

17 th November 2008	No. 13 SENATE ORDINARY SESSION 2008-2009
EUROPEAN RESOLUTION <i>On the draft Council directive concerning the implementation of the principle of equality of treatment between individuals without distinction of religion or beliefs, handicaps, age or sexual orientation (E 3918)</i>	
<i>The draft resolution of the Committee of Social Affairs has become a Senate resolution, in accordance with the terms of Article 73 b., clause 8, of the Senate regulations, with the following wording:</i>	
See items: Senate: 58 and 72 (2008-2009)	

The Senate,

Having regard to Article 88-4 of the Constitution,

Having regard to the text E 3918 containing the draft Council Directive concerning the implementation of the principle of equality of treatment between individuals without distinction of religion or beliefs, handicaps, age or sexual orientation;

Whereas discrimination is the intention to harm a person on the grounds of their personal characteristics and inequality of treatment is the result of an empirical observation according to which a person is less well treated than another in the same situation, resulting in an inequality of treatment which may occur without discrimination;

Whereas owing to the confusion which its current wording creates between inequality of treatment and discrimination, the draft directive only protects certain citizens against inequality of treatment in the fields to which it applies; it is consequently, in its present state, inadequate and unfair;

Whereas, since it does not postulate the existence of a general principle of equality of treatment applicable to all, the draft directive indirectly encourages the creation of communities of individuals who benefit from particular rights and therefore falls within the scope of a communitarian approach;

Whereas consequently, by not respecting the equality of all citizens before the law it is contrary to the fundamental principles of the Republic which support a universal approach advocating the definition of common and unifying principles;

Whereas also the draft directive comprises imprecise definitions which do not guarantee legal certainty and lead to a fear of judicial challenges; that these definitions will require work on interpreting the law going beyond that which is within the powers of the judicial authorities and which could lead to their breaching the principle of separation of powers;

Whereas in postulating the obligation of “reasonable facilities”, without defining the scope thereof, for the access of handicapped individuals to goods and services, including the subject of accommodation and transport, that the draft directive raises considerable legal uncertainty which places all national legislation in this field under the authority of the community judge, who will inevitably be obliged to fix a precise content for this obligation on behalf of member States;

Whereas finally in spite of the wording in Article 3 according to which the draft directive does not compromise national legislation relating to rights in the field of procreation, the European Commission has let it be understood that the existence of a civil partnership comparable with marriage entails the application of the principle of equality of treatment; that this interpretation introduces ambiguity in the legal effects of the draft directive concerning, in France, the access of homosexual couples with a long term contract [“PACS”] to medical assistance for the purpose of procreation; that only Parliament has the democratic legitimacy necessary to assess this opportunity.

Consequently:

Requests that the directive make a clear distinction between discrimination and equality of treatment;

Deems it imperative that a general principle of equality of treatment be established in the fields of application of the directive, in order that community legislation protects all the citizens of the (European) Union fairly;

Firmly opposes the present wording of Article 2 which, in particular if applied to public service, misjudges the fundamental principle of equality of citizens before the law and presents serious risks of communitarian divergence;

Judges it essential to clarify the definitions of direct discrimination, indirect discrimination and harassment, by eliminating the non-legal terms and references to fictitious situations which they contain, in order to guarantee the necessary legal certainty and to avoid any challenging action;

Deems the legal uncertainty created by the undefined concept of “reasonable facilities” unacceptable; recalls that the fight against discrimination against handicapped individuals is not to be conducted by attributing moral guilt to civil society but by the will of the legislator, on whom it is incumbent to define clear and precise obligations for public bodies and private businesses; considers,

by virtue of the principle of subsidiarity, that the European arena is not suited to an effective fight against discrimination with regard to handicapped individuals;

Demands that the draft directive should not in any case entail legal effects on the subject of the right of access of homosexual couples bound by a civil contract comparable to marriage, for example the long term civil contract ["PACS"], to medically assisted procreation;

Formally requests the Government to oppose the adoption of a text which does not answer these recommendations.

Adopted as a resolution by the Senate on 17th November 2008.

The President

Signed: Gérard LARCHER