

Situation of gays and lesbians and their partners in respect to asylum and immigration in the member states of the Council of Europe

Recommendation 1470 (2000)[\[1\]](#)

1. The Assembly recalls and reaffirms its Recommendation 924 (1981) on discrimination against homosexuals, Recommendation 1236 (1994), on the right of asylum, and Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum seekers in Europe.
2. The Assembly is concerned by the fact that immigration policies in most Council of Europe member states discriminate against lesbians and gays. In particular, the majority of them do not recognise persecution for sexual orientation as a valid ground for granting asylum, nor do they provide any form of residence rights to the foreign partner in a bi-national same-sex partnership.
3. Furthermore, the rules concerning family reunion and social benefits usually do not apply to same-sex partnerships.
4. The Assembly is aware of a number of documented cases of persecution of homosexuals in their countries of origin, including Council of Europe member states.
5. The Assembly is of the opinion that homosexuals who have a well-founded fear of persecution resulting from their sexual preference are refugees under Article 1 A (2) of the 1951 Refugee Convention as members of a particular social group, and consequently should be granted refugee status. The present practice in some Council of Europe member states to grant them leave to stay on humanitarian grounds, may be detrimental to their human rights, and cannot of itself be considered as a satisfactory solution.
6. Moreover, the Assembly is aware that the failure of most member states to provide residence rights to the foreign partner in a bi-national partnership is the source of considerable suffering to many lesbian and gay couples who find themselves split up and forced to live in separate countries. It considers that immigration rules applying to couples should not differentiate between homosexual and heterosexual partnerships. Consequently, proof of partnership other than a marriage certificate should be allowed as a condition of eligibility for residence rights in the case of homosexual couples.
7. Therefore the Assembly recommends that the Committee of Ministers:
 - i. instruct its appropriate committees:
 - a. to hold exchanges of views and experience on these subjects;
 - b. to examine the question of recognition of homosexuals as members of a particular social group in the understanding of the 1951 Geneva Convention with a view to ensuring that persecution on grounds of homosexuality is recognised as a ground for asylum;

- c. to develop guidelines for the treatment of homosexuals who are refugees or members of a bi-national partnership;
 - d. to initiate the setting up of a European system for data collection, and for the documentation of abuses against homosexuals;
 - e. to co-operate with, and support groups and associations defending the human rights of homosexuals in respect to asylum and immigration policies in Council of Europe member states.
- ii. urge the member states:
- a. to re-examine refugee status determination procedures and policies with a view to recognising as refugees those homosexuals whose claim to refugee status is based upon well-founded fear of persecution for reasons enumerated in the 1951 Geneva Convention and 1967 Protocol relating to the Status of Refugees;
 - b. to adopt criteria and guidelines dealing with homosexuals seeking asylum;
 - c. to ensure that the authorities responsible for refugee status determination procedure are well informed about the overall situation in the countries of origin of applicants, in particular concerning the situation of homosexuals and their possible persecution by state and non-state agents;
 - d. to review their policies in the field of social rights and assistance in respect to migrants in order to ensure that homosexual partnership and families are treated on the same basis as heterosexual partnership and families;
 - e. to take such measures as are necessary to ensure that bi-national lesbian and gay couples are accorded the same residence rights as bi-national heterosexual couples;
 - f. to encourage the establishment of non-governmental organisations to help homosexual refugees, migrants and bi-national couples to defend their rights;
 - g. to co-operate more closely with UNHCR and national non-governmental organisations, promote the networking of their activities, and urge them to systematically monitor the observance of the immigration and asylum rights of gays and lesbians;
 - h. to ensure that the training of immigration officers who come into contact with asylum seekers and bi-national same-sex couples includes attention to the specific situation of homosexuals and their partners.

[1] Assembly debate on 30 June 2000 (24th Sitting). See Doc. 8654, report of the Committee on Migration, Refugees and Demography (rapporteur: Mrs Vermot-Mangold). Text adopted by the Assembly on 30 June 2000 (24th Sitting).