



Adopted resolution

LGBT rights as Human Rights

“It’s normal to be different”

Lesbian, Gay, Bisexual and Transgender (LGBT) Rights are Human Rights

Human Rights and LGBT rights as human rights have been important for the EGP/EFGP since its beginning:

- The “Guiding Principles” of the EFGP emphasize the importance of human rights. III. 2.1. states “Human rights are basic individual rights, which cannot be reduced. They are valid for inhabitants without discrimination on the basis of race, disability, gender, **sexual orientation**, religion, age or national or ethnic origin”(emphasis added).
- Resolutions that have been adopted by the European Greens that are of major relevance to LGBT issues are “The Human Rights Act” (EFGP 10th council meeting, Stockholm, 24th-26th of November 2000), “On Homophobia” (EFGP 2nd council meeting, Riga, 6th-8th of May 2005, “Rights of minorities” (EGP 3rd council meeting, Kyiv, 21st to 23rd October 2005)

All over the world LGBT rights are being violated. LGBT people are still being discriminated against on basis of their sexual orientation or on basis of their gender identity. We - the European Greens - call for an end of discriminations on the basis of sexual orientation and gender identity. Lesbian, gay, bisexual and transgender rights are human rights.

Therefore the European Greens demands:

- Anti-discrimination legislation that prohibits discrimination on the basis of sexual orientation and gender identity in all areas (goods and services, employment and occupation)
- Registered partnerships for same sex couples and /or same sex marriage (that includes for example the same legal rights as married heterosexual couples concerning rent law, social security, income tax, immigration rules, inheritance rights etc.)
- The right for same sex couples to adopt children
- The permission of fertility treatment for single and lesbian women
- Same age of consent for heterosexuals and homosexuals
- Asylum Law: specific legislation on granting refugee or asylum status to people facing persecution on ground of their sexual orientation or on ground of their gender identity
- The ratification of Protocol 12 to the European Convention on Human Rights
- Free choice of first name for transgenders without the need to have a sex changing surgery before

The European Greens also see the need to inform the public about myths and realities of LGBT ways of living. Therefore we support:

- Public awareness raising campaigns in order to make it clear that “it’s normal to be different”.

EGP and EFGP parties will strive to change public awareness and legislation accordingly. That includes:

- to have anti-discriminations policies within EGP member parties

Appendix A: **European Union and LGBT rights, some examples:**

1994: Adoption of the Resolution on equal rights for homosexual and lesbians in the EC.¹ In this resolution, the European Parliament called upon EU member states to provide lesbians and gay men with legal protection against discrimination and to introduce partnership registration schemes. This resolution was reiterated by the European Parliament on three more occasions, e.g., in the annual reports and resolutions on the observance of human rights in the EU for 1994 (Document A4-0223/96), 1995 (A4-0112/97) and 1996 (A4-0034/98). Author of the groundbreaking European Parliament report of “Equal Rights for homosexuals and lesbians in the EC” was the Green MEP Claudia Roth (EP Doc. Nr. A3-0028/1994)

Amsterdam Treaty 1997

Article 13 Treaty of Amsterdam:

“Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting upon unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

While Article 13 EC Treaty does not provide for a ban on discrimination, it provides the Union for the first time with the competence to take measures to fight discrimination.

Framework Directive on Equal Treatment in Employment and Occupation²

In November 2000 the European Union adopted the Framework Directive on Equal Treatment in Employment and Occupation. (Directive 2000/78/EC of 27 November 2000, OJ L303/16). It prohibits discrimination on the grounds of religion or belief, disability, age and sexual orientation.

Community Action Programme to Combat Discrimination

In November 2000 a Community Action Programme to Combat Discrimination for the period 2001-2006 was approved with a budget of 100 million euros in order to support activities that fight against discrimination on grounds of racial or ethnic origin, religion or belief, disability, age, or sexual orientation. Legal basis: **Council Decision 2000/750/EC** of 27.11.2000 (OJ L 303, 2.12.2000)³, **EEA Joint Committee Decision 181/2003** of 5.12.2003 (OJ L 88, 25.3.2004, entry into force 20.12.2003)⁴

The **European Union’s Charter of Fundamental Rights** was adopted in the European Council of Nice in December 2000. It states that fighting for human rights and against all forms of discrimination, including on grounds of sexual orientation, are fundamental values of the European Union.

“Article II- 21. Non-discrimination. 1. Any discrimination based on ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”⁵

Report on Fundamental Rights in the EU in 2002 (European Parliament resolution on the situation as regards fundamental rights in the European Union (2002) - (2002/2013(INI)).: “European Parliamentarians call on the member states to “abolish all forms of discrimination - whether legislative or de facto - which are still suffered by homosexuals, in particular as regards the rights to marry and adopt children”. Moreover, the report makes explicit mention of the current limitations of free movement rights and urges member states to take the necessary steps to extend these rights to all definitions of “family”.⁶

¹ http://www.stonewall.org.uk/docs/1994_EU_parliament_resolution.pdf

² http://www.legislationline.org/data/Roma/Standards/EU/Council/Directive_78_2000_equal_treat_employ_occup_topic.pdf

³ http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_303/l_30320001202en00230028.pdf

⁴ http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_088/l_08820040325en00630064.pdf

⁵ http://www.europarl.eu.int/charter/pdf/text_en.pdf

⁶ <http://www.ilga-europe.org/>

European Constitution: adopted in June 2004, will enter into force in 2007 if ratified by all member states.

“The preamble of the Constitution states that equality and human rights are central values of the EU. The Constitution includes the Charter of Fundamental Rights of the Union, which will be judiciable in the European Court of Justice (ECJ). It presents a substantial change in relation to the rights of lesbian, gay, bisexual and transgender (LGBT) people in the EU since it enshrines protection against discrimination on the grounds of sexual orientation and sex (which includes gender according to the case law of the ECJ) (article II-21). It also recognises, amongst others, the rights to respect for private and family life (Article II-7) and the right to marry and found a family (Article II-9).”⁷

Resolution on Homophobia in Europe⁸: adopted on the 18th of January 2006 by the European Parliament (468 in favour, 149 against, 41 abstentions)

Appendix B:

Council of Europe and LGBT rights, some examples:

European Convention on Human Rights⁹: Especially article 8 and article 14 have been important for LGBT rights although sexual orientation is not explicitly mentioned in the Convention.

Recommendation 924, 1981: the Parliamentary Assembly condemned the various forms of discrimination suffered by homosexuals in certain Council of Europe member states

Resolution 756, 1981: On discrimination against homosexuals, the Parliamentary Assembly called upon the World Health Organisation to delete homosexuality from its International Classification of Diseases. It was finally put into practice in the beginning of the 90s.

Recommendation 1474, 2000: Situation of lesbians and gays in Council of Europe member states¹⁰

Recommendation 1470, 2000: Situation of gays and lesbians and their partners in respect of asylum and immigration in the member states of the Council of Europe¹¹

Protocol 12 to the European Convention of Human Rights and Fundamental Freedom¹²: It has come into force on the 1st of April 2005, but so far only 11 countries have ratified the Protocol¹³ therefore its implementation is being delayed. Protocol 12 strengthens the anti-discrimination provisions of the Convention and is therefore potentially beneficial to lesbians, gays, bisexuals and transgenders.

“Currently, the European Convention on Human Rights does not provide a separate right not to be discriminated against. Secondly, prohibition of discrimination applies only in respect of one of the other rights protected by the Convention. Protocol 12 creates an independent right for individuals not to be discriminated against and a positive duty for public authorities not to allow discrimination. Sexual orientation and gender identity are not listed among prohibited grounds of discrimination. Nevertheless earlier case-law of the European Court of Human Rights clearly stated that discrimination on grounds of sexual orientation and gender identity in some areas breaches the Convention rights. Additionally, the Explanatory Memorandum to the Protocol does make reference to sexual orientation discrimination.”¹⁴

Case-law of the European Court of Human Rights relevant to lesbian, gay, bisexual rights, some examples:

⁷ Ilga Europe Press Release 21. June 2004, <http://www.ilga-europe.org/>

⁸ <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+TA+P6-TA-2006-0018+0+DOC+XML+V0//EN&L=EN&LEVEL=0&NAV=S&LSTDOC=Y&LSTDOC=N>

⁹ <http://conventions.coe.int/Treaty/ger/Treaties/Html/005.htm>

¹⁰ <http://assembly.coe.int/Documents/AdoptedText/ta00/erec1474.htm#1>

¹¹ <http://assembly.coe.int/Documents/AdoptedText/ta00/erec1470.htm#1>

¹² <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm>

¹³ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=8&DF=19/04/05&CL=ENG>

¹⁴ <http://www.ilga-europe.org/>

- ban on consensual sex between adult men: 1981: the European Court of Human Rights, in its *Dudgeon v. United Kingdom* judgment held that the prohibition of sexual acts between consenting male adults infringed Article 8 of the European Convention on Human Rights; It was confirmed by 2 more judgements: *Norris v Ireland* (1988) and *Modinos v Cyprus* (1993)
- age of consent: European Commission in the case of *Sutherland v. Uk* (1996) found that the higher age of consent for gay men was discriminatory and violated a right to a private life. The European Court of Human Rights confirmed the higher age of consent for gay men was discriminatory and in breach if the European Convention on Human rights in 2 more judgments: *L. and V. v Austria* (2003) and *S.L. v Austria* (2003).
- military ban: The European Court of Human Rights found that to ban lesbians, bisexuals and gays from military service violets article 8 of the Convention in following cases: *Lustig-Prean and Beckett v UK* (1999), *Smith and Grady v UK* (1999), *Perkin and R v UK* (2002) and *Beck, Copp and Bazeley v UK* (2002).
- child custody: The Court declared that refusing child custody to a gay man simply because of his homosexuality was in breach of Article 8 of the Convention, the right to a private life. It was declared discrimination on the grounds of sexual orientation and violated Article 14 of the Convention which prohibits discrimination. Case: *Salgueiro Da Silva Mouta v Portugal* (1999)
- rights of same sex partners: case: *Karner v Austria*. “It involved a complaint from Siegmund Karner, an Austrian gay man who has lived in his male partner’s flat since 1989 and shared the expenses of the flat. Mr Karner’s partner died in 1994 and designated Mr Karner as his heir. However, the landlord of the property started the process of terminating the tenancy with Mr Karner. District and Vienna Regional Courts interpreted the term ‘life companion’ of the Rent Act as including same-sex partners who lived together for a long time. However, the Supreme Court disagreed with this interpretation. For the first time in its history, the European Court of Human Rights ruled that this was discrimination based on sexual orientation and that the Convention has been breached.”¹⁵

Appendix C: Links: <http://www.ilga-europe.org>