



THE CITY OF STRASBOURG AND THE COUNCIL OF EUROPE, WITH THE PATRONAGE  
OF ITS SECRETARY- GENERAL MR. THORBJØRN JAGLAND

LA VILLE DE STRASBOURG ET LE CONSEIL DE L'EUROPE, SOUS LE PATRONAGE  
DE SON SECRETAIRE-GENERAL MONSIEUR THORBJØRN JAGLAND

21 November 2001

Lack of mutual recognition conference

## **THE LACK OF MUTUAL RECOGNITION OF SAME SEX UNIONS IN EUROPE**

*An obstacle to Freedom of Movement*

STRASBOURG, FRANCE, 18 AND 19 NOVEMBER 2011



### **DECLARATION OF STRASBOURG**

**Unanimously adopted on 19 November 2011**

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1. We, conference participants with particular knowledge of LGBT issues, meeting in Strasbourg on 18 and 19 November 2011 under the auspices of the Secretary General of the Council of Europe, with the support of the City of Strasbourg, and on the initiative of the French NGO l'Autre Cercle within the framework of its ongoing reflection on equality of rights for the LGBT population of Europe,

Thanking the Senator-Mayor of Strasbourg, Monsieur Roland Ries and the Director of Human Rights and Antidiscrimination of the Council of Europe, Mr. Ralf René Weingaertner, for their warm hospitality and welcome and for their contribution to the work of the conference,

### 1) Statement of fundamental principles

- 1.1 recall that the duty of member states of the Council of Europe is to have non-discriminatory respect for the family life of any couple, including when the couple has moved, is moving, or wants to move from one country to another.
- 1.2 consider that a cornerstone of the law of the Council of Europe is the right to respect for family life (article 8 of the European Convention on Human Rights).
- 1.3 stress that the European Court of Human Rights has repeatedly held that not only different-sex couples enjoy this family life, but also same-sex couples.
- 1.4 recognise that Article 14 of the European Convention on Human Rights compels the 47 member countries of the Council of Europe to secure the enjoyment of this right without discrimination on any ground.
- 1.5 recall that the European Court of Human Rights has repeatedly held that particularly serious reasons are required to justify any discrimination based on sexual orientation.
- 1.6 consider that a cornerstone of the law of the European Union is freedom of movement, as specified in Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.
- 1.7 emphasise that Article 2 of the Directive includes in the notion of "family member": the spouse of the Union citizen, his or her children under 21, the spouse's children under 21, certain dependant relatives, and (in countries where partnership registration is possible) the registered partner of the citizen and that partner's children under 21.
- 1.8 recognise that Article 3 of the Directive adds that the member states shall also "facilitate entry and residence" of, among others, the "partner with whom the Union citizen has a durable relationship, duly attested".
- 1.9 point out that it follows from Article 21 of the EU Charter of Fundamental Rights that the 27 member states should implement this Directive without discrimination on grounds of sexual orientation.

- 1.10 stress that both the Court of Justice of the EU and the European Court of Human Rights have repeatedly held that discrimination between same-sex and different-sex partners is a form of sexual orientation discrimination.
- 1.11 consider that non-recognition of a foreign marriage or partnership primarily because of the sexual orientation of the couple is discriminatory, offends their right to family life, and constitutes a major obstacle to their freedom of movement.
- 1.12 reaffirm our vision of a Europe in which the rights of LGBT people are equal to those of heterosexuals, in particular in the areas of civil marriages and partnerships and in the mutual recognition of those civil marriages and partnerships across national borders.
- 1.13 reaffirm our solidarity with LGBT people whose rights have been denied by national governments or who have had to face administrative obstacles when trying to achieve those rights. In particular we express our solidarity with transgender persons facing discrimination and experiencing problems in obtaining recognition of their acquired gender or suffering from its non recognition.
- 1.14 give our support to the efforts made by the Council of Europe, notably the Recommendation (2010)5 of the Committee of Ministers of the Council of Europe to member states on measures to combat discrimination on the grounds of sexual orientation and gender identity, adopted on 31 March 2010 and the recommendations of the Commissioner for Human Rights, Thomas Hammarberg, in his 2011 report on Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe (see page 13 recommendation 5.5 on the recognition and rights of same-sex partnerships).
- 1.15 give our support to the efforts of the European Union to improve the currently imperfect transposition into national law of Directive 2004/38/EC.
- 1.16 stress the importance of adopting regulations on the property rights of married and registered partners without regard to sexual orientation, and of the recent consultation on mutual recognition of civil status documents.

## 2) Call for action

- 2.1 call on European and national politicians to put an immediate end to the discriminatory legal and regulatory barriers faced by lesbian and gay couples in their international mobility and ensure that same-sex couples are guaranteed equality of rights with heterosexual couples
- 2.2 intend to encourage the use of strategic litigation in order to identify and close gaps in the law and to obtain case law aimed at facilitating changes in legislation or policies that violate constitutional protections or human rights, and ensure that laws are properly interpreted and enforced
- 2.3 will participate in strategy and policy making forums to ensure the mainstreaming of LGBT issues and perspectives in the realisation of free movement and human rights, both at European and national level.
- 2.4 will encourage public and private sector organisations to implement diversity management policies that ensure inclusion of their LGBT employees and respect their right to family life including cases where it is in the interest of both the employees and the organisations concerned.
- 2.5 will identify best practices and encourage and accompany such organisations in the implementation of their LGBT diversity management policies, providing them with materials and training programmes to this end.
- 2.6 will actively encourage persons who may face issues relating to non recognition of their foreign same sex unions or civil status to report such problems to their national or international representative institutions.