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Conference on Private and family life for LGBTI people¹

co-organised by the Danish Chairmanship of the Committee of Ministers, the Danish Parliament and the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe

Copenhagen, 2 March 2018

9.30am	Opening session
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Welcome address by Mr Michael Aastrup Jensen, Chairperson of the Danish delegation to the Parliamentary Assembly of the Council of Europe

I welcome all participants to Copenhagen. Yesterday it should have been the first day of spring. It does not show but I welcome you anyway. The topic of today's conference is private and family life of LGBTI people. This is an issue which Denmark has been looking at for some time. This conference is a key event for the Danish Chairmanship of the Committee of Ministers of the Council of Europe. In fact, the protection of the rights of LGBTI persons is one of its priorities. Denmark has a long-standing tradition in defence of LGBTI rights. In 1989 Denmark was the first country in Europe to introduce same-sex civil partnership. Furthermore, in 2012 the church introduced the possibility of marriage for same sex couples. Today LGBTI people in Denmark enjoy equal rights. Together with Amsterdam, Copenhagen is one of the most gay-friendly capitals of the world. There is a very broad political consensus in support of equal rights.

I am proud of our achievements in this field. However, there are several issues to work with: ethnic minorities with for example a Muslim background still have difficulties with accepting homosexuality. It can be very difficult to be open about one's sexual orientation in that kind of environment. It is shocking that half the LGBTI community in Europe faces discrimination. The Council of Europe plays an important role in combating discrimination and prejudice against LGBTI people in Europe. But this role still needs strengthening. A number of member States are not fulfilling their obligations. In fact, some of them are promoting discrimination against LGBTI persons. This is not acceptable. For example, I am not asking the Russian Orthodox Church to introduce same-sex marriage but I am asking the authorities, all over Europe, to guarantee equal rights, non-discrimination and safety to all their citizens, irrespective of their sexual orientation.

Ladies and gentlemen, I look forward to this conference and to the debate and I hope that we can draw conclusions that can be used in the future work of the Council of Europe.

¹ Proceedings of the conference approved and declassified by the Committee on Equality and Non-discrimination at its meeting in Strasbourg on 23 April 2018.

Opening address by Ms Karen Ellemann, Minister for Equal Opportunities, Denmark

First of all, let me thank you all very much for coming.

I am very happy to be able to use the Danish chairmanship to facilitate this very important debate: how do we provide equal rights and opportunities in private and family life regardless of sexual orientation or gender identity?

I believe that the Council of Europe is the perfect place to have this debate. For more than half a century the Council of Europe has been one of the greatest forces in the world when it comes to promoting human rights, democracy and good governance.

If we are to continue on this path, we need to continue to confront the issues at hand. And from a Danish point of view the question of equal rights and opportunities for LGBTI persons is an obvious issue. Far too often, cultural, traditional and religious values are used to justify discrimination based on sexual orientation and gender identity. Let me be clear: there is no excuse to discriminate or beat up an LGBTI-person in the name of religion, tradition or culture.

Many member States have made tremendous progress. But we still have some way to go. Our countries are different, but we face similar challenges: how do we fight gender stereotypes and homophobia? How do we make our labour markets inclusive to all regardless of sexual orientation and gender identity? And how do we make it easier for same-sex partners to share their lives and create a family?

This conference is a great opportunity for us to learn from each other, to bring out the good examples of what works.

In Denmark, we are proud that we were among the first countries to introduce legal recognition of same-sex partnerships and same-sex marriage – and more recently to remove transgender from the official list of mental illnesses. And we are equally proud that we have second-parent adoption, co-motherhood and adoption for same-sex couples. Nevertheless, we still have challenges.

This is evident when we look at the numbers. Homosexuals and transgender persons have higher rates of mental health issues. 4 in 10 are not open about their sexual orientation and gender identity in their workplace. I think it is fair to ask: how are you supposed to be happy with your job, if you cannot be honest with your colleagues about whom you share your life with?

Sadly, it is still common to shout homophobic slurs at football matches in Denmark. If we want equal opportunities for taking part in sports and associations, this homophobic culture is not acceptable. Words matter, and knowledge matters.

A part of the population in Denmark still finds homosexuality unacceptable. 1 in 5 from non-western ethnic minorities even believe that homosexuality is an illness. The consequence is enormous – a third of the LGBT-persons with non-western background have considered suicide. A third!! And to continue: 1 in 10 LGBT-persons from non-western ethnic minorities have experienced physical violence from their own family members. We need to change this and I am certain that Denmark doesn't stand alone with these challenges.

One of the most effective tools to make an impact on existing prejudices is to raise awareness. That is the first step in order to create more acceptance in our societies.

This year the Danish government will launch Denmark's first national action plan for the promotion of security, well-being and equal opportunities of LGBTI persons. In doing that, we draw inspiration from other member States who have made similar action plans. Our national action plan will fight prejudice. It will provide support services in general and, more specifically, to non-western ethnic minorities. It will raise awareness on transgender and intersex issues and it will promote openness around sexual orientation and gender identity in the labour market and in sports.

Advancing the rights and equal opportunities for LGBTI persons is equally important at the international level. Denmark will not only raise the issue here today.

Denmark is currently campaigning for a seat in the UN Human Rights Council from 2019-2021, and will use this opportunity to increase our engagement in pushing the international norms on LGBTI persons' rights. We will raise the flag high and engage in constructive dialogue across the Council membership – with likeminded

countries, but just as importantly with those countries who represent opposing views. Only through dialogue can we hope to increase our common understanding.

The history of LGBTI-rights is a history of bravery, of homosexuals and transgender persons who have been brave enough to be open about their sexual orientation or gender identity – even though they risked being victims of prejudice, harassment and even violence. These people have helped pave the way for many others. It is also a history of activists, politicians and community leaders who were brave enough to stand up for justice – even though it came at a personal cost.

We might have come a long way. But if you only take one thing with you from this conference, let it be that we need to be brave too. We need to be brave enough to challenge our own prejudice; challenge what we think of as “normal” or even “natural”; be brave enough to listen to the experiences of the people who have been victims of prejudice and hate crimes and people who have been discriminated against for being who they are. We need to be brave enough to challenge the opinions of our peers – in our communities, in our parliaments - even in our own parties.

It might be easier to sit back. But that is not how history is made.

Thank you.

Opening address by Ms Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe

Chairman, Ministers, and participants,

It is a pleasure to address you this morning on a topic that is heartening and fast-evolving.

I pay tribute to the Danish Chairmanship of the Committee of Ministers, the Parliamentary Assembly and the Folketing for taking this initiative.

Every society in human history has featured LGBTI people and communities. Their acceptance, their visibility and the words we use to identify and describe them – these things change across generations and cultural contexts. But LGBTI sons, daughters and parents have always existed, and they always will.

That is well-understood in Denmark, the first country to recognise same-sex partnerships and a nation among the most supportive of LGBTI rights. In some other countries such rights have not been recognised, and the family unit is seen through a more traditional lens.

The Council of Europe’s perspective in this area is based on human rights, underpinned by the rule of law. So when we consider the private and family life of LGBTI people, we begin with the same starting point as we do with any other issue before us: the principles enshrined in the European Convention on Human Rights – including Article 8 on the right to respect for family and private life – and the rich case law of the European Court of Human Rights. Because, to paraphrase, LGBTI rights are human rights, and human rights are LGBTI rights. Not special, not additional, but equal – for all.

The application of the Convention has resulted in the largest body of case law on sexual orientation and gender identity discrimination of any international human rights court in the world. On the decriminalisation of same sex relationships, for example, in the 1981 *Dudgeon v. the United Kingdom* case, the Strasbourg Court found that legislation classifying homosexual relations between two men as a criminal offence was a violation of Article 8.

Further cases followed and the case law of the Court was enshrined in the Committee of Ministers’ landmark 2010 Recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity. It made clear to member States that they should repeal any criminal law provisions that may result in discrimination against same-sex sexual acts between consenting adults.

But that Recommendation went further. It clarified that domestic authorities should investigate, properly, crimes where sexual orientation or gender identity is believed to have been a motive; that those responsible should be brought to justice, and that member States should take action against “hate speech” – including in the media and on the internet – aimed at inciting, spreading or promoting discrimination against LGBTI people.

Naturally, a primary concern for many LGBTI people is the legal status of their relationship with a partner. Today, 27 Council of Europe member States provide legal recognition for same-sex couples, and in recent years the Strasbourg Court has issued a series of landmark judgments resulting in the adoption of laws that do this. Similarly, our Commissioner for Human Rights and our Venice Commission have been clear that member States have a positive obligation to give legal recognition to same-sex couples.

The law has also evolved even on some of the most sensitive issues. These include access to assisted reproductive treatment and adoption. Here, the 2010 Recommendation and subsequent case law have leaned heavily on Articles 8 and 14 of the Convention, namely, the right to respect for family and private life and the prohibition on discrimination. And in these cases, the principle of the child's best interest has been applied. Consequently, in these areas, it is clear that discrimination against single women and single people respectively, on the basis of their sexual orientation or gender identity, is not in conformity with the requirements of the Convention.

Of course, member States are free to go beyond the minimum standards established. We see this for example in the growing number of countries allowing same-sex couples to adopt, legislating for equal marriage, or recognising such marriages made abroad as a Hungarian Court has done recently. But implementing the 2010 Recommendation, keeping up with case law, and ensuring the human rights to which LGBTI people are entitled – these things are not always easy or intuitive for some national authorities. That's why we provide tailored support to our member States, working with national governments and civil society alike to amend laws, build capacity and raise awareness.

Our technical assistance ranges across aspects of life impacting on LGBTI people: access to justice; protection against violence; non-discrimination in the workplace and so on. This assistance is underpinned by the excellent work of our Sexual Orientation and Gender Identity unit and our monitoring body ECRI, the European Commission Against Racism and Intolerance. Together, they are providing the framework and support that bring about real change. So too is our Parliamentary Assembly, which has a decades-long record in this area. In recent years, the Assembly has adopted landmark resolutions on the rights of transgender and intersex people – and its current work on rainbow families is of great value too.

The speed and extent of change does of course depend on the readiness of governments and societies to embrace it. There is a spectrum of views when it comes to LGBTI privacy and family life. Some countries are impatient for progress; some move forward with caution; and others still are reluctant or hostile to change. The trend among some member States of legislating for gay marriage has, for example, been met by others seeking constitutional amendments to stop the same happening there, and it is only right to recognise the recent outburst of homophobia and transphobia – and the recent deterioration of equal rights for LGBTI people – in some European countries.

At the Council of Europe we are driven by human rights and the rule of law. We cannot demand that member States move beyond these – but we have a right to insist that they abide by them. It is on this basis that the European Court of Human Rights, the Committee of Ministers and the Parliamentary Assembly have worked to strengthen private and family life for LGBTI families.

Today, when we talk of LGBTI people, we are talking about an extraordinary range of family circumstances in this diverse era in which we live. LGBTI parents are raising – and raising well – children who will in turn take their place in society and contribute to our common well-being.

They, like every family, should live free from stigma and discrimination, because everyone has a right to privacy and family life – and the dignity that comes with it.

Thank you.

Introductory address by Ms Elvira Kovács, Chairperson of the Committee on Equality and Non-Discrimination

Ministers, Deputy Secretary General, Distinguished Guests, Dear colleagues, Ladies and gentlemen,

It is a great honour and pleasure for the Assembly's Committee on Equality and Non-Discrimination to co-organise today's conference, and to benefit from the contributions and wisdom of so many distinguished speakers. I would like to thank the Minister for Equal Opportunities of Denmark and the Deputy Secretary General of the Council of Europe most warmly for their important and enlightening input this morning, and I

welcome the opportunity to hear more in a few minutes from the Irish Minister for Children and Youth, Katherine Zappone.

Sexual orientation is a profound part of the identity of each of us, and no one should be treated differently because of it. For this reason, the Assembly has called on member States to ensure that their laws prohibit discrimination on the grounds of sexual orientation, that freedom of assembly is protected for LGBTI people as for the majority of the population, and that each person, regardless of their sexual orientation, has equal access to employment, education, health, goods and services, housing and social benefits.

In my own country, Serbia, antidiscrimination law expressly prohibits discrimination based on more than twenty grounds, including sexual orientation. We have seen great strides towards protecting the freedom of assembly of LGBTI people, and towards increased diversity in political life, even at the highest levels. Our prime minister is open about her sexual orientation – although she has always stressed that what counts is her work.

In 2010, the Assembly acknowledged the importance of issues related to private and family life, such as the rights and obligations of same-sex couples with regard to taxation, next of kin status, and residence rights for couples of different nationalities. However, it left it to member States to legislate in this field. At the same time, it called on States to provide for joint parental responsibility for each partner's children, bearing in mind the interests of the children.

Since then, the European landscape in this field – the “Rainbow Map”, as some say – has changed greatly. But progress, especially in the field of private and family life, has not always been linear.

The issues on our agenda today may seem self-evident in some countries, but in others they are highly sensitive. This is why, although the Assembly has increasingly been working on the human rights of LGBTI persons, it has rarely taken a position when it comes to equality in the field of private and family life.

The debates at our conference today will help to inform the work of our Committee on its forthcoming report on “Private and family life: achieving equality regardless of sexual orientation”. As members of the parliaments of Council of Europe member States, we are keen to learn from the direct experience of those who work closely on these issues or who are affected by them in their everyday lives. And we are honoured to hold these discussions in the form of a public conference, thanks to the support of the Danish Ministry for Equal Opportunities and the Danish Parliament.

I very much look forward to a thorough exploration of the issues and to an open and respectful debate.

Keynote address by Ms Katherine Zappone, Minister for Children and Youth Affairs, Ireland

Good morning. Thank you for your warm welcome. This is first time in the Danish parliament. I am very happy to be here. Why shouldn't I be? I was able to see again some of my former colleagues of the Committee on Equality and Non-Discrimination and the Secretariat of the Committee. It is wonderful to be here and feel the energy of all the previous speakers and all of you who are gathered here.

Denmark is to be congratulated for hosting, under its Chairmanship of the Committee of Ministers of the Council of Europe, this Conference on the right to private and family life for LGBTI people. I am one of those people. I am the L. It brings a much needed focus to abuses that members of our community continue to face despite recent progress on equality. Previous speakers have already referred to some aspects of that.

Indeed it is fitting that we meet at the seat of government of the first country to formally recognise same-sex unions. Your recognition of registered partnerships in 1989 gave hope to people right across the globe. It gave hope to me and it was the spark from which the modern equality marriage equality movement has grown.

As a campaigner, a believer in social justice and as an independent minister of the Irish government it is a privilege and an honour to be here. I bring you the warmest greetings from our prime minister, Leo Varadkar.

You will be aware that Ireland joined the growing list of countries with marriage equality three years ago. Our own individual claim to fame is that we were the first sovereign State to do so by popular vote. It sparked nationwide celebrations. The images beamed around the world show people waving the rainbow flag alongside the Irish tricolour. As a country it was a huge moment. Much of the international commentary reflected on the journey which Ireland had travelled in a relatively short period of time. We went from once being a conservative, mostly Catholic country where many felt they could not be open about love to an

international beacon of hope. It is worth reflecting, remembering and recording the long road to achieve marriage equality. While the referendum results sparked the scenes of joy which I have already mentioned, it was for some of us the culmination of a lifetime of hard work. Years of sleepless nights, legal defeats and even moments of fear. And I know what fear feels like.

At times our very livelihood was at risk. My late spouse Ann Louise and I were proud, though, to be leading the charge. Ours is a love story which spanned two continents, from the moment we met as students in Boston College in 1981 to our marriage in British Columbia in Canada in 2003 and our legal battle to have that marriage recognised in Ireland. It was a legal battle that brought us to the highest courts in the land. However it was also a period which saw a close and growing network of friends form around us. The Irish marriage equality campaign literally started as a small group of friends and supporters around our kitchen table. We saw it grow to a gathering of a few hundred people in Dublin's Mansion House to give us courage, moral support and financial assistance. It also put us in the media spotlight, both at home and further afield. Defeat in the High Court in Dublin saw us initiate an appeal to the Supreme Court.

However, our legal challenge had sparked action elsewhere. Political moves were also afoot. The first steps were small. Progress in outlawing discrimination in our employment laws in the late 90s was followed by similar laws in the areas of provision of goods and services in 2000 and a civil partnership law back in 2010. More than 2000 couples registered for civil partnerships. But this was not marriage. A constitutional convention of Irish citizens in 2012 took a huge step forward. This gathering showed that when confronted with the stories, experiences and families of members of the LGBTI community, the Irish people were accepting fair and just. The moment was right. It did take three more years but it brings us to the jubilation of the joy and the tears that erupted as the result of the day of 23 May 2015 came in with a massive 62% YES to equality.

It is a moment none of us will ever forget and for my late spouse Ann Louise it was one that was right up there with our wedding day. But amidst the joy and the jubilation of the celebrations it's easy to be lulled into believing that the goal of equality had been achieved. Marriage is hugely important. It binds partners together. It is recognition and acknowledgment of love by the State. Yes, but more importantly by friends and neighbours and the wider community.

But true equality is so much more. As a minister for children and youth affairs, I have had the privilege of updating Ireland's adoption laws to ensure that they reflect modern families. We are also developing an LGBTI plus national youth strategy which is a world first. A national consultation amongst young LGBTI people conducted to prepare the strategy has identified the importance of family life. Support and acceptance by family members is highlighted as a positive and important factor in young lives. They also want better sex education, LGBTI plus history being taught in schools and a better understanding of their needs in terms of toilets and changing facilities.

If I had to sum up the desires of these young voices in one word it would be INCLUSION - inclusion not just of the individual but also of couples and families. Marriage equality, the change to our adoption laws, and listening to young LGBTI voices are actions which reflect the express views and desires of the Irish people. They are the laws and policies of an open free and modern democracy. They are Irish government policy. Equality is hard-fought, difficult to achieve but more importantly, it is also very fragile. As campaigners, as activists, as governments we must ensure that no gathering, group or individual is ever allowed to undermine these rights. So I am echoing the words of former speakers.

All aspects of our public life should be inclusive. There must be a welcome for all and never again should public statements to remarks which seek to isolate certain families be tolerated. So it is my hope that those were gathering to organise, and as they gather, in the World Meeting of Families in Dublin this summer will extend a warm welcome to all families. It is also my hope that the event organized by the Catholic Church when Pope Francis comes to Dublin will not be used as a platform for remarks which exclude, isolate or hurt any family. The leadership of Pope Francis is given hope to many. However, the recent attempts to exclude our former president Mary MacAleese from an event in the Vatican together with the airbrushing out of images of LGBTI families from certain church literature related to this event is a matter of serious concern.

The international gathering is coming to a country where people want marriage equality, where adoption by LGBTI people is government policy and where all families are fully respected. Organisers should reflect on that. The eyes of the world will be on Dublin. Indeed some of the biggest audiences will be in countries where LGBTI people are discriminated against, threatened and abused. I have mentioned that the list of countries with marriage equality is growing but there are also countries where to come out puts people and their families under the threat of death. The World Meeting of Families is a unique opportunity to confront such inequality, discrimination and hate. It can provide global leadership on inclusion. LGBTI families like all

families should be celebrated, not excluded. That is the message that should be coming not just from the World Meeting of Families but from all who believe in justice, equality and fairness.

As modern democracies who believe in equality we also have a responsibility towards our brothers and sisters who are denied their rights, whether through discriminatory laws, policies of exclusion or even under the threat of physical harm. Too many nations are intent on isolating our community and our families. So by gathering here in Copenhagen we offer hope to those at the brunt of this discrimination.

The Council of Europe, Denmark and Ireland need to continue being a voice for the voiceless defenders of human rights and examples for others to follow.

So colleagues, friends and fellow campaigners, can I wish you every success in your deliberations and can I ask you to continue being defenders of human rights and standard-bearers of equality which others will do well to follow. Thank you.

Debate

Mr Gunnarsson: I thank the Danish authorities for helping organising this important event and the speakers for their interventions. Minister Zappone, what led to the success of the marriage equality movement in Ireland?

Minister Zappone: Never give up, develop networks, build support and be prepared to change one's strategy if it is required. When we saw that ultimately the movement was going into the direction of popular vote, even if the initial plan had been to go through the courts and legislation had been initiated in the meantime, we decided to go for it. In the end, the success was even greater because the result belonged to the Irish people. There are many paths that can be taken, including members of government taking leadership. One of the most effective strategies was encouraging people to tell their stories and their deep desire to have equality. That won the hearts of the people.

Ms Aevarsdóttir: Do you believe that this vote indicates a growing liberal attitude in Ireland towards private and personal issues, for instance concerning abortion?

Minister Zappone: The most fundamental change that we seek is cultural, which then results in changing behaviour, and laws. The result of the marriage referendum testifies of a significant cultural change towards a more modern democracy. This applies to all equality issues. Young people's participation had an impact on this change. I will be championing the change of law on abortion. What we learnt in the context of the equality marriage debate is how to have a respectful debate, and to listen to the diversity of views.

Mr Søren Laursen: I am very pleased that the Danish government used its Chairmanship to organise an event on this topic. I am also very pleased to have such a distinguished panel address the conference. So far we have spoken of families. But there are families that include more people. I urge Council of Europe member States to recognise this.

Minister Ellemann: I am fully aware that this is an important matter. I am happy to have a good dialogue with NGOs on this. There is no quick fix for this.

Mr Mogens Jensen: Thank you for these strong and personal statements. Not all Council of Europe member States recognise same-sex marriage or partnership. Too many States are missing. This is in contradiction with the case-law of the European Court of Human Rights. What is the way forward to bring about a change in these countries? What's the strategy to support change, especially in Eastern Europe?

The Deputy Secretary General of the Council of Europe: The Council of Europe has important cooperation activities and Action Plans for these countries. We cannot impose a change but we can promote it through dialogue and by proposing awareness campaigns. We have to be determined but tactful. At the end of the day what we are trying to achieve is a change of mind-sets. Time is also an important element. Our action can have more impact if the Assembly and the Committee of Ministers work together.

Ms Kovács: Not long ago it would have been unimaginable for Serbia to have an openly Lesbian prime Minister. For my point of view, political will and leadership is very important. Same-sex marriage is a very sensitive issue, especially in countries with a patriarchal mentality. Time and patient dialogue are necessary to achieve change.

10.50am	Round table on Rainbow Families: Achieving equality in private and family life regardless of sexual orientation
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Moderator: Mr Mogens Jensen (Denmark, SOC)

I welcome all participants and thank the members of this panel for having accepting our invitation. It is my pleasure to give you the floor.

Mr Jesús Santos and his son Gabriel Santos, Network of European LGBTI Family Associations (NELFA), Spain

Thank you for this opportunity to be here and for your hospitality. My name is Jesús Santos. I am a member of the Rainbow Family Association of Spain and a member of the board of NELFA.

I am a gay man, married to a man, and I have a 15 year old son called Gabriel. We live in Spain, where the situation of LGBTI rights is excellent: we are among the 13 European Union member States recognising same-sex marriage or civil partnership. Moreover, joint adoption, second-parent adoption and co-parenthood are recognised. We still face challenges, for instance we would like to have equal access for all women to fertility programmes, access for everyone to surrogacy, and Rainbow Families to be mentioned in school curricula. However, although I am an activist, I am here mainly to give a personal testimony about my experience. Spanish society is welcoming of Rainbow Families and we do not face particular difficulties in our everyday life. This is also due to the positive impact of equal marriage legislation on people's mind-sets: the example of Spain shows that positive legislation contributes to creating an open society.

My name is Gabriel, I am Spanish and I am 15 years old. Being part of a Rainbow Family means a lot to me. I know that we trust each other. People ask me what it is like, and I do not know what to say. I was a guest of a traditional family for one year, in Ireland, and I did not see a difference. Spain is very open and gay-friendly, therefore I feel free to let everybody, including school teachers, know that I have two fathers and I love them. I did not have any bad experience in my life for being part of a Rainbow Family.

Ms Nicoletta Finter, Federal Ministry of Family, Children and Women, Germany, Representative of the European Governmental LGBTI Focal Points Network

Dear participants,

I thank you for the invitation and the opportunity to present at this conference the activities of the European Governmental LGBTI Focal Point Network and the Federal Ministry for Family, Senior Citizens, Women and Youth in Germany in the field of LGBTI.

The European Governmental LGBTI Focal Points Network is invaluable in implementing the rights of LGBTI people in Europe. This pan-European network currently has 27 active members. Government experts and LGBTI equality leaders from various government departments play an active role in the network meetings. Participating countries currently include: Albania, Austria, Belgium, Croatia, Denmark, Estonia, Finland, Flanders, France, Georgia, Ireland, Italy, Latvia, Luxembourg, Malta, Republic of Moldova, Montenegro, the Netherlands, Norway, Poland, Scotland, Serbia, Spain, Sweden and Switzerland.

The network meets several times a year on LGBTI subject areas and brings together representatives of various ministries from European countries, experts, academics and representatives of LGBTI NGOs. Its first objective is the exchange of experience between policy-makers from the European member States and competent regions on equality of LGBTI.

The second goal is interaction with the European political level. We seek to keep up to date with the development of LGBTI human rights and to disseminate this important information and expertise from the member States at European level. Especially in this day and age, the international exchange on problems and strategies is particularly important and profitable for all sides, because in many places in Europe, the political forces that reject gender equality are becoming stronger.

The recognition of diversity and respect for the equality of all people is the basis of our democracy. In Germany we have already achieved some goals for legal and actual equality. In 2014, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth established, for the first time in the history of the

Federal Republic, an interdisciplinary unit on sexual orientation and gender diversity, which has since been coordinating within the federal government for questions and tasks relating to sexual and gender diversity. It is also the contact point for the federal states, for organisations of affected persons and associations - both nationally and internationally. Through our work we have been able to contribute to the social acceptance of sexual and gender diversity in recent years.

For most people in Germany, it has now become a matter of course to recognise lesbian and gay people as an equal part of society. The visibility of bisexuality has also increased. This is also confirmed by current surveys on the subject of opening up marriage to all people. These surveys have clearly shown that the majority of Germans are in favour of such an opening.²

Almost two-thirds of the respondents indicated in the survey in 2015 that they would support the opening up of marriage to same-sex couples as well. Particularly large is the group of advocates among young people: Three out of four 18- to 24-year-olds (75%) already approved the opening of marriage in 2015. Even among the over 55s, the majority (60%) in 2015 was already in favour of gay couples marrying. The adoption right for homosexual couples also has a majority (57%). This is gratifying and shows that great progress has been made in the legal recognition and social acceptance of same-sex lifestyles in recent decades.

Since October 2017 same-sex couples have been able to marry in Germany. Previously, these couples were able to establish a civil partnership under the Civil Partnership Act which was introduced in 2001.

In June 2017, the time had finally come: members of the German Bundestag voted to allow same-sex couples to marry. How did this happen? Originally, the law allowing marriage for same-sex couples came from the Bundesrat: the Federal Council had passed the law in September 2015. For 21 months the law was then in a Bundestag committee, before the parliament decided to give its consent in June 2017. The law finally came into force on 1 October 2017.

However, this law still needs adaptation in some places, as its legal consequences have not been consistent with all areas of law, where, for example, the possibility for intersex people to marry remains to be clarified. For this purpose, a bill is currently being drafted by the Federal Government.

Legally, there are hardly any differences between registered partners and spouses. The only major loophole is the ban on joint adoption, which is hard to justify in terms of family law, as partners can now adopt one child in turn. However, the principle must apply: same-sex couples must have the same chances of adopting a child as all other couples do.

The independent working group on the right of descent, which worked for the Federal Ministry of Justice in the last legislature, pointed out to the Federal Government and the Bundestag the need for reform. The Federal Ministry for Family Affairs will work to ensure that these reform proposals are implemented as soon as possible, so that good arrangements can be found for the different family and parent constellations, especially in the interest of the children. In addition, the discussion in Germany is currently focusing on how the legal and political acceptance of people with a non-binary gender identity can be increased. A reform of the transsexual law based on out-dated medical principles is overdue and in 2017 the Federal Constitutional Court called on the legislator to allow intersex people to have access to a "further" legal gender entry in addition to male and female.

The Basic Law calls for a society where differences are normal and nobody is discriminated against: a society in which diversity is perceived as an opportunity and an advantage should therefore be the objective; a society in which all people, as different as they are, have the same rights and opportunities, regardless of their gender, their age, an alleged or present disability, their religion or beliefs, their ethnicity, their marital status, their gender identity and their sexual orientation. Diversity in our society is something we need to promote and defend.

I am therefore looking forward to the exchange and wish all of us constructive discussions.

Thank you for your attention!

² On behalf of the German Press Agency (dpa), opinion research institute YouGov interviewed 1197 persons in the period from 26 to 29 May 2015.

Mr Piet De Bruyn (Belgium, NR), General Rapporteur on the rights of LGBTI people, Parliamentary Assembly of the Council of Europe

Dear colleagues, participants and militants,

It is always a pleasure sharing ideas with so many people from such a diverse background and experience. The speech by Minister Zappone really touched me. She spoke to our hearts. It was an example of how empowering politicians can be.

Since the outset, it should be clear that this Conference is not advocating for special rights for LGBTI people but calling for freedom, security and equality for all. As General Rapporteur, this is what I always try to explain, including to interlocutors who might be reluctant on these matters.

It can never be underestimated how important it is to be able to say without any fear: *'Yes, I am gay. Yes, I am Lesbian. This is who I am. This is my identity'*. Nobody should be attacked because of his or her identity. As we have heard, there has been great progress in this area throughout Europe in the past decades. Unfortunately, we don't live in paradise yet. You might be familiar with the ILGA map showing very dark spots on the European continent. A lot remains to be done. Some people are even tortured in certain European countries because of their sexual orientation.

Especially for same-sex couples and Rainbow Families, the picture remains extremely uneven, ranging from the recognition of marriage equality in 15 – soon 16 – Council of Europe member States (including mine), to the changing of constitutions in a few states to prevent any marriages that are not between a man and a woman.

Today's meeting is extremely important because it allows us to discuss together how to move forward in achieving equality for LGBTI people in private and family life.

What I want to make clear is that this is not a minor issue for LGBTI people. It's not simply the icing on the cake. It is a crucial human rights issue and an integral part of achieving equality.

In the meeting of the Committee on Equality and Non-Discrimination yesterday, we discussed the different fields of life where the failure to recognise same-sex couples and their children creates inequalities and genuine difficulties for LGBTI people. A non-exhaustive list includes:

- lack of next-of-kin status;
- lack of inheritance rights (even after a lifetime together);
- lack of family allowances;
- no possibility to share health insurance;
- no regulation of how to share assets when a couple separates;
- no recognition of a co-parent's role in raising a child.

These are real issues that affect real people in their daily lives throughout Europe. Whether or not national law recognises them, Rainbow Families exist everywhere. It is our responsibility as politicians to make sure that their human rights are fully respected, just like everyone else's. It is our responsibility to promote freedom, equality and security for all people in all circumstances, throughout our European continent.

Professor Robert Wintemute, Professor of Human Rights Law, King's College London, United Kingdom

I will present the case-law of the European Court of Human Rights on Rainbow Families covering three aspects: history, the rights of individuals forming Rainbow Families, and the rights of same-sex couples forming Rainbow Families.

Historically, there are three stages. The first stage started in 1983, with the first ECtHR case concerning a same-sex couple, and lasted until 1999: in this dark age lasting 16 years, there were no positive decisions. It was followed by a middle period 1999-2010, and finally by a more positive period from 2010 to nowadays.

The first decision was **X & Y v. UK (No. 9369/81)** (EComHR, 3 May 1983), in which the Commission stated that *"Despite the modern evolution of attitudes towards homosexuality, the Commission finds that the ... relationship [of two men] does not fall within the scope of the right to respect for family life ensured by Article*

8.”). The refusal to grant a residence permit to the same-sex partner of a UK citizen, therefore, was not in breach of Article 8.

The approach that homosexual couples did not enjoy family life started to change in 1999. In the case **Mouta v. Portugal** (ECtHR, 21 Dec. 1999) the Court found that sexual orientation, *per se*, cannot be cited as a negative factor in deciding which parent should have custody of a child after a different-sex marriage ends in divorce (see para. 36). In its reasoning the Court made a parallel with discrimination on religious grounds. In the case of *Mouta v. Portugal*, the parent complaining against a discrimination on the grounds of his sexual orientation was the genetic father of the child. In 2002, the Court addressed the case of a gay man who had been refused the authorisation to adopt his partner's child on the grounds of his sexual orientation. In a Grand Chamber judgment in the case **Fretté v. France** (ECtHR, 26 Feb. 2002), the Court found no violation of Article 14 combined with Article 8, by 4 votes to 3 and with very strong dissenting opinion. Fretté was however overruled in 2008, in the case **E.B. v. France** (ECtHR GC, 22 January 2008), which was decided by 14 votes to 3. Since then, any possibility in Europe to become a parent that is open to an unmarried, heterosexual, non-transgender, non-intersex individual must be made available to an LGBTI individual.

In 2003, there was a breakthrough regarding access to the rights of unmarried same-sex couples, in the case **Karner v. Austria** (ECtHR, 24 July 2003), concerning the right of a gay man to remain in the flat where he had lived with his deceased partner, even if the lease was in the latter's name.

Since then, it has been established that same-sex couples must have access to the same rights and duties as unmarried different-sex couples, a principle which has been applied also to second-parent adoption (adoption of a child by the same-sex partner of the child's mother or father: *X & Others v. Austria* (ECtHR GC, 19 Feb. 2013)). The principle also applies to any registered partnership law that creates an alternative to marriage for different-sex couples only: *Vallianatos & Others v. Greece* (ECtHR GC, 7 Nov. 2013) and to residence permits for same-sex partners: *Pajić v. Croatia* (ECtHR, 23 Feb. 2016).

In the *Karner v. Austria* case, I made a third party intervention on behalf of ILGA Europe and other NGOs, in which I quoted an Assembly resolution which was in turn quoted by the ECtHR. Never underestimate the influence of your work.

It is also interesting to point out that in *X & Others v. Austria* the ECtHR put the burden of proof on the Austrian government to show that two women could not be good parents. No such evidence could be submitted. Of course when it comes to proof, it seems humiliating to have to rely on scientific studies to say whether you are a good parent or not; on the other hand, it is reassuring for the Court to base itself on scientific evidence by psychologists.

In 2012 I had a fantastic experience speaking at a conference of NELFA in Lloret de Mar, which was attended by over 300 children of LGBT parents. I wish I could take all these happy and very much loved children to Strasbourg, so that the judges can look at the evidence before them. Unfortunately one must be 18 years old to attend a ECtHR hearing.

In 2002, in the case **Christine Goodwin v. UK** (ECtHR, 11 July 2002), the Court decided that a transgender person has the right to re-enter a different sex marriage according to their reassigned sex. It also said that the capacity to reproduce without the assistance of a third party is not a requirement of the right to marry.

To date the Court has not required Council of Europe member States to grant access to marriage for same sex-couple because of the insufficient European consensus but it did say that same-sex couples enjoy family life and enjoy the protection of the Article 8 of the ECHR.

As regards the current situation, 16 member States have introduced marriage for same-sex couples, including Austria in which the law have changed in January 2018. Slovenia will be the 17th Council of Europe member State to introduce same-sex marriage but because of a referendum. We all heard the very inspirational speech by Minister Zappone but I think that what happened in Ireland was a mistake. The legislators should have done their work. There was no definition of marriage in the Irish Constitution. The referendum had a happy outcome but it set a precedent for voting of the rights of a minority which was followed by Slovenia.

The Court also set some minimum standards for member States: in the case **Oliari & Others v. Italy** (ECtHR, 21 July 2015) the Court said that Article 8 requires a "specific legal framework" for same-sex couples. At the moment, 20 member States have nothing; it is clear they should start working.

In addition, the Court said that this framework does not have to be identical to marriage but must include certain core rights, including the granting of a residence permit (see **Taddeucci & McCall**, also cited by the Advocate General in his 11 January 2018 Opinion, CJEU Case C-673/16).

11.30am Discussion

Mr Tornare: In Switzerland, where referenda are often held and people vote decisions directly, PACS (a sort of civil union) was introduced in 2005 with the support of 68% of voters. Homosexuality was decriminalised in French speaking Switzerland in 1798. Civil marriage for all will be submitted to popular vote in the coming years and will, most probably, be approved. Moreover, second parent adoption has been possible since 1 January 2018 and racist and homophobic speech is illegal.

Mr Gunnarsson: What is the most pressing matter that European legislation should deal with in this area, and what is the general conclusion that can be drawn from the case-law of the European Court of Human Rights? How does it summarise the situation in Europe?

Mr Jesus Santos: The main challenge in Europe today is freedom of movement for same-sex couples and families, or how to ensure that the rights recognised at home can be enjoyed abroad.

Mr Wintemute: The Court sets minimum standards. Every country should recognise to same-sex couples the rights that non-married opposite-sex couple enjoy. The Parliamentary Assembly could be bolder and go beyond such standards, which in turn would influence the decisions of the Court. Second-parent adoptions should be a priority, and so should donor insemination for lesbian couples. While surrogacy is a controversial issue, donor insemination is allowed in most Council of Europe member States, but not always actually acceptable. A resolution indicating the minimum content of legislation regulating same-sex partnerships would also be useful, as the Court decisions required member States to adopt such legislation but did not specify its content.

Mr De Bruyn: The Parliamentary Assembly should indeed push standards further, striking a balance between the rights and interests at stake.

Mr Beus Richemberg: Croatia has a strong religious movement and the majority of voters approved the definition of marriage as a union between a man and a woman. Civil partnerships for same-sex couples however were recently introduced granting partners the same rights as marriage with the exception of adoption. The Rainbow Family Association published a book called "My rainbow family" presenting same-sex parents to children, which was very successful.

Mr Wintemute: In the past, books for children depicting rainbow families triggered controversy. The example of United Kingdom's 1988 legislation about so-called promotion of homosexuality in schools shows that a potential backlash should be taken into account when publishing such books.

Ms Aevarsdóttir: Freedom of religion is protected to the point that the exercise of other rights is restricted. Religion has often proved to be a barrier. Are we on the verge of a paradigm shift as regards regulating family rights, in the sense that the State should only provide regulations on cohabitation and issues pertaining to this, or will the State continue for a long time to dictate what a marriage is and, for instance, how many people may be part of it? Should we be particularly welcoming of same-sex couples whose rights are not recognised in other countries, and grant them refugee status, like some member States already do to those who are persecuted for being LGBTI?

Ms Bayr: Second parent adoption, access to insemination for lesbian couples and adoption for all were difficult to introduce in Austria. Decisions from international courts would help to reach such goals. We need courage to put human rights and equality in the centre of the work of our Parliaments.

Mr von Barnekow: In addition to a resolution, the Parliamentary Assembly should adopt a recommendation in the area of family rights of LGBTI people. It would be useful to include the Committee of Ministers in the process of promoting such rights, and a recommendation would be a good way to do so, as the Committee of Ministers is bound to take a position on it.

Ms Gorrotxategui: Patriarchal traditions create difficulties not only for LGBTI people but also for women. Surrogacy is a delicate issue that should be dealt with bearing in mind the risk of exploitation that it implies for women.

Mr Wintemute: Religion is indeed at the origin of some of the challenges that LGBTI people face, and it was the inspiration for criminal laws prohibiting homosexuality in Europe. LGBTI equality is better respected in Europe today, and discrimination is prohibited. The details of legislation should be established at national, not necessarily at European level. Council of Europe member States should welcome foreigners who have suffered from discrimination, but this is not the answer to issues of discrimination: in fact, no Council of Europe member State national should need to apply for asylum, as no member State should practice discrimination. Legislation can be amended in parliament but also thanks to decisions of high courts, as it has happened in European countries in a number of cases. Surrogacy is another issue that the Assembly should address, as it is practiced in some Council of Europe member States and in other countries outside Europe, and it is necessary to regulate the rights of children and of parents in connection with it.

Mr De Bruyn: The debate on the possible evolution of partnerships has proved difficult even in a country like Belgium that is rather progressive in the area of family rights. This matter should be discussed and regulated at national level.

Ms Finter: In Germany, only two people can be a married couple. At the moment there is no intention to amend this principle.

Mr Jesus Santos: children should be educated in matters relating to equality. As regards families with more than two parents, we might discuss it in the future but the priority today is to recognise equal rights to everyone in family law. Surrogacy has a dark side, with risks of exploitation of women, but regulations should be adopted since some women are willing to give birth to other people's children, and surrogacy is actually taking place.

Mr Gabriel Santos: in my social circle, there is no difference between hetero-, bi- and homosexual persons. Discriminatory comments should be prohibited in any context, like they are at school. Everybody should fight against discrimination.

12.30pm	Closing session Closing comments and wrapping up by Mr Mogens Jensen (Denmark, SOC), moderator
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This conference has made it clear that much work remains to be done in Council of Europe member States and this requires the efforts of all actors, from the Parliamentary Assembly to the Committee of Ministers, to national authorities, civil society and each individual. We now have a clearer image of the concrete improvements that are needed in member States, which was one of the main aims of the conference and also the reason why it was part of the activities of the Danish chairmanship of the Committee of Ministers of the Council of Europe.