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Prohibition of same sex marriage in Croatia

Reply to Written question¹: Written question No. 647 (Doc. 13369)
Committee of Ministers

1. In reply to the Honourable Parliamentarian's question, the Committee of Ministers recalls that the European Court of Human Rights, through its judgments in individual cases, assesses the compliance of national legislation with the European Convention on Human Rights. The Committee of Ministers cannot substitute the Court in this respect.
2. In this context, the Committee of Ministers observes that in its judgment in the case of *Schalk and Kopf v. Austria* of 24 June 2010, the Court has stated that it "would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex". It further held that "as matters stand, the question whether or not to allow same-sex marriage is left to regulation by the national law of the Contracting State". In this respect, the Court observed that "marriage has deep-rooted social and cultural connotations which may differ largely from one society to another". It concluded that Article 12 of the Convention does not impose an obligation on the respondent government to grant a same-sex couple access to marriage.
3. The Committee of Ministers has been informed by the Croatian authorities that following the results of the referendum of 1 December 2013, the Croatian Constitution contains a provision that defines marriage as the "union between a woman and a man". The definition of marriage contained in the Croatian legislation has consequently become a constitutional norm. However, the constitutional changes do not provide for any explicit "prohibition of same-sex marriage", as implied in the question posed by the distinguished member of the Parliamentary Assembly.
4. The Committee of Ministers has also been informed by the Croatian authorities that all rights and legal aspects of cohabitation, as well as same-sex union, will continue to be regulated by the legislation in force. In order to further strengthen the right to private and family life of same-sex couples, the Croatian Government, on 13 December 2013, proposed a new draft Law on Registered Civil Partnership to Parliament. This draft Law reflects a commitment to regulate same-sex unions comprehensively and to remove the existing obstacles to their social equality, based on the best European standards and practices. The purpose of the new draft Law on Registered Civil Partnership is to provide same sex-unions with the same statutory rights as those provided for married couples, including the right to inherit and rights and obligations deriving from pension and medical insurance schemes, etc.

1. Adopted at the 1194th meeting of the Ministers' Deputies (12 March 2014).

