

Statement at launch of Report on Discrimination on grounds of sexual orientation and gender identity in Europe by the Commissioner for Human Rights of the Council of Europe

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Ladies and Gentlemen,

It is an honor and a pleasure for me to be able to represent here today the Office of the UN High Commissioner for Human Rights.

I would like to congratulate Commissioner Hammarberg on his Report on Discrimination on grounds of sexual orientation and gender identity in Europe. It is indeed a landmark – a document remarkable for its comprehensive character, spanning the whole scope of human rights from civil and political rights through protection from violence and discrimination to issues of access to economic, social and cultural rights and rights linked to privacy, family life and gender recognition.

It is also a very courageous and forward-looking Report, particularly in the areas of right to family life and gender recognition, on which there is less consensus (even in Europe) than on most of the other issues. The issue of gender recognition is, in fact, one of the last instances where a powerful medical profession is still in the position of a gatekeeper for persons' access to rights – and this Report provides strong arguments for changing that situation.

The Report in global context

Commissioner Hammarberg's report is another example of how the international and regional systems complement each other. In some areas, the international system has taken the lead – as Commissioner Hammarberg has remarked recently at the Open Society Institute event in Dublin, referring to the case of the Convention on the Rights of Persons with Disabilities. Conversely, in the area of LGBT rights, this Report confirms that the Council of Europe is serving as a source of inspiration for the international system and for the rest of the world.

Globally, the challenges are even greater than in Europe, with more than 70 countries still criminalizing same-sex relationships. High Commissioner Navi Pillay has made a number of outspoken public statements, condemning homophobia and the criminalization of same-sex relationships, as has Secretary General Ban Ki-moon in his statement on Human Rights Day 2010.

Although there is no specific instrument dealing with LGBT rights in international human rights law, International Human Rights Treaty Bodies interpret their articles as covering sexual

orientation and gender identity. Many Special Procedures mandate holders have specifically addressed the issue of protection of rights of LGBT persons.

Most recently, on 15th June 2011, the Human Rights Council adopted its first-ever Resolution on the subject of human rights, sexual orientation and gender identity, in which it expressed grave concern at the acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity. It requested the High Commissioner

...to commission a study to be finalized by December 2011, to document discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.

The Human Rights Council also decided to convene a panel discussion during its 19th session (in spring 2012), informed by the facts contained in the study commissioned by the High Commissioner, and to have a constructive, informed and transparent dialogue on these issues.

In the light of the facts contained in Commissioner Hammarberg's Report, we can conclude that for Europe, the task of documenting discriminatory practices has to a large extent been accomplished. In the overall endeavor, Commissioner Hammarberg's Report will no doubt be reflected, and I dare say it will serve as a beacon.

The situation in Europe

In Europe itself, Commissioner Hammarberg's Report shows that there are dramatic differences among the Member States of the Council of Europe – and that a huge amount of work remains to be done in order to change both legislation and popular perception. In many European countries, open discussion of LGBT rights only started fairly recently. Thus, many of these differences can be attributed to a time lag rather than being interpreted as a sign of some fundamental cultural difference.

However, it is clear that it would be wrong to wait with legislation until public opinion in all those countries changes. Legislation protecting the rights of LGBT persons cannot wait. And indeed, such normative changes can themselves act as powerful catalysts of public debate and encourage the members of the LGBT community to mobilize.

In this context, EU legislation can also play such a guiding role. It is well known that an ambitious proposal for a "horizontal" Directive against discrimination was presented by the European Commission in 2008, but it is still waiting for adoption in the Council of the EU. This draft Directive aims to protection from discrimination on grounds of age, disability, religion and

sexual orientation (though not explicitly on the basis of gender identity) in social protection, education, health and access to goods and services, including housing.

I would like to urge the Council of Europe Member States which are also Member States of the European Union to adopt this Directive, which would be fully in line with Commissioner Hammarberg's recommendation to all the states to adopt comprehensive non-discrimination legislation. It is true that the States which object to the adoption of the draft Directive are not doing so out of resistance to rights of LGBT persons, but on the grounds of "subsidiarity", i.e., the principle that such protection is better achieved on national level without having an overarching legal instrument at EU level.

Commissioner Hammarberg's Report - with its maps which demonstrate the very uneven protection of rights of LGBT persons even among States which are also Members of the EU – could provide a powerful argument against the "subsidiarity" principle. It shows the EU Member States with considerably weaker levels of protection would significantly benefit from the adoption of the draft Directive; relying on "subsidiarity" will hardly accelerate their development in this respect.

Conclusion

In conclusion, Commissioner Hammarberg's Report represents a direct challenge to all those politicians and other duty-holders in Europe who themselves make homophobic statements – but also to those who pay lip service to equality but still regard the issue of LGBT rights as one of marginal importance. It shows that this is not a marginal issue at all. Indeed, in contemporary Europe, respect for rights of LGBT persons may be seen as a litmus test of respect for human rights in general. This is illustrated by the issue of freedom of assembly and expression, which is dealt with in detail in the Commissioner's Report. In some European countries, LGBT activists are virtually the only group in society which faces bans from the authorities and attacks from non-state actors, often followed by impunity, when trying to exercise these freedoms.

Therefore, the Office of the UN High Commissioner for Human Rights – and in particularly its Regional Office for Europe – fully and unconditionally supports Commissioner Hammarberg's recommendations. We are prepared to work with other Council of Europe bodies, with EU institutions and its Fundamental Rights Agency, with National Human Rights Institutions, Equality Bodies and civil society organizations, to make these recommendations a reality across Europe.

Thank you for your attention.