

OSCE Human Dimension Implementation Meeting in Warsaw

Working session 12:

Fundamental freedoms II, including freedom of movement; freedom of assembly and association; ombudsperson and national human rights institutions, 10 October 2006

Speech by Mr Hans Ytterberg, the Ombudsman of Sweden against Discrimination on grounds of Sexual Orientation

Chair,

A core value of the mandate of the OSCE is security, also in the sense of *human security*, the safety for all human beings to be free of discrimination, oppression and intolerance. As early as 1995, the Parliamentary Assembly of the OSCE adopted a resolution which called on the participating States '... to ensure that all persons belonging to different segments of their population be accorded equal respect and consideration in their constitutions, legislation and administration and that there be no subordination, explicit or implied, on the basis of ethnicity, race, colour, language, religion, sex, **sexual orientation**, national or social origin or belonging to a minority...'. In spite of positive developments in many participating States, the OSCE area by no means can be described as safe for gays, lesbians, bisexuals and transgender persons. Still there are OSCE states which maintain a blanket criminal ban on same-sex relations between consenting adults, a violation of both the European Convention for the Protection of Human Rights and Fundamental Freedoms¹ (the European Human Rights Convention) and the Covenant on Civil and Political Rights² of the United Nations from 1966. Apart from that, discrimination on grounds of sexual orientation as well as homophobic incidents and crimes occur frequently throughout the OSCE area. These include beatings, torture and even murder. Such gross human rights violations no doubt occur throughout the world. At the same time LGBT individuals and groups not only in Europe but also in Asia, Africa and Latin America no longer accept prejudice and discrimination, and are becoming increasingly impatient to achieve freedom, security and equality in dignity and rights. Their legitimate demands must be met. As the High Commissioner for Human Rights of the United Nations, Mme Louise Arbour, emphasized at this year's International Human Rights Conference in July in Montréal, Canada, '*Neither the existence of national laws, nor the prevalence of custom can*

¹ See inter alia *Dudgeon v. United Kingdom*, European Court of Human Rights, 1981, Series A, No. 259.

² *Toonen v. Australia*, UN Human Rights Committee, Communication No. 488/1992, CCPR/C/50/D/488/1992.

ever justify the abuse, attacks, torture and indeed killings that gay, lesbian, bisexual and transgender persons are subjected to because of who they are. [...] Violence against LGBT persons is frequently unreported, undocumented and goes ultimately unpunished. Rarely does it provoke public debate and outrage. This shameful silence is the ultimate rejection of the fundamental principle of universality of rights.' This silence is a real threat to human rights defenders who are active in this field. Or, with the words of the Special Representative on Human Rights Defenders of the Secretary General to the United Nations: *'Greater risks are faced by defenders of the rights of certain groups. [...] Of special importance will be women's human rights groups and those who are active on the issues of sexuality, especially sexual orientation and reproductive rights.'*³ Governments of OSCE States have an obligation to break this silence. It is time to honour what was so solemnly declared by Governments at the Vienna Conference on Human Rights in 1993: *'All human rights are universal, indivisible, and interdependent and interrelated. [...] While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'* For most OSCE States, being members also of the Council of Europe and/or the European Union, this duty includes the obligation to actively uphold the protection of gays and lesbians against violations because of their sexual orientation, of their right to respect for private and family life, a right which the European Convention guarantees in accordance with consistent case law from the European Court of Human Rights. The right to non-discrimination in employment and occupation,⁴ or with respect to parental rights⁵ or social welfare protection for surviving same-sex partners,⁶ as well as in relation to the right to sexual self-determination of young gays and lesbians,⁷ form fundamental parts of those rights which governments must protect. I would like to conclude by drawing your attention also to a statement by the Commissioner for Human Rights of the Council of Europe, Mr. Thomas Hammarberg, published only a few weeks ago. In his statement, the Commissioner emphasizes that the *'[r]ealisation of human rights is a question of political will. It is not enough just to endorse European and international*

³ Report 2001 of the Special Representative on Human Rights Defenders.

⁴ See inter alia *Lustig-Prean and Beckett v. United Kingdom*, European Court of Human Rights, judgment 27 September 1999; Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

⁵ *Salgueiro da Silva Mouta v. Portugal*, European Court of Human Rights, judgment 21 December 1999.

⁶ *Karner v. Austria*, European Court of Human Rights, judgment 24 July 2003.

⁷ See inter alia *S.L. v. Austria*, European Court of Human Rights, judgment 9 January 2003.

norms: these standards must also be translated into a practical reality at all levels – national, regional and local. In addition to the courts, authorities should promote and protect the existence of extra-judicial mechanisms for independent monitoring. Ombudsmen in several countries have already made a great difference – but only where their integrity has been respected by those in power.’ In support of this I would like to urge Governments of all OSCE States to comply with the Commissioner’s appeal for the creation of and support for independent monitoring bodies that can play a significant role in providing real access to justice, when it comes to the promotion and protection of human rights and fundamental freedoms for all. I would also like to take this opportunity to invite representatives of States and Inter-Governmental Organisations, NGOs and other interested parties to a side-event organised by the Swedish Government at 6 o’clock this evening, where the subject I have touched upon here will be further elaborated on, as will the issue of access to justice and the role of independent bodies.

Thank you for your attention.