

Discrimination on grounds of sexual orientation and gender identity in Europe

**UNDER EMBARGO
UNTIL 23 JUNE 2011**

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Foreword

Many people in Europe are stigmatised because of their actual or perceived sexual orientation or gender identity and cannot fully enjoy their universal human rights. Some of them are victims of hate crime and may not receive protection when attacked in the street by fellow citizens, while some of their organisations are denied registration or are banned from organising peaceful meetings and demonstrations. Some people have fled to Council of Europe member states from countries where they risk being tortured or executed because of their sexual orientation or gender identity. Too few opinion leaders and leading politicians have taken a firm stand against homophobic and transphobic expressions, discrimination and violence.

I have often discussed these and other problems with the authorities of Council of Europe member states. The serious concerns about the problems faced by lesbian, gay, bisexual and transgender (LGBT) persons are reflected in my country monitoring reports as well as in thematic publications. I have also initiated a debate on the specific human rights issues encountered by transgender persons.

Unfortunately, I have repeatedly noted that there is too little objective data and information available to conduct a well-informed discussion with authorities on these questions. For this reason, my Office launched a comprehensive study on the situation concerning homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the 47 member states of the Council of Europe. This report, coupled with a more comprehensive version, is the result of the study and contains a socio-legal analysis of the situation of LGBT persons across member states. The study relies on data and information made available by public authorities, national human rights structures, non-governmental organisations (NGOs) and academic experts in the member states.

I extend my gratitude to all organisations and people involved for their active participation and forthcoming contributions. Special thanks and recognition are due to the European Union Agency for Fundamental Rights (FRA), which kindly shared its research and data on the 27 member states of the European Union. In this regard, effective use was made of respective areas of expertise and complementary capacities.

The standards used in this report are based on judgments of the European Court of Human Rights and recent recommendations of the Council of Europe's Committee of Ministers and Parliamentary Assembly. Several institutions of the European Union, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations have expressed concerns relating to the treatment of LGBT persons. The report clearly demonstrates that member states need to take further steps to address discrimination on grounds of sexual orientation and gender identity. It also provides a knowledge base for effective measures to combat homophobia and transphobia.

There is considerable resistance among many people to discuss the full enjoyment of universal human rights by LGBT persons. Even if this may not be a popular human rights topic, the time has now come to take the discussion forward and make it concrete. Supported by the facts presented in this report, I look forward to a constructive dialogue with authorities and other stakeholders to improve respect for the human rights of LGBT persons.

Thomas Hammarberg

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Summary

This report is the result of the largest study ever made on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the 47 member states of the Council of Europe. The findings are presented in six thematic chapters followed by forward-looking conclusions. The Commissioner's recommendations on the issues that emerged from the findings of the study can be found at the beginning of the report.

Attitudes and perceptions

Homophobic and transphobic attitudes have been identified in all 47 member states, though attitudes vary significantly among and within the countries. Biased, outdated and incorrect information on what constitutes sexual orientation and gender identity as well as stereotypical portrayals of LGBT persons in the media and in textbooks contribute to the shaping of negative attitudes. Inflammatory and aggressive discourse against LGBT persons, occasionally amounting to hatred, has also been identified in several member states. LGBT persons have often been portrayed as a threat to the nation, religion, and traditional notions of gender and the family. Such speech has rarely been officially condemned.

The invisibility of LGBT persons and the absence of a serious discussion about their human rights situation are recurring themes in this report. Many LGBT individuals conceal their sexual orientation or gender identity in everyday life out of fear of negative reactions at school, work, in their neighbourhood or in their family. They fear that public knowledge of their sexual orientation and gender identity will lead to discrimination, harassment, rejection or even violence.

Legal standards and their implementation

A large number of member states have adopted legislative and other measures to prohibit discrimination against individuals on grounds of their sexual orientation and, though in fewer cases, also on grounds of gender identity. The majority of member states (38) have recognised, in line with international and European standards, that sexual orientation is one of the grounds of discrimination in comprehensive or sectoral non-discrimination legislation. Some nine member states do not appear to protect LGB persons against discrimination. A lower number, 20 out of 47 member states cover discrimination based on gender identity in their non-discrimination legislation, either as gender identity explicitly or as a recognised interpretation of the terms "sex", "gender" or "other ground of discrimination". For the other 27 member states, the non-discrimination legislation remains silent or is unclear on the protection of transgender persons.

Official statistics and data regarding discrimination on grounds of sexual orientation and gender identity are scarce in member states. National structures

for promoting equality do not always have an explicit mandate to receive complaints of discrimination based on sexual orientation and even fewer have a clear mandate to cover gender identity as a ground of discrimination.

Protection: violence and asylum

LGBT persons run a serious risk of becoming victims of a hate crime or a hate-motivated incident, especially in public places. Violence may also take place within a family setting. Moreover, some state agents, such as the police, have been involved in blackmailing and harassing LGBT persons. Often LGBT persons do not report such violence to the competent authorities due to lack of trust in law-enforcement agencies, who may have no training in investigating effectively such hate-motivated crimes and incidents.

Homophobic and transphobic incidents or hate crimes are not reflected in official hate crime statistics in most of the member states. The incitement of hatred, violence or discrimination on grounds of sexual orientation is considered as a criminal offence in only 18 member states. Similarly, homophobic intent is accepted as an aggravating factor in common crimes in only 14 member states. In only two member states is gender identity or transphobic hate crime explicitly addressed in hate crime legislation.

Owing to criminalisation and persecution on grounds of sexual orientation and/or gender identity, a number of LGBT persons have sought to flee their country of origin. Thirty-three member states recognise sexual orientation as a ground for persecution in asylum claims, while only six member states do so for gender identity. LGBT persons encounter particular difficulties in the process of seeking asylum, often owing to inadequate knowledge by immigration authorities about conditions for LGBT persons in countries of origin. Some authorities appear to consider that, if LGBT persons kept their sexual orientation or gender identity secret, they would not be at risk. LGBT asylum seekers also face difficulties in asylum centres and may be exposed to harassment from other applicants.

Participation: freedoms of assembly, expression and association

Violent and discriminatory reactions have occurred when LGBT persons have collectively attempted to express their views, freely associate or gather for public demonstrations. In most member states the freedoms of association, expression and assembly of LGBT persons are respected. However, in a few states they have been infringed upon. Bans or administrative impediments imposed on public LGBT demonstrations were identified in 12 member states, and in some instances the police have failed to protect peaceful demonstrators from violent assaults. Obstructions and/or refusal of attempts to register LGBT associations have been identified in five member states, though in some instances courts have overturned such bans at a later stage. Infringement of the freedom of expression has been reported in three member states, whereas attempts to criminalise “propaganda of homosexuality” were identified in three member states.

Privacy: gender recognition and family life

Transgender persons face significant problems in the process of their legal gender recognition. In at least 10 member states no legislation regulating it was identified. In 13 other member states no or only partial legislation was identified, but transgender persons are able to have their new gender legally recognised, either through court decisions or by certain administrative practices. Twenty-nine member states require, as a precondition for legal gender recognition, surgery leading to infertility, whereas 15 member states require the transgender person to be unmarried or divorced, which can leave couples without a legally recognised relationship after divorce.

Same-sex couples wishing to marry can do so in seven member states (gender-neutral marriage) and in 13 other member states they can enter a registered partnership which provides a form of recognition. The lack of access to marriage or registered partnership deprives same-sex couples of rights and benefits granted to different-sex relationships. It has also consequences for same-sex couples having children as one of the partners may not have custody rights, inheritance and next-of-kin status, which need to be assured in the best interests of the child. Ten member states allow second-parent adoption to same-sex couples, while 35 countries provide no access to it. Two member states give only some parental authority and responsibilities to registered same-sex partnerships, but no adoption is available.

Access to health care, education and employment

LGBT persons are more prone to suffer from depression, anxiety, and anguish. Suicide and attempted suicide rates are significantly higher for LGBT persons than their heterosexual peers, especially young people. LGBT persons also experience problems when accessing health care, caused by mistrust between patients and doctors, problematic attitudes of medical staff, as well as outdated approaches to homosexuality and transgenderism. Contrary to international medical classifications, some official textbooks contain references to homosexuality as an illness. Transsexuality continues to be considered a mental disorder according to some international classifications. In 13 member states medical facilities for gender reassignment treatment are non-existent or insufficient. Health care insurance does not cover gender reassignment treatment in at least 16 countries. In the remaining states there is partial or full reimbursement.

Bullying of LGBT persons within the educational system is a reality. Objective information on sexual orientation and gender identity is rarely imparted in schools. Discrimination and harassment of LGBT persons also occurs in the employment sector. Even though the majority of member states include sexual orientation in non-discrimination legislation for employment, gender identity is usually only partially included under the sex or gender ground. Trade unions and employers in some member states have taken measures to combat these practices. Transgender persons face particular problems when accessing the labour market, as privacy of personally sensitive data related to their gender identity history is rarely ensured.

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