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Launch of the report
"Discrimination on grounds of sexual orientation and gender identity in Europe"

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Member states need guidance for implementing LGBT persons' human rights

Speech by Thomas Hammarberg
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Since I took up the position as Commissioner for Human Rights I have consistently raised my concerns regarding the human rights problems faced by lesbian, gay, bisexual and transgender (LGBT) persons. During my missions I have often discussed these problems with the authorities of Council of Europe member states. Last week, while visiting Serbia, I raised the question of homophobic hate crimes which still occur in the country despite encouraging jurisprudence from its Constitutional Court condemning such practices.

Generally, I have noticed that there is too little objective data and information available to conduct a well-informed discussion on these questions. For this reason, I instructed my Office to conduct a comprehensive study on the situation concerning homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in all member states of the Council of Europe.

The study, carried out by consultants and my Office, relied on input from national experts and authorities in the member states, national human rights structures, NGOs, international organisations and many other interlocutors. Many of them are here today and I am pleased

to say that they were overwhelmingly constructive in their cooperation with the study. I would like to express my gratitude for the forthcoming exchanges of views and data.

The study involved intensive cooperation with the European Union Agency for Fundamental Rights (FRA), which kindly shared its research and data on the 27 member states of the European Union. UNHCR and OSCE/ODIHR made important contributions as well. Today we launch the report of this research which provides an overall picture of the socio-legal position of LGBT persons in Europe.

As a point of departure this report is built on the existing human rights standards. They are found in international and European human rights instruments including the jurisprudence of the European Court of Human Rights and United Nations treaty bodies, and, for the EU member states, the Court of Justice of the European Union. As I have stressed on many occasions, this report does not intend to create *new* or *special* rights for LGBT persons. It simply builds upon the notion of the universality of human rights for all persons, irrespective of someone's sexual orientation or gender identity.

Unfortunately, the report demonstrates that these agreed human rights standards are not consistently applied in the case of LGBT persons. Let me highlight five obstacles to the full enjoyment of human rights by LGBT persons:

1. LGBT organisations have been denied registration or are banned from organising peaceful meetings and demonstrations in some member states of the Council of Europe.
2. Many LGBT persons have fled to Council of Europe member states from countries where they risk being tortured or executed because of their sexual orientation or gender identity. Not all member states recognise persecution on grounds of sexual orientation or gender identity as a sufficient reason for granting asylum.
3. LGBT persons face a high risk of becoming victims of hate crime or hate-motivated incidents. Some have died after attacks. Only very few member states recognise homophobic or transphobic violence in their hate crime legislation.

4. Homophobic and transphobic harassment in the workplace and bullying in schools can seriously affect LGBT persons' health and impede their social integration. This happens in practically all member states.
5. Transgender persons face significant problems in all areas of life, including the official recognition of their gender. In some states no legislation regulating the recognition of gender reassignment was identified. In a majority of member states transgender persons have to undergo surgery leading to infertility in order to be legally recognised. A significant number of member states requires the transgender person to be unmarried or divorced, which can leave couples without a legally recognised relationship after divorce.

Underpinning many problems LGBT persons face are deeply rooted and stigmatising stereotypes and prejudices. LGBT persons have often been portrayed as a threat to the nation, religion, and traditional notions of gender and the family. This report identified many examples of negative attitudes held by opinion shapers, religious leaders, politicians and state authorities. Inflammatory and aggressive discourse against LGBT persons, occasionally amounting to incitement to hatred, also takes place in many member states. It is of particular concern that such discourse rarely receives official condemnation.

Homophobic and transphobic attitudes have been found in all member states, although there are significant variations among the countries. Biased, outdated and incorrect information on what constitutes sexual orientation and gender identity contribute to the shaping of such negative attitudes and result in stereotypical portrayals of LGBT persons in the media and schoolbooks. The root causes of discrimination, transphobia and homophobia need to be seriously addressed in order for the human rights situation of LGBT persons to improve.

This being said, we must also acknowledge that significant, albeit uneven, progress has been made over the past decades concerning the attitudes and practices towards LGBT people. The pathologisation and criminalisation of homosexuality clearly belong to the past even if some echoes remain. Equal treatment legislation is beginning to demonstrate its effects in addressing discrimination, although there are gaps in its coverage, especially as regards transgender persons.

The jurisprudence of the European Court of Human Rights has taken steady steps during the past two decades. Sexual orientation and transsexuality are clearly recognised as prohibited grounds of discrimination under Article 14 of the European Convention on Human Rights. We should also note recent jurisprudence in the field of family life. The Court has acknowledged that same-sex couples can also come under the protection of the right to respect for family life under Article 8 of the Convention. This opens up new perspectives for the recognition of the human rights enjoyed by members of LGBT families, including children.

Member states need guidance for fully implementing the human rights of LGBT persons. A strong reason for releasing this report is that it constitutes a tool for dialogue with the authorities of the member states as well as national human rights structures and civil society. I believe that this baseline study should be an incentive for further action in both legislative and policy fields. Concrete Recommendations are given in the report with this aim in mind. They cover all the thematic fields of the report.

Recent Recommendations by the Committee of Ministers and the Parliamentary Assembly have already provided the political impetus for implementing effective policies to address sexual orientation and gender identity discrimination in all member states of the Council of Europe. The Council of Europe will initiate a technical assistance programme in this field later this year. In addition, national and international monitoring is needed to measure progress in all fields covered by this report. All of this can only be successful when there is a political will to recognise that problems exist and that discrimination, transphobia and homophobia must be addressed seriously. Some member states have experience in this field and could share their good practices as highlighted in the report.

Finally, this report cannot be viewed in isolation from the wider global context. In almost 80 countries worldwide laws are in force which prohibit homosexuality. In seven countries lesbian, gay and bisexual persons may still face the death penalty because of their sexual orientation. The standards set by the 47 member states of the Council of Europe bear a direct influence on the protection afforded to LGBT persons coming from those countries where they encounter persecution, repression or even the death penalty. There is an urgent need to promote the human rights of LGBT persons in the UN system. Converging efforts by the Council of Europe, the European Union, the OSCE and the UN are essential for ensuring the full enjoyment of universal rights by LGBT persons everywhere.