

**OPINION OF THE E.U. NETWORK OF INDEPENDENT EXPERTS ON
THE SITUATION OF HOMOSEXUALS IN SLOVENIA***

**AVIS DU RESEAU U.E. D'EXPERTS INDEPENDANTS EN MATIERE DE DROITS
FONDAMENTAUX SUR LA SITUATION DES HOMOSEXUELS EN SLOVENIE**

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The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union. The content of this opinion does not bind the European Commission. The Commission accepts no liability whatsoever with regard to the information contained in this document .

* This Opinion is based on the information provided by Arne Mavcic, member of the EU Network of Independent Experts on Fundamental Rights, Expert for Slovenia.

Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutionseuropéennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Florence Benoît-Rohmer (France), Martin Buzinger (Rép. slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moyses (Luxembourg), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ilvija Puce (Lettonie), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Pavel Sturma (Rép. tchèque), Edita Ziobiene (Lithuanie). Le Réseau est coordonné par O. De Schutter, assisté par V. Van Goethem.

Les documents du Réseau peuvent être consultés via :

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The documents of the Network may be consulted on :

http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm

The following opinion seeks to offer a description of the situation of homosexuals in Slovenia, in particular with regard to their protection from discrimination. Section 1 describes the legal provisions which protect from discrimination in the legal order of Slovenia. Section 2 provides an overview of the instances of discrimination against homosexuals which have been reported and of the state of the public opinion with regard to sexual orientation matters, focusing especially on the reports of the Human Rights Ombudsman on this matter and on a survey conducted by the NGO_KUC-LL. Section 3 considers the specific question of same-sex partnerships and comments on the recent parliamentary debates on this issue. Section 4 concludes briefly. An Annex offers a presentation of the two most representative organisations combating discrimination on grounds of sexual orientation in Slovenia.

1. THE PROHIBITION OF DISCRIMINATION

A. The Constitution

Paragraph 1 of Article 14 of the Slovenian Constitution (Equality before the Law) provides that :
"In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance."

B. The Legislation

The Implementation of the Principle of Equal Treatment Act has been adopted in May 2004 (Zakon o uresni_evanju na_ela enakega obravnavanja, Principle of Equal Treatment Act, Official Gazette 2004, nr. 50). It is aimed at improving the protection against discrimination based on sex and other grounds, such as race or ethnic origin, health condition, disability, language, religious or other convictions, age, sexual orientation, education and social status. The Act prohibits direct and indirect discrimination, harassment and victimization and defines the sanctions for the violations. It allows for the adoption of positive measures provided they promote the achievement of these aims or are used as compensatory measures for the less favourable position of persons with particular personal circumstances. It also creates the legal basis for the establishment of the Council of the Government for the Implementation of the Principle of Equal Treatment Act. This Council should in particular provide for the implementation of the provisions of the Act, monitor their implementation and initiate educational, awareness-raising, information and research activities for the promotion of equal treatment. Further rules however should be adopted by Government for the implementation of these provisions of the Act, and thus, for the effective creation of the Council.

The Principle of equal Treatment Act determines the 'common foundations and grounds for the guarantee of equal treatment of every individual' in the exercise of his rights and duties and of his fundamental freedoms in any field of social life, in particular in the fields of employment, employment relations, affiliation with unions and interest societies, upbringing and education, social security, access to goods and services and provision of them regardless of their personal circumstances such as nationality, racial or ethnic background, gender, health condition, disability, language, religious or other belief, age, sexual orientation, education, material standing, social status or other personal circumstances. The Act was adopted as a means of implementing Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation¹ into Slovenian law.

The Principle of Equal Treatment Act also provides for the consideration by the Advocate of the Principle of Equality of informal complaints linked with anti-discrimination rules. The Advocate of the Principle of Equality is a body that investigates complaints regarding alleged breaches of the principle of equal treatment and determines the circumstances in which the Advocate shall transmit

¹ OJ L 303, 2.12.2000, p. 16.

a case to the competent inspection service. (Government of the Republic of Slovenia, Office for Equal Opportunities, National report of Slovenia, July 2004).

The Principle of Equal Treatment Act does not affect the regulation of marriage. Under the Slovenian law, both forms of unions (i.e. the marriage and the extramarital union) are expressly defined as a “life union between man and woman” (Articles 3 and 12 of the Marriage and Family Relations Act, Official Gazette RS, Nos. 15/76, 30/86, 1/89, 14/89, 13/94, 82/94, 29/95, 28/99, 60/99, 70/200, 64/01 and 110/02). Accordingly, the Slovenian legislation in force does not regulate a life union between same-sex partners, and any advantages reserved to married couples are denied to same-sex partners. Recently however, the Registration of Same-Sex Partnership Act has been adopted, which to some extent compensates for the inability of same-sex partners to marry. Section 3 describes this new development in more detail.

2. REPORTED CASES OF DISCRIMINATION

2.1. General Comments

Cases of discrimination on the basis of sexual orientation have been reported by NGO's and by the Ombudsman. Homophobic statements have been frequently published in the media. Homophobic statements by church leaders are also reported. Discrimination on the basis of sexual orientation is explicitly prohibited in the Employment Act (Official Gazette RS, No. 67/02). It is however important that complementary antidiscrimination legislation be adopted, in order to ensure that similar provisions be included in other laws, in order to strengthen the public perception that discrimination on the ground of sexual orientation is prohibited.

The respective provisions of the Employment Act came into force on 1st January 2003. Article 6 of the Employment Act determines that the employer may not discriminate between employment seekers or employees on the basis of any personal circumstance when the employment contract is being concluded or at any time during the employment. The employer is liable for damages in case of occurrence of such discrimination. The legislature believes that Principle of Equal Treatment Act will strengthen the public perception regarding discrimination, especially with reference to the already existing constitutional guarantees of prohibition of discrimination and the prohibition incitement to discrimination and intolerance. Article 63 of the Constitution namely determines that any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional.

Some of the latest public investigation shows that around 83 % of the population did not express any objections against the same-sex partnership (<http://socialna-zavest.sou.uni-lj.si/RezAnCSD.htm>). According to a poll of members of the gay and lesbian community conducted in 2001 by the domestic NGO _KUC (Student Cultural Artistic Centre), 49 % of respondents had experienced some form of violence of harassment based on their sexual orientation, more than 20 % reported discrimination in the workplace, and 7 % reported discrimination in healthcare and in matters relating to tenancy.

A small proportion of people who have been attacked (on the basis of their perceived sexual orientation) report the incident to the police. But it is often pointed out that the victims do not feel that the police take proper action following the report of an offence. Certain victims fear that they will encounter a dismissive attitude from the police. Whilst in some countries, victims have to face a rather hostile reaction from the police, this is less the case in Slovenia. (ILGA-Europe Media Release, Sexual orientation discrimination in new member states, 30 June 2004).

2.2. Reports by the Human Rights Ombudsman

A. Excerpt of the 2002 Annual Report

“Last year we again received several complaints from same-sex partners, who assert that by not being able to conclude formal marriages, their constitutional rights are being infringed – particularly the right to free choice of marital partner. The Constitution leaves the regulation of marital relations to the law. The relevant law (Marriage and Family Relations Act, published in the Official Gazette RS,

Nos. 15/1976, 30/1986,1/1989, 14/1989, 13/1994, 82/1994, 29/1995, 26/1999, 70/2000, and 16/2004, hereafter referred to as 'ZZZDR') allows for the conclusion of formal marriages only between persons of the opposite sex. Until the Constitutional Court perhaps determines otherwise, this arrangement is in compliance with the Constitution. Irrespective of such provisions in the ZZZDR, we maintained that the complainants' right to free choice of partner was not infringed, since they could create a domestic partnership with a person of the same sex, although they could not conclude a formal marriage under the ZZZDR. Such partnership should in principle be equated with a formal marriage, although the regulations and practices in all areas do not yet ensure this. This should be provided primarily through a law governing registration of same-sex partnerships, which is being drafted at the Ministry of Labour, Family and Social Affairs."

B. Excerpt of the 2001 Annual Report

"We received a relatively large number of cases relating to discrimination on the basis of sexual orientation. One notable case involved the refusal of entry to public premises to persons of different sexual orientation. The Ombudsman made a public statement in which he warned that the provisions of various public activities and services, which include public premises such as bars and restaurants, shall be non-discriminatory. The provider of a public activity shall offer his goods or services to all without differences which have no basis in regulations or justifiable grounds. The Ombudsman also issued a special statement which did not relate only to discrimination against homosexuals but applied to all forms of discrimination. In this matter we were also contacted by the parties concerned, but since they had not applied to the competent state bodies because of the violations of their rights, the Ombudsman was unable to intervene in this particular case (the Ombudsman has no powers in relation to individuals and other subjects of civil law).

Our attention was drawn to the issue of supposed discrimination on the basis of sexual orientation by the _kuc Society, which cited three such cases. In the first case a radio presenter had indicated a link between Hitler's supposed homosexuality and the actions he committed. The second case relates to affirmations in two technical books or textbooks, which in the opinion of the complainants deal with homosexuality in an inappropriate manner. The third case involves an enrolment form for the teachers' club at the ZPMS Moste-Polje which offers a statement from which a connection between the exploitation of children and a homosexual orientation can be inferred. For the first two cases we pointed out the limitations deriving from legislation and the powers of the Human Rights Ombudsman (who has no powers to deal with and punish the actions of individuals). We also drew attention to freedom of expression and the possibilities of replying to affirmations by experts in academic publications at a similar level. Our intervention was however successful in the third of the cases mentioned: the ZPMS Moste-Polje heeded our opinion and proposal and made appropriate changes to the teachers' club form."

2.3. Survey by the NGO _KUC-LL

In 2001, _KUC-LL, an NGO promoting non-discrimination regarding sexual orientation, conducted a nationwide study on discrimination on the basis of sexual orientation in Slovenia.² The survey addressed the issues of violence and harassment and discrimination in employment, health care services, housing and military service. The survey was conducted from January until March 2001. During this period, 172 persons completed the questionnaire. Respondents were primarily those individuals who regularly frequent openly lesbian and gay meeting places in Ljubljana or who are indirectly connected with lesbian, gay and bisexual organisations (e.g., through personal contacts or correspondence). The questionnaires were distributed in the lesbian bar Monokel, the gay bar Tiffany and the Metelkova Cultural Centre in Ljubljana. The questionnaire was also distributed to members of SKUC-LL as well as the youth group Legebitra, and was made available on the website www.ljudmila.org/siqrd.

A survey of this type of course does not purport to produce results that are statistically valid for the entire target population, as would be the case with a random sample. Nonetheless, the survey results

² Full-text of the study can be found on the following site: <http://www.ljudmila.org/siqrd/sods.html>.

provide valuable information and permit certain broad conclusions to be drawn about the nature and extent of sexual orientation discrimination in Slovenia.

However attention shall be drawn to two important factors:

- Surveys seeking to quantify the extent of discrimination directed toward lesbian, gay and bisexual persons are facing a specific problem: unlike many other minorities that experience discrimination, most lesbian, gay and bisexual persons can conceal the aspect of their identity that is the target of discrimination, namely their sexual orientation. Accordingly any survey investigating sexual orientation discrimination is likely to understate the real extent of discrimination ;
- As noted above, the survey respondents consisted mainly of persons openly participating in Ljubljana's lesbian and gay scene, as well as individuals connected with lesbian, gay and bisexual organisations in Slovenia. It is likely that this sample does not provide a comprehensive picture of the lesbian, gay and bisexual population in Slovenia, since it includes a relatively high proportion of individuals who are politically aware and open about their sexual orientation.

3. REGISTRATION OF SAME-SEX PARTNERSHIPS

Certain Slovenian NGO's (Legebitra, _kuc Magnus, _kuc-Roza klub) called for a legal regulation of same-sex partners relationship, referring to the legislation and practice of other countries and to paragraph 1 of Article 14 of the Constitution. In 1997, the Ministry of Labour, Family and Social Affairs started the process of adopting the Bill on Same-Sex Partnerships under the liberal government. The Ministry appointed the expert commission. On their request, the representatives of the lesbian group “_KUC-LL” and gay group “Magnus” (see Annex) were allowed to take an active part in the drafting process. The proposed law regulates the formal and material conditions for the registration of such a partnership. On 22 June 2005, the National Assembly of the Republic of Slovenia – where the conservative parties have the majority – adopted the amended Registration of Same-Sex Partnership Act (Official Gazette RS, No. 65/05). Out of the 47 deputies present in the 90-seat chamber, 44 deputies from the ruling coalition voted for the government-proposed bill, which allows same-sex couples to register their relationship (as recalled above, same-sex couples are not allowed to get officially married).

The Act sets down the conditions and the procedure for the registration of same-sex unions as well as the legal consequences resulting from it, the termination of such a union and the relations between the partners after the termination of the union. Article 2 defines the notion of registered same-sex union. According to this provision, the registered same-sex union is a legally established union of two women or two men who register their union before the competent authority in a manner determined by the Act. The main legal consequences are determined in Articles 8 to 24. The main provisions relate to:

- the rights and obligations of the partners, the property of each individual partner and the joint property and earnings of the couple, the provisions on management of the property, responsibility for the assumed obligations, the division of the property, the amount of shares in joint property and the conclusion of contracts between the partners ;
- the right of one partner to be supported by the other partner, the right to housing protection, certain rights of the partner in case of illness of the other (e.g. the right to acquire information on the health condition of the partner who is ill and the right to visit in health institutions) ;
- two clauses on inheritance limited to joint property acquired through work accomplished throughout the duration of the union ;
- the procedure of termination of the union and certain legal consequences resulting from it.

However the Registration of the Same-Sex Partnership Act does not deal with the relations between the partners and the children of either of them.

The government plans to draw up changes to other laws within the next six months. Legislation dealing with criminal proceedings, lawsuits and other proceedings will be amended in order to include the rights resulting from the registration of same-sex unions.

NGOs were involved in the drafting of the bill and could make certain proposals. Among the rights they proposed, the right to inheritance of common property was included in the Act, but most of the other proposed rights were firmly rejected by the government. After the adoption of the Act, most NGOs complained that their proposals had not been taken into account. The Society for the Integration of Homosexuality, the Peace Institute and Lingisium, Group for Same-Sex Oriented Youth considers that the adoption of the Act is a positive step since it partially regulates the previously unregulated field. However after the change of government, the Ministry of Labour, Family and Social Affairs has decided not to enter into a dialogue with them and they were invited to submit their comments and proposals only on one occasion. According to these organisations, the main weak point of the Act is that it does not provide for a status of a "relative" for the same-sex partner. The partner will thus not be able to exercise the rights (e.g. health and pension insurance, social security, procedural rights) that are granted to the "relatives".

Since certain rights are consciously excluded from the Act, certain NGOs deem the Act discriminatory and have filed a petition for the review of constitutionality before the Constitutional Court. The NGOs _KUC-LL and _KUC-Magnus moreover consider that the Act is introducing a differentiated treatment and is thus inconsistent with both the principle of equality of all citizens and the principle of equal opportunities. They also condemned the level of discussion in the National Assembly during the proceedings of adoption of the Act. The fear that the tone of the debate could encourage a banalization of homophobic statements appears to be shared by members of the European Parliament, who wrote the following letter to the President of the Slovenian Parliament :

Mr. France Cukjati
Subiceva 4
1000 Ljubljana
Slovenia
22/06/2005

We, as members of the European Parliament, are disturbed and worried by the derogative tones of speech used in the National Assembly of the Republic of Slovenia during the debate on the Bill of Registration of Same-sex Partnerships on June the 17th.

We would like to encourage the Presidency of the Parliament to conduct its sessions with a fair and equal manner. Homophobic and otherwise insulting remarks are not of good taste nor should be allowed in any parliamentary debate or discussion.

We hope for an appropriate and balanced discussion today, on the 22nd of June, in which all opinions and arguments are be regarded with the same respect and treated in accordance to good parliamentary etiquette.

Yours sincerely,

Michael Cashman, Sophie Int'Veld, Alexander Stubb, Raül Romeva, Ewa Hedkvist-Petersen, Mojca Drnar Murko, Anna Hedh, Asa Westlund, David Hammerstein-Mintz, Monica Frassoni, Sarah Ludford, Holger Kraemer, John Bowis, Helene Flautre, Ieke van der Burg, Luis Yanez-Barnuevo Garcia

Supporters of the Letter: Jan Andersson, Inger Segelstöm, Thijs Berman, Roselyne Bachelot, Adeline Hazan, Piia-Noora Kauppi

On the other hand, the Bill was also criticised by some deputies from more conservative wings, who argue that it went too far by attempting to give equal rights to homosexual couples. Sre_ko Prijatelj, from the rightist Slovene National Party, said he voted against the bill because he did not "want my children, or any other children" being encouraged to register their homosexual relation. But Alojz

Sok, from the ruling Slovene Democratic Party, said after the vote he was "proud" to see that the government "gathered strength to solve the problem that existed for a long time."

The Registration of Same-Sex Partnership Act provides for certain listed rights which are recognized to such partners. It does not equal marriage and remains distinct from the provisions of the Marriage and Family Relations Act. The most obvious difference is certainly the lack of any provisions concerning children. Joint adoption of children by a registered partnership is not possible.

4. SUMMARY OF THE FINDINGS

The findings of this survey lead to the conclusion that there is a high level of discrimination against gay, lesbian and bisexual people in Slovenia. For example, one of every two respondents had experienced some form of violence or harassment because of his/her sexual orientation, and one in five had suffered harassment at the workplace. The survey findings also raise serious concerns about discriminatory behaviour in the police force, in health services and in the military, as well as the difficulties faced by open lesbians and gays in finding housing.

It is highly probable that these findings actually seriously understate the scale of the problem, due to the above-mentioned fact that many lesbian, gay and bisexual individuals seek to avoid discrimination by concealing their sexual orientation. The potential magnitude of this factor is revealed when one compares the number of incidents of harassment at the workplace with the number of respondents who stated that they are open to their co-workers and superiors as regards their sexual orientation. On the basis of this comparison, the proportion of those harassed rises from 20 % to 70 %. It is thus impossible for the survey to measure precisely the extent of sexual orientation discrimination in Slovenia. This is however unnecessary for determining whether action is needed since it is clear from the survey's results that:

- The overall level of discrimination on the basis of sexual orientation in Slovenia is shocking and unacceptable ;
- Acts of discrimination, and the potential for discrimination, have profound and negative consequences on the lives of lesbian, gay and bisexual individuals. The fact that one in three respondents would seriously consider emigrating from Slovenia because of their sexual orientation dramatically underlines the damaging effect of discrimination on the lives of lesbians, gays and bisexuals in Slovenia.

ANNEX

PRESENTATION OF TWO MAIN NON-GOVERNMENTAL ORGANISATIONS WORKING IN THE FIELD OF SEXUAL-ORIENTATION DISCRIMINATION

1. _KUC – LL

Lesbian Section _KUC-LL was established in 1987 within the framework of the feminist group Lilit as the first lesbian organisation in the former socialist Eastern European states. In 1988 it became an autonomous section within the association _KUC (The Students' Cultural Centre, which is one of the leading organisations for the promotion of non-profit artistic activity in Slovenia, formed in 1972).

At the end of the 80's, lesbian activism is a constituent part of the new social, civil-rights movements and alternative culture, oriented toward the establishment of modern political culture and civil society: on the one hand it articulates political demands and on the other hand, it socializes forms of lesbian culture, gatherings and alternative thinking. This period is noted for intensive networking and making ties with related groups at the international and regional level, as well as breaking through into the media sphere, organizing social and discussion evenings and art events (Lesbian Film Week in 1988 in _KUC-Gallery in Ljubljana).

In the first half of the 90's the lesbian section _KUC-LL, which together with gay-men group Magnus establishes the political association Roza klub, is a cofounder of various cultural and social projects: it launches the film festival, which grew into the annual Days of Lesbian and Gay Film in Ljubljana; it assists in establishing the gay & lesbian magazine Revolver and legendary Sunday disco nights Roza disko in club K4; it is a cofounder of LGBT info and help line GALfon.

After 1997 the section _KUC-LL turns again to autonomous activism, based on lesbian politics, culture and society. It opens projects, which are on-going. With its culturally and politically engaged projects, it attacks the dispersion of lesbophobia and homophobia; it socializes into the ideals of an enlightened, inclusive, sympathetic and egalitarian society. It participates in wider anti-government, political and cultural efforts, aiming at breaking the massive walls of civil apathy, political ignorance, ideological terror and mind exploitation and is as such in public and common interest.

2. MAGNUS

MAGNUS is gay section at _KUC (Students Cultural Centre). It was founded in 1984 as Cultural Organisation for Socialisation of Homosexuality. Its first and most important roles were organising MAGNUS Festival with a wide variety of activities to propagate homosexual life style. MAGNUS also organised a Week of Gay Films Festival on which most of the important international gay films were shown. At its beginning MAGNUS was tightly connected to alternative scene in Slovenia. From founding Roza klub as a political organisation MAGNUS headed for cultural activities.

In 1993 with new policy in homosexual movement MAGNUS renewed its activities with the aim to invite students' population to participate in building homosexual lobby in Slovenia.