

**Speech
By
Peter Schieder, Austria,
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The record of the Council of Europe in the past three decades on LGBT questions is a mixed one. On one hand, it was the first international body to speak up and act to protect the rights of lesbians and gays. On the other hand, this progress – crucially important though it is – was built through a succession of small and timid steps, which did not always apply principles to the full, and which often sought to placate persistent homophobic attitudes within some member states.

In spite of this, the progress made has been considerable, and it should largely be attributed to the European Court of Human Rights and the Parliamentary Assembly.

The Court and, in the past, also the European Commission for Human Rights, handed down a series of ground-breaking judgments, recognising that discrimination on the basis of sexual orientation was a violation of fundamental rights, and gradually expanding this general principle to areas such as employment and child custody. The decisions of the Court are of the greatest importance because they oblige changes in national legislation which is found to be incompatible with the European Convention on Human Rights.

The Parliamentary Assembly did not only aim to change laws, but also to change attitudes. The Assembly brings together parliamentarians from different backgrounds and of different political persuasions. They are not directly elected as the Members of the European Parliament of the 27 member states of the EU. The Members of the Parliamentary Assembly of the Council of Europe are Members of the 47 National Parliaments of the member States of the Council of Europe, designated by their national parliament for the tasks in the Strasbourg assembly. Their views reflect the predominant opinions within their part of the electorate, be they progressive or conservative, tolerant or marred with prejudice. In the debating chamber in Strasbourg they express themselves freely, but they do so against the background of the principles that our Organisation was set up to defend. This is our best chance to move things forward, but one should not expect miracles. It is always difficult to change people's views, and it takes time.

Yet the Assembly has made steady progress. In 1981 it adopted its ground-breaking Recommendation 924 on discrimination against homosexuals, which condemned the continuous discrimination against and oppression of homosexuals and recommended that Council of Europe of governments take a number of concrete steps, including applying the same age of consent as for heterosexuals and ensuring equal treatment with regard to custody rights for children.

More recently, in year 2000, the Assembly adopted two texts – the first one on the general situation of lesbians and gays in the Council of Europe and the second one on their and their partners' situation in respect of asylum and immigration in our member states. Both recommendations are openly critical of the insufficient legal protection given to gay and lesbian rights in many Council of Europe member states, and they clearly state a number of principles revealing the extent of the change in the Assembly's thinking since 1981.

To fully appreciate the importance of this change one must recall that in 1981 the Council of Europe had twenty-one member states, all from the western part of the continent. In the year 2000, it had twenty more. Our unequivocal condemnation of any form of discrimination, our calls for an equal age of consent, for the formal recognition of homosexual partnerships, for an explicit reference to sexual orientation as a ground for discrimination prohibited by the European Convention on Human Rights – these were messages which were sent to the Europe as a whole, including the new members from Eastern Europe, the Caucasus and Russia too

The educational role of the Assembly in this field may be oriented towards the long term, but it is important. We are consistently expanding the boundaries of human rights and paving the way for further progress achieved through the decisions of the European Court of Human Rights and the actions of member states' governments.

In addition, the Assembly has imposed a number of legislative changes on countries acceding to the Council of Europe. Respect for these obligations is closely scrutinised through the Assembly's monitoring procedure. Romania is an example of the concrete and positive results of the Assembly's action.

On the other hand, I personally regret the fact that in the debate on the accession of Yugoslavia, an amendment calling to repeal from the internal legislation all provisions discriminating against homosexuals, failed to obtain the necessary majority. However, the absence of a specific reference did not mean that we had accepted the presence of discriminatory provisions in the legislation in our 45th member states. This issue can be dealt with through Protocol 12 to the European Convention on Human Rights which the Belgrade authorities are obliged to sign upon accession and ratify within a year after.

In the last years the Assembly concentrated on full legal recognition of same-sex couples by the state, including the right to marry, and the right to be considered for the adoption of children. The now discussed Convention on Childs Rights could bring a break through for the question of adoption. The Assembly dealt also regularly with homophobic tendencies in some member countries.

Some examples for these Assembly activities are:

- + The Written Declaration No 398 from 26 June 2007 on "Rising levels of homophobia in some member states", deploring that in May 2007a gay pride parade in Moscow was, for the second year running, banned and broken up by the police. As in the previous year, some participants were the victims of violence, with the police reportedly sometimes slow to intervene. In April 2007for the third year in succession, the Mayor of Chisinau (Moldova) banned a peaceful demonstration by lesbian, gay, bisexual and transgender persons, in March 2007, the Polish Government put

forward proposals which would oblige schools to “protect students from contents which threaten their proper psychological and moral development”, including those which “violate the principles of the protection of marriage and family, including the propagation of homosexuality” and in May, Vilnius city council, in Lithuania, banned an EU-sponsored rally called “For diversity – against discrimination”, which aimed to promote tolerance towards minority groups, including gays and lesbians.

+ The Written Question No. 540 to the Committee of Ministers on “Denial of freedom of assembly and expression to lesbian, gay, bisexual and transgender persons in Lithuania”

+ The Written Question No. 527 on “Ban on a Moscow demonstration by lesbian, gay, bisexual and transgender persons in 2007”

+ The Written question no 559 from 27 January 2009 to the Committee of Ministers on “Equal rights for homosexual partnerships” presented by Mrs Acketoft

+ The Motion for a recommendation from 8 October 2007 on “Discrimination on the basis of sexual orientation and gender identity” presented by Mr Jurgens and others

+ The Written question no 559 from 27 January 2009 to the Committee of Ministers on “Equal rights for homosexual partnerships” presented by Mrs Acketoft

The Committee of Ministers in its replies always deals very seriously with the questions. To give you an example I quote from the answer concerning Lithuania:

“1. In reply to the Honourable Parliamentarian’s question, the Committee of Ministers refers to its previous replies regarding the rights to freedom of expression and freedom of assembly of lesbian, gay, bisexual and transgender (LGBT) persons.¹ It considers that these replies, as well as the reply to the present question, serve as a useful reminder of the relevant human rights principles that have to be respected in this field. The Committee of Ministers recalls in particular that the rights to freedom of expression and freedom of assembly must be enjoyed by all without discrimination. While the Convention allows for restrictions on the exercise of the rights to freedom of expression and freedom of assembly, such restrictions must be prescribed by law and be necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others. According to the established case law of the European Court of Human Rights, peaceful demonstrations, be they in favour of the rights of LGBT persons or others, cannot be banned simply because of the existence of attitudes hostile to the demonstrators or to the causes they advocate. On the contrary, the state has a duty to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully. In a series of judgments, the Court has emphasised that any discrimination based on sexual orientation is contrary to the Convention.² All member states must observe the Convention when they apply national law, notably in the light of the case law of the Court.

2. The Committee of Ministers furthermore recalls that its Recommendation No. R (97) 20 on “hate speech” asserts that public authorities and institutions have a “special responsibility to refrain from statements (...), speech (...) and other forms of

discrimination or hatred based on intolerance” (Principle 1), especially when it is disseminated through the media. Any legitimate interference with freedom of expression should be “narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria (and) (...) subject to independent judicial control” (Principle 3).³ In this context, the Committee of Ministers invites all member states to implement its Recommendation No. R (97) 20 on “hate speech” as well as its Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance in respect of lesbians, gays, bisexuals and transgender persons.

3. The Lithuanian authorities have informed the Committee of Ministers that they have drawn the attention of the Mayor of Vilnius and the Lithuanian Office of Equal Opportunities Ombudsperson to the relevant human rights principles of the Council of Europe. More generally, the Committee of Ministers has already announced in its previous replies on the matter that it will consider how to enhance Council of Europe action in this area,⁴ in order to achieve more synergy, co-ordination and substantial results and has instructed the relevant services of the Secretariat to make proposals to this effect. In addition to the work undertaken by the Council of Europe Commissioner for Human Rights in this field, the Steering Committee for Human Rights (CDDH) has recently adopted a report on “hate speech” and will continue to consider this issue in the context of its work on human rights in a multicultural society. It has also recently examined the topic of human rights defenders with a view to identifying ways and means to improve their protection. As a result of this activity, the Committee of Ministers adopted, on 6 February 2008, a declaration on the protection of human rights defenders and promotion of their activities. Freedom of association and peaceful assembly is, of course, at the heart of this declaration, and this includes those who defend the rights of individuals who are particularly vulnerable to victimisation, such as LGBT persons.”

Even if there is an unchallenged clear line concerning the condemnation of homophobic attitudes, I should not conceal from you that the Assembly remains divided on the issue of same-sex marriages and adoptions by gays and lesbians. The opponents of a more liberal approach are mainly the Christian Democratic and the Conservative Group in the Assembly.

Court decisions are therefore of real importance, but it must be made absolutely clear that the Assembly is free to make recommendations which go beyond the Court’s decisions.

As Honorary President I am still connected with the Assembly, but I am not longer a member of it. I left politics two years ago concentrating on a new important task as President of the International Institute of Peace

When I was elected President of the Parliamentary Assembly of the Council of Europe in 2002, I declared that the protection of gay and lesbian rights would be one of my priorities in office. One of the reasons for it was that in their struggle to defend and expand their rights, gays and lesbians have had to rely almost exclusively on themselves. There has been a persistent, and almost generalised, lack of commitment, to recognise and defend their rights as an integral part of human rights. I believe it is high time that Europe’s lesbians and gays receive greater support from institutions mandated to protect equality and human rights at national and European level.

LGBT rights cannot and should not be only the concern of LGBT persons themselves – they must be the concern of all parliamentarians in Europe and our societies as a whole.