

## CURRENT DIPLOMATIC PRACTICE ON PARTNERS OF HOMOSEXUAL MEMBERS OF DIPLOMATIC MISSIONS AND WIVES OF POLYGAMOUS MEMBERS OF DIPLOMATIC MISSIONS

Peter Rosputinský\*

### ABSTRACT

Although there is no rule defining the term family member of a member of a diplomatic mission in general international law, it is an established consensus between States of different cultures, political systems and legal orders that at least a husband or a wife and their joint minor children are family members. However, the status of same-sex partners of diplomats as well as the second and other wives of the polygamous diplomat is unclear. Since the data about practice of States regarding same-sex partners on one hand, and wives with children of polygamous diplomats on the other hand, is fragmentary and hardly accessible, we decided to conduct a research, objective of which was to identify the current diplomatic practice on the issues concerned as well as its consequences with respect to the definition of a family member of a member of a diplomatic mission. The main research was undertaken by the means of written requests sent to Ministries of Foreign Affairs and by subsequent processing of responses received. The results show that many sending States are sending openly homosexual diplomats into receiving States not recognising any form of same-sex partnership and that many receiving States prohibiting polygamy are willing to accredit sending States' polygamous diplomats with all their children, and even all their wives. This demonstrates an emerging tendency of the prevailing character of the sending States' law with respect to the definition of family members which takes place on the basis of international courtesy and not of international law.

**Key words:** same-sex partner, homosexual partner, registered partnership, polygamy, marriage, family member, diplomatic mission, accreditation, diplomatic privileges and immunities

\* PhDr. Mgr. Peter Rosputinský, PhD. is a lecturer at the Department of International Relations and Diplomacy, Faculty of Political Sciences and International Relations, Matej Bel University in Banská Bystrica, Kuzmányho 1, 974 01 Banská Bystrica, Slovak Republic, e-mail: peter.rosputinsky@umb.sk.

## Introduction

Modern diplomatic relations between states are mostly handled by diplomats on permanent diplomatic missions in receiving States. Given that they ordinarily operate in foreign States for several years, in diplomatic practice it is already well established that they are accompanied by their immediate family. This regime is also legally enshrined in the Vienna Convention on Diplomatic Relations (hereinafter only "VCDR"), however, in brief and vague way. Persons accompanying a member of the diplomatic mission (hereinafter only "the mission<sup>1</sup>") are mentioned only a few times in the text of this international treaty. It is so when defining legal status of these persons (question of their privileges and immunities) and when specifying duties of the sending State in relation to these persons (for example, obligation to notify their arrival to the receiving State and their final departure from the receiving State). To identify abovementioned accompanying persons, the VCDR uses the term "*a person belonging to the family of a member of the mission*", or more often "*a member of the family of a member of the mission*". However, the VCDR does not define a family member nor enumerate them by an exemplificative or exhaustive list. Nonetheless, what is more important is the fact that the VCDR does not even define the term family, which is crucial for the persons accompanying members of the mission. The reason for this is that the family is a social structure perceived differently by different cultures and different legal systems. Nowadays, from the point of view of international law, a universal definition of family still does not exist and therefore there is no exact demarcation of who could be regarded as a member of the family of a member of the mission. However, due to practical reasons, States needed to resolve this question and that is why they created generally accepted practice in the process of realisation of diplomatic relations, "*that receiving States may formulate a reasonable definition in order to specify who may enjoy the privileges and immunities of this category of persons*" (Diplomat in Norway, 2019, para 1.9). Therefore, in this question, both sending and receiving States are creating and applying their own national legislation or at least their own practice. Logically, due to providing diplomatic privileges and immunities (hereinafter only "P&I"), the position of the receiving State is deciding. **E. Denza**, one of the most

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<sup>1</sup> The term 'mission' is frequently used also in the VCDR as an abbreviation for 'diplomatic mission' and in this study it will include consular posts, too. The reason is that the practice of States with respect to family members of members of diplomatic missions is almost the same or very similar as in the case of family members of members of consular posts.

recognised experts in the field of diplomatic law, states that “majority of states have not published formal rules about who will be accepted as a member of the family” (Denza, 2004, p. 323) and therefore it is quite difficult to find out law of which receiving State is solving this question specifically, or alternatively, how does respective receiving State solve this question. However, this question is of great significance to the decision, whether the given person will enjoy the P&I on the territory of the particular receiving State or not.

There has been only a little attention given to this question in academic literature. It is usually narrowed down to a reference to definition of the term family in the receiving States’ legal systems, sometimes with the addition of requirements of being blood-related, having common household and mutual or unilateral dependence. Detailed overview of opinions of Slovak and foreign authors on this topic is included in publication *Vybrané otázky diplomatického práva*, in English *Selected Questions of Diplomatic Law* (Rosputinský, 2015, p. 78-91). Common character of generally recognised definitions of a member of the family of a member of the mission is that he/she ought to be a close relative, especially a husband, a wife or a spouse and their minor children. Scientific literature, however, takes into account only an exemplificative enumeration of persons who could be considered as family members of a member of the mission without claiming an absolute applicability of the respective definition for every State. This discretion corresponds to the practice of States, reason of which is, among others, retaining a certain extent of flexibility in the case of necessity to deal with unusual situations, for example an arrival of a polygamous ambassador accompanied by several wives (Gore-Booth, 1992, para 17.3) or by a partner of the same sex as is the member of the mission.

And exactly the two abovementioned categories of persons became a subject of research began in October 2016, conclusions of which are presented by this study. The objectives of this research were (i) to find out the practice of as much UN Member States as possible in the question whether they consider a partner of a homosexual member of the mission and several wives of a polygamous member of the mission as members of the family of a member of the mission; (ii) to identify, on the basis of States’ answers, whether in the modern diplomatic practice a new universal or regional rule in the field of definition of a member of the family of a member of the mission is already created or at least is being created and (iii) to identify whether the rule of international customary law, which is referred to in scientific literature about receiving State having the right to define the term ‘family member’, applies or not.

The basic hypothesis of the whole research as well as of this study is that receiving States consider as a family member of a member of the missions of the sending States, entitled to enjoy the P&I, only persons who are considered as family members according to their own legal systems. In other words, it means that States not recognising any forms of life partnership of two people of the same sex and the States not recognising polygamous marriages will not acknowledge the status of the family member with the P&I to a same-sex partner and to more than one wife of a member of the mission.

## 1 Starting Point of the Research

Subject of the research was focussed on the two abovementioned categories of persons from the point of view of the current development of international relations. As for the first one, in the relation to homosexual partners of the members of the missions, we are witnessing increasingly more open attitude of many States which tends to abolish the discrimination of homosexual people and gradually endow them equal rights as the heterosexual majority. Even before approximately twenty-five years, homosexuals were undesirable or at least problematic persons in diplomatic service in every State of the world including the USA or countries of Northern Europe. The change was coming very slowly but occurred quite quickly. Even in 1998, only two European countries did recognise unmarried partners of diplomats, namely Netherlands and Sweden, "*whilst the European Commission, Finland, Norway and France accept only heterosexual partners*" (Hendry, 1998, p. 41). Nowadays, it has become increasingly common that posts on embassies are being filled by persons who openly claim to be homosexual. Cases of accrediting the head of the mission by the openly gay diplomats are known<sup>2</sup>, even in States which do not recognise homosexual marriages or registered partnerships<sup>3</sup>.

As for polygamous diplomats, making up the second group of persons which this research was focussed on, the inspiration was the increasing migration to Europe after the year 2014 which brought among others the question how should the continental legal system, recognising only monogamous marriages,

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<sup>2</sup> Historically, the first of them was probably the U.S. Ambassador to Luxembourg, J. Hormel, accredited by the U.S. president B. Clinton in 1999 (Nevius, 2016).

<sup>3</sup> In Slovakia, the first one was presumably Ch. Fotsch as the Ambassador of the Swiss Confederation (between January of 2011 until January 2014).

deal with the issue of polygamous families<sup>4</sup>. Abovementioned means that the status of the polygamous diplomats does not have to be tackled in Muslim States exclusively, but it can also increasingly affect many other countries in the near future.

An acknowledgement of topicality and correctness of content focus of our research started in the autumn 2016, was the publication *Diplomatic Law in a New Millennium* with publication date 13 July 2017, extensive book written by twenty experts and edited by **P. Behrens**, which is providing “*insight into some of the most controversial and important matters which characterise modern diplomatic law*” (Amazon, 2019). To one of those matters was even dedicated a separate chapter named *The Privileges and Immunities of the Family of the Diplomatic Agent: The current scope of Article 37(1)*<sup>5</sup>. Its author, **S. Stirling-Zanda**, points out exactly the issues of same-sex partners as well as of polygamy in its various forms within the substantive practice of States with respect to the concept of family and simultaneously says to that point that “*if more research were available it would probably offer an interesting insight into an increasing, though still modest recognition of diversity around the world*” (Stirling-Zanda, 2017, p. 107)<sup>6</sup>. Our research shall at least partially fill the gap, bring some new information on diplomatic practice of States involved in our research and provide some useful findings.

There were two questions formulated with respect to the abovementioned two categories of persons within the research. Their essence comes out of the fact that according to universal international public law, the P&I can be enjoyed in the receiving State only by that kind of persons accompanying a member of the mission who is a member of his/her family (and fulfils other conditions, for

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<sup>4</sup> From our point of view, probably only the amount of persons entitled to the P&I in the receiving State and the prohibition of bigamy are important. Allowing the arrival of more spouses of polygamous missions' members will increase number of privileged persons. Allowing the arrival of polygamous family will create huge discrepancy between criminally liable citizens of the receiving State for the crime of bigamy on one hand and polygamous foreigners not only tolerated but also endowed with the P&I on the other hand. However, generally speaking, there are many other crucial issues that should be dealt with in countries of immigration, e. g. entitlement to receive social benefits for the second and other wives or assessment of the whole family with regard to the entitlement to benefits in material need and so on.

<sup>5</sup> The Article 37 (1) of the VCDR is relating to the members of the family of a diplomatic agent.

<sup>6</sup> She also openly confessed that their “*initial intention of trying to ascertain the meaning of Article 37(1) by looking at practice, has been partly defeated by a frustrating difficulty in gathering judicial practice and in obtaining ‘guides’ or legislative documents relative to privileges and immunities granted by various States to their beneficiaries*” (Stirling-Zanda, 2017, p. 109).

example forms part of his household, is not a national of the receiving State or, in case of members of the administrative and technical staff of the mission, is not permanently resident in the receiving State). This does not prevent a member of a mission from being accompanied by a relative not belonging to his/her close family (e. g. nephew or grandson) or by another person whom he/she are not blood-related with, even though he/she will form part of his/her household (e. g. mother of his/her spouse). However, according to universal international public law, these categories of accompanying persons are not entitled to enjoy the P&I<sup>7</sup>. Due to the previously stated reason, the questions within our research were formulated in such a way that allows to find out whether the homosexual partners and several wives of a member of the mission are considered as not only members of the family of a member of the mission but also as his/her family members entitled to enjoy the P&I arising from their relationship to a member of the mission.

Therefore, the first research question prepared for States was whether the respective State in the position of the receiving State would recognise a same-sex partner of a member of the mission of the sending State as a family member and would grant the P&I to him/her. The second question sought answer to whether the respective State in the position of the receiving State would recognise the second and other wives of a polygamous member of the mission of the sending State and their joint children as family members and would grant the P&I to them.

Within the research, the ambition was to capture the broadest possible view of the members of international community with respect to the researched subject which naturally resulted in the interest in determining the position of as many States as possible. Taking into account the fact that diplomatic relations are realized not only by full-fledged members of international community but also by various States (entities) mutually recognising themselves, not only all UN Member States were addressed within the research but also Abkhazia, the Holy See, Kosovo, Northern Cyprus, Palestine, Somaliland, South Ossetia, Taiwan and Western Sahara were. Questions were submitted in written form by post to publicly accessible postal addresses of Ministries of Foreign Affairs or other competent ministries of all States and entities concerned. In the case that

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<sup>7</sup> Obviously, the P&I can be accorded to them either on the basis of *ad hoc* bilateral agreement concluded between the receiving State and the sending State or unilaterally by the receiving State as a goodwill gesture, what often occurs in many receiving States.

further communication on the subject of the research with the State concerned was necessary (e. g. omission of giving answer to some part of the question or ambiguity of some answer), it was carried out only via e-mails. If there was no response from the addressed State to the written request, attempts to obtain the answers to the questions from the research were made by the means of sending e-mails to the accessible e-mail addresses of respective organs of the States concerned, starting with the Ministry of Foreign Affairs, Office of the Head of the State or the Head of the Government continuing with embassies and consular offices of the given States and eventually with their permanent missions to the UN or other international organizations. In individual cases, Slovak embassies and Slovak consular offices abroad were contacted with the request for assistance<sup>8</sup>.

Replies to the requests from individual States came in vast majority via e-mail messages or more precisely, their attachments. In some isolated cases, the addressed State replied in the form of a letter. With regards to the identification of the separate replies, this study does not solely use a reference to a State as such; every response is marked by its consignor. In most cases, the consignor was a particular person who either wrote or signed the State's position (preponderantly an employee of the Ministry of Foreign Affairs or embassy of the State concerned), however, in some cases, an institution was explicitly marked as a consignor, ordinarily the Department of Protocol of the Ministry of Foreign Affairs of the given State. For the purpose of making this study more straightforward and synoptical, the particular position (function) of the person submitting the State's reply is not stated.

Apart from the abovementioned basic way of obtaining the primary data, the method of content analysis of publicly accessible information in the form of various guides, diplomatic handbooks and protocol guidelines issued by some States, where available<sup>9</sup>, were used as well. In the case that no reply was given by the addressed State, we attempted to identify the practice of that State based on its diplomatic guide. In the case that the State sent the reply and

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<sup>8</sup> An example of this way of obtaining information was the case of Turkey when the Deputy Head of the Slovak Embassy in Ankara, B. Hradský, consulted the consular department of the Turkish Ministry of Foreign Affairs and submitted the Turkish position on the issue. Some other Slovak embassies answered too, but only with their estimate of the receiving State's position. This was the case of positions of Micronesia, Qatar and Syria which were not included in the research.

<sup>9</sup> Some guides were found in Arabic. Due to the difficulties with their translation, it was impossible to include them in the research.



simultaneously published its diplomatic guide on the internet, we made a comparison of the reply with the content of the guide, verifying the reliability of the obtained information.

Finally, it should be noted that the whole research was conducted within the course Diplomatic Law and Consular Law and with the considerable cooperation of the students of the Faculty of Political Sciences and International Relations of the Matej Bel University. The participation in the research was a practical task for them, set as one of conditions to graduate the course. Another reason to actively involve students in the research was due to vast amount of addressed States and their institutions (altogether 202 subjects – States, while in cases of some of them, tens of e-mail requests had to be sent) and due to the necessity or propriety of using as many languages as possible<sup>10</sup>. At this point, I would like to express my sincere thanks to all students of the Faculty of Political Sciences and International Relations of the Matej Bel University who participated in collection of primary data –practical and time-consuming part of the research– for their cooperation and in many cases, even perseverance. Without their patient work and sometimes even persistence, it would be impossible to conduct a meaningful research and without information obtained within it, this study would have never come into being.

## **2 Results of the Research on Same-Sex Partners of Missions' Members**

Based on the hypothesis of the research, it could be presumed that in the case of the same-sex partners, States will be naturally divided into two groups. The first one shall be formed by States that recognise some kind of cohabitation of two persons of the same sex and therefore accredit homosexual partners. The second group shall be formed by States not recognising any form of cohabitation of two same-sex persons and therefore not accrediting homosexual couples. According to our findings, the States' practice is a bit more diverse. In some cases, results of the research can be found even surprising.

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<sup>10</sup> We presumed that if the Foreign Ministry receives our request written in the official language of its State, the probability of answering to our request would be increased. For example, this was the case of Armenia. It could be added that requests were formulated and the communication was carried out not only in English and Slovak, but also in French, German, Spanish, Russian, Portuguese, Ukrainian, Armenian, Bulgarian, Romanian and other languages.



## 2.1 States Recognising Same-Sex Partners of Members of Sending States' Missions as Family Members

Significant amount of States, altogether fifty, considers same-sex partners of accredited staff of missions as their family members and accords to them the usual P&I, provided that they are nominated as dependants by the sending State or their relationship is officially recognised by the sending State. However, in this group of States it is possible to divide the receiving States into two subcategories, depending on whether they recognise same-sex marriages or other civil or registered unions of the same-sex persons or not.

The first subcategory, consisting of thirty-three States recognising same-sex partners of members of a mission as family members, in absolute accordance with the hypothesis of this study, is formed by receiving States recognising same-sex marriages, same-sex partnerships or other similar relationships between same-sex couples in their domestic legislation. In the case that the practice of the given State is somehow unique, or the given State mentioned some additional information or interesting fact in their response which is new or beneficial from the point of view of the research, all of it will be stated in the further text of the study. Following States, in alphabetical order of their official designations used by the United Nations, belong to this subcategory:

1. Andorra grants all the P&I to the family members of a member of the mission in case that they are in a registered partnership or other similar union of persons of the same sex (Quillacq, 2017). Andorra stated as general rule that Andorra „*applies the privileges and immunities to family members of a diplomat without a distinction of their gender*” (Forner, 2017). According to Andorra’s position, it depends only on the sending State, whether the homosexual partner of a member of the mission will enjoy the P&I on the territory of Andorra or not. If a sending State also requests the accreditation of the same-sex partner of a member of the mission, Andorra will grant to him or her full extent of the P&I (Forner, 2017)<sup>11</sup>;

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<sup>11</sup> This was the situation of the U.S. Ambassador to Spain (accredited also to Andorra) J. Costos. It is worth noting that other U.S. openly gay ambassadors, after J. Hormel (1997), were accredited to Australia (J. Berry), to the Dominican Republic (J. Brewster), to Denmark (R. Gifford), to the Organization for Security and Cooperation in Europe (D. Baer), to Vietnam (T. Osius) (Itkowitz, 2015), to Romania (M. Guest), to Germany (R. Grenell), to Nepal (R. Berry) (Chibbaro, 2019), to Bosnia and Herzegovina (E. Nelson) (Sito-Sucic, 2019) and next can be R. Gilchrist which is nominated as Ambassador to Lithuania (Chibbaro, 2019).

2. Argentina stated that same-sex member of the family of a member of the mission will be granted the same P&I as heterosexual partners enjoy (Sekretariat posla, 2017);
3. Australia (Australian Government Letter, 2016);
4. Austria (Kernthaller, 2017);
5. Belgium (Heyvaert, 2016; Protocol Guide Immunities and Privileges, 2019);
6. Brazil states that the VCDR mentions only the term “family member” without specifying whether the union is formed between two persons of the same sex. Brazil generally grants the P&I also to same-sex partners but under the condition of reciprocity which means that if the sending State does not grant any P&I to a same-sex partner of a Brazilian diplomat, Brazil in the position of the receiving State will not grant them as well (Kleebank, 2016);
7. Canada (Circular Note No. XDC-3196, 2014);
8. Chile where it is sufficient to prove the origin of the same-sex union with the member of the mission (Navarrete, 2017);
9. Colombia (Derecho de Peticion, 2017);
10. Croatia (Diplomatski protokol, 2017);
11. Czech Republic accredits same-sex partners and grants them the P&I, if the sending State provides assurance that the relationship is recognised by the law of the sending State and that its Ministry of Foreign Affairs recognised them as members of family (Čížek, 2017);
12. Denmark which requires proof of cohabitation prior to arrival in Denmark (Guide for Diplomats in Denmark, 2019);
13. Estonia accepts and accredits same-sex spouse as spouse with all the P&I, if the sending State accepts same-sex spouse and provide him/her with a diplomatic passport of the sending State (Unger, 2016);
14. Finland is one of the few States, where the term family member is defined directly by a national legislation; pursuant to the Finnish Aliens Act same-sex partner is a family member too, “*if the two persons have officially registered their relationship*” (Diplomatic privileges and immunities in Finland, 2018, p. 45);
15. France, as a State recognising same-sex marriages, considers as a family member in the category of partners of the members of a mission only a husband or a wife, regardless of their gender; in the Protocol Guide published on the internet, France explicitly states that partners of

missions' members who have entered into a Civil Solidarity Pact<sup>12</sup> or comparable legal relation will not be considered as family members (Protocole, 2019);

16. Germany answered that same-sex life partners enjoy the P&I when the following conditions are met: (i) proof of registered partnership similar to registered partnership according to the German law on registered partnerships; (ii) issue of the diplomatic or official passport for the life partner by the sending State (iii) assurance of reciprocity (Hölscher, 2017);
17. Greece (Embassy of Greece, 2017);
18. Hungary (Gerelyes, 2017);
19. Ireland includes same-sex partner to the family of the principal in case that the same-sex spouse is recognised as a family member by the sending State "*as demonstrated by registration of the partnership in law in the sending State*" (Feighan, 2017);
20. Italy recognises same-sex partners only if their relationship is legally recognised in the sending States; but if the both persons do live in a de-facto relationship, Italy cannot proceed (Rizzo, 2016);
21. Malta (Frazier, 2017);
22. Netherlands (Protocol Guide for Diplomatic Missions and Consular Posts, 2019, p. 16);
23. New Zealand officially recognises all partners accredited to New Zealand provided that they are officially recognised by the sending State (MFAT ENQUIRIES, 2017);
24. Norway (Knutsen, 2017);
25. Portugal (Rybanský, 2016);
26. San Marino<sup>13</sup> stated that same-sex partners possess the P&I under the condition they hold a diplomatic passport (Dordevic, 2017);
27. Slovenia recognises as family members "*a spouse or cohabiting partner, provided that the extramarital union has been recognised by the sending State*" (protocol.mzz, 2017a);

<sup>12</sup> A Civil Solidarity Pact is a form of civil union of two opposite sex or same sex adults for their joint life which is based upon a contract registered by the appropriate officer of the court in the France.

<sup>13</sup> In the time of San Marino was drawing up the response to our research, San Marino did not recognise any form of same-sex partnership; however, from February 2019 civil unions for same-sex couples are legal in San Marino.

28. South Africa (Diplomatic Immunities and Privileges Act 37 of 2001, 2009);
29. Spain (Fernandez, 2017), while there are quite strict requisites arising from Spanish Protocol Guidelines regarding the proof of civil or registered partnership: passport similar to that of the accredited member of mission explicitly indicating their relationship by the expression “civil partner” or by other similar words, and when it “*is not possible, a certified document must be submitted, legalized by an official civil partnership registry in the accrediting State, in which the relationship is formally recognized*”) (Practical Guide, 2017, p. 23);
30. Switzerland considers a same-sex partner as a member of the family of a member of the mission with the same P&I if the partnership of the couple was registered in Switzerland or the person is, according to similar foreign legal provision, considered as an official partner or dependent of the member of the mission (Persons admitted as members of the family group, 2019);
31. Sweden (Eberhardson, 2016);
32. United Kingdom<sup>14</sup> (Immigration Directorates’ Instructions, 2019);
33. USA (HC-144-09, 2009) but as of October 1, 2018 the USA accepted “*the accreditation of spouses of newly arrived mission members, both same-sex and opposite sex, as members of the family for the Permanent Missions to the United Nations*” (HC-59-18, 2018, p. 2). It means that the USA stopped recognising same-sex domestic partners of members of the permanent missions of the UN Member States. Many sources (papers and internet media) informed that this policy would be applied not only with respect to the UN but also to all diplomatic missions in the USA (Morello, 2018).

The second subcategory of altogether seventeen States recognising same-sex partners of members of sending States’ missions as their family members is represented by the receiving States recognising no form of same-sex partnership in their domestic legislation. The following States belong to this subcategory:

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<sup>14</sup> First openly gay man which was appointed Ambassador of the UK was J. Clark (to Luxemburg) in 2004 (Southern, 2017).

1. Belize (Guerra, 2016) but it is needed to point out that Belize's answer does not contain any explicit proclamation, whether these dependants will enjoy the P&I;
2. Bolivia that stated that reason for such a decision is not to violate the human rights and these persons would be granted the P&I, too (Cuti, 2017);
3. Bulgaria (Šatilova, 2016; Protocol Guide of the Republic of Bulgaria, 2017);
4. Fiji (Nadalo, 2017);
5. Japan provided that the Japanese Ministry of Foreign Affairs can ascertain that the same-sex partner of a member of a mission is an eligible family member in the sending State; these same-sex spouses would enjoy the P&I (Ito, 2017);
6. Latvia<sup>15</sup>, recognising both officially registered and nonregistered marriages provided that the marriage is recognised and certified by the sending State (Arrival and Departures of Members of Diplomatic Missions, 2016);
7. Lesotho (Embassy of Lesotho, 2017);
8. Lithuania (Protocol guide for diplomatic missions in Lithuania, 2014);
9. Moldova accredits same-sex partners "*if the sending State recognizes him/her as a legal partner and, at the same time, issues a similar document as to the member of the mission (diplomatic or service passport, laissez-passer in case of international organizations)*" (Drucec, 2016);
10. Montenegro (Vukotić, 2016);
11. Nepal deems immediate family member also a same-sex partner recognised by the sending government on the basis of reciprocity (Protocol and Consular Handbook, 2018);
12. North Macedonia grants the P&I to the same-sex partner of a member of the mission if he/she is holder of diplomatic passport of the sending State and has the status as a partner (Sibinovski, 2017);

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<sup>15</sup> Realization of the research was parallel with activity of the Canadian Ambassador to Latvia A. Hausser, accredited also to Estonia and Lithuania with his same-sex spouse Mr Golany in years 2015-2018.

13. Panama stated that restrictions regarding the P&I for members of the missions and their spouses with homosexual preferences are non-existent (Lee, 2017);
14. Samoa (MFAT, 2017);
15. Serbia gave very exhaustive answer starting with a reference that Serbian diplomatic and consular practice had cases with same-sex spouses of members of diplomatic missions and consular posts. Serbia will issue respective identification card provided that the family member has passport of the sending State and a *"certificate that those persons without doubt enter into such community. Instead of "wife/husband it will be written "a member of family + surname of the member of mission/consular post"."* (Ostojic, 2017);
16. Slovakia, accepting the national legislation of the sending State, recognises as a family member of a mission's member his/her opposite-sex or same-sex partner who is officially notified while the prerequisite of registration is the submission of the same type of the travel document as the principal holds, i. e. diplomatic or official passport (Odbor legislatívno-právny, 2015; Novotný, 2019);
17. Vietnam has already had an experience with the foreign diplomat accompanied by his same-sex partner and granted him the P&I and Vietnam would do the same in the future, upon the requirement that *"his position must be clearly stated in the diplomatic passport issued by the sending State, and the couple must have marriage certificate"* (Viet Nam Embassy, 2017).

We managed as well to obtain the opinion of the Northern Cyprus, which is recognised only by one UN Member State (Turkey). The Northern Cyprus answered that they experienced a case of an ambassador with a partner of the same sex accredited to (Southern) Cyprus. That couple *"did not encounter any problems"* when had dealings in the Northern Cyprus (Redif, 2017).

## 2.2 States Non-recognising Same-Sex Partners of Members of Sending States' Missions as Family Members

According to obtained States' responses or officially published information by States, there is a number of altogether 25 (or 26<sup>16</sup>) States taking a view that

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<sup>16</sup> According to the accessible information from the daily press, India should belong to this group as well. (White, 2007). Pursuant to the provisions of the Indian diplomatic guide, *"family means*

the homosexual partner is not a member of the family of a member of the mission and therefore would not enjoy the P&I. These States justify their attitude by referring to their own legislation, especially the fact that they consider a marriage as a voluntary union of a man and a woman, or alternatively that the recognition of the union of two same-sex persons is not possible due to violation of domestic law of the receiving State. That means that States belonging to this group responded in accordance with the hypothesis of our research. This attitude was presented by:

1. Belarus (Služba gosudarstvennogo protokola, 2016);
2. Democratic Republic of the Congo (“DRC”) with supplementary recommendation, in case of receiving State having a person interested in accreditation to the DRC with his/her same-sex partner, to consult this situation with the candidate concerned (Votre demande de renseignements, 2016);
3. Ecuador (Consulado, 2017)<sup>17</sup>;
4. Egypt (Henawy, 2017);
5. Gambia (Ceesay, 2017);
6. Guatemala grants no P&I to the same-sex spouses, but treats them „with deference and courtesy” (Girón, 2017);
7. Guyana does not recognise same-sex partners but „[f]he existence of same sex marriages and registered partnership has never prevented heads of mission or heads of consular posts from being granted agrément” (McDonald, 2017);
8. Haiti (Fils-Aimé, 2017);
9. Holy See<sup>18</sup> (Pilátová, 2017);

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husband, wife, minor children and parents”, but it is admissible that other family members will arrive to India upon some proof of their identity and their relationship as a family (General Policy Guidelines, 2018, p. 4). Therefore, it is not undoubtedly clear what is the final position of India on the issue.

<sup>17</sup> Ecuador legalised same-sex marriages in 2019 (Felter, Renwick, 2019) and therefore it is very likely that the position of Ecuador has changed in the meantime.

<sup>18</sup> No response was obtained from any of the accessible organs of the Holy See; however, the response was provided by the counsellor of the Embassy of the Slovak Republic to the Holy See, Mrs M. Pilátová. Negative attitude of the Holy See in this question is best shown in the Holy See’s diplomatic practice. In 2007, the Holy See did not give an agrément when „France proposed openly gay diplomat Jean-Loup Kuhn-Delforge to be its ambassador at the Vatican” (News Wires, 2015). The exact same situation was repeated in the case of L. Stefani, a diplomat nominated by France, whereas the Holy See was not responding to the request for an agrément for over 14 months from January 2015 to May 2016 (Vatican: Philippe Zeller appointed ambassador, 2016).



10. Ivory Coast (Letter N°096/AMCIB/1/AN, 2017);
11. Kenya (Mbaya, 2017);
12. Kuwait (Prado, 2017);
13. Kyrgyzstan (Letter No. 091/n-28, 2017);
14. Malaysia (Karim, 2017);
15. Mali (Gaye, 2017);
16. Philippines does recognise as a family member neither same-sex partners nor unmarried spouses (Dayang, 2017);
17. Poland (Reply PD.0121.207.2016/2, 2016);
18. Romania (Letter Nr. A6-1/75, 2017)<sup>19</sup>;
19. Russian Federation grants no P&I to the same-sex family members of members of the mission, not even in the case of confirmation of officiality of their union; these persons can obtain Russian visa as a guest of a member of the mission for residence in Russia for a period of 90 days (Letter No 69/KO, 2017);
20. Saint Kitts and Nevis (Penny, 2017);
21. Senegal (Letter N° MAESE/SG/DPCT, 2016);
22. Tanzania (Wambura, 2017);
23. Timor-Leste (Leite, 2017a);
24. Turkey, which allows to apply for a residence permit to the relevant Turkish authorities without intermediary of the Ministry of the Foreign Affairs as a regular foreigner (Hradský, 2017; Guide to Diplomatic Missions in Turkey, 2019);
25. Uzbekistan (Služba protokola MID RU, 2016).

### **2.3 States with no Explicit or Clear Position to the Same-Sex Partners of Members of Sending States' Missions as Family Members**

Apart from abovementioned seventy-five clearly formulated answers – positive or negative– we also received some vague responses. Two states responded to the research questions only with a reference to the text of the VCDR without any additional information or any specific mention regarding a

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<sup>19</sup> It is worth noting that Romania accredited openly gay U.S. ambassador, M. Guest, in period 2001 – 2004. We did not find out what legal status was applied to his partner, but prior to his arrival to Romania, the Romanian Penal Code's provision on the criminalisation of manifestation of homosexuality was abolished.

same-sex partner of a member of the mission. Therefore, it is actually impossible to figure out the attitude of the given States to the same-sex couples and their legal position. This concerns Armenia (Letter of the Ministry of Foreign Affairs of the Republic of Armenia, 2016) and Ukraine (Letter № 211/19-172/3-1775, 2016)<sup>20</sup>.

Two other States responded by stating the categories of persons considered as family members. In the first category of them –a husband, a wife or a stable partner– they did not state whether a same-sex person is included too. This concerns the case of Mexico (Aschentrupp, 2017) and Seychelles (Accouche, 2017). The same way of defining a life partner of a mission’s member is used in diplomatic handbooks of various states. We have identified the ones of six States, namely the People’s Republic of China (Protocol Guidelines for Diplomatic Missions in China, 2006), Iceland (Diplomatic Handbook, 2019), India (General Policy Guidelines, 2018), South Korea (Guide for Foreign Mission in Korea, 2019), Mauritius (Protocol Handbook, Undated) and Thailand (Guidelines on Protocol Practice, Undated).

The last subcategory is formed by six States that did not express their opinion<sup>21</sup> specifically with respect to homosexual partners as family members of a mission’s member:

1. Monaco stated that “*a great discretion is observed on this point when ambassadors come with their spouses*” (Settimo, 2017);
2. Mongolia just concisely stated that it recognises “*the family as a union only between a man and a woman*” (Batbold, 2017);
3. Georgia stated that “*the specificities of the legislation of the sending state and the agreement reached with the respective country may also be taken into consideration*” (Protocol Guide to Diplomatic Missions Accredited in Georgia, 2019, para 11.6);
4. Israel refers to the general rule applicable to more categories of persons, additionally stating that as a family member of a member of a

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<sup>20</sup> A handbook for diplomats was issued in March 2019 in Ukraine, however the term family member is not defined there as well. At some points, this handbook just mentions all conditions pursuant to the VCDR, which are relevant for the P&I, e. g. common household, state nationality and permanent residence (Protocol Guide of Ministry of Foreign Affairs of Ukraine, 2019).

<sup>21</sup> Liechtenstein can be subsumed to this category for being in a very specific situation with regard to this issue since there are no diplomats of foreign States residing in Liechtenstein due to no resident missions in Liechtenstein. Therefore Liechtenstein answered that because of the lack of practical relevance, they have no practice nor interpretation to the question of family members of members of missions (Schindler, 2017).

mission is also considered “any other clearly dependent person who has an established history of forming part of the household; the application will be judged case by case on its merits by the Protocol Department, only at the formal and explicit request by the sending Ministry of Foreign Affairs” (Being a Diplomat in Israel, 2008, p. 29);

5. Uganda just states the term family member with no further specification (Privileges and Immunities for the Diplomatic Corps, 2012);
6. Namibia stated that “Foreign Service was never exposed to such” (Tjizo, 2017).

In this group of sixteen (with Liechtenstein seventeen) States with not expressly addressed position with the respect to same-sex partners, we are able to find some opinions inclined to the positive answer (e. g. Georgia and Israel) and some inclined to the negative answer (probably Mongolia). However, since it is our interest to classify the attitudes of States as precisely as possible and without any suppositions or even the smallest doubts, we put all the positions of these States into this separate group (including India).

Finally, we can mention the last answer of Abkhazia, which is recognised only by five UN Member States<sup>22</sup>. Abkhazia responded that she has undertaken all commitments under the VCDR and the Vienna Convention on Consular Relations and that all persons accredited in Abkhazia enjoy the full extent of the P&I enshrined in both of those treaties (Consular Service MFA of Abkhazia, 2017). However, who can be accredited in Abkhazia, was left unsaid.

## 2.4 Findings

With respect to the status of partners of homosexual members on missions in receiving States, we were able to obtain standpoints of ninety-one UN Member States, the Holy See and two internationally non-recognised entities (the Northern Cyprus and Abkhazia). Three States (Nicaragua, Qatar and Uruguay) announced they will answer on the matter, but failed to do so.

According to currently publicly accessible data the same-sex marriage is legal in twenty-seven countries<sup>23</sup> (Felter, Renwick, 2019). In addition, there are

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<sup>22</sup> Russian Federation, Nicaragua, Venezuela, Nauru and Syria (Jasutis, 2018).

<sup>23</sup> Most of them (16 States) are in Western Europe: Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom. Then Americas (8 States) follow: Argentina, Brazil, Canada, Colombia, Ecuador, Mexico, Uruguay and USA. In the rest of the world there are only three States which legalised same-sex marriages: Australia, New Zealand and South Africa.

thirteen other countries which do recognise same-sex civil unions or registered partnerships<sup>24</sup> (Countries Where Gay Marriage is Legal, 2019; Felter, Renwick, 2019; Mendos, 2019, p. 288). So, as of 31 August 2019, forty States legally recognise some form of cohabitation of same-sex couples.

We received responses from thirty-seven States from this group (just opinions of Cyprus, Luxembourg and Uruguay are missing), whereas thirty-three States expressly confirmed they recognise the same-sex partners of a member of the mission as family members. Two States from this group, Iceland and Mexico, stated that they consider a marital partner of a member of the mission as his/her family member, but without explicit mention on their gender. One State, Liechtenstein, does not address the question of same-sex couples due to absence of any resident diplomatic missions on its territory. And the last State from this group, Ecuador, has introduced the same-sex marriages in its legislation this year, so we can presume that the negative answer from 2017 is already not up-to-date. As for the three abovementioned missing States from this group, we can formulate a presumption that these States – predominantly Luxembourg and Cyprus– would consider same-sex partners of missions' members as family members like all States in this group.

The information about the amount of States legalising the cohabitation of homosexuals in their domestic law implies that remaining 153 UN Member States advocate the opposite view. We received a response from fifty-eight out of these 153 States. Seventeen of those fifty-eight States replied they consider a same-sex partner of a homosexual member of the mission as his/her family member. Therefore, according to these seventeen States' opinions (now without San Marino which changed its legislation in the meantime), the homosexual partner of a member of the mission is considered as a family member, but paradoxically, the homosexual partners of their own citizens are not.

That means that forty percent of answers (seventeen States) obtained from these forty-two States – i. e. around eleven percent of all 153 States not recognising any form of same-sex partnership in national legislation– prioritise the definition of family according to law and traditions of the sending State and would accept, as a family member, a person who is not recognised as a family member pursuant to their national law. Twenty-five States from the group of 153 States not recognising any form of same-sex partnership responded in

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<sup>24</sup> This group of countries covers Andorra, Chile, Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Italy, Liechtenstein, San Marino, Slovenia and Switzerland.

accordance with the hypothesis of our research, stating that same-sex partners of members of missions are not recognised as family members. The amount of twenty-five States is around sixty percent of answers obtained from this category of States. As for these States, from the point of view of the same-sex persons, there is no contrast in perception of family with respect to own citizens and to foreign diplomats.

The last group of States is formed by countries (amounting to twenty) that did not express their opinion on same-sex couples at foreign missions explicitly or not at all. Since it is rather a high amount of States, it leads to the question what was the reason for not responding specifically. The first answer to this question might be that the given States not only have no experience with accreditation of homosexual members at foreign missions but also have no rules prepared for such situations potentially occurring in the future. The second option is that the given States responded diplomatically, and their answer is to be sought in between the lines. Taking this into account, we could state that Israel expressed the positive answer and Mongolia expressed the negative answer. However, we cannot take this as a final opinion, because as is proven by the findings of the research, there are some States which accredit same-sex partners as family members of missions' members, even though they do not grant the status of a family member to its own homosexual citizens by their national law. Nonetheless, the research proved that for a number of States, this question is yet to be solved.

### **3 Results of the Research on Spouses of Polygamous Missions' Members**

In the same way as in the case of same-sex partners, based on the hypothesis of the research, it could be presumed that with respect to wives of polygamous missions' members, States will be divided into two categories: (i) States recognising polygamy will recognise wives of a polygamous member of the mission and also their children as family members and will accredit them with the P&I in the full range and (ii) States not recognising polygamy will accredit just one wife of a polygamous member of the mission and only her children or alternatively, the given States will accredit only one wife but all children of a polygamous member of the mission, regardless of who is their mother.

As will be shown in further text, the practice of States towards polygamous families at foreign missions was less uniform in comparison with the attitude of States to same-sex partners. However, the research brought some quite interesting findings in this category of persons, too.

### **3.1 States Recognising all Wives of Polygamous Members of Sending States' Missions as their Family Members**

The group of receiving States, altogether seventeen, considering all wives of accredited polygamous members of missions as family members of missions' members entitled to all P&I can be also divided to two subcategories, depending on whether these States recognise polygamy or not.

The first subcategory of States includes only two countries and consists of receiving States that, in an absolute accordance with the hypothesis of this study, recognise polygamy in their domestic legislation. Both States accredit not only all wives of a polygamous missions' member but all their children, too. Following States belong to this subcategory:

1. Kuwait, stating that wives of the ambassador are members of their family and *"enjoy all the privileges and immunities regardless of how many wives he has as long as they are in the marriage status. The children maintain all immunities and privileges for the essence until the age of 18 for sons and until they get married for woman"* (Prado, 2017);
2. Mali, answering that Mali as a State where polygamy is legal recognises four spouses of member of the mission and accords all the P&I to them as well as to all children of a member of the mission (Gaye, 2017).

At this point, we can mention the opinion of Embassy of the Philippines in Prague with respect to the practice of the Philippines as the sending State regarding Philippine polygamous diplomats. If they are Muslims, only one of their wives can be accredited as a family member but all children of their can (Dayang, 2017). It is a pity that the Philippines did not disclose its position as a receiving State.

The somewhat higher amount of positive answers<sup>25</sup>, from altogether six States, came within the subcategory of receiving States that according to their

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<sup>25</sup> States that explicitly expressed their standpoints for future situations are subsumed within this category too. It means that these States have not yet introduced described procedure because of no need to do so, but in case of need, they will proceed in that manner.

own answers, do not recognise or even do prohibit polygamy (or bigamy) in their national law. Some of them, as will be shown, expressed their explicit opinions not only on wives but also on children from polygamous marriages. Following States belong to this subcategory:

1. Argentina, that would grant the P&I also to the second and another wife of mission' members and to their joint children, provided that polygamy is legal in the sending State and the sending State will request accrediting of all those persons (Sekretariat posla, 2017);
2. Estonia, that stated that Estonia „*would most probably accredit second wife as a member of the diplomat's family, at the precondition, that she must be bearing the diplomatic passport of her husband's country and the Embassy in question must apply by verbal note her accreditation as the member of diplomat's family*“ (Kahur, 2016);
3. Hungary responded favourably, on the basis of respect of “*the family law system of the sending State*” and under the condition of an official request of their acknowledgement as spouses by the sending State (Gerelyes, 2017);
4. Lithuania affirmed that Lithuania has no experience with request for accreditation of a polygamous member of the mission, but if “*the second or third wife of diplomatic agent is legal wife according to the sending state (their status is confirmed by documents, Lithuania will grant them a diplomatic status as well as for their children with all the diplomatic privileges and immunities according to the Vienna Convention on Diplomatic Relations (of course, countries have to be participants of Vienna Convention on Diplomatic Relations)*” (Stanys, 2017);
5. Romania does not recognise polygamy, but taking into account the international courtesy, Romania will issue identification cards to the persons concerned as long as the sending State will prove polygamous marriage by an official document; some privileges will be granted only under the condition of strict reciprocity (Letter Nr. A6-1/75, 2017; Letter Nr. A6-1/5285, 2017);
6. Slovakia submitted very detailed standpoint. Its main idea is that it is not always possible and accurate to interpret the term ‘family member’ solely according to the rules of the receiving State. The acknowledgement of life cohabitation of more persons in polygamy (as well as cohabitation of registered same-sex partners) in one particular



case “does not mean that the Slovak Republic recognises it *de iure*, neither that this constitutes infringement of the Slovak legal order”. Therefore, “the accreditation of two wives of a diplomatic agent and their children or a registered partner of a diplomatic agent is possible”, but the Slovak Foreign Affairs Ministry is not obliged to do so. The Slovak Republic stressed the fact that “it is necessary to assess every single case individually and take into account specificities and differences of the particular case” (Novotný, 2019).

In addition, there were some other States which replied in the affirmative, but without any statement regarding legality of polygamy in their national legal systems. Therefore, these States are listed separately:

1. Fiji stated that if the given persons form a part of the household of any diplomat, the P&I will apply to them (Nadalo, 2017);
2. Guatemala stated that other wives of a polygamous member of the mission and their children enjoy a status „as a legally constituted spouse and children” (Girón, 2017);
3. Japan stated that if the Japanese Ministry of Foreign Affairs can ascertain that the second wife of a member of the mission is an eligible family member in the sending State, she and her children may be regarded as family members with the P&I (Ito, 2017);
4. Lesotho stated that if a member of a mission would be posted in Lesotho with more than one spouse, Lesotho would not object to that, provided that the sending State would give “satisfactory reasons for this type of an arrangement” (Embassy of Lesotho, 2017);
5. Moldova accredits all family members “if they are holders of a similar document as the member of the mission and meet all the requirements of the accreditation procedure (spouses and unmarried children, whose family relationship is confirmed by marriage certificates and birth certificates)” (Drucec, 2016);
6. New Zealand answered in the affirmative with the reasoning that New Zealand officially recognises all family members accredited to New Zealand, provided that they are officially recognised by the sending State (MFAT ENQUIRIES, 2017);
7. Panama stated that full extent of the P&I applies just to the Chief of Mission and his spouse or spouses but not to their children; children are granted only identification documents (Lee, 2017);

8. Russian Federation, where the second, the third and other wives and their children would enjoy the status of family members, if the marriages were contracted according to the law of States where polygamy is national tradition (Letter No 69/KO, 2017);
9. Serbia confirmed no previous experience with polygamous diplomats but simultaneously depicted that if such a situation would happen upon sending State's notification on arrival of more accompanying wives with diplomatic or official passports, Serbia will accord them the P&I and will issue respective identification cards and as category of their position *"it would be written instead of "wife" – "a member of family+surname of the member of mission/consular post".*" (Ostojic, 2017).

### **3.2 States Recognising Only One Wife of Polygamous Member of Sending States' Mission as His Family Member**

Larger group of States, altogether thirty-one countries, responded to the question of several wives of a polygamous member of the mission that they will accredit only one spouse or partner for any nominated member of the mission. Second partners and second families are therefore not admitted as diplomatic dependants and no P&I will apply to them. That does not automatically mean that these wives and their children cannot accompany a member of the mission and some States from this group confirmed this explicitly. The accompanying persons can enter the territory of the receiving State, but their status will be no different from an ordinary foreigner and in particular, they will not enjoy the P&I.

The status of the second and the other wives is naturally closely connected with the status of their minor children. Despite this and the fact that we asked directly about children too, many States from this category did not express their opinion regarding the children. Those who did so, wrote that they would accord the P&I only to the children of one wife (for example the first of them). Finally, around one half of these thirty-one States added their position to recognition of polygamy in their national law.

Positions of States belonging to this category are as follows<sup>26</sup>:

1. Andorra stated that the situation of polygamous member of a mission, coming to Andorra as the receiving State, accompanied by several wives has never been dealt with before, reasoning it with the fact that

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<sup>26</sup> States from this group did not express their opinion on children of a polygamous member of the mission from his second and another marriage.

there are only embassies of three States in Andorra (that of France, Spain and Portugal), all of them prohibiting polygamy (Quillacq, 2017). Another representative of Andorra responded to the additional question in such a manner that no member of a diplomatic mission has had more than one wife before in Andorra as well as she expressed a doubt, whether a State would want to send a polygamous member of the mission to the country where the Catholic Bishop is the Head of the State (Forner, 2017). She also stated that if this was the case, the government of Andorra would most likely informally advise not to do so;

2. Australia (Australian Government Letter, 2016);
3. Austria explicitly stated that “*only the first spouse will enjoy privileges and immunities. Further spouses would need to apply for a residence permit and would not enjoy privileges and immunities in Austria*” (Kernthaller, 2017);
4. Belgium (Heyvaert, 2016; Protocol Guide Immunities and Privileges, 2019, s. 32);
5. Belize (Guerra, 2016);
6. Croatia decided to gather information from other protocols within the EU States and subsequently answered that Croatia would apply the same procedure as the majority of EU members, i. e. only one legal spouse would be recognised (Diplomatksi protokol, 2017);
7. Czech Republic (Čížek, 2017);
8. Ecuador neither considers the second and other wives nor the joint children of the member of a mission as family members (Consulado, 2017);
9. Egypt that expressed its standpoint that the official status is possessed by only one (the first) wife (Henawy, 2017);
10. Gambia (Ceesay, 2017);
11. Germany started to address this issue by reference to the “*certain protocol reticence*” (“*gewisse protokolarische Zurückhaltung*”) with respect to family members of polygamous diplomat and answered that in German practice only one wife of a diplomat is recognised as well as their joint children (Hölscher, 2016);
12. Greece will recognise only one wife „*following her announcement as wife of a diplomat*” (Embassy of Greece, 2017);

13. Ireland stated that only one spouse is entitled to be notified and any other spouses and their children would be entitled only to apply for a short stay without the P&I (Feighan, 2017);
14. Italy accredits only the first wife and the other wives can enter Italy "according to the general Schengen rules of immigration and they will not enjoy neither privileges nor immunities" (Rizzo, 2016);
15. Ivory Coast does not accord any P&I to several wives in polygamous marriages, but only to one of them and to joint children of her and her husband (Letter N°096/AMCIB/1/AN, 2017);
16. Kyrgyzstan (Letter No. 091/n-28, 2017);
17. Latvia which admits that in exceptional cases, the status of a family member of a mission's member can be granted to other persons than spouses and unmarried children upon "a Note Verbale that sets forth sufficient and reasonable grounds to justify such a request" (Arrival and Departures of Members of Diplomatic Missions, 2016);
18. Malta explicitly stated that second and other wives may be accredited as dependants but without the P&I (Frazier, 2017);
19. Mexico stated that in the past, there were two cases of sending States requesting information regarding this matter by a phone call, but no official request to accord the P&I to the second and other life partners of a member of the mission has been received. If Mexico would have received this kind of request, it would not grant the P&I to the given wives (Aschentrupp, 2017);
20. Montenegro (Vukotić, 2016);
21. Namibia (Tjizo, 2017);
22. North Macedonia (Sibinovski, 2017);
23. Portugal (Rybanský, 2016) stated that only one wife can be accredited, but a member of the mission can request a replacement of the accredited wife with any other of his wives whenever he wishes;
24. Saint Kitts and Nevis (Penny, 2017);
25. San Marino (Dordevic, 2017);
26. Senegal accords the P&I only to one wife according to the choice of the member of a mission (Letter N° MAESE/SG/DPCT, 2016);
27. Spain (Fernandez, 2017);
28. Sweden stated that Sweden will not "accept a second, third etc. wife as a member of the family of a diplomat, and would not issue residence permit and ID card for this person" (Eberhardson, 2016);

29. Timor-Leste answered that the P&I “*can be enjoyed by the first wife and her kids*” (Leite, 2017b);
30. Turkey expressly stated that members of family could be only the first wife and her children (Hradský, 2017; Kadak, 2016);
31. Uzbekistan (Služba protokola MID RU, 2016).

A view slightly different from the previously listed group of States is taken by a number of countries, altogether seventeen, that on one hand, do not accept more than one wife of the member of a mission but on the other hand, they accept all children of the polygamous diplomat, regardless of which wife is their mother. Some of these States mentioned *expressis verbis* whether they recognise polygamy in their national law. States of this category are the following:

1. Belarus that even explicitly stated that the family status of the diplomat is not substantial for the status of his minor children, including the matter of according the P&I (Služba gosudarstvennogo protokola, 2016);
2. Bolivia that considers all children of a member of the mission, younger than 21 years, as a family member (Cuti, 2017);
3. Canada accredits only one spouse and with respect to children, its position is based on the general conditions for acceptance of children under the age of 19 pursuant to the Circular Note No. XDC-0643 in conjunction with the Circular Note No. XDC-3196;
4. Chile that considers as a family member (i) only the first wife or the wife who arrives to Chile with a member of the mission and (ii) all his children who are recognised by him (Navarrete, 2017);
5. Democratic Republic of Congo considers as a family member (i) only the legal spouse of the member of a mission and (ii) all children of the member of a mission who are recognised by him (Votre demande de renseignements, 2016);
6. Finland (Malmberg, 2016);
7. France (Protocole, 2019);
8. Guyana which stated that „*it is likely that more than one spouse will not be recognized*” (McDonald, 2017) and any additional spousal relationship of a polygamous diplomat would be considered a dependant with equal status of all children of a polygamous diplomat (McLennan, 2017);

9. Haiti which particularly stated that all children of a polygamous member of mission would enjoy the P&I until the age of 18 (Fils-Aimé, 2017);
10. Kenya which accepts one declared spouse and four declared children (Mbaya, 2017);
11. Malaysia stated that she accords the P&I only to one wife, but it depends on the decision of a member of the mission to which wife the P&I should be granted; the P&I are accorded to all children (Karim, 2017);
12. Netherlands (Protocol Guide for Diplomatic Missions and Consular Posts, 2019);
13. Norway stated that Norway accepts only one person as the spouse of a diplomat and all “[c]hildren of a diplomat, regardless of who their other parent is” (Knutsen, 2017);
14. Poland stated that unlike the children of a member of the mission, the second and other wives would not be considered as family members. However, they would be granted a residence permit in Poland (Reply PD.0121.207.2016/2, 2016);
15. Samoa (MFAT, 2017);
16. Switzerland admitted Switzerland has had exceptional cases of diplomats or consuls living in polygamy. *“In these cases, only the first wife enjoys privileges and immunities. The other wife/s receive a permit which grants them the possibility to stay in Switzerland without any privileges and immunities. The rightful children of the diplomat enjoy the same status as their father.”* (Huber, 2017);
17. Tanzania (Wambura, 2017).

### **3.3 States with No Clear Position to the Wives of Polygamous Members of Sending States’ Missions as Their Family Members**

The only response regarding wives of a polygamous member of a mission of five States<sup>27</sup> was a mere claim that they have never encountered a case like this before. They did not specify their attitude to the issue at all, not even after our further requests. This concerns:

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<sup>27</sup> Liechtenstein can be included here as well; see footnote 19.

1. Armenia (Letter of the Ministry of Foreign Affairs of the Republic of Armenia No 1112/1112/2127908-16, dated 13 December 2016);
2. Brazil (Kleebank, 2016);
3. Monaco (Settimo, 2017);
4. Slovenia “*did not receive a proposal to recognize the status of a second wife and their children in the past years. In a process of recognizing the status in the mentioned case, all the relevant data of an applicant would be taken into account, but therefore is no unique answer*“ (protokol.mzz, 2017b);
5. Vietnam has never dealt with this issue and has no specific regulations on how to proceed (Viet Nam Embassy, 2017).

In addition to the abovementioned answers, we obtained also the expert estimate of position of the Holy See<sup>28</sup> which is includable to this group of answers. The expert estimate was provided by the counsellor of the Embassy of the Slovak Republic to the Holy See, Mrs **M. Pilátová**, who presented that diplomats accredited to the Holy See from countries where it is possible to have several wives, are mostly Christians and therefore there is a little likelihood that such a situation will occur (Pilátová, 2017).

Ultimately, some States, altogether six, responded in a way that made it impossible to conclude any unambiguous opinion regarding the researched subject from that answer. For example:

1. Bulgaria will qualify as family member *inter alia* “*spouse or registered common-law partner cohabiting with the principal member of the staff*” (Protocol Guide of the Republic of Bulgaria, 2017, p. 14);
2. Colombia replied that Colombia grants the P&I not only to mission’s member but also to his/her current spouse and not to former spouses (Derecho de Peticion, 2017);
3. Mongolia just shortly stated that “*Mongolian laws do not recognize polygamy*” (Batbold, 2017);
4. Seychelles responded by enumerating categories of persons considered as a family member, but when mentioning wives, no clarification was given whether several of them and their children belong to this category (Accouche, 2017);

<sup>28</sup> No efforts to obtain the answer from any of the accessible organs of the Holy See have met with success.



5. Ukraine very concisely stated that Ukraine is abiding by the provisions of the VCDR and the Vienna Convention on Consular Relations (Letter N° 211/19-172/3-1775, 2016);
6. the United Kingdom explains its definition of members of households by enumeration of respective categories of persons without any reference to polygamous couples (Immigration Directorates' Instructions, 2019, para 6.).

In this group of respondent States vaguely expressing their position with respect to partners of polygamous members of missions, we can find opinion potentially inclined to the positive answer (Bulgaria) and one probably inclined to the negative answer (Mongolia). However, since it is our interest to classify the attitudes of States as precisely as possible and without any suppositions or even the smallest doubts, we put all the positions of these States into this separate group.

In order to ascertain views of more States, we also searched all available diplomatic guides, in particular of those States which did not respond to our requests. The guides of thirteen of them (i. e. China, Denmark, Georgia, Iceland, India, Israel, Mauritius, Nepal, South Africa, South Korea, Thailand, Uganda and USA) were available but with no exact information regarding polygamous families.

Finally, we can mention last answers of two non-recognised entites, Abkhazia and the Northern Cyprus. Abkhazia responded generally, that it has undertaken all commitments under the VCDR and the Vienna Convention on Consular Relations and that all persons accredited in Abkhazia enjoy the full extent of the P&I enshrined in both of those treaties (Consular Service MFA of Abkhazia, 2017). The response of the Northern Cyprus was a little bit different, since it stated that it will "*follow internationally acceptable practice*" (Redif, 2017).

### 3.4 Findings

With respect to the status of wives of polygamous members on missions in receiving States, we were able to obtain more or less specific written positions from sixty-five UN Member States and two internationally non-recognised entities (the Northern Cyprus and Abkhazia). Five entities (the Holy See, Nicaragua, Philippines, Qatar and Uruguay) did not respond or did announce they will answer on the matter, but failed to do so.

According to currently publicly accessible data, the polygamous marriage is legal in fifty-eight countries (Heath, 2018), most of them in Africa and the Middle East region. In 2009, as the UN Department of Economic and Social Affairs<sup>29</sup> wrote in its report, polygamy was legal or generally accepted in thirty-three States at the national level, and in other forty-one States it was accepted by a part of their population (Population Fact, 2011). However, we were not able to obtain any reliable source of information dividing all States of the world into categories of those recognising polygamous marriages under the civil law at national level or just in some region, those whose customary law recognises polygamous unions and those where the polygamous marriages performed abroad are recognised. Due to this reason, it is not possible to credibly confront the standpoints of States responding to our research with their national legislation. It is also impossible to state how many States, out of the total number of sixty-five States responding to the question regarding polygamous families within our research, recognises polygamous marriages under the civil law at national level or in any other way.

The first group of States addressing the polygamous couples at missions consists of States recognising either all wives with no reference to children or all wives and all their children of a polygamous member of the mission as his family members. Seventeen countries belong to this group. Besides two States allowing polygamous marriages, there are nine States which did not express their positions towards legality of polygamy and six States which do not accept polygamy in general, but do accredit polygamous diplomats with their families. Positions of these fifteen States disprove our hypothesis.

The second group is approximately three times larger; it is composed of forty-eight countries. States belonging here recognise just one wife of a polygamous member of the mission, ordinarily the first one. In these States, the other wives of a member of the mission are not considered as family members entitled to enjoy the P&I. Instead, they have a status of an ordinary foreigner, only benefit of whom is easier access to visa or residence permit in the receiving State. The opinion of States in this group regarding children of a polygamous member of the mission varies. The significant number of answers making up around two thirds of them, recognises as family members only the children of the wife enjoying the status of a family member. That means that the status of children of the other wives is the same as their mothers', i. e. in

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<sup>29</sup> The UN DESA is special organizational structure within the UN Secretariat (Bolečeková, 2011).

receiving State, they are foreigners without the P&I. Almost one third of the remaining States from this group (i. e. seventeen States) derive the children's status from their father instead of mother, i. e. they consider all children of a polygamous member of the mission as family members, regardless of the marriage they are coming from.

The third –relatively large– group, amounting to thirty States (including the Holy See), is formed by countries that expressed their opinion very vaguely or even gave no standpoints on polygamous couples. This is more unfavourable result than in the case of same-sex couples. When considering the States which participated in the research, it is evident that many States with considerable influence on diplomatic relations have no vision what to do with respect to more wives of one diplomat and their children or alternatively, they do not want to share their visions. It can only be predicted that it will be most likely on the agenda in those receiving States which have significant minorities of inhabitants of foreign origin living in polygamous unions contracted in their homelands or concluded unofficially in the receiving State in accordance with religious rules or national traditions. This consideration, paradoxically, can be inspired by recent developments in the field of LGBTI rights in many States. If the legal position of Muslim minorities or other communities with the tradition of polygamous marriages will be enhanced in some receiving States (e. g. as a result of widespread immigration or population growth), it may be expected that some sending States will probably seek to accredit polygamous diplomats right there.

Taking into account our research and its objectives, the finding of great importance regarding the polygamy is predominantly the conclusion that there are some States (e. g. Argentina, Estonia, Hungary, Lithuania, Romania and Slovakia) definitely not legally recognising polygamous marriages with respect to their own citizens and simultaneously recognising polygamous couples on foreign missions on their own territory. Besides these six States, there are other nine States (very likely not allowing or prohibiting polygamy) admitting all wives of polygamous mission's member. It means that there are some UN Member States giving priority to the family law of the sending States instead of its own legal system when determining the scope of diplomat's immediate family.

## Conclusions and Implications for Further Research

Our research reflects diplomatic practice of ninety-one States and the Holy See. Seventy-four States –which is approximately forty percent of the whole UN

membership– actively participated in our research by sending their responses to our questions. In addition, we were able to acquire the standpoints of other seventeen UN Member States as well as the Holy See through the publicly accessible information. As a result of this, our research contains the practice of ninety-two entities conducting diplomatic relations, i. e. almost a half of the UN Member States and the Holy See. We presumed that addressing the Ministries of Foreign Affairs via the post would help us to ensure the higher feedback rate. Despite addressing the not responding States multiple times and at their many organs designated to conduct international relations, we were not sent any answers from one hundred and nineteen UN members. Some of them even envisaged that they will submit their answers, but did not so. The final overview of all States’ responses and positions acquired with respect both parts of the research is presented in a table below.

**Table: Diplomatic Practice of the Receiving States towards Same-Sex Partners of a Mission’s Member and towards Wives of a Polygamous Mission’s Member**

No.	Receiving States Involved in the Research	Recognition as a Family Member				
		same-sex partner of a mission’s member	all wives of a poly-gamous mission’s member	all wives and all children of a poly-gamous mission’s member	only one wife of a poly-gamous mission’s member (and her children)	only one wife of a poly-gamous mission’s member but all his children
1	Andorra	✓			✓	
2	Argentina	✓		✓		
3	Armenia	?	?	?	?	?
4	Australia	✓			✓	
5	Austria	✓			✓	
6	Belarus	x				✓
7	Belgium	✓			✓	
8	Belize	✓			✓	
9	Bolivia	✓				✓
10	Brazil	✓	?	?	?	?

11	Bulgaria	✓	?	?	?	?
12	Canada	✓				✓
13	Chile	✓				✓
14	China	?	?	?	?	?
15	Colombia	✓	?	?	?	?
16	Croatia	✓			✓	
17	Czech Republic	✓			✓	
18	Denmark	✓	?	?	?	?
19	DRC	x				✓
20	Ecuador	x			✓	
21	Egypt	x			✓	
22	Estonia	✓	✓			
23	Finland	✓				✓
24	Fiji	✓		✓		
25	France	✓				✓
26	Gambia	x			✓	
27	Georgia	?	?	?	?	?
28	Germany	✓			✓	
29	Greece	✓			✓	
30	Guatemala	x		✓		
31	Guyana	x				✓
32	Haiti	x				✓
33	Holy See	x	n/a	n/a	n/a	n/a
34	Hungary	✓	✓			
35	Iceland	?	?	?	?	?
36	India	?	?	?	?	?
37	Ireland	✓			✓	
38	Israel	?	?	?	?	?
39	Italy	✓			✓	
40	Ivory Cost	x			✓	
41	Japan	✓		✓		
42	Kenya	x				✓
43	Kuwait	x		✓		
44	Kyrgyzstan	x			✓	
45	Latvia	✓			✓	
46	Lesotho	✓	✓			

	Liechtenstein	no embassy	no embassy	no embassy	no embassy	no embassy
47						
48	Lithuania	✓		✓		
49	Malaysia	x				✓
50	Mali	x		✓		
51	Malta	✓			✓	
52	Mauritius	?	?	?	?	?
53	Mexico	?			✓	
54	Moldova	✓		✓		
55	Monaco	?	?	?	?	?
56	Mongolia	?	?	?	?	?
57	Montenegro	✓			✓	
58	Namibia	?			✓	
59	Nepal	✓	?	?	?	?
60	Netherlands	✓				✓
61	New Zealand	✓		✓		
62	Nicaragua	n/a	n/a	n/a	n/a	n/a
63	North Macedonia	✓			✓	
64	Norway	✓				✓
65	Panama	✓	✓			
66	Philippines	x	n/a	n/a	n/a	n/a
67	Poland	x				✓
68	Portugal	✓			✓	
69	Qatar	n/a	n/a	n/a	n/a	n/a
70	Romania	x		✓		
71	Russian Federation	x		✓		
72	Saint Kitts and Nevis	x			✓	
73	Samoa	✓				✓
74	San Marino	✓			✓	
75	Senegal	x			✓	
76	Serbia	✓	✓			
77	Seychelles	?	?	?	?	?
78	Slovakia	✓		✓		
79	Slovenia	✓	?	?	?	?

80	South Africa	✓	?	?	?	?
81	South Korea	?	?	?	?	?
82	Spain	✓			✓	
83	Switzerland	✓				✓
84	Sweden	✓			✓	
85	Tanzania	×				✓
86	Thailand	?	?	?	?	?
87	Timor-Leste	×			✓	
88	Turkey	×			✓	
89	Uganda	?	?	?	?	?
90	Ukraine	?	?	?	?	?
91	United Kingdom	✓	?	?	?	?
92	Uruguay	n/a	n/a	n/a	n/a	n/a
93	USA	✓	?	?	?	?
94	Uzbekistan	×			✓	
95	Vietnam	✓	?	?	?	?
	SUMMARY	✓ 33		✓ 2		
		✓ 17	✓ 2	✓ 4	✓ 16	✓ 10
		×	✓ 3	✓ 6	✓ 15	✓ 7
		? 15	5	12	31	17
		? 1			? 23	
		n/a 3			? 1	
		no embassy 1			n/a 5	
					no embassy 1	

Source: Data processing by the author based on the outputs from the research.

### Table Notes

- ✓ means recognition by a State recognising same-sex partnership at least in one of its form
- ✓ means recognition by a State non-recognising same-sex partnership or polygamous marriage in any form
- ✓ means recognition by a State with no confirmed information on recognition of polygamous marriage
- ×
- × means non-recognition
- ? means that the standpoint of a State contains no clear position on the issue
- ? means that the standpoint of a State contains no clear position on the issue, but the polygamy is not recognised by that State
- n/a means apology for not responding or unexpressed position on the issue, although it was promised to be sent



The basic conclusion of the study is that the researched questions are becoming increasingly important in the current diplomatic practice. Responses of some States may serve as a confirmation of this statement, especially those that have encountered the situation of a sending State consulting the matter of the status of partners of homosexual or polygamous members of the mission with the receiving States concerned. Another proof of actuality of the topic is the fact that quite a large number of States does not have any resolute opinion regarding the issue (and if they do, they did not specify it).

As for the hypothesis of the research, the responses of States enabled us to conclude that in the current diplomatic practice of States involved in the research, the principle of prevailing character of the receiving States' law with respect to definition of family members of missions' members is not always applied. On the contrary, a significant number of States explicitly declared that despite not recognising registered marriages or other forms of same-sex unions in their legal system, they will grant a status of a family member to a same-sex partner of a member of the mission too, under the condition of the relationship of the mission's member and his/her same-sex partner being officially recognised by the sending State. In the question about the second and other wives of polygamous members of missions, fewer respondent States not recognising polygamy answered in the affirmative. In this case, the situation is somewhat more peculiar. The reason is that the bigamy (as well as polygamy) is not only explicitly forbidden, but even prosecuted in many receiving States. According to States' responses to the research, there is a notable divergence from the rule on the receiving States' perception of family for purposes of definition of accompanying family of mission's members. It should be added that this development is happening with the full consent of positively reacting receiving States, since they reply in the affirmative to the requests for accreditation of same-sex or polygamous persons. Nonetheless, it still remains impossible for sending States to accredit mission's members unilaterally, against the will of the receiving States.

Furthermore, the research has shown that the States' practice in relation to both of categories of persons varies. The most far-reaching development is occurring in (Western) Europe, America and Australia with New Zealand. States of Africa and Asia interpret the term family member in the most conservative way. However, in both of these continents, there are some exceptions, like in the case of South Africa or Japan. This diversity of States' behaviour has prevented the new rule of universal or regional international law from coming to

existence. At the same time, it should be stressed that no State involved into our research has raised any claim to have exclusive right to define the scope of family of the missions' members. The emerging tendency of receiving States to take into account the sending States' definition of family (i. e. spouse or partner) takes place on the basis of international courtesy and not of international law.

As a partial remark, it can be emphasised that a vast amount of States involved in the research replied to the question regarding the same-sex partners but did not reply to the question about the polygamous marriages. This may indicate that the attitude of receiving States is defined in the question of the same-sex couples rather than in that of the polygamous ones. At the first sight, it may appear that these are completely different questions, but they do share a common factor. Both of them are not universally accepted and there are strong reservations and denial of them in many countries. Majority of States does recognise neither the same-sex unions nor the polygamous marriages. Insistence on accepting some form of cohabitation of same-sex persons can lead to argumentation for the necessity of accepting the polygamous marriages. Finding the parallels between these two types of life partnerships goes beyond the scope of this study, but it can concern diplomatic relations, too. The point is that the recognition of same-sex partnerships for foreign diplomats in receiving States may create a pressure to recognise this kind of partnership for the own population. This could subsequently transfer to a pressure to recognise the polygamous marriages as the second unconventional form of cohabitation in such receiving States, where lives either Muslim minority or migrants coming from regions where polygamy is an integral part of religious tradition or customary law. In this context, it should not be forgotten that nowadays, the polygamous marriages are accepted or tolerated in more countries than the same-sex marriages and other forms of partnership of homosexual persons are. Despite this fact, the accreditation of homosexual diplomats is more frequent than accreditation of the polygamous ones.

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