



LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS IN EUROPE

LES DROITS DES PERSONNES LGBT EN EUROPE

PARIS, MARCH 26TH, 2013
Centre de Conférences Ministériel



CONFERENCE REPORT

Introduction

The conference was organised by the French Ministry for Women's Rights and the French Ministry of Foreign Affairs, in co-operation with the European Commission and in partnership with Poland. The conference was attended by approximately 200 participants, including Ministers and Secretaries of State, governmental representatives, representatives of the European Commission, the Office for the UN High Commissioner of Human Rights, the Council of Europe, the Organization for Security and Cooperation in Europe and civil society representatives from over 40 different countries from a broad range of States in Western and Eastern Europe and Central Asia. The conference programme included two plenary sessions, titled: "Winning Strategies" and "The Need for Coordination in Europe and the world", and three workshop sessions: "Liberties – fighting discrimination against LGBT persons," "Violence – Fighting violence against LGBT," "Governance – National, regional and international mechanisms for defending LGBT people's rights". This report summarises the outcome of these discussions.

Summary of discussions & key issues arising

From the outset, it was stressed that the **existing body** of national, regional and international human rights **standards** is universally applicable for lesbian, gay, bisexual, transgender and intersex ("LGBTI") people. Participants noted legislative and non-legislative progress made in most countries in the European region over the last two decades. However, participants reported **weaknesses in the monitoring mechanisms** on the national,

regional and international levels to address violations of LGBTI people's human rights, while also recognising that some States and national human rights structures have stepped up efforts to address these weaknesses. Concerns were raised about the **tone of public debates regarding LGBTI issues** in some countries and the **lack of political leadership** in speaking out against prejudice and stereotypes. In some cases, participants reported that politicians were among those making negative comments about LGBTI people.

Data collected by intergovernmental organisations, national authorities, NGOs, national human rights institutions (NHRIs) and equality bodies (EBs) as well as academics show that stigmatisation, violence and discrimination against LGBTI people are widespread. Examples of data collected include socio/legal research and the *EU LGBT survey* by the European Union Agency for Fundamental Rights (FRA), reports by the Council of Europe's Commissioner for Human Rights and the *Trans Murder Monitoring Project* by TGEU. However, participants pointed out that that data collection and monitoring are not always done on a regular and repeated base and that there are still many gaps in data collection, which is often conducted by NGOs. The latter frequently lack the financial means to carry out relevant research and monitoring, while many national authorities do not have solid data collection systems in place, creating a cycle in which "the lack of knowing" leads to a "lack of doing".

Homophobic and transphobic bullying in schools is a concern across the region. Tackling this problem is likely to have a wide-ranging and long-

term impact in terms of changing mentalities and behaviours.

As one participant said:

“If you want to tackle homophobic violence in society, start dealing with homophobic bullying in schools.”

Homophobic and transphobic violence occurs across the European region. Participants indicated that violence tends to be particularly systematic and structural in countries where laws prohibiting “homosexual propaganda” are being proposed or have been introduced. Homophobic or transphobic laws as well as speech inciting and promoting hatred, discrimination and intolerance, fuelled by extremist or religious beliefs, is also reported to perpetuate intolerance and violence. Participants reported that violence can also include the use of so-called “corrective rape” against lesbian, bisexual and transgender women, as well as domestic violence and honour killings of LGBTI persons. Positively, an increasing number of States have recognised homophobic and transphobic bias in their national hate crime legislation.

Participants highlighted that medical interventions without informed consent (particularly with reference to intersex people, see below) and sterilisation as a requirement for legal gender recognition (for transgender persons, see next paragraph) should be considered in the light of the right to control one’s own body including one’s sexual and reproductive freedom. In particular, participants indicated that **intersex people** are subject to ‘normalising’ practices in many countries, including genital surgeries, psychological and other medical treatments, usually without their free and informed consent.

It was reported that many **transgender people face barriers to having their gender identity legally recognised**, including by changing gender markers in official documents. Such barriers may take various forms, ranging from the non-availability of a legislative or functioning framework on legal gender recognition to legislation in force prescribing surgery leading to sterilisation which is medically often unnecessary and in the absence of the trans person’s wish.

Discussions highlighted that without official documentation corresponding to their gender identity, transgender people are at risk of being considered “non-persons”, facing stigma and discrimination when seeking to access employment, education, healthcare and other services.

A participant reported:

“If like me, for example, you look clearly male and your passport shows a female picture and a female person, you can imagine how hard it is to get some money from your bank account or to even cross borders or take a plane. This is a constant stress you have in your daily life, not only once a day but several times a day.”

Participants pointed out that these practices are inconsistent with long-established human rights principles such as the rights to respect for private life, the highest attainable standard of health, equality, non-discrimination, and physical integrity. Encouragingly, many European countries are in the process of changing their legislation on gender recognition while it was also reported that a significant number of States have no (effective) legislation on gender recognition in place or laws in conflict with the principles just outlined.

European States were encouraged by many participants to consider as a model the Argentinian law on gender recognition, which allows individuals to obtain recognition of their gender identity through a simple administrative procedure.

Participants reiterated that LGBTI people often face **multiple discrimination** prompted by the intersection of their sexual orientation or gender identity with other characteristics such as their age, ethnicity, economic status and country or place of residence.

Many participants expressed their concern at the introduction of legislation prohibiting “**homosexual propaganda**” in some countries in the region. Such laws may violate international human rights standards on freedom of expression and can result in restrictions on discussion of LGBTI issues, impediments to the work of NGOs, and the undermining of effective education, including on HIV/AIDS prevention.

As one participant from Eastern Europe noted:

“We see how legislative initiatives on prohibition of so-called ‘propaganda of homosexuality’ influence basic freedoms. It means censorship of course. And we see on the streets, for example, during our public assemblies, many ultra-right wings attack LGBT people and the police do nothing, actually. There will be no possibility, no possibility to register LGBT organizations. So we will go to the shadows. But we will still work of course. It’s getting worse. And it’s not just about LGBTI rights. It’s about human rights, freedom of speech, freedom of assembly. We see this situation getting worse and worse every year.”

Numerous good practices in the areas of data collection, anti-bullying approaches, and measures to combat stigma, discrimination and violence were mentioned during the discussions. These included involving trade unions in combating employment discrimination; third party reporting for victims of hate crime; training for public officials and policy-makers; public awareness and sensitisation campaigns; strengthening the role of NHRIs; and cooperation between civil society and government in designing LGBT action plans. Various States highlighted the need to exchange such good practices and to share technical expertise to help build the capacity of institutions to address the human rights of LGBTI people. The **LGBT governmental network** as well as the Council of Europe’s **Cooperation and Assistance project** could serve as opportunities for governments to work together in advancing the human rights of LGBTI persons.

Summary of Outcomes and Key Conclusions

The conference discussed ways to improve the realisation of the human rights of LGBTI persons in Europe. **Political leadership** is key in making progress, as demonstrated by the presence of numerous ministers, governmental and institutional representatives at the event.

Data collection and monitoring of human rights violations by public authorities on national, regional and international level needs to be extended and improved. Data collected by the EU Fundamental Rights Agency, the Commissioner for

Human Rights of the Council of Europe as well as OSCE/ODIHR were cited as leading examples, including for other regions. Data should be disaggregated to identify violent crimes and hate speech targeted at specific groups. It should also be publicly available to enable civil society organisations and other relevant actors to respond effectively.

Participants acknowledged the need for **transgender and intersex issues** to receive more attention, including through **education of policy-makers, empowerment** of transgender and intersex activists and **strengthening of collaborations** with civil society organisations working on these issues. Facilitating the exchange of good practices and the provision of technical support between countries, institutions and NGOs was mentioned as a tool to drive progress.

National governance:

Legal protection of LGBTI persons is a key priority: participants reiterated that both sexual orientation and gender identity should be included as grounds in national **non-discrimination legislation**. In addition, laws facilitating the recognition of transgender identities that respect international human rights principles and appropriate legislation to address the human rights of intersex people were identified as urgent needs. Legal reform should also focus on the repeal of laws banning “homosexual propaganda”. Such legislative measures should be taken in accordance with existing EU directives, Council of Europe standards, OSCE commitments, UN conventions and other guidelines, such as the **EU’s Employment Equality Directive, Recommendation 2010(5) of the Committee of Ministers of the Council of Europe**. The *Yogyakarta Principles* also provide relevant guidance in key areas. A **multi-sectoral approach** is helpful to integrate these issues across relevant government ministries.

Non-legislative measures, including **education and awareness-raising activities** are equally important, to address negative attitudes, stereotypes and social climates which may give rise to human rights violations.

Ensuring independent **national human rights institutions** in compliance with the Paris Principles, as well as the proper functioning of

equality bodies with a mandate to address discrimination on the grounds of both sexual orientation and gender identity, is important for promoting effective responses to human rights violations and facilitating public education.

Public authorities have a crucial role to play in **countering homophobic and transphobic bullying**, including by raising awareness and providing training. Programs need to be comprehensive and include anti-bullying measures, teacher training, review of school curriculums, inclusion in school inspection reviews and protection of teachers who are themselves bullied.

Regional governance:

At the European level, participants expressed the need for a **strategic political commitment and policy framework**. Participants recognised the positive contribution the EU Employment Equality Directive has made to combatting discrimination on the labour market while also pointing out **remaining gaps in EU non-discrimination legislation** beyond employment. The support of many **Members of European Parliament (MEPs)** for LGBT rights has been constant and consistent. Participants reinforced the need for an **EU roadmap** which would bring together in a single document policy and legislative actions to counter discrimination, violence and hate crimes on the grounds of sexual orientation and gender identity.

Participants welcomed **Recommendation 2010(5) of the Committee of Ministers of the Council of Europe**, but acknowledged the need for indicators, benchmarks and mechanisms (e.g. through a periodic review) to monitor progress towards its implementation. The increasing attention given to sexual orientation and gender identity issues by the **European Commission against Racism and Intolerance** was appreciated, and it was felt to be important that this work continue with adequate resources.

International governance:

Participants acknowledged the **significant progress** made in recent years, particularly the leadership of the **UN Secretary General**, the **UN High Commissioner for Human Rights**, and the adoption of **Human Rights Council resolution 17/19** on human rights, sexual orientation and gender identity in 2011 with support from all regional groups. The role of the **Special**

Procedures, treaty bodies, and engagement in other fora such as the **Commission on the Status of Women** were also highlighted as positive steps.

Increasing the **cross-regional base of support** for human rights related to sexual orientation and gender identity was felt to be an important priority. In this regard, participants highlighted the role of EU Member States, particularly through constructive **bilateral diplomacy**, to strengthen engagement and leadership by States from diverse regions, especially in the Global South.

The UN High Commissioner's report and the subsequent panel in the Human Rights Council were felt to have provided valuable contributions to the discussion. Nevertheless, it was acknowledged that there is a need for the Human Rights Council to address human rights violations based on sexual orientation and gender identity in a **systematic way**, for example through the **creation of a mechanism** to better document human rights violations based on sexual orientation and gender identity, engage with States and human rights defenders, raise awareness of the issues and engage UN human rights bodies in regular discussions.

The **Universal Periodic Review (UPR)** has served as a valuable tool for engaging with States on human rights concerns linked to sexual orientation and gender identity. Participants felt it would be helpful to strengthen scrutiny of the human rights situation in States within the European region, including by using the UPR to bring increased and **systematic attention to the rights of transgender and intersex persons**.

UN agencies such as UNESCO and UNICEF have also played a valuable role. One priority identified by participants was referred to as the '**depathologisation** of transgender identities' which refers to the review process of current international and national medical classifications defining transsexuality as a mental disorder, notably the WHO's ICD. The allocation of a senior staff member within the Office of the High Commissioner for Human Rights focussing on LGBTI issues was welcomed as a very positive development, while there was felt to be a need for more systematised integration of sexual orientation and gender identity throughout the UN secretariat and agencies, as well as increased **inter-agency cooperation** and sharing of good practices.