



**Inter-ministerial programme to combat discrimination  
against gay men, lesbians  
and transsexuals**

© **Generalitat de Catalunya**

**Departament d'Acció Social i Ciutadania**

1a edició: gener de 2008

Tiratge: x exemplars

Disseny: **Xeixa Rosa**

Impressió: **x**

Dipòsit legal:

## Table of Contents

5	Salutació
7	Presentació
9	Text Verdeguer
11	Introduction
15	a) Legislation and law
17	b) Employment
19	c) Healthcare
23	d) Education and training
25	e) Culture and leisure
27	f) Communication
29	g) Welfare
31	h) Participation and solidarity
33	Study and research
35	Contacts and cooperation
39	Bibliography and documentation





## Salutació

This Inter-ministerial Programme to Combat Discrimination against Gay Men, Lesbians and Transsexuals places Catalonia at the forefront of those countries committed to promoting policies and government actions which increase visibility for individuals within these communities, allowing them to live freely and openly. In the space of a few years, Catalonia has taken the lead in recognising rights for lesbians, gays and transsexuals. And now, the government of the Generalitat shall continue this work, developing incipient initiatives and opening the way for new measures.

For the Ministry of Social Action and Citizenship, this Programme is a way to impact as many aspects of daily life as possible and thereby create true equality in terms of opportunity, rights and freedom. In keeping with this idea, the support and involvement of Catalan LGBT (lesbian, gay, bisexual and transsexual) organisations is essential in implementing the policies and actions described in the Programme.

We should not forget that this Programme, which involves ten different ministries from the Generalitat of Catalonia, is the result of the aspirations and historical demands of the various LGBT communities in Catalonia. It has become an example of how this work is to be done, thanks both to its scope as well as to its specific areas of implementation: legislation and law; employment; healthcare; education and training; culture and leisure; communication; social action and citizenship; and participation and solidarity.

In fact, one of the most important proposals that has been put into practice is the creation of the National Council for Lesbians, Gay Men, Bisexuals and Transsexuals, a permanent advisory body for dialogue between the government of the Generalitat and civil society. Another significant initiative is the drafting and adoption of the future law against homophobia, lesbophobia and transphobia. Moreover, research and prospective studies shall be carried out, in order to better guide future government actions.

By drafting and adopting this reference document, the Generalitat of Catalonia not only complies with that which is set out in the statute of autonomy, it also commits itself to safeguarding complete equality for all citizens in Catalonia, regardless of their sexual or gender orientation.

**Carme Capdevila i Palau**

Minister of Social Action and Citizenship



## Presentació



Four years after the setting up of the Office for the Gay, Lesbian and Transsexual Community and the adoption of the Inter-ministerial Programme to Combat Discrimination against Gay Men, Lesbians and Transsexuals, we are seeing how other countries in Europe are following in our footsteps. Back then, those individuals and institutions which were moving towards this goal saw how necessary and important it was to work on a comprehensive approach in responding to the diverse needs of the LGBT (lesbian, gay, bisexual and transsexual) community.

In the government of the Generalitat we are providing political hope beyond our borders, and that is no chance happening – it is the result of constant effort and of the wise proposals made, such as: this Programme and the Office it answers to; the modification of the law on adoption, thereby opening the door for adoption by lesbian or gay couples; the setting up of the National LGBT Council which will allow for close work with civil society; or the fact that the Generalitat has joined ILGA (International Gay and Lesbian Association). All of these moves place us at the very centre of the fight for anti-discriminatory policies, equality under law and recognition of diversity in sexual orientation. Up until now we have established the foundation and created the instruments to be used; meanwhile, the process of consolidation and growth has continued and will do so for years to come.

As the Secretary for Family Policy and Citizens' Rights, I would like to mention two areas that have been given special attention: the way in which the family diversity has been included in family policy, and the promotion and empowerment of the lesbian perspective within LGBT policies. We speak of diversity of families because on a daily basis we see a multitude of situations which deserve a response from public administrations, as directed by the Catalan statute of autonomy. This diversity naturally includes relationships between lesbians or gay men who are living together as a family. After all, public administration exists to provide individuals with those tools and resources they need to prosper in all aspects of life, including relationships and family.

Allow me to elaborate on one more point. Women are 52% of the population, and yet we are without any doubt one of the least visible groups within the LGBT community for many different reasons. Steps must be taken towards slowly but surely changing this situation in society. Government actions are designed to do away with discrimination and, in this case, the double discrimination endured by lesbian women.

At the government, our challenge and main goal in developing this inter-ministerial programme is to end with the discrimination suffered by so many individuals for the mere fact of having a different sexual orientation.

**Carme Porta Abad**

Secretary of Family Policy and Citizens' Rights

The Inter-ministerial Programme to Combat Discrimination against Gay Men, Lesbians and Transsexuals is the manifestation of the Catalan government's will to ensure that the lesbian, gay, bisexual and transsexual (LGBT) community is fully protected and respected according to the fundamental rights described in our legislation. After having gone through a period of significant change in legislation, the challenge we now face is to make sure that this is reflected in the entire set of laws and in every part of the country: from schools to the workplace, in hospitals and in residences for the elderly, while receiving job training, during leisure activities, etc. The objective is clear: to end discrimination based on sexual orientation.

Articles 15.2, 40.7 and 40.8 of the Catalan statute of autonomy clearly define the public administration's responsibility in working towards a more fair society, one without discrimination and where all families, no matter what their makeup, receive equal recognition, free of LGBT phobia. The last two Government Plans (2004–2007 and 2007–2010) provide for the implementation of the Inter-ministerial Programme and for other measures whose goal is to offer a high degree of recognition and protection for the LGBT community.

It is important to see the legal framework in which these new policies were developed, policies which have put us at the forefront of those European countries fighting for human rights and the recognition of the LGBT community. The European recommendations and directives adopted over the last fifteen years have been an incentive for governments and administrations throughout the Union in achieving higher levels of freedom and welfare.

And precisely with the goal of greater freedom and welfare in mind, we shall have to see how the National LGBT Council works over the next few years in achieving community representation. There are eight areas touched upon by the Programme, and we shall see to what extent it effects each of them: ensuring protection via legislation; working towards safe workplaces, free of discrimination due to sexual orientation; offering a sectoral response to healthcare needs; providing education based on equality and respect for difference; promotion of LGBT cultural and leisure activities; encouraging proper treatment in mass communication; fostering non-discriminatory welfare policies; and increasing the work done around participation and solidarity. The goal is for every one of us to be able to develop ourselves freely without having to worry about our sexual orientation in any sphere of daily life.

The Office and the Catalan government must continue to stake out a place in the international context in which this is all being developed, so as to assure good relations with our neighbours, share the positive experiences we have had, and learn from the experience of others in working towards ever-greater freedom, justice and equality.

**Xavier Verdaguer i Ribes**

Head of the Office for the Gay, Lesbian and Transsexual Community

## Introduction

It is set out in article 15.2 of the Catalan statute of autonomy:

“Each individual has the right to live in dignity, safety and autonomy, free from exploitation, from ill-treatment, and from all kinds of discrimination, and has the right to freely develop his or her personality and personal abilities.”

In article 40.7 it states that

*“the public authorities shall promote the equality of the different stable forms of union established between couples, bearing in mind their characteristics, regardless of the sexual orientation of the partners. The law shall regulate these unions and other forms of cohabitation and their consequences”.*

Likewise, article 40.8 states that

*“public authorities must promote the equality of all persons regardless of their origin, nationality, sex, race, religion, class or sexual orientation, and the must also promote the eradication of racism, anti-Semitism, xenophobia, homophobia and all other forms of attack on a person’s equality and dignity”.*

In the last few years there has been great progress towards equal rights for lesbian, gay, bisexual and transsexual (LGBT) citizens, including the creation in 2005 of the Office for the Gay, Lesbian and Transsexual Community as well as the drafting and approval in 2006 of the Inter-ministerial Programme to Combat Discrimination against Gay Men, Lesbians and Transsexuals.

The Generalitat (the government of Catalonia) has been at the forefront of these changes since the beginning, and now, seeing how other European countries are following the same path, we can be sure of the aptness of the choices we made. The tendency is towards ever-greater collaboration between ministries regarding LGBT matters, and we are already seeing positive results stemming from this precise, across-the-board approach.

The Inter-ministerial Programme that we are describing in this document has been established according to what is set out in the statute of autonomy and in the government plan, and is the manifestation of the government’s commitment towards the gay, lesbian and transsexual community. The government’s objective is to do away with any kind of legal discrimination towards homosexual and transsexual people; but what’s more, this legal equality must also bring about the end of the

social discrimination that gays, lesbians and transsexual women and men have historically suffered in Catalonia. Via the programme described herein, the government will work so that lesbians, gays and transsexuals can live completely normal lives with full social visibility: in all walks of life, in any city or town in Catalonia.

To reach this goal, this document details a series of government actions to be taken in different areas, dealing with homosexuality and transsexuality from a global perspective, affecting all aspects of ordinary life. Specifically, the Inter-ministerial Programme works on the fields of: legislation and law, employment, healthcare, education and training, culture and leisure, communication, welfare, and participation and solidarity.

The many different kinds of families that exist are now protected by new legislation which they need as human beings and to which they have a right as citizens. Whereas up until recently these families enjoyed no legal protection, the current government now has the obligation to help them develop their full potential. It is time to put an end once and for all to the injustice and legal disregard that has been endured for centuries by gays, lesbians, transsexuals and their families, be they the families they were born in to or the ones they set up upon their own free will.

Lesbians have it twice as hard: on the one hand there is the invisibility of their sexual orientation, and on the other, the discrimination that they and other women so often suffer in all aspects of daily life. This Inter-ministerial Programme endeavours to create tools and strategies to overcome this situation, through working diligently in cooperation with those government departments that deal with women's issues.

Unfortunately, the workplace in our country is far from being a place where everyone can coexist in equality, where everyone can live out their sexual orientation with complete normality. This was recognised by the Parliament of Catalonia in resolution 446/VII on equality in employment and the workplace for sexual minorities in Catalonia ,

*“manifestations of discrimination and homophobia are still much too frequent: during the hiring procedure (during the personal interviews as wells as in many tests), it is common for questions to be asked, both directly and indirectly, about a candidate's private life; between co-workers in the workplace, it is not unusual to hear homophobic comments or other language which is offensive to gays, lesbians and transsexuals; when decisions are taken concerning matters such as promotions, raises and work conditions, there is still a great value attached to whether or not the employee has a conventional or traditional lifestyle, as if that had anything to do with their professionalism or productivity”.*

The goal of the programme described in this document is to eliminate these kinds of discrimination from the workplace in Catalonia.

Appropriate ways of assisting victims of any kind of homophobic assault must be established, and it is especially important to ensure that respectful medical treatment is offered to gay men, lesbians and transsexuals. AIDS and HIV require especially sensitive treatment, assuring the best care possible for HIV-positive gay men, lesbians and transsexuals and increasing the number of campaigns aimed at preventing sexually transmitted diseases.

We also believe the proposals relating to education to be important in two respects in fostering normal attitudes towards homosexuality as well as greater visibility: firstly, to ensure that gay and lesbian teenagers can develop normally within a space where there have always been cases of bullying and physical assault due to sexual orientation. Secondly, the inclusion of subject matters related to LGBT issues in the curricula and classes in Catalan schools (be they public, private or partially

state-subsidised) would have a profound effect on the way social issues are taught and would bring about a considerable change in the respect future generations hold for the human rights of gays, lesbians and transsexuals.

Equally important are the measures intended to safeguard and assure the welfare of gays and lesbians, especially for those who have special needs due to physical or mental disability, or due to old age. Transsexual men and women deserve special care, as the majority of them have traditionally been victims of social discrimination.

We must promote more LGBT-related cultural events within the panorama of cultural activities held in Catalonia, and assure that homosexuality and transsexuality are treated with complete normality and with sufficient frequency in the media and in artistic and cultural happenings in the region.

Finally, as part of the process of recovery of historical memory, the proper mechanisms must be found for recognising and paying homage to gay, lesbian and transsexual victims of Franco's regime: victims due to their sexual orientation, a situation which can unfortunately still be found in many countries in the world. Along these lines, Catalonia will work to become an international model of respect for sexual and gender diversity within society, promoting initiatives that improve human rights for gays, lesbians and transsexuals.

The Ministry of Social Action and Citizenship is responsible for coordinating the Inter-ministerial Programme and making sure it is carried out. On 28 June 2005, approval was given for the creation of the Office for the Gay, Lesbian and Transsexual Community (the GLT Office), with clearly defined tasks and responsibilities. This document details the first lines of activity to be carried out by the government. It also has to make it possible to deploy those lines of activity in the most appropriate way possible. To do so, each of the areas of government involved must participate directly and make maximum use of the knowledge available, so as to find the best way to develop the Programme, keeping in mind that its scope is not one mere year, but quite a bit longer.

In order to develop the Programme adequately, mechanisms must be found to establish long-term cooperation with those organisations that work in defence of the rights and freedom of gays, lesbians and transsexuals in Catalonia; one example could be the setting up of an advisory and participatory body that would meet regularly, with representation for every Catalan LGBT organisation. Actions like this are essential, since gay, lesbian and transsexual associations have been the real driving force behind the social and legal changes around homosexuality and transsexuality that have occurred in our country. This Programme cannot be adequately developed without their participation, which is why on 28 June 2007, the National LGBT Council was founded: to foster and facilitate exchange and cooperation between the Catalan government administration and LGBT associations.

In sum, the government, firmly convinced of the need to due away with the long-established exclusion of gay men, lesbians and transsexuals, has adopted a set of guidelines which is pioneer in the European Union in terms of its reach and applicability. It will enable all citizens in Catalonia to enjoy a more closely-knit society — one which treats emotional, sexual and gender diversity with respect, proof of Catalonia's ability to embrace its citizens in all their variety.

With this document, therefore, we present you with a programme which is to be evaluated at the end of the current legislature so as to see to what extent it has affected government action, at which point we will see what questions are raised and how to answer them. At that moment we will have to look at this instrument we have at our disposal and see what went well and what needs to be changed — which aspects need to be strengthened and which ones reformulated.



## a) Legislation and law

### 1. Proposals relating to law, regulations, justice and home affairs

15



- a) Carry out resolution 243/VI of the Parliament of Catalonia on care, information and advising for gay men and lesbians.

**Government action 1.a.1:** *The government will ensure that resolution 243/VI of the Parliament of Catalonia is carried out.*

- b) Foster measures in police stations and in penitentiaries which ensure correct treatment for gay men, lesbians and transsexuals who have been deprived of freedom.

**Government action 1.b.1:** *The Ministry of Justice and the Ministry of Home Affairs, Institutional Relations and Participation shall create programmes, regulations and measures on the way in which gay men, lesbians and transsexuals are to be taken into custody in police stations and prisons, as well as on how they are to be treated while there.*

- c) Work to have sensitivity towards LGBT issues included in the training given to law-enforcement officers, when required. Widen knowledge of homophobia amongst all the law-enforcement agencies in Catalonia.

**Government action 1.c.1:** *The Ministry of Justice and the Ministry of Home Affairs, Institutional Relations and Participation will provide for regulations and training courses on homosexuality and transsexuality, and will also deal with homophobia from all of its social and healthcare-related aspects.*

- d) Establish protocols for victims of homophobic attacks. Ensure that violence within same-sex couples, or where one of the partners is transsexual, is included within the law on gender violence.

**Government action 1.d.1:** *The Ministry of Justice, the Ministry of Health, and the Ministry of Home Affairs, Institutional Relations and Participation will draft a protocol guide which describes the characteristics of homophobic assaults and appropriate treatment for victims thereof.*

- e) Promote generic campaigns on family diversity and on the policy of its inclusion within legislation.

**Government action 1.e.1:** *The Ministry of Justice and the Ministry of Social Action and Citizenship will carry out awareness-raising campaigns to teach about family diversity and its inclusion in the legislation describing rights and obligations.*

**Government action 1.e.2:** *The Ministry of Home Affairs, Institutional Relations and Participation and the Ministry of Justice will carry out campaigns to train members and staff of the local and regional police forces about sexual and gender diversity, homophobia and transphobia.*

**Government action 1.e.3:** *The Ministry of Home Affairs, Institutional Relations and Participation, the Ministry of Justice, the Ministry of Economy and Finance and the Ministry of Employment shall work to end discrimination due to sexual orientation in entertainment venues, and this shall be stated in publicity and in informational material concerning right of admission.*

## b) Employment

### 2. Proposals relating to employment

17



- a) Propose a new framework agreement on labour relations that would include homosexuality and transsexuality.

**Government action 2.a.1:** *The Ministry of Employment shall promote a resolution on labour relations which explicitly forbids discrimination towards gay men, lesbians and transsexuals and refers to directive 2000/78/CE.*

- b) Set up and guarantee mechanisms to raise awareness concerning the legislation on discrimination, especially within the business and employment sectors.

**Government action 2.b.1:** *The Ministry of Employment shall promote informational meetings for representatives from all different business sectors.*

**Government action 2.b.2:** *The Ministry of Employment shall promote informational meetings for those in charge of labour inspection.*

- c) Work towards including and promoting the rights of lesbian, gay and transsexual workers within unions.

**Government action 2.c.1:** *Urge labour unions to foster measures which promote inclusion in the collective bargaining agreements within all areas of employment.*

**Government action 2.c.2:** *Urge all labour unions to ensure that the rules regarding non-discrimination get to all workplaces.*

- d) Promote campaigns specifically around non-discrimination at the workplace.

**Government action 2.d.1:** *The Ministry of Employment shall promote campaigns to raise awareness about directive 2000/78/CE (concerning non-discrimination of sexual minorities at the workplace) within all areas of employment.*

**Government action 2.d.2:** *Suggest to labour unions from all sectors that they carry out campaigns amongst all employees to raise awareness about directive 2000/78/CE.*

**Government action 2.d.3:** *The Ministry of Employment shall promote the publication of a booklet on best practices within business and labour relations that includes recommendations and practices to eliminate discrimination towards sexual minorities in the workplace.*

**Government action 2.d.4:** *Urge labour unions from every sector to publish and distribute to all employees a booklet describing the principles of non-discrimination in employment found in directive 2000/78/CE.*

- e) Promote knowledge and ongoing training on gender and matters relating to discrimination due to sexual orientation. Promote familiarity with terms that appear in directive 2000/78/CE and knowledge of how to apply it.

**Government action 2.e.1:** *The Ministry of Employment shall include awareness of sexual and gender diversity, as well as of directive 2000/78/CE, within its training programmes and plans.*

- f) Promote and encourage equal opportunity in job hiring for transsexuals, paying due respect to their training and profession.

**Government action 2.f.1:** *Foster a survey and follow-up study on the relationship between employment and gender, with the participation of trade unions, the ICD (Catalan Institute of Women) and the Ministry of Employment, within the framework of a global study on transsexuality.*

## c) Healthcare

### 3. Proposals relating to healthcare



- a) Set up and regulate medical and therapeutic treatment for gay men, lesbians and transsexuals in a way that is rigorous and in keeping with WHO (World Health Organisation) indicators, being especially sure to avoid any kind of harmful treatment or aversion therapy intended to change sexual orientation.

**Government action 3.a.1:** *Work with associations of medical professionals to create a resolution that would provide orientation and explanation concerning all medical treatment having to do with homosexuality and transsexuality.*

- b) Promote methods that would make it easy for people who are receiving treatment for HIV (human immunodeficiency virus) infection to shift duties and responsibilities without having to change to a different workplace (in those cases where the treatment entails frequent leave of absence).

**Government action 3.b.1:** *The Ministry of Employment shall research to find the best procedure for effectively carrying out this reorientation within the workplace.*

- c) Set up a principle healthcare unit for transsexuals. The function of this unit would be to become an advisory body for specific specialisations within medicine such as gynaecology, urology, endocrinology, psychiatry and psychology. Moreover, this unit should offer this same advisory service for all other healthcare professionals, such as nurses, health care assistants and social workers.

**Government action 3.c.1:** *The Ministry of Health shall create a specific unit offering consultation, care and treatment around practices and therapies related to transsexuality.*

- d) Guarantee that WHO information regarding homosexuality and transsexuality is made available to all healthcare workers.

**Government action 3.d.1:** *The Ministry of Health shall run campaigns for raising awareness amongst all healthcare workers in the private and public sector about the information that the WHO provides on homosexuality, transsexuality, sexual rights and healthcare, etc.*

- e) Set up study plans for future healthcare professionals. Increase the amount of references made to homosexuality and transsexuality throughout different curricula, when appropriate, taking into account aspects related to sociology, lifestyle and health.

**Government action 3.e.1:** *The Ministry of Innovation, Universities and Enterprise shall make a proposal to have all aspects of homosexuality and transsexuality, as well as homophobia and transphobia, included within the study programs at colleges for medicine, nursing and social work.*

- f) Promote an ever-greater number of campaigns around HIV prevention and care.

**Government action 3.f.1:** *The Ministry of Health shall increase the number of generic HIV prevention campaigns, being sure to include information on sexual diversity. It shall also carry out campaigns specifically for young people and for women in Catalonia, in collaboration with the Secretariat for Young People and the Catalan Institute of Women. The Ministry of Health shall also run prevention campaigns specifically for deaf or blind gay men and lesbians, in collaboration with the Ministry of Social Action and Citizenship.*

**Government action 3.f.2:** *The Ministry of Social Action and Citizenship will ensure that home-care programmes take into account the double marginalisation often suffered by elderly gay men, lesbians and transsexuals who need care and are also HIV positive and/or have AIDS (acquired immune deficiency syndrome).*

- g) Promote the use of condoms and other means of protection from HIV.

**Government action 3.g.1:** *The Ministry of Health shall create and run campaigns on the use of condoms and other means of protecting oneself during sexual relations, in collaboration with the Ministry of Innovation, Universities and Enterprise and the Secretariat for Young People. It shall also draw up campaigns specifically targeting the gay, lesbian and bisexual community when appropriate, in collaboration with the Office for the Gay, Lesbian and Transsexual Community.*

**Government action 3.g.2:** *The Ministry of Health shall ask the colleges of pharmacists to recommend that condoms always be made available to those that request them at any pharmacy throughout Catalonia.*

**Government action 3.g.3:** *The Ministry of Health shall ensure that LGBT (lesbian, gay, bisexual and transsexual) organisations are present in those working groups that address HIV prevention and whose objective is to exchange experiences, make proposals and carry out new activities in their respective areas.*

**Government action 3.g.4:** *The Ministry of Health shall study the viability of increasing the support given to organisations which work around care, information and prevention.*

**Government action 3.g.5:** *The Ministry of Health and the Ministry of Home Affairs, Institutional Relations and Participation shall work to convince the*

*proprietors of entertainment venues, bars and nightclubs of the importance of HIV and STD prevention amongst their employees and clients.*

- h) Promote research into new drugs and access to generic drugs.

**Government action 3.h.1:** *Promote research on new drugs and therapies for fighting AIDS and HIV infection.*

- i) Work to have the needs and concerns of lesbians and transsexuals included within gynaecology and prevention.

**Government action 3.i.1:** *Run campaigns aimed at getting professionals from gynaecology to include the needs and concerns of lesbians and transsexuals within their professional protocols.*

**Government action 3.i.2:** *Work to have the needs and concerns of lesbians and transsexuals included within breast-cancer prevention campaigns.*



#### d) Education and training

### 4. Proposals relating to education and training

23



- a) Monitor the implementation of resolution 1079/VI of the Parliament of Catalonia, adopted in February 2003, concerning respect for sexual orientation.

**Government action 4.a.1:** *The government shall make periodic reports to the parliament concerning compliance with resolution 1079/VI of February 2003, concerning respect for sexual orientation.*

- b) Work to have the social-science related aspects of homosexuality and transsexuality included, when appropriate, within the curricula of all levels of education throughout Catalonia, be it in public, private or state-subsidised schools.

**Government action 4.b.1:** *The Ministry of Education shall include issues related to homosexuality and transsexuality within the educational curricula and professional training provided for all students in Catalonia, when appropriate to the subject matter being taught.*

- c) Include issues related to homosexuality and transsexuality within the ongoing training given to all teachers. Training shall also be promoted within the EAPs (care and educational counselling teams), CRPs (educational resources centres) and CAPs (help centres for teachers).

**Government action 4.c.1:** *The Ministry of Innovation, Universities, and Enterprise and the Col·legi de llicenciats (association of university graduates) shall include LGBT concerns in their retraining and ongoing-training courses.*

**Government action 4.c.2:** *The Ministry of Innovation, Universities and Enterprise shall promote a programme of seminars and training that include issues relating to homosexuality and transsexuality when appropriate.*

**Government action 4.c.3:** *The Ministry of Education shall promote a programme of seminars for parents' associations which includes LGBT-related issues, where appropriate.*

- d) Ensure the availability of bibliographies, text books and other resources which address LGBT issues appropriately and comprehensively.

**Government action 4.d.1:** *The Ministry of Education shall provide materials concerning homosexuality and transsexuality to all primary and secondary school libraries.*

**Government action 4.d.2:** *The Ministry of Education shall provide primary and secondary schools with a range of basic teaching materials and audiovisual resources concerning homosexuality and transsexuality.*

- e) Guarantee internal cohesion within schools and prevent the isolation so often suffered by gay, lesbian and transsexual students and teachers.

**Government action 4.e.1:** *The Ministry of Education shall guarantee as much support and orientation as possible for gay, lesbian and transsexual students and teachers, using appropriate counselling, protocols and methods so that all individuals within the school system can feel free and open about their sexual orientation.*

- f) Promote positive attitudes and greater visibility of LGBT concerns and issues within the school system.

**Government action 4.f.1:** *The Ministry of Education shall promote activities focused on LGBT issues within Catalan schools, when deemed appropriate.*

**Government action 4.f.2:** *The Ministry of Education shall carry out a study on the prevalence of homophobia in the classroom, the extent of isolation felt by students and teachers, and the degree to which they risk exclusion.*

## e) Culture and leisure

### 5. Proposals relating to culture

25



Create a public documentation and reference centre for LGBT issues.

**Government action 5.a.1:** *The Ministry of Culture and the Media shall set up a documentation and reference centre for gay, lesbian and transsexual issues.*

- b) Include LGBT issues within the offering in the public and state-subsidised network of cultural spaces. These issues are to be treated in a positive way.

**Government action 5.b.1:** *The Ministry of Culture and the Media shall promote and support cultural creations that include gay, lesbian or transsexual subject matter.*

**Government action 5.b.2:** *The Ministry of Culture and the Media shall support cultural competitions on LGBT issues, with the goal of creating a productive network of cultural offerings and professionals specialised in LGBT issues in Catalonia.*

- c) Promote a series of documentaries which would contribute to the recovery of historical memory for gay men, lesbians and transsexuals.

**Government action 5.c.1:** *The Ministry of Culture and the Media and Memorial Democràtic (Ministry of Home Affairs, Institutional Relations and Participation) shall work to foster and assist projects related to the recovery of historical memory of lesbians, gay men and transsexual men and women, which will be included within the programme contract with CCRTV (Catalan Broadcasting Corporation).*

- d) Promote, foster and support the production of shows for children and young people which include LGBT subject matter and which provide them with positive models of emotional diversity.

**Government action 5.d.1:** *The Ministry of Culture and the Media, the Ministry of Social Action and Citizenship and the Secretariat for Young People shall promote and favour the production of shows and other events for children and*

*young people (story-telling, theatre, puppet shows, games, workshops, and so on) which take emotional diversity into account.*

- e) Ensure that a wide range of publications on LGBT subjects can be found throughout the Catalan public-library network.

**Government action 5.e.1:** *The Ministry of Culture and the Media shall consider publications and magazines which include LGBT issues when deciding which periodicals to have sent to the network of libraries.*

- f) Promote and ensure cooperation and coordination between government institutions and private leisure organisations. The GLT Office, the Secretariat for Young People and the Secretariat for Sports shall ensure that emotional diversity is respected in leisure or sporting activities.

**Government action 5.f.1:** *The Secretariat for Young People, the Secretariat for Sports and the GLT Office shall work together to foster greater communication and coordination between LGBT organisations from the above-mentioned areas and 1) coaching organisations, 2) institutional representatives, and 3) those in charge of programming leisure activities and competitions for children and adolescents.*

- g) Promote LGBT visibility and participation in leisure activities, village fairs, folk-culture happenings and sporting events.

**Government action 5.g.1:** *The Ministry of Culture and the Media, the Ministry of Social Action and Citizenship, the Secretariat for Young People and the Secretariat for Sports shall take emotional diversity into account in their events programming.*

**Government action 5.g.2:** *The Secretariat for Sports, the Ministry of Culture and the Media and the Secretariat for Young People shall promote sports activities specifically for gay men, lesbians and transsexuals.*

**Government action 5.g.3:** *The Secretariat for Young People shall promote and aid those recreation and leisure centres for children and adolescents which take emotional diversity into account.*

## f) Communication

### 6. Proposals relating to communication

27



- a) Work towards the creation of a joint follow-up committee between the CAC (Catalonia Broadcasting Council) and the GLT Office, the basic responsibilities of which shall be to monitor the ethical code and ensure that emotional, gender and sexual diversity are respected throughout the media.

**Government action 6.a.1:** *Ask the CAC to establish the above-mentioned committee together with the GLT Office in order to safeguard the objectives of respect and visibility within the media. The committee shall also act as an observatory for the Oficina de Defensa de l'Audiència (audiovisual council).*

- b) Ensure the visibility of LGBT issues in the media. The goal shall be to offer a positive image and work towards an ongoing presence in the media.

**Government action 6.b.1:** *LGBT issues shall be included within the programming criteria described in the programme contract held with the CCRTV. These criteria shall favour clearly-identifiable positive models.*

- c) Ensure that programmes and other accounts and references which might have a homophobic slant are documented and reported to the *Oficina de Defensa de l'Audiència* (the audiovisual council).

**Government action 6.c.1:** *Ask the CAC to work together with the GLT Office in drafting a yearbook which would document homophobic news items and references. This yearbook is to be provided to the audiovisual council (Oficina de Defensa de l'Audiència) and to the Catalan Ombudsman (Síndic de Greuges).*

- d) Work towards the creation of a documentation centre for information professionals.

**Government action 6.d.1:** *Make proposals to the CAC and the Catalan Journalists Association (Col·legi de Periodistes) on the creation of a LGBT documentation centre to be used by professionals working in information and communications.*

- e) Establish excellent relations between information professionals and LGBT organisations.

**Government action 6.e.1:** *Suggest to the CAC that a meeting be held on a yearly basis between representatives from the media and representatives from the LGBT movement, the goal of which would be to provide a space for dialogue and knowledge building on LGBT issues for information professionals.*

## g) Welfare

### 7. Proposals relating to welfare

29



- a) Increase and intensify policies of inclusion and recognition of sexual, emotional and gender diversity, ensuring that there are no cases of exclusion or marginalisation due to one's personal circumstances, focussing especially on the inclusion of those gay men, lesbians and transsexuals who suffer from motor, sensory, hearing, mental or mobility deficits or from any other circumstances which hamper independent living.

**Government action 7.a.1:** *The Ministry of Social Action and Citizenship, when 1) planning resources, 2) determining what conditions are necessary for accessing them, and 3) providing services, shall ensure that the same rights and obligations apply to all citizens regardless of their sexual orientation. The Ministry shall also ensure that programmes offering support to families and children foster family diversity.*

- b) Work towards greater support for LGBT organisations. Offer subsidies to those services and activities which work especially for integration and social cohesion.

**Government action 7.b.1:** *The Ministry of Social Action and Citizenship shall work to ensure that subsidies and contracts awarded by services and departments that answer to the Ministry are based on policies of inclusion designed to guarantee rights in all services and projects throughout Catalonia, especially those that assist the elderly, the disabled, dependant persons, children, adolescents and their families.*

**Government action 7.b.2:** *The Catalan Institute of Women shall include explicit references to lesbians and transsexual women in the conditions for subsidies and contracts awarded by those services and sectors which answer directly to the Institute.*

**Government action 7.b.3:** *The Catalan Institute of Women and the Ministry of Social Action and Citizenship shall continue to ensure that the conditions for subsidies and contracts offered by the various services and departments guarantee the same rights and obligations to all citizens, regardless of sexual orientation.*

- c) Offer support specifically for adolescents and young people who have been thrown out of their home or who have chosen to leave due to abuse or psychological pressure.

**Government action 7.c.1:** *The Directorate General for Child and Adolescent Care, in collaboration with organisations and professionals that work with gay, lesbian and transsexual youth, shall make proposals concerning actions to be taken around the vulnerability that many of these adolescents face.*

- d) Promote educational activities and awareness-raising campaigns for the entire population which focus on increasing the visibility of gay men, lesbians and transsexuals.

**Government action 7.d.1:** *The Ministry of Social Action and Citizenship and the GLT Office shall run campaigns with an emphasis on social pedagogy, the purpose of which shall be to promote both social cohesion and LGBT visibility.*

- e) Work towards the explicit inclusion of emotional, sexual and gender diversity throughout all organisations and associations.

**Government action 7.e.1:** *The Presidential Department and the Ministry of Social Action and Citizenship shall promote an awareness-raising campaign for all associations and organisations in general, focusing on respect for and visibility of sexual and gender diversity.*

- f) Raise visibility of gay men, lesbians and transsexuals in public space. Promote the naming of squares, streets, cultural centres, etc., after renowned members or events within the LGBT community.

**Government action 7.f.1:** *The Ministry of Home Affairs, Institutional Relations and Participation, the Ministry of Social Action and Citizenship, and the GLT Office shall work together in designing a citizens' public visibility project.*

- g) Work towards ongoing contact with those organisations that represent families with same-sex couples.

**Government action 7.g.1:** *The Ministry of Social Action and Citizenship and the GLT Office will develop appropriate, ongoing communication channels with LGBT organisations so that actions and policies focusing on welfare and families meets these organisations' needs.*

## h) Participation and solidarity

### 8. Proposals relating to participation

31



- a) Work towards the recognition of gay men, lesbians and transsexuals who were persecuted and suffered reprisals under Franco's regime.

**Government action 8.a.1:** *The Ministry of Culture and the Media shall encourage research and publications on the recovery of historical memory related to the persecution and repression suffered by gay men, lesbians and transsexuals during Franco's regime. The Museum of the History of Catalonia shall create a permanent section devoted to the repression of homosexuality throughout history and especially during Franco's regime, as part of the Democratic Memorial.*

- b) Ensure government presence during acts, events and meetings organised by LGBT organisations.

**Government action 8.b.1:** *The Ministry of Home Affairs, Institutional Relations and Participation and the GLT Office shall ensure that government representatives are present as appropriate in acts and other events held by LGBT organisations in Catalonia.*

- c) Promote Catalonia as an open and welcoming country for international LGBT events, especially for conferences held by ILGA (International Gay and Lesbian Association).

**Government action 8.c.1:** *The Ministry of Home Affairs, Institutional Relations and Participation, the Secretariat for International Relations and the GLT Office shall foster regular communication with other international organisations and government institutions which work with LGBT issues so as to promote Catalonia as a country which welcomes international events put on by ILGA and other LGBT organisations.*

- d) Establish relations with organisations that work on the topic of immigration and which promote respect for sexual and gender diversity among newly arrived immigrants.

**Government action 8.d.1:** *The Secretariat for Immigration shall include sexual*

*diversity within their work areas and shall collaborate with the GLT Office in setting up spaces where LGBT organisations and those working around immigration can meet and dialogue.*

- e) Work from inside Catalonia to foster respect for human rights for gay men, lesbians and transsexuals in those countries where homosexuality and transsexuality are still illegal or where there is social persecution.

**Government action 8.e.1:** *The Catalan Agency for Development Cooperation shall make the rights of gay, lesbian and transsexual people one of their central areas of work, fostering those cooperation projects which defend LGBT human rights.*

**Government action 8.e.2:** *The Catalan Agency for Development Cooperation and the GLT Office shall work together to create spaces in which LGBT associations and NGOs can meet and debate about how to better work in defending the rights of LGBT persons within cooperation projects.*

- f) Promote LGBT events, groups and organisations outside of Barcelona, so as to foster geographical diversity in LGBT issues.

**Government action 8.f.1:** *The various territorial delegations of the government, together with the GLT Office, shall promote events and activities throughout all of Catalonia.*

- g) Promote dialogue with representatives from the various religious denominations to be found in Catalonia.

**Government action 8.g.1:** *The Directorate General for Religious Affairs and the GLT Office shall promote ongoing effective communication with representatives of the different religious denominations to be found in Catalonia, so as to explain the principles and provisions set out in this Programme.*

- h) Promote dialogue with the various social actors working on LGBT issues. Create space for communication concerning the concerns and proposals of intellectuals, writers, businesspersons, artists and creators.

**Government action 8.h.1:** *The Ministry of Home Affairs, Institutional Relations and Participation and the GLT Office shall promote ongoing effective communication with all social actors working on LGBT issues.*

## Study and research

There has been no research conducted on homosexuality for quite a few years in Catalonia. Similarly, no research has been done at all concerning transsexuality. There are areas of research that are essential if the Inter-ministerial Programme is to be applied, and other areas which will help in directing future government actions.

- 1. Risks for children, adolescents and young people:** the inter-university research that was formerly carried out around certain aspects of resolution 1709/VI of the Parliament of Catalonia should be continued.
- 2. Double discrimination due to being a woman and a lesbian:** knowledge must be gained concerning the sociological and personal impact of this double discrimination that also manifests in some cases as contempt. The lack of visibility of lesbians for so many years necessitates investigation and understanding. A greater understanding would make the proposed interventions more effective.
- 3. Societal homophobia and internalised homophobia:** this study should provide valuable tools for social interventions on the health of the population as a whole and on gay men and lesbians specifically.
- 4. Well-being, healthcare, dependency and elderly gay men, lesbians and transsexuals:** data is needed concerning the needs of elderly persons who are dependent on care. Data is also needed concerning healthcare networks and inclusion, as well as on healthcare professionals' knowledge and criteria.
- 5. Transsexuality:** data is needed concerning medical needs, social issues, welfare and, especially, employment.
- 6. The media:** press, communication and publicity. We need in-depth studies on the impact the media have in forming public opinion and in creating harmful stereotypes.
- 7. Employment and labour:** data is needed concerning discrimination at the workplace, mobbing, the working environment, and difficulties in access to employment. Another area of research is to what extent employers and trade unions are aware of and implementing European directive 2000/78/CE on discrimination of sexual minorities at the workplace.



## Contacts and cooperation

So as to develop the provisions set out in this Programme as fully as possible, contact and cooperation with the following actors will be needed:

- 1. The Office for the Gay, Lesbian and Transsexual Community:** The Office is the executive unit in charge of this Inter-ministerial Programme and shall coordinate its successful application within the government of the Generalitat. The Office is also responsible for finding solutions for any issues affecting the LGBT community which are not covered by the Programme.
- 2. The Ministry of Social Action and Citizenship (DASC):** due to the inter-ministerial aspect of the Programme and considering the nature of the proposals set out in the section relating to welfare, cooperation with the DASC is essential for an adequate implementation of the Catalan government's LGBT policies, since it is in this very ministry where policies on immigration and on care for children and the elderly are created, issues which directly affect gay men, lesbians and transsexuals.
- 3. The Secretariat for Family Policy and Citizens' Rights:** the secretariat is in charge of coordinating policies and activities that affect the elderly and families. The secretariat will no doubt be greatly involved in carrying out many of the actions described in the Inter-ministerial Programme. Moreover, the secretariat is responsible for the GLT Office and for organising and coordinating the work that is done with the rest of the DASC and the government. Work plans, evaluations of the Inter-ministerial Programme and daily activities shall be coordinated between both bodies so as to make sure that there is a high level of representation, focus and coherence in the actions taken by the GLT Office and the Inter-ministerial Programme. Moreover, the secretariat is responsible for a great deal of the actions to be taken around the elderly and families.
- 4. The Catalan Institute of Women (ICD):** permanent contact with the ICD and joint activities carried out with the Action and Development Plan for Women's Policies in Catalonia will make it possible to better confront the double discrimination that lesbians face and make sure that the perspective of women is included in LGBT policies, thus ensuring that the government actions set out in the Programme can truly be carried out.
- 5. Territorial delegations:** in order to make the Programme known and applicable throughout Catalonia, permanent contact must be maintained with govern-

ment offices all over the country. Joint effort between the GLT Office and the DASC's territorial delegations can help to overcome the fact that LGBT issues tend to be concentrated in the big city with very little visibility in smaller towns and villages.

6. **The Secretariat for Young People:** due to the extreme vulnerability that young people suffer from, cooperation with this secretariat is essential if the Inter-ministerial Programme is to be applied. The informal network and venues for engaging free-time activities are good places for training, as that is where a good deal of homophobia, lesbophobia and transphobia occur.
7. **The Presidential Department:** this department's involvement is important due to the amount of inter-ministerial and overlapping policies to be found within the government of the Generalitat. Aspects such as dissemination of information and providing services to individuals are of great importance in social policies.
8. **The Vice-Presidential Department:** thanks to this Programme, Catalonia is at the forefront of LGBT policies; therefore, international and cooperation work must be coordinated and fostered. Certain issues, such as the way certain established religions treat the LGBT community, or the complete absence of role models from the sporting world, are challenges that this department must deal with as well.
9. **The Ministry of Governance:** the government designs policies for the country and must be the first to set a good example. It is for this reason that the civil service is a mirror that reflects society itself: what is needed is to completely take on board the message that we are trying to convey with this Programme. Moreover, volunteer work and civic action have played a very dynamic role in working towards LGBT rights.
10. **The Ministry of Home Affairs, Institutional Relations and Participation:** three areas which are inseparable from the across-the-board government action that we are setting out. Training for and appropriate response by law-enforcement agencies, relations with other institutions, and citizen participation are central points within the Inter-ministerial Programme.
11. **The Ministry of Justice:** the first section of this Programme deals with legislation and law, showing how important it is at this moment in history to bring legislation into line with the reality of society. This is probably one of the areas in which we have progressed furthest; and yet, work still needs to be done if the citizens who make up the LGBT community in this country are to move from being merely recognised by law to being fully protected.
12. **The Ministry of Culture and the Media:** culture and the media are informal channels through which the majority of the population is shaped. This is why it is necessary to promote respect and work towards accomplishing as many actions as possible in this area.
13. **The Ministry of Education:** The Inter-ministerial Programme is meant to be a method for dealing with difference in a positive way within the school system. Women, immigrants, the LGBT community — we are all different, but that is

positive and beneficial. We hope that teachers (from whom we demand so much) will find this Programme to be a useful tool for working with diversity.

**14. The Ministry of Health:** The LGBT community has shown its ability to react and organise itself when faced with adverse situations, such as at the beginning of the HIV/Aids pandemic. Transsexuals, for their part, have spearheaded the process of gaining greater visibility for the entire community. For all of these reasons, public health benefits when the LGBT perspective is included in health policies, as we have already seen.

**15. The Ministry of Employment:** with Council Directive 2000/78/EC (establishing a general framework for equal treatment in employment and occupation), the European Union set out a legal framework regarding employment. This is justifiable if we consider the importance of employment and the independence it gives us. The recently created Directorate General for Equal Opportunity will be without a doubt an important way of working with this framework.

**16. The Ministry of Innovation, Universities and Enterprise:** three different areas touched on by both the Programme and the Office come together in this ministry: universities, tourism and business. Universities play a double role, being the space where upcoming researchers and trainers are receiving their education, as well as the place where current research is carried out, something the Catalan LGBT community so urgently needs. Business and tourism (strategic elements within the country's economic development) also have to be taken into account, due to the ever-increasing role they play within the LGBT community.



## Bibliography and documentation

### Bibliography



- Arnalte, Arturo. *Redada de violetas: La represión de los homosexuales durante el Franquismo*. Madrid: La Esfera de los libros, 2003.
- Borrillo, Daniel. *Homofobia*. Barcelona: Edicions Bellaterra, 2001.
- Cadoret-Abeles, Anne. *Padres como los demás*. Barcelona: Gedisa, 2003.
- Eribon, Didier. *Reflexiones sobre la cuestión gay*. Barcelona: Anagrama, 2001.
- Fuentes, Pablo and José María Sánchez Silva. "Franquismo y homosexualidad." Madrid: Triángulo magazine, October 2001.
- Fluvià i Escorça, Armand de. "Aspectos jurídico-legales de la homosexualidad." *Temas monográficos de sexología*, no 4. Institut Lambda.
- Fluvià i Escorça, Armand de. *El moviment gai a la clandestinitat del franquisme (1970-1975)*. Barcelona: Laertes, 2003.
- García, Antonio and Andrés López. *Imagen social de la homosexualidad en España*. Madrid: Asociación Pro Derechos Humanos de España, 1985.
- Generelo Lanaspá, Jesús. *Cómo superar la homofobia: Manual de supervivencia en un medio hostil*. Madrid: Cyan. Proyectos y producciones editoriales.
- Guasch i Andreu, Òscar. *La crisis de la heterosexualidad*. Barcelona: Laertes, 2000.
- Guasch i Andreu, Òscar. *Sociologia de la sexualitat: Una aproximació a la diversitat sexual*. Barcelona: Pòrtic, 2002.
- Mira, Alberto. *De Sodoma a Chueca: Una historia cultural de la homosexualidad en España en el Siglo XX*. Madrid: Egales, 2004.
- Mirabet i Mullol, Antoni and 48 collaborators. *Homosexualitat a l'inici del segle XXI*. Barcelona: Claret, 2000.
- Mirabet i Mullol, Antoni. *Homosexualitat avui: Acceptada o encara condemnada?* Barcelona: Edhasa/Institut Lambda, Anagrama, 1984.

Olmeda, Fernando. *El látigo y la pluma: Homosexuales en la España de Franco*. Madrid: Oyeron, 2004.

Petit, Jordi. *25 años más: Una perspectiva sobre el pasado, el presente y futuro del movimiento de gays, lesbianas, bisexuales y transexuales*. Barcelona: Icaria, 2003.

Seel, Pierre and Jean le Bitoux. *Pierre Seel: Deportado homosexual*. Barcelona: Edicions Bellaterra, 2001.

Tofiño, Iñaki et al. *Gent com tu?: Adolescència i diversitat sexual*. Barcelona: Viena Edicions, 2004.

Viñuales, Olga. *Lesbofobia*. Barcelona: Edicions Bellaterra, 2002.

## Documentation

### Associations

Coordinadora Gai-Lesbiana (CGL): [www.cogailles.org](http://www.cogailles.org)

Casal Lambda: [www.lambdaweb.org](http://www.lambdaweb.org)

Col·lectiu Gai de Barcelona (CGB): [www.colectiugai.org](http://www.colectiugai.org)

Front d'Alliberament Gai de Catalunya (FAGC): [www.makmakmak.com/FAGC](http://www.makmakmak.com/FAGC)

Associació Universitària Sin Vergüenza: [www.sinver.org](http://www.sinver.org)

Col·lectiu de Transsexuals de Catalunya: [www.transsexualitat.org](http://www.transsexualitat.org)

Grup de Transsexuals Masculins de Barcelona (GTMB): [www.geocities.com/mahftm](http://www.geocities.com/mahftm)

Associació Gais i Lesbianes de L'Hospitalet (gl'H): [www.geocities.com/glhospi](http://www.geocities.com/glhospi)

Associació de Famílies Lesbianes i Gais: [www.familieslg.org](http://www.familieslg.org)

Associació de Mares i Pares de gais i lesbianes (AMPGIL): [www.ampgil.org/cat/intro.htm](http://www.ampgil.org/cat/intro.htm)

Associació Cristiana de gais i lesbianes (ACGIL): [www.cogailles.org/acgil](http://www.cogailles.org/acgil)

Grup de Joves per a L'Alliberament Lèsbic i Gai (JALG):

<http://magno.uab.es/vr-estudiants/assoclas-jalg.htm>

Grup de Lesbianes Feministes: [www.lesbifem.org](http://www.lesbifem.org)

Associació de Transsexuals de Catalunya (ATC): <http://es.geocities.com/atclibertad>

Panteres Grogues: [www.panteresgrogues.org](http://www.panteresgrogues.org)

Col·lectiu Dona més Dona: [www.donamesdona.terrassa.net](http://www.donamesdona.terrassa.net)

Bearcelona: [www.bearcelona.org](http://www.bearcelona.org)

Associació de Gais i Lesbianes de Badalona (AGIL): [es.geocities.com/agil\\_badalona](http://es.geocities.com/agil_badalona)

H2O, Col·lectiu Gai, Lesbià, Bisexual i Transsexual (GLBT) del Camp de Tarragona: [www.h2oweb.org](http://www.h2oweb.org)

Col·lectiu Espai Acció Gai-Lesbià de Lleida i Entorn (EAGLE): [www.astrea.es/ong/eagle](http://www.astrea.es/ong/eagle)

### Documents from the Generalitat of Catalonia

*Pla del Govern de la Generalitat de Catalunya 2004 – 2007*. Presidential Department.

*Pla d'Acció i desenvolupament de les polítiques de dones a Catalunya 2004 – 2007*. Catalan Institute of Women.

This action plan describes the programme for the comprehensive approach in dealing with violence against women, 2005.

*Pla Director Departamental de L'Administració Oberta de Catalunya*. Ministry of Culture, 2004.

*Pla Director de l'Educació Especial de Catalunya*. Ministry of Education, 1981.

*Pla Director de Justícia Juvenil*. Ministry of Justice, 2004.

## **Documentation from various foundations, organisations, etc.**

### **Documents from Amnesty International**

*'The louder we will sing': Campaigning for lesbian and gay human rights.*

*Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity.*

*Amnesty International Report 2004.*

### **Documents from the Fundació Jaume Bofill**

*Sortir de l'armari: Un estudi sobre la joventut lesbiana a Catalunya.* 1998.

### **Documents from the Institut Lambda**

"Aproximació sociològica a l'homosexualitat." *Temes monogràfics de sexologia*, no. 8.

Barcelona, 1986.

### **Documents from the Observatori GLT contra l'homofòbia**

FAGC, *Memòria antidiscriminatòria 2003 – 2004.*

### **Documents from the Fundación Triángulo**

*Unidad didáctica sobre homosexualidad.* Educational dossier, 1998.

### **Documents from the Fundación para la Identidad de Género**

*Notas a la Ley de Identidad de Género.*

*Memoria de carencias y prioridades.*

*Protocolo de redefinición de género.* Preliminary notes.

### **Documents from ILGA (International Lesbian and Gay Association)**

*World Legal Survey 2004.*

*After Amsterdam: Sexual orientation and the European Union.* Published by ILGA-Europe,

Brussels, 1999.



## Resolució 243/VI del Parlament de Catalunya, de defensa de la no-discriminació per motiu d'opció sexual

Tram. 250-00509/06

Adopció: Comissió de Política Social

Sessió núm. 12, 11.10.2000, DSPC-C 82

COMISSIÓ DE POLÍTICA SOCIAL

La Comissió de Política Social, en sessió tinguda el dia 11 d'octubre de 2000, ha estudiat el text de la Proposició no de llei de defensa de la no-discriminació per motiu d'opció sexual, presentada per tots els grups parlamentaris (tram. 250-00509/06).

Finalment, d'acord amb l'article 135 del Reglament, ha adoptat la següent

### RESOLUCIÓ

El Parlament de Catalunya insta el Govern a:

a) Incorporar de manera efectiva entre els seus objectius i línies d'actuació qual-sevol aspecte relacionat amb la defensa de la no-discriminació per motiu d'opció sexual, d'acord amb les exigències del Tractat d'Amsterdam.

b) Posar en funcionament mecanismes d'informació, atenció i assessorament de gais i lesbianes i dels seus familiars en col·laboració amb les entitats municipalistes i els principals ajuntaments catalans, en el termini d'un any.

c) Propiciar el treball conjunt de col·laboració entre les organitzacions socials i els col·lectius sense ànim de lucre que treballen en la defensa dels drets dels gais i lesbianes i totes les administracions per tal de promoure els valors de respecte i igualtat.

d) Vetllar perquè en els materials didàctics no es faci cap tipus de discriminació per raó de l'orientació sexual.

e) Elaborar i difondre campanyes específiques de sensibilització en el respecte a la normalitat de l'opció homosexual i en la defensa dels drets dels qui l'han presa.

Palau del Parlament, 11 d'octubre de 2000

El secretari  
Josep Lluís Fernández i Burgui

La presidenta de la Comissió  
Pilar Malla i Escofet



## COUNCIL DIRECTIVE 2000/78/EC

of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

### THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the Opinion of the European Parliament (2),

Having regard to the Opinion of the Economic and Social Committee (3),

Having regard to the Opinion of the Committee of the Regions (4),

Whereas:

(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

(2) The principle of equal treatment between women and men is well established by an important body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (5).

(3) In implementing the principle of equal treatment, the Community should, in accordance with Article 3 (2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention

(1) OJ C 177 E, 27.6.2000, p. 42.

(2) Opinion delivered on 12 October 2000 (not yet published in the Official Journal).

(3) OJ C 204, 18.7.2000, p. 82.

(4) OJ C 226, 8.8.2000, p. 1.

(5) OJ L 39, 14.2.1976, p. 40.

No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

- (5) It is important to respect such fundamental rights and freedoms. This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests.
- (6) The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.
- (7) The EC Treaty includes among its objectives the promotion of coordination between employment policies of the Member States. To this end, a new employment chapter was incorporated in the EC Treaty as a means of developing a coordinated European strategy for employment to promote a skilled, trained and adaptable workforce.
- (8) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability. They also emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.
- (9) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of

citizens in economic, cultural and social life and to realising their potential.

- (10) On 29 June 2000 the Council adopted Directive 2000/43/EC (6) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. That Directive already provides protection against such discrimination in the field of employment and occupation.
- (11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.
- (12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.
- (13) This Directive does not apply to social security and social protection schemes whose benefits are not treated as income within the meaning given to that term for the purpose of applying Article 141 of the EC Treaty, nor to any kind of payment by the State aimed at providing access to employment or maintaining employment.

- (14) This Directive shall be without prejudice to national provisions laying down retirement ages.
- (15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.
- (16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.
- (17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.
- (18) This Directive does not require, in particular, the armed forces and the police, prison or emergency services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective of preserving the operational capacity of those services.
- (19) Moreover, in order that the Member States may continue to safeguard the combat effectiveness of their armed forces, they may choose not to apply the provisions of this Directive concerning disability and age to all or part of their armed forces. The Member States which make that choice must define the scope of that derogation.
- (20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.
- (21) To determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.
- (22) This Directive is without prejudice to national laws on marital status and the benefits dependent thereon.
- (23) In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.
- (24) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of

philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.

(25) The prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce. However, differences in treatment in connection with age may be justified under certain circumstances and therefore require specific provisions which may vary in accordance with the situation in Member States. It is therefore essential to distinguish between differences in treatment which are justified, in particular by legitimate employment policy, labour market and vocational training objectives, and discrimination which must be prohibited.

(26) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation, and such measures may permit organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

(27) In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community (1), the Council established a guideline framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on

equal employment opportunities for people with disabilities (2), affirmed the importance of giving specific attention inter alia to recruitment, retention, training and lifelong learning with regard to disabled persons.

(28) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.

(29) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

(30) The effective implementation of the principle of equality requires adequate judicial protection against victimisation.

(31) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.

(1) OJ L 225, 12.8.1986, p. 43.

(2) OJ C 186, 2.7.1999, p. 3.

(32) Member States need not apply the rules on the burden of proof to proceedings in which it is for the court or other competent body to investigate the facts of the case. The procedures thus referred to are those in which the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.

(33) Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations to address different forms of discrimination at the workplace and to combat them.

(34) The need to promote peace and reconciliation between the major communities in Northern Ireland necessitates the incorporation of particular provisions into this Directive.

(35) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

(36) Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as regards the provisions concerning collective agreements, provided they take any necessary steps to ensure that they are at all times able to guarantee the results required by this Directive.

(37) In accordance with the principle of subsidiarity set out in Article 5 of the EC Treaty, the objective of this Directive, namely the creation within the Community of a level playing-field as regards equality in employment and occupation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at

Community level. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I GENERAL PROVISIONS

### Article 1

#### Purpose

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

### Article 2

#### Concept of discrimination

1. For the purposes of this Directive, the 'principle of equal treatment' shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

- (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or
- (ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

### Article 3

#### Scope

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and

private sectors, including public bodies, in relation to:

- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissals and pay;
- (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

3. This Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.

4. Member States may provide that this Directive, in so far as it relates to discrimination on the grounds of disability and age, shall not apply to the armed forces.

### Article 4

#### Occupational requirements

1. Notwithstanding Article 2(1) and (2),

Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

## Article 5

### **Reasonable accommodation for disabled persons**

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

## Article 6

### **Justification of differences of treatment on grounds of age**

1. Notwithstanding Article 2 (2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

- (a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
- (b) the fixing of minimum conditions of age, professional experience or

seniority in service for access to employment or to certain advantages linked to employment;

- (c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.

#### Article 7

##### **Positive action**

1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.
2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.

#### Article 8

##### **Minimum requirements**

1. Member States may introduce or maintain provisions which are more

favourable to the protection of the principle of equal treatment than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

## CHAPTER II REMEDIES AND ENFORCEMENT

### Article 9

#### **Defence of rights**

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

### Article 10

#### **Burden of proof**

1. Member States shall take such meas-

ures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures.

4. Paragraphs 1, 2 and 3 shall also apply to any legal proceedings commenced in accordance with Article 9(2).

5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

#### Article 11

##### **Victimisation**

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

#### Article 12

##### **Dissemination of information**

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force in this field, are brought to the attention of the persons concerned by all appropriate

means, for example at the workplace, throughout their territory.

#### Article 13

##### **Social dialogue**

1. Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct and through research or exchange of experiences and good practices.

2. Where consistent with their national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to conclude at the appropriate level agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and by the relevant national implementing measures.

#### Article 14

##### **Dialogue with non-governmental organisations**

Member States shall encourage dialogue with appropriate nongovernmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on any of the grounds referred to in Article 1 with a view to promoting the principle of equal treatment.

### CHAPTER III PARTICULAR PROVISIONS

#### Article 15

##### **Northern Ireland**

1. In order to tackle the under-represen-

tation of one of the major religious communities in the police service of Northern Ireland, differences in treatment regarding recruitment into that service, including its support staff, shall not constitute discrimination insofar as those differences in treatment are expressly authorised by national legislation.

2. In order to maintain a balance of opportunity in employment for teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities there, the provisions on religion or belief in this Directive shall not apply to the recruitment of teachers in schools in Northern Ireland in so far as this is expressly authorised by national legislation.

#### CHAPTER IV FINAL PROVISIONS

##### Article 16

###### Compliance

Member States shall take the necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended.

##### Article 17

###### Sanctions

Member States shall lay down the rules on sanctions applicable to infringements

of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 2 December 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

##### Article 18

###### Implementation

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 2 December 2003 at the latest or may entrust the social partners, at their joint request, with the implementation of this Directive as regards provisions concerning collective agreements. In such cases, Member States shall ensure that, no later than 2 December 2003, the social partners introduce the necessary measures by agreement, the Member States concerned being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

In order to take account of particular conditions, Member States may, if necessary, have an additional period of 3 years from 2 December 2003, that is to say a total of 6 years, to implement the provisions of this Directive on age and disability discrimination. In that event they shall inform the Commission forthwith. Any Member State which chooses to use this additional period shall report annually to the Commission on the steps it is taking to tackle age and disability discrimination and on the progress it is making towards implementation. The Commission shall report annually to the Council.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

#### Article 19

##### **Report**

1. Member States shall communicate to the Commission, by 2 December 2005 at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

#### Article 20

##### **Entry into force**

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

#### Article 21

##### **Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 27 November 2000.

*For the Council The President*  
É. GUIGOU



## DISPOSICIONS

### DEPARTAMENT DE LA PRESIDÈNCIA

#### LLEI

*3/2005, de 8 d'abril, de modificació de la Llei 9/1998, del Codi de Família, de la Llei 10/1998, d'unions estables de parella, i de la Llei 40/1991, del Codi de Successions per causa de mort en el Dret Civil de Catalunya, en matèria d'adopció i tutela.*

EL PRESIDENT  
DE LA GENERALITAT DE CATALUNYA

Sia notori a tots els ciutadans que el Parlament de Catalunya ha aprovat i jo, en nom del Rei i d'acord amb el que estableix l'article 33.2 de l'Estatut d'autonomia de Catalunya, promulgo la següent

#### LLEI

#### PREÀMBUL

L'ordenament civil català va ésser el primer a l'Estat espanyol d'arreglar-se amb els aleshores incipients corrents prelegislatius i legislatius que, en l'àmbit de les parelles de fet, començaven a aflorar en els ordenaments del nostre entorn geogràfic i cultural. Així, ja el preàmbul de la Llei 10/1998, del 15 de juliol, d'unions estables de parella, reconeixia que, a banda del matrimoni, en la societat catalana hi havia altres

formes d'unió en convivència de caràcter estable, tant heterosexuales com homosexuals, i que els darrers anys havien augmentat. A més a més, remarca que aquest augment s'havia produït d'una manera paral·lela al creixement de l'acceptació que totes aquestes altres formes tenien en la nostra societat. Pel que fa a l'adopció, però, la Llei es mantingué en les mateixes coordenades que el Codi de família, i limità tant l'adopció conjunta com la dels fills del convivent al matrimoni i a les parelles formades per un home i una dona.

Ara, aquesta llei fa un pas endavant i elimina la dita restricció legal a l'adopció per parelles homosexuals, en el marc del que disposa la Resolució del Parlament Europeu del 4 de setembre de 2003, sobre la situació dels drets fonamentals a la Unió Europea, la qual reitera en aquest punt la Resolució del 8 de febrer de 1994, sobre la igualtat dels drets dels gais i les lesbianes a la Comunitat Europea, que insta els estats membres a vetllar per l'aplicació del principi d'igualtat de tracte, amb independència de l'orientació sexual de les persones interessades, en totes les disposicions jurídiques i administratives.

Aquesta ha estat també la línia d'altres països europeus que han aprovat normes que, tot i alguna diferència de matís, coincideixen a admetre aquestes adopcions: Holanda, Suècia i Anglaterra regulen l'adopció conjunta, i Dinamarca, Islàndia i Noruega la circumscriuen als

fills del convivent. Dins l'Estat espanyol, Navarra, el País Basc i, recentment, Aragó també han aprovat sengles lleis que eliminen les restriccions legals que hi havia fins ara per a aquestes adopcions.

L'article 39 de la Constitució espanyola fixa que els poders públics tenen l'obligació d'assegurar la protecció social, econòmica i jurídica de la família, la qual no s'ha d'identificar necessàriament amb la que té l'origen en el matrimoni. Efectivament, tal com afirma la Sentència del Tribunal Constitucional 222/1992, aquesta conclusió s'imposa pel sentit protector o tuïtiu amb què la norma fonamental considera sempre la família, que respon a imperatius vinculats al caràcter «social» de l'Estat. En aquest marc, el mateix article 39 de la Constitució espanyola fixa també, com un dels principis rectoris de la política social, l'obligació dels poders públics d'assegurar la protecció integral dels fills; és a dir, exigeix que el legislador ordinari respecti l'esmentat principi d'assistència i protecció dels fills menors. És a l'empara d'aquests preceptes, i també del que disposa l'article 8.2 de l'Estatut d'autonomia respecte de l'obligació de promoure les condicions necessàries perquè la llibertat i la igualtat de l'individu siguin reals i efectives i de remoure els obstacles que impedeixin o dificultin llur plenitud, que la Generalitat, en l'exercici de la competència legislativa que li reconeix l'article 9.2 de l'Estatut d'autonomia en matèria civil, ha aprovat aquesta llei, que elimina els obstacles que hi havia fins ara perquè les persones que integren una parella homosexual que conviu amb caràcter estable adoptin un fill o una filla.

El concepte modern de l'adopció com una mesura sobretot per a protegir els menors l'ha allunyat radicalment de l'estretor amb què s'havia concebut a l'origen. Ja amb la incorporació, gairebé fa mig segle, de l'adopció plena -reservada exclusivament als menors abandonats i als expòsits- es va produir una renovació substancial d'aquesta institució, que adquiria així un perfil marcat de protecció de menors, en el qual les

reformes successives no han fet sinó aprofundir. En aquesta mateixa direcció, un cop la Generalitat va haver recuperat la competència legislativa, el Parlament va aprovar la Llei 11/1985, del 13 de juny, de protecció de menors, que, ja sense cap mena de dubte, concebia l'adopció com l'últim pas en l'actuació protectora, quan no és possible retornar el menor a la seva família. Després, la Llei 37/1991, del 30 de desembre, sobre mesures de protecció dels menors desemparats i de l'adopció, va assentar-se, encara amb més força, en aquest mateix principi: això és, que, per sobre de tot, ha de prevaler la protecció i l'interès del menor. El Codi de família, l'any 1998, es va limitar a incorporar, sense canvis substancials, la regulació d'aquella llei especial, de manera que hom pot afirmar que, avui dia, l'adopció només té un sentit ple en el marc de les mesures de protecció dels menors desemparats, sense excloure, és clar, els casos -més aviat excepcionals- en què es permet l'adopció fora d'aquest àmbit.

Aquesta llei parteix de la base que allò que és millor per a l'interès del menor només es pot determinar acuradament en cada adopció concreta, i que no s'ha de fer dependre, apriorísticament, de l'orientació sexual dels sol·licitants. Ningú no té, de manera automàtica, el dret d'adoptar, sinó que hi ha persones o famílies idònies per a l'adopció. El que fa aquesta llei és equiparar les persones homosexuals que conviuen more uxorio als convivents heterosexuals, i els reconeix el dret a ésser valorats com a possibles pares o mares adoptius. En fi, allò que cal assegurar en tota adopció, sigui quina sigui l'orientació sexual dels qui adopten, és l'interès superior del menor, la qual cosa correspon als poders públics competents en matèria de protecció de menors desemparats i, en definitiva, correspon a l'autoritat judicial examinar, cas per cas, si cada sol·licitud concreta s'adequa o no a aquest interès.

Es possibilita tant que un membre de la parella homosexual adopti els fills

de l'altre, com que tots dos adoptin conjuntament menors aliens, és a dir, que no tenen cap mena de vincle afectiu amb la parella que adopta. En el primer cas, hom pretén legalitzar la situació de fet en la qual el fill o filla té dues mares o dos pares, és a dir, l'adopció es planteja, potencialment, com la millor manera de reconèixer el vincle que hi ha amb el menor i, al mateix temps, com un instrument adequat perquè, en el seu interès, es puguin fer efectius les responsabilitats i els drets legals, i resoldre, en el marc del dret de família, qualsevol tipus de problema que pugui sorgir posteriorment en relació amb el menor. D'aquesta manera, la llei permet donar cobertura legal a una realitat emocional: la d'aquests menors amb dos pares o dues mares. En el cas de l'adopció conjunta, la llei parteix del principi que el millor camí per a satisfer l'interès superior del menor és, normalment, que convisqui, com més aviat millor, en una llar idònia, de manera que passi el mínim temps possible en un centre d'acolliment o, fins i tot, en un acolliment familiar simple sense voluntat d'adoptar.

Atès que s'ha volgut donar una resposta legislativa immediata a aquesta realitat social, s'ha optat per aprovar una llei modificativa, en el benentès que aquesta reforma s'haurà d'integrar en la tasca d'harmonització, ja força avançada, del Codi de família i la resta de lleis que han de conformar, en l'àmbit de la persona i la família, el llibre segon del Codi civil de Catalunya. Aleshores serà el moment, a més, d'harmonitzar el que disposa aquesta llei amb la regulació de la resta d'institucions, com ara la potestat -que, literalment, encara es continua referint al model tradicional del pare i la mare-, i d'introduir els canvis terminològics pertinents per a assolir una major neutralitat en termes de gènere que s'adeqüi més a la disciplina de l'adopció que resulta d'aquesta llei, això és, a la possibilitat que el menor tingui dos pares o dues mares.

Amb la finalitat, doncs, de fer possible l'adopció per les parelles homose-

xuals i amb la voluntat clara d'assegurar la protecció de l'interès primordial dels infants, que són, en definitiva, les persones beneficiàries d'aquesta modificació legislativa, es deroga l'article 6 de la Llei d'unions estables de parella i, en relació amb el Codi de família, es modifiquen l'article 115, referit a l'adopció conjunta per més d'una persona; l'article 117, sobre l'adopció dels fills de l'altre membre de la unió estable; l'article 122, respecte de la necessitat d'assenir en l'adopció individual; l'article 127, pel que fa als efectes de l'adopció, i l'article 132, per a assenyalar que aquesta nova regulació de l'adopció atribueix la filiació a dos pares o dues mares. Es modifica també l'article 344 del Codi de successions, en aquest darrer cas per a equiparar l'efecte del manteniment de drets successoris abintestat (actualment tan sols previst per a l'adopció dels fills del consort) a la dels fills del convivent en parella estable, ja que continuen subsistint els vincles de parentiu.

Finalment, fora de l'adopció, per raons de coherència normativa es modifica també l'article 179 del Codi de família, ja que no fóra lògic mantenir que no pot ésser tutor o tutora qui conviu amb el pare o la mare del menor en relació de parella homosexual, quan ara la llei admet que pot adoptar. El mateix s'ha de dir respecte de l'atribució de la tutela de l'incapacitat preferentment a qui hi conviu en relació de parella amb caràcter estable; en aquest darrer cas, es tracta d'una simple harmonització amb l'article 25 de la Llei d'unions estables, que ja posa en primer lloc, en l'ordre de preferència de la delació de la tutela, el convivent homosexual. La llei es completa amb la modificació de la resta de preceptes que, en diverses normes jurídiques, encara tenien en compte les parelles de fet només de caràcter heterosexual.

#### Article 1

##### *Modificació de l'article 115 de la Llei 9/1998*

Es modifica l'apartat 2 de l'article 115 de la Llei 9/1998, del 15 de juliol,

del Codi de família, que resta redactat de la manera següent:

“2. Només s’admet l’adopció per més d’una persona en el cas dels cònjuges o de les parelles que conviuen amb caràcter estable. En aquests casos, n’hi ha prou que una de les persones que adopta hagi complert vint-i-cinc anys.”

#### Article 2

##### *Modificació de l'article 117 de la Llei 9/1998*

Es modifiquen les lletres a i b de l'article 117.1 de la Llei 9/1998, que resten redactades de la manera següent:

“a) Els fills del cònjuge o de la persona amb qui l’adoptant conviu en relació de parella amb caràcter estable. En aquests casos, l’adopció requereix que la filiació no estigui determinada legalment respecte a l’altre progenitor, o que aquest hagi mort, o que estigui privat de la potestat, o que estigui sotmès a una causa de privació de la potestat, o que hi hagi donat l’assenyament.”

”b) Els orfes que són parents de l’adoptant fins al tercer grau de consanguinitat o afinitat.”

#### Article 3

##### *Modificació de l'article 122 de la Llei 9/1998*

Es modifica l’apartat 1.a de l'article 122 de la Llei 9/1998, que resta redactat de la manera següent:

“1. Han de donar l’assenyament a l’adopció, si no estan impossibilitats per a fer-ho:

”a) El cònjuge de l’adoptant, llevat del cas de separació judicial o de fet, o la persona amb qui l’adoptant conviu en relació de parella amb caràcter estable.”

#### Article 4

##### *Modificació de l'article 127 de la Llei 9/1998*

Es modifica l’apartat 2 de l'article 127 de la Llei 9/1998, que resta redactat de la manera següent:

“2. L’adopció extingeix el parentiu entre la persona adoptada i la seva famí-

lia d’origen, llevat dels casos establerts per l’article 117.1.a i de l’adopció entre parents fins al quart grau.”

#### Article 5

##### *Modificació de l'article 128 de la Llei 9/1998*

1. Es modifica l’apartat 1 de l'article 128 de la Llei 9/1998, que es divideix en dos apartats que resten redactats de la manera següent:

“1. La persona que és adoptada conjuntament porta els cognoms dels adoptants en l’ordre que estableix la llei o en l’ordre que aquests acordin en la inscripció del primer fill o filla que tinguin en comú. Si els adoptants són del mateix sexe, l’ordre dels cognoms és el que elegeixin de comú acord. Si no hi ha acord, l’ordre el decideix el jutge o jutgessa de primera instància, dins el procediment d’adopció.

”2. L’adoptat o adoptada per una persona porta els cognoms d’aquesta, llevat del cas a què es refereix l’article 117.1.a, en el qual conserva el cognom de la persona amb qui té el vincle de filiació establert prèviament, d’acord amb les normes de l’apartat 1 respecte de l’ordre dels cognoms. Si aquesta persona és del mateix sexe que l’adoptant, ambdós han d’establir l’ordre dels cognoms de comú acord en el moment de l’adopció. Si no hi ha acord, l’ordre el decideix el jutge o jutgessa de primera instància.”

2. Els antics apartats 2 i 3 de l'article 128 de la Llei 9/1998 passen a ésser els apartats 3 i 4, respectivament.

3. S’afegeix un nou apartat, el 5, a l’article 128 de la Llei 9/1998, amb el text següent:

“5. En els supòsits anteriors d’elecció, petició d’inversió o conservació, en el moment de l’adopció, els cognoms de la persona adoptada han d’ésser acordats expressament en la part dispositiva de la resolució judicial per la qual es constitueix l’adopció.”

#### Article 6

##### *Modificació de l'article 132 de la Llei 9/1998*

1. L'article 132 de la Llei 9/1998 passa a ésser l'apartat 1 de l'article 132.

2. S'afegeix un nou apartat, el 2, a l'article 132 de la Llei 9/1998, amb el text següent:

“2. Si les persones a qui s'ha assignat la potestat sobre els fills menors són del mateix sexe, es denominen mares, si són dones, i pares, si són homes.”

#### Article 7

##### *Modificació de l'article 158 de la Llei 9/1998*

Es modifica la lletra b de l'article 158 de la Llei 9/1998, que resta redactada de la manera següent:

“b) L'adopció dels fills, llevat que ho siguin del cònjuge o de la persona amb qui l'adoptant conviu en relació de parella amb caràcter estable.”

#### Article 8

##### *Modificació de l'article 161 de la Llei 9/1998*

Es modifica l'article 161 de la Llei 9/1998, que resta redactat de la manera següent:

“La declaració judicial d'incapacitat dels fills majors d'edat o emancipats, si ells mateixos no han designat un tutor o una tutora, d'acord amb el que estableix l'article 172, o bé si no és procedent la constitució de la tutela a favor del cònjuge o de la persona amb qui conviu en relació estable de parella, o dels descendents, i viuen encara el pare o la mare que eren els titulars de la potestat, comporta la rehabilitació d'aquesta potestat, que s'ha d'exercir, d'acord amb les excepcions que pugui establir la resolució judicial, com si es tractés d'un menor.”

#### Article 9

##### *Modificació de l'article 163 de la Llei 9/1998*

Es modifica l'apartat 1.c de l'article 163 de la Llei 9/1998, que resta redactat de la manera següent:

“1. Les potestats prorrogades o rehabilitades del pare i de la mare s'extingeixen per:

”c) La constitució posterior de la tutela a favor del cònjuge o de la persona amb qui es conviu en relació estable de parella o dels descendents.”

#### Article 10

##### *Modificació de l'article 179 de la Llei 9/1998*

Es modifiquen les lletres a i c de l'article 179.1 de la Llei 9/1998, que resten redactades de la manera següent:

“a) En la tutela de l'incapacitat, el seu cònjuge, si conviu, o la persona amb qui l'incapacitat conviu en relació estable de parella.

”c) El cònjuge del pare o de la mare del menor o incapacitat, o la persona que, en morir l'un o l'altra, hi estigués convivint en relació estable de parella; en ambdós casos, si la persona designada ha estat convivint amb el menor o incapacitat.”

#### Article 11

##### *Modificació de l'article 198 de la Llei 9/1998*

Es modifica la lletra b de l'article 198 de la Llei 9/1998, que resta redactada de la manera següent:

“b) Quan la tutela correspongui a una persona casada o que visqui en relació estable de parella, i es cregui convenient que el cònjuge o l'altre membre de la parella també l'exerceixi.”

#### Article 12

##### *Modificació de l'article 344 de la Llei 40/1991*

Es modifica l'article 344 de la Llei 40/1991, del 30 de desembre, del Codi de successions per causa de mort en el dret civil de Catalunya, que resta redactat de la manera següent:

“En el cas d'adopció dels fills del consort o de la persona amb qui l'adoptant conviu en relació de parella amb caràcter estable, es manté el dret dels fills a succeir abintestat a llur progenitor i els parents d'aquest, sens perjudici dels drets successoris abintestat que puguin correspondre a l'adoptant.”

### Article 13

#### *Modificació de l'article 354 de la Llei 40/1991*

Es modifica el paràgraf segon de l'article 354 de la Llei 40/1991, que resta redactat de la manera següent:

“Se n'exceptua el supòsit en què un consort adopti els fills per naturalesa de l'altre consort, o un dels membres de la parella que conviu en relació de caràcter estable adopti els fills de l'altre.”

### Article 14

#### *Modificació de l'article 31 de la Llei 10/1998*

1. S'afegeix un nou apartat 1 a l'article 31 de la Llei 10/1998, del 15 de juliol, d'unions estables de parella, amb el text següent:

“1. En cessar la convivència, els membres de la parella, en el cas que tinguin fills comuns, poden pactar amb quin dels dos han de conviure, i el règim de visites, d'estada i de comunicació amb el membre de la parella amb qui no hagin de conviure. Si no hi ha acord, l'autoritat judicial decideix en benefici dels fills, escoltant-los prèviament si tenen prou coneixement o si tenen, com a mínim, dotze anys”.

2. Els antics apartats 1 i 2 de l'article 31 de la Llei 10/1998 passen a ésser els apartats 2 i 3, respectivament.

#### DISPOSICIÓ DEROGATÒRIA

Es deroga l'article 6 de la Llei 10/1998.

Per tant, ordeno que tots els ciutadans als quals sigui d'aplicació aquesta Llei cooperin al seu compliment i que els tribunals i les autoritats als quals pertoqui la facin complir.

Palau de la Generalitat, 8 d'abril de 2005

PASQUAL MARAGALL I MIRA

President de la Generalitat de Catalunya

JOSEP M. VALLÈS

Conseller de Justícia

(05.097.038)

### LLEI

#### *4/2005, de 8 d'abril, dels recursos contra les qualificacions dels Registradors de la Propietat de Catalunya.*

EL PRESIDENT DE LA GENERALITAT  
DE CATALUNYA

Sia notori a tots els ciutadans que el Parlament de Catalunya ha aprovat i jo, en nom del Rei i d'acord amb el que estableix l'article 33.2 de l'Estatut d'autonomia de Catalunya, promulgo la següent

### LLEI

#### PREÀMBUL

L'Estatut d'autonomia de Catalunya, a l'article 20.1.e, estén la competència dels òrgans jurisdiccionals als recursos sobre qualificació de documents referents al dret privat català que han de tenir accés als registres de la propietat; i a l'article 9.2 reconeix a la Generalitat competències exclusives amb relació a la conservació, la modificació i el desenvolupament del dret privat català.

La Llei hipotecària, text refós aprovat per Decret del 8 de febrer de 1946, en la redacció introduïda per la Llei de l'Estat 24/2001, del 27 de desembre, de mesures fiscals, administratives i d'ordre social, modificades per les lleis de l'Estat 53/2002, del 30 de desembre, i 62/2003, del 30 de desembre, ambdues de mesures fiscals, administratives i d'ordre social, estableix que contra les qualificacions negatives dels registradors de la propietat es pot interposar un recurs administratiu davant la Direcció General dels Registres i del Notariat, la resolució del qual pot ésser objecte de recurs en seu judicial davant els òrgans de l'ordre jurisdiccional civil amb remissió a l'aplicació de les normes de judici verbal. No obstant això, la mateixa Llei hipotecària disposa que, quan el coneixement del recurs contra la qualificació negativa del registrador de la propietat ha estat atribuït per un estatut d'autonomia als òrgans jurisdiccionals radi-

cats en la comunitat autònoma en la qual té la demarcació el Registre de la Propietat, el recurs s'ha d'interposar davant l'òrgan jurisdiccional competent.

Això comporta que ara, a Catalunya, quan es tracta de recursos que es fonamenten en dret propi només hi ha una única instància, la jurisdiccional, amb el greuge comparatiu i discriminatori que això significa, ja que quan es tracta de matèries de dret comú es gaudeix de les garanties de totes dues instàncies, la governativa i la jurisdiccional.

La Generalitat, d'acord amb l'article 9.3 de l'Estatut d'autonomia, té competència exclusiva per a dictar normes processals i de procediment administratiu que es derivin de les particularitats del dret substantiu català, i l'article 149.1.18 de la Constitució espanyola exceptua de les competències de l'Estat en matèria de procediment administratiu comú les especialitats derivades de l'organització pròpia de les comunitats autònomes.

En ús d'aquestes competències, i per a equiparar les garanties dels particulars en els mecanismes d'impugnació de les qualificacions negatives efectuades pels registradors de la propietat quan es fonamenten en matèria de dret català amb els ja existents quan el recurs es fonamenta en matèries de dret comú, cal implantar també per a Catalunya un sistema de doble instància que estableixi una primera instància governativa, prèvia a la instància judicial. Aquesta primera instància governativa radica en la Direcció General de Dret i d'Entitats Jurídiques, del Departament de Justícia, atès que és l'òrgan directiu de la Generalitat que exerceix les funcions en matèria de dret català. A aquest efecte, la dita Direcció General és assessorada, per a la resolució dels recursos, per una comissió de juristes de reconegut prestigi experts en la matèria, la composició i funcionament de la qual s'ha d'establir per reglament.

Contra les resolucions de la Direcció General de Dret i d'Entitats Jurídiques es pot interposar recurs davant l'òr-

gan jurisdiccional competent. Seria desitjable que aquesta competència, per raons d'unificació de doctrina i de celeritat, recaigués en la Sala Civil i Penal del Tribunal Superior de Justícia de Catalunya quan el marc normatiu ho permeti. Catalunya, en aquest sentit, compta amb el precedent de la Llei del 10 de març de 1934, reguladora del Tribunal de Cassació, en el qual es va crear una secció de recursos governatius dins la Sala Civil.

Per economia processal es fa una remissió al procediment establert per la Llei hipotecària quant a la forma de presentació dels recursos i llur tramitació, amb les adaptacions corresponents.

## Article 1

### *Objecte de la Llei*

Aquesta Llei regula el règim dels recursos contra la qualificació negativa dels títols o les clàusules concretes d'aquests susceptibles d'inscripció en un registre de la propietat, mercantil o de béns mobles de Catalunya, sempre que els dits recursos es fonamentin, de manera exclusiva o juntament amb d'altres motius, en una infracció de les normes del dret català.

## Article 2

### *Recurs governatiu*

1. Contra els actes a què es refereix l'article 1, es pot interposar recurs governatiu davant la Direcció General de Dret i d'Entitats Jurídiques.

2. La Direcció General de Dret i d'Entitats Jurídiques és assessorada per una comissió formada per un notari o notària, un registrador o registradora de la propietat, un catedràtic o catedràtica d'universitat i un advocat o advocada de la Generalitat, nomenats pel conseller o consellera de Justícia a proposta de l'Observatori de Dret Privat de Catalunya.

## Article 3

### *Recurs jurisdiccional*

Contra les resolucions expresses o presumptes de la Direcció General de

Dret i d'Entitats Jurídiques dictades en aplicació de l'article 2 es pot interposar recurs davant l'òrgan jurisdiccional competent.

#### Article 4.

##### *Procediment*

La forma d'intervenció i la tramitació dels recursos establerts per aquesta Llei és l'establerta per l'article 325 i els següents de la Llei hipotecària, tenint en compte que la referència a la Direcció General dels Registres i del Notariat s'ha d'entendre feta a la Direcció General de Dret i d'Entitats Jurídiques.

#### Article 5

##### *Publicitat*

Les resolucions de la Direcció General de Dret i d'Entitats Jurídiques es publiquen en el Diari Oficial de la Generalitat de Catalunya

#### DISPOSICIÓ FINAL

Aquesta Llei entra en vigor als dos mesos d'haver estat publicada en el *Diari Oficial de la Generalitat de Catalunya*.

Per tant, ordeno que tots els ciutadans als quals sigui d'aplicació aquesta Llei cooperin al seu compliment i que els tribunals i les autoritats als quals pertoqui la facin complir.

Palau de la Generalitat, 8 d'abril de 2005

PASQUAL MARAGALL I MIRA

President de la Generalitat de Catalunya

(05.097.039) \*

## I. Disposiciones generales

JEFATURA DEL ESTADO  
11364 LEY 13/2005, de 1 de julio, por  
la que se modifica el Código  
Civil en materia de derecho a  
contraer matrimonio.

JUAN CARLOS I  
REY DE ESPAÑA

A todos los que la presente vieren y  
entendieren.

Sabed: Que las Cortes Generales  
han aprobado y Yo vengo en sancionar  
la siguiente ley.

### I

La relación y convivencia de pareja,  
basada en el afecto, es expresión genuina  
de la naturaleza humana y constituye  
cauce destacado para el desarrollo de  
la personalidad, que nuestra Constitu-  
ción establece como uno de los funda-  
mentos del orden político y la paz social.  
En consonancia con ello, una manifes-  
tación señalada de esta relación, como  
es el matrimonio, viene a ser recogida  
por la Constitución, en su artículo 32, y  
considerada, en términos de nuestra  
jurisprudencia constitucional, como una  
institución jurídica de relevancia social  
que permite realizar la vida en común  
de la pareja.

Esta garantía constitucional del  
matrimonio tiene como consecuencia  
que el legislador no podrá desconocer  
la institución, ni dejar de regularla de  
conformidad con los valores superiores

del ordenamiento jurídico, y con su  
carácter de derecho de la persona con  
base en la Constitución. Será la ley que  
desarrolle este derecho, dentro del  
margen de opciones abierto por la Con-  
stitución, la que, en cada momento histó-  
rico y de acuerdo con sus valores domi-  
nantes, determinará la capacidad exigida  
para contraer matrimonio, así como su  
contenido y régimen jurídico.

La regulación del matrimonio en el  
derecho civil contemporáneo ha refle-  
jado los modelos y valores dominantes  
en las sociedades europeas y occidenta-  
les. Su origen radica en el Código Civil  
francés de 1804, del que innegablemente  
trae causa el español de 1889. En este  
contexto, el matrimonio se ha configu-  
rado como una institución, pero también  
como una relación jurídica que tan sólo  
ha podido establecerse entre personas  
de distinto sexo; de hecho, en tal diferen-  
cia de sexo se ha encontrado tradicio-  
nalmente uno de los fundamentos del  
reconocimiento de la institución por el  
derecho del Estado y por el derecho  
canónico. Por ello, los códigos de los  
dos últimos siglos, reflejando la menta-  
lidad dominante, no precisaban prohi-  
bir, ni siquiera referirse, al matrimonio  
entre personas del mismo sexo, pues la  
relación entre ellas en forma alguna se  
consideraba que pudiera dar lugar a una  
relación jurídica matrimonial.

Pero tampoco en forma alguna cabe  
al legislador ignorar lo evidente: que la  
sociedad evoluciona en el modo de

conformar y reconocer los diversos modelos de convivencia, y que, por ello, el legislador puede, incluso debe, actuar en consecuencia, y evitar toda quiebra entre el Derecho y los valores de la sociedad cuyas relaciones ha de regular. En este sentido, no cabe duda de que la realidad social española de nuestro tiempo deviene mucho más rica, plural y dinámica que la sociedad en que surge el Código Civil de 1889. La convivencia como pareja entre personas del mismo sexo basada en la afectividad ha sido objeto de reconocimiento y aceptación social creciente, y ha superado arraigados prejuicios y estigmatizaciones.

Se admite hoy sin dificultad que esta convivencia en pareja es un medio a través del cual se desarrolla la personalidad de un amplio número de personas, convivencia mediante la cual se prestan entre sí apoyo emocional y económico, sin más trascendencia que la que tiene lugar en una estricta relación privada, dada su, hasta ahora, falta de reconocimiento formal por el Derecho.

Esta percepción no sólo se produce en la sociedad española, sino también en ámbitos más amplios, como se refleja en la Resolución del Parlamento Europeo, de 8 de febrero de 1994, en la que expresamente se pide a la Comisión Europea que presente una propuesta de recomendación a los efectos de poner fin a la prohibición de contraer matrimonio a las parejas del mismo sexo, y garantizarles los plenos derechos y beneficios del matrimonio.

## II

La Historia evidencia una larga trayectoria de discriminación basada en la orientación sexual, discriminación que el legislador ha decidido remover. El establecimiento de un marco de realización personal que permita que aquellos que libremente adoptan una opción sexual y afectiva por personas de su mismo sexo puedan desarrollar su personalidad y sus derechos en condiciones de igualdad se ha convertido en

exigencia de los ciudadanos de nuestro tiempo, una exigencia a la que esta ley trata de dar respuesta.

Ciertamente, la Constitución, al encomendar al legislador la configuración normativa del matrimonio, no excluye en forma alguna una regulación que delimite las relaciones de pareja de una forma diferente a la que haya existido hasta el momento, regulación que dé cabida a las nuevas formas de relación afectiva. Pero, además, la opción reflejada en esta ley tiene unos fundamentos constitucionales que deben ser tenidos en cuenta por el legislador. Así, la promoción de la igualdad efectiva de los ciudadanos en el libre desarrollo de su personalidad (artículos 9.2 y 10.1 de la Constitución), la preservación de la libertad en lo que a las formas de convivencia se refiere (artículo 1.1 de la Constitución) y la instauración de un marco de igualdad real en el disfrute de los derechos sin discriminación alguna por razón de sexo, opinión o cualquier otra condición personal o social BOE núm. 157 Sábado 2 julio 2005 23633 (artículo 14 de la Constitución) son valores consagrados constitucionalmente cuya plasmación debe reflejarse en la regulación de las normas que delimitan el estatus del ciudadano, en una sociedad libre, pluralista y abierta.

Desde esta perspectiva amplia, la regulación del matrimonio que ahora se instaura trata de dar satisfacción a una realidad palpable, cuyos cambios ha asumido la sociedad española con la contribución de los colectivos que han venido defendiendo la plena equiparación en derechos para todos con independencia de su orientación sexual, realidad que requiere un marco que determine los derechos y obligaciones de todos cuantos formalizan sus relaciones de pareja.

En el contexto señalado, la ley permite que el matrimonio sea celebrado entre personas del mismo o distinto sexo, con plenitud e igualdad de derechos y obligaciones cualquiera que sea su composición. En consecuencia, los

efectos del matrimonio, que se mantienen en su integridad respetando la configuración objetiva de la institución, serán únicos en todos los ámbitos con independencia del sexo de los contrayentes; entre otros, tanto los referidos a derechos y prestaciones sociales como la posibilidad de ser parte en procedimientos de adopción.

Asimismo, se ha procedido a una imprescindible adaptación terminológica de los distintos artículos del Código Civil que se refieren o traen causa del matrimonio, así como de una serie de normas del mismo Código que contienen referencias explícitas al sexo de sus integrantes.

En primer lugar, las referencias al marido y a la mujer se han sustituido por la mención a los cónyuges o a los consortes. En virtud de la nueva redacción del artículo 44 del Código Civil, la acepción jurídica de cónyuge o de consorte será la de persona casada con otra, con independencia de que ambas sean del mismo o de distinto sexo.

Subsiste no obstante la referencia al binomio formado por el marido y la mujer en los artículos 116, 117 y 118 del Código, dado que los supuestos de hecho a que se refieren estos artículos sólo pueden producirse en el caso de matrimonios heterosexuales.

Por otra parte, y como resultado de la disposición adicional primera de la presente ley, todas las referencias al matrimonio que se contienen en nuestro ordenamiento jurídico han de entenderse aplicables tanto al matrimonio de dos personas del mismo sexo como al integrado por dos personas de distinto sexo.

**Artículo único.** *Modificación del Código Civil en materia de derecho a contraer matrimonio.*

El Código Civil se modifica en los siguientes términos:

Uno. Se añade un segundo párrafo al artículo 44, con la siguiente redacción:  
«El matrimonio tendrá los mismos requisitos y efectos cuando ambos

contrayentes sean del mismo o de diferente sexo.»

Dos. El artículo 66 queda redactado en los siguientes términos:

«Artículo 66.

Los cónyuges son iguales en derechos y deberes.»

Tres. El artículo 67 queda redactado en los siguientes términos:

«Artículo 67.

Los cónyuges deben respetarse y ayudarse mutuamente y actuar en interés de la familia.»

Cuatro. El primer párrafo del artículo 154 queda redactado en los siguientes términos:

«Los hijos no emancipados están bajo la potestad de sus progenitores.»

Cinco. El primer párrafo del artículo 160 queda redactado en los siguientes términos:

«Los progenitores, aunque no ejerzan la patria potestad, tienen el derecho de relacionarse con sus hijos menores, excepto con los adoptados por otro o conforme a lo dispuesto en resolución judicial.»

Seis. El párrafo 2.º del artículo 164 queda redactado en los siguientes términos:

«2.º Los adquiridos por sucesión en que uno o ambos de los que ejerzan la patria potestad hubieran sido justamente desheredados o no hubieran podido heredar por causa de indignidad, que serán administrados por la persona designada por el causante y, en su defecto y sucesivamente, por el otro progenitor o por un administrador judicial especialmente nombrado.»

Siete. El apartado 4 del artículo 175 queda redactado en los siguientes términos:

«4. Nadie puede ser adoptado por más de una persona, salvo que la

adopción se realice conjunta o sucesivamente por ambos cónyuges. El matrimonio celebrado con posterioridad a la adopción permite al cónyuge la adopción de los hijos de su consorte.

En caso de muerte del adoptante, o cuando el adoptante sufra la exclusión prevista en el artículo 179, es posible una nueva adopción del adoptado.»

Ocho. El apartado 2 del artículo 178 queda redactado en los siguientes términos:

«2. Por excepción subsistirán los vínculos jurídicos con la familia del progenitor que, según el caso, corresponda:

1.º Cuando el adoptado sea hijo del cónyuge del adoptante, aunque el consorte hubiere fallecido.

2.º Cuando sólo uno de los progenitores haya sido legalmente determinado, siempre que tal efecto hubiere sido solicitado por el adoptante, el adoptado mayor de doce años y el progenitor cuyo vínculo haya de persistir.»

Nueve. El párrafo segundo del artículo 637 queda redactado en los siguientes términos:

«Se exceptúan de esta disposición las donaciones hechas conjuntamente a ambos cónyuges, entre los cuales tendrá lugar aquel derecho, si el donante no hubiese dispuesto lo contrario.»

Diez. El artículo 1.323 queda redactado en los siguientes términos:

«Artículo 1.323.

Los cónyuges podrán transmitirse por cualquier título bienes y derechos y celebrar entre sí toda clase de contratos.»

Once. El artículo 1.344 queda redactado en los siguientes términos:

«Artículo 1.344.

Mediante la sociedad de ganancia-

les se hacen comunes para los cónyuges las ganancias o beneficios obtenidos indistintamente por cualquiera de ellos, que les serán atribuidos por mitad al disolverse aquella.»

Doce. El artículo 1.348 queda redactado en los siguientes términos:

«Artículo 1.348.

Siempre que pertenezca privativamente a uno de los cónyuges una cantidad o crédito pagadero en cierto número de años, no serán gananciales las sumas que se cobren en los plazos vencidos durante el matrimonio, sino que se estimarán capital de uno u otro cónyuge, según a quien pertenezca el crédito.»

Trece. El artículo 1.351 queda redactado en los siguientes términos:

«Artículo 1.351.

Las ganancias obtenidas por cualquiera de los cónyuges en el juego o las procedentes de otras causas que eximan de la restitución pertenecerán a la sociedad de gananciales.»

Catorce. El artículo 1.361 queda redactado en los siguientes términos:

«Artículo 1.361.

Se presumen gananciales los bienes existentes en el matrimonio mientras no se pruebe que pertenecen privativamente a uno de los dos cónyuges.»

Quince. El párrafo 2.º del artículo 1.365 queda redactado en los siguientes términos:

«2.º En el ejercicio ordinario de la profesión, arte u oficio o en la administración ordinaria de los propios bienes. Si uno de los cónyuges fuera comerciante, se estará a lo dispuesto en el Código de Comercio.»

Dieciséis. El artículo 1.404 queda redactado en los siguientes términos:

«Artículo 1.404.

Hechas las deducciones en el caudal

inventariado que prefijan los artículos anteriores, el remanente constituirá el haber de la sociedad de gananciales, que se dividirá por mitad entre los cónyuges o sus respectivos herederos.»

Diecisiete. El artículo 1.458 queda redactado en los siguientes términos:  
«Artículo 1.458.  
Los cónyuges podrán venderse bienes recíprocamente.»

**Disposición adicional primera.** *Aplicación en el ordenamiento.*

Las disposiciones legales y reglamentarias que contengan alguna referencia al matrimonio se entenderán aplicables con independencia del sexo de sus integrantes.

**Disposición adicional segunda.** *Modificación de la Ley de 8 de junio de 1957, sobre el Registro Civil.*

Uno. El artículo 46 queda redactado en los siguientes términos:  
«Artículo 46.  
La adopción, las modificaciones judiciales de capacidad, las declaraciones de concurso, ausencia o fallecimiento, los hechos relativos a la nacionalidad o vecindad y, en general, los demás inscribibles para los que no se establece especialmente que la inscripción se haga en otra Sección del Registro, se inscribirán al margen de la correspondiente inscripción de nacimiento.  
Cuantos hechos afectan a la patria potestad, salvo la muerte de los progenitores, se inscribirán al margen de la inscripción de nacimiento de los hijos.»

Dos. El artículo 48 queda redactado en los siguientes términos:  
«Artículo 48.  
La filiación paterna o materna constará en la inscripción de nacimiento a su margen, por referencia a la inscripción de matrimonio de los

padres o por inscripción del reconocimiento.»

Tres. El artículo 53 queda redactado en los siguientes términos:  
«Artículo 53.  
Las personas son designadas por su nombre y apellidos, correspondientes a ambos progenitores, que la Ley ampara frente a todos.»

**Disposición final primera.** *Título competencial.*

Esta ley se dicta al amparo de la competencia exclusiva del Estado en materia de legislación civil reconocida por el artículo 149.1.8.<sup>a</sup> de la Constitución española sin perjuicio de la conservación, modificación y desarrollo por las Comunidades Autónomas de los derechos civiles, forales o especiales, allí donde existan y de las normas aprobadas por éstas en desarrollo de sus competencias en Derecho Civil.

**Disposición final segunda.** *Entrada en vigor.*

La presente ley entrará en vigor el día siguiente al de su publicación en el «Boletín Oficial del Estado».

Por tanto,

Mando a todos los españoles, particulares y autoridades, que guarden y hagan guardar esta ley.

Valencia, 1 de julio de 2005.

JUAN CARLOS R.

El Presidente del Gobierno,  
JOSÉ LUIS RODRÍGUEZ ZAPATERO



## Homophobia in Europe

European Parliament resolution of 26 April 2007 on homophobia in Europe

The European Parliament ,

— having regard to international instruments guaranteeing human rights and fundamental freedoms and prohibiting discrimination, notably the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),

— having regard to Articles 6 and 7 of the Treaty on European Union (TEU) and Article 13 of the EC Treaty, which commit the EU and the Community, respectively, as well as the Member States, to upholding human rights and fundamental freedoms and which provide means at European level to fight discrimination and human rights violations,

— having regard to the Charter of Fundamental Rights of the European Union, in particular Article 21 thereof, which prohibits discrimination based on sexual orientation,

— having regard to EC activities to fight homophobia and discrimination based on sexual orientation, in particular Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>(1)</sup> and Decision No 771/2006/EC of the European Parliament and of the Council of 17 May 2006 establishing the European

Year of Equal Opportunities for All (2007) - towards a just society<sup>(2)</sup> ,

— having regard to its previous resolutions on homophobia, protection of minorities and anti-discrimination policies, and notably to those of 18 January 2006 on homophobia in Europe<sup>(3)</sup> and of 15 June 2006 on the increase in racist and homophobic violence in Europe<sup>(4)</sup> ,

— having regard to Rule 103(4) of its Rules of Procedure,

**A.** whereas Parliament has monitored a proliferation of hate speech targeting the lesbian, gay, bisexual and transgender (LGBT) community in a number of European countries,

**B.** whereas statements and actions by political and religious leaders have a major impact on public opinion, so that they have an important responsibility in contributing positively to a climate of tolerance and equality,

**C.** whereas this resolution, like the above-mentioned resolutions, has been triggered by the proliferation of hate speech and other series of worrying events, such as the prohibition by local authorities of holding equality and gay pride marches, the use by leading politicians and religious leaders of inflammatory or threatening language or hate

(1) OJ L 303, 2.12.2000, p. 16.

(2) OJ L 146, 31.5.2006, p. 1.

(3) OJ C 287 E, 24.11.2006, p. 179.

(4) Texts Adopted, P6\_TA(2006)0273.

speech, and the failure by the police to provide adequate protection against violent demonstrations by homophobic groups, even while breaking up peaceful demonstrations,

D. whereas equality and gay pride events are planned throughout Europe and the world in the forthcoming months, with participants and organisers facing possible physical violence, despite their fundamental right to freedom of expression and assembly, as recalled *inter alia* by the Council of Europe Commissioner for Human Rights,

E. whereas Matteo, a 16-year-old Italian citizen from Turin, recently committed suicide and left two suicide notes citing as the reason for his suicide the bullying that he suffered because of his sexual orientation; whereas civil society organisations in the United Kingdom have signalled an increase in instances of homophobic bullying in secondary schools throughout the United Kingdom; whereas a gay man was bludgeoned to death in the Netherlands solely for his sexual orientation and feminine appearance,

F. whereas Parliament has repeatedly asked for the completion of the anti-discrimination legislative package based on Article 13 of the EC Treaty, and periodically asks the Commission to propose a directive prohibiting discrimination based on sexual orientation in all sectors,

G. whereas in its above-mentioned resolution of 15 June 2006, Parliament has already expressed its serious concern at the situation in Europe and notably in Poland, condemning the declarations of incitement to hatred and violence by the leaders of the Party of the League of Polish Families and, notably, by the Deputy Prime Minister and Minister for Education,

H. whereas in March 2007 the Polish Deputy Prime Minister and

Minister for Education announced draft legislation punishing "homosexual propaganda" in schools, and illustrated its content, which is to provide for dismissing, fining or imprisoning school heads, teachers and pupils in the event of LGBT rights "activism" in schools,

I. whereas the Polish Deputy Minister for Education confirmed that the administration is drafting such legislation and declared that "teachers who reveal their homosexuality will be fired from work"; whereas various members of the Polish Government reacted in different ways, leaving it unclear whether the legislation will in fact be proposed,

J. whereas the Polish Deputy Prime Minister and Minister for Education has expressed a desire to promote the adoption of similar laws at European level,

K. whereas the proposed legislation received the support of the Polish Prime Minister, who declared that "promoting a homosexual lifestyle for young people in school as an alternative to normal life goes too far, and that these kinds of initiatives in schools have to be stopped", thus presenting a distorted interpretation of education and tolerance,

L. whereas the Polish Ombudsman for Children has stated that she is preparing a list of jobs for which homosexuals are unfit,

M. whereas in June 2006 the State Prosecutor's office ordered checks on the funding of LGBT organisations in connection with "criminal movements" and their presence in schools, in order to find traces of criminal activities, without any result,

N. whereas on 8 June 2006 the Polish Government sacked the head of the Centre for Teacher Development and prohibited the distribution of an official Council of Europe anti-discrimina-

tion manual, and whereas the new head of the Centre stated on 9 October 2006 that "improper patterns must not be present in schools, because the objective of school is to explain the difference between good and evil, beauty and ugliness... school must explain that homosexual practices lead to drama, emptiness and degeneracy",

**O.** whereas Secretary-General of the Council of Europe Terry Davis reacted to the events described by stating that "the Polish Government is free to decide whether it wishes to use Council of Europe material for human rights education, but if the teaching material is optional, the values and principles contained therein are certainly not" and expressed concern about "some policies promoting homophobia ... and homophobic behaviours being accepted by the government",

**P.** whereas the Polish Government has also denied funding for projects sponsored by LGBT organisations in the framework of the European Youth Programme, and illustrated this decision in a letter to those organisations by stating that "the policy of the Ministry does not support actions that aim to propagate homosexual behaviour and such an attitude among young people ... [and] the role of the Ministry is not to support cooperation with homosexual organisations",

**Q.** whereas a number of positive developments may also be noted, such as the successful gay pride event in Warsaw in June 2006, the massive demonstration for tolerance and democracy in Warsaw in November 2006 after the banning of a tolerance demonstration in Poznan, the protection of the gay rights march in Krakow in April 2007, and the fact that gay pride marches are no longer systematically banned,

**R.** whereas Parliament has asked the European Monitoring Centre on

Racism and Xenophobia to conduct an inquiry into the emerging climate of racist, xenophobic and homophobic intolerance in Poland, and has asked the Commission to verify whether the actions and declarations of the Polish Minister for Education are consistent with Article 6 of the TEU, while recalling the sanctions provided for breaching it, and whereas those requests have remained unmet,

1. Underlines that the European Union is first and foremost a community of values, with respect for human rights and fundamental freedoms, democracy and the rule of law, equality and non-discrimination among its most cherished values;

2. Affirms that the EU institutions and Member States have a duty to ensure that the human rights of people living in Europe are respected, protected and promoted, as provided for by the ECHR, the Charter of Fundamental Rights of the European Union, Article 6 of the TEU, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (5) and Council Directive 2000/78/EC;

3. Reiterates its request to the Commission to ensure that discrimination on the basis of sexual orientation in all sectors is prohibited by completing the anti-discrimination package based on Article 13 of the EC Treaty, without which lesbians, gays, bisexuals and other individuals facing multiple discrimination continue to be at risk of discrimination; calls for a worldwide decriminalisation of homosexuality;

4. Will mark International Day against Homophobia on 17 May each year;

5. Urges the Commission to speed up the review of implementation of the anti-discrimination directives and to institute proceedings against Member States in the event of violations of their obligations under Community law;

6. Reminds all Member States that, in accordance with the case law of the

(5) OJ L 180, 19.7.2000, p. 22.

European Court of Human Rights, the right to freedom of assembly may be exercised even when the views of those exercising that right challenge the views of the majority and that, in consequence, discriminatory bans of pride marches, as well as the failure to provide proper protection to those taking part in them, contravene the principles protected by the ECHR; invites all competent authorities, including local authorities, to authorise such marches and protect participants adequately;

7. Condemns the discriminatory remarks by political and religious leaders targeting homosexuals, since they fuel hate and violence even if later withdrawn, and asks the respective organisations' hierarchies to condemn them;

8. Reiterates its invitation to all Member States to propose legislation to overcome the discrimination experienced by same-sex couples, and asks the Commission to make proposals to ensure that the mutual recognition principle is applied in this field also, in order to ensure the freedom of movement for all persons in the EU without discrimination;

9. Expresses its solidarity with, and support for, fundamental rights activists and defenders of equal rights for members of the LGBT community;

10. Urges the competent Polish authorities to refrain from proposing or adopting legislation as described by the Polish Deputy Prime Minister and Minister for Education or from implementing intimidating measures against LGBT organisations;

11. Calls on the competent Polish authorities publicly to condemn and take measures against declarations by public leaders inciting discrimination and hatred based on sexual orientation; believes that any other behaviour would constitute a violation of Article 6 of the TEU;

12. Requests the Polish authorities to facilitate the implementation of the Year of Equal Opportunities 2007, and requests the Commission to monitor the

implementation of the Year, in particular the clause whereby funding is conditional on ensuring that all grounds for discrimination are addressed equally in the national programmes;

13. Asks the Conference of Presidents to authorise the sending of a delegation to Poland on a fact-finding mission, with a view to obtaining a clear picture of the situation and entering into dialogue with all the parties concerned;

14. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States and the candidate countries, and the Council of Europe.

Last updated: 2 November 2007