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## **Committee on Equality and Non-Discrimination**

# **Freedom of expression for LGBT people**

**Conference organised by the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe in co-operation with the Sejm**

**Draft Proceedings**

**Sejm, Warsaw, 19 March 2013**

## PROGRAMME

8.30-9.00 Registration of participants

9.00-9.45 **Opening session**

Welcome:

- Ms Tina Acketoft (Sweden, ALDE), Chairperson of the Committee on Equality and Non-Discrimination, Chair of the Conference
- Ms Wanda Nowicka, Vice-Speaker of the Polish Parliament (Sejm)

Speakers:

- Ms Agnieszka Kozłowskiej-Rajewicz, Secretary of State, Government Plenipotentiary for Equal Treatment, Poland
- Mr Jan Jařab, Regional Representative, OHCHR Regional Office for Europe, Brussels
- Ms Ulrike Lunacek, MEP, Austria, Vice-President of the Greens/European Free Alliance (EFA) and Co-President of the EP LGBT Intergroup

9.45-10.45 **Session 1: Freedom of expression**

Speakers:

- Sir Nicolas Bratza, former President of the European Court of Human Rights
- Ms Evelyne Paradis, Executive Director of ILGA-Europe

Testimony: Ms Polina Savchenko, Acting Director, Coming Out, St. Petersburg

Debate

10.45-11.00 Coffee break

11.00-12.30 **Session 2: Freedom of assembly**

Speakers:

- Ms Finola Flanagan, Law reform commissioner of Ireland, member of the Commission on Democracy through Law (Venice Commission)
- Mr Robert Biedroń, member of the Polish delegation to the Parliamentary Assembly of the Council of Europe, Vice-Chair of the Committee on Justice and Human Rights of the Sejm

Testimony: Mr Goran Miletić, Programme Director for the Western Balkans, Civil Rights Defenders, Serbia

Debate

12.30-2.30 Working lunch

*Participants are free to join informal thematic tables, animated by experts and parliamentarians*

*Topics of the thematic tables:*

- *LGBT rights in Poland (2 tables, language: English)*
- *Anti-propaganda laws and the protection of children (languages: Russian and English)*
- *LGBT and politics: visibility, networking and political discourse (language: English)*
- *Discrimination and violence against LGBT persons: data and evidence from EU-wide research (language: English)*
- *LGBTs and family life: marriage, civil partnership and adoption (language: French),*
- *Transgender issues (language: English)*
- *Freedom of peaceful assembly in the OSCE area (language: English)*

2.30-4.00 **Session 3: Tackling homophobic speech and violence**

Speakers:

- Ms Birgitta Ohlsson, Minister for EU Affairs, Sweden
- Ms Barbora Bukovská, Senior Director for Law and Policy, Article 19
- Ms Calliope Spanou, Ombudsperson, Greece

Testimony: Ms Jasmine O'Connor, Stonewall, United Kingdom

Debate

4-4.30 **Conclusions:**

- Reporting back by the parliamentarians on the lunch discussions
- Wrapping up and recommendations by Mr Håkon Haugli, Rapporteur on tackling discrimination on the grounds of sexual orientation and gender identity

## BIOGRAPHIES OF THE SPEAKERS

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### Ms Tina ACKETOFT

Member of the Swedish delegation to the Parliamentary Assembly of the Council of Europe

Chairperson of the Committee on Equality and Non-Discrimination

<http://www.folkpartiet.se/acketoft>

Ms Tina Acketoft is a member of the Swedish Parliament and of the Parliamentary Assembly of the Council of Europe. She is a member of the Swedish People's Liberal Party and of the ALDE group.

Ms Acketoft currently chairs the Committee on Equality and Non-Discrimination. She has been rapporteur for the Parliamentary Assembly on matters including:

- *Environmentally induced migration and displacement: a 21st century challenge*

- *Georgia and Russia: the humanitarian situation in the conflict- and war-affected areas.*

Ms Acketoft is currently rapporteur for the Committee on Equality and Non-Discrimination on *So-called "honour" crimes in North Caucasus.*

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### Mr Robert BIEDROŃ

Member of the Polish delegation to the Parliamentary Assembly of the Council of Europe, Vice-Chair of the Committee on Justice and Human Rights of the Sejm

<http://www.sejm.gov.pl>

Mr Robert Biedroń is a member of the Polish parliament and one of the founders and key leaders of the Campaign Against Homophobia in Poland. This group has been one of the most successful LGBT rights groups in East-Central Europe and has developed strong advocacy and community mobilisation approaches despite a very conservative political context at the national level.

Mr Biedroń has been one of the key thinkers behind the success of the group. He also has a strong background in human rights and is well respected within the broader Polish civil society and human rights movements.

Mr Biedroń received a master of science from Warmia and Mazuria University in Poland, and is currently pursuing a PhD at the Humanistic Academy in Poland.

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### Sir Nicolas BRATZA

Former President of the European Court of Human Rights

Sir Nicolas Bratza was appointed a Recorder of the Crown Court and became a Bencher of Lincoln's Inn in 1998. In the same year he was elected as the United Kingdom member of the European Commission of Human Rights, becoming Vice-President of the First Chamber of the Commission in 1997. In 1998 he was appointed a High Court judge and elected as the first United Kingdom judge of the new, permanent European Court of Human Rights. In the same year, and again in 2001, he was elected as one of the four Section Presidents of the Court.

He was re-elected as a judge of the Court and as a Section President in 2004. In 2007, and again in 2010, he was elected as one of the two Vice-Presidents of the Court. He was elected President from November 2011 to October 2012.

Sir Nicolas Bratza is a member of the Advisory Council and former Vice-Chairman of the British Institute of Human Rights, a member of the Council of Management of the British Institute of International and Comparative Law and a member of the Editorial Board of the European Human Rights Law Review. He holds honorary doctorates from the University of Essex and the University of Glasgow.

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**Ms Barbora BUKOVSKÁ**

Senior Director for Law and Policy,  
Article 19

<http://www.article19.org/>

Since 1994, Ms Bukovská has worked with different organisations in the Czech Republic and Slovakia on cases involving equal opportunities, access to justice, the rights of prisoners, deprivation of liberty, reproductive rights and others.

In 2001, she founded the Centre for Civil and Human Rights in Kosice, Slovakia, where she led efforts to eliminate the practice of forced sterilisation of Romani women in Slovakia, as well as other human rights abuses. From 2006 to 2008, she was the Legal Director at the Mental Disability Advocacy Centre, an international organisation based in Hungary, working on the rights of people with disabilities in Europe and Central Asia.

Ms Bukovská is a member of the Czech Bar Association and the Bar Association of the State of New York, and is qualified to practice law in those jurisdictions. Within her legal practice, she has filed more than 50 cases on various issues to the ECHR and has published a number of reports and articles on a broad range of human rights.

Ms Bukovská graduated from the Law School of Charles University in Prague and earned a doctorate in law in Slovakia, and an LLM degree from Harvard Law School. In 1998 and 1999, she was a visiting scholar at Columbia University Law School in New York.



**Ms Finola FLANAGAN**

Venice Commission  
<http://www.venice.coe.int/>

Ms Finola Flanagan has been a Commissioner of the Law Reform Commission of Ireland since March 2012. The Commission is an independent statutory body whose purpose is to keep the law under review and to make recommendations for law reform so that the law reflects the changing needs of Irish society.

Ms. Flanagan graduated from Trinity College, Dublin with a B.A. (mod) Legal Science and from the King's Inns, Dublin as a Barrister at Law. She subsequently graduated from Trinity College, Dublin with a M.Sc (Mgmt) in Strategic Management. She practised at the Bar as a barrister in Ireland before joining the Office of the Attorney General where she was Director General from 1999 to 2009. Subsequently she was Co-ordinator of EU and ECHR Law in that Office Ms Flanagan has been the Irish member of the Venice Commission for Democracy through Law from 2002 to date and she has acted as rapporteur on many opinions.



**Mr Håkon HAUGLI**

Member of the Norwegian delegation to the Parliamentary Assembly of the Council of Europe. PACE's General Rapporteur on the rights of lesbian, gay, bisexual and transgender people (LGBTs)

<http://www.stortinget.no/en/In-English/Members-of-the-Storting/Members1/H/Haugli-Hakon/>

Håkon Haugli (born 1969) is member of the Norwegian delegation to the Parliamentary Assembly of the Council of Europe (Socialist Group). He is a member of the Committee on Equality and Non-Discrimination and the General rapporteur on the rights of lesbian, gay, bisexual and transgender people (LGBTs).

Mr Haugli is a member of Norway's Labour Party since 1989: among the founders of the network Lesbiske og homofile sosialdemokrater (Lesbian and Gay Socialdemocrats) in 2004, he has been its leader since 2005.

Mr Haugli is currently preparing a report on *Tackling discrimination on the grounds of sexual orientation and gender identity*.



**Mr Jan JAŘAB**

Regional Representative,  
OHCHR Regional Office for Europe, Brussels  
[www.ohchr.org](http://www.ohchr.org)

Jan Jařab was born 1965 in Hranice in today's Czech Republic. He has been the Regional Representative for Europe of the UN High Commissioner for Human Rights since January 2010.

Previously, Jan Jařab served as Member of Cabinet of Vladimír Špidla, European Commissioner for Employment, Social Affairs and Equal Opportunities (2004-2010). In this role, he was actively involved in preparing the European Commission's 2008 proposal for a horizontal non-discrimination directive as well as in launching the EU Platform for Roma Inclusion and the Ad Hoc Expert Group on Transition from Institutional to Community-Based Care (both 2009).

For almost four years (2001-2004) he served the Government of the Czech Republic as its Commissioner for Human Rights and Director of the Human Rights Division of the Office of Government.

As Commissioner, he initiated new legislation and/or policies in areas such as non-discrimination, rights of migrants, registered partnership of same-sex couples, rights of the child, rights of persons with intellectual or psychosocial disabilities, prison conditions and Roma inclusion.



**Ms Agnieszka KOZŁOWSKA-RAJEWICZ**

Secretary of State,  
Government Plenipotentiary for Equal  
Treatment, Poland  
[www.sejm.gov.pl](http://www.sejm.gov.pl)

Ph. D. Agnieszka Kozłowska-Rajewicz was elected to the 7<sup>th</sup> Sejm. She took seat in following committees: Education, Science and Youth, Health and the Family and Social Policy. She has worked on legislations in favor of reconciliation of work and family life - the so called day care law and educational law.

She established the Parliamentary Group called "Family 2030". The team monitored the acts relevant from the perspective of family policy, as well as in cooperation with the Ombudsman for Children, NGOs and a team of experts – advisers of the Prime Minister. She also worked in the Subcommittee on bioethical laws and in vitro.

She is the author of the Quota Law, providing a minimum of 35% of men and women on electoral lists. She is engaged in the activities of Congress of Women from the very beginning.

In December 2011 was appointed Government Plenipotentiary for Equal Treatment. One of her priorities for this position is to promote equality between women and men in the labor market.



**Ms Ulrike LUNACEK**

Member of the European Parliament  
Group of the Greens/European Free Alliance  
(Vice-Chair)

Ms Lunacek is a Member of the European Parliament for Austria. Born on 26 May 1957 in Austria, she was a member of the Austrian Parliament and spokesperson on spokeswoman on foreign and development policy and equality for Lesbians, Gays and Transgender Persons from 1999 to 2009.

Ms Lunacek co-chaired the European Green Party from 2006 to 2009. She is currently Vice Chair of the Group of the Greens/European Free Alliance within the European Parliament and Co-chair of the Intergroup on LGBT rights.

[http://www.europarl.europa.eu/meps/fr/97017/ULRIKE\\_LUNACEK.html](http://www.europarl.europa.eu/meps/fr/97017/ULRIKE_LUNACEK.html)



**Mr Goran MILETIĆ**

Programme Director for the Western Balkans,  
Civil Rights Defenders, Serbia  
<http://www.civilrightsdefenders.org/about-us/board-staff/#fieldoffice.pristina>

Goran Miletić started working for the Civil Rights Defenders (former Swedish Helsinki Committee for Human Rights) in 2004 as Programme Officer and later Human Rights Lawyer for the Western Balkans. His work includes co-operation and support of different human rights and minority NGOs from Serbia, Montenegro, Kosovo\*, Bosnia and Herzegovina, Croatia and Macedonia.

As a representative of Civil Rights Defenders, he was one key organizer of the conferences “Equality for sexual minorities: Justice in Balkans” that were opened many key issues both in Montenegro and Serbia.

During his work he prepared numerous reports, articles and lectures, and published in the region. His public appearance included promotion and advocacy for LGBT and minority rights as well as publishing of different analyses, articles and columns in major media in Serbia and the region.

In 2010, Mr Miletić becomes a candidate for the Equality Commissioner in Serbia, proposed by more than 250 organizations. He is member of European Commission of Sexual Orientation Law (ECSOL) and member of the Board of Heartefact Fund.

\* All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.



**Wanda NOWICKA**

Deputy Speaker of Sejm,  
Lower Chamber of the Polish Parliament, since  
October 2011  
<http://www.sejm.gov.pl/sejm7.nsf/posel.xsp?id=267>

Ms Nowicka has been an activist in the field of women’s rights and health, human rights especially sexual and reproductive health and rights for many years.

She is a co-founding member of the Federation for Women and Family Planning – pro-choice Polish NGO advocating for reproductive rights and was its President till September 2011. Ms Nowicka is a founding member of ASTRA – Central and Eastern European Women’s Network for Sexual and Reproductive Health and Rights (1999).

From 1996-2002 she served as a member of the Gender Advisory Panel of WHO’s Development and Research Training in Human Reproduction Programme. Since 2003 she has been a member of Advisory Board of Reproductive Health Matters.

Ms Nowicka is the author of many articles and papers on women’s rights, sexual and reproductive health and rights published in Poland and internationally (inter alia in Reproductive Health Matters). She contributed to SexPolitics the Reports from the Front Lines (e-book), Struggle for reproductive rights in Poland). She wrote a number of shadow reports to UN Human Rights Committee, UN Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, which contributed in issuing recommendations by respective committees recognising the violations of reproductive rights of Polish women.

Ms Nowicka has Master’s Degree in classics. In 2008, Ms Nowicka was granted the University-in-Exile Award awarded by the New School – the University in New York in recognition of the engagement in the struggle for women’s reproductive rights, both in Poland and in the international arena.



**Ms Jasmine O'CONNOR**  
Stonewall, United Kingdom  
<http://www.stonewall.org.uk/>

Founded in 1989 to campaign against the anti-gay propaganda legislation known as Section 28, Stonewall is Britain's leading lesbian, gay and bisexual equality charity. Stonewall led numerous successful campaigns to achieve legislative changes alongside campaigns that have led to an unparalleled transformation in the social attitudes towards lesbian, gay and bisexual people in Britain.

As a result Britain is now regarded as 'a beacon of gay equality'. Stonewall continues to fight to end homophobic bullying in schools and eliminate discrimination in the workplace and in health services.

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**Ms Birgitta OHLSSON**

Minister for European Affairs,  
Minister responsible for consumer and  
democracy issues,  
[www.sweden.gov.se](http://www.sweden.gov.se)  
Sweden <http://www.government.se/sb/d/12720>

Between 2002 and 2010, Ms Ohlsson was a Member of the Riksdag (the Swedish Parliament) and a member of the Board of the Swedish International Development Cooperation Agency (Sida).

From 2007 to 2010, she was the Chair of the Federation of Liberal Women. In 2007, she became a member of the National Board of the Liberal Party. She was Deputy chair of the Sweden-Israel Society, in Stockholm from 2003 to 2005.

Between 2001 and 2010, she was a member of the Board of the Swedish International Liberal Centre (SILC).

In 1998, she was the Vice Chair of Young European Federalists in Sweden. From 1996 to 1998, she was the Chair of the Association of Liberal Students, in Stockholm.

**She was named as Sweden's new EU minister on in February 2010.**

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**Ms Evelyne PARADIS**

Executive Director of ILGA-EUROPE  
<http://www.ilga-europe.org>

Evelyne Paradis is the Executive Director of ILGA-Europe. She is responsible for providing overall leadership, strategic direction and management of the organisation.

Evelyne joined ILGA-Europe in 2005. Before becoming ILGA-Europe's Executive Director, she held the position of Policy Director, coordinating the organisation's advocacy work with the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe. Among other things, she led ILGA-Europe's campaign and lobbying work on the new proposed EU anti-discrimination directive.

Prior to joining ILGA-Europe, Evelyne worked with the UN High Commission for Human Rights, the Council of Europe and human rights NGOs in Canada. She worked as a research assistant to the UN Special Rapporteur on freedom of expression and Special Representative for human rights defenders, as well as a member of the preparatory team of the World Conference Against Racism.

She also led human rights education projects for an international NGO based in Canada for over two years. Originally from Canada, Evelyne holds post-graduate degrees in history, political science and European studies from Canadian and French universities. She completed a Master's thesis on racial discrimination and citizenship in Europe.

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**Ms Polina SAVCHENKO**

Acting Director, Coming Out, St. Petersburg  
<http://www.lindedin.com/pub/polina-savchenko>

Ms Savchenko was born in 1974 in Leningrad, Soviet Union. In 1989 her family immigrated to the US. In 2007 she came back to Russia because she felt I could make a contribution to the human rights struggle in her homeland. She has been an activist of the Russian LGBT rights movement for the last 5 years.

Organised grassroots LGBT movement in Russia began in 2006, with the establishment of interregional LGBT movement "Russian LGBT Network," and picked up momentum in 2008, with the establishment of the regional LGBT organization Coming Out in St. Petersburg and other LGBT groups in the regions of Russia. Today, Coming Out is the largest grassroots LGBT organization in Russia. She was one of the group's founders, boardmember, and since 2012 she is its acting director. She is also one of the founders of the International Queer Festival, Russia's version of a pride festival, bringing 1500 visitors and media attention to issues of LGBT every year.



**Ms Calliope SPANOU**

Ombudsperson, Greece  
<http://www.theioi.org>

Athens University Professor Calliope Spanou was appointed Ombudsman in Greece on May 19, 2011 following a decision by the special electoral body of the Greek Parliament. Prior to that, she was Deputy Ombudsman from 2003.

Calliope Spanou has taught Administrative Sciences and Public Administration at the faculty of Political Science and Public Administration at the University of Athens since 1989. She also taught at the Universities of Amiens, Paris II and Versailles – Saint-Quentin-en-Yvelines and at the National School of Public Administration. In addition, she was advisor at the National Centre of Public Administration and the OECD, a member of the Steering Committee of the European Group of Public Administration, and former president of the Hellenic Political Sciences Association.

## **GUEST SPEAKERS' SPEECHES**

### **OPENING SESSION**

#### **Ms Tina ACKETOFT (Sweden, ALDE), Chairperson of the Committee on Equality and Non-Discrimination, Chair of the Conference**

Today we are going to talk about the freedom of expression for LGBT persons.

If you take away the right to express yourself, if you take away the right to gather, if you take away the right to safety, you will have removed all the fundamentals for democracy. Remove these rights for all, and you have an elected dictatorship. Remove these rights from a selected few, a group, and you have created a tyranny.

There are 47 member states in the Council of Europe. I would say that not any single of those can actually say that they are free from prejudice, that they are guaranteeing equal rights for everybody, for every citizen in their country. As politicians, we have an obligation to do that. As fellow comrades, we also have an obligation to do that.

Today we will explore the legal work, the structures and the best practices, and also hear testimonials about how these lacks of rights affect people living in Europe today.

I hope this is a day to get new examples to bring back to our countries, to all help removing or rather get these rights in order, in the right place for each and everybody.

#### **Ms Wanda NOWICKA, Vice-Speaker of the Polish Parliament (Sejm)**

Ladies and Gentlemen,

It is a great pleasure and a real honor to host this Conference in the Polish Parliament.

Today's conference is devoted to a very important issue. We are going to talk about human rights of LGBT persons and in particular their fundamental right to express their opinions. This right is in the catalog of the fundamental rights, upheld by international organizations including the Council of Europe which has been implementing the human rights standards for many years now.

Today's conference is devoted to the key issues from the point of view of LGBT people. We are going to talk about the fundamental right to express oneself. We are also going to talk about the need to fight hate speech and violence that many LGBT persons fall victims of.

I would like to express my appreciation for the LGBT communities from all over Europe. For many years now, they have been very effective in their fight for their rights. They have been organizing campaigns for tolerance and for legalization of partnerships. I am very much impressed by the campaign run by a Polish organization against homophobia. During this campaign, parents of homosexual persons supported their children and themselves also did their so-called "coming out" as parents.

I realize that LGBT persons are frequently discriminated and fall victim to violence. In Poland, this may also mean exclusion from many spheres of public life. But today, thanks to very effective activities from LGBT groups from all over Europe and despite opposition from conservatives, the rights of LGBT persons and their situation are slowly improving.

The governments of many European countries have already introduced in their legal systems many solutions that provide for the rights of the LGBT persons. In fact, the image of the LGBT persons is gradually changing and such people are more and more accepted in societies.

Poland is a country where unfortunately this process is too slow. In fact, there is so much to do in terms of the legal environment. Today we are going to talk about different projects.

For instance, in Poland, we have a heated debate on the same sex partnerships. LGBT persons do not have the right to legalize their partnerships in Poland. This means for instance that they do not have a possibility of enjoying some tax benefits. I do hope that the Polish Parliament shall introduce the necessary changes.

Another problem is the hate speech that is reinforcing homophobia. It is very much discriminatory to LGBT persons. Many times, LGBT people are subject to psychological pressure and violence at their work places and even in State institutions. The Polish Parliament is keen on fighting hate speech, which increases aggression against all minorities. I do hope that a good law will soon be adopted by the Parliament.

I hope that today's conference combined with the meeting of the equality and non-discrimination committee of the Council of Europe will be an important step to reduce discrimination against LGBT persons both in Poland and in Europe and will help us to enforce human rights. LGBT persons have the right to be fully fledged citizens of Europe. That is what I would like to declare as today's Conference opens.

### **Ms Agnieszka KOZŁOWSKA-RAJEWICZ, Secretary of State, Government Plenipotentiary for Equal Treatment, Poland**

Ladies and Gentlemen,

I am honored that I can take part in this Conference of the Equality and non-discrimination committee of the Council of Europe that is devoted to the issues of LGBT persons.

In many international but also domestic documents, we declare frequently something which seems and needs to be quite obvious: the principle of non-discrimination. We were born free and equal, and this is how we should be treated. Still, discrimination is there, it persists.

We know that respect for human rights forms the foundation of democracy. This is one of the principle tasks of any country, of any State. Poland is one of those many countries that are trying to handle discrimination and prejudice by means of legislation, and we can progress in this respect. But we can also note many initiatives that are run by private persons and civic groups. I am deeply convinced that all these activities make a lot of sense, even though it seems that change is sluggish.

Sometimes, we might think that the effects of those activities are not satisfactory. But Poland is a young democracy, and after many years of living under a communist regime which was building up a very homogeneous society without LGBT persons, we see the power of diversity. This is a discovery, a discovery which has many facets. All of a sudden, we come to realize that diversity is a huge power, under the condition that we will be able to cope prejudice, to cope stereotypical thinking about other people, provided that we will be able to come over this mental stiffness that has been instilled in so many people.

For many years now, we have been working to ensure that that every single person who lives in Poland, regardless of whether that person belongs to a mainstream or not, could be a free citizen, respected by law, by the institutions and by the social environment.

Last year, we ran a study that was commissioned by the Private Office of the Prime Minister. That Study was carried out by the Jagiellonian University. It was supposed to find out what Poles think about the discriminated and disadvantaged groups. In the beginning, the following question was addressed to different representatives of the Polish society: "what is the group of persons that you would like to stay away from?" The top answer was LGBT, which is to say that LGBT persons are the group of persons that Poles are most apprehensive of. The next question was: "What group is the most discriminated in Poland?" In the answers, again, LGBT people were on the top of the list. Another question was: "Whom should the government deal with first?" The answers were: first the government should deal with people with disabilities, with families with many children and with sick people, but LGBT people were not on the list whatsoever. It means that this is the challenge we have to face now. It shows that still, there is a high degree of prejudice, of stereotypical thinking and it seems to be a far greater problem than legislation alone.

We have to change the way we think, we have to make the society become open to these people. The people who work in those institutions that influence the way people function come from the society, so if we do not change the society, we won't be able to change the way of thinking within institutions. Institutions are there to implement the law and interpret the law.

The government has to begin with itself and this is what we have already done: last year, we ran training on non-discrimination for the government administration. We have trained 460 people. Those are people who are general directors. We have also trained the legal staff not only of central institutions but also from regional authorities. We are going to continue this training. It is necessary as it shows us how to build up tolerance. We begin with the people who are there to enforce the law but we have to work also with those who create law, with law-makers.

This study also showed other specific features of our society. Although there is some degree of prejudice and stereotypical thinking, Poland is actually changing. For instance, we asked what was the attitude of Poles to the legislation of partnership unions of heterosexual persons and non-heterosexual persons. When the question was asked about civil partnerships in general terms, the answer was that more than 60% of the society would actually support civil partnerships of heterosexual persons. 40% of the society accepts legislature of civil partnerships of non-heterosexual persons. But then, we asked a detailed question: whether same sex couples who live together should have a possibility of paying taxes together. 65% of persons answered yes. Another question was whether these persons should have full access to their medical documentation and visit each other in hospitals. Again, 65% of the society said yes. Once we start asking about matters of everyday life, the level of acceptance is much higher.

It shows that still, there is a lot of work to be done, but this work is being done now by NGOs, and also by government institutions. In the years to come, this will be translated into a very high degree of acceptance for LGBT persons and these problems will finally be solved.

As far as legislation activities are concerned, you have already heard about our failed attempt to provide for civil partnerships. Civil partnership issues were first handled by the previous parliament, however only at the level of parliamentary committees. This year we have already seen three drafts of acts on civil partnerships launched in the committees, but the lower house did not agree to continue this discussion. But I do hope that this Parliament will finally be able to discuss this question in the plenary.

Yet another legislative initiative is already being discussed in the mass media and in the general public. Yesterday, for instance, a study was published: the acceptance of LGBT people is already at the level of 47%, which is much higher than several months ago. The general attitude is gradually changing.

I am deeply convinced that the involvement of Poland in many different international initiatives the objective of which is to respect the rights of LGBT persons, but also the involvement of Poland in the newest initiatives that handle the issue of gender identity will help us to generate better legislation both in Poland and in Europe – This is how we will be able to provide for a still high level of acceptance for LGBT persons.

### **Mr Jan JARAB, Regional Representative, OHCHR Regional Office for Europe, Brussels**

It is both an honour and a pleasure for me to be here with you today, and I would like to thank the organizers for inviting me to represent the Office of the United Nations High Commissioner for Human Rights at this event. Please allow me also to express our Office's deep appreciation of the role of the Council of Europe in general and on this issue in particular. Our Office regards former Commissioner Thomas Hammarberg's Report on Discrimination on grounds of sexual orientation and gender identity in Europe as a landmark, and welcomes the new report by Mr Håkon Haugli.

The struggle for equal rights of LGBT persons is one of the most important human rights challenges in the world today. It is also one of the most difficult issues, as shown by the following quotation:

*“The spread of homosexuality is a threat to national security, as it leads to the epidemic of HIV/AIDS and destroys the institution of family and can cause a demographic crisis. ... Some media, contrary to the interests of society and state, form a tolerant attitude to such a phenomenon as same-sex sexual relations. It is known that any form of sexual depravity in society always leads to major social, economic and epidemiological problems. Given the above, to counter the propaganda of homosexuality and to ensure the legal framework which promotes high morality of [our] society, adoption of this bill is needed.”*

The quote is from the explanatory memorandum to the draft law of Ukraine which went through the first reading in Parliament. It prohibits so-called “promotion of homosexuality” in print media, TV and radio broadcasting and includes amendment of the Criminal Code in which the importation, making or distribution

of works that “propagandize homosexuality” is punishable by deprivation of liberty for a term up to three years. If repeated or committed by a group of persons upon their prior conspiracy, it is punishable by imprisonment of three to five years.

I hope you will agree with me that the quote speaks volumes - for itself - even without analysing how many prejudices, misconceptions and factual errors are concentrated into these few phrases and how absurd it is to identify tolerance as a societal evil. But it also provides a sign of hope when it assaults these media for their “tolerant attitude to such a phenomenon as same-sex sexual relations”; this tells us how wrong and unfair it would be to characterize a society with such media as a whole as intolerant.

Societies are not homogenous in this respect. It is only fair to say that prominent politicians have expressed prejudiced views even in States which have legal protection against discrimination on the grounds of sexual orientation and recognize same-sex relationships. For instance, in 2011, when the first ever Gay Pride event took place in Prague, Czech Republic, several high-ranking politicians made homophobic statements.

Let me now turn to a rather different quote:

“In a number of countries, including Ukraine, draft laws have been proposed that would criminalize public discussion of homosexuality – potentially making meetings such as this one illegal. I deplore these kinds of measures wherever they are introduced. They threaten basic rights, feed stigma and lead to more abuse.”

The author of this statement is UN Secretary-General Ban Ki-moon, and he said it at an anti-homophobia event at UN Headquarters on 11 December 2012. To paraphrase the Secretary-General this conference, too, could be regarded as an illegal exercise in what the Ukrainian draft law labels as “homosexual propaganda”.

Similar legislation has already been introduced in six regions of Russia. On 25 January, the lower chamber of the Russian Duma adopted at first reading a Draft Federal Law which seeks to make so-called “propaganda of homosexuality among minors” a legal offence.

As the UN High Commissioner for Human Rights, Navi Pillay, emphasized in her speech in Brussels at the European Commission’s seminar on discrimination and development on 1 June 2012, the growing efforts to ban or criminalize so-called “propaganda” or “promotion of homosexuality” in some States are a particular source of concern to her because they make open discussion of matters related to sexual orientation impossible, particularly in schools or in the media, under the guise of protection of children etc.

The High Commissioner has always addressed the issue of equal rights of LGBT people very openly and – considering how contentious this issue remains in many parts of the world – also courageously. Few other issues have generated so much misunderstanding and indeed accusations of being merely a European or Western imposition on the rest of the world. Some non-European States continue to oppose equality for persons on grounds of sexual orientation as an alleged European import. Interestingly enough, within Europe itself, we see politicians in some States opposing equality for LGBT as a foreign import while they proudly identify themselves as Europeans, and even as defenders of European values, and claim a moral high ground.

The High Commissioner has always very clearly rejected so-called “cultural reasons” as justification for continuing anti-LGBT discrimination. For instance, she has pointed out that if legislating against such discrimination was possible in South Africa, it is clear that intolerance against LGBT persons cannot be labelled as an “African value”, and similar advances can surely be achieved also in other African countries. What it requires – everywhere - is political leadership and courage to confront prejudice rather than to use it as a pretext for inaction, let alone as a pretext for action which further stigmatizes and criminalizes the LGBT community.

In this context, the High Commissioner has also repeatedly pointed out that just a few decades ago, discrimination against LGBT persons was enshrined in law in many of the same European States where the law now protects them from discrimination and indeed where registered partnership or even same-sex marriage are now part of the legal order. She recalled that a well-known example of a law against “promotion of homosexuality” emanated from the United Kingdom, where the Conservative Government introduced such a measure in 1988 (the “Section 28” of a local government law that prevented public money being spent to disseminate materials promoting homosexuality). It is telling of the progress made by the United Kingdom in this respect that the current leader of the British Conservative Party, PM David Cameron, has formally

apologized to Britain's LGBT community for the law, which had been repealed in 2003. And there are many other countries, in Western as well as Eastern Europe, where progress against prejudice, towards tolerance and equality, has been made (despite considerable resistance) – our host country, Poland, being a particularly encouraging case in the point.

Therefore, I believe it is important to emphasize that this is not an issue of a clash of cultures between a global North and South, or even between a European West and East, but an issue of overcoming a shared historic legacy of prejudice and intolerance. In that process, some societies have been faster than others – often those from the same cultural area.

The issue of LGBT rights has been one of the long-standing concerns of United Nations human rights treaty monitoring bodies and special procedures, which had been addressing different aspects of violence and discrimination against LGBT persons for some two decades. Moreover, there has recently been considerable progress in the area of tackling homophobic prejudice on the international scene.

In March 2011, the Human Rights Council adopted a groundbreaking, truly historic resolution on this issue, in which it requested the Office of the UN High Commissioner for Human Rights to prepare a report on “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.”

The High Commissioner's subsequent report – presented exactly a year ago - showed that violence and discrimination against LGBT individuals remained pervasive in all regions of the world (though to differing degrees), and often reflected in national laws, and in customs and practices. It showed that the situation in Europe is among the most advanced, but also – as demonstrated in considerably more detail by the aforementioned report of Commissioner Hammarberg – that Europe also faces many important challenges. Bans on Gay Prides which restrict the freedom of assembly (in Moldova, Serbia and various other countries) and expression and, above all, restrictions of freedom of speech through laws aiming at prohibiting so-called “promotion of homosexuality” are among the most serious of these problems.

The panel debate after the presentation of the High Commissioner's report in Geneva last year showed that there was still a lot of resistance in some regions of the world – some delegates even walked out - but the overall message was positive: There is a growing number of States which are committed to full equality for LGBT persons, including non-European ones, particularly in Latin America (which is now sharing the lead on this issue), but also, though to a lesser degree, in other parts of the world.

Therefore, please let me conclude by expressing my strong personal conviction that what we are witnessing is a shared narrative of progress – uneven progress, surely but inexorable progress across the world, nonetheless. And it would be a real setback if in some States, legislation would cement the most repressive tendencies which exist in their societies, thus silencing the debate through threats of criminalization.

It is our joint task – of the United Nations and its Human Rights office, of the Council of Europe, of Governments and civil society – to engage with those concerned and persuade them that this would be indeed a very tragic development which needs to be avoided.

**Ms Ulrike LUNACEK, MEP, Vice-President of the Greens/European Free Alliance (EFA) and Co-President of the EP LGBT Intergroup**

I am glad to have been invited to share with you some insights of what we are doing at the European Parliament about issues concerning the LGBT persons, and the reasons behind it.

I would like to begin by referring to the title of our Conference: “Freedom of expression for LGBT people”. Freedom of expression is something that should not only be protected by the laws. It is also something that all societies should cherish, because to every individual, it is extremely important to live a life without fear - and that is especially true for LGBT people.

I am saying that on the basis of my own experience. I was the first openly lesbian politician in Austria in 1995, almost twenty years ago. This raised a lot of comments about how courageous I was. I personally found myself courageous at the moment when I announced it to my parents, my friends, and decided to run

for politics. But then the fear was over. Others live with fear all their lives. Even in countries inside the European Union, they are, at the moment, threatened by laws on so-called “homosexual propaganda”.

The importance of being able to live a life without fear is essential when it comes to freedom of expression, freedom of assembly and all other freedoms that we seek to ensure in this Europe. This central aspect must be considered in relation to every individual's life. Why should lesbians and gays show up at work on a Monday morning and hide who they went to the movies with on Sunday? Or why when coming back from holidays, should they not be open about the fact that they went with their same-sex partner? Why do they have to hide in so many parts of the world? That is an important aspect of the freedom of expression.

Of course, laws don't help in all aspects, but they are essential to make States protective of individuals, whoever they are. In the European Union, there is a law against discrimination in employment which every country needs to abide by. But it doesn't help people to be open about themselves all the time. I mean it doesn't help them to say openly: “yes (as a woman), I went with my female partner to the movies last night and the movie was great, let's talk about the movie and not about us”. To sum up, yes, we need laws, but we also need visibility.

Said that, I would like to explain a little bit about what we do in the European Parliament. The LGBT Intergroup, which I co-chair, is the second biggest intergroup of the European Parliament. It has 152 members, coming from twenty four countries of the European Union and from six different parliamentary groups, including the EPP and the ECR. Most of those members are straight. Like in society, only a minority is LGBT.

Through the LGBT Intergroup, we pro-actively monitor reports debated in the European Parliament and prepared by the Commission in the process of enlargement. We also ask Parliamentary questions, we write letters of protest and letters of support, inside and outside Europe. We support LGBT organizations in different pride events, whenever it is necessary. I am glad to say that I was here in Warsaw in the summer of 2010 at the Europride, and I am very happy that it was possible to hold it in Poland. There is progress.

As far as European laws are concerned, there are two important questions: the first one regards the implementation of the so-called horizontal directive which refers to non-discrimination on all grounds other than racism in the fields of services and access to services. It does not only include sexual orientation: it also refers to people discriminated because of their age, because of a handicap or a disability, political or religious views... For now, this implementation is blocked by the Council. There may be numerous reasons behind that. For example, the member states may feel that it is too expensive, or they may not want to see a lesbian couple openly renting an apartment together. We hope that with governments changing across the European Union, evolution will come soon.

The second question concerns a roadmap against homophobia. The European Parliament has repeatedly requested Ms Viviane Reding, deputy president of the Commission, to elaborate it. Several laws have already been adopted in relation to the freedom of movement aspect, and improvement has been accomplished. For instance, there is progress for couples being recognized in some EU member States whether they are married or partnered in one of the other countries. However, this is still not good enough. We therefore need a roadmap against homophobia, which would include laws, but which would also include the call on different member States and governments to cooperate stronger with civil society.

The European Parliament in Strasbourg has adopted a broad resolution against racism, intolerance and all other kinds of hatred which includes the fight against homophobia and trans phobia. It is essential that civil society is involved in that. Without the support and the struggle of civil society's organizations, we as politicians and governments wouldn't be where we are, in the positive sense. We still need to win the fight against those very homophobic propaganda laws.

Let me finalize with a quote from Jerzy Buzek, former President of the European Parliament, Polish member of the conservative EPP and member of Solidarnosc: “Homophobia is deplorable because it aims to denigrate people and deprive them of their rights on the basis of their sexual orientation”.

It is possible to change laws and make society less homophobic, more accepting and respecting of people. It is possible, we can do it.

## **Session 1: Freedom of expression**

### **Sir Nicolas BRATZA, former President of the European Court of Human Rights**

Ladies and Gentlemen,

I am honoured and delighted to have been invited to say a few words at this important and timely Conference on freedom of expression for LGBT people.

In a Conference held in Strasbourg almost exactly a year ago on combating discrimination on the grounds of sexual orientation or gender identity across Europe, I spoke as President of the European Court of Human Rights on the progress which had been made – albeit at different speeds – in the overall direction of greater equality and deeper respect for the dignity and diversity of individual men and women. There was, as I saw it, a strong dynamic at work at all levels – national law and policy, international organisations and their laws and standards and civil society in its advocacy and campaigning roles – which had informed and guided the Strasbourg Court in its evolving interpretation of the Convention.

This was recognised by the Court itself in its important judgment in the case of *Alekseyev v. Russia*, to which I will return shortly. The Court there dismissed the respondent Government's argument that the State should be afforded a wide margin of appreciation in granting or withholding civil rights to people who identified themselves as gay men or lesbians, an argument which was founded on an alleged lack of European consensus on issues relating to the treatment of sexual minorities. The Court invoked its own ample case-law which in its view reflected a long-standing European consensus on such matters as the abolition of criminal liability for homosexual relations between adults (*Dudgeon v. the United Kingdom, Norris v. Ireland, Modinos v. Cyprus*); homosexuals' access to service in the armed forces (*Smith and Grady v. the United Kingdom*); the granting of parental rights (*Salgueiro da Silva Mouta v. Portugal*); equality in tax-matters and the rights to succeed to a deceased partners' tenancy (*Karner v. Austria*); and equalising the age of consent for homosexuals and heterosexuals (*L. and V. v. Austria*). In the field of transgender rights, the Court could have mentioned the strong trend in favour of the recognition of the new gender and right to marry which was relied on by the Court in its important judgment in *Christine Goodwin v. the United Kingdom*.

The Court of course recognised that there were still areas where such consensus had not been reached, citing adoption as an example. But here, too, the situation is evolving as the Court acknowledged in its judgment in *E.B. v. France* and, very recently, in the Grand Chamber judgment in *X. v. Austria*.

But the landscape is still very far from perfect. In his foreword to the important report on discrimination on grounds of sexual orientation and gender identity in Europe, Thomas Hammarberg, the former European Commissioner of Human Rights, noted the continued stigmatisation of many people in Europe because of their actual or perceived orientation or gender identity, which denied them universal human rights. The report highlighted among other areas of concern those which are the subject matter of the present conference - inflammatory and aggressive discourse, amounting to hatred, when LGBT persons have collectively sought to express their views or freely associate together in public demonstrations, and infringements by national authorities of their freedom of expression by obstructing or refusing to register LGBT associations or criminalising alleged homosexual "propaganda".

It is on the European Court's case-law on this latter aspect – restrictions by national authorities on freedom of expression – that I wish to focus in the few minutes allotted to me. The Court's jurisprudence concerning the protection of the freedom of expression of sexual minorities is essentially embodied in three judgments, all dealing with a specific aspect of this freedom, namely the right to freedom of assembly protected by Article 11 of the Convention – *Bączkowski and Others v. Poland* (2007), *Alekseyev v. Russia* (2010) and, most recently, *Genderdoc v. Moldova* (2012).

There were strong factual similarities between the three. In all of them the municipal authorities had banned a march or assembly by LGBT groups – in the Russian case, a Gay Pride march, a flower-laying ceremony to commemorate the victims of fascism, including gay and lesbian victims, and a picket to protest against the bans; in the Polish case, a march to alert public opinion to the risk of discrimination against sexual, national, ethnic and religious minorities; and, in the Moldovan case, a demonstration to encourage the adoption of laws to protect sexual minorities from discrimination.

In each cases, a number of similar reasons had been given for refusing the authorisation – in *Bączkowski*, the applicants' failure to submit a "traffic organisation plan" and the avoidance of possible violent clashes with assemblies which had been granted permission to demonstrate for the same day and whose aims ran contrary to the ideas and intentions of the applicants; in *Alekseyev*, the risk to public order and safety was cited, it being said that numerous petitions had been brought against the march by representatives of legislative and executive State bodies and religious denominations and that the march was likely to cause a negative reaction and protests against the participants; in *Genderdoc*, the ban was initially based on the wholly spurious ground that there was already a law in place to protect national minorities and that there was therefore no need for the demonstration. But these grounds changed during the legal proceedings brought by the applicant and were replaced by a claim that the holding of the march would endanger public order and social morality. Even this was not the ground eventually relied on by the Supreme Court, which instead invoked the fact that the applicant association had failed to give undertakings required by law in respect of assemblies.

In both the Polish and Russian cases, the sincerity of the reasons given had been undermined by strong homophobic statements made by the mayor himself, the mayor of Moscow declaring that he considered homosexuality unnatural and that he would not allow a gay pride parade to be held in any form, whether openly or disguised as a human rights demonstration; and the mayor of Warsaw announcing that he would allow "no public propaganda" about homosexuality, which was not the same as exercising the constitutional right of freedom of assembly. Where the two cases differed was in the fact that the national courts in the Polish case had found the ban to be unlawful as a matter of domestic law but had refused any remedy since the assembly had already taken place and the proceedings had therefore become devoid of purpose.

The European Court had no hesitation in finding that there had been an interference with the applicants' rights to freedom of assembly under Article 11, in each of the cases, even though in the *Bączkowski* case, the march had gone ahead despite the lack of authorisation. The Court there noted that the applicants had taken a risk in holding the march, given the official ban in force, and that the march had taken place without the presumption of legality and official protection against hostile counter-demonstrations, which were vital aspects of the effective and unhindered exercise of freedom of assembly and expression.

In the *Genderdoc* case a violation of Article 11 was conceded, a concession which the Court accepted. In finding a violation of Article 11 in the other two cases, the Court re-emphasised that the hallmarks of a democratic society were pluralism, tolerance and broadmindedness. The Court was able to base its finding of a violation of the Article in the Polish case on the ground that the ban had not been prescribed by law, as the national courts had themselves decided.

But in the *Alekseyev* case, the Court entered into the merits. It reiterated that any measures which interfered with freedom of assembly and expression, other than in the cases of incitement to violence or rejection of democratic principles, did a disservice to - and even endangered - democracy, even where the views expressed appeared shocking and unacceptable to the authorities. The Court was wholly unconvinced of the genuineness or validity of the reasons given for banning the assemblies. As to the alleged concerns for the safety of the participants and the prevention of disorder, the Court emphasised that it was the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully and that, despite the petitions which the Government claimed to have received threatening counter-demonstrations and violence if the processions went ahead, the Government had failed to carry out any adequate assessment of the risk (if any) to safety and public order.

As to the alleged threat to public morals, which the Court found to be the primary reason for the ban, the Court was unable to accept the Government's claim that the processions would have caused the level of controversy claimed, finding no evidence to suggest that the participants would indulge in sexually provocative behaviour or attack religious views. It also rejected the argument, which reflected the Mayor's view, that it was necessary to confine every mention of homosexuality to the private sphere and force gay men and lesbians out of the public eye, thereby implying that homosexuality was a result of conscious and antisocial choice. There was, in the Court's view, no scientific evidence or sociological data suggesting that the mere mention of homosexuality, or open public debate about the social status of sexual minorities would adversely affect children or "vulnerable adults" as the Government had claimed. "On the contrary", the Court said, "it is only through fair and public debate that society may address such complex issues as the one raised in the present case." It was exactly this kind of debate which in the view of the Court the applicants had sought to advance and the authorities were seeking to prevent.

Of equal, if not greater, importance than the Court's finding of a violation of Article 11 in the three cases was the fact that the Court chose to depart from the course frequently followed where a violation of a substantive Article of the Convention was found, by examining separately the complaint of discrimination under Article 14. The Court recalled its case-law in this respect that especially weighty reasons would be required to justify a difference of treatment in the intimate sphere of a person's sexual orientation. In each case, it found a separate violation of Article 14, holding that no reasonable and objective justification could be identified for what was found to be a discriminatory difference of treatment.

In the *Bączkowski* case, the Court noted that the administrative decisions did not in terms refer to a motive which could be qualified as one of the forbidden grounds of discrimination. Nevertheless, the Court stated that, while it could not speculate on the existence of motives, it equally could not overlook the strong personal opinions publicly aired by the Mayor, which opinions had been expressed at a time when a request for permission to hold the assembly was already pending before the municipal authorities. It could, in the Court's view, be reasonably surmised that his opinions could have affected the decision-making process and as a result impinged on the applicants' right to freedom of assembly in a discriminatory manner.

In *Alekseyev*, the Court similarly placed reliance on the expressed views of the Mayor, and the undeniable link between his statements and the ban, as confirming its view that the main reason for the ban was the authorities' disapproval of the demonstrations, which they considered to promote homosexuality.

In the *Genderdoc* case, it was the failure of the Government to offer an explanation for the different treatment of the applicants and other organisations which had been allowed to assemble at about the same time, as well as the Mayor's argument before the Court of Appeal that the assembly should be banned because of the opposition of Moldovan citizens to homosexuality, that led the Court to find that Article 14 had been violated.

The three cases shared one further characteristic. In each case, although time limits were set within which applications had to be made for authorisation to hold a march, procession or demonstration, the authorities were either under no such time-limits or the time-limits which were set were exceeded so that the decision was not taken until after the date on which the march was supposed to have taken place – the worst example of this was in the *Genderdoc* case where the applicants' request to hold a demonstration was finally replied to a year and a half after it had been lodged. The judicial remedies which the respondent Governments claimed were available to the applicants under domestic law were in each case rendered wholly ineffective to protect their freedom of assembly, with the result that an additional violation of Article 13 of the Convention was found.

Ladies and Gentlemen, I recognise that this brief survey of the Strasbourg Court's case-law may be said to pose more questions than it answers. The three cases were relatively straightforward on their facts and the results arrived at by the Court were, perhaps, self-evident. Undoubtedly, the issues would have been more complex had the municipal authorities been less outspoken or transparent in their hostility to homosexuality or had the reasons given for refusing authorisation been more plausible or convincing. It is by no means certain that in such a case the Court's view would have been the same. The important questions which need to be answered are whether these cases are merely the tip of a large iceberg, whether they are but mere examples of a continuing effort on the part of certain governments to frustrate the exercise by LGBT persons of their freedom of expression. And, if so, whether the national courts have taken up a more courageous stand in protecting this fundamental right than the three cases would suggest. These are questions which are better answered by those who follow me and who will speak from personal experience and I for one greatly look forward to hearing what they have to say.

### **Ms Evelyne PARADIS, Executive Director of ILGA-Europe**

Recent years have seen the introduction of, or proposals for, laws intended to prohibit so-called "propaganda for homosexuality" in a number of member states at national or local level. I'm going to summarise briefly the content of these laws or bills, and then examine them from the perspective both of human rights in general, and of their practical consequences for LGBTI people. I will concentrate on four countries, Lithuania, Moldova, the Russian Federation and Ukraine, where the legislation is furthest advanced, although proposals for such laws have been put forward in other countries.<sup>1</sup>

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<sup>1</sup> Hungary, Latvia

To start with the most positive situation: in Moldova, in early 2012, several Communist Party led towns and district councils (including Moldova's second largest city, Balti), adopted ordinances prohibiting "propaganda for non-traditional sexual orientations". While no sanctions were attached to these ordinances, they represented a serious symbolic attack on LGBT people. The good news is that the Moldovan authorities have initiated legal proceedings against these ordinances, and it seems that they have been or are in the process of being struck down. This is obviously a welcome development, as is the recent decision of Chisinau town council to authorise, for the first time ever, a demonstration supporting the rights of LGBT people.

In the Russian Federation 10 regional assemblies (The Republic of Bashkortostan, the Krasnodar, Arkhangelsk, Kostroma, Magadan, Novosibirsk, Ryazan, Samara and Kaliningrad Regions, and the City of St Petersburg) have introduced laws prohibiting "homosexual propaganda towards minors". The laws are broadly similar and provide for fines by way of punishment. In the case of St Petersburg, for example, these range from the equivalent of €125 for an individual, up to the equivalent of €12,500 for a legal entity.

Similar laws are reported to be pending in another six regional assemblies. However these may be overtaken by events, as a Bill has now been tabled in the State Duma. It received overwhelming support at first reading on 25th January 2013. 388 MPs voted for the proposal, with only one opposing it. The bill is very short. It states only that "Propaganda of homosexuality among minors is punishable by an administrative fine", and sets levels similar to those in the St Petersburg legislation. A working group of the Duma is to propose amendments to define "propaganda" and other unclear terms by 25 May 2013.

In Ukraine draft law number 0945 proposes to ban the promotion of homosexuality through the production, printing, publication or distribution of products, through the use of media, TV or radio broadcasting, and through the import, production or distribution of creative writings, cinematography or video materials. Such activities would be subject variously to fines or prison sentences of up to 5 years. On 2nd October 2012 this proposal was supported overwhelmingly at first reading, with 289 votes in favour, and none against. A second bill, No 1155, which has yet to receive a first reading, has broadly similar objectives, but includes a definition of propaganda which covers public activities that disseminate positive information about homosexuality, such as rallies, parades or demonstrations.

In Lithuania, there were attempts in 2009 to prohibit dissemination of information promoting "homosexual, bisexual or polygamous relations" through an amendment to the Law on the Protection of Minors against Detrimental Effect of Public Information. This was rejected, but a provision which is implicitly discriminatory was adopted. Article 4 (2) (16) recognises information as having detrimental effect if it "encourages the concept of entry into a marriage and creation of a family other than as stipulated in the Constitution of the Republic of Lithuania and Code of the Republic of Lithuania." Since these laws only recognise marriage between persons of a different sex, any advocacy for marriage or family rights for same-sex couples would contravene this provision.

None of the laws or proposed laws described above provides a viable definition of "propaganda for homosexuality." All therefore allow for the prosecution of almost any form of campaigning for equal rights for LGBT persons in which information is provided, whether through the media, through publications, or through marches and demonstrations.

The explanatory notes to the Russian and Ukrainian bills provide an insight into the thinking of the authors. In the case of the Russian federal bill, propaganda for homosexuality "is especially dangerous to children and youth who are not yet capable of a critical attitude to the avalanche of information that falls upon them every day". It could "harm [their] health and moral and spiritual development, as well as form misperceptions about the social equivalence of conventional and unconventional sexual relationships".

The concern that information about homosexuality can harm children is unsupported by evidence. Indeed, in the Moscow Prides case, *Alexeyev v. Russia*, the European Court of Human Rights noted that "There is no scientific evidence or sociological data at the Court's disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities' social status, would adversely affect children....".

On the contrary, the Committee of Ministers Recommendation on combating discrimination on the grounds of sexual orientation or gender identity specifically recommends that "measures should be taken ... to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should

include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials”.

In the case of Ukrainian bill 0945, although the title of the bill refers to the protection of children,<sup>2</sup> this question is almost completely absent from the accompanying Explanatory Note. Instead, we are told that "the spread of homosexuality is a threat to national security, as it leads to an epidemic of HIV/AIDS, destroys the institution of the family, and can cause a demographic crisis." This is revealing: it strongly suggests that, at least so far as the authors of the bill are concerned, it has far more to do with the expression of deep prejudices against LGBTI people than with the protection of children.

Whatever the motives of those behind these laws, they are inimical to human rights. They violate freedom of expression of LGBTI people in general, and of young LGBTI people in particular, denying them access to information which they need about their sexual orientation or gender identity. It should be noted that more than a decade ago the UN Committee on Rights of the Child emphasised the need of young LGBT people to "have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation."<sup>3</sup>

Moreover, these laws do not qualify as legitimate restrictions on freedom of expression, being impermissibly vague, failing the tests of necessity and proportionality, and constituting discrimination on grounds of sexual orientation and gender identity.

More generally, they are based on stereotyping myths, which stigmatise and endanger a vulnerable minority. Propagation of these myths exposes members of this vulnerable minority to increased discrimination and violence and encourages police and other state agents to ignore the need to protect them, or even to engage in discrimination against them.

It comes as little surprise then that these "propaganda for homosexuality" laws have been the subject of widespread criticism in international institutions. At the Council of Europe the Committee of Ministers, the Parliamentary Assembly, the Commissioner for Human Rights<sup>4</sup> and Secretary General<sup>5</sup> have all expressed serious concern, as has the European Parliament. For example, on seventh of March 2013 the Committee Ministers, in a Decision on the execution of judgment of the Alexeyev versus Russia case, expressed serious concerns at the federal "promotion of homosexuality" bill, and considered that such a law could raise serious questions as to the compliance by the Russian Federation with the judgment of the Court in that case.<sup>6</sup>

These laws have also been challenged at the United Nations. In the case of Irina Fedotova v. Russia, which involved the prosecution of a human rights defender under the Ryazan regional law, the Human Rights Committee found the Russian Federation in breach of the freedom of expression and non-discrimination articles of the International Covenant on Civil and Political Rights. She had displayed posters promoting tolerance towards homosexuality near a local school.

At the start of February 2013 four UN Special Rapporteurs, on freedom of expression, human rights defenders, cultural rights, and the right to health, jointly called on the Duma to drop the propaganda of homosexuality bill.

Lastly, in December 2012 UN Secretary-General Ban Ki Moon "[deplored] these kinds of measures wherever they are introduced. They threaten basic rights, feed stigma and lead to more abuse."<sup>7</sup>

This last sentence sums up the experience of our member organisations in the countries. A recent report highlights growing numbers of attacks by neo-Nazi and nationalist groups in Ukraine targeting LGBTI related events. The first attempt to hold a pride event in Ukraine in May 2012 was cancelled after the police claimed they could not protect participants from potential violence. Following a press conference by the organisers to

<sup>2</sup> The Bill is entitled "Draft Federal Law No. 0945 – On Introduction of Changes to Certain Legislative Acts of Ukraine – Regarding Protection of Children's Rights in the Safe Information Sphere".

<sup>3</sup> *UN Committee on the Rights of the Child - UK Concluding observations, October 9, 2002.*

<sup>4</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1953861&Site=DC>

<sup>5</sup> [http://hub.coe.int/en/web/coe-](http://hub.coe.int/en/web/coe-portal/press/newsroom?p_p_id=newsroom&_newsroom_articleId=1170096&_newsroom_groupId=10226&_newsroom_tabs=newsroom-topnews&pager.offset=0)

[portal/press/newsroom?p\\_p\\_id=newsroom&\\_newsroom\\_articleId=1170096&\\_newsroom\\_groupId=10226&\\_newsroom\\_tabs=newsroom-topnews&pager.offset=0](portal/press/newsroom?p_p_id=newsroom&_newsroom_articleId=1170096&_newsroom_groupId=10226&_newsroom_tabs=newsroom-topnews&pager.offset=0)

<sup>6</sup> <https://wcd.coe.int/ViewDoc.jsp?id=2039741&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

<sup>7</sup> <http://www.un.org/sg/statements/index.asp?nid=6504>

announce this, two of the organisers were attacked. The police failed to identify the suspects, despite the existence of video recordings of the attack, and failed to report the attacks as hate crimes. The following month the leader of the Kiev Pride organisers was attacked near his home, after being asked about his sexual orientation. In December 2012 neo-Nazis and nationalists verbally attacked LGBT rights protesters and tore their posters.

In Moldova legal representatives of the main LGBTI organisation challenging the Balti "propaganda for homosexuality" ordinance were harassed and intimidated on two separate occasions by religious extremists during the hearings in the Court of appeals in Balti. Police and court officials present failed to intervene.

In Russia, in January 2013, demonstrations against the federal "propaganda for homosexuality" law were attacked in Voronezh and Moscow. In Voronezh, days before the planned demonstration, the organisers started receiving threats that their rally would be disrupted. They called on the police and local authorities to prevent violence at the protest. On the day the six demonstrators found the site of their rally occupied by 200 counterdemonstrators who attacked and beat some of them, while law-enforcement officers and municipal officials looked on.

The regional laws have already been used as grounds for banning freedom of assembly events in Arkhangelsk, Kostroma and St Petersburg. Moreover, demonstrators have been prosecuted under these laws in Arkhangelsk, Ryazan and St Petersburg.

The legality of five of the regional "propaganda for homosexuality" laws has been challenged in the Russian courts – the Ryazan law before the Constitutional Court, and the Arkhangelsk, Kostroma, Samara and St Petersburg laws before the Supreme Court. All these appeals have been dismissed.

In a recent report to the Committee of Ministers on the execution of the judgment in the Moscow prides case, *Alekseyev v. Russia*, the Russian authorities, in defending their propaganda for homosexuality laws, cited the judgments of the Supreme Court in these regional cases. The Supreme Court judgments had demonstrated, it was argued, that the regional "propaganda for homosexuality" laws did not contain any "legal uncertainty", and did not prevent LGBT people "from holding public events, including public debates on the social status of sexual minorities", so long as they did not "dictate homosexual lifestyles to minors who are not able to critically estimate such information due to their age".

One of these Supreme Court judgments related to the law in Arkhangelsk and was delivered in August 2012. Only two months later, the Arkhangelsk district court upheld a ban on a demonstration whose objective was to draw attention to the social problems of LGBT teenagers. In December 2012 and January 2013 the Arkhangelsk authorities banned two further demonstrations under this law. These developments illustrate just how hollow is the defence of the Russian authorities.

### **Ms Polina SAVCHENKO, Acting Director, Coming Out, St. Petersburg**

I would like to thank you for giving me the opportunity to be here and share with you the experience of the Russian LGBT community. Last year was an uneasy time for Russian LGBT activists. One of the things that sustain our belief in things getting better is the full support of our international colleagues.

My name is Polina Savchenko. I am the member of a team of wonderful people, who have been working together for the last three years to fight discrimination. I am the director of St. Petersburg organization Coming Out, the largest grassroots LGBT organization in Russia, which is also part of a wider movement called Russian LGBT Network.

Russian society is overall very homophobic. A 2010 poll showed that 74% of Russians believe gays and lesbians are mentally defective, 39% - that homosexuals should be isolated from society, and 4% - that gays should be exterminated.

We attribute these attitudes to the lack of any kind of information or education about homosexuality and sexuality in general. It is up to LGBT organizations to provide that information. We believe that in the last three years, we have been quite successful in doing that. The so-called "propaganda of homosexuality" laws spreading all over the country can be in part viewed as a backlash of the government, trying to force us back into invisibility. These laws are aiming to take away our freedom to speak, to be open and honest about our lives.

The St. Petersburg law bans propaganda of homosexuality among minors. The same law bans propaganda of pedophilia, symbolically linking the two phenomena. "Propaganda" is defined as the distribution of information that is capable of harming health, moral and spiritual development of minors, including information about social equality of traditional and non-traditional relationships. This definition is already discriminatory in its nature. It claims that some relations are socially inferior to others. It is also based on an assumption that information about homosexuality can somehow harm minors, to which there is absolutely no scientific proof or sociological data.

The lawmakers have been claiming that propaganda of homosexuality in Russia has reached its peak. However, according to a Public Opinion Research Center recent poll, 92% of Russians have never experienced such propaganda. At the same time, 86% of Russians support propaganda laws. This means that the law takes advantage of common misconceptions and stereotypes and appeal to more basic human instincts and emotions. What people are thinking is: "we have never seen this propaganda; we are not quite sure what it is. But of course we have to protect children from anything bad, so it must be a good thing".

Today I would like to talk to you about what this law means for LGBT people in real life. A year ago, it was signed into effect by the St. Petersburg governor. From that moment, LGBT people no longer knew what was legal and what was illegal.

A year has passed, and we have firsthand experience of what this law actually means. Its first and most obvious use is to prevent any public LGBT rights activity in the streets. This year, the police has been using the propaganda law as a pretext to arrest activists for displaying rainbow flags, for any kind of signs stating "no hate crimes against gays and lesbians", and even for wearing rainbow suspenders!

The law gravest effects, however, are quite difficult to measure since they lie in the plane of out-of-court harassment and psychological intimidation. Same-sex families are one of the groups that are the most vulnerable. By raising children, these families are in theory breaking the law every day. Mr. Milonov, world-famous for authoring the infamous law in St. Petersburg, was asked on national television by two women raising a child whether they were breaking the law. His answer was – yes, and that would be a matter for social services to enforce. At that moment, all the same-sex families watching the show realized that social services could come and interfere in their families, take their children away. Our organization has been getting a lot of questions from people about where to emigrate to and how to do it. It is sad to see that once again, Russian citizens no longer believe that their home country can be safe.

Another effect of the propaganda law is that teachers can no longer promote tolerance and prevent homophobic bullying in schools. Moreover, organizations that provide psychological support to minors do not want to work with homosexual teenagers because they fear being charged with propaganda. And of course, LGBT organizations are under constant threats of being fined for anything that they do.

It is very important to mention that this law most harms the group that it is supposed to protect – young people. Today, in Russia, every fifth LGBT person attempted suicide at one point of their young lives. The propaganda law takes away information that these young people need at the most vulnerable time, when they discover their sexuality and when they need to feel that they are not alone. If this information is taken away from them, the suicide rate will only be higher.

The story I would like to share with you today is how the propaganda law serves to escalate violence and aggression in society. It serves as a green light to nationalists and right extremists to use violence, to take this law into their own hands to enforce it. A month after the law was signed into effect, we held our annual International Day against homophobia rally. In the previous years, no more than few counter-protesters showed up. That year, it was quite an eerie and scary sight. Imagine fifty people, mostly women with children, holding rainbow balloons to symbolize a world without homophobia. They are surrounded with a circle of fifty policemen, wearing helmets and bulletproof vests, holding off a crowd of a hundred men in masks, chanting in unison "we will hang you and bury you".

Some of these men explicitly referred to the propaganda law. The hatred we felt being in that inner circle was almost tangible. All of a sudden, we feared for our lives. There was also this painful realization of how diseased the society must be if we are so hated just for wanting to openly say: "we are gay, and it's ok". That was also a moment of clarity though, when understanding came of how important it is to continue to speak openly and loudly, for those thousands of people who can't do it because they have a lot to lose, because they have children to protect or because they fear for their jobs.

It seems that this awareness was not only mine or my fellow activists'. In response to the attack on their freedoms, gay people in Russia stood up for their rights like they never did before. Hundreds of people came out in the streets with us in protest. Dozens joined LGBT organizations and movements. Instead of shutting down, new LGBT groups and initiatives sprung up like mushrooms after rain. There is now an Alliance of heterosexuals for gay rights in Russia, and an ongoing online project to give voice to LGBT teenagers. Major media sources publish magazines with a rainbow on the front cover.

All throughout history, we can see how oppression leads to consolidation of a movement. I believe this is what we are witnessing in Russia today.

Gandhi said: "First they ignore you, then they laugh at you, then they fight you, and then you win." I like to think that the difficult time that we are going through right now is the third stage, the one where they fight us. With your support, I believe that sooner or later, hopefully sooner, we are going to win.

## **Session 2: Freedom of assembly**

### **Ms Finola FLANAGAN, Law reform Commissioner of Ireland, member of the Commission on Democracy through Law (Venice Commission)**

The law on the right to campaign for substantive civil rights for homosexual persons is clear. Similarly, the law is clear in relation to what are many of the substantive rights of homosexual persons.

So, the European Court of Human Rights identified in the case of *Alekseyev v Russia* in 2010 that its case-law reflected long-standing European consensus on such matters as:

- abolition of criminal liability for homosexual relations between adults (*Dudgeon* in 1981 & *Norris* in 1988);
- the right of homosexuals to serve in the armed forces (*Smith and Grady v UK* in 1999);
- the granting of parental rights (*Salguero da Silva Mouto v Portugal* in 1999); equality in tax matters (*Karner v Austria* 2003);
- right to succeed to a deceased partner's tenancy (*Karner*);
- equal ages of consent under criminal law for heterosexual and homosexual acts (*L. and V. v Austria* 2003).

The Court noted that no European consensus had been reached on other matters and, as a consequence, states have a wide margin of appreciation which nonetheless "goes hand in hand with European supervision" so as to ensure that matters are not decided arbitrarily (*Handyside v UK* 1976):

- permission to same-sex couples to adopt a child (*Fretté v France* 2002); and
- the right to marry.

In any event, as the Court pointed out in *Alexeyev* (para 84) "...the conferring of substantive rights on homosexual persons is fundamentally different from recognising their right to campaign for such rights. There is no ambiguity about the other member States' [i.e. other than the Russian Federation] recognition of the right of individuals to openly identify themselves as gay, lesbian or any other sexual minority, and to promote their rights and freedoms, in particular by exercising their freedom of peaceful assembly." Thus the European Court of Human Rights was unable to accept the Russian government's claim to a wide margin of appreciation on this issue pointing out that any restriction on the exercise of freedom of assembly must be based on an acceptable assessment of the relevant facts. However, the facts in *Alexeyev* were that "[the] only factor taken into account by the Moscow authorities was the public opposition to the event and the officials' own views on morals." (para. 85.)

Thus there is a clear right to campaign and promote the rights and freedoms of homosexuals. This is guaranteed by international conventions and in particular by the European Convention on Human Rights' guarantees contained in Articles 10 on freedom of expression and Article 11 on freedom of assembly. These articles expressly state that the only permissible restrictions on these freedoms are those set out in Articles 10(2) and 11(2). No others are permitted. The list is exhaustive.

Recent proposals from some states in Central and Eastern Europe to enact laws banning "homosexual propaganda", in particular amongst juveniles, are worrying. Certain regional laws in the Russian Federation

do not take account of international law on the issue - the recent decision in the case of *Irina Fedotova v Russian Federation* (31 October 2012) before the UN Human Rights Committee demonstrates this. Ms Fedotova was convicted under a Ryazan Region Law criminalising "public actions aimed at the propaganda of homosexuality". The UNHRC found that her conviction was discriminatory and not based on any reasonable or objective criteria for the restriction of propaganda on homosexuality while, at the same time, allowing propaganda on heterosexuality or sexuality in general. There are many similar regional laws in Russia and law and proposals in other states - Ukraine, Moldova, Lithuania and Hungary.

A Federal bill has been proposed in the Russian Duma aimed at tackling the spread of homosexual propaganda amongst minors which provides for criminal offences and significant fines. Much of the language in these laws e.g. prohibiting distribution of "any positive information about homosexuality" (Ukraine) is vague to a degree that individuals cannot know what precise conduct or expression is prohibited or in what way the authorities may decide to interpret it. Even on a cursory examination it can be seen that the laws generally discriminate against people on the basis of their sexual orientation and do not meet the requirements of necessity and proportionality thus interfering in a way that is not permitted with the freedoms of expression and assembly. Interferences with freedom of assembly almost inevitably interfere with the freedom of expression as all assemblies in the nature of demonstrations are for the purpose of conveying a message.

"Public morality" as a justification for bans on "homosexual propaganda" fail to pass essential necessity and proportionality tests as required by the ECHR and interpreted by the Court. This is amply demonstrated by the cases of *Alexeyev v Russia* and *Braczkowski v Poland*. In *Alexeyev* (para 86) the Court stated: "The mayor of Moscow, whose statements were essentially reiterated in the Government's observations, considered it necessary to confine every mention of homosexuality to the private sphere and to force gay men and lesbians out of the public eye, implying that homosexuality was a result of a conscious, and antisocial, choice. However, they were unable to provide justification for such exclusion. There is no scientific evidence or sociological data at the Court's disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities' social status, would adversely affect children or "vulnerable adults". On the contrary, it is only through fair and public debate that society may address such complex issues as the one raised in the present case. Such debate, backed up by academic research, would benefit social cohesion by ensuring that representatives of all views are heard, including the individuals concerned. It would also clarify some common points of confusion, such as whether a person may be educated or enticed into or out of homosexuality, or opt into or out of it voluntarily. This was exactly the kind of debate that the applicant in the present case attempted to launch, and it could not be replaced by the officials spontaneously expressing uninformed views which they considered popular. In the circumstances ...the Court cannot but conclude that the authorities' decisions to ban the events in question were not based on an acceptable assessment of the relevant facts...The foregoing considerations are sufficient to enable the Court to conclude that the ban on the events organised by the applicant did not correspond to a pressing social need and was thus not necessary in a democratic society."

The Venice Commission has been invited (December 2012) by the Parliamentary Assembly to provide an opinion on this issue of so-called propaganda of homosexuality in the light of the recent legislation mentioned above in some Council of Europe member States including Moldova, the Russian Federation and Ukraine. This opinion will be sent to the Commission's plenary meeting later this year for adoption and then published.

Apart from passing specific laws such as those already mentioned which seek to prohibit "homosexual propaganda", laws regulating assemblies generally, often also fail to respect the guarantees contained in international conventions. These are laws which set the rules for holding all types of assembly irrespective of the specific message sought to be communicated. The Venice Commission has adopted several opinions on such laws and the matters considered to be problematic in these laws recur, to a marked degree. These opinions are all to be found on the Venice Commission website. (Russian Federation, Ukraine, Armenia, Azerbaijan, Georgia, Serbia, Moldova and Belarus.) In addition the Venice Commission with OSCE/ODIHR has adopted Guidelines on Freedom of Peaceful Assembly for use when drafting such legislation.

These general laws regulating assemblies are just as relevant to the freedom of people to campaign for civil rights for homosexuals as laws specifically banning "propaganda of homosexuality". Mr Alexeyev's notifications were rejected pursuant to the 2004 Law on Assemblies without any recourse to specific "propaganda" law.

At its most recent plenary meeting earlier this month, the Venice Commission adopted an Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No 54 FZ of 19 June 2004

on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences. As recently as March 2012, the Venice Commission had given an opinion on the 2004 Assembly Law prior to its amendment making a set of recommendations. However the 2012 amending law failed to address these and the Venice Commission concluded that the amendments to the Assembly Act and to the Code of Administrative Offences raise a number of serious concerns and represent a step backwards for the protection of freedom of assembly in the Russian Federation.

The role of the Venice Commission is to examine the law as a whole in relation to its compatibility with international human rights standards. This contrasts with the role played by the Russian Constitutional Court when it addressed the constitutionality of those aspects of the Assembly Law challenged by a group of deputies of the Duma. In its judgment of February 2013 the Constitutional Court carefully analysed international human rights norms and discussed Article 11 ECHR and the European Court's jurisprudence and this analysis is welcomed in the Opinion. The Constitutional Court found that some of the Law's provisions contravened the Constitution of the Russian Federation.

Amongst other points, the Constitutional Court acknowledges that "...the right of freedom of peaceful assembly is not subject to any restrictions other than such as are prescribed by law and are necessary in a democratic society in the interests 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 freedoms of others" (i.e. it expressly acknowledges the limited restrictions allowed by article 11(2) ECHR). The Constitutional Court also acknowledges that the State bears an obligation to guarantee protection, including judicial protection, for civil and human rights and freedoms and notes that "...the reaction of a public authority to the organisation and holding of assemblies, rallies, demonstrations, marches and picketing must be neutral and in all cases...geared to ensuring conditions...for the lawful exercise by citizens and associations thereof of their right to freedom of peaceful assembly..." This is a thoroughly welcome general statement. However, as usual "the devil is in the detail" and as is common with former Soviet Union states, there is a lot of detail.

The freedom of assembly is a fundamental democratic right which covers all types of gathering provided they are peaceful. Whilst a regime of prior authorisation may not infringe the freedom it is not essential to have one. It must be limited to setting out the legislative basis for any interference – what is not forbidden is allowed and not vice versa. The state may be required to intervene to secure conditions which ensure exercise of the right - in the current context whether it does so is a test of whether the right is in fact guaranteed in a full and practical way for homosexuals and other who wish to campaign publicly for civil rights.

The Venice Commission has in several opinions emphasised that assembly laws should guarantee freedom of assembly and not merely regulate the conduct of public events. It is noteworthy that many of the Venice Commission's criticisms of the laws, including the Russian law, relate to their detailed provisions which place practical impediments in the way of free exercise of the right. These criticisms of the Russian Assembly Law are typical of those made in relation to all of the other assembly laws analysed by the Venice Commission. Whilst there may be acknowledgement - strong and clear at times - of the freedom of assembly in constitutions and elsewhere, the laws that are enacted to regulate the freedom do not fully reflect the presumption in favour of holding assemblies and the strictly limited reasons permitted for restricting the freedom. The assembly laws should not negate the state's positive obligation to ensure that the freedom can be effectively exercised.

In particular, blanket prohibitions which do not allow the authorities to exercise appropriate discretion and make a proportionate response by assisting in facilitating the assembly are common. Blanket rules will often be disproportionate because no consideration can be given to exceptional cases which should be treated differently. Discretion exercised by the authorities must be exercised by the authorities with due regard for the essential presumption in favour of the assembly, proportionality and non-discrimination.

The ECHR has stated (*Stankov v Bulgaria* 2001) that "sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles - however shocking and unacceptable certain views or works appear to the authorities, and however illegitimate the demands made may be - do a disservice to democracy and often even endanger it". This of course is of particular relevance to assemblies seeking to promote the civil rights of homosexuals.

Examples of regulations that can operate to interfere without a legitimate basis include:

- an onerous notification procedure which if not fully completed and filed on time will not be accepted and which, in essence, amounts to a request for permission which confers on the authorities too broad a discretion to refuse or alter the proposal which goes beyond the legitimate aims of Article 11(2);
- such a notification procedure means that spontaneous and urgent assemblies responding to unexpected events cannot take place though these are protected by article 11 ECHR;
- bans on simultaneous or counter-demonstrations though these should be facilitated as far as possible and adequate arrangements, including policing arrangements, should be put in place;
- extensive lists of banned locations which frequently include the locations most desired by demonstrators for their assembly within sight and sound of the targeted audience or at a place with special meaning for the purpose of the assembly such as close to the seats of government and public authorities, these places are banned despite the fact that the autonomy of the assembly should allow the organisers to choose the location and format that they consider most suitable and which may only be restricted for a compelling reason being one of the reasons listed in article 11(2) ECHR - being a blanket restriction even very small assemblies causing no inconvenience to the public would be prohibited in these locations;
- this list of banned places can be accompanied by a right of the authorities to propose an alternative location or time prohibiting the assembly unless agreement is reached;
- having specially designated sites for public assemblies which are in practice preferred by the authorities but which are not the sites chosen by the organisers and which are frequently far from the centre;
- making interference with traffic or access to buildings a basis for refusing permission to hold an assembly when such interference is inevitable and a blanket prohibition for these reasons amounts to a complete denial of the freedom; use of public space for an assembly is just as much a legitimate use as any other;
- having a system of appeal from the decisions of the authorities which is not completed in sufficient time so as to allow the planned event to proceed or even having time limits which necessarily result in the decision being given after the date of the planned event;
- prohibiting all assemblies at night which, amongst others, has the effect that no assembly may last longer than a few hours and never continue over a period of days;
- imposing excessive obligations on the organiser of the assembly including obligations that in fact amount to policing obligations, and this is contrary to the state's obligation to facilitate and protect assemblies; any breach by the organiser of these obligations, including a breach whereby more than the anticipated number of participants turn up, can result in criminal liability;
- suspension or termination of the assembly for even minor infringements of law and order or of the terms of the notification even though suspension or termination should be a measure of last resort and only for reasons of public safety or a danger of imminent violence; and
- having criminal penalties including fines and imprisonment for even minor breaches of assembly laws and having excessively heavy penalties generally.

“Perfect” legislation complying on its face with international standards will not result on its own in practical guarantees of this essential freedom. Police and administrative authorities in all states must be trained in both the letter and the spirit of the law and, in particular, in the permissive nature of freedom of assembly so that the onus of justifying restrictions rests on those seeking to impose them. This is not an easy task especially in countries with a tradition of very heavy regulation. It requires goodwill towards exercise of the freedom coming from the highest levels of state and government which filters down to those individuals in authority who engage directly with the people who wish to assemble and demonstrate peacefully.

**Mr Robert BIEDROŃ, member of the Polish delegation to the Parliamentary Assembly of the Council of Europe, Vice-Chair of the Committee on Justice and Human Rights of the Sejm**

This is a very important moment. Four or five years ago, we could not even dream about holding this kind of conference in the premises of the Polish parliament. A few years ago, in this same parliament, there were proposals of so-called homosexual propaganda laws. Politicians were trying to propose the same legislation that unfortunately exists now in Russia and in other neighboring countries. It is good to see how much things have changed, and in what kind of circumstances we are meeting today. I am also very grateful to Ms Acketoff for having the courage to organize this conference here, because I think that it is important to hold it in Eastern Europe.

Concerning LGBT rights, it is very clear that Europe is divided in two parts on this matter. There is a green part, with very progressive legislation. The other part still has problems with guaranteeing equal rights for LGBT people. I think we all wish that Europe will be entirely green one day.

In 1969, my LGBT activists' colleagues launched the Stonewall Riots in New York City and it was the first public assembly of LGBT people in history. They had the same dreams. Since 1969, we have lived in a world where more and more LGBT people are looking for equal rights through exercising their freedom of assembly.

Freedom of assembly allows LGBT people to build a spirit of community, to feel that they are integral part of this society. Many LGBT people around Europe who live in small cities and villages still feel that they are alone, isolated, that there is nobody who can support them.

Furthermore, freedom of assembly also shows to the media that this kind of minority exists in their country, that LGBT people also have a right to assembly and that very often this is refused. This celebration of diversity for us, for people who know that LGBT people are treated unequally, is a fundamental issue.

It also shows to the general public that there is nothing shameful or secretive about being an LGBT person. I am very glad that in his memorandum, Mr. Haugli mentioned that this is also a matter of pride. It is not a coincidence that these assemblies are called prides. We are very often ashamed of being gay or lesbian. It also helps the individuals to express their identity which for many straight people is transparent, like air.

I would like to mention the problems we face with freedom of assembly. The first one are the bans and administrative impediments. It was the case in *Baczkowski and others*, it was the case in *Alexeyev*, and many others.

Another thing is that the police is not effectively protecting this kind of assemblies. Sometimes, it is even using its power to break up a peaceful demonstration, which was the case a few years ago in Poland. There are many other examples. This is changing, but it is still an important problem.

For example, in the context of our meeting some politicians have used inflammatory language. Many of you have been mentioning Lech Walesa. I am ashamed by his words. Lech Walesa became a symbol of the homophobic speech, but unfortunately it is present all around Europe and we should feel responsible for that, talk to our colleagues. I am happy that I have many colleagues from other parties in the Polish Parliament who are open, who are today with us and they are changing this Parliament.

Another important thing is violence against LGBT people during the demonstrations. It is often perpetrated by active religious groups, extreme right wing groups and, in the case of Poland, by football supporters. Again, this violence takes place in societies with extremely high levels of intolerance and homophobia.

You should remember the context, and how brave are the Human rights defenders, participants of these kinds of events. What can we do to support these events? Through legislation. There is already legislation: we have article 11 of the European Convention on Human Rights, European Union chapter for fundamental rights, chapter 12, the legislation concerning the matter in our countries...

But we still have to take care of that: democracy and human rights are not given forever. There are always politicians who try to change it. This is happening in Ukraine, this is happening in Russia. There are politicians who say: some citizens should have access to certain rights, others shouldn't. We have responsibility, also as members of the Council of Europe, where we agreed to fight for democracy in Human Rights, to protect the society against these types of attempts. I am very proud that the previous Secretary General of the Council of Europe Terry Davis was very often interviewed publicly in the context of gay prides and always stressed that this is a core Human Right. For example, he was very much engaged in discussions with Moscow authorities. He was going to Moscow to convince the mayor of Moscow to change his mind.

We also participate in political groups in the Council of Europe. I am a member of the socialists but many of you are members of other groups. We have instruments to influence our colleagues. The Council of Europe Human Rights Commissioner is very much engaged in promoting LGBT equal rights, we should support him, help him elaborate his reports. Of course, we are members of the Parliamentary Assembly of the Council of Europe, where we can use other instruments like statements or reports when we hear about limitations of freedom of assembly, we can always react. We should support the NGOs. We should always remember that the European Court of Human Rights is a guardian and an interpreter of the European Convention. We should use these opportunities. The cases of *Baczkowski and others* and *Alexeyev* show that we can always ask for interpretation by the ECtHR.

What else can we do? We can change attitudes. As politicians, we have access to media and we should use this opportunity. We can influence the education, the mentioned lack of knowledge. We can ensure a better implementation of the rights for freedom of assembly and talk to administrations and local authorities. We can ensure better police protection through trainings for policemen.

In Poland, after Poznan riots, after Warsaw and Cracow where the counter demonstrators were attacking gay prides, police was trained for better reaction. This should be done everywhere. The police and the administration should engage into fighting hate speech and hate crimes, which are often connected to the issue of freedom of assembly. So we can change legislation related to hate crimes and hate speech; I am very happy that at the Polish Parliament we are discussing this proposal and I hope that very soon we are going to join this family of countries that protect LGBT person against hate speech.

What is also very important is to do everything to support and ensure better protection for human rights defenders. It is very often happens that like in St. Petersburg, people are not protected good enough by authorities. This concern should be addressed.

Finally, we should support civil society. When I started this statement, I said that I was very proud and that this was a historical moment. But it could never happen if the society had not changed. I would never have been elected as a member of Parliament. So we need to change the society to fully implement Article 11 of the Convention of Human Rights which says: "Everyone has the right of freedom of peaceful assembly".

**Mr Goran MILETIĆ, Programme Director for the Western Balkans, Civil Rights Defenders, Serbia**

I am glad to be able to testify today, on behalf of the international organization Civil Rights Defenders, of the attempts to provide the LGBT community in Serbia with freedom of assembly guaranteed by the Constitution and international standards that are binding for Serbia.

In the very beginning, as representatives of the international community often have objections to us activists communicating bad news only, let me tell you the good news first. Since 1994, homosexuality has not been a criminal act, and since 2000 several laws that have been adopted prohibit discrimination on the basis of sexual orientation. In the past couple of years, there have been contacts and talks with representatives of the international community and those of Serbian authorities about the respect for human rights of LGBT community. LGBT community is not absolutely invisible anymore, and in the past 5 years media have switched from extremely negative coverage of LGBT community to neutral or positive.

That is exactly where the story of all disrespect for freedom of assembly starts, not only for members of this vulnerable group, but even for those citizens of Serbia who want to publicly voice their protest against discrimination. Regarding respect for this right, Serbian authorities are acting as if Serbia were not a member state of the Council of Europe. So far, we have had five attempts to exercise the right to freedom of assembly in form of an announced assembly. I am deliberately emphasizing "announced assembly" because we have tried with unannounced rallies as well, and they mainly went without problems. Nobody knew about them in advance. However, of the mentioned five announced rallies, i.e. Pride Parades, one (in 2001) was interrupted because the police had sent out to the streets only 4-5 dozen officers who were not even informed of what was going on, despite the extremists and hooligans threats. The extremists and hooligans also did not handle the situation well, so many passers-by were attacked just under the assumption of being members of LGBT community, although they had nothing to do with Pride as a matter of fact. The epilogue was 48 detainees, out of which 5 were sentenced to up to 20 days' imprisonment, some were fined and the vast majority were acquitted.

It had been no less than 8 years until the next Pride was organized. In that year 2009, we had a great media campaign with celebrities, the newly adopted Law against Discrimination and debate on sexual orientation going on in media and in the Parliament, very serious preparations with the police who could choose both the route and the time for Pride. Despite the clear agreement, day before Pride the organizers were invited to see the Prime Minister who told them that the police were not going to protect the participants. This decision in writing was delivered to them only when they expressly asked for it, because there was an intention not to even deliver a written decision. The reason for this ban was formally security, although nobody had been arrested for preparing alleged violence. Some extremists were summoned to court as accountable for graffiti like "Death for Faggots" or "We are Waiting for You", but there has been no judgment yet and most of them

have made the whole judicial system a laughing stock. The only bright point in the judiciary is the Constitutional Court that declared the ban on Pride non-constitutional.

The experience from the only Pride that has formally taken place in Serbia (held in 2010) are as follows: we had to meet every political party and they all had to be at least neutral toward Pride. We had a similar situation with institutions that used benevolent consultations for indecent requirements: where Pride shouldn't go, what slogans were not to be hoisted, when and how not to come and leave, and many more. Both in preparations and especially during the attacks it was obvious that those who are supposed to enforce law actually very much respected the extremists who were attacking the citizens who gathered and the police protecting them. Although the police very well know who prepares violence and who the extremists are, nobody was arrested before Pride itself, and due to violence perpetrated by about 6,000 hooligans only 250 of them were arrested in the end, with charges pressed against about 100 and fewer than 40 sentenced to short imprisonment. Here's good news again – even besides the vast number of well organised hooligans, no participant was injured. The good news is also the fact that this means the police can protect Pride participants, if there is something called “political will” in Serbia. The bad news is that almost all the politicians blamed LGBT community for the demolished city, instead of those who committed violence. The bad news is also that no politician said that LGBT persons were targets of the extremists, but it turned out that they had problems with some imaginary enemy.

The afore-mentioned political will, i.e. lack of it, caused prohibition of the two coming Prides (2011 and 2012). The 2011 one was the reason the highest security body held a session – the National Security Council consisting of the President, Prime Minister and 4 most relevant persons in charge of the country's security. This body convenes twice annually, and that year they met for Pride. The result was ban on Pride and all other 16 rallies scheduled by the extremists for the same day. As you can see, the citizens who had registered a peaceful gathering several months in advance are the same to Serbia as extremists who want violence. However, as someone who had every single talk with the police representatives, local authorities and other public agencies, I can mention several important facts:

- We had held meetings with the police for months, carefully planning every detail regarding security. There was no signal that there would be a ban and we again let the police choose literally everything in order to enhance security – we only wanted to walk those 920 steps around a block on that Sunday morning. The last meeting with police top officers ended with their words “See you Sunday morning”;
- When Pride was banned the next day, I was invited to the Minister of the Interior's office. They showed me a folder they claimed to contain evidence of mass violence prepared for the streets of Belgrade. I had two questions – whether anybody had been arrested for that and whether anybody would be arrested. The police top officials kept silent. Of course, nobody has ever been arrested for that, and the same happened last year again, although the putative reason for the ban was security;
- The police promised absolute security to all diplomatic missions we had invited to the joint meeting. The security was provided by ban, not by protection;
- Bans are always decided upon by one or two persons in Serbia, regardless of the law, competences and procedures. Each year it is easy to conclude who opposes Pride, because that representative of the authorities mainly avoids meetings us despite our persistent requests to see him. For your information, those who do meet us always tell us they support us, but they cannot help us.

And, finally, what did we do when the 2011 and 2012 Prides got banned? We held the so-called “Pride within Four Walls” that was named like that because the Mayor of Belgrade sent out the message that we'd better stay within 4 walls instead of walking as the former would provoke the extremists. We were forced to stay with public figures and representatives of the international community within 4 walls of the Media Centre. After a debate, in 2011 we all went out to the street together, spilt paint in rainbow colours and put up a banner “Love. Normally.” It all lasted a couple of minutes and the police asked us to withdraw, which is what we did. We respected the decisions of national authorities even in such difficult moments for LGBT community. Besides, when we wanted to get out and announce the date for this year in the same way in 2012, after the ban and the said “Pride within 4 Walls”, the police wouldn't let us get onto the street. As you can see in the photos, we had to sit down in front of the entrance to the building and announce the date there.

Judging by the current state of play, the Government has an intention of prohibiting Pride again, because they are not interested in decisions of the Serbian Constitutional Court or those of the European Court for Human Rights in cases of respective Prides in Poland, Russia or Moldova. The Government will find excuses in its inability to protect us from the extremists who will allegedly get out because of its negotiations with

Kosovar authorities. They are going to say so, although it is quite clear that they can protect us without too much of a trouble. A high police officer has told me: "Protecting Pride is not at all more complicated than a football match. It's just that we need an order for that."

Civil Rights Defenders, just like in the past years, will be in the front lines with LGBT community in Serbia, trying to achieve the freedom of assembly the way the Council of Europe's standards guarantee it. You can help us by having your respective countries send a clear message to our authorities to ensure the respect of the right to freedom of assembly for LGBT community, and the community's representatives will be happy to see you personally sending a message of support or coming to be with us.

For the end, I will use a sentence of the European Court in case Alekseyev vs. Russia: "It is not about gay rights, but their fundamental right to demand those rights."

### **Session 3: Tackling homophobic speech and violence**

#### **Ms Birgitta OHLSSON, Minister for European Union Affairs, Sweden:**

I would like to start by quoting the Polish Nobel prize winner Wislawa Szymborska: "Let the people who never find true love keep saying that there is no such thing; their faith will make it easier for them to live and die."

My friends Jimmy and Lorris fell in love in Uganda, their home country, a country where some politicians want to introduce death penalty for being gay. Violence and assault forced them both to flee the country. After years of separation, they coincidentally met again in Stockholm. A couple of weeks ago I attended their wedding.

When we talk about LGBT rights, we are talking about love, identity and human rights. Looking at Europe today, I would say it is a twofold story. On one hand, we have individual European countries being true pioneers and human rights champions in this field, with the most progressive laws that you can find in the world today. On the other hand, we are also seeing a sad story of violence and violations of the basic human rights.

We speak about equal rights, but we see freedom of association and freedom of assembly being strongly violated on the European soil. We speak about equal rights, but we see the rights to organize and to defend the common interest being compromised on the European soil. We speak about equal rights, but we see the fundamental right of shaping one's own life being challenged again and again.

I think that what we should acknowledge and remember is that in the year of 2013, pride parades are being banned on the streets in European capitals. In the year of 2013, Europe's LGBT people are being violently harassed in their own families. Hate speech against LGBT people is widely spread on the internet. But change does not come overnight: that is the Swedish experience and the Swedish story.

When I was born in the year of 1975, homosexuality was still considered as a disease in Sweden. When I was 10, the Archbishop in Sweden advised homosexuals to live in friendship and celibacy. When I was 20, gay couples did still not have the same legal right to inherit each other's property. When I was 30, not that long ago, hate speech against LGBT people was still legal in Sweden, one of the most progressive countries in the world. This summer, I am turning 38. Hate speech is against the Swedish law, and gay people can marry in a church.

My daughter is almost 3 years old. She has friends who have two mothers or two fathers, and that is normal to her and to her friends growing up in my home town.

The Swedish army and police force proudly join the pride parades in uniforms, supported by their own authority and leadership. Freedom of expression is a cornerstone of our democratic society. Here of course, internet and social media play a crucial role as an instrument for democratic participation, and the test of democracy is the freedom to criticize. We cannot allow the freedom of expression to be undermined, not in a single area. But the freedom of speech is not the same as to write or to spread hate speech freely – that is also something that we need to acknowledge in a democratic society.

A person who spreads threats or expressions, express contempt against people because of their sexual orientation, can be sentenced for agitation in Sweden. Swedish policemen and women today are taught and trained on how to prevent, identify and investigate hate crimes against LGBT people. In the Swedish municipality of Malmö, the third largest city in Sweden, we have specially trained hate crime investigators that we are very proud of. These investigators are in close cooperation with the Swedish federation for lesbian, gay, bisexual and transgender rights (RFSL).

A NGO in Sweden recently launched the first Swedish web portal against hate speech on the internet, also including hate speech when it comes to LGBT people. In this portal, people who have been subject to hate speech can get information, support and also pursue legal claims online, to make the process much more easy.

Also, in Sweden, we face important challenges in tackling homophobia. In 2011, almost 840 hate crimes with homophobic motives were identified in police reports, and 52 hate crimes with Trans phobic motives. I believe that interaction between civil society, authorities and governments are vital elements to combat hate speech and hate crimes. For society to develop towards greater respect for human rights cooperation between all sectors is also fundamental to get real results on the long run. To be silent about the violations of human rights is a choice, and it is an unacceptable choice for all politicians, no matter what their background is.

I have a young daughter myself, and she is turning three this summer. I really hope that she will grow up in a Europe where no one questions her choice of partner, or her choice of identity or sexuality. I have a wish that my daughter grows up in a Europe where no politician, no authority, no religious group will ever stop a pride parade as we can see today. And I hope for a world where no one preaches hate against lesbians, gays, bisexual and transgender people.

I think it is also important for us gathering here today to urge all European politicians from the left to the right to get out of the closet, and do not hide behind their liberty activists. We need to support their struggle, because their struggle is all about human rights and nothing less. We are all committed to human rights, in the Council of Europe, in the European Union and in our own national governments and parliaments.

I would like to end by quoting Martin Luther King who said very wisely: "Nothing in your world is more dangerous than sincere ignorance and contentious stupidity". That is why we are all here today: because we are not ignorant.

### **Ms Barbora BUKOVSKÁ, Senior Director for Law and Policy, Article 19**

For those who are not familiar with our organization, « Article 19 » is an international freedom of expression organization, which takes its name from the article 19 of the Universal declaration of Human Rights which guarantees the freedom of expression. As a freedom of expression organization, we are obviously very concerned about numerous instances and cases of violation of the right to freedom of expression of LGBT people and communities. We are also accurately aware of the fact that LGBT people are too frequently victims of homophobic speech, Transphobic speech, or hate speech in general and victims of the incitement to hatred, discrimination, hostility and violence. In too many cases, these hate speeches result in actual violence and discrimination.

The challenge for us has been to come up with a framework which would be conducive to what freedom of expression guarantees and to protection of equality. These two rights have been very often seen as being in clash or in conflict. Article 19 has been recently very privileged to work with ILGA on a report on hate speech based on sexual orientation and gender identity which I will be very happy to share with you.

I would like to highlight two key aspects in my presentation today. First I want to remind you of the international framework for freedom of expression and equality and highlight what are the States' obligations in this respect. Because of this framework being rather confusing and conflicting, I would like to mention what is Article 19's approach to this topic.

I will start by highlighting the fact that there is no universally accepted definition of hate speech, despite its frequent use in legal and non-legal settings. Although there are some definitions in the Council of Europe's materials, this is not universally accepted and it results in a great deal of confusion. At the same time, prohibition of hate speech in domestic legislation is often overbroad, vague, and doesn't result in really addressing the underlying prejudices and discriminations that the hate speech is symptomatic of.

Under international law, the phenomenon of hate speech can be restricted on different grounds. Under article 19 - §3 of the International Covenant on Civil and Political rights, it can be restricted under the possible limitation of the rights of the others, by national security or public order.

There is also a specific obligation of the States, when the States are obliged (not only allowed) to prohibit a certain speech. That is article 20 which obliges the State to prohibit advocacy that results in incitement to discrimination, hostility and violence.

These two obligations are not transposed into domestic legislation in a uniform and consistent manner. From this results the fact that they are not interpreted consistently in the domestic case law. What we end up with is a great deal of confusion: people don't know what sort of speech is prohibited and what sort of speech is protected.

What Article 19 is proposing is certain clarity. There are two key recommendations. One set of recommendations is what we call positive legal measures. We argue that first of all, when States want to promote freedom of expression and equality jointly, the key emphasis have to come in positive policy measures. What this consists of is a variety of policies, legislation and actual campaigns. For example, we argue that it is absolutely necessary to adopt anti-discrimination legislation which also includes sexual orientation and gender identity among prohibited grounds – this is unfortunately not the case everywhere.

Moreover, we strongly recommend that there would be institutional knowledge in individual States, including in the specialized equality bodies or national human rights institutions that should monitor instances of discrimination and other forms of human rights violations of LGBT people. It is also absolutely crucial to conduct educational campaigns, particularly in schools and issues such as sports and online campaigns.

It is also very important for public officials and especially politicians to adopt the codes of conduct, and to avoid statement that would contribute to discrimination and inequality. There are good examples for this sort of codes adopted for racial discrimination, and it is very important that they will be broad for other grounds.

Article 19 also strongly recommends the importance and the role of free independent and diverse media and the importance for the media to adopt their own course of conduct and fulfill their ethical responsibilities not to promote discrimination or negative stereotypes of LGBT groups. Article 19 has been working with editors and with the media to raise awareness and push them to ethical approaches in this area.

That is just a summary of some actions which are important for the positive measures. However, as I said in the introduction, there is also a set of obligations on the States. According to it, the States are obliged to prohibit certain speech, and that speech is incitement to hatred (discrimination, hostility and violence). Unfortunately, this obligation has also been interpreted differently.

Here again, Article 19 offers a set of recommendations. What I can highlight from these recommendations is the fact that the incitement to hatred should be an intentional offence. Then, we also came up with a set of tests for reviewing incitement cases which we believe would contribute to a more uniform approach in interpretation across Europe, especially in the digital age when speech can travel across the borders. I will now highlight some key aspects of this test.

First, the incitement test should always evaluate the role of the speaker. Again, important is the role of politicians or public figures who are too often not targeted by these prohibitions because of their high importance in the society. However, their role or their influence over the audience is much higher. Then, we also need to look at the context of the speech. What is the situation of the targeted group in this context?

There is also the important aspect of the intent of the speaker, and content of the speech. It needs to be very carefully examined, this is especially important for the cases where the language of hatred is not visible in clear language of pushing or calling for violence, but can be in the statements which are ambiguous or can be appreciated differently by different audiences and sometimes might even appear rational.

We also recommend to give very close attention to the form of extent and magnitude of how the speech was distributed, including through the media, and then the likelihood and eminence of the possibility of the discrimination, violence or hostility occurring.

In terms of sanctions which can be applied, we call to give more emphasis on the fact that criminal law penalties should only be used as a last resort. From our experience, it shows that recourse to criminal sanctions doesn't give voice to the victims in these cases.

Therefore, it seems much more useful to give a way to civil sanctions, which allows victims to bring cases of discrimination, and which comes with systems such as legal aid. Furthermore, civil sanctions allow class action for the discriminated groups, who can take an active role in the case. That does not often happen in criminal cases.

It is also important to look at the variety of administrative sanctions, and this is particularly true for the media and for areas where hate speech is often demonstrative, such as sports. It is recommended to work with regulators and agencies that can impose such administrative sanctions. This is the set of recommendation that Article 19 has put together.

I should also highlight that Article 19 argues that sexual orientation and gender identity should be recognized as a ground for incitement which unfortunately is not the case under the International Covenant on Civil and Political Rights that only prohibits incitement to racial, religious and ethnic discrimination. However, Article 19 argues that sexual orientation and gender identity should be included here, because of the evolutive character of international treaties.

### **Ms Calliope SPANOU, Ombudsperson, Greece**

The Greek Ombudsman (GO) is a constitutionally established independent authority and started operations on October 1998. The mission of the GO is to mediate between the public administration and citizens, in order to protect the citizens' rights, to ensure compliance with the rule of law, and to combat maladministration. In 2005 the GO was designated as national equality body handling complaints with regard to discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation in the public sector (Human Rights Department) as well as discrimination on the grounds of gender and gender identity in both the public and the private sector (Gender Equality Department). The relevant problems involving minors are dealt with by the Children's Ombudsman, also part of the GO. All three Departments cooperate in overlapping discrimination (i.e. LGBT women or children).

Although the institution has been concerned with homophobic and transphobic speech/ harassment/ bullying, very few complaints on these issues have been received. Obviously this is not an indication of the absence of such incidents within Greek society and, therefore, the problem of underreporting is of great concern. To a great extent, it suggests a lack of public awareness as to rights and the options available for protection. The problem is significantly aggravated by the complexity of the current legal framework.

The choice made in the relevant antidiscrimination laws in Greece to delegate competencies to three supervisory bodies (the GO, the Labour Inspectorate of the Ministry of Labour, and the Equal Treatment Committee of the Ministry of Justice), two of which lack the independent nature required by the relevant EU Directives, renders very difficult both the comprehensive handling and supervising of the relevant cases and the coordination of actions for the effective promotion and implementation of the principle of equal treatment.

The regulatory scope of the national laws in force are still cause for concern in terms of the range of protection provided, and also of the interpretative hurdles having to do with specifying the content of its individual notions. The exclusion of citizenship, the restriction of the field of discrimination to specific sectors and individual areas of administrative action only, the narrowing down of notions such as "provision of services", the unclear relationship of subjective and objective data to prove the occurrence of "harassment", the fact that many forms of discrimination are of a structural nature in Greece, all illustrate the weaknesses of the legislation in force in terms of effectively handling the range and scope of discrimination in Greece.

The need for a legislative extension of the scope of implementation beyond the currently limited fields is evident. Besides, the EU legislator has had the providence of explicitly giving this very possibility to the national legislative bodies; Greece, however, has not made use of this possibility so far, at least as regards the implementation of the law (3304/2005) that incorporated the Directives (2000/48, 2000/73) in national legislation.

However, a new positive development must be mentioned. Specifically, the Penal Code was recently amended in order to recognize as aggravating factors in sentencing the existence of racial or ethnic origin,

religion or belief, disability, age, sexual orientation and gender identity motivation in crimes committed. In addition, a law is now under discussion, which will possibly include sexual orientation and gender identity as grounds of specific protection against hate speech and violence in accordance with the E.U. framework decision (Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law).

In any case and, despite the difficulties related to the existing anti-discrimination legislation, the general competency of the GO, as laid out in L. 3094/2003, often permits the GO's intervention in fields of discrimination to which national antidiscrimination laws do not apply. The joint implementation of the GO's special competency as the body promoting the principle of equal treatment and its general competence as a body protecting civil rights, renders possible the widening of the protection finally provided to persons being discriminated against.

The problem of underreporting of discrimination on grounds of sexual orientation and gender identity is obviously more complex. Both at a national and a European level, the number of complaints filed is consistently low. The limited number of such complaints suggests that those discriminated against are hesitant to expose their personal or social lives and sustain the cost that lodging a complaint possibly entails and also indicate the failure of the GO to reach these groups and to gain their trust. For this reason, the GO intends to intensify its involvement in this specific field of human rights protection, by developing specific projects and initiatives in two fronts: a) at the level of the coordination of activities between state agencies, local government and of civil society, and b) that of legislative or administrative regulatory changing or improvement which is necessary in order to achieve effective protection and awareness. The main concern is to challenge existing misconceptions and prejudices in the public administration and in public opinion, influencing the level of human rights protection and human rights ethics in the field of sexual discrimination and gender identity issues.

In fact, the GO has been trying to establish a relationship of communication and trust with the LGBT community for years. Since 2007, the GO participated in the Athens Pride –and it should be noted that we were the first public authority in Greece to have an active presence in the festival. The GO also carried out targeted campaigns in LGBT online and press media and has established contacts with LGBT NGO's in Greece. Still the number of relevant complaints remains very low.

Obviously the GO needs to become more active in providing targeted information, especially to vulnerable groups where underreporting of discrimination is evident. To this end the GO announced a strategic plan which included the creation of networks of cooperation and exchange of information, drawing on the experience gained from the successful operation of the "Roma network". However, this plan has not been implemented yet, mainly due to the serious cutbacks in the GO's budget. Given the further cutbacks expected, the GO will seek funding from European programmes in order to proceed with its implementation.

#### **General comment on sexual orientation and gender identity cases investigated by the Ombudsman:**

As regards sexual orientation issues, the GO has received limited number of cases that are actually related to harassment in education and employment. The intervention of the Institution focused on the resolving of the individual case and the immediate amelioration of the situation, indicating the relevant protection and challenging misconceptions that differentiate human rights protection due to sexual orientation.

As regards gender identity issues, the number of complaints lodged is relatively higher to those involving discrimination on the ground of sexual orientation. These have mainly involved harassment by the police, as well as difficulties of transgender people that have undergone sexual reassignment surgery in the enrollment in municipal registries following a court decision in the case.

#### **Presentation of Indicative Cases:**

##### ***Transgender bullying***

We recently established contact with the Greek Transgender Support Association with whom we are trying to build a relationship of trust, so as to combat the problem of underreporting. As a result of this contact, we are currently dealing with a complaint lodged by a transgender woman (26 years old) attending night school.

In her complaint she reports a number of serious incidents of bullying and also alleges attempts by the school itself to force her to dress as a man and, failing to do so, suggesting she moves to a different school.

The Greek Ombudsman has, already, addressed two letters to the school explaining the differences between sexual orientation and gender identity and informing them of the rights and protection provided for transgender individuals in national and international law. We have, also, asked the school to respect the student's gender identity by addressing her with her chosen name, allowing her to dress as a woman and granting her wish for use of the female toilets.

The Greek Ombudsman has met with the student, as well as, the Greek Transgender Association and the Association of School Teachers against Homophobia in order to discuss the case and identify the most effective means for further intervention. A meeting between the school's principal and members of the school's staff has been arranged, possibly with the presence of the Greek Transgender Association and the Association of School Teachers against Homophobia.

### ***Censorship of artistic expression in the National Opera***

The Greek Ombudsman received a complaint by an NGO concerning the curtailment of an erotic scene (a kiss between two men) in the official premiere, on March 2009, of the opera "Rusalka" by Antonn Dvořk, in the National Opera House.

The NGO attributed the exclusion of the specific scene to homophobic censorship. According to the complaint and the attached documents, at the opera premiere, members of the orchestra handed out a statement issued by their trade union, in which they expressed their objection to the director's artistic interpretation of the opera with regard to the homosexual representation of the central character and the inclusion of "extreme scenes".

Since discrimination on the grounds of sexual orientation is only covered in the field of employment according to EU and national antidiscrimination legislation (Council Directive 2000/78/EC and L.3304/2005), the Greek Ombudsman investigated this complaint under its general mandate as a human rights institution (specifically as a violation of freedom of expression) and its specific mandate to promote the principle of equal treatment, contributing to the creation of a culture of acceptance and understanding of diversity.

The Greek Ombudsman's investigation found that the National Opera did not intervene in the director's artistic interpretation of the opera, nor did it seek the censorship of specific scenes. However, members of the Orchestra of the National Opera (which is a separate legal entity from the National Opera) asked the director to exclude the homoerotic kiss and implied that should she not agree to this demand, they would not participate in the performance. In light of these reactions, the director and the opera singers that would have exchanged the kiss decided not to perform the contentious scene on opening night.

From the aforementioned it is obvious that, although the National Opera did not itself impose artistic restrictions, it failed to safeguard the director from the pressures that led to the censorship of her work. Thus, not only were the artist's freedom of expression and the right of the audience to enjoy an uncensored work of art undermined, but also the intolerance of homosexuality was promoted.

The Greek Ombudsman publicised the findings of this case – on its website, annual report and the media – stating that the artistic expression of homoerotic desire cannot be restricted and that the attribution of homoerotic feelings to a fictional character and the exchange of a kiss by two men neither constitute "extreme scenes", nor can they be considered offensive. It called both the Chairman of the National Opera house and the Head of the Orchestra of the National Opera to denounce the censorship that was imposed on this occasion and express their commitment in safeguarding artists' freedom of expression in the future.

### ***Censorship by the Greek national television channel***

A similar case involving censorship by the Greek national television channel (ERT) of a kiss between two male actors in "Downton Abbey", a British period drama television series, was lodged with the GO.

Following the GO intervention the specific episode, including the kiss, was repeated at a later date.

**Ms Jasmine O'CONNOR, Stonewall, United Kingdom**

Thank you Madame Chair. It is a real privilege to be here and be a part of this conference.

As mentioned in the introduction, I work for Stonewall, the British gay, lesbian and bisexual (LGB) equality charity.

We were founded in 1989 to campaign against the ban on homosexual propaganda, Section 28.

We are well-known for our effective campaigning and lobbying - major successes include:

- The repeal of Section 28 in 2003,
- Lifting the ban on lesbians and gay men serving in the military,
- Securing legislation allowing same-sex couples to adopt,
- Comprehensive civil partnership legislation,
- The inclusion in the 2010 Equality Act of 'Public Duty' which mandates public services to make sure LGB people are not discriminated against.

Most recently we have been leading the campaign for equal marriage.

We hope that by Christmas the equal marriage bill will have been passed securing full legal equality for LGB people.

These legal changes are very important. They create an environment in which LGB people can have their human rights fully met. But we know that changing laws does not always change hearts and minds. There are still homophobic bullies who have not caught up with the changing legal picture.

In schools, the workplace and in sport LGB people are frequently bullied because of their sexual orientation. So, as well as campaigning to change laws, Stonewall works to tackle homophobia in every sector of British society.

I am going to take you through a quick outline of just two areas of our work – our 'Education for All' and our 'Workplace' campaigns.

So, turning to our education programme, we have been working in the education sector to tackle homophobic bullying since 2005. Our research shows that:

- More than half of lesbian, gay and bisexual young people experience homophobic bullying;
- Almost 100 per cent of young gay people hear the phrases 'that's so gay' and 'you're so gay' at school on a regular basis;
- Only half of young gay people report that their schools say that homophobic bullying is wrong;
- A third of gay pupils who experience homophobic bullying change their plans for future education because of it.

Our education programme works at a policy level with local authorities and central government as well as directly with schools to tackle these challenges.

One of the most important components of the campaign is our Schools Champions programme which has over 200 members. Schools pay to join and work with us and each other to address homophobic bullying and promote a safe and inclusive learning environment for all children and young people.

School Champions get the resources they need to start anti-homophobic bullying work in their school. This includes DVDs, stickers, posters and best practice guides.

They also get:

- A named Stonewall point of contact for support and guidance;
- Free access to our good practice seminars to hear about and share best practice;
- A unique benchmarking tool to assist them in prioritising work around tackling and challenging homophobic bullying and language;
- Early access to ground-breaking school resources, Stonewall research and good practice guides.

In the 8 years we have been doing this work we have learnt what works, much of it is pretty obvious, but the challenge is to get it done. We know that to tackle homophobic bullying anti-bullying policies are needed and these must include homophobic bullying, policies then need to be communicated to all, staff and children. In the schools that say homophobic bullying is wrong, gay people are 60 per cent more likely NOT to have been bullied. Staff need to be trained how to respond. They then must act to challenge homophobia when it happens. Sexual orientation should be integrated into the curriculum. This helps students see and respect difference. Positive gay role models should also be used. Lesbian, gay and bisexual teachers are in a good position to fulfill this need.

This work is backed up by the UK's official schools inspection regime. Inspectors want to know what schools are doing around issues of prejudice-based bullying like homophobic bullying. A concerted and consistent approach brings results. The schools in our programme report a drop in homophobic bullying. This makes schools safer for everyone.

However homophobic bullying is not confined to school playgrounds. It is also found in the workplace. Our own research, Living Together, tells us that:

- In the five years up to 2012 2.4 million people of working age had witnessed verbal homophobic bullying in the workplace;
  - A total of 800,000 had witnessed physical bullying at work;
- Our workplace programme Diversity Champions works with over 600 employers and reaches around a fifth of British workers.

Similar to our schools programme, employers pay to join and get a range of benefits including:

- Regular 'how to' practice guides;
- A designated point of contact in Stonewall to advise and support them;
- Seminars and networking opportunities so they can learn from each other;
- Discounted rates for our regular Workplace Conferences.

This Diversity Champions programme is complemented by the Stonewall Equality Index. This is an annual competition which any British-based organisation can enter for free. Organisations are graded against a range of indicators and given a final score. The top 100 are published and the very best are publicly recognised at an awards ceremony.

The Equality Index has helped to drive up standards year on year, with organisations seeking to get into the top 100. These employers recognise not only that homophobic bullying is wrong, but that diversity is good for everyone. People perform better when they can be themselves.

Although we have made great progress in our education and workplace programmes, as well as in other sectors, there is still a long way to go.

Stonewall wants a Britain where lesbian, gay and bisexual people are empowered, protected and informed from cradle to grave. Our vision is one where a young gay person doesn't experience homophobic bullying at school because the school has used our teaching resources. Their parents are as supportive as possible because they've read our guide on how to support their gay child. They then choose a gay-friendly university using our Gay By Degree resource. They can pursue whatever career they want having seen role models from all industries in our Role Models guide. They can pick and choose who they want to work for informed by our Starting Out recruitment guide and they work in a workplace free from discrimination because their employer is a member of our Diversity Champions programme. In their personal lives they can marry and have children because of laws Stonewall has fought for. They have equal access to public services because we've worked with healthcare organisations and the police to tackle discrimination. And, when they get old and need care they can get it from providers who understand their needs having used our guides on caring for older gay people.

Thank you for listening. If anyone wants any more information, then please get in touch. All our resources can be found on our website.

## CONCLUSIONS

### **Mr Håkon HAUGLI, Rapporteur on tackling discrimination on the grounds of sexual orientation and gender identity**

It has been an overwhelmingly positive experience to be at this conference. We have had excellent speakers and a lot of food for thought on many different points.

Our chairperson, Ms Acketoft, reminded us this morning that freedom of speech and freedom of assembly are not just writings on paper but the very fundamentals of democracy.

We have also been reminded very eloquently, by many people, that all of this is about people's lives. I think Paulina Savchenko pointed out very well how same-sex families with children in St Petersburg live in constant fear because their very existence is in fact a breach of the law. It is very thought provoking. I think it gives us something to take home to work on.

My other thought is: if a country in the Council of Europe's sphere introduced a ban against Jewish propaganda or tried to introduce legislation that limited families only to be of people of the same skin color, how would we react? I imagine with considerable outrage and disgust. The same goes for this issue, it is a core to people's identity and we need to recognize it as a fundamental right issue.

I think the good news about human rights is that when improvement takes place, there is no way back. I think there is absolutely nobody in Europe today who thinks that we should reintroduce the death penalty or that women should not be able to vote. When we are successful in changing laws that create a greater respect for human rights, they actually remain.

The Croatian Prime Minister was at the Parliamentary Assembly quite recently and he was confronted with the argument about traditions. Isn't it a tradition for families to consist of a man, a woman and their children? His answer was really good. He said that it used to be a tradition for a man to beat his wife, and that it is no longer a tradition today. I think that we can all agree on the fact that not all traditions are worth preserving.

Let me end with quotes from famous politicians who inspire me. The first one is Hilary Clinton, who said that "laws that discriminate validate all other kinds of discrimination". I think it is very well put. The other person that I want to quote is Robert Biedroń who said at this conference that "a few years ago, we could not even dream about having such a conference at this parliament".