



Strasbourg, 10 March 2009

DH-LGBT(2009)005rev

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**COMMITTEE OF EXPERTS FOR
THE DEVELOPMENT OF HUMAN RIGHTS
(DH-DEV)**

**COMMITTEE OF EXPERTS ON DISCRIMINATION ON
GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY
(DH-LGBT)**

Meeting Report

1st meeting
Strasbourg, Wednesday 18 February (9.30am) – Friday 20 February 2009 (1pm)

Palais de l'Europe, Room 14
Council of Europe

Synopsis

- The Committee elected Mr Hans Ytterberg (Sweden) as chairperson and adopted the agenda;
 - The Committee exchanged views with several speakers:
 - Prof Michael O'Flaherty, Professor of Applied Human Rights, Co-Director of the Human Rights Law Centre, University of Nottingham, on human rights and discrimination on grounds of sexual orientation;
 - Mr Nicolas Beger, Director of the Amnesty International EU Office, on human rights and discrimination on grounds of gender identity;
 - Mr Ioannis Dimitrakopoulos, Head of Department Equality and Citizens' Rights of the European Union Agency for Fundamental Rights, on the Agency's report entitled "Homophobia and discrimination on grounds of sexual orientation in the EU member states: Part I – Legal analysis";
 - Ms Catherine Maffucci-Hugel, Secretariat of the Parliamentary Assembly Committee on Legal Affairs and Human Rights, on the preparation of the PACE report on discrimination on grounds of sexual orientation and gender identity;
 - Ms Sabrina Cajoly, Secretariat of the European Committee on Legal Co-operation (CDCJ), on the report on various forms of marital and non-marital partnerships and cohabitation currently being prepared for the CDCJ.
 - The Committee held a preliminary discussion on the format of the recommendation;
 - The Committee started identifying issues and practical measures for possible inclusion in the draft recommendation;
 - The Committee agreed to hold its next meeting on 3-5 June 2009.
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- Members of the Committee were invited to provide examples of national measures promoting tolerance towards LGBT persons, and were informed that a preliminary draft would be circulated for comments ahead of the next meeting.

Item 1: Opening of the meeting

1. The Committee of Experts on Discrimination on grounds of Sexual Orientation and Gender Identity (DH-LGBT) held its 1st meeting in Strasbourg on 18-20 February 2009. Mr Jan KLEIJSEN, Director of Standard-Setting (Directorate General of Human Rights and Legal Affairs, DG-HL) made an opening statement to welcome all participants. The Committee elected Mr Hans YTTERBERG (Sweden) as chairperson. The list of participants can be found in [Appendix I](#). The agenda as adopted and the references to the working documents appear in [Appendix II](#).

Item 2: Draft recommendation of the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity

2. Several speakers were invited to make presentations on topics and activities of relevance for the Committee's work:

- Prof Michael O'Flaherty, Professor of Applied Human Rights, Co-Director of the Human Rights Law Centre, University of Nottingham, made a presentation on human rights and sexual orientation, with special focus on the "principles on the application of international human rights law in relation to sexual orientation and gender identity" ([Appendix IV](#));

- Mr Nicolas Beger, Director of the Amnesty International EU Office, presented human rights obstacles faced by transgender persons in Europe ([Appendix V](#)).

- Mr Ioannis Dimitrakopoulos, Head of Department Equality and Citizens' Rights of the European Union Agency for Fundamental Rights, presented the results of the report prepared by the Agency at the request of the European Parliament entitled "Homophobia and discrimination on grounds of sexual orientation in the EU member states: Part I – Legal analysis" ([Appendix VI](#))

- Ms Catherine Maffucci-Hugel, member of the Secretariat of the Parliamentary Assembly Committee on Legal Affairs and Human Rights, presented the ongoing work of the Assembly on a report on discrimination on grounds of sexual orientation and gender identity. Ms Maffucci-Hugel informed the Committee that a first hearing of experts on these issues was organised to identify factors that have ensured (positive) changes in attitudes and legislation in a number of countries, as well as difficulties encountered in this field. A second hearing will take place on 24 March 2009 in Berlin and will specifically focus on gender identity issues, which were not addressed during the first exchange of views. The objective of the report is to complete the work of the FRA, the Commissioner of Human Rights and other bodies, to become an essential source of information, and to contribute to the promotion of the rights of LGBT persons. The report should be adopted in June 2009 and presented during the September/October session of the Parliamentary Assembly;

- Ms Sabrina Cajoly, member of the Secretariat of the European Committee on Legal Co-operation (CDCJ), presented the work undertaken within this Committee on various forms of marital and non-marital partnerships and cohabitation with a view to identifying possible measures to avoid discrimination on grounds of sexual orientation or gender identity. Ms Cajoly informed the Committee that a study had been entrusted to a consultant (the Danish Human Rights Institute) which will focus on the impact of various forms of marital and non-marital partnerships and cohabitation on specific issues related to the right to private life and family life (including second parent and joint adoption, assisted reproduction, family

reunification), and the principle of non-discrimination (including in the areas of health, housing, property, pensions and inheritance). She also indicated that the general aim of this activity was to give an overview of the situation in the Council of Europe member states, with a view to improving synergy and co-ordination in the future action of the CoE in this area. The study will be made available in the coming months and, given its relevance for the work on the future recommendation, it will be communicated to the DH-LGBT for information. The CDCJ will report back to the Committee of Ministers in the light of the results of the study by the end of 2009.

3. In the light of the terms of reference, the Chair noted that the recommendation should not only recall applicable standards but also focus on practical measures to improve the situation of LGBT persons' human rights in Europe.

4. As to the format of the recommendation, the Committee expressed a slight preference for a recommendation without an appendix in order to give prominence in its operative part to applicable standards and practical measures. However, the Chairperson underlined that the final decision on the format would be taken at the next meeting, once issues of relevance have been identified and examined in depth by the Committee.

5. The Committee started identifying a number of issues which could be addressed in the recommendation, as well as practical measures that could be encouraged. The topics and measures considered by the Committee for possible inclusion in the recommendation are listed in Appendix III. The Chair underlined that this was only a checklist and that the actual drafting would take place at the next meeting.

6. The Chair invited members of the Committee to send the Secretariat (stephanie.burel@coe.int) further suggestions of measures to be added into the recommendation, as well as examples of good practice regarding the promotion of tolerance and respect towards LGBT persons by 10 April 2009.

7. The Committee was informed by the Secretariat that a preliminary draft would be prepared on the basis of the members' suggestions – as included in Appendix III – and taking into account the examples of good practice received from members after the meeting. This text will be circulated for comments in advance of the next meeting.

8. A written statement of the member of the Russian Federation recalling its general position on non-discrimination of LGBT persons was distributed.

Item 3: Other business

9. The date of the next meeting was confirmed as 3-5 June 2009.

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Appendix I

LIST OF PARTICIPANTS

MEMBERS / MEMBRES

AUSTRIA / AUTRICHE

Dr. Katharina GRÖGER, Familienrechtsabteilung, Bundesministerium für Justiz, Wien

BELGIUM / BELGIQUE

Mme Stéphanie GRISARD, Attachée, SPF Justice, Direction générale de la Législation et des Libertés et Droits fondamentaux, Service des droits de l'Homme, Bruxelles

CROATIA / CROATIE

Mr Branko SOČANAC, Head of Human Rights Section, Human Rights Department, Ministry of Foreign Affairs and European Integration of the Republic of Croatia, Zagreb

FINLAND / FINLANDE

Ms. Martina TÖRNKVIST, Legal Officer, Unit for human rights courts and conventions, Ministry of Foreign Affairs of Finland, Merikasarmi

Ms Elisa KUOSMANEN

Permanent representation of Finland to the Council of Europe, Strasbourg

GERMANY / ALLEMAGNE

Dr. Nicola WENZEL, LL.M., Desk Officer, Federal Ministry of Justice, Unit of the Agent for Human Rights, Berlin

HUNGARY / HONGRIE

Ms Beáta SÁNDOR, Advisor, Budapest

NETHERLANDS / PAYS-BAS

Mr Ben BAKS, Ministry of Education, Culture and Science, The Hague

Ms Liselot EGMOND, International Law Division, Ministry of Foreign Affairs, EB The Hague

NORWAY / NORVÈGE

Mr Dag Robin SIMONSEN, Senior Advisor, Ministry of children and equality, Dept. of Family and Equality, Oslo

POLAND / POLOGNE

Mr Lukasz KNUROWSKI, Ministry of Foreign Affairs, c/o Permanent Representation of Poland to the Council of Europe, Strasbourg

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

Ms Tatiana SULITSKAYA, Head of Division, Department for Humanitarian Co-operation and Human Rights, Ministry of Foreign Affairs of the Russian Federation

SWEDEN / SUÈDE

Mr Hans YTTERBERG, Chair of the Committee / Président du Comité, Director General, Ministry of Integration and Gender Equality, former ombudsman for LGBT-matters in Sweden, Stockholm

SWITZERLAND / SUISSE

Mme Cordelia EHRICH, Juriste, Département fédéral de justice et police DFJP Office fédéral de la justice OFJ, Domaine de direction droit public, Droit européen et protection internationale des droits de l'homme, Berne

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / "L'EX-RÉPUBLIQUE YUGOSLAVE DE MACÉDOINE"

Ms Svetlana GELEVA, Head of Multilateral Department, Ministry of Foreign Affairs, SKOPJE

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SPEAKERS / ORATEURS

Prof. Michael O'FLAHERTY, Professor of Applied Human Rights, Co-Director, The Human Rights Law Centre, The University of Nottingham, School of Law, University Park, Nottingham, UK

Dr. Nicolas J. BEGER, Director, Amnesty International EU Office, Brussels, Belgium

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PARTICIPANTS

European Committee on Legal Cooperation (CDCJ) / Comité européen de coopération juridique (CDCJ)

Ms Sabrina CAJOLY, Administrator, Directorate General of Human Rights and Legal Affairs (DG-HL), Council of Europe, Strasbourg

Parliamentary Assembly / Assemblée Parlementaire

Mme Catherine MAFFUCCI, Committee on legal affairs and human rights, Council of Europe , Strasbourg

Council of Europe Commissioner for Human Rights / Commissaire aux Droits de l'Homme du Conseil de l'Europe

Mr Dennis Van der Veur, Advisor to the Commissioner for Human Rights, Council of Europe, Strasbourg

European Union Agency for Fundamental Rights (FRA) / Agence des droits fondamentaux de l'Union européenne (FRA)

Mr Ioannis DIMITRAKOPOULOS, Head of Department Equality and Citizens' Rights, European Union Agency for Fundamental Rights, Vienna

Holy See / Saint-Siège

M. Grégor PUPPINCK, Directeur du Centre européen pour la Justice et les Droits de l'Homme, Strasbourg, France

Amnesty International

Mr Johannes HEILER, Assistant Adviser, International Law and Organizations Programme, Amnesty International

International Lesbian and Gay Association – Europe (ILGA – Europe) / Association internationale lesbienne et gay - Europe (ILGA – Europe)

Prof. Robert WINTEMUTE, Professor of Human Rights Law, School of Law, King's College, London

Mr Nigel WARNER, ILGA-Europe's Council of Europe adviser

TransGender EU (TGEU)

Prof. Stephen WHITTLE

Mr Richard KOEHLER

**European Group of National Institutions for the Promotion and Protection of Human Rights /
Groupe européen des institutions nationales de promotion et de protection des droits de
l'homme**

Mme Noémie BIENVENU, Chargée de mission, Commission Nationale Consultative des Droits de
l'Homme (CNCDH), Paris, France

Human Rights Watch

Mr Boris O. DITTRICH, Advocacy Director, Lesbian, Gay, Bisexual and Transgender Rights Program,
Human Rights Watch, New York, NY

Conference of European Churches (KEK) / Conférence des Eglises européennes (KEK)

Mr John MURRAY, Associate staff member, Conference of European Churches, Church and Society
Commission, Strasbourg, France

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SECRETARIAT

Directorate General of Human Rights and Legal Affairs

Direction générale des droits de l'Homme et des affaires juridiques

Council of Europe/Conseil de l'Europe, F-67075 Strasbourg Cedex

Mr Jan KLEIJSEN, Director / Directeur, Directorate of Standard Setting / Direction des activités
normatives

Mr Gerald DUNN, Administrator / Administrateur, Human Rights Law and Policy Division / Division
du droit et de la politique des droits de l'Homme, Secretary of the DH-LGBT / Secrétaire du DH-
LGBT

Ms Stéphanie BUREL, Programme Officer / Officier de programmes, Human Rights Law and Policy
Division / Division du droit et de la politique des droits de l'Homme, Co-secretary of the DH-LGBT /
Co-secrétaire du DH-LGBT

Ms Merete BJERREGAARD, Administrator / Administrateur, Human Rights Law and Policy Division
/ Division du droit et de la politique des droits de l'Homme,

Mrs Catherine VARINOT, Assistant / Assistante, Human Rights Law and Policy Division / Division du
droit et de la politique des droits de l'Homme

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Appendix II

Agenda

Item 1: Opening of the meeting

- Election of the Chairperson
- Adoption of the agenda

Item 2: Draft recommendation of the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity

Working documents

Terms of reference and decisions of the Committee of Ministers	DH-LGBT(2009)001
Different drafting examples of recommendations of the Committees of Ministers	DH-LGBT(2009)002
Relevant sources of the Council of Europe (including the European Court of Human Rights' case-law) and of other international organisations	DH-LGBT(2009)003
Annotated agenda	DH-LGBT(2009)004

Information documents

Written contribution to be submitted by the Office of the Commissioner for Human Rights

The Yogyakarta principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity

Item 3: Other business

Appendix III

List of issues and practical measures for possible inclusion in the draft recommendation

Hate crimes and hate-motivated incidents

- Sexual orientation and gender identity among aggravating factors under criminal law with regard to the commission of a crime (violence, harassment, bullying), with appropriate criminal penalties.
- Allegations of hate crimes and other biased-motivated incidents are effectively investigated and those responsible brought to justice and punished in order to avoid impunity.
- Training for law enforcement personnel and other competent public officials to raise awareness of the specific situation of and problems faced by LGBT persons. Consultation of LGBT organisations about the development of such training programmes.
- Adequate support for victims of homophobic and transphobic crimes and other incidents, as any other victims of hate crimes, in order to encourage the reporting of these crimes by the victims themselves or by human rights defenders.
- Structures within public administrations providing advice on governmental policies regarding the protection of LGBT persons and acting as an interlocutor for other relevant stakeholders (different governmental sectors, NGOs, Nation Human Rights Institutions, Ombudsman institutions).
- Awareness of hate crimes against LGBT persons by Hate Crime Focal Points, as established within the framework of the OSCE/ODIHR.
- Efficient data collection on hate crimes including to raise awareness about the specificities of homophobic and transphobic crimes and plan adequate measures to effectively combat such crimes.

“Hate speech”

- Sexual orientation and gender identity to be included among aggravating factors under domestic law with appropriate penalties.
- Awareness-raising on the disruptive effects in societies of “hate speech”, including homophobic and transphobic discourse, particularly when taking the form of threatening verbal abuse and inciting to violence, whilst at the same time safeguarding the fundamental importance of freedom of expression.
- Role and responsibilities of politicians, public officials, opinion leaders and other leaders of different communities (social, cultural, religious or otherwise) regarding the use of responsible and non-violent discourse and in promoting tolerance and respect for LGBT persons.
- Role and responsibilities of the media for the strengthening of respect, tolerance and mutual understanding regardless of sexual orientation and gender identity, and for avoiding stereotypical representations of LGBT persons.
- Codes of conduct of media professionals to prevent and counter the use of homophobic and transphobic language.

- Role of existing international cooperation as well as mutual assistance between law enforcement bodies with regard to the dissemination of homophobic and transphobic language on the internet.

Respect for private life

- Discriminatory legal provisions criminalising certain homosexual acts, in particular any differences with respect to age of consent for same-sex and heterosexual acts.
- Protection of personal data against misuse and public disclosure, including where references are made to a person's sexual orientation or gender identity. Handling of criminal records which include references to a person's sexual orientation or gender identity, detained by the authorities. Other special records on gays, lesbians, bisexuals and transgender persons.
- Forced marriages including cases of LGBT persons forced into heterosexual marriage.
- Refusal to grant child custody solely on grounds of sexual orientation or gender identity
- Exclusion from the possibility of adopting solely on grounds of sexual orientation or gender identity in situations where national legislation allows single and unmarried individuals to adopt children.
- Discrimination on grounds of sexual orientation and gender identity regarding rights, benefits and obligations enjoyed by married and de facto couples.
- Non-discriminatory access on grounds of sexual orientation and gender identity to legal parenthood in situations where children are already living with same-sex couples, taking into account the primary importance of the best interest of the child.
- Access to full legal recognition of gender reassignment, including the alteration of all relevant official documents within a reasonable time.
- Misuse of gender reassignment medical treatment as a precondition to the enjoyment of individual rights affecting private life.
- Divorce as a mandatory requirement for accessing gender reassignment treatments. Negative impact on the right to respect for private and family life of such mandatory divorce requirements, notably in respect of the best interest of children in such families.

Freedom of movement

- Discriminatory rules having a negative impact on the effective enjoyment of freedom of movement of individuals, couples and families on grounds of sexual orientation and gender identity.

Rights of children and young people

- Prevention and remedying of bullying and harassment based on sexual orientation or gender identity. Tolerance and respect for LGBT children and young adults (Council of Europe Compass Manual on Human Rights education of young people) in order to guarantee to all children and young persons the right to education in a safe environment.
- Negative stereotypical portrayals of LGBT persons in school curricula and educational materials.
- Access of young persons to appropriate information on sexual orientation and gender identity, including on sexual health.
- Training for teachers regarding difficulties faced by young LGBT persons at school.

Employment-related issues

- Legal protection for individuals being denied access to employment or dismissed on grounds of sexual orientation or gender identity.
- Diversity policies and other measures taken by employers of both public and private sectors to prevent exclusion and marginalisation on grounds of sexual orientation and gender identity and to ensure equal opportunities of LGBT persons at the workplace.
- Prevention and remedying of discrimination on any ground including sexual orientation and gender identity regarding recruitment, promotion, dismissal, conditions of employment and remuneration in the public and private sector.
- Awareness-raising to encourage tolerance and respect for LGBT persons in the working environment, including the use of a responsible discourse, without stereotypes, notably in the police and the armed forces.
- Awareness of complaint mechanisms, such as equality bodies, National Human Rights Institutions and ombudspersons, of specific problems faced by victims of discrimination and harassment in the working environment on grounds of sexual orientation and gender identity.
- Particular problems of exclusion of transgender persons on the labour market, notably obstacles linked to the length of legal recognition procedures.

Housing

- Discrimination in accessing and keeping one's housing, including on grounds of sexual orientation and gender identity, and notably with regard to the enjoyment of tenancy rights for same-sex couples and different-sex couples.
- Risks of homelessness faced by young persons and children by reason of their sexual orientation or gender identity. Social measures, such as the establishment of structures providing advice and shelters.

Freedom of association

- Obstacles to the effective enjoyment of freedom of association by LGBT persons.
- Misuse of registration rules and other administrative procedures, including excessive formalities, resulting in the denial of the effective enjoyment of freedom of association of LGBT persons.
- Obstacles faced by human rights defenders, particularly in the form of pressure, threats or violence hindering work in defence of LGBT persons' rights. Possibility for Human rights defenders to bring complaints on behalf of LGBT victims or assist them in bringing complaints before courts or other competent bodies.
- Non-discriminatory access to state funding where available of NGOs which defend the rights of gay, lesbian, bisexual and transgender people.

Freedom of expression and assembly

- Obstacles to an effective enjoyment of freedom of expression on grounds of sexual orientation or gender identity.

- Bans of peaceful demonstrations, in favour of the rights of LGBT persons or others, simply because of the existence of attitudes hostile to the demonstrators or to the causes they advocate.
- Necessary measures to protect peaceful demonstrations from hostile and violent actions by others.
- Ill-founded refusals by local authorities, for reasons related solely to issues of sexual orientation or gender identity, of permissions to hold peaceful demonstrations in venues where demonstrations are usually allowed.
- Awareness among representatives of local authorities of their duty to protect the enjoyment of the right to freedom of assembly and expression by all persons, including LGBT persons.
- Specific problems faced by transgender persons in expressing their gender identity, notably through their clothing, especially in contexts where a gender-based dress code is imposed (e.g. schools, workplace).

Various forms of detention (custody, prison)

- Adequate and effective protection to LGBT persons who are arrested, remanded in custody or detained, and notably preventive measures against any ill-treatment.
- Effective investigations into any allegation of ill-treatment of LGBT persons, in particular when under the responsibility of state agents.
- Need for effective and accessible structures for LGBT victims, given their particular vulnerability, to report homophobic and transphobic incidents.
- Risk of additional restrictions, in particular with the placement in solitary confinement, for LGBT persons in detention as a result of measures to protect them from attacks from other inmates.
- Placement of transgender persons in a prison ward not corresponding to their preferred gender identity, with risks of abuse from other inmates.
- Denial to transgender persons of the possibility to start or continue their gender reassignment treatment whilst in detention.
- Adequate training on human rights issues related to sexual orientation and gender identity issues for law enforcement and prison officials in order for them to properly understand and respond to the specific problems faced by LGBT persons.

Health-related matters

- Equal enjoyment by all, including LGBT persons, of the highest possible standards of health.
- Effective protection against discrimination against LGBT persons in having access to healthcare services, including in relation to sexual and reproductive health. Harassment of LGBT persons in contacts with healthcare providers.
- Negative effects on LGBT persons' medical support due to the lack of adequate references in medical codes of conduct which could contribute to preventing discrimination and to ensuring that all persons are properly taken care of, with due attention paid only to their medical needs.
- Detrimental effects for transgender persons of the use of legal recognition of gender reassignment as a requirement for access to healthcare (and conversely).

- Adequate training and awareness-raising programmes on sexual orientation and gender identity for medical staff. Involvement of LGBT persons and organisations in the development of such programmes.
- Significantly higher suicide rates among LGBT persons, especially young individuals, compared to heterosexuals and non-transgender young persons and children, as well as higher risks of psychological vulnerability.
- Update of medical curricula to reflect medical needs of LGBT persons, including with respect to the special situation of HIV positive LGBT persons.
- Unavailability of health insurance covering the costs of gender reassignment treatments.
- Wrongful application of instruments for the classification of diseases, by representatives of the health and medical profession, resulting, for example, in the branding of homosexual or bisexual orientation as a mental disorder in violation of the relevant instruments of the World Health Organisation.

Sport

- Discrimination on grounds of sexual orientation or gender identity in the practice of any sport, sport being a key factor in social integration.
- Equal opportunities for the participation of LGBT persons in professional or recreational sports, regardless of, and with full respect for their sexual orientation and gender identity.
- Codes of conduct developed by sports authorities, as an important means to prevent and remedy discrimination on grounds of sexual orientation and gender identity in sports.
- Common use of hate or bias motivated slurs or insults with reference to sexual orientation or gender identity, during sport events, especially in the context of mediated sport events.
- Obstacles to transgender persons being able to practice any professional or recreational sport and see their gender preference respected, notably concerning access to changing facilities.

Asylum seekers, refugees

- Acceptance of well-founded fear of persecution on the basis of sexual orientation or gender identity as a valid ground for the granting of asylum status and recognition of refugee status.
- Risks of violence, and other forms of hostility against refugees and asylum seekers in compounds for reasons related to their sexual orientation or gender identity.
- Risks of LGBT persons to be returned to countries where they may face a well-founded fear of torture, persecution, or any other form of ill-treatment based on their sexual orientation or gender identity

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Appendix IV

Presentation to DH-LGBT Strasbourg, 18 February 2009

Professor Michael O'Flaherty¹

Chairperson and distinguished members of the Committee,

Thank you for the invitation to appear before you. Today you are embarking on an important project with the potential to make a significant difference for the lives of millions of people in the Council of Europe's member States. Your work will also serve as a stimulus for advances worldwide in efforts to curb discrimination against, and attacks on, persons of diverse sexual orientations and gender identities. I am honoured to be allowed make a contribution to your process of reflection.

I speak to you primarily in my capacity as rapporteur for the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. The Principles were adopted in March 2007 by a group of 29 human rights experts. The experts come from 25 countries and a wide diversity of backgrounds and expertise. Twelve of them are from Council of Europe States. The Principles have a tri-partite function. In the first place they constitute a "mapping" of the experiences of human rights violations experienced by people of diverse sexual orientations and gender identities. This "map" takes account of the distinct ways in which human rights violations are experienced in different regions of the world. Second, the application of international human rights law to such experiences is articulated in as clear and precise a manner as possible. Finally, the Principles spell out in some detail the nature of the duty on States for effective implementation of each of the human rights obligations.

The Yogyakarta Principles have been extremely well received. Many States have made reference to them in proceedings of the UN Human Rights Council, while some have specifically incorporated them into both domestic and foreign policy. The Principles served as a reference resource for a statement of 64 States (including 41 members of the Council of Europe) delivered to the UN General Assembly on 18 December last. The UN High Commissioner for Human Rights used that occasion to make a strong statement of support for efforts to combat human rights abuses related to sexual orientation and gender identity. Within the Council of Europe framework, the Principles have been welcomed by the Commissioner for Human Rights.

¹ Michael.oflaherty@nottingham.ac.uk

I believe that you will find the principles to be a useful resource as you embark on the drafting of the recommendation. With your permission I would like to refer to specific aspects of the Principles:

In the first place, as you undertake a review of the patterns of human rights violation that you seek to address, you may find our experience to be of interest. We observed that victimisation on the basis of sexual orientation or gender identity is a cross cutting phenomenon that manifests itself in an extraordinary multiplicity of forms. I expect you will be no less surprised than were we with regard to the sheer scale and variety of ways in which people are abused, attacked or suffer discrimination. Worldwide these abuses range from summary execution, torture and denial of security of the person, to discrimination in accessing economic, social and cultural rights such as health, housing, education and the right to work, from non-recognition of personal and family relationships to pervasive interferences with personal dignity, suppression of diverse sexual identities, attempts to impose heterosexual norms, and pressure to remain silent and invisible. We encountered a severe problem of inter-sectoral human rights violations – the phenomenon whereby people are rendered more susceptible to sexual orientation or gender-identity related abuses because of already existing vulnerabilities. This is well demonstrated, for instance, concerning the situation of children. Children who are or who are perceived to belong to a sexual minority face a host of dangers that may not confront adults. Indeed the same may be said of children of whatever sexuality or gender identity who suffer victimisation or discrimination in the community because they belong to LGBT families. As you embark on some form of “mapping” you will be supported greatly by the information resources that exist regarding Europe. The recent report of the EU Agency for Fundamental Rights on “Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States” is a notably useful compilation as are the country assessment reports by the Commissioner for Human Rights, as well as the many sources cited in submissions made to you by ILGA-Europe.

Having mapped the problems, the drafters of the Yogyakarta Principles sought to identify applicable elements of international human rights law. For the purpose of the drafting of a human rights law-related recommendation you may be encouraged to know that this caused no difficulties. We took account of the provisions of the global and the regional human rights treaties, as well as the jurisprudence of the applicable courts, especially the European Court of Human Rights and treaty monitoring bodies. In light of these sources it was extremely straightforward to identify standards in existing human rights law to underlie every proposition of the Principles. Indeed, in some aspects, such as regarding issues of how to deal with hate speech we may have actually understated the reach of existing human rights law. And, because of the nature of our exercise, we avoided any attempt to push the boundaries of the law or to propose any new human right.

The Yogyakarta Principles seek to be of assistance by spelling out in detail the extent of the State's obligations with regard to each human right. Our approach may be helpful to you as you consider how to craft recommendations. In each case the Yogyakarta provisions reflect the tri-partite duty of States to respect, protect and fulfil each human right. In other words,

we addressed the State's obligation to avoid direct violations perpetrated by itself, to protect people from abuses in the community and to vigorously build and encourage what we might term a human rights culture in society. Many of the recommendations are very specific indeed – in a manner reminiscent of some of the work that your committee has undertaken with regard to issues of gender discrimination. For instance, the principle on the right to education addresses issues of access to education, content of education, protection for students and teachers, school discipline and lifelong learning. We also considered it necessary to address recommendations to actors other than States that have an important role to play. Among those groups that may be of relevance for your own consideration are NGOs, national human rights institutions, professional organisations, commercial bodies and the mass communications media.

Notwithstanding the comprehensiveness of our mapping exercise and the clarity of the legal provisions, the drafters of the Yogyakarta Principles were faced with very many choices – what issues to highlight or leave to one side, what level of detail to enter into, what recommendations to make and to whom to direct them. As you face similar dilemmas it may be of interest to consider what values we relied on to guide us in our choices. Here we had recourse to the fundamental principles of human rights that are to be found in the Universal Declaration of Human Rights and have been reaffirmed repeatedly since its adoption.

The first of these values is that of universality. By universality of course we meant the reach of human rights protection to every human being. But if this was to be more than just a rhetorical flourish we understood that it compelled us to seek out and devote priority attention to the most vulnerable, the most neglected, forgotten or abused people. In other words, to be truly universal, the Principles had to avoid bland over-generalisations and directly address some of the most difficult and challenging issues in our societies.

The second value is that of indivisibility, in particular of civil, political, economic, social and cultural rights. We were very conscious of the need to avoid an imbalance that preferred attention to civil and political rights. Undoubtedly, these have historically been more loudly advocated for and researched. We know far more about patterns of hate crimes or obstructions of freedom of assembly than we do as regards, for example, sexual orientation-related violation of shelter or standard of living rights. However, the evidence is clear that people experience sexual orientation and gender identity-related persecution with regard to every aspect of their lives, often in a manner that closely intertwines the various categories of violation. We considered that the Principles would be badly compromised if they had failed to reflect this reality.

The third value that shaped our work was that of accountability. In this regard we were focussed not only on the duty of the State and on but also on the principle that there can be no right without a remedy. Human rights abuses related to sexual orientation and gender identity are particularly prone to impunity – perpetrators may not only get away with it but

are praised in certain sectors. This caused us to repeatedly emphasize vigorous and consistent application of the rule of law. You will also find strong references to the need to do justice for victims, through programmes of redress and reparation.

The final value that I wish to mention is the most primordial and over-arching of all – that which is so strongly stated in the Universal Declaration as being the bedrock for human rights – dignity. Recalling that human rights are in service of an inviolable human dignity we sought to direct every aspect of the Principles to the ultimate goal of the empowerment of everyone regardless and in full respect for their sexual orientation and gender identity. This preoccupation of ours underlies elements that envisage open, respectful well-informed societies that celebrate diversity. It underpins calls for programmes of public information and education so that no person is unaware of his or her rights. It informs stipulations that rights-holders be assiduously consulted in the design of programmes and that they are centrally involved in the implementation of those programmes. It requires that States support the development of a vigorous LGBT civil society and that it protect and enable human rights defenders.

Chairperson and distinguished member of the committee,

Let me conclude with a quote. As soon as the Yogyakarta Principles went on line they triggered a lot of blog commentary. Some comments were not at all friendly, while most were positive and encouraging. There is one that I will not forget: the message from one anonymous blogger that read, "Yesterday, I was nobody/nothing. Today, having seen these principles I realise that under International Human Rights Law I am officially human". That powerful comment serves to remind us of both the scale of the challenge we face and of the potential of our efforts. It is why I believe your task is so important. The recommendation you are crafting will help establish an environment where people across Europe and regardless of their sexual orientation or gender identity can experience what it is finally to be "officially human". I wish you every success in your work.

Thank you for your attention.

Appendix V

Summary by the Secretariat of the presentation on human rights obstacles faced by transgender persons in Europe by Mr Nicolas Beger, Director of the Amnesty International EU Office

In his presentation, Mr Nicolas Beger covered 6 specific topics: **hate crimes, law, employment, health, education, and other (housing, sport).**

Mr Beger firstly underlined that most states do not record **hate crimes** of a transphobic nature. Trans people frequently face different types of hate crimes, ranging from harassment, bullying and verbal abuse to physical violence, (sexual) assault and even murder. He referred to the report 'Hate Crimes in the OSCE Region: Incidents and Responses' which indicates that 'Homophobic hate crimes and incidents often show a high degree of cruelty and brutality. "They often involve severe beatings, torture, mutilation, castration, even sexual assault. They are also very likely to result in death." Transgender people seem to be even more vulnerable within this category.'¹ He also drew attention to the fact that there is no European-wide scientific data available concerning the treatment that trans victims of crime experience when they report a crime to the police.

As regards **relevant legal issues**, Mr. Beger identified a number of problematic areas:

- He stressed the fact that at least 4 Member States of the European Union do not provide gender recognition at all. In addition, most States require heavy administrative procedures, which in some cases involve undergoing a medical treatment.
- In most countries, the procedure of name change includes lengthy legal, medical and administrative practices and can prevent participation in the labour and education market for years.
- Mr. Beger indicated that divorce sometimes is a requirement for gender reassignment, which also leads to the question of the custody of children.
- He also pointed out existing problems concerning the enjoyment of freedom of expression and the fact that those who do not fall under the legal categories of transsexualism have often no or little right to express their identities in dress or name.
- Finally, Mr. Beger addressed the issue of freedom of movement and highlighted the problem of papers, which are not in line and therefore prevent from visiting relatives living abroad or taking a job that involves travel even across Schengen borders.

The presentation of Mr. Beger also referred to specific problems of transgender persons regarding **employment**, which, as shown by several studies, is a crucial issue. He noted that while transitioning between genders tends to lead to the loss of homes, families and friends, the working environment is often the only place left for socialising.

Furthermore, he underlined that many transgender persons have no other choice but to become sex workers which involves various health and violence issues (including from the police). Mr. Beger also highlighted that the majority of transgender persons move out of their original profession into low paid jobs of which the areas are often chosen in accordance with the existence of work place protection (e.g. public administration).

Mr. Beger gave examples of "real-life" issues of relevance for employers and transgender employees:

- Changing of degree certificates often proves difficult

¹ OSCE/ODIHR (2007) *Hate Crimes in the OSCE Region: Incidents and Responses; Annual report for 2006*; Warsaw: OSCE/ODIHR, p. 53f

- Access to treatment affects earning capacity (long distance travel, sick leave times), earning capacity affects access to treatment.
- Legal impediments to being gainfully employed or completing or starting education
- Access to toilets
- Bullying and the need of awareness raising among colleagues
- Dress codes and customer contacts
- Leave times for treatment

Subsequently, Mr. Beger examined a number of **health-related problems** faced by transgender persons. He noted that the right to treatment is a very difficult issue but that equality in the health system is clearly established by the ECHR since the case of von Kück and L. v. Lithuania (see summary of the Court's case-law in DH-LGBT(2009)003): sometimes it is not regulated by law and in practice it is often entirely unavailable or excluded entirely from all available insurance schemes. He made reference to the *Transgender EuroStudy*, which included a survey of healthcare experience of transgender persons. This study found that, with regard to access to gender reassignment treatments, 79% of respondents were refused state funding for hormones; over 86% were refused state funding for the minimum surgeries required to live in their preferred gender, some countries like Poland exclude all treatment explicitly. He quoted that "when it came to treatment by healthcare professionals in response to seeking help with gender reassignment, only 30% reported experiencing what the survey defined as the minimum acceptable level - a practitioner wanting to help, but lacking information about transgender issues. Moreover, one third of respondents reported that they were refused treatment because a medical practitioner did not approve of gender reassignment"². He noted that helpful healthcare professionals with sufficient knowledge of transgender issues are rare and further emphasised that access to general – i.e. non transgender-related - healthcare is often impaired by prejudices of such professionals. Mr. Beger also stressed that abuse by the medical profession is a serious concern, and indicated that often routine check-ups unrelated to transgender treatment led to the unnecessary staring of a transgender persons by several doctors, nurses and students, without any medical justification.

It is important to note that Mr. Berger stressed that the requirement by States for surgery and/or hormonal treatment as a prerequisite for a legal change of gender are a form of medical abuse, as the treatment may not be in accordance with the wishes and needs of the patient, nor prescribed by his/her medical specialist, and realisation of the person's preferred gender identity is rendered impossible without these treatments, putting the transgender person under unacceptable pressure. Furthermore, he underlined that therapy, which aims at affirming the birth gender of a transgender person, is known to have a counterproductive effect on transgender people and is also a medical abuse.

As regards **education**, Mr. Berger underlined that no analysis of the situation of transpeople in the education system at the European level can be found. He quoted a study 'Engendered Penalties' in which it was reported that '64% of natal females with a male identity reported experiencing some kind of harassment or bullying at school and 44% of natal males with a female identity experienced harassment or bullying at school.' He noted that this is significantly more than gay men, lesbian women and heterosexual men and women reported in similar studies. He pointed out that this study also shows that not only pupils are the offenders (71.6% of the natal females, and 55% of the natal males were victims), teachers bully gender non-conforming children as well (experienced by 28.7% of the natal females and 21% of the natal males). In addition, he drew attention to the impossibility to "transition" early or change names (non-cooperation of teachers and principals) and the difficulties faced on a daily basis (physical education classes, swimming etc.).

As to housing, he stressed that studies showed that transgender people often find themselves in the least protected forms of housing.

² Ibid. - pp 55 and 58

Concerning insurance-related matters, he underlined that insurance companies refuse application of transgender people on a regular basis

As to sport, he noted that studies reveal that trans people are less likely to engage in sports than other groups in society.

He ended his presentation in saying that at minimum the text of the recommendation should include reference to: an equal right to obtain and retain work, without prejudice; a right to change one's name (including to one of the opposite gender, where names are 'gendered') without treatment requirements; a right to change all one's public documents to reflect the reality of a life in the preferred gender role without treatment requirements; a right to be legally recognized for all purposes to reflect the reality of a life in the preferred gender role without treatment requirements; equality in access to gender reassignment treatments and coverage as necessary medical treatment within the national health care system, including outside the own country; a right to be treated equally in all other health care areas, without prejudice; a right to safety in public and in private; a right to equal access to goods, services, housing and other facilities, without prejudice; a right of adolescents and children to learn about gender identity issues at school and home without prejudice, and free from bullying.

Appendix VI

Presentation of Mr Ioannis Dimitrakopoulos, Head of Department Equality and Citizens' Rights of the European Union Agency for Fundamental Rights

The European Union Agency for Fundamental Rights was established by Council Regulation (EC) No 168/2007 on 15 February 2007 with the objective to provide assistance and expertise to relevant Community institutions and EU Member States, when implementing Community law relating to fundamental rights.

Discrimination on grounds of sexual orientation is prohibited by Article 13 of the EC Treaty and the EU's Charter of Fundamental Rights. However, in recent years a series of events in EU MSs, such as the banning of Pride marches, intolerant statements by politicians and religious leaders, and evidence of discriminatory treatment have sent alarming signals and sparked a new debate about the extent of homophobia and discrimination against lesbian, gay, bisexual, transsexual and transgendered persons in the European Union leading the European Parliament to adopt in 2005 a resolution condemning homophobia and sexual orientation discrimination.

In June 2007 the European Parliament asked the FRA to develop a comprehensive comparative report on the situation and in response we launched a large scale legal and social research project carried out during 2007 and 2008 investigating homophobia and discrimination on grounds of sexual orientation and gender identity in all EU Member States. The first part, a comparative legal study based on 27 background country reports, was published by the FRA in June 2008 and the second part, a comparative social study based on 27 background country reports and fieldwork interview research in all EU MSs will also be published in the coming weeks.

Short overview of some key findings:

Regarding the legal situation:

Currently, the principle of equal treatment in EU law appears paradoxically to be applied "unequally": Whereas the Racial Equality Directive provides comprehensive protection against discrimination in all areas of social life on grounds of racial or ethnic origin, the other grounds, including sexual orientation are only partially protected in employment and vocational training. This creates an artificial "hierarchy" of grounds of discrimination. Although various anti-discrimination provisions may offer a certain level of protection against sexual orientation discrimination in the MSs, treating grounds of discrimination differently is not commensurate with the EU's fundamental principle of equal treatment. In this respect the FRA welcomed the 2 July 2008 European Commission proposal for a "horizontal" anti-discrimination Directive providing equal protection on all grounds in the spirit of the Fundamental Rights Charter.

Our study has shown that already 18 EU Member States have gone beyond minimal prescriptions regarding sexual orientation by providing protection against discrimination for LGBTs not only in employment, but also in many other areas of social life.

However, the unequal treatment of same sex couples across the EU points to the urgent need to clarify the situation in conformity with international human rights law for rights and benefits provided for spouses and partners under the EU's Free Movement Directive, the Family Reunification Directive and the Qualification Directive.

Our study also found that the issue of transgendered persons, who are also victims of discrimination and homophobia, is adequately addressed in only 12 EU Member States that treat discrimination on grounds of transgender as a form of sex discrimination. In two Member States this type of discrimination is treated as sexual orientation discrimination and in 13 Member States discrimination of transgender people is neither treated as sex discrimination nor as sexual orientation discrimination, resulting in a situation of legal uncertainty.

Regarding the social situation:

→ Public opinion and attitudes:

The results of the Eurobarometer Discrimination Survey of July 2008 show that on average over half of EU respondents think that discrimination on grounds of sexual orientation is widespread in their country. However, there are major differences between EU Member States. For instance, the 2008 Eurobarometer Discrimination Survey using a ten-point 'comfort scale' found Swedes (9.5), Dutch and Danish respondents (9.3) the most 'comfortable' with the idea of having a homosexual as a neighbour, but a much lower 'comfort' level was recorded in Bulgaria (5.3), Latvia (5.5) and Lithuania (6.1).

→ Freedom of assembly:

A key issue concerns the fundamental right of freedom of assembly: In a number of Member States this right has been obstructed either by public authorities or by 'counter-demonstrator' attacks. Such incidents have been reported in five Member States (Bulgaria, Estonia, Latvia, Poland and Romania). Furthermore, in these, and in six additional Member States (Bulgaria, Czech Republic, Cyprus, Hungary, Italy and Malta), calls for improving the rights of LGBT persons have invariably been met with negative statements from some politicians and representatives of religious institutions.

In other Member States, however, LGBT organisations celebrated pride events often with the participation of government ministers, political parties, and, in some cases, religious organisations: For example, in the Netherlands the 2008 Canal Pride in Amsterdam was joined by three government ministers, representing the cabinet, and the mayor of Amsterdam. In Austria, the the equality body of the city of Vienna participated in the 2008 Pride; In Sweden, the Minister for EU Affairs opened the 2008 Stockholm EuroPride, in which the country's Lutheran Church also participated; In Spain, the 2008 Madrid Pride was joined by the Equality Minister; In France, the Mayor of Paris joined the Paris Gay Pride in 2008.

→ Hate crime:

Homophobic hate crime has an impact on LGBT persons in various ways. Verbal aggression is the most commonly experienced type of hate incident, and usually occurs in public spaces. Young people are subjected to assaults more than other age groups (including bullying at school). In recent years there have also been several accounts of deadly assaults on transgender persons.

A key feature of homophobic and transphobic crime is, like in other forms of hate crime, underreporting. In many cases tools for reporting such incidents to the police, such as self-reporting forms or third party and assisted reporting, are non existent or underdeveloped, while police officers in most Member States are not adequately trained to identify and deal with hate crime.

Underreporting is also explained by the reluctance of most LGBT victims to disclose their sexual identity, often because authorities are not sensitive to their situation or because they are not trained to deal with such incidents in support of the victim. Attacks on LGBT venues are a problem in some Member States. LGBT NGO premises have been vandalised, and other meeting places have been burnt down or the clientele seriously harassed or assaulted.

Hate speech against LGBT persons takes place, among other contexts, in political debates concerning LGBT rights or during counter-demonstrations at public LGBT events such as Pride. Homophobic statements by political and religious figures are circulated through the media. In such statements, LGBT persons are often depicted as unnatural, diseased, deviant, linked to crime, immoral or socially destabilising.

The Internet is an area of particular concern as a platform for the publication of hate speech, but more often than not web pages are hosted outside the EU.

→ Employment:

The invisibility of LGBT persons and a relatively low level of recorded complaints make the true extent of homophobia, transphobia and discrimination based on sexual orientation and gender identity difficult to determine. Lack of rights awareness coupled with the reluctance of LGBT persons to

acknowledge their sexual orientation, gender identity or gender expression in a public trial, may partly explain this phenomenon.

Nevertheless, there is some research evidence to suggest that LGBT persons are subject to homophobia and discrimination in the workplace through direct discrimination, harassment, bullying, ridicule and being socially 'frozen out'. Many workplaces are not considered 'safe' for LGBT staff.

The existence of equal treatment and diversity policies in the workplace and the decisive role of management in implementing such policies determine whether LGBT persons will perceive their work environment as safe and inclusive. Evidence shows that effective employment equality legislation empowers LGBT persons to complain formally in cases of discrimination.

→ Education

Incidents of bullying and harassment of LGBT persons are reported in educational settings across the EU. Verbal homophobia and transphobia are commonplace, and the word 'gay' is commonly used in a derogatory way. There is research evidence that bullying and harassment can have significant negative consequences for LGBT youth, affecting school performance and well-being. Such experiences can lead to social marginalisation, poor health or dropping out of school. However, school authorities across the EU pay little attention to homophobia and LGBT bullying and teachers lack the awareness, incentives, skills and tools to recognise and tackle such problems.

The lack of recognition, representation and positive LGBT images in education in the majority of EU Member States is another concern raised by NGOs, as it facilitates the lack of awareness, sensitivity and understanding contributing to the social isolation of LGBT students. Teachers are rarely trained, prepared or inclined to discuss the issue of sexual identity and orientation.

→ Health care

It is difficult to determine the real extent of discrimination against LGBT persons in health care, as they tend not to reveal their sexual orientation. Existing research indicates both positive and negative reactions from health care professionals and personnel when an LGBT person discloses her/his sexual orientation or gender identity. Negative attitudes towards LGBT people or the perceived risk of encountering such attitudes can lead some LGBT persons to avoid seeking health care.

Lack of recognition of same-sex partners as 'next of kin' creates difficulties regarding access to information and decision-making about a partner's health and treatment, as well as problems with hospital visitation.

→ Religious institutions

Attitudes of religious institutions towards LGBT persons and rights vary considerably. While some religious organisations are in different ways open to LGBT participation, in most cases religious leaders often mobilise and lobby against the LGBT rights.

In Member States where religious institutions own and administer schools, social services and community centres used for public debates or events, LGBT NGOs have been denied access to such premises and were barred from disseminating information on LGBT issues or participating in political debates.

Religious institutions as employers have in some instances used exemptions in anti-discrimination legislation against LGBT employees for failing to 'act in good faith and with loyalty to the organisation's ethos'.

→ Sports

Homophobia is expressed in different ways, both in fan culture and among athletes, and when homophobic language is used to ridicule opponents or referees. The available evidence indicates a significant lack of LGBT visibility, as LGBT persons who reveal themselves as such in sports risk harassment, homophobia or rejection.

→ Media

Incidents of homophobic reporting can be seen in media across the EU. The most worrying examples depict LGBT persons as perverts or associate homosexuality with paedophilia.

However, media studies have recently also noted an increase in positive media depictions that include a more nuanced and informed perspective on LGBT persons and issues.

→ **Asylum**

LGBT persons face particular difficulties in the process of seeking asylum, as intimate, sexual or taboo information can be difficult to present to public authorities. Moreover, there is anecdotal evidence that staff and interviewing techniques often do not recognise this difficulty. Several LGBT asylum seekers have been rejected because their status as homosexuals was regarded as untrustworthy or they were expected to be able to live as homosexuals in the private sphere (i.e. remain 'closeted') in their country of origin.

LGBT asylum seekers in asylum centres experience a lack of information, social isolation and abuse because of their sexual orientation or gender identity.

→ **Multiple discrimination**

LGBT persons constitute a diverse group and may risk discrimination on two or more grounds. Discrimination and exclusion can be compounded by a disabled, elderly or ethnic/religious minority status combined with LGBT identity.

Ethnic minorities risk discrimination on grounds of sexual orientation or gender identity within their ethnic minority communities and discrimination on grounds of race or ethnic background in the LGBT community.

Disabled LGBT persons may experience 'a-sexualisation' by, among others, caretakers and members of the LGBT community. Furthermore, inaccessible LGBT venues, bars and meeting places create physical obstacles for disabled LGBT persons attempting to participate in the LGBT community.

Some LGBT persons in care facilities and care homes for the elderly face social isolation and stereotyping from personnel and other residents.

→ **Transgender persons**

Transgender persons include those who have a gender identity which is different than the gender assigned at birth and those who wish to portray their gender identity in a different way than the gender assigned at birth. It also includes persons who present themselves as contrary to the expectations of the gender role assigned to them at birth, whether through clothing, accessories, cosmetics or body modification. This includes, among many others, transgender persons between male and female, transsexuals, transvestites and cross-dressers.

Transgender persons face transphobia and discrimination on grounds of their gender identity and expression and not necessarily because of their sexual orientation. Discrimination against transgender persons occurs in all the areas we have investigated and especially in the areas of hate crime and hate speech, health and the labour market. Surveys show that transgender people face more negative attitudes than LGB people.

The FRA believes that combating fundamental rights violations effectively requires **first** a firm political commitment to the principles of equal treatment and non-discrimination and a firm stance against homophobia and discrimination against LGBT and transgendered persons contributing in this way to changing public attitudes and behaviour. In this context the standard setting work of the Council of Europe, as well as the case law of the ECtHR, is of crucial importance.

Secondly, it requires good knowledge of the situation based on robust data guiding the development of evidence based policies and actions. This research represents an important positive step in this direction. But equality authorities and other specialised bodies in many Member States still need to develop data collection mechanisms, promote scientific research, and actively encourage LGBT people to come forward and lodge complaints on incidents of discrimination.

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