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31 March 2009

## The situation for the homosexuals in Bosnia and Herzegovina The situation for the homosexuals in Serbia

**Reply to Written question<sup>1</sup>:** Written question No. 554 (Doc. 11738) and Written question No. 556 (Doc. 11739)

Committee of Ministers

### *Written Question No. 554 by Mr Jensen*

In connection with a festival for homosexuals in Sarajevo on 25 September 2008 some of the participants were exposed to violent attacks by demonstrators. The festival was the first of its kind in Bosnia and Herzegovina, but the organizers decided after day one to close the festival according to the many violent attacks.

It seems as if many Bosnians this very day consider homosexuality as a disease. It also includes members of different political parties in Bosnia and Herzegovina.

I note that the government of Bosnia and Herzegovina has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol no. 12 to the Convention, in which Article 1 reads as follows:

*“The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

In the light of these facts, it would be of a great interest to know if the Government of Bosnia and Herzegovina intends to take any measure to:

1. avoid similar episodes of attacks on homosexuals in Bosnia and Herzegovina?
2. secure equal rights of homosexuals in society?
3. protect homosexuals against discrimination?
4. inform the population of Bosnia and Herzegovina about the rights of homosexuals?

Therefore, I ask the Committee of Ministers to request the relevant information on those matters from the Government of Bosnia and Herzegovina and to inform me about it.

### *Written Question No. 556 by Mr Jensen*

In connection with a festival for homosexuals in Belgrade on 19 September 2008 a group of participants were exposed to violent attacks by Fascist demonstrators. The festival was the fifth of its kind in Serbia with participants coming from "the former Yugoslav Republic of Macedonia", Russia, Netherlands, Germany, Italy, United Kingdom, Greece and Slovenia.

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1. adopted at the 2052nd meeting of the Ministers' Deputies (25 March 2009)



I note that the Government of Serbia has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol no. 12 to the Convention, in which Article 1 reads as follows:

*“The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

In the light of these facts, it would be of a great interest to know if the Government of Serbia intends to take any measure to:

1. avoid similar episodes of attacks on homosexuals in Serbia?
2. secure equal rights of homosexuals in society?
3. protect homosexuals against discrimination?
4. inform the population of Serbia about the rights of homosexuals?

Therefore, I ask the Committee of Ministers to request the relevant information on those matters from the Government of Serbia and to inform me about it.

### Reply

1. The Committee of Ministers deplores the acts of violence against homosexuals reported in the questions asked by the honourable member. It trusts that the persons responsible for those acts will be prosecuted and, if appropriate, convicted in compliance with the domestic legislation of the states concerned.

2. The Committee of Ministers draws attention to the fact that discrimination on the grounds of sexual orientation is not compatible with the values of tolerance and the principle of equality which the Council of Europe member states have a duty to uphold, and that it remains firmly attached to the principle of equal rights and equal dignity of all human beings, including lesbians, gays, bisexuals and transgendered persons (LGBT). It also refers to its previous replies on LGBT persons' rights to freedom of expression and freedom of assembly.<sup>2</sup> It considers that these replies and the reply to the present question are a useful reminder of the relevant human rights principles which must be observed in this matter. The Committee of Ministers notes in particular that LGBT persons must enjoy the rights to freedom of expression and freedom of assembly provided for in Article 11 of the European Convention on Human Rights (the “Convention”), like all other individuals within the jurisdiction of a member state. This protection stems in particular from Article 14 of the Convention, which prohibits all forms of discrimination in the exercise of the rights and freedoms safeguarded by the Convention. In a long line of decisions, the European Court of Human Rights (the “Court”) has also emphasised that the state has a duty to take reasonable and appropriate measures to ensure the peaceful conduct of lawful demonstrations. Furthermore, the Court has stressed on several occasions that any discrimination on the grounds of sexual orientation – including in connection with freedom of assembly – is contrary to the Convention.<sup>3</sup> As indicated in the above-mentioned written questions, Protocol No. 12 to the Convention prohibits all forms of discrimination on the grounds of sexual orientation (as specified by its explanatory report).

3. The Committee of Ministers also wishes to draw attention to the decisions it took at its 1031st meeting (2 July 2008) to strengthen the Council of Europe's action to protect the rights of LGBT persons.<sup>4</sup> The Steering Committee for Human Rights (CDDH) has been asked to prepare a recommendation on measures to combat discrimination on the grounds of sexual orientation or gender identity, ensure respect for the human rights of LGBT persons and promote tolerance towards them.

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2. Reply to Written Question No. 524 by Ms Acketoft: “Ban on a Chişinau demonstration by homosexuals” (adopted on 7 November 2007 at the 1010th meeting of the Ministers' Deputies), reply to Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of expression and assembly for lesbians, gays, bisexuals and transgendered persons” (adopted on 16 January 2008 at the 1015th meeting of the Ministers' Deputies) and reply to Written Question No. 527 by Mr Huss: “Ban on a Moscow demonstration by lesbian, gay, bisexual and transgender persons in 2007” (adopted on 6 February 2008 at the 1017th meeting of the Ministers' Deputies), reply to Written Question No. 540 by Mr Huss: “Denial of freedom of assembly and expression to lesbian, gay, bisexual and transgender persons in Lithuania” (adopted on 2 April 2008 at the 1023rd meeting of the Ministers' Deputies).

3. See for example *Karner v. Austria* judgment of 24 July 2003; *B.B. v. United Kingdom*, judgment of 10 February 2004, and *Baczowski and others v. Poland*, judgment of 3 May 2007.

4. Decisions adopted by the Ministers' Deputies on 2 July 2008, 1031st meeting, items 4.3 a, b and c, CM/Del/Dec(2008)1031 of 4 July 2008.

4. Bosnia and Herzegovina and Serbia have undertaken to guarantee respect for all the rights enshrined in the Convention to all persons within their jurisdiction, and therefore to ensure that LGBT persons enjoy the same rights to freedom of expression and freedom of assembly as all other individuals within their jurisdiction.
5. Freedom of peaceful assembly, including for LGBT persons, is guaranteed by the laws and constitutions of those two countries. In Serbia a "Law on prohibiting discrimination" has recently been tabled in Parliament for enactment. In Bosnia and Herzegovina, a procedure for the adoption of a law banning discrimination is currently underway.
6. Bosnia and Herzegovina and Serbia, aware of their international obligations and determined to ensure respect for human rights on their territory, have informed the Committee of Ministers of their intention to pursue their efforts to combat all forms of discrimination on the grounds of sexual orientation.