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**“Thinking Globally, Acting Locally”
ILGA Europe conference**

*Statement by Thomas Hammarberg, Council of Europe Commissioner for Human Rights
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Core human rights like *freedom of assembly, freedom of expression and the right to life, liberty and security* are often not applied to lesbian, gay, bisexual and transgender (LGBT) persons. This is against the spirit of the Universal Declaration of Human Rights, which celebrates its 60 years anniversary this year.

Sexual orientation and gender identity, unlike ‘race’, gender and since recently disability, are not explicitly mentioned in any UN human rights treaty or convention. Even more so, there is a strong lobby to keep these issues out of treaties as some debates in the UN show. That is why it is crucial that European institutions, including my own Office, furthers this agenda.

In the absence of an instrument explicitly recognizing that someone’s sexual orientation and gender identity can be no reason for persecution, discrimination, humiliation - or even worse- killing of LGBT persons, we have to rely on the non-discriminatory application of the existing human rights framework. In this regard we fortunately have some good jurisprudence. On the European continent, the European Court for Human Rights has been very helpful in clarifying human rights of LGBT persons. In significant rulings, the Court decided that

- consensual sexual relations in private, between adults of the same sex, must not be criminalized;
- there should be no discrimination when setting the age of consent for sexual acts;
- homosexuals should also have the right to be admitted into the armed forces;
- same sex partners should have the same right of succession of tenancy as other couples;
- sexual orientation cannot be used as a ground to discriminate when child custody is granted.

The Court has also ruled that sex change in identity documents should be authorized for transgender persons. The Court also affirmed the right of a single lesbian mother to adopt a child as well as the right to assembly for LGBT persons (Pride marches).

Still, we also witness that the human rights of LGBT persons and *gender identity* and *sexual orientation* as grounds for discrimination are only recognised and respected in a very limited number of countries in the world. Even in some of the Council of Europe Member States LGBT persons are often excluded from protection under anti discrimination legislation. I encounter this often during my missions.

That is why it is so important that Europe sets the standards. I am in this regard worried about current discussions in some EU Member States whether to support the proposed single EC Anti-Discrimination Directive which would prohibit discrimination on the grounds of age, disability, sexual orientation, race/ethnicity and religion or belief in the areas of social protection, including social security and health care, education and access to and supply of goods and services, including housing. This would bring an end to the current hierarchy in discrimination grounds, although I remain concerned about the lack of *gender identity* being explicit part of the proposed EC Directive. My understanding is that the current EC Gender Directive *only* applies to post-operative transsexuals, which leaves approximately 90% of the transgender community not covered. This has to be clarified - all transgender persons should be protected against discrimination on the same footing as other groups.

The lack of implementation of human rights standards on a national and local level worries me most. My office receives quite a number of reports and complaints of individuals, organizations and groups, some of whom are present here today. Almost without exception, they refer to the lack of correct implementation of universal human rights on a national and local level. Some examples include:

- the persisting pattern of **freedom of assembly** being denied to gay pride march organizers (Moldova tops the list with 5 *Gay Pride marches* in a row not being 'permitted' despite a Supreme Court ruling in favour of the freedom of assembly for LGBT persons). Currently there are similar cases in Ukraine and the Russian Federation which I am closely monitoring;

- the patterns of hate crimes and hate motivated incidents against LGBT persons and the lack of appropriate response of law enforcement officials;
- cases in the Russian Federation and Turkey where LGBT organisations face denial of being registered due to not meeting 'moral' standards;
- the lack of support from National Human Rights Institutions or Ombudsperson, who do not consistently give appropriate attention to human rights violations based on sexual orientation and gender identity even if the information is available and complaints are submitted;
- lack of recognition that LGBT activists are human rights defenders; during my missions I have come across examples where mainstream human rights NGOs would not (dare to) stand up for LGBT persons, or if they do, they face aggressive response or even death threats.

Frequently, this lack of action or inappropriate response by authorities, courts or Ombudspersons goes hand in hand with intolerant speech or worse, incitement to hatred. Too often there is no counter reaction and too few people stand up against homophobia and transphobia.

I was asked to share with you a few words on my vision regarding the future: how will the human rights protection of LGBT persons in 10 years time have progressed?

I think that in 10 years time the LGBT human rights agenda will have developed immensely. Change goes slow but there is no way back. I think this particularly applies in taking forward the human rights agenda of the transgender movement. I see this as a big problem in the Council of Europe Member States. The Fundamental Rights Agency study on homophobia and discrimination based on sexual orientation and gender identity revealed that there is unawareness in many EU Member States on how to combat discrimination based on gender identity. In some States it is regarded as a form of 'sex' discrimination, in others - wrongly so - as discrimination based on sexual orientation and in again other States, there is simply no answer to this question. The problems at stake go to the very roots of what human rights are: the protection of the most vulnerable in society, the integrity of the human body and the right to be free from inhumane treatment. On November 18 I have invited 10 transgender experts from different Council of Europe Member States to inform me on the issues at stake in greater detail.

Finally, States are eager to deny that human rights violations and discrimination based on sexual orientation and gender identity exist in their territories. NGO reports are not always taken seriously. I see a big need for more and comparable data on transphobia, homophobia and discrimination based on gender identity and sexual orientation. I very much welcome in this regard the Fundamental Rights Agency's recent report on homophobia in the EU 27 Member States and I am currently investigating ways to do a parallel study extending the report-data to the 47 countries in the Council of Europe. This report is a tool for my dialogue with governments in order to bring about change: globally, locally and most importantly for each single individual whose human rights are currently violated for being lesbian, gay, bisexual or transgender.