Committee of Ministers: Recommendation Combating Discrimination on Grounds of Sexual Orientation or Gender Identity

IRIS 2010-8:1/3

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A new Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Council of Europe's Committee of Ministers' (CM) on 31 March 2010, contains a number of provisions concerning freedom of expression, "hate speech" and the media.

Recommendation CM/Rec(2010)5 is addressed to all member states of the Council of Europe. It comprises a substantive part with five recommendations and an appendix that sets out a range of relevant "principles and measures". The recommendations concern both direct and indirect discrimination based on sexual orientation or gender identity. They highlight the need for relevant existing legal and other measures to be kept under review. They also call for the adoption and effective implementation of legal and other measures to combat such discrimination and to "ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them". Another main focus of the recommendations is the need to ensure that relevant legal (and other) measures include effective legal remedies, as well as awareness of and access to such remedies, and provision for appropriate sanctions and reparations.

The principles and measures contained in the Appendix are intended as a source of guidance for member states "in their legislation, policies and practice". In respect of "hate speech", the Appendix recommends that "Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons". Those measures should be in accordance with Article 10 of the European Convention on Human Rights and relevant case-law of the European Court of Human Rights. Public authorities and institutions "at all levels" are reminded of their responsibility to refrain from engaging in such types of expression and indeed to promote tolerance towards lesbian, gay, bisexual and transgender persons. The Appendix also calls on member states to ensure the non-discriminatory and effective enjoyment of the right to freedom of expression, "including with respect to the freedom to receive and impart information on subjects dealing with sexual

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orientation or gender identity".

More generally, the range of "principles and measures" set out in the Appendix to the Recommendation is broad, as illustrated by the range of categories into which they are grouped: right to life, security and protection from violence ("Hate crimes" and other hate-motivated incidents; "Hate speech"); freedom of association; freedom of expression and peaceful assembly; right to respect for private and family life; employment; education; health; housing; sports; right to seek asylum; national human rights structures, and discrimination on multiple grounds.

Finally, it is worth noting that the CM's engagement with "hate speech" concerning sexual orientation and gender identity in this Recommendation and Appendix represents a broadening of the Council of Europe's traditional approach to combating "hate speech", which has generally tended to centre on racism, xenophobia, anti-Semitism and related forms of intolerance. Curiously, two very important reference points for that traditional approach - the twin CM Recommendations No. R (97)20 on "hate speech" and No. R (97)21 on the media and the promotion of a culture of tolerance (see IRIS 1997-10: 4/4) - are not expressly mentioned in the present Recommendation.

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, 31 March 2010

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