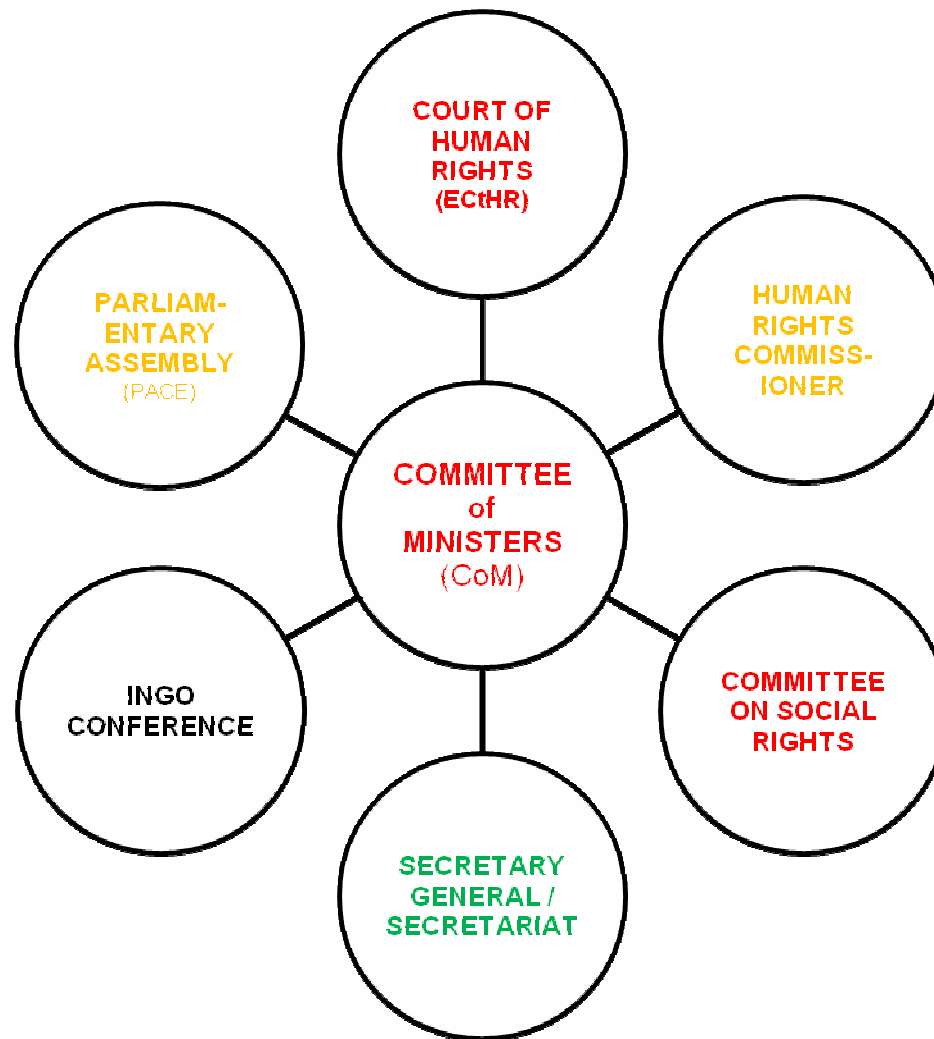


Council of Europe Agenda

- Main Institutions
- History
- European Court of Human Rights
- Committee of Ministers
- Commissioner on Human Rights
- Parliamentary Assembly

Council of Europe / Main Institutions



History:

Struggle for recognition that LGBT rights are human rights

- 1981: **ECHR**: Dudgeon – **PACE**: Recommendation
- 1990: ILGA application for consultative status rejected
- Since 97: strongly increasing recognition under European Convention on Human Rights
- 2000: Parliamentary Assembly Recommendation
- 2001: Committee of Ministers reply – half-hearted
- Since 2005 **freedom of assembly and other problems in CEE are transforming attitudes at the Committee of Ministers**

How we can use C of E

- **Extend concept of LGBT rights as HR's**
 - Judgments (ECHR, Social Charter)
 - “Soft law” statements (CoM, PACE)
 - Educate through debate (Governments, MPs, NGO's, faith organisations)
- **Pressurise individual governments**
(ECHR, Social Charter, PACE Monitoring Cttee, PACE Written Question's, HR Commissioner's reports)

Pro-LGBT positions of the Court: sexual orientation

- Equal treatment in the criminal law (1997 – 2000)
- Prohibition of discrimination by public authorities in:
 - Custody of children by biological parents (1999)
 - Employment and services (armed forces) (2000)
- Same rights/benefits must be granted to same-sex cohabiting partners as they give to different-sex cohabiting partners (2003)
- If single heterosexuals are allowed to adopt, single homosexuals must be allowed to adopt (2008)

Pro LGBT positions of the Court

Gender Identity

Judgments protect right of transsexual men and women:

- To legal recognition of sex reassignment (e.g. birth certificates) (2002)
- To marry a person whose sex is different to their reassigned sex (2002)
- Where a health insurance plan reimburses cost of "medically necessary" treatment, plan must cover the cost of gender reassignment (2003)

Future ECHR cases

Current cases

- Partnership rights (Schalk and Kopf – Austria + others)
- Freedom of expression (Kaos – Turkey; Nash Mir - Ukraine)
- Freedom of association (Rainbow House - Russia)
- Freedom of assembly (Russia, Moldova)

Areas not covered: marriage and joint adoption

Response by the Committee of Ministers to PACE Recommendation (2001)

- “regrettably, discrimination and violence .. Still occur... as do contemptuous or intolerant attitudes”
- “importance of covering all forms of discrimination within C of E’s activities” – **but no action proposed**
- Reform discr legislation in line with ECtHR case law
- Agrees with “*several* of the injunctions addressed to member states” esp re education and training
- “powerful cultural reactions.. not a valid reason for governments or parliaments to remain passive.”

DID NOT REFER RECOMMENDATION TO MS

Developments at Committee of Ministers 2007

Responses to Written Questions:

- “ The C of E is promoting a clear message of tolerance and non-discrimination” (31.1.07 - Moscow 2006 pride)
- “Discrimination on grounds of sexual orientation is not compatible with the value of tolerance and the principle of equality, to which all the member states are bound... in a series of judgements the Court has emphasised that **any discrimination based on sexual orientation** is contrary to the Convention ... will consider **how to enhance C of E action in this area**” (7.11.07 Chisinau 2006 pride) (Warsaw ECHR 5/07)
- “invites all member states to implement its Recommendation on “hate speech” (6.2.08 Moscow 2007 pride)

Committee of Ministers Actions – July 2008

- i. Recommendation on combating so/gi discrimination identity, and need to ensure respect for LGBT human rights
 - ii. All intergovernmental committees to “mainstream” need for member states to avoid discrimination against LGBT people and to make proposals to that effect.
 - iii. An intergovernmental committee is to examine discrimination against LGBT partners
- + Family Law Committee study on rights of children in non-traditional families

Commissioner for Human Rights

- Public statements
- Conferences/seminars
- Interventions with government officials, national human rights institutions
- Country reports
- Does not take up individual cases

Support for LGBT rights

- Playing strong leadership role – LGBT rights a priority
- Many statements in support of LGBT rights, including full endorsement of Yogyakarta principles
- Staff member dedicated half time to LGBT issues
- LGBT Programme
 - Seminar on how National Human Rights institutions can work on LGBT issues
 - Workshop on transgender issues
- Actively seeking information on LGBT issues for country reports and meeting LGBT groups

“Time to recognize that human rights principles apply also to sexual orientation and gender identity”

- “too few leading politicians stand up against homophobic and transphobic expressions”
- Protection of LGBT rights does not “amount to introducing new rights”.
- “unfortunately some religious preaching has not been helpful in the defence of LGBT rights”
- “Discrimination against anyone on the ground of so or gi is a human rights violation”

Patriarch Alexi II – speech to PACE

Justified his opposition to the Moscow gay pride march on the basis that it was “propaganda for sin”.

Homosexuality was “an illness and a distortion of the human personality” comparable to kleptomania.

Parliamentary Assembly

Report on sexual orientation and gender identity discrimination

- Will lead to resolution on a wide range of areas
- Many hostile delegates to Assembly
- May not go beyond Committee of Ministers, esp re family related issues

Monitoring Committee

Reviews progress of new member states towards achieving satisfactory level of respect for human rights and rule of law. (Albania, Armenia, Azerbaijan, Bosnia, Bulgaria, Georgia, Macedonia, Moldova, Monaco, Montenegro, Serbia Turkey, and Ukraine)

Rapporteurs (2) appointed by Assembly;

- Regular visits
- Report to the Assembly every year to two years

Window of opportunity

Monitoring process disliked by governments, so incentive to comply with Assembly recommendations

Assembly Monitoring Resolution on Bosnia – 1 Oct 2008

- Condemns the discrimination and violence against LGBT people and the recent attacks against organizers and participants of the Sarajevo Queer Festival ..
- Calls upon the Bosnian authorities “to condemn discrimination against LGBT people ... and promptly and thoroughly investigate any attacks against them and bring those responsible to justice”