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Discrimination on the basis of sexual orientation and gender identity

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Andreas GROSS, Switzerland, Socialist Group

Summary

The Committee on Legal Affairs and Human Rights points out that sexual orientation – be it heterosexuality, bisexuality or homosexuality – is a profound part of the identity of each one of us. Under international law nobody should be treated differently because of their sexual orientation. Yet lesbian, gay, bisexual and transgender people across Europe still face deep-rooted prejudice and widespread discrimination. This can range from physical violence – including, in the worst cases, killings – through to hate crimes, gags on expression, bans on demonstrations, state intrusion into private life and unfair treatment at school or in the workplace.

Transgender people are refused gender reassignment treatment or told they cannot register their new gender, contributing to high rates of suicide in this group.

These human rights violations must end, as well as incitement to commit them from public figures, according to the committee. Meanwhile, Council of Europe member states should ensure legal recognition of same-sex partnerships, providing notably for ”next of kin” status and the possibility to jointly parent each others' children, if not also the right of each partner to adopt the other partner's children.

Dialogue between all bodies, based on mutual respect, is essential in order to improve mutual understanding, combat attitudes of prejudice and facilitate public debates and reforms on issues concerning lesbian, gay, bisexual and transgender people.

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A. Draft resolution

1. The Parliamentary Assembly recalls that sexual orientation, which covers heterosexuality, bisexuality and homosexuality, is a profound part of the identity of each and every human being. The Assembly also recalls that homosexuality has been decriminalised in all member states of the Council of Europe. Gender identity refers to each person's deeply felt internal and individual experience of gender. A transgender person is someone whose gender identity does not correspond to the gender he or she was assigned at birth.

2. Under international law, all human beings are born free and equal in dignity and rights. Sexual orientation and gender identity are recognised as a prohibited ground of discrimination. According to the European Court of Human Rights, a difference in treatment is discriminatory if it has no objective and reasonable justification. Since sexual orientation is a most intimate aspect of an individual's private life, the Court considers that only particularly serious reasons may justify differences in treatment based on sexual orientation. Negative attitudes on the part of a heterosexual majority against a homosexual minority cannot amount to sufficient justification, any more than similar negative attitudes towards those of a different race, origin or colour.

3. Nevertheless, Lesbian, Gay, Bisexual and Transgender (LGBT) persons, as well as human rights defenders working for the rights of LGBT persons, face deeply rooted prejudices, hostility and widespread discrimination all over Europe. The lack of knowledge and understanding about sexual orientation and gender identity is a challenge to be addressed in most Council of Europe member states, since it results in an extensive range of human rights violations, affecting the lives of millions of people. Major concerns include physical and verbal violence (hate crimes and hate speech), undue restrictions on freedom of expression, freedom of assembly and association, violations of the right to respect for private and family life, violations of rights to education, work and health, as well as regular stigmatisation. As a consequence, many LGBT persons across Europe live in fear and have to conceal their sexual orientation or gender identity.

4. Transgender persons face a cycle of discrimination and deprivation of their rights in many Council of Europe member states due to discriminatory attitudes and to obstacles in obtaining gender reassignment treatment and legal recognition of the new gender. One consequence is the relatively high suicide rate among transgender persons.

5. The Assembly is particularly concerned by the violation of the rights to freedom of assembly and freedom of expression for LGBT persons in a number of Council of Europe member states since these rights are pillars of democracy. This has been illustrated by the banning or attempted banning of peaceful rallies or demonstrations of LGBT persons and their supporters and the overt or tacit support some politicians have given to violent counter-demonstrations.

6. Hate speech by certain public figures, including religious leaders, and hate speech in the media and Internet are also of particular concern. The Assembly stresses that it is the paramount duty of all public authorities not only to protect the rights enshrined in human rights instruments in a practical and effective manner, but also to refrain from speech likely to legitimise and fuel discrimination or hatred based on intolerance.

7. Homophobia and transphobia have particularly serious consequences for young LGBT people. They face widespread bullying, sometimes unhelpful or hostile teachers, and curricula which either ignore LGBT issues or propagate homophobic or transphobic attitudes. A combination of discriminatory attitudes in society and rejection by the family can be very damaging for the mental health of young LGBT people, as evidenced by suicide rates which are much higher than those in the wider youth population.

8. The denial of rights to de facto "LGBT families" in many member states must also be addressed, including through the legal recognition and protection of these families.

9. On the other hand, the Assembly welcomes the fact that, in some cases, political and judicial authorities have taken a number of measures against discrimination affecting LGBT persons.

10. In this context, the Assembly welcomes the work of the Committee of Ministers, which is preparing a recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity, to ensure respect for human rights of LGBT persons and to promote tolerance towards them, the high priority given by the Council of Europe Commissioner for Human Rights to this issue, as well as the recent reports of the European Union Fundamental Rights Agency on homophobia and discrimination on grounds of sexual orientation in European Union member states.

11. Recalling its Recommendations 1474 (2000) on the situation of lesbians and gays in Council of Europe member states and 1117 (1989) on the conditions of transsexuals, the Assembly again condemns the various forms of discrimination suffered by LGBT people in Council of Europe member states. LGBT people should not have to fear being stigmatised and victimised, either in the public or private spheres.

12. The Assembly considers that the Council of Europe has the duty to promote a clear message of respect and non-discrimination so that everybody can live in dignity in all its member states.

13. The eradication of homophobia and transphobia also requires political will in member states to implement a consistent human rights approach and to embark on a wide range of initiatives. In this respect, the Assembly stresses the specific responsibility of parliamentarians in initiating and supporting changes in legislation and policies in Council of Europe member states.

14. Consequently, the Assembly calls on member states to address these issues and in particular to:

14.1. ensure that the fundamental rights of LGBT people, including freedom of expression and freedom of assembly and association, are respected, in line with international human rights standards;

14.2. provide legal remedies to victims and put an end to impunity for those who violate fundamental rights of LGBT people, in particular their right to life and security;

14.3. condemn hate speech and discriminatory statements and effectively protect LGBT persons from such statements;

14.4. adopt and implement anti-discrimination legislation which includes sexual orientation and gender identity among the prohibited grounds for discrimination, as well as sanctions for infringements;

14.5. revoke legislative provisions which are not in conformity with the case law of the European Court of Human Rights;

14.6. ensure that discrimination on the basis of sexual orientation and gender identity can be effectively reported to judicial and non-judicial bodies and ensure that national human rights structures and equality bodies effectively address these issues;

14.7. sign and ratify Protocol No. 12 to the European Convention on Human Rights providing for a general prohibition of discrimination;

14.8. ensure legal recognition of same-sex partnerships, as already recommended by the Assembly in 2000, by providing for:

14.8.1. the same pecuniary rights and obligations as those pertaining to different-sex couples;

14.8.2. “next of kin” status;

14.8.3. measures to ensure that, where one partner in a same-sex relationship is foreign, this partner is accorded the same residence rights as would apply if she or he were in a heterosexual relationship;

14.8.4. recognition of provisions with similar effects adopted by other member states;

14.9. provide the possibility for joint parental responsibility of each partner’s children, if not also the right of each partner to adopt the other partner’s children;

14.10. ensure that laws relating to the adoption of unrelated children by single persons are applied without distinctions based on sexual orientation, in accordance with the 2008 *E.B. v. France* judgment of the European Court of Human Rights;

14.11. address the specific discrimination and human rights violations faced by transgender persons and, in particular, ensure in legislation and in practice their right to:

14.11.1. safety;

14.11.2. documents that reflect an individual’s preferred gender identity, without any prior obligation to undergo sterilisation;

14.11.3. access to gender reassignment treatment and equal treatment in health care areas;

14.11.4. equal access to work, goods, services, housing and other facilities, without prejudice;

14.11.5. relationship recognition and the right to found a family, in accordance with the case lawof the European Court of Human Rights;

14.12. introduce or develop anti-discrimination and awareness-raising programmes fostering tolerance, respect and understanding of LGBT persons, in particular for public officials, the judiciary, law-enforcement bodies and the armed forces, as well as schools, the media, the medical profession and sporting circles;

14.13. promote research on discrimination on the basis of sexual orientation and gender identity, establish and/or maintain regular contacts with human rights defenders working on the rights of LGBT persons and consult them on issues relating to such discrimination;

14.14. encourage dialogue between national human rights institutions, equality bodies, human rights defenders working on the rights of LGBT persons and religious institutions, based on mutual respect, in order to facilitate public debates and reforms on issues concerning LGBT persons;

14.15. recognise persecution of LGBT persons as a ground for granting asylum and implement the 2008 Guidance Note on refugee claims relating to sexual orientation and gender identity of the Office of the United Nations High Commissioner for Refugees.

B. Draft recommendation

1. Referring to its Resolution … (2009), the Parliamentary Assembly commends the Committee of Ministers for its decision of 2 July 2008 to prepare a recommendation on measures to combat discrimination based on sexual orientation or gender identity.

2. The Assembly considers that the Council of Europe has indeed the duty to promote a clear message of respect and non-discrimination. In addition, the Council of Europe is particularly well placed to develop human rights standards, offer expertise and advice and serve as a forum for discussion on issues related to discrimination on the basis of sexual orientation and gender identity.

3. Consequently, the Assembly recommends that the Committee of Ministers:

3.1. adopt the recommendation currently under preparation on measures to combat discrimination on grounds of sexual orientation and gender identity, to ensure respect for human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them and subsequently monitor its implementation;

3.2. define further Council of Europe action in this field, in particular:

3.2.1. instruct a relevant Council of Europe body to review and address issues related to discrimination on the basis of sexual orientation and gender identity in member states, and provide the necessary resources to this body to carry out this task;

3.2.2. further mainstream issues relating to discrimination on the basis of sexual orientation and gender identity in its activities, and disseminate the case law of the European Court of Human Rights on sexual orientation and gender identity, including through publications and training materials;

3.2.3. in the framework of its work on children and violence, address in particular the issue of homophobic and transphobic bullying at school;

3.2.4. further develop anti-discrimination and awareness-raising programmes fostering tolerance, respect and understanding of lesbian, gay, bisexual and transgender persons and, in particular, organise a campaign to combat discrimination on the basis of sexual orientation and gender identity.

C. Explanatory memorandum, by Mr Gross, rapporteur

1. Introduction

1.1. Scope of the report

1. On 16 September 2005, I was appointed rapporteur of the Committee on Legal Affairs and Human Rights on the issue of "Legal recognition of same-sex partnerships in Europe", on the basis of a motion for a recommendation (Doc. 10640) tabled by Mr Jurgens and others. In 2006, a new motion for a resolution concerning "Freedom of assembly and expression for lesbian, gay, bisexual and transgendered persons in Council of Europe member states" (Doc. 10832) was referred to the committee, to be taken into account in my report on legal recognition of same-sex partnerships in Europe.

2. In January 2008, a third motion for a recommendation (Doc. 11423) on "Discrimination on the basis of sexual orientation and gender identity" was referred to the Committee on Legal Affairs and Human Rights for report. In April 2008, the Assembly considered that this motion should be merged into the report since it covered both subjects I was working on.

3. Consequently, it was decided to take the motion which has the broadest focus, that is, that on discrimination on the basis of sexual orientation and gender identity, as the new framework for this report, to modify the title of the report accordingly and to focus, *inter alia*, on the issues of freedom of assembly and expression for lesbian, gay, bisexual and transgender persons and legal recognition of same-sex partnerships in Europe within this new framework.

1.2. Terminology

4. The following terminology will be used in this report:

– "Sexual orientation" refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or of the same gender or of more than one gender.[1] Sexual orientation is a profound part of the identity of each and every human being and covers heterosexuality, bisexuality and homosexuality. The latter has been decriminalised in all member states of the Council of Europe;

– "Gender identity" refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond to the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms;[2]

– The term "transgender people" (or just "trans people") includes those people who have a gender identity which is different from the gender assigned at birth and those people who wish to portray their gender identity in a different way to the gender assigned at birth; it includes those people who feel they have to, or prefer or choose to, whether by clothing, accessories, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth;

– A transsexual is a person who prefers another gender than his/her birth gender and feels the need to undergo physical alterations to the body to express this feeling, such as hormone treatment and/or surgery;

– The term "LGBT persons" is used to describe those who identify as lesbian, gay, bisexual or transgender. It does not suggest that there is a single "LGBT" identity;[3]

– Homophobia is the irrational fear of, and aversion to, homosexuality and to lesbian, gay and bisexual (LGB) people based on prejudice;[4]

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1. See the "Principles on the application of international law in relation to issues of sexual orientation and gender identity" ("the Yogyakarta Principles"), introduced in November 2006, as well as the report of the European Union Fundamental Rights Agency on "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States" (2008 and 2009).
2. Idem. See also TransGender Europe (TGEU) website: http://tgeu.net/.
3. The term "sexual minority" is sometimes used as a convenient short term particularly when the terms lesbian, gay, bisexual and transgender are less understood. However, it is not used in this report since it is not relevant in a human rights context focusing on equality and non-discrimination. Indeed, LGBT persons are not demanding minority rights or special rights. They simply need to enjoy the same human rights as all other individuals.

– Transphobia can be described as an irrational fear of gender non-conformity or gender transgression.

1.3. Preparation of the report

1.3.1. Under the mandates covering freedom of assembly and expression for lesbian, gay, bisexual and transgender persons and legal recognition of same-sex partnerships in Europe

5. In the framework of the preparation of this report, I visited Spain (May 2006) and Latvia (October 2007), presented to the committee an introductory memorandum on "Legal recognition of same-sex partnerships in Europe" in June 2007 and, in March 2008, an information memorandum on "Freedom of assembly and expression for lesbian, gay, bisexual and transgendered persons in Council of Europe member states and legal recognition of same-sex partnerships in Europe".[5]

6. Given the strong reactions and opposition raised by this subject in a number of countries, in January 2008, I proposed that the committee hold an exchange of views with experts on these issues, in order to identify factors that have ensured (positive) changes in attitudes and legislation in a number of countries, as well as difficulties encountered in these fields. This exchange of views was held on 7 March 2008 with the participation of the following experts:[6]

– Mr Jeffrey Weeks, Professor of Sociology, Director of Research, London South Bank University;

– Mr Louis-Georges Tin, French Academic, Founder of IDAHO (International Day against Homophobia);

– Ms Joke Swiebel, former member of the European Parliament and Chairperson of the Parliament's Gay and Lesbian Intergroup;

– Mr Maxim Anmeghichean, Programmes Director, International Lesbian and Gay Association (ILGA Europe);

– Mr Dennis van der Veur, Advisor, Office of the Council of Europe Commissioner for Human Rights.

1.3.2. Under the present mandate concerning discrimination on the basis of sexual orientation and gender identity

7. Since my mandate was extended to the broader issue of discrimination on the basis of sexual orientation and gender identity, the committee held a second exchange of views with experts to complement the first hearing held in 2008, by focusing, *inter alia*, on the human rights law standards relating to these issues and by covering gender identity issues. This hearing took place on 24 March 2009 in Berlin, with the participation of the following experts:

– Mr Hans Ytterberg, Director General, Ministry for Integration and Gender Equality, Chairperson of the Council of Europe (intergovernmental) Committee of Experts on Discrimination on Grounds of Sexual Orientation and Gender identity (DH-LGBT), former Swedish Ombudsperson against discrimination on the basis of sexual orientation;

– Ms Julia Ehrt, TransGender Europe (TGEU) (Berlin);

– Professor Igor Kon, Chief Researcher, Institute of Ethnology and Anthropology, Russian Academy of Sciences (Moscow);

– Mr Ioannis Dimitrakopoulos, Head of Department, Equality and Citizen's Rights, European Union Agency for Fundamental Rights;

– Mr Dennis van der Veur, Adviser, Office of the Council of Europe Commissioner for Human Rights.

8. I also carried out visits to Poland (November 2008) and Lithuania (April 2009). Unfortunately, my visit to Moldova, foreseen in May 2009, had to be cancelled due to the political situation in the country.

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4. See the report of the European Union Fundamental Rights Agency on "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States".
5. Documents AS/Jur (2007) 30 and AS/Jur (2008) 11; the latter was declassified by the committee on 7 March 2008.
6. See the minutes of the hearing in document AS/Jur (2008) 22, declassified by the committee on 7 March 2008.

1.4. Aim of the report

9. It is important to stress that this report is not meant to be a monitoring report, as it does not aim at evaluating situations in particular countries. The report will strive to present the issues at stake, the reasons behind diversity in Council of Europe member states in this respect and factors that have already ensured or could contribute to positive changes in attitudes towards LGBT persons and equality legislation in a number of countries. In other words, I intend to focus on the process which can lead to a human rights compatible approach to LGBT persons and to stress that the Council of Europe has the duty to promote a clear message of tolerance, respect and non-discrimination.

10. In addition, given the very many prejudices and the lack of knowledge surrounding the issues involved, I consider that this report has a strong "awareness-raising" dimension. It should also give members of the Parliamentary Assembly and the public at large the opportunity to have open and direct discussions on these subjects in the light of relevant international human rights law standards.

2. Discrimination on the basis of sexual orientation and gender identity

2.1. Widespread discrimination in Council of Europe member states

11. Homosexuality has been decriminalised in all member states of the Council of Europe. Nevertheless, homophobic and transphobic attitudes are deeply rooted in most Council of Europe member states, with the consequence that LGBT people, as well as human rights defenders working for the rights of LGBT persons, face strong prejudices, hostility and widespread discrimination all over Europe. Discrimination can manifest itself in the legal, political and/or social fields and takes place not just in the public sphere, but, particularly as concerns young people, also within the family.

12. The lack of knowledge and understanding about sexual orientation and gender identity is a challenge to be addressed in most Council of Europe member states since it results in an extensive range of human rights violations affecting the lives of millions of people. Major concerns include physical and verbal violence (hate crimes and hate speech), undue restrictions on freedom of expression, freedom of assembly and association, violations of the right to respect for private and family life, violations of rights to education, work and health, as well as regular stigmatisation.

13. Homophobia and transphobia have particularly serious consequences for young LGBT people: widespread bullying, sometimes unhelpful or hostile teachers, and curricula which either ignore LGBT issues or propagate homophobic or transphobic attitudes. As the Assembly has already noted, a combination of discriminatory attitudes in society and rejection by the family can be very damaging for the mental health of young LGBT people, as evidenced by much higher suicide rates than those in the wider youth population.[7]

14. A report published in 2009 by the European Union Agency for Fundamental Rights (FRA) on "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States (see also part III below) gives a useful analysis of the situation in this respect in European Union member states. It concludes that discrimination and harassment against LGBT persons are widespread throughout the Union. The report also notes that hate speech by public figures is a particularly worrying phenomenon. A key feature of homophobic and transphobic crime is, like in other forms of hate crime, underreporting. Also, according to the FRA, the most worrying examples in media depict LGBT persons as perverts or associate homosexuality with paedophilia. Transgender people face even more negative attitudes than LGB people.

15. Non-governmental organisations also report widespread discrimination in non-European Union member states (see in particular part IV below). According to NGOs, when there is little sign of LGBT people in a country, this is merely a blatant indication of their difficult situation.

16. Given the lack of precise data on discrimination on the basis of sexual orientation and gender identity in Council of Europe member states which are not European Union member states, the Council of Europe Commissioner for Human Rights has launched the proposal to complete the study prepared by the European Union (covering member countries) in order to cover Council of Europe member states which are not members of the European Union.

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7. See the Assembly report on "Child and teenage suicide in Europe: a serious public health issue", Doc. 11547, paragraph 22.

17. Transgender persons face a cycle of discrimination and deprivation in many Council of Europe member states due both to discriminatory attitudes and to obstacles to obtaining gender reassignment treatment and legal recognition. One consequence is relatively high suicide rates.

18. Indeed, people whose gender representation, gender identity or gender role differs from those which are socially accepted face discrimination, ridicule, harassment or even physical violence. As a consequence many transgender people barely, if at all, participate in social and public life, while many others who do participate are so traumatised and frightened by the hostility they face that they are unable to live their life in dignity. When represented, their image in the media, curricula and arts is made up of misconceptions, ignorance and lack of knowledge.

19. Discrimination against transgender persons occurs especially in the health sector and in the labour market and such persons are very vulnerable to hate crimes. It would appear that many people, including doctors and teachers, simply do not know what transgenderism is and associate the phenomenon with prostitution in exotic locations.

20. The effects of discrimination are compounded by difficulties in obtaining the medical interventions needed to realise their gender identity and in gaining legal recognition of it. These difficulties can greatly inhibit the enjoyment of other rights, particularly the right to work, leaving many transgender people facing poverty, and in some member states, little alternative to engaging in sex work. This extreme social exclusion brings with it serious health risks, and great vulnerability to abuse at the hands of the police and criminals.

21. On 10 March 2009, a prominent transgender human rights activist and leading figure of Lambda Istanbul, was stabbed and killed. This is the second recent killing of a member of the organisation. Between January and May 2009 five transgender people were reported murdered in Turkey. This is part of a continuing pattern: for example, 15 gay men and transgender people were reported murdered between January and October 2007.[8] NGOs have denounced this continuing climate of violence based on gender identity in Turkey. Investigating violence against LGBT people, prosecuting suspects, and passing effective legislation to ensure equality are all crucial in order to put an end to such killings.

22. Apart from respect for their rights to life and security, changing name and gender is the key in transgender people's lives. However, this "entry" into society does not exist, or is made very difficult, in many Council of Europe member states, which violate the European Convention on Human Rights (right to privacy, Article 8, see case of *B. v. France* (1992)). Without name and gender recognition, trans people are marked as transgender (this concerns ID cards, credit and bank cards, school and university degrees, etc.) which leads to stigmatisation in every aspect of life and makes participation in social life, travelling or finding a job virtually impossible. Consequently, there is a need:

– to ensure their rights to life, security, physical integrity and dignity;

– to include gender identity in anti-discrimination legislation;

– to ensure that transgender people have the possibility to change name and gender;

– to ensure that transgender people have access to the medical treatments which they need to realise their preferred identity, funded on the same basis as other necessary medical treatment.

23. Accordingly, the NGO TransGender Europe has identified eight key human rights for transgender people:

23.1. the right to safety in public and in private;

23.2. an equal right to obtain and retain work, without prejudice;

23.3. the right to documents and papers that reflect the reality of those living in their preferred gender role, including:

a. the right to change one's name, including to one of the opposite gender (in countries where names are "gendered") without medical treatment being a pre-requisite;

b. the right to change gender in all one's public documents without medical treatment being a pre-requisite;

23.4. the right to be recognised for all legal purposes in the preferred gender role without medical treatment being a pre-requisite;

8. Human Rights Watch, May 2008, report entitled "'We need a law for liberation' – Gender, Sexuality, and Human Rights in a Changing Turkey; see also Lambda Istanbul, Call for action, April 2009.

23.5. the right to have access to gender reassignment treatment of acceptable quality;

23.6. the right to be treated equally in all other health care areas, without prejudice;

23.7. the right to equal access to goods, services, housing and other facilities, without prejudice;

23.8. the right to relationship recognition, including marriage, and a right to found and support a family.

24. Two recent judgments of the European Court of Human Rights concerning transgender persons could be mentioned in this context: one concerning Switzerland and the other Lithuania, one of the countries I visited. In January 2009, the Court condemned Switzerland (*Schlumpf v. Switzerland,* Application No. 29002/06) in a case concerning the refusal of an insurance company to pay for gender reassignment surgery. In its judgment the Court noted in particular the importance of questions concerning one of the most intimate aspects of private life, namely a person's gender identity, for the balancing of the general interest with the interests of the individual. Concerning the Lithuanian case (*L. v. Lithuania*, final judgment on 31 March 2008), the Court found that a legislative gap on gender reassignment of transsexuals "had left the applicant in a situation of distressing uncertainty as to his private life and the recognition of his true identity". As concerns this legislative gap, I was informed when in Lithuania that the authorities had no intention of adopting any legislation on gender reassignment of transsexuals, despite the 2008 judgment of the Court condemning Lithuania. This legislation is needed to implement the right foreseen by the new Civil Code since 2003. I hope that some courageous colleagues in the Lithuanian Parliament will take this up and initiate legislation in line with the judgment of the Court.

25. On a more positive note, one should mention that in May 2009, France announced that transsexuality would no longer be considered as a psychiatric condition.

26. Behind much of the discrimination faced by LGBT people is a refusal by some leading politicians, opinion leaders and religious leaders to accept that LGBT people are entitled to the same human rights as other human beings. This underpins a high degree of homophobic and transphobic discourse in the public sphere in some member states, and gives legitimacy to those state actors – police, prison officers, public prosecutors, judiciary, local authority officials, and even ombudspersons – who fail to uphold, or even attack, the rights of LGBT people.

27. LGBT people are sometimes perceived as a "threat" to the rest of society. On the occasion of my fact-finding visit to Latvia, some politicians referred to homosexuality and to Pride marches as a "spreading plague" and a "problem imported from abroad" and denied it was a human rights issue. Fortunately, these views were strongly opposed by some other parliamentarians I met.

28. In a large number of Council of Europe member states, LGBT persons are not protected under anti-discrimination or hate crime legislation, as sexual orientation and gender identity are not explicitly mentioned as grounds for discrimination. In addition, LGBT persons sometimes face a lack of appropriate responses from law-enforcement officials.

29. This has particularly serious consequences for LGBT activists who are primarily targeted. But others (politicians, lawyers, trade unionists, etc.) are sometimes targeted if they help promote LGBT rights or are themselves "accused" of being homosexual in order to discredit them. This is particularly true where the issues involve freedom of expression, association, and assembly, with authorities banning LGBT Pride marches and events in a number of countries and in some cases also restricting or seeking to restrict freedom of association and public or media discussion of homosexuality. In Latvia, LGBT rights activists have seen their personal information published on websites. Consequently, all too often, as I could see in some of the countries I visited, too few people, even among mainstream human rights defenders, stand up against homophobia and transphobia.

30. Political and religious leaders sometimes claim that societies are not ready to accept homosexuality. Yet as was stressed during the hearing held in March 2008 it would appear that these same leaders are sometimes themselves the source of intolerance in society. Their statements, by fuelling hatred and violence, can sometimes even endanger the lives of LGBT persons. People who discriminate also often invoke "morality" or justifications based on public order, freedom of thought, conscience and religion. The Court provides a crucial reference in respect of these issues. It considers in particular that differences in treatment based on sexual orientation require particularly serious reasons by way of justification (see below). In addition, I consider that parliamentarians have the duty to inform people properly about these issues, to improve human rights protection and in particular to protect more vulnerable people.

31. As stressed by the Council of Europe Secretary General on the occasion of the International Day against Homophobia, on 17 May 2009, “it is heads of some political parties that I am really worried about. It is unacceptable that some people in positions of official or moral authority in Europe still behave as if the European Convention on Human Rights does not apply to homosexuals”.

32. In Lithuania, in April 2009, I called on the authorities not to adopt a proposed amendment to the Law on the Protection of Minors against the Detrimental Effect of Public Information which would prohibit “agitation for homosexuality and bisexuality” as regards children. This amendment was intended to put information on homosexuality on a par with issues such as portrayal of physical or psychological violence or vandalism, and to prohibit the discussion of homosexuality in schools and ban any reference to it in public information that could be viewed by children. Amnesty International stressed in June 2009 that the amendment would violate human rights and reinforce homophobia, and was part of a “growing climate of intimidation and discrimination in Lithuania against LGBT people”.[9] It was later adopted but was subsequently vetoed by the (outgoing) Lithuanian President in June 2009; however, the parliament rejected the presidential veto. Reportedly, in late July 2009, the new President of Lithuania considered that the law should be reviewed by human rights experts. I strongly support a revision of the law in accordance with human rights standards. Finally, in August 2009, I was informed that new draft amendments to the Penal Code and to the Administrative Code concerning homosexual relations are also raising serious concern. Again, I call on my colleagues in the Lithuanian Parliament to adopt legislation in accordance with human rights standards (see paragraph 40 below).[10]

33. The importance of addressing these issues should not be underestimated, as they concern tens of millions of Europeans whose rights enshrined in the European Convention on Human Rights are flouted because of their sexual orientation or gender identity.

34. On a more positive note, good practices such as meetings and hearings with LGBT persons and firm stances against discrimination are also found in some Council of Europe member states, as experts underlined at the 2009 hearing organised by the Committee on Legal Affairs and Human Rights (in that respect, see also the report of the FRA).

35. The FRA believes that combating fundamental rights violations effectively requires first a firm political commitment to the principles of equal treatment and non-discrimination and a firm stance against discrimination on grounds of sexual orientation and gender identity. The FRA considers that the standard-setting work of the Council of Europe, as well as the case law of the Court is of crucial importance in this context. Secondly, it requires good knowledge of the situation based on robust data. Equality authorities and other specialised bodies in many member states still need to develop data collection mechanisms and actively encourage LGBT people to come forward and lodge complaints about incidents of discrimination. Campaigns to inform everyone about diversity and non-discrimination are necessary. The FRA called on European Union political decision makers to further improve equality legislation and ensure accurate reporting, in order to improve the situation.

2.2. Homosexuality – exposing the prejudices

36. As indicated above, according to the FRA, the most worrying examples in media, as far as European Union member states are concerned, depict LGBT persons as perverts or associate homosexuality with paedophilia.

37. The table below lists some of the most widespread prejudices about homosexualityand gives a concrete example of how one can confront these prejudices with specific arguments. Another table presenting human rights law responses appears in part 3 below.

MOST COMMON PREJUDICES	RESPONSE
"Homosexuality is an illness"	**The World Health Organisation ruled nearly twenty years ago that homosexuality is not an illness.**[11]
"Homosexuality is abnormal", a "distortion of the personality"	**Mainstream scientific and medical opinion holds that homosexuality is a natural variant of human behaviour.***

9. Amnesty International: “proposed law would violate human rights and reinforce homophobia”, 3 June 2009.
10. See also Written Declaration No. 428, Doc. 11969.
11. The World Health Organisation removed homosexuality from its International Classification of Diseases in 1991.

MOST COMMON PREJUDICES	RESPONSE
* "Despite the persistence of stereotypes that portray lesbian, gay, and bisexual people as disturbed, several decades of research and clinical experience have led all mainstream medical and mental health organisations in this country to conclude that these orientations represent normal forms of human experience." (American Psychological Association)[12]	
"Homosexuality is immoral"	**This is a subjective view usually based on religious dogma. In a democratic society it cannot be a basis for limiting the rights of others.**
"Homosexuality is increasing"	**The number of lesbians, gays and bisexuals is not increasing. They are just becoming more visible.***
* The United Kingdom Government estimates that between 5% and 7% of the population is lesbian, gay or bisexual. With discrimination decreasing, more people are open about their sexual orientation, giving the impression that numbers are increasing.	
"Homosexuality is worsening the demographic crisis and threatening the future of the nation"	**Blaming a small minority for national demographic decline is manifestly illogical and serves only to distract from addressing its real causes.***
* There is no link between supporting the rights of lesbians, gays and bisexuals and demographic decline. Indeed, some of the countries in Europe that have been most successful in addressing demographic problems – the Nordic states[13] – have led the way in supporting the rights of lesbian, gay and bisexual people, while many of those countries which have been most repressive towards them have the most serious demographic problems.	
"Legal recognition of same-sex couples is a danger to the traditional family"	**Granting legal recognition to same-sex couples has no influence on whether heterosexuals marry or have children.***
* the "traditional family" (that is, a married heterosexual couple with children) has been declining in many European countries because a growing proportion of heterosexuals are choosing not to marry, because of increasing divorce rates, and because more married heterosexuals are choosing not to have children. Granting legal recognition to same-sex couples will affect this trend only in so far as it will reduce the number of lesbians and gays who feel compelled to enter into heterosexual marriages, and the number of painful divorces that generally follow.	
"Propaganda can convert young people to homosexuality"	**There is no evidence to support this view.***
* If 1 600 years of persecution - including the death penalty, imprisonment, discrimination and social ostracism - have not been able to "convert" homosexuals into heterosexuals, mere information about homosexuality will certainly not influence the sexual orientation of heterosexual people, whatever their age.[14]	
"Homosexuals are a danger to children"	**Gay, lesbian and bisexual people are no more likely to be a threat to children than heterosexuals.***
* "The American Academy of Child and Adolescent Psychiatry finds that there is no evidence that lesbians and gay men, per se, represent any threat to the development of children or adolescents and condemns any restriction on employment or service based on sexual orientation in positions involving the delivery of services or treatment to children and adolescents."[15]	

38. The position of the European Court of Human Rights in some of its judgments concerning discrimination on the basis of sexual orientation and gender identity appears below.

3. Recognition that human rights principles apply to sexual orientation and gender identity

3.1. The rights of LGBT people under international law

39. Sexual orientation and gender identity are not explicitly mentioned as grounds for discrimination in international human rights treaties, except, to some extent, in European Union Treaties[16] but they are nevertheless covered. The 1948 Universal Declaration of Human Rights and the case law of human rights treaties establish that human rights are universal and indivisible: they apply to everyone and no one should be excluded since all human beings are born free and equal in dignity and rights. Non-discrimination and equality

12. www.apa.org/topics/sexuality/orientation.aspx.
13. See "Demographic challenges for social cohesion", Doc. 10923, Committee on Migration, Refugees and Population, 3 May 2006, paragraph 30: "[the Nordic countries] have best succeeded in creating a woman-friendly, child-friendly and family-friendly policy framework, thus also reaching relatively high fertility rates".
14. The first legal prohibition on homosexuality in Europe was reportedly introduced in AD 390.
15. Policy Statement of the American Academy of Child and Adolescent Psychiatry, adopted in October 1992.
16. Discrimination on grounds of sexual orientation is prohibited by Article 13 of the Treaty establishing the European Community and the European Union's Charter of Fundamental Rights (not yet in force).

are therefore fundamental components of international human rights law. Under the International Covenant on Economic Social and Cultural Rights, prohibited grounds of discrimination cover “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. In its General Comment No. 20 on Non-discrimination in economic, social and cultural rights, adopted in May 2009, the United Nations Committee on Economic, Social and Cultural Rights provided a list of “other grounds” that are prohibited, which includes sexual orientation and gender identity. Article 14 of the European Convention on Human Rights prohibits any form of discrimination in the enjoyment of the rights and freedoms set forth in the Convention and its Protocol No. 12 contains a general prohibition of discrimination.

40. Consequently, experts invited to the hearing held in March 2008 stressed that LGBT persons are not demanding special rights. They simply need to enjoy the same human rights as all other individuals in Council of Europe member states, which are enshrined in international instruments, in particular in the European Convention on Human Rights, such as the right not to be tortured, freedom of expression, freedom of assembly, respect for private life, etc.

41. The case law of the European Court of Human Rights, like that of the European Court of Justice, indeed provides a vital reference framework in respect of these issues. According to the European Court of Human Rights, a difference in treatment is discriminatory if it has no objective and reasonable justification. Since sexual orientation is a most intimate aspect of an individual’s private life, the Court also considers that differences in treatment based on sexual orientation can only be justified by particularly serious reasons (see in particular the case of *Karner v. Austria* (2003)). Finally, this is not a matter of opinion: negative attitudes on the part of a heterosexual majority against a homosexual minority could not amount to sufficient justification, any more than similar negative attitudes towards those of a different race, origin or colour (see notably the case of *Lustig-Prean and Beckettv.the United Kingdom* (1999)). In significant rulings, the Court decided that:

– consensual sexual relations in private, between adults of the same sex, must not be criminalised: see *Dudgeon v. the United Kingdom* (1981);

– the age of consent for homosexual and heterosexual acts must be equal: see *Sutherland v. the United Kingdom* (Commission Report 1997); (in the case of *S.L. v. Austria* (2003), the Court reiterated that “sexual orientation is a concept covered by Article 14”);

– the right of freedom of assembly and association for LGBT people was violated: see *Bączkowski and others v. Poland* (2007);

– public authorities are not allowed to discriminate based on sexual orientation when it comes to custody of children, employment and services (armed forces):

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  - see *Lustig-Prean and Beckettv.the United Kingdom* (1999): ban on homosexuals in the armed forces;
  - see *Salgueiro Da Silva Mouta v. Portugal* (1999): refusal to grant custody to a parent living in a homosexual relationship on the basis of the interest of the child;

– the same rights/benefits must be granted to same-sex cohabiting partners as to different-sex cohabiting partners: see *Karner v. Austria* (2003): unequal tenancy rights of heterosexual and same-sex couples;

– if single heterosexuals are allowed to adopt a child, single homosexuals must also be allowed to adopt: see *E.B. v. France* (2008): refusal to authorise an adoption application by a woman in a same-sex relationship on the basis of her sexual orientation;

– legal recognition of acquired gender and transsexuals’ right to marry: see *Christine Goodwin v. theUnited Kingdom* (2002): denial of legal recognition of acquired gender and transsexuals’ right to marry;

– the requirement to provide for the possibility for transgender persons to undergo medical treatments leading to full gender reassignment, and to make provision for the funding of such treatments on the basis that they are medically necessary: see *Van Kück v. Germany* (2003):refusal to order reimbursement of top-up costs of a transsexual’s gender re-assignment treatment; *L. v. Lithuania* (2008): legislative gap concerning full gender reassignment surgery; and *Schlumpf v. Switzerland* (2009): refusal of an insurance company to pay for gender reassignment surgery.

42. A number of common prejudices regarding lesbian, gay and bisexual rights and the response of international human rights law appear below.

PREJUDICES	HUMAN RIGHTS LAW RESPONSE
“Homosexuality is unacceptable to a large part of society, based on religious and social norms, and this justifies discrimination”	**The European Court of Human Rights has held that prejudiced attitudes on the part of the heterosexual majority towards the homosexual minority cannot be used to justify discrimination.**[17]
"Restrictions against homosexuals are justified. They do not count as discrimination"	**The European Court of Human Rights has held that discrimination on the ground of sexual orientation is generally as unacceptable as discrimination on the ground of sex, race, or religion.**[18]
“Homosexuals are demanding special rights”	**The rights claimed are those guaranteed to all human beings under international human rights law, no more and no less.**
“Granting rights to homosexuals takes away rights from others, particularly religious people”	**The only "right" taken away is the "right" to discriminate, which is not a human right. Narrow exceptions can be made if they are justifiable as necessary to protect religious freedom.**
"Granting rights to homosexuals takes away rights from others, particularly religious people"	**The European Court of Human Rights has held that disapproval of “propaganda about homosexuality” is not a justification for denying freedom of assembly or expression.**
"Propaganda about homosexuality can be prevented because it is not the same as exercising one's freedom of assembly or expression"	**The European Court of Human Rights has held that disapproval of "propaganda about homosexuality" is not a justification for denying freedom of assembly or expression.**[19]
“Protection of young people requires discriminatory treatment”	**The European Court of Human Rights has rejected this justification, finding that male adolescents cannot be "recruited" into homosexuality through homosexual experience, and that sexual orientation is in most cases established before the age of puberty.**[20]
“Protection of the traditional family justifies discrimination against same-sex couples”	**The European Court of Human Rights has held that governments must show why it is necessary to exclude same-sex couples from rights or benefits granted to traditional families in order to protect such families.**[21]
“Homosexuals are not fit to bring up children”	**The European Court of Human Rights has ruled that lesbian or gay individuals must be treated in the same way as heterosexual individuals with regard to custody of a child, or eligibility to adopt a child.**[22]

43. As stressed by the Council of Europe Commissioner for Human Rights: “What is new is that there is now a stronger quest for this universal principle to be applied *consistently*. … The idea is to make clear the obvious – that lesbians, gays, bisexuals and transgender people have the same rights as others. The international standards do apply to them as well. In other words, discrimination against anyone on the grounds of sexual orientation or gender identity is a human rights violation.” At the committee hearing, Mr Ytterberg concluded by stressing that “equality in dignity and rights was a fundamental human right, not a negotiable concession”.

44. The introduction of the “Principles on the application of international law in relation to issues of sexual orientation and gender identity” (“the Yogyakarta Principles”), in November 2006, should be mentioned in this context. These principles were devised and adopted unanimously by a group of eminent human rights experts

17. *Lustig-Prean and Beckett v. the United Kingdom* (1999), paragraph 90; *S.L. v. Austria* (2003), paragraph 44.
18. Sex (*S.L. v. Austria* (2003)); race (*Smith and Grady v. the United Kingdom* (1999); *Lustig-Prean and Beckett v. the United Kingdom* (1999)); and religion (*Salgueiro Da Silva Mouta v. Portugal* (1999).
19. *Bączkowski and others v. Poland* (2007).
20. *S.L. v. Austria* (2003), paragraph 43.
21. *Karner v. Austria* (2003).
22. *Salgueiro Da Silva Mouta v. Portugal* (1999), which concerned the right of a gay man to have custody of his biological daughter; *E.B. v. France* (2008), which concerned the right of a lesbian woman to be considered as a potential adoptive parent.

from various regions and various backgrounds.[23] They are an important tool to help identify the obligations of states to respect, protect and fulfil the human rights of all persons, regardless of their sexual orientation or gender identity. The principles also recall that human rights serve human dignity.

45. When addressing the (intergovernmental) Committee of Experts on Discrimination on Grounds of Sexual Orientation and Gender Identity, meeting at the Council of Europe in Strasbourg on 18 February 2009, Professor Michael O'Flaherty, Rapporteur for the Yogyakarta Principles, concluded with the message of an anonymous blogger commenting the Yogyakarta Principles:

> *"Yesterday, I was nobody/nothing. Today, having seen these principles, I realise that under international human rights law I am officially human".*

46. Nevertheless, attempts to introduce legislation prohibiting discrimination on the basis of sexual orientation and gender identity still often meet with opposition. For example, in early March 2009, a draft anti-discrimination law, prohibiting, *inter alia*, discrimination on the basis of gender identity or sexual orientation, which had been withdrawn in the Serbian Parliament, was resubmitted to the parliament and finally adopted. The responsibility of national parliaments in the field of anti-discrimination is crucial.[24] The Commissioner for Human Rights has consistently called for fully comprehensive anti-discrimination legislation in all Council of Europe member states.

3.2. The duty of the Council of Europe to promote a clear message of respect and non-discrimination

47. "Never again!". The Council of Europe was born from this will to prevent history repeating itself at all costs. Consequently, it has the duty to provide effective safeguards for human rights, democracy and the rule of law and to promote a clear message of respect and non-discrimination. In this respect, one should not forget that homosexuals were also among the victims of the Nazis.

48. In practice, the Organisation has always fought for equality and diversity and the Council of Europe Parliamentary Assembly has, on several occasions, condemned discrimination in Europe based on sexual orientation and gender identity[25] (see also below).

49. The Commissioner for Human Rights (who has defined discrimination on the basis of sexual orientation and gender identity as one of his office's priority fields), the Congress of Local and Regional Authorities of the Council of Europe, as well as the Organisation's Secretary General, have on several occasions addressed these issues and condemned homophobia and transphobia.

50. In its replies to Parliamentary Assembly and Congress recommendations and, more recently, in its replies to written questions by Assembly members, the Council of Europe Committee of Ministers has also recalled the principles of equal enjoyment of human rights regardless of any grounds such as sexual orientation and gender identity and mainly touched upon issues of freedom of expression, assembly and association and homophobic speech. It has also reiterated that discrimination on grounds of sexual orientation is not compatible with the value of tolerance and the principle of equality, to which all member states are bound.[26]

51. In addition, in July 2008, the Committee of Ministers stressed the strong attachment of the Council of Europe to the principle of equal rights and dignity of all human beings, including LGBT persons. It recalled that the Council of Europe's standards on tolerance and non-discrimination apply to all European societies, and that discrimination on grounds of sexual orientation or gender identity is not compatible with these standards.

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23. For more detailed information and a comprehensive list of the principles, see: www.yogyakartaprinciples.org
24. See also Doc. 11743, "Discrimination against sexual orientation", Written Question No. 555 to the Committee of Ministers, concerning Monaco.
25. See in particular Recommendation 1117 (1989), "The condition of transsexuals"; Recommendation 1470 (2000), "Situation of gays and lesbians and their partners in respect of asylum and immigration in the member states of the Council of Europe"; Recommendation 1474 (2000) "Situation of lesbians and gays in Council of Europe member states"; and Recommendation 1635 (2003), "Lesbians and gays in sport".
26. See, *inter alia*, Committee of Ministers (CM) reply to Written Question No. 524 by Mrs Acketoft, "Ban on a Chişinău demonstration by homosexuals", adopted on 7 November 2007; CM reply to Written Question No. 567 by Mr Jensen, "Homosexual rights in Russia", adopted on 23 September 2009; and CM reply to Written Question No. 568 by Mr Jensen, "Homosexual rights in Latvia", adopted on 23 September 2009.

52. In this context, it was decided to prepare a recommendation of the Committee of Ministers (to member states) on measures to combat discrimination based on sexual orientation or gender identity. This work is in progress. The Committee of Ministers has also initiated work on the topic of various forms of marital and non-marital partnerships and cohabitation with a view to identifying possible measures to avoid discrimination on grounds of sexual orientation or gender identity (see below).

53. Furthermore, the Committee of Ministers addressed a message to all committees involved in intergovernmental co-operation at the Council of Europe inviting them to give due attention in their activities to the need for member states to avoid and remedy any discrimination on grounds of sexual orientation or gender identity. These committees were also asked to make proposals for activities to strengthen the equal rights and dignity of lesbian, gay, bisexual and transgender persons and to combat discriminatory attitudes against them in society.

3.3. Recent developments in other international fora to combat discrimination based on sexual orientation or gender identity

54. In December 2008, 66 states – 41 of which were Council of Europe member states – endorsed a "Statement on human rights, sexual orientation and gender identity" made at the United Nations General Assembly, which condemned violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and deprivation of economic, social and cultural rights, including the right to health. In June 2008, the Organization of American States also issued a declaration on "Human Rights, Sexual Orientation, and Gender Identity".

55. The first part of the above-mentioned report by the European Union Agency for Fundamental Rightson "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States", published in June 2008, comprises a comparative legal study. The second part, a comparative social study, was published on 31 March 2009. In July 2008, the European Commission proposed an anti-discrimination directive which would ensure equal protection against discrimination based on various grounds, including sexual orientation.

56. In January 2009, the European Parliament called on the European Commission to make sure that member states grant asylum to persons fleeing from persecution on the grounds of their sexual orientation in their country of origin, to take initiatives at the bilateral and multilateral level to stop the persecution of persons on the basis of their sexual orientation, and to launch a study on the situation of transgender people in the member states and candidate countries, with particular regard to the risk of harassment and violence.

4. Freedom of assembly and association and freedom of expression:[27] fundamental rights protected by the European Convention on Human Rights

4.1. Recent developments

57. The right of LGBT persons to freedom of assembly/association and freedom of expression has met with widespread opposition in many Council of Europe member states, including several European Union member states. This opposition has manifested itself in a number of ways, particularly the banning of marches, the use of intolerant or derogatory language by leading politicians and religious representatives, violent attacks on demonstrators (such as took place in Latvia in 2005, in Russia in 2007, in Moldova in May 2008 and in Hungary in July 2008), and failure by the police to provide adequate protection. In 2008, in Bosnia and Herzegovina, many publications called for the organisers of the Sarajevo Queer Festival to be "lynched and stoned" and eight people were injured at the opening of the festival. In Lithuania, in 2007, the Vilnius authorities even refused to give permission to a European Union anti-discrimination truck to make its planned stop in Vilnius, as part of the European Year of Equal Opportunities for All.

58. In a number of Council of Europe member states – in Lithuania and Moldova, for example – LGBT organisations abandoned plans to hold Pride events in 2009. In Russia, the Gay Pride Parade in Moscow was again banned in 2009. In May 2009, police violently dispersed demonstrators at the (banned) Slavic Pride March in Moscow and a number of activists were arrested as they protested against discrimination of LGBT people. Also in Russia, in May 2009 activists in about 40 cities staged a so-called "Rainbow Flash Mob"

27. See the work of the Congress of Local and Regional Authorities of the Council of Europe on freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons; Resolution 230 (2007); Recommendation 211 (2007); and document CPL(13)9 Part 2, 15 January 2000.

dedicated to the International Day against Homophobia. In St Petersburg, their motto was "We are no longer acting as if we do not exist". In Ukraine, municipal authorities in Mykolayiv city banned the "Rainbow Spring 2009" festival for the second year running.

59. In some cases, however, courts have eventually overturned bans by city authorities. For example, in Latvia, in May 2009, the ban on the Baltic Pride March was finally lifted and the event was successful and peaceful. In May 2008, an Istanbul court ordered the closure of Lambda Istanbul, an LGBT organisation. This decision was eventually overturned by the Supreme Court of Appeal in November 2008.

60. As stressed by the Congress in 2007, on the occasion of its debate on freedom of assembly and expression for lesbian, gay, bisexual and transgender persons, recent homophobic incidents in a number of member states have highlighted not only the systematic violation of the basic rights of the LGBT community but have shown that in many cases the very authorities who have the positive obligation to protect their citizens against discrimination are actually endorsing and, in some cases, actively supporting or perpetrating this injustice. Nevertheless, in some European Union member states, LGBT organisations have celebrated Pride events with the participation of government ministers, political parties and, in some cases, religious organisations. In Sweden, the Minister for European Union Affairs opened the 2008 Stockholm EuroPride festival, attracting more than 80 000 participants, among them the country's Lutheran Church.[28]

61. There is a clear need to reaffirm the existing standards in this respect and to urge the authorities concerned to implement them.

4.2. The standards[29]

62. Freedom of expression and freedom of assembly and association are enshrined in the European Convention on Human Rights (Articles 10 and 11), which has been ratified by all Council of Europe member states. In addition, the Convention prohibits discrimination in the way that the rights enshrined therein are applied (Article 14). Consequently, the rights to freedom of expression and freedom of assembly must be enjoyed by all without discrimination. In other words, lesbian, gay, bisexual and transgender persons enjoy the same rights to freedom of expression and assembly as any other person within the jurisdiction of a Council of Europe member state.

63. Any restrictions on the exercise of the rights to freedom of expression and freedom of assembly must be prescribed by law and be necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others.

64. The authorities play a central role in upholding citizens' rights to freedom of assembly and expression. This includes the positive obligation for the state to provide effective protection and ensure respect for lesbian, gay, bisexual and transgenderpersons who wish to assemble and express themselves, even if their views are unpopular or are not shared by the majority of society.

65. As stressed by the Council of Europe Committee of Ministers in January 2008, "According to the established case law of the European Court of Human Rights, peaceful demonstrations, be they in favour of the rights of LGBT persons or others, cannot be banned simply because of the existence of attitudes hostile to the demonstrators or to the causes they advocate. On the contrary, the state has a duty to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully. In a series of judgments, the Court has emphasised that discrimination based on sexual orientation is contrary to the Convention. All member states must observe the Convention when they apply national law, notably in the light of the case law of the Court".[30]

66. The Committee of Ministers[31]has also invited all member states to implement its Recommendation No. R (97) 20 on "hate speech" and Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance, in respect of lesbians, gays, bisexuals and transgender persons. The recommendation on hate

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28. See the report of the European Union Fundamental Rights Agency on "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States": Part II – the Social Situation.

29. The NGO Article 19 is preparing an advocacy manual highlighting principles and policies on the application of international freedom of expression standards and best practices in relation to sexual orientation and gender identity.

30. CM/Cong(2008)Rec211 final, CM Reply to Congress Recommendation 211 (2007), 18 January 2008, paragraph 3. See also Committee of Ministers (CM) reply to Written Question No. 524 by Mrs Acketoft, "Ban on a Chişinău demonstration by homosexuals", adopted of 7 November 2007, and CM Reply of 6 February 2008 to Written Question No. 527 by Mr Huss, "Ban on a Moscow demonstration by lesbian, gay, bisexual and transgender persons in 2007". See also OSCE/ODIHR guidelines on freedom of peaceful assembly.

speech asserts that public authorities and institutions have a "special responsibility to refrain from statements …, speech … and other forms of discrimination or hatred based on intolerance", especially when it is disseminated through the media. Any legitimate interference with freedom of expression should be "narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria … [and] subject to independent judicial control".

67. In 2007, in the case of *Bączkowski and others v. Poland*,[32] the Court of Human Rights delivered its first judgment specifically addressing the right to freedom of assembly of lesbian, gay, bisexual and transgender persons. It ruled that the prohibition by the Warsaw authorities of the 2005 Equality assemblies violated the Convention (Articles 11 and 14). The Court drew attention to the positive obligation of the state to secure the effective enjoyment of Convention rights, stressing that "this obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation". In referring to a public statement by the then Mayor of Warsaw that he would refuse permission to hold the assemblies, the Court emphasised that the exercise of freedom of expression by elected politicians "entails particular responsibility".

5. Legal recognition of same-sex partnerships in Europe: contrasting situations in Europe

68. Under international law, the decision to recognise same-sex marriage and/or registered partnerships, as well as the extension of privileges to such institutions, is left to the state's margin of appreciation. Nevertheless, European Union countries have specific obligations: in order to comply with the prohibition against discrimination under European Union law, member states that provide a form of union to same-sex partnerships which is comparable to marriage must ensure that same-sex partners enjoy the same rights as married couples.

5.1. Evolution of legislation across Europe

69. In present-day Europe, there is no consensus among Council of Europe member states and the situation varies considerably from one country to another as regards legal recognition of same-sex partnerships. In some countries, same-sex partners may enter into a civil marriage, whereas in others same-sex couples may, by registering their partnership and/or by drawing up an official cohabitation contract, obtain legal recognition and protection for most or some of the rights that are afforded to heterosexual married couples. In a number of Council of Europe member states, however, there is no statutory provision to this effect (see the table below). In addition, a number of countries – Poland, Lithuania, Ukraine and, more recently, Latvia – have prohibited same-sex marriage in the constitution by defining marriage as a union between a man and a woman.

70. Legal recognition of same-sex partnerships is an issue that causes feelings to run high, and there are differences of opinion both between member states and among the public in each member state. For some, same-sex partnerships are perceived as being "against human nature", a "threat" to the traditional family and/or an offence to the "moral order". At the same time, it has to be acknowledged that failure to recognise same-sex partnerships results in discriminatory treatment in regard to some of the rights enshrined in the European Convention on Human Rights and often leaves those concerned in uncertain and distressing situations.

71. During the hearing of the Committee on Legal Affairs and Human Rights held in 2008, experts considered that legal recognition of same-sex partnerships was an indicator of progress towards equality and full citizenship and of the level of social justice. Experts presented the example of the United Kingdom, which had initially been very hostile to the legal recognition of same-sex partnership but has, since 2005, become one of the most liberal countries in the matter. Reportedly, key factors which facilitated changes in legislation and attitudes were:

– the level of development of the LGBT community;

– the commitment of a political party or a coalition to reaching a consensus;

– the role of faith-based organisations.

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31. See CM/Cong(2008)Rec211 final, CM Reply to Congress Recommendation 211 (2007), 18 January 2008, paragraph 4.

32. Application No. 1543/06, final judgment on 24 September 2007.

72. In the United Kingdom, the LGBT community had mainly called for the legal recognition of same-sex partnerships in the name of equal rights and responsibilities, the need to demonstrate their commitment to each other, and public recognition of that commitment.

73. Despite the lack of consensus, the number of states adopting some form of legally recognised same-sex partnership is growing. As recently stressed by the European Parliament, steps should be taken to "ensure that same-sex partners enjoy the same respect, dignity and protection as the rest of society".[33] The Council of Europe Commissioner for Human Rights has also stated that legal recognition of same sex partnerships is needed and must be afforded in a non-discriminatory way with regard to all financial and proprietary benefits.[34]

33. European Parliament resolution on homophobia in Europe of 18 January 2006.

34. Commissioner for Human Rights, Annual Activity Report 2006 (CommDH(2007)3) and Follow-up Report on Slovenia (2003-2005) (CommDH(2006)8).

Overview of the situation in Council of Europe member states[35] (years indicate entry into force of relevant legislation)				
No legal recognition of same-sex partnerships	**Some recognition of same-sex cohabitation, but no formal registration of partnership or marriage**	**Formal registration of a partnership open to same-sex AND different-sex partners**	**Formal registration of a partnership ONLY open to same-sex partners**	**Civil marriage open to same-sex partners**
Albania Armenia Azerbaijan Bosnia and Herzegovina Bulgaria Cyprus Estonia Greece Ireland (draft legislation envisaged) Italy Latvia Liechtenstein Lithuania Malta Moldova Monaco Montenegro Poland Romania Russian Federation San Marino Serbia Slovak Republic "The former Yugoslav Republic of Macedonia" Turkey Ukraine	Austria Croatia (2003) Portugal (2001)	***Status virtually equivalent to that of married couples:*** Netherlands (1998) ***Status inferior to that of married couples:*** Andorra (2005) Belgium (2000) France (1999) Luxembourg (2004) [Pending legislation: Ireland Liechtenstein]	***Status virtually equivalent to that of married couples (with possible exception of parental rights):*** Denmark (1989) Finland (2002) Germany (2001) Iceland (1996) United Kingdom (2005) Switzerland (2007) _____ ***Status inferior to that of married couples:*** Czech Republic (2006) Slovenia (2005) Hungary (2009) NB: the Hungarian law also provides for a formal registration scheme available to both same sex and different-sex couples.	Belgium (2003) Netherlands (2001) Spain (2005) Norway (2009) Sweden (2009) [NB: Canada, South Africa and some US states have also passed such legislation]

74. Registered partnerships may have virtually all the consequences of marriage – with the result that one can talk of a "virtual marriage" in the United Kingdom – or only a limited number of those consequences.

5.2. The international dimension[36]

75. In 2000, the Assembly urged member states to review their policies in the field of social rights and protection of migrants to ensure that homosexual partnerships and families are treated on the same basis as heterosexual partnerships and families and 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. More recently, on 14 January 2009, the European Parliament called on European Union member states who have

35. For details of the situation in each Council of Europe member state, see the ILGA-Europe website: www.ilga-europe.org. See also "Sexual orientation discrimination in the European Union: national laws and the Employment Equality Directive", by Kees Waaldijk and Matteo Bonini-Baraldi, The Hague, Asser Press, 2006 (see www.emmeijers.nl/experts), as well as the "Chronological overview of the main legislative steps in the process of legal recognition of homosexuality in 45 European countries", by Kees Waaldijk and "All's well that ends registered? The substantive and private international law aspects of non-marital registered relationships in Europe", by Ian Curry-Sumner, Antwerp/Oxford, 2005, part 11. See also the report of the European Union Agency for Fundamental Rights on "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States".

adopted legislation on same-sex partnerships to recognise provisions with similar effects adopted by other member states; it also called on those member states to propose guidelines for mutual recognition of existing legislation between member states in order to guarantee that the right of free movement within the European Union for same-sex couples applies under conditions that are equal to those applicable to heterosexual couples. In addition, it called on those member states that have not yet done so, and in application of the principle of equality, to take legislative action to overcome the discrimination experienced by some couples on the grounds of their sexual orientation.

5.3. Pecuniary rights/obligations and parental rights/obligations[37]

76. In Council of Europe member states, theassignment of certain pecuniary rights (benefits, such as pensions, bereavement benefits, tenancy rights, etc.) remains much less problematical than the granting of parental rights. Belgium is a telling case: whereas same-sex partners have been able to enter into civil marriages since 2003, their right to adopt children was not recognised until 2006.

77. In the case of *Karner v. Austria* (2003) concerning unequal tenancy rights of heterosexual and same-sex couples, the Court found that "particularly serious reasons" had to be provided if de facto same-sex couples were to be excluded from rights and obligations available to de facto different-sex couples.

78. At present, in two pending cases before the Court, applicants have put forward the argument that same-sex couples should be exempted from having to marry to qualify for a particular right or benefit.[38]

79. Theexistence of same-sex partnerships is a fact in all Council of Europe member states. As far as the concept of the family is concerned, one should stress that this concept has developed over time in many Council of Europe member states. The traditional idea of "the family" represented by the nuclear family – a married opposite-sex couple and their children – is becoming increasingly distant from the reality experienced by very many European families and their children. In many countries, such as Latvia, I was told, traditional families are not in the majority. There are many single-parent families, families without children and cases of children being brought up by their grandparents, as well as same-sex families (with or without children). There are now increasing efforts at both the national and European levels to recognise alternative family forms and, in particular, to protect the rights of children being raised outside traditional marriage-based family units.

80. Moreover, it has to be borne in mind that some same-sex couples actually do have children (from prior opposite-sex relationships, through assisted conception, donor insemination, or through adoption). The families in question exist de facto and are often referred to as "LGBT families". Again, this is a fact of society, which cannot just be ignored.

81. International and national laws often fail to recognise the reality of these children's family relationships, thus potentially jeopardising their legal security. Since the Court has, so far, had little to say about the rights of children raised in LGBT families, it has largely been left to states to decide what legal recognition, if any, will be given to LGBT families and what protection children raised in these families will have. While most children raised in non-traditional families share a degree of legal vulnerability with respect to their family ties, for children in LGBT families, such vulnerability is almost invariably a fact of life: for example, in the majority of countries, there is still no legislative provision for recognising and protecting a child's relationship with an LGBT "co-parent".[39] Consequently, many children of LGBT parents are denied equal enjoyment of the family rights that international human rights law recognises for all children equally. The discrimination and disadvantage suffered by children in LGBT families can take various forms. In particular, these children may be denied their right to live with their parents and to have the integrity of their family life respected. In the absence of legal recognition, LGBT co-parents are denied the possibility of being involved in making important decisions, relating to, for example, the child's medical treatment and education; it also impacts on the quality of social services that a child of LGBT parents receives. The situation of these children may become particularly dramatic in the case of death of the biological parent. This is clearly not consistent with the child's best interests, which the United Nations Convention on the Rights of the Child states should be the primary consideration in all actions concerning them. Therefore, legal recognition of the situation of children born into

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36. On 19 November 2008, the Committee of Ministers of the Council of Europe adopted Resolution CM/Res(2008)22 on the application of Article 3: "Non-discrimination" of the Staff Regulations. The resolution aims at granting staff members in registered partnerships who cannot get married all the benefits currently enjoyed by their married colleagues.

37. This section is mainly based on information provided by experts at the hearings held in 2008 and 2009 and on the occasion of the conference/debate held in Strasbourg on 15 May 2009 on "LGBT Families".

38. *M.W. v. the United Kingdom* (Application No. 11313/02) and *Schalk and Kopf v. Austria* (Application No. 30141/04).

39. Term used to refer to the non-biological parent of a child raised in an LGBT family.

or raised in LGBT families is essential. In many cases, the legislation would merely legitimise a social reality. Ignoring this reality does not make the reality of their existence disappear but only denies those children the full enjoyment of their rights.[40]

82. Adoption of children by homosexual person(s) is undoubtedly one of the issues giving rise to the most doubts, opposition or clear hostility. The situation in Council of Europe member states regarding adoption varies. Even in countries where adoption is possible, there are different types of situation. In some countries, the legislator has introduced a distinction between adoption of unrelated children and adoption of the partner's child: Netherlands, Spain, Sweden, United Kingdom, Belgium, Iceland and now also Denmark (law adopted on 17 March 2009) enable same-sex partners to jointly adopt unrelated children, while Germany and Norway permit a registered same-sex partner to adopt their partner's child.

83. Individual adoption by an unmarried person, whether homosexual or not, is, however, more widely possible, but this right often exists only on paper. In practice, people who make no secret of their homosexuality are frequently refused authorisation to adopt by the authorities, often on the grounds of the lack of a paternal/maternal role model conducive to the harmonious development of the adopted child. The European Court of Human Rights recently handed down a judgment[41] on the matter in connection with the French authorities' refusal to grant approval to a homosexual woman. This woman alleged that she was refused authorisation to adopt on account of her sexual orientation and that she was discriminated against on the grounds of her homosexuality. The Court concluded that the decision of the French authorities violated the Convention (violation of the prohibition of discrimination and of the right to respect for private and family life).

84. It is often argued that granting parental rights could make homosexuality more acceptable, or more attractive even and that children raised in LGBT families would become homosexuals. At the committee's hearings held in 2008 and 2009, experts stressed that the percentage of children brought up by same-sex couples who also became homosexuals themselves is no higher and no lower than the percentage of children brought up by heterosexual couples.[42] On the other hand, children brought up by homosexual parents are usually more tolerant.

85. Moreover, as demonstrated by the Italian and Spanish examples, there is no cause-and-effect relationship between the legal recognition of same-sex partnerships and a country's birth rate, as is sometimes suggested. As indicated in the table above, some of the countries in Europe that have been most successful in addressing demographic problems – the Nordic states – have led the way in supporting the rights of lesbian, gay and bisexual people, while many of those countries which have been most repressive towards them have the most serious demographic problems.

86. During my visits, I was also sometimes confronted with the argument that legal recognition of same-sex partnerships and/or granting parental rights is a danger to the "traditional families" (that is, married heterosexual couples with children). But there is nothing to prevent both types of families existing and developing in the same society or country. The "traditional family" has been declining in many European countries because a growing proportion of heterosexuals are choosing not to marry, because of increasing divorce rates, and because more married heterosexuals are choosing not to have children.

87. In 2004, the Assembly recommended that the Committee of Ministers apply, where possible and appropriate, a broad interpretation of the concept of family and include, in particular, in that definition members of the natural family, non-married partners, including same-sex partners, children born out of wedlock, children in joint custody, dependent adult children and dependent parents.[43] Also, as already mentioned above, in July 2008 the Council of Europe Committee of Ministers initiated work on the topic of the various forms of marital and non-marital partnerships and cohabitation with a view to identifying possible measures to avoid discrimination on grounds of sexual orientation or gender identity.

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40. For details, see "The rights of children raised in lesbian, gay, bisexual or transgender families: a European perspective" – ILGA-Europe, October 2008. See also the "Study into the rights and legal status of children being brought up in various forms of marital or non-marital partnerships and cohabitation", Council of Europe (intergovernmental) Committee of Experts on Family Law, CJ-FA (2008) 5.

41. *E.B. v. France* (2008) (Grand Chamber), 22 January 2008.

42. Comprehensive research by the American Psychological Association found that children brought up by lesbian or gay parents experienced no adverse consequences with regard to their gender identity or sexual orientation. Studies of the social relationships of these children, both with regard to peer relations, and relations with adults, were consistent with typical patterns of development: see "Lesbian and Gay Parents and their Children: Summary of Research Findings" American Psychological Association, 2005, available at: www.apa.org/pi/lgbc/publications/lgparenting.pdf and www.apa.org/pi/lgbt/resources/parenting.aspx.

43. Recommendation 1686 (2004), "Human mobility and the right to family reunion".

88. As rapporteur I consider that it is essential for children to be raised in a loving environment, which can certainly be ensured by "traditional" families as well as by "non-traditional" families. In addition, the family rights of children in LGBT families should be fully respected and consequently, the necessary legal framework should be put in place in order to ensure this. In my view, this necessarily requires legal recognition of same-sex partnerships, providing, at least, for joint parental responsibility of each partner's children on a basis of equality with opposite-sex marriage, if not also the right of each partner to adopt the other partner's children.

6. Historical perspective and factors that can lead to an approach compatible with human rights

89. On the occasion of my fact-finding visits and during the hearings held by the Committee on Legal Affairs and Human Rights, experts stressed that a number of factors were key to fostering changes in attitudes, legislation and measures which could prevent or combat discrimination. Some of them also insisted on the need to look at the issue from an historical perspective, in order to illustrate the evolution of prejudices and discrimination present in a given society.

6.1. Some historical perspectives

90. As stressed during the hearing held in 2008, there was a time (not long ago) when people with red hair and people who were left-handed were stigmatised and discriminated against on grounds which now appear to be "ridiculous". Also not long ago, in a number of countries, children born out of wedlock and children whose parents were divorced or raised by a single parent were stigmatised, just as children raised in "LGBT families" are now.

91. It is worth noting that the European Parliament defines homophobia as "an irrational fear of and aversion to homosexuality and to lesbian, gay, bisexual and transgender (LGBT) people based on prejudice and similar to racism, xenophobia, anti-semitism and sexism".[44]

92. Interestingly enough, in the framework of an extensive hate speech monitoring programme carried out in Latvia from 2006 to 2007, homophobic statements by public figures were compared to Nazi statements against Jews, and the publication of this monitoring report, reportedly, led to some improvements.

93. As stressed by the Secretary General of the Council of Europe in May 2009, "Everyone knows that homosexuals were arrested and sent to concentration camps by the Nazis, but it is less well known that after they were freed from the camps, many homosexuals were forced to serve out their terms of imprisonment. This may be shocking, but it was consistent with the deeply rooted discrimination against homosexuals in Europe at the time ... It was not until 1990 that the World Health Organization removed homosexuality from [its] list of mental illnesses and, until a few years ago, homosexuality was still a criminal offence in several countries".

6.2. Factors fostering changes in legislation and attitudes

94. It seems that a variety of factors – and sometimes a combination of them – can play a key role in the evolution of attitudes and legislation. Nevertheless, commitment to human rights and to the principles of non-discrimination is certainly the most decisive factor.

a. Knowledge of the issues involved; commitment to human rights and to the principles of equal treatment and non-discrimination:

- the role of NGOs and the level of development of the LGBT community;
- the capacity of LGBT people to organise themselves and to lobby mainstream parties and organisations;
- the information available and the role of the media;
- the monitoring of the human rights situation of LGBT persons;
- an open social and political climate and, in particular, the search for equality;
- the role of individuals (in particular, the support provided by the political authorities);
- the level of understanding and factual objective knowledge of these issues, especially among politicians/legislators;

44. European Parliament resolution on homophobia in Europe of 18 January 2006.

- the commitment of a political party or a coalition to reaching a consensus, and the will for change;
- the understanding that legislation has to recognise social reality;
- the understanding of the human rights issues involved and the firm commitment to promote the dignity of all human beings, tolerance and respect;
- a firm opposition to discrimination against LGBT persons and the eradication of impunity for human rights violations targeting LGBT persons;
- education in the broadest sense;
- equality bodies and national human rights structures (ombudspersons) whose mandates/ practice cover discrimination on the basis of sexual orientation and gender identity.

b. Other factors involved in some cases

- the role of churches, their level of "interventionism" on these issues and their influence;
- decentralisation, the role of local authorities and the support of public opinion;
- understanding diversity and its "traditional" nature;
- citizens' participation and collective decision-making rights.

c. The international dimension

- the standards and values of international organisations, in particular those of the United Nations, the Council of Europe and the European Union, which underline that human rights and fundamental freedoms are universal;
- the case law of international judicial organs;
- the recognition of the international nature of the relevant issues (in particular, the recognition of same-sex partnerships from one country to another).

6.3. Concrete examples

- In Cyprus, the decriminalisation of homosexuality followed a ruling of the European Court of Human Rights.
- Spain, despite having a strong Catholic cultural heritage, has opened civil marriage to same-sex partnerships. Key factors which facilitated changes in legislation and attitudes were, reportedly:
  - the commitment of a political party;
  - the involvement of the LGBT community;
  - the fact that a number of persons have distanced themselves from the Catholic Church[45] due to the position of some religious authorities during the Franco regime.
- In Switzerland, where society is rather conservative, changes in legislation towards the legal recognition of same-sex partnerships originated in the cantons and through popular initiatives and referendums.
- In the United Kingdom, reportedly (as indicated above), key factors which facilitated changes in legislation and attitudes were:
  - the level of development of the LGBT community;
  - the commitment of a political party or a coalition to reaching a consensus;
  - the role of faith-based institutions.

45. In Poland, my interlocutors stressed the difference between Spain and Poland in that respect. They underlined that the Catholic Church in Poland was still perceived as a strong element of national identity, with high credibility due to its role in overcoming totalitarianism and, consequently, it was still highly valued by the majority of the population.

6.4. The importance of dialogue

95. On the occasion of the hearing held by the Committee on Legal Affairs and Human Rights in Berlin in March 2009, the question of religion and homosexuality was raised, in particular the question whether there was room for dialogue with religious institutions. At the request of members, I will briefly address this issue.

96. Attitudes of religious institutions towards LGBT persons and their rights vary considerably. According to the FRA report on homophobia and discrimination on grounds of sexual orientation and gender identity (the social situation), as far as European Union member states are concerned:

– In many European Union member states, conservative religious institutions actively speak out against LGBT persons, usually arguing that being LGBT runs contrary to religious doctrine and should be opposed rather than encouraged. They sometimes lobby against legislation that better protects LGBT persons and campaign against LGBT events;

– At the same time, there are examples of religious institutions and organisations that have reached out to LGBT people. Some churches or parts of churches have welcomed LGBT persons as part of their communities and tried to diffuse intolerance based on religious beliefs. For example, in the Netherlands, by 1995, the synod of the Netherlands Reformed Church had already issued a statement that members of the Church have equal rights, regardless of their sexual orientation or way of life. In Finland, reportedly, since 1999, the Kallio parish in Helsinki has embraced "rainbow people" and "rainbow masses" have been held in connection with Gay Pride events in several places. In Sweden, the Church participated in the 2008 Pride events.

97. Some churches allow same-sex blessings. In Denmark, the Lutheran Church accepted blessing services for same-sex partnerships as early as in 1997. In the Anglican Church in the United Kingdom, the issues of same-sex blessings and the ordination of lesbians and gay priests have given rise to controversial debates and discussions.

98. It would appear that most developments in the churches occurred in reaction to earlier decisions in the different national socio-political spheres, such as same-sex partnership registration or same-sex marriage laws in many western European countries, or the process of the national adoptions of the European Union anti-discrimination law of 1997 and its directive against discrimination in the workplace in 2000.[46]

99. I consider that dialogue between all bodies (authorities, national human rights institutions, equality bodies, human rights defenders working on the rights of LGBT persons and religious institutions), based on mutual respect, should be encouraged in order to improve mutual understanding and the human rights protection of LGBT people.

7. Conclusion

100. The lack of knowledge and understanding about sexual orientation and gender identity is a challenge to be addressed in most Council of Europe member states since it results in an extensive range of human rights violations.

101. The eradication of homophobia and transphobia requires political will in member states to implement a consistent human rights approach and to embark on a wide range of initiatives. Education in the broadest sense is crucial to bringing about changes. Parliamentarians have a specific responsibility to initiate and support changes in legislation, practice and policy in Council of Europe member states. The Council of Europe also has the duty to promote a clear message of respect and non-discrimination so that everybody can live in dignity and respect in all its member states.

102. Specific measures are needed to address the specific discrimination faced by transgender persons, and the obstacles to their ability to "live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost."[47]

103. Dialogue between all bodies, based on mutual respect, is also essential in order to improve mutual understanding, combat attitudes of prejudice and facilitate public debates and reforms on issues concerning LGBT persons.

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46. For more details, see "Imagine there's a heaven!? The situation of Lesbians, and Gays in the Churches of Europe", by Randi O. Solberg, June 2005. See also *Let Our Voices Be Heard! Christian Lesbians in Europe telling their Stories*, published in Germany, 2004.

47. *Christine Goodwin v. the United Kingdom* (2002) (Grand Chamber), Application No. 28957/95, paragraph 91.

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Members of the Committee: Mrs Herta Däubler-Gmelin (Chairperson), Mr Christos **Pourgourides**, Mr Pietro **Marcenaro**, Mr Rafael Huseynov (Vice-Chairpersons), Mr José Luis Arnaut, Mrs Meritxell Batet Lamaña, Mrs Marie-Louise **Bemelmans-Videc**, Mrs Anna Benaki-Psarouda (alternate: Mr Emmanouil **Kefaloyiannis**), Mr Petru Călian, Mr Erol Aslan **Cebeci**, Mrs Ingrida **Circene**, Mrs Ann Clwyd, Mrs Alma Čolo, Mr Joe Costello, Mrs Lydie **Err**, Mr Renato **Farina**, Mr Valeriy **Fedorov**, MrJoseph **Fenech Adami**, Mrs Mirjana **Ferić-Vac**, Mr György **Frunda**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mrs Svetlana Goryacheva, Mr Neven Gosović, Mrs Carina Hägg, Mr Holger Haibach (alternate: Mr Jürgen **Herrmann**), Mrs Gultakin Hajibayli, Mr Serhiy **Holovaty**, Mr Johannes Hübner, Mr Michel Hunault, Mr Aliosman Imamov, Mr Kastriot Islami, Mr Željko Ivanji, Mrs Kateřina Jacques, Mr András **Kelemen**, Mrs Kateřina **Konečná**, Mr Franz Eduard Kühnel, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Aleksei Lotman, Mr Humfrey Malins, Mr Alberto Martins, Mr Dick **Marty**, Mrs Ermira Mehmeti, Mr Morten Messerschmidt, Mr Akaki Minashvili, Mr Philippe Monfils, Mr Alejandro Muñoz Alonso (alternate: Mr Arcadio **Díaz Tejera**), Mr Felix Müri (alternate: Mr Andreas **Gross**), Mr Philippe Nachbar, Mr Adrian Năstase (alternate: Mr Tudor **Panţiru)**, Ms Steinunn Valdís Óskarsdóttir, Mrs Elsa Papadimitriou, Mr Valery Parfenov (alternate: Mr Sergey **Markov**), Mr Peter Pelegrini, Mrs Marietta de Pourbaix-Lundin, Mr Valeriy Pysarenko, Mr Janusz Rachoń, Mrs Marie-Line Reynaud, Mr François Rochebloine, Mr Paul **Rowen**, Mr Armen Rustamyan (alternate: Mrs Zaruhi **Postanjan**), Mr Kimmo Sasi, Mr Yanaki Stoilov, Mr Fiorenzo Stolfi, Mr Christoph **Strässer**, Lord John **Tomlinson**, Mr Joan Torres Puig, Mr Tuğrul Türkeş, Mrs Özlem **Türköne**, Mr Viktor Tykhonov, Mr Øyvind Vaksdal, Mr Giuseppe Valentino (alternate: Mr Giacomo **Santini**), Mr Hugo Vandenberghe, Mr Egidijus **Vareikis**, Mr Luigi **Vitali**, Mr Klaas **De Vries**,Mrs Nataša Vučković,Mr Dimitry **Vyatkin**, Mr Marek **Wikiński**, Mrs Renate Wohlwend, Mr Jordi **Xuclà i Costa**

NB: the names of the members who took part in the meeting are printed in **bold**

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