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Situation of gays and lesbians and their partners in respect to asylum and immigration in the member states of the Council of Europe

Report

Committee on Migration, Refugees and Demography

Rapporteur: Mrs Ruth-Gaby Vermot-Mangold, Switzerland, Socialist Group

Summary

The Assembly is concerned by the fact that immigration policies in most Council of Europe member states discriminate against lesbians and gays.

The majority of them do not recognise persecution for sexual orientation as a valid ground for granting asylum, and the rules concerning family reunion and social benefits usually do not apply to same-sex partnerships. The Assembly is also aware that the failure of most member states to provide residence rights to the foreign partner in a bi-national partnership is a serious problem for many gays and lesbians.

The Assembly is of the opinion that homosexuals who have a well-founded fear of persecution resulting from their sexual preference are refugees in accordance with the 1951 Refugee Convention, and proposes the development of guidelines for the treatment of homosexuals who are refugees or partners of a bi-national relationship.

Furthermore, the Assembly calls on the Committee of Ministers to examine these issues and to set up a European system for the documentation of abuses against homosexuals.

I. Draft recommendation

1. The Assembly recalls and reaffirms its [Recommendation 924](#) (1981) on discrimination against homosexuals, [Recommendation 1236](#) (1994), on the right of asylum, and [Recommendation 1327](#) (1997) on the protection and reinforcement of the human rights of refugees and asylum seekers in Europe. It refers also to its Recommendation ... (2000) on the situation of lesbians and gays in the member states of the Council of Europe.

2. The Assembly is concerned by the fact that immigration policies in most Council of Europe member states discriminate against lesbians and gays. In particular, the majority of them do not recognise persecution for sexual orientation as a valid ground for granting asylum, nor do they provide any form of residence rights to the foreign partner in a bi-national same-sex partnership.

3. Furthermore, the rules concerning family reunion and social benefits usually do not apply to same-sex

partnerships.

4. The Assembly is aware of a number of documented cases of persecution of homosexuals in their countries of origin, including Council of Europe member states.

5. The Assembly is of the opinion that homosexuals who have a well-founded fear of persecution resulting from their sexual preference are refugees under Article 1 A (2) of the 1951 Refugee Convention as members of a particular social group, and consequently should be granted refugee status. The present practice in some Council of Europe member states to grant them leave to stay on humanitarian grounds, may be detrimental to their human rights, and cannot of itself be considered as a satisfactory solution.

6. Moreover, the Assembly is aware that the failure of most member states to provide residence rights to the foreign partner in a bi-national partnership is the source of considerable suffering to many lesbian and gay couples who find themselves split up and forced to live in separate countries. It considers that immigration rules applying to couples should not differentiate between homosexual and heterosexual partnerships. Consequently, proof of partnership other than a marriage certificate should be allowed as a condition of eligibility for residence rights in the case of homosexual couples.

7. Therefore the Assembly recommends that the Committee of Ministers:

i. instruct its appropriate committees:

a. to hold exchanges of views and experience on these subjects;

b. to examine the question of recognition of homosexuals as members of a particular social group in the understanding of the 1951 Geneva Convention with a view to ensuring that persecution on grounds of homosexuality is recognised as a ground for asylum;

c. to develop guidelines for the treatment of homosexuals who are refugees or members of a bi-national partnership;

d. to initiate the setting up of a European system for data collection, and for the documentation of abuses against homosexuals;

e. to co-operate with, and support groups and associations defending the human rights of homosexuals in respect to asylum and immigration policies in Council of Europe member states.

ii. urge the member states:

a. to re-examine refugee status determination procedures and policies with a view to recognising as refugees those homosexuals whose claim to refugee status is based upon well-founded fear of persecution for reasons enumerated in the 1951 Geneva Convention and 1967 Protocol relating to the Status of Refugees;

b. to adopt criteria and guidelines dealing with homosexuals seeking asylum;

c. to ensure that the authorities responsible for refugee status determination procedure are well informed about the overall situation in the countries of origin of applicants, in particular concerning the situation of homosexuals and their possible persecution by state and non-state agents;

d. to review their policies in the field of social rights and assistance in respect to migrants in order to ensure that homosexual partnership and families are treated on the same basis as heterosexual partnership and families;

- e. to take such measures as are necessary to ensure that bi-national lesbian and gay couples are accorded the same residence rights as bi-national heterosexual couples;
- f. to encourage the establishment of non-governmental organisations to help homosexual refugees, migrants and bi-national couples to defend their rights;
- g. to co-operate more closely with UNHCR and national non-governmental organisations, promote the networking of their activities, and urge them to systematically monitor the observance of the immigration and asylum rights of gays and lesbians;
- h. to ensure that the training of immigration officers who come into contact with asylum seekers and bi-national same-sex couples includes attention to the specific situation of homosexuals and their partners.

II. Explanatory Memorandum by Mrs Vermot-Mangold

1. Introduction

1. The present report results from the concern that in most Council of Europe member states the legal instruments relating to asylum and immigration discriminate against homosexuals and homosexual couples. In addition, immigration policies towards same-sex couples differ from one country to another. The present report examines the relevant legislation and practice, and makes recommendations with a view to increasing respect for the human rights of homosexuals in the field of asylum and immigration.
2. The report is based, *inter alia*, on the replies to the questionnaire sent out to relevant international and non-governmental organisations in most of the member states. It also takes into account the findings of the hearing on the situation of lesbians and gays in Council of Europe member states organised by the Sub-Committee on Human Rights of the Committee on Legal Affairs and Human Rights on 14 October 1999, in which the Rapporteur took part.
3. The subject of the present report cannot be considered without reference to the legal situation of gays and lesbians in Council of Europe member states in general. This question is thoroughly examined in the report presented on behalf of the Committee on Legal Affairs and Human Rights. In order to avoid repetition, the preparation of the present report has been coordinated with the work of the Rapporteur on behalf of the Committee on Legal Affairs and Human Rights.
4. The Rapporteur wishes to express her gratitude to the International Lesbian and Gay Association for assistance with the preparation of the present report.

2. General overview of the situation

5. All people living in a country are valuable members of society and should be allowed to develop their full potential for the good of the society they choose to live in, including in the area of social and political rights. All residents in a European country should have the guaranteed right to equal treatment, whether or not they are nationals of that state, and should enjoy respect for their cultural traditions, lifestyles and relationships. They should also enjoy legal protection against discrimination on the grounds of race, colour, religion, ethnic origin or sexual orientation.
6. Refugees should be able to seek asylum in Europe on the basis of a fair assessment of their situation in accordance with the principles laid down in international conventions. Individuals from different countries in stable, loving relationships should be able to live together with their partner regardless of their sex or marital status.
7. There is an urgent need for recognition in Europe that persecution for reasons of sexual orientation is a

valid ground for granting asylum. Several Council of Europe member states (Austria, Belgium, Denmark, Finland, Germany, Greece, Ireland, Latvia, the Netherlands, Norway, Sweden, the United Kingdom)¹ already explicitly recognise in their asylum law or practice that lesbians and gay men constitute "members of a particular social group", in the wording of the 1951 United Nations Convention relating to the Status of Refugees, or have granted asylum to lesbians and gay men on "humanitarian grounds". In this respect, persecution should be understood to encompass that by state and non-state agencies, as well as severe social ostracism and bodily harm inflicted by family and society.

8. Persecution on grounds of sexual orientation is widespread and just as horrifying and harmful in many countries as persecution for reasons of religion or political belief. Amnesty International has been adopting prisoners persecuted solely on grounds of their homosexuality as prisoners of conscience since 1991, following a decade of persistent lobbying by lesbians and gays within and outside Amnesty International.

9. Immigration policies in most member states clearly discriminate against same-sex couples. These policies inflict immense suffering on lesbian and gay couples who face separation or deportation of one of the partners who is not a citizen. Only Belgium, Denmark, Finland, Germany, Iceland, the Netherlands, Norway, Sweden and the United Kingdom recognise same sex relationships for the purposes of immigration.²

10. Some of these regulations place considerable restrictions on the recognition of lesbian and gay relationships which usually do not apply to married couples in similar circumstances; for example, they may insist on several years of established relationship or cohabitation.

3. Asylum: legal basis

11. The 1951 Refugee Convention (Article 1A(2)), as amended by its 1967 Protocol, defines a refugee as any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence..., is unable or, owing to such fear, is unwilling to return to it."

12. In a recent analysis of trends in gender-related persecution,³ UNHCR states that "the prosecution of individuals because of their homosexuality is an area in which punishment for digressing from laws or social norms has been interpreted as persecutory by courts. In a number of countries, homosexuals are subject to severe criminal penalties and/or extreme public hostility and discrimination because of their sexual orientation. Courts have determined that when such punishment is excessive or is inflicted on a person for a reason mentioned in the [1951 Refugee Convention] definition, it may amount to persecution within the meaning of the 1951 Convention. Since at least 1988, a number of states have granted some form of humanitarian status to men and women on the basis of their homosexuality⁴. Refugee status has also been granted to homosexuals in accordance with the 1951 Convention in some states. In such cases, the protection granted derives from the right to non-discrimination which is enshrined in most international human rights instruments."

13. "Among the chief issues posed by the refugee claims of homosexuals is whether the harm they have experienced, or fear, constitutes persecution. In the United States, the Board of Immigration Appeals held that a man who had been detained, regularly questioned and subjected to a number of physical examinations by the State authorities for being homosexual should be granted refugee status⁵. In this context, the Board interpreted repeated detention over regular intervals, for days at a time, coupled with subjection to verbal and physical abuse, as persecution. In addition, given the fact that the claimant was ultimately given a choice of either leaving the country or facing four years of incarceration because of his

homosexual orientation, the Board concluded that the applicant's freedom was threatened, giving rise to a valid fear of persecution."

14. "Since these precedent-setting cases, the US Immigration and Naturalization Service has granted asylum to several homosexuals. On 18 October 1995, the INS granted asylum to an Iranian woman on the ground that she would suffer persecution for her feminist and lesbian activism if returned to her country. Recognising that the Government adheres to a strict interpretation of Islam that punishes lesbian and gay men by death, it was concluded that the claimant faced persecution if she were to be returned to her country of origin. Other countries have taken similar decisions. For example, in its decision of 30 August 1995 the Refugee Status Appeals Authority of New Zealand granted refugee status to a homosexual man, citing country of origin information which established that homosexuals, or persons suspected or accused of being homosexuals, were punished with extreme severity⁶. It was concluded that 'it is inevitable that we must find that the fear held by the appellant is a fear of persecution.'..."

15. "Such cases, in which the law is found to be persecutory *per se*, exist in the context of homosexuality. Courts have determined that requiring conformity to avoid prosecution would amount to persecution. In a 1983 German Administrative Court/ Wiesbaden judgement, the decision of the Federal Refugee Office which held that the applicant could avoid persecution in the future by concealing his homosexuality from the Iranian government and live peacefully in Iran, was reversed. In so deciding, 'the Administrative Court believed that telling a homosexual asylum seeker that he can avoid persecution by being careful to live a hidden, inconspicuous life is as unacceptable as suggesting that someone deny his religious beliefs, or try to change his skin colour.'"

A. *Sexual orientation as a ground for "membership of a particular social group"*

16. For the purpose of determining refugee status under the 1951 Refugee Convention and its 1967 Protocol, the ground of membership in a particular social group has not been easy to define. According to the UNHCR *Handbook on procedures and criteria for determining refugee status*, "A 'particular social group' normally comprises persons of similar background, habits or social status. A claim to fear of persecution under this heading may frequently overlap with a claim to fear of persecution on other grounds, i.e. race, religion or nationality."

17. As explained in the UNHCR analysis already quoted,⁷ "the term was added to the grounds of persecution in the 1951 Convention by the Swedish delegation at the Conference of Plenipotentiaries, commenting that ... 'experience had shown that certain refugees had been persecuted because they belonged to particular social groups. The draft convention made no provision for such cases, and one designated to cover them should accordingly be included.' Unlike other terms in the refugee definition, this ground has been the subject of continuous debate, and jurisprudence in general on this ground is diverse and continues to grow."

18. As summarised in a recent research survey carried out by the European Council on Refugees and Exiles (ECRE), the focus of academic debate on this issue revolves around three approaches:

a. The *inclusive approach* – asserts that drafters of the 1951 Convention meant to include all those people who could not fit into the other four grounds of the definition, the social group category thus acting as a "safety net". This approach calls for a "broad, liberal interpretation" of the social group category.

b. The *exclusive approach* – asserts that social group is not a category in itself but should be viewed in conjunction with the other categories in the definition. This approach seeks to produce tests of eligibility.

c. The *middle way approach* – asserts that the social group category was not meant to be meaningless, but neither was it meant to be a catch-all."⁸

19. Jurisprudence shows that homosexuals have been identified as constituting a particular social group. In its trend analysis already cited,⁹ UNHCR refers to the case of *Toboso-Alfonso*. In this case, the US Board of Immigration Appeals "reversed a decision which had found that socially deviate behaviour, which is how it defined homosexual activity, was not a basis for finding the existence of a social group. The Board stressed that it was not a specific activity which led to persecution of the claimant, but rather his having the status of being homosexual. However, the Board emphasised that recognition of homosexuality as an immutable characteristic was not challenged."

20. UNHCR also points out that "the German authorities have accepted that homosexuals can constitute a particular social group based on their minority and negative status in society. The German Administrative Court/Wiesbaden held that the key to determining the existence of a particular social group is whether the general population views this collection of people as an unacceptable group. 'Based on the pejorative labels attached to homosexuals, the prejudice expressed against them, and the destructive treatment they are subject to in Iran and in many other societies, the court concluded that homosexuals constitute a particular social group within the Geneva Convention.'"¹⁰

21. In 1993 the Canadian Supreme Court, in *Canada (Attorney General) v. Ward*, established that "individuals fearing persecution on such bases as gender, linguistic background and sexual orientation" could constitute a particular social group defined by "an innate or unchangeable characteristic" for the purposes of the 1951 Refugee Convention.

22. In 1999, in the United Kingdom, in *Islam (A.P.) v. Secretary of State for the Home Department, Regina v. Immigration Appeal Tribunal and Another Ex Parte Shah (A.P.)*, the House of Lords stated that homosexuals persecuted on the grounds of their sexual orientation could constitute a particular social group for the purposes of the 1951 Refugee Convention.

23. Finally, it may not be irrelevant to note that a 1998 decision in France recognised a transsexual from Algeria as a refugee. The *Commission des recours des réfugiés* concluded that transsexuals, because of their own common characteristics different from others, are exposed to persecution in Algeria, and, as such, constitute a particular social group for the purposes of the refugee definition.

24. According to the above-mentioned research survey carried out by the European Council on Refugees and Exiles (ECRE), "in 1996 it was estimated that there were 700 asylum cases world-wide, decided or pending, involving sexual orientation applications for Convention refugee status, under either 'membership of a particular group' or 'political opinion' or a combination of the two. Some applications for Convention refugee status on the grounds of sexual orientation are claimed under the category of political opinion, despite the fact that many homosexuals do not consider their sexual orientation to be political... Some academics consider it could be possible to file an application under the category of religion, where homosexual status conflicts with conventional religious doctrine, compliance with which is enforced by state or private actors. No cases are known to have been filed under this category."

25. "Claims for Convention refugee status based on sexual orientation under the social group category emerged at the beginning of the 1980's¹¹, and still represent a small part of the total claims under 'membership of a particular social group' as a whole."

26. "An increasing number of homosexuals have been granted asylum on humanitarian grounds rather than granted Convention status."

27. "Whilst women comprise the overwhelming majority of asylum seekers world-wide, there has been a

conspicuous absence of sexual orientation applications by women and the granting of refugee status based on sexual orientation to women. The majority of claims based on sexual orientation have been made by male applicants."

28. "The issues surrounding sexual orientation as a social group category have highlighted problems such as asylum based on persecution of HIV-positive persons."

29. "The non-recognition by states of homosexual marriages has meant the absence of applications for asylum based on family reunion of gay and lesbian couples."¹²

B. Prosecution of homosexuals as well-founded fear of persecution

30. In approximately 40 countries around the world same-sex relationships, whether between men or women, remain illegal, while in a further approximately 40 countries, same-sex sexual relationships between men only also remain illegal. In at least 8 countries the maximum penalty is death.¹³

31. The above-mentioned ECRE research paper points out that "it is frequently the case that homosexuals are prosecuted in their countries of origin. Punishment has ranged from imprisonment (Romania 1-5 years for a consensual act in private¹⁴), to forced medical intervention (such as in Russia), to execution (death by stoning in Iran)."¹⁵

32. Some observers find it hard to accept that prosecution can amount to persecution. However, it has been held that this may be the case where the law allegedly broken is contrary to international human rights standards, and this is an approach which is in total accord with the principles of the Council of Europe.

33. In this connection, the UNHCR *Handbook* states, in paragraphs 59 and 60:

"In order to determine whether prosecution amounts to persecution, it will also be necessary to refer to the law of the country concerned, for it is possible for a law not to be in conformity with accepted human rights standards. More often however, it may not be the law but its application that is discriminatory..."

"In such cases, due to the obvious difficulty involved in evaluating the laws of another country, national authorities may frequently have to take decisions by using their own national legalisation as a yardstick. Moreover, recourse may usefully be had to the principles set out in various international instruments relating to human rights, in particular the International Covenants on Human Rights, which contain binding commitments for the states parties and are instruments to which many states parties to the 1951 [Refugee] Convention have acceded."

34. In this context, for example, the European Court of Human Rights, in *Dudgeon v the United Kingdom*, held that the prohibition of private homosexual relations between adult males capable of valid consent was not necessary in a democratic society for the protection of morals, public order, or the rights of others. Nevertheless, states had a certain margin of discretion in determining how they regulated sexual conduct other than by total prohibition, in the light of local circumstances.

35. Furthermore, it has been held that laws prohibiting homosexual acts in private violate the right to private life under Article 8 of the European Convention on Human Rights [*Dudgeon v. the United Kingdom*; *Norris v Ireland*; *Modinos v Cyprus*] and Article 17 of the International Covenant on Civil and Political Rights [*Toonen v Australia*].

36. It has also been argued that prosecution would amount to persecution if that prosecution were simply a pretext, "accompanied by excessive punishment or administered under inadequate or arbitrary procedures."¹⁶

C. The problem of evidence

37. As the ECRE paper cited above points out, "homosexuals face additional burdens in seeking to establish credibility to their claims, corroborate their fears of persecution and submit evidentiary information. They are often unable to provide sufficient documentation to support their allegations of persecution." In the United Kingdom, for example, "a refugee had to undergo an anal examination by a medical doctor in order for the adjudicator to determine whether the applicant was really homosexual. A lack of documentation on persecution of homosexuals by mainstream human rights groups and a general mistrust by the courts of information produced by gay and lesbian organisations makes it relatively difficult for homosexuals to produce reliable evidence of persecution. There is a lack of pro bono legal representation. The fact that determination systems often allow adjudicators to exercise some degree of discretion means that determinations may be subject to prejudices against political or socially unpopular groups."¹⁷

4. Asylum practice in Council of Europe member states

38. In Council of Europe member states the practice of granting asylum to gay men or lesbians differs widely, judging from the replies to the Rapporteur's questionnaire sent out to relevant international and non-governmental organisations in most of the member states.¹⁸

39. From the replies received, it seems that some member countries have granted asylum to gays and lesbians from other member states, for example from Romania¹⁹ and Russia on the ground of persecution. While laudable on the part of the receiving states, this is a very unsatisfactory state of affairs. member states of the Council of Europe should harmonise their policies on such human rights issues as the status and treatment of homosexuals in accordance with "best practice".

5. Immigration

40. As with asylum, member states' immigration policies and practices differ widely in respect to immigration status of gays and lesbians. The legal basis of immigration rights of partners is usually founded in Article 8 of the European Convention on Human Rights. But this hinges on the definition of family. Same sex partnerships are either not recognised or discriminated against in many member states.

41. In order to address these forms of discrimination, there needs to be specific provision by each member State for the recognition of same-sex partnerships in relation to immigration law, and a legal recognition of same-sex partnerships across Europe. For there to be an equivalent freedom of movement, same-sex partners need to be recognised as family members in both national and international law.

42. In most member states immigration on the ground of family reunion is only granted to legally married heterosexual couples. Some member countries take a more restrictive view of what constitutes a relationship for migrants than for their own population. This practice is highly discriminatory.

43. However there have been very positive developments in the recognition of the residence rights of bi-national couples in a number of member states in recent years.²⁰ Registered partnership laws in Denmark, Iceland, the Netherlands, Norway, and Sweden all enable bi-national couples (where one partner is a local national) to enjoy the same residence rights as married couples. Many of these countries also have separate regulations which enable bi-national partners in stable same-sex relationships who have not taken up registered partnership to obtain residence rights for the foreign partner.

44. In the Netherlands the foreign partner of an European Union citizen resident in that country, or of a foreign national granted refugee status, may settle in the Netherlands. In Sweden under a proposal intended to take effect on 1 March 2000, non-Swedish same-sex couples who have lived in Sweden for at

least two years will be eligible for registration under the Registered Partnership Law.

45. Certain other member states also make provision for bi-national same-sex couples to obtain residence together. In Finland immigration officials do not distinguish between heterosexual and homosexual common-law couples. Such couples need to prove they have lived together for at least one year in order to qualify for a residence permit. In the United Kingdom same-sex couples need to prove that they have lived together for two years, while in Belgium, residence permits of unlimited duration are granted only after three years and six months cohabitation.

46. There have also been some developments in Germany. In 1996 the Federal Administrative Court in Berlin ruled that the immigration authorities had a certain amount of discretion when granting residence permits, and in the same year the Higher Administrative Court in Münster ruled that the European Convention on Human Rights implied a right for the foreign partner of a binational same-sex couple in a lasting relationship to be granted a residence permit. However, despite these developments, access to residence rights by bi-national couples remains highly restrictive, with few couples qualifying, and with the foreign partner, if lucky enough to be granted residence, unable to take up employment.

6. Conclusions

47. The present unsatisfactory situation could be improved by ensuring that persecution on grounds of homosexuality is recognised as a ground for asylum. This should be followed by recognition that lesbian and gay relationships should be treated on the same basis as heterosexual relationships in respect to laws and social policies in the field of immigration. The Committee of Ministers should develop specific guidelines and immigration officials should be trained accordingly.

48. member states should review their treatment of homosexuals in respect to asylum and immigration, and the harmonisation of relevant laws and policies among Council of Europe member states should be speeded up.

49. Support and encouragement should be provided to non-governmental organisations defending the human rights of homosexuals.

Reporting committee: Committee on Migration, Refugees and Demography.

Budgetary implications for the Assembly: none.

Reference to committee: [Doc. 7864](#) and Reference No 2209 of 22.09.97

Draft recommendation unanimously adopted by the committee on 19 November 1999

Members of the committee: Mr Díaz de Mera (Chairman) (alternate: *Fernandez Aguilar*), Mr Iwiński, (Vice-Chairman), Mrs *Aguiar*, MM. Akselsen, Amoruso (alternate: *Olivo*), Mrs *Arnold*, MM. Atkinson (alternate: *Hancock*), Aushev, Mrs *Björnemalm*, MM. Bogomolov, *Bösch*, Brancati (alternate: *Brunetti*), Branger, Mrs Bušić, MM. *Chiliman*, Chitaia, Christodoulides, Chyzh, *Cilevičs*, *Connor*, Debarge, Mrs Dumont, Mr Einarsson, Mrs *Err*, Mrs *Fehr*, MM. *Filimonov*, Frimannsdóttir, Ghiletschi, Hrebenciuc (alternate: *Paslaru*), Ivanov, Jakic, Lord *Judd*, Mrs *Karlsson*, MM. Koulouris (alternate: Mrs *Katseli*), Kozłowski, Laakso, *Lauricella*, *Liapis*, Luís, Mrs Markovska, MM. *Mateju*, Melo, Minkov, Moreels, Mularoni, *Mutman*, Ouzky, Pullicino Orlando, Rakhansky, Mrs Rastauskiené, Mrs Roth, MM. von Schmude, *Szinyei*, Tabajdi, Tahir, *Telek*, Thönnnes, *Tkác*, Vanoost, Verhagen, Mrs *Vermot-Mangold*, Mr Wray (alternate: Lord *Ponsonby*), Mrs *Zwerver*, N..... (Alternate: Mrs *Guirado*, *Vice-Chair*).

N.B. The names of those members present at the meeting are printed in italics.

Secretaries of the committee: Mr Newman, Mrs Nachilo, Mr Adelsbach.

¹ Source: International Lesbian and Gay Association (ILGA) World Legal Survey – published at www.ilga.org

² *Ibid.*

³ "Gender-related persecution: an analysis of recent trends" in *International Journal of Refugee Law Special Issue*, 1997, from which paragraphs 12-15 herein are extracted (pp.95-6).

⁴ Countries include Australia, Belgium, Canada, Finland, Germany, Ireland, the Netherlands, New Zealand, the United Kingdom and the United States.

⁵ *Matter of Toboso-Alfonso*, designated as precedent on 16 June 1994 by the Attorney General.

⁶ The Authority noted, among others, the Amnesty [International] Report, "Breaking the Silence: Human Rights Violations Based on Sexual Orientation" (AI USA Report, Feb. 1994) which condemned the death penalty and stated that "although referred to as a punishment for crime, the death penalty is often arbitrary, used as a tool for political repression or disproportionately imposed on the poor and powerless. Like other disenfranchised groups, lesbians and gay men sometimes face the death penalty for their identity, including their homosexual conduct."

⁷ "Gender-related persecution: an analysis of recent trends" in *International Journal of Refugee Law Special Issue*, 1997, p. 105.

⁸ "Sexual orientation as a ground for recognition of refugee status", European Legal Network on Asylum (Elena), European Council on Refugees and Exiles, London, June 1997, p. 3.

⁹ "Gender-related persecution: an analysis of recent trends" in *International Journal of Refugee Law Special Issue*, 1997, p. 112.

¹⁰ (cited *ibid.*) "The Court added that in many cases, it may be difficult to decide whether the mistreatment of homosexuals constitutes discrimination or rises to the level of persecution, but that this distinction was easy to make in Iran where homosexuals are 'crushed like vermin'."

¹¹ The first case was in the Netherlands [*Judgement of Aug 13 1981 Afelding.Rechtspraak (Judicial Commission of the Council of State) No A-2.1113 Rechtspraak Vluchtelingenrecht No 5 1981*].

¹² Research paper on "Sexual orientation as a ground for recognition of refugee status", European Legal Network on Asylum (Elena), European Council on Refugees and Exiles, London, June 1997, pp. 1-2.

¹³ Source: ILGA World Legal Survey, published at www.ilga.org

¹⁴ According to information provided on 10 September 1999 to the Committee on Migration, Refugees and Demography by the Romanian Member, the restrictive law concerning homosexuals in Romania is in the process of being revised.

¹⁵ Research paper on "Sexual orientation as a ground for recognition of refugee status", European Legal Network on Asylum (Elena), European Council on Refugees and Exiles, London, June 1997, p. 7.

¹⁶ *Ibid.*

[17](#) *Ibid*, pp. 7-8

[18](#) No information was received from Andorra, Estonia, Czech Republic, Lithuania, Liechtenstein, Luxembourg, Malta, Moldova, San Marino, Slovenia, "the Former Yugoslav Republic of Macedonia", or Turkey. The Rapporteur is grateful to the International Lesbian and Gay Association (ILGA) for help with the questionnaire.

[19](#) See footnote No. 14.

[20](#) Source for information included in paragraphs 41 to 45: ILGA World Legal Survey published at www.ilga.org