



Strasbourg, 11 June 2009

DH-LGBT(2009)008rev

**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

2nd meeting
Strasbourg, Wednesday 3 June (9.30am) – Friday 5 June 2009 (1.30pm)

Agora Building, Room G06
Council of Europe

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 2nd meeting in Strasbourg on 3-5 June 2009 with Mr Hans YTTERBERG (Sweden) in the Chair. Mr Jeroen SCHOKKENBROEK, Head of the Human Rights Development Department (Directorate General of Human Rights and Legal Affairs, DG-HL) made an opening statement to welcome all participants. 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: Findings of the FRA report: Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States - Part II - The Social Situation

2. Ms Eva SOBOTKA (Human Rights Officer, Fundamental Rights Agency) and Dr Israel BUTLER (Seconded National Expert, Fundamental Rights Agency) gave a presentation of the findings of the report of the Fundamental Rights Agency on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States - Part II - The Social Situation and made a few suggestions for the content of the draft recommendation. The presentation can be found in Appendix IV.

Item 3: Draft recommendation of the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity

3. Mr YTTERBERG informed the Committee of the discussion that had taken place at the 68th meeting of the CDDH concerning the format and content of the draft recommendation. He stressed that the Committee should aim for the more traditional format of Committee of Ministers recommendations, i.e. a shorter recommendation with an appendix. Regarding the content, he suggested that the Committee should base the text on well-founded principles (such as those drawn from the European Convention on Human Rights and other international instruments). Any lengthy detail would be more appropriate in the Explanatory Memorandum.

4. The Committee agreed to keep the traditional format of the recommendation, as it appeared in document DH-LGBT (2009)006 and finalised the text of the draft recommendation. The revised text of the draft recommendation can be found in Appendix III. The Committee agreed to transmit the text of the draft recommendation to the DH-DEV for discussion and guidance at its next meeting.

5. A written statement of the representative of the Holy See was distributed.

Item 4: Other business

6. The dates of the next meeting of the DH-LGBT were fixed for 4-6 November 2009.

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Appendix I

LIST OF PARTICIPANTS

MEMBERS

LISTE DE PARTICIPANTS

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

ESTONIA / ESTONIE

Mr Christian VESKE, Chief specialist, Gender Equality Department, Ministry of Social Affairs, Tallinn

FINLAND / FINLANDE

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

Ms Elisa KUOSMANEN, Permanent representation of Finland to the Council of Europe, Strasbourg

GERMANY / ALLEMAGNE

Ms 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

ITALIE/ITALY

Mr Pietro VULPIANI, Presidenza del Consiglio dei Ministri, Dipartimento per le Pari Opportunità, Ufficio Nazionale Antidiscriminazioni Razziali, Roma

THE NETHERLANDS / PAYS-BAS

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

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

POLAND / POLOGNE

Ms Agnieszka TORRES DE OLIVEIRA, Ministry of Foreign Affairs, WARSAW

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

SPAIN / ESPAGNE

Ms Ana MOLTØ BLASCO, Chief of Service, Office for International Relations of Ministry for Equality, Madrid

Mr. Enrique Criado, Ministry of Foreign Affairs and Cooperation

SWEDEN / SUÈDE

Mr Hans YTTERBERG, Chair of the Committee / Président du Comité, Director General, Ministry of Integration and Gender Equality, former Ombudsman against sexual orientation discrimination 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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OBSERVATEURS ET AUTRES PARTICIPANTS

Holy See / Saint-Siège

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

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

Mr Milos HATAPKA, Director, Private International Law Division, Ministry of Justice, BRATISLAVA, Slovak Republic

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

Parliamentary Assembly / Assemblée Parlementaire

Ms Catherine MAFFUCCI-HUGEL, 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)

Ms Eva SOBOTKA, Human Rights Officer, External Relations and Networking Department, European Union Agency for Fundamental Rights, VIENNA Austria

Dr Israel BUTLER, Seconded National Expert, European Union Agency for Fundamental Rights, VIENNA Austria

OSCE Office for Democratic Institutions and Human Rights (ODIHR) / Bureau de l'OSCE des institutions démocratiques et des droits de l'homme (BIDDH)

Ms Kirsten MLACAK, Head, Human Rights Department, OSCE Office for Democratic Institutions and Human Rights (ODIHR), WARSAW, Poland

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

Excusé/excused

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)

Mr Dirk De MEIRLEIR, Executive Director

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 James MORTON

Ms Julia EHRT, TGEU, Co-Chair

Apologised

Mr Richard KOEHLER

Human Rights Watch

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

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

Ms Diane MURRAY, Consultant, Conference of European Churches, Strasbourg

Apologised

M. Richard FISCHER, Commission Eglise et Société, Conférence des Eglises européennes, Strasbourg

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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 Jeroen SCHOKKENBROEK, Head of Human Rights Development Department / Chef du Service du développement des droits de l'Homme

Mr Nicola Daniele CANGEMI, Head of the Human Rights Law and Policy Division / Chef de la Division du droit et de la politique des droits de l'homme, Secretary of the DH-DEV-FA / Secrétaire du DH-DEV-FA

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 Claire ASKIN, Administrative assistant, Human Rights Law and Policy Division / Assistante administrative, Division du droit et de la politique des droits de l'Homme, Co-secretary of the DH-DEV-FA / Co-secrétaire du DH-DEV-FA

Mme Estelle FAURY, Administrative assistant, European Court of Human Rights

Mme Frédérique BONIFAIX, Assistant / Assistante, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

Mme Michèle COGNARD, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Appendix II**Agenda**

- Item 1: Opening of the meeting and adoption of the agenda**
- Item 2: Findings of the FRA report: Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States - Part II - The Social Situation - Presentation by Eva Sobotka, Human Rights Officer, Fundamental Rights Agency and Dr Israel Butler, Seconded National Expert, Fundamental Rights Agency**
- Item 3: Draft recommendation of the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity**

Working documents

Preliminary draft of the future Recommendation	DH-LGBT (2009)006
Written contributions by the Group members	DH-LGBT(2009)007 Bilingual
Report of the 1 st meeting of the Group	DH-LGBT (2009)005rev
Terms of reference and decisions of the Committee of Ministers	DH-LGBT(2009)001rev1
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)003rev
Addendum to relevant sources of the Council of Europe (including the European Court of Human Rights' case-law) and of other international organisations	DH-LGBT(2009)003add

Information documents

Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the Eu Member States Part II – The Social Situation by the Fundamental Rights Agency (FRA)	FRA-PARTII
Parliamentary Assembly Committee on Legal Affairs and Human Rights, Discrimination on the basis of sexual orientation and gender identity Introductory memorandum, Rapporteur: Mr Andreas Gross, Switzerland, Socialist Group	<u>Declassified</u> ajdoc16 2009

Rights and legal status of children in various forms of marital and non-marital partnerships and cohabitation by Nigel Lowe for the Committee of experts of Family Law (CJ-FA)

CJ-FA (2008) 5

Comparative study on partnership regulation in the Council of Europe's Member States with a view to identifying possible measures to avoid discrimination on grounds of sexual orientation or gender identity – European Committee on Legal Co-operation (restricted) – European Committee on Legal Co-operation (CDCJ)

CDCJ (009) 9 (restricted)

Contribution of the Commissioner for Human Rights to the work of the European Committee on Legal Co-operation (CDCJ)

CommDH(2009)19

Item 4: Other business

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Appendix III**Draft recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity, to ensure respect for human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them.**

The Committee of Ministers under the terms of Article 15.b of the Statute of the Council of Europe;

Considering that the aim of the Council of Europe is to achieve greater unity between its members, and that this aim may be pursued in particular, through common action in the field of human rights;

Stressing its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the European Convention on Human Rights and its protocols;

Considering the case-law of the European Court of Human Rights, the former European Commission of Human Rights as well as the European Court of Justice which recognises sexual orientation as a prohibited ground of discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recognising that non-discriminatory treatment by state actors, as well as positive state measures of protection against discriminatory treatment by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender individuals have been subjected for many centuries to widespread and enduring criminalisation, discrimination, rejection and marginalisation all over Europe and in all areas of life, on grounds of sexual orientation and gender identity;

Considering that homophobia and transphobia are specific forms of intolerance, leading to hostile acts ranging from social exclusion to discrimination and violence against persons on account of their sexual orientation or gender identity;

Recognising that discrimination and stigmatisation or stereotyping of persons on account of their sexual orientation or gender identity have resulted in countless people having to conceal or suppress their identity and to live lives of fear and invisibility, even within their family, and that this continues in many parts of Europe today;

Concerned by the specific discrimination experienced by lesbian, bisexual and transgender women and acknowledging the problem of multiple discrimination experienced by lesbian, gay, bisexual and transgender persons who may experience discrimination also on other grounds, such as race, religion, age and disability;

Concerned about the serious health consequences for gay, lesbian, bisexual and transgender persons caused by discrimination and stigmatisation on grounds of sexual orientation and gender identity, in particular for young people as reflected in the high suicide rates among them;

Concerned that in many States of the Council of Europe those who seek to realise their self-defined gender identity may still face significant obstacles to, or even the impossibility of, obtaining the legal recognition and medical treatment they need;

Bearing in mind the principle that neither cultural nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on

grounds of sexual orientation and gender identity, as affirmed by the Council of Europe White Paper on Intercultural Dialogue;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008;

Recalling the Committee of Ministers' Recommendation No. R (93) 13rev on the Revised European Sports Charter, which states that no discrimination shall be permitted in access to sports;

Recalling the Committee of Ministers' Recommendation No. R (97) 21 on media and the promotion of a culture of tolerance, which underlines the importance of the role of the media in the fight against intolerance, especially where they foster a culture of understanding between different social groups;

Bearing in mind Parliamentary Assembly Recommendation 924 (1981) regarding discrimination against homosexuals, Recommendation 1117 (1989) regarding the conditions of transsexuals, Recommendation 1470 (2000) regarding the situation of gays and lesbians and their partners in respect of asylum and immigration in the member states of the Council of Europe and Recommendation 1474 (2000) on the situation of gays and lesbians in Council of Europe Member States, all addressed to the Committee of Ministers, as well as Recommendation 1635 (2003) regarding lesbians and gays in sport, addressed to member states, the Committee of Ministers and European sports organisations, Resolution 1608 (2008) - *Child and teenage suicide in Europe: a serious public health issue* and the Assembly's ongoing work on sexual orientation and gender identity;

Recalling Recommendation 211 (2007) of the Congress of Local and Regional Authorities on freedom of assembly and expression by lesbian, gay, bisexual and transgender persons, which calls on the Committee of Ministers to invite member states to take appropriate measures to ensure the full enjoyment of these rights by them;

Appreciating the important role of the Commissioner for Human Rights in monitoring the situation of persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity, and taking into account the recommendations in the country human rights assessment reports, viewpoints and other publications of the Commissioner;

Welcoming the joint statement, made on 18 December 2008 at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and "deprivation of economic, social and cultural rights, including the right to health";

Taking into account the research, data collection and opinions of the European Union Agency for Fundamental Rights (FRA), and its specific reports on homophobia and discrimination on grounds of sexual orientation and gender identity in the EU member states;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by comprehensive, coherent and proactive policies targeted both at those who experience such discrimination or exclusion and the population at large, and designed to enable all persons irrespective of sexual orientation or gender identity to live openly, in equality, and with respect for their identity;

Recommends that the governments of member states,

1. Carry out a comprehensive review of, and make all necessary amendments to, existing legislation and practices which could result, directly or indirectly, in prosecution, punishment or discrimination on grounds of sexual orientation or gender identity; and thereafter regularly and effectively monitor all legislation, policies and other measures for their impact on the right to non-discrimination;
2. Ensure that comprehensive legislation, policies and strategies to combat discrimination on grounds of sexual orientation and gender identity, in particular with respect to employment and access to goods and services, including education, health care, housing and social benefits, are adopted and that they are effectively enforced in practice;
3. Ensure that comprehensive data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation and gender identity, and in particular on “hate crimes” and “hate-motivated incidents” related to sexual orientation and gender identity;
4. Ensure that their national legislation against discrimination include sanctions for infringements, which are effective, proportionate and dissuasive, and include the provision of adequate compensation for victims of discrimination;
5. Ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, notwithstanding that the violation may have been committed by persons acting in an official capacity;
6. Ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation and gender identity; in particular they should be able to make recommendations on legislation and policies, examine individual complaints regarding both the private and public sector, raise awareness amongst the general public, as well as initiate or participate in court proceedings in accordance with rules laid down in national law;
7. Ensure that all necessary measures are taken in the field of education, professional training and awareness-raising to effectively promote respect for diversity, equality and tolerance and to combat the causes and manifestations of discrimination on grounds of sexual orientation and gender identity, including notably prejudices and negative stereotypes among public officials;
8. Ensure that non-governmental organisations advocating respect for the human rights of lesbian, gay, bisexual and transgender persons, are fully consulted on the adoption and effective implementation of legislation, policies and strategies that may have an impact on the human rights of these persons;
9. Be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this Recommendation;
10. Ensure that this Recommendation and the principles and measures contained in the appendix are translated and disseminated as widely as possible.

[Follow-up]

I. Right to life, security and protection from violence

A. “Hate crimes” and other “hate-motivated incidents”

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator (hereinafter sexual orientation or gender identity related “hate crimes” or “hate-motivated incidents”); they should further ensure that particular attention is paid to the investigation of such crimes and incidents, when allegedly committed by law-enforcement officials and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity;
2. Member states should ensure that when determining sanctions a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance;
3. Member states should take all appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other “hate-motivated incidents” are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.
4. Member states should take appropriate measures to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, including in particular protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; accommodation should be arranged so as to respect the self defined gender identity of transgender persons;

B. “Hate speech” and other “hate-motivated expressions”

5. Member states should take appropriate measures to combat negative stereotyping and all other forms of expression, including in the media and on the Internet, which spread, incite, promote or justify hatred and aggressively hostile attitudes, based on intolerance against lesbian, gay, bisexual and transgender persons (hereinafter sexual orientation and gender identity related “hate speech” and other “hate-motivated expressions”); such “hate speech” and other “hate-motivated expressions” should be prohibited and publicly disavowed whenever they occur; all such measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the European Convention of Human Rights and the case-law of the European Court of Human Rights;
6. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or aggressively hostile attitudes;
7. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in dialogue with key representatives of civil society, including media and sports organisations, political organisations and religious communities;

II. Freedom of association

8. Member states should take appropriate measures to ensure that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or

gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be effectively removed and prevented; measures should also be taken to prevent the abuse of legal and administrative provisions such as on health, morality and public order;

9. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity;

10. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be particularly exposed, including when allegedly committed by state agents, to enable them to freely carry out their activities, and to create an environment conducive to their work;

III. Freedom of expression and peaceful assembly

11. Member states should take appropriate measures at all levels to ensure that the right to freedom of expression, can be effectively enjoyed, without discrimination on grounds of sexual orientation and gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation and gender identity;

12. Member states should take appropriate measures at national, regional and local levels, to ensure that the right to freedom of peaceful assembly can be effectively enjoyed, without discrimination on grounds of sexual orientation and gender identity;

13. Member States should ensure that peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons are not prevented from taking place or banned solely because of the existence of attitudes hostile to the demonstrators or to the cause they advocate;

14. Law enforcement authorities should take all appropriate measures to protect participants of such peaceful demonstrations from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly;

15. Member States should take appropriate measures to prevent restrictions to the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal and administrative provisions such as on health, morality and public order;

16. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably, when related to the human rights of lesbian, gay, bisexual and transgender persons;

IV. Right to respect for private and family life

17. Member states should ensure that any discriminatory legislation criminalising sexual acts between consenting adults, including any differences with respect to age of consent for same-sex and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which because of their wording may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination;

18. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including, notably, within the law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed;

19. Existing mechanisms imposing requirements such as hormonal or surgical treatments, sterilisation or divorce prior to the legal recognition of the preferred gender, or for accessing gender reassignment services, should be reviewed, and all unnecessary requirements should be removed;

20. Member states should take all necessary measures to ensure the adoption and effective implementation of legislation, which guarantees the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in all official documents in a quick, transparent and accessible way; member states should also ensure the corresponding recognition and changes by non-state actors with respect to key documents such as educational or work certificates;

21. Member states should take all necessary measures to ensure that the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed;

22. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights;

23. Where national legislation recognises registered same-sex partnerships, their legal status and their rights and obligations should be equivalent to those of heterosexual couples in a comparable situation;

24. Where national legislation does not recognise registered same-sex partnerships nor unmarried couples, member states are invited to consider the possibility of providing same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

25. Member states should take all necessary measures to ensure that a person's sexual orientation or gender identity is not used as a basis for unfavourable decisions regarding the parental responsibility for, or guardianship of a child;

26. Where national legislation permits single individuals to adopt children, member states should ensure that the law is applied without distinctions based on an applicant's sexual orientation or gender identity;

27. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure that access to such treatment can be enjoyed without discrimination on grounds of sexual orientation;

V. Employment

28. Member states should ensure the establishment and implementation of legislation, policies and other measures which provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment and occupation in the public sector including, notably, within the armed forces and the law enforcement structures as well as in the private sector, in relation to conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

29. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees;

VI. Education

30. Member states should take all necessary legislative and other measures addressed to educational staff and pupils to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation and gender identity; this includes, in particular, safeguarding the right of lesbian, gay, bisexual and transgender children and youth to education in a safe environment, free from violence, bullying, harassment, social exclusion or other forms of discriminatory and degrading, treatment related to sexual orientation and gender identity;

31. To this effect appropriate measures should be taken at all levels to promote mutual tolerance and respect in school regardless of sexual orientation or gender identity; in particular this should include:

- a) providing school curricula and educational materials containing objective information with respect to sexual orientation and gender identity;
- b) designing and implementing school equality and safety policies and action plans;
- c) ensuring access to adequate anti-discrimination training and teaching aids;
- d) providing pupils with the necessary information, protection and support to enable them to live in accordance with their sexual orientation or self-defined gender identity;

VII. Health

32. Member states should take appropriate legislative and other measures to ensure that the right to the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of healthcare services;

33. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation;

34. Transgender persons should be ensured effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent;

35. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate ;

VIII. Housing

36. Measures should be taken to ensure that the right to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation and gender identity; such measures should in particular seek to provide an effective protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and property;

37. Special attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including, notably, young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination;

IX. Participation in sports

38. Homophobia, transphobia, and discrimination on grounds of sexual orientation and gender identity in sports should be combated in the same way as racism and other forms of discrimination;

39. Professional and recreational sport activities and facilities should be open to all without discrimination on grounds of sexual orientation and gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of bias motivated slurs and insults with reference to sexual orientation or gender identity during and in connection with sports events;

40. Member states should encourage dialogue and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them;

X. Right to seek asylum

41. Member states should take measures to ensure that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law, taking into account the guidelines on these matters of the Office of the United Nations High Commissioner for Refugees;

42. Member states should ensure particularly that asylum seekers are not sent to a country where they may face the risk of torture, inhuman or degrading treatment, punishment or other serious human rights violations, including persecution on grounds of sexual orientation or gender identity;

43. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation and gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers who are accommodated in asylum centres or compounds, and to ensure their access to information relevant to their particular situation;

XI. Multiple discrimination

44. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting and preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation and gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Appendix IV

SUBMISSION OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS TO THE COUNCIL OF EUROPE'S COMMITTEE OF EXPERTS ON DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY (DG-LGBT)

The Agency of Fundamental Rights has conducted in 2008, at the request of the European Parliament, research on the situation of LGBT communities in the EU, examining, both their legal and social situation.¹ The Committee has already had an opportunity to learn about Conclusions and Opinions of the legal study on the situation of LGBT communities at its last meeting. This brief contains summary of conclusions and opinions of the social impact study and is provided with a view of informing the **Preliminary draft of the future Recommendation of the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity.**

The principal challenge facing LGBT persons is the attitude of individuals towards them. There is a lack of public understanding about sexual orientation and sexual identity. The greatest challenge faced is how to influence and alter these attitudes. Attitudinal change is central to combating most of the problems that have been encountered across all the areas of society the FRA has examined.

Second principle challenge is a chronic lack of data concerning LGBT communities. There is a significant lack of both academic research and unofficial NGO data regarding homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in many Member States and at the EU level. The data gap analysis shows that there is a profound lack of quantitative and qualitative research and statistics. The area which appears to be most commonly researched concerns attitudes towards LGBT persons. The areas of hate crime and hate speech, access to health care, labour market and education, have been afforded some research attention in some Member States. However, **transgender issues, multiple discrimination, religion, freedom of assembly, asylum and sports appear to be profoundly under-researched.** This data is needed for building a base of informed policy making.

This brief further provides: (1) Short description of situation of LGBT Communities in a given policy area (2) Direct input for the draft Recommendation (*in italics*) and (3) example of good practice for the Explanatory Memorandum, should it accompany the Recommendation.

Attitudes towards LGBT persons

A Eurobarometer Survey of 2008 indicates a widespread unwillingness even to associate with LGBT persons in some countries. A ten-point 'comfort scale' which indicated peoples' ease with the idea of having a homosexual as a neighbour returned the following figures:

- Sweden (9.5), Sweden (9.5), Netherlands and Denmark (9.3)

¹ For both FRA reports on homophobia, please see link
http://www.fra.europa.eu/fraWebsite/home/pub_cr_homophobia_p2_0309_en.htm

- Bulgaria (5.3), Latvia (5.5) and Lithuania (6.1)

A similar variation in attitudes exists in relation to whether same sex couples should be able to marry or to adopt.

There appears to be a tendency for many LGBT persons to conceal their sexuality from colleagues, friends and family, presumably as a consequence of these prejudices. This not only has grave influence on general well-being but also affects the extent to which discrimination can be detected.

The Committee of Ministers might therefore consider the following -

Recommends that governments of the member states engage in awareness-raising activities in order to heighten public understanding about LGBT issues and combat prejudice. LGBT organisations should be involved in the planning and implementation of such projects

GOOD PRACTICE BOX:

Awareness-raising campaign. In **Poland** the first awareness-raising campaign promoting acceptance of gays and lesbians "Let them see us" was organised in 2003 by the *Campaign Against Homophobia*. Thirty pictures of gay and lesbian couples holding hands were shown in galleries and on billboards in the biggest Polish cities. The campaign sparked a heated debate in the media on LGB issues.²

In January 2005, ILGA **Portugal** launched a media campaign, including TV, radio, press and the Web in cooperation with the advertising agency W/Portugal, contributing pro bono work. The campaign included displays of affection between lesbian and gay couples on television and print media in order to enhance the visibility of LGBT persons through positive representations.³

Religious institutions, political figures, and the media

While the absence of public awareness relating to LGBT issues itself gives room for prejudice to flourish among the public the FRA's research also suggested that certain actors that are influential of public opinion actively disseminate and propagate negative portrayals of LGBT persons. In particular certain religious institutions, political figures and elements of the media.

- Religious institutions

In many member states conservative religious institutions actively speak out against LGBT persons, usually arguing that being LGBT runs contrary to religious doctrine and should be opposed rather than encouraged. They may lobby against legislation that better protects LGBT persons and campaign against LGBT events.

² See http://niechnaszobacza.queers.pl/index_en.htm (23.10.2008).

³ See <http://www.youtube.com/watch?v=Xtv2OjDV6t0> (17.10.2008)

At the same time some churches or parts of churches (e.g. in the Netherlands, Finland and Sweden) have welcomed LGBT persons as part of their communities and tried to diffuse intolerance based on religious beliefs.

Accordingly the Committee might consider a recommendation along the following lines:

Recommends that member states encourage dialogue between LGBT groups and representatives of religious institutions with a view to improving mutual understanding and combating prejudicial attitudes.

GOOD PRACTICE BOX:

In the Netherlands by 1995 the synod of the Netherlands Reformed Church had already issued a statement that members of the church have equal rights, regardless of their sexual orientation or way of life. In Finland, reportedly since 1999 the Kallio parish (Kallion seurakunta) in Helsinki has embraced “rainbow people” and “Rainbow Masses” have been held in connection with Gay Pride events in Vaasa, Helsinki and Tampere. In Sweden, the Church participated in the 2008 Pride events.

- Political Figures

Our research revealed that in certain states conservative politicians often make derogatory statements about LGBT persons in public debates. They are portrayed as immoral, analogous to drug addicts or alcoholics and a threat to traditional family values. On the basis of these prejudices politicians attempt to resist legislative change favourable to LGBT persons, while drawing upon and reaffirming negative attitudes among the public in general.

Accordingly the Committee might consider a recommendation along the following lines:

Recommends that member states encourage more balanced and nuanced public debate concerning LGBT persons in conjunction with more general awareness-raising activities.

GOOD PRACTICE: (see freedom of assembly, below)

- The media

Studies of the media in various countries reveal that newspapers and broadcasters are prepared to publish levels of homophobic abuse that would not be acceptable were they racist. For instance, a headline in a Romanian newspaper saying ‘The homosexuals should be executed’. Such strong statements could, of course, be combated through the use of legislation relating to hate speech, discussed below.

However, a more widespread and subtle problem is the portrayal of LGBT persons in the media where negative stereotypes are promoted, focusing on particular events, such as gay pride, and focusing on patterns of sexual behaviour as definitive of LGBT persons. There is

little balanced depiction or discussion of issues facing LGBT persons (apart from medical problems), or of LGBT persons as 'normal' people.

Accordingly the Committee might consider a recommendation along the following lines:

Recommends that member states encourage the media to include in their codes of conduct provisions prohibiting pejorative or prejudicial references to LGBT persons.

Recommends that member states consider the creation of a complaints authority competent to deal with claims against the media for non-respect of this code of practice.

Recommends that member states support and encourage the introduction of diversity training for the media in order to combat prejudice and hate speech.

GOOD PRACTICE BOX:

Together with the **European Broadcasting Union**, the **Lithuanian Gay League** developed a *Guide for better media reporting on LGBT issues*. The Guide provides journalists and activists with easily applicable tools to improve positive reporting on LGBT issues. As a result, a closer cooperation with the media has been achieved resulting in more balanced articles and information about LGBT persons in the media.¹

In the United Kingdom the independent *Press Complaints Commission*, an independent body that deals with complaints about the editorial content of newspapers and magazines, expanded Clause 12 (Discrimination) of its Code to cover discriminatory press reporting of transgender people in May 2005. Under the new Clause the press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.¹

Physical and verbal aggression against LGBT persons (hate crime)

As noted, the media, political figures and religious institutions in certain states may be implicated in incidences of hate speech or hate crime. However, more generally it appears that violence and verbal aggression are inflicted upon LGBT persons on a day to day basis.

Two principal problems exist in relation to hate crime and hate speech, by which is meant verbal or physical assaults motivated by phobia of an LGBT person by reason of their sexual orientation or identity.

Firstly, it is not possible to form an accurate idea of the frequency of these incidents. There is a lack of statistics in most states. In 2007 there were almost 1000 prosecutions for hate crimes in the UK. In a Danish survey, 12% of LGB persons reported physical assault. One survey in Italy suggested about 50% of gay men and 1/3 of lesbian women had experienced hate crime or hate speech. To a great extent the lack of data is owed to the fact that few states have tools for reporting these incidences to the police: victims often do not feel

secure reporting incidents where they fear prejudicial attitudes; police officers themselves usually lack specific training to deal with hate crime or the tools to record homophobic intent. Some surveys suggest that over 80% of hate crimes go unreported.

Secondly, not all states criminalise homophobic intent behind offences. Only 10 EU member states expressly classify homophobia an aggravating circumstance. In 12 Member States homophobic intent could be caught by general legislative provisions and in 4 Member States LGBT persons do not feature in the list of groups who may benefit from this protection.

In light of the following the Committee might consider making recommendations along the following lines:

Recommends that member states consider the use of criminal law as a means of combating verbal and physical attacks against LGBT persons motivated by prejudice against their sexual orientation or gender identity.

Recommends that member states consider introducing training for police officers in dealing with incidences of hate crime, and that tools be developed to permit 'self reporting' or 'third party reporting' where contact between the police and the victim may take place away from the police station or through an intermediary.

Recommends that member states ensure that law enforcement agencies investigate homophobic crime to the same high standard as other crimes.

Recommends that member states explore means of collecting data on the prevalence of verbal and physical abuse against LGBT persons.

GOOD PRACTICE BOX:

Anonymous reporting of hate crime: Fieldwork research revealed that in **the Netherlands**, a pilot project has been initiated where hate crimes can be reported anonymously on the Internet so that information can be collected, even if victims don't want to report to the police directly.⁴ Similarly, in **Denmark**, the Municipality of Copenhagen established a website for anonymous reporting of hate incidents.⁵ In **Slovenia**, the LGBT NGO *Legebitra* has initiated the program, *Povej naprej!* (Activate!) to facilitate reporting of hate crimes and incidents of discrimination against LGBT persons by interviewing victims anonymously.⁶

Training and information material: In **France**, a 'Victim's Guide' to hate crime and discrimination was developed by a partnership of private enterprises, police unions and gay and lesbian associations. According to fieldwork interviews, the **National Gendarmerie in France** has included since 2006, awareness-raising modules on homosexuality and homophobia in its educational curricula.⁷ Fieldwork interviews reveal that the National Equality Body, *Centre for Equal Opportunities and Opposition to Racism*, in **Belgium** has

⁴ Fieldwork meeting with the Commission for Equal Treatment (The Netherlands, 1 April)

⁵ See http://www.registrerdiskrimination.kk.dk/?sc_lang=en (17.10.2008)

⁶ See http://www.drustvo-legebitra.si/index.php?option=com_content&task=view&id=148&Itemid=0 (17.10.2008)

⁷ Fieldwork meeting with Inter-LGBT and L'Autre Cercle, (France, 10 March 2008)

⁸ Fieldwork meeting with The Centre for Equal Opportunities and Opposition to Racism (Belgium, 3 April)

undertaken a similar police training initiative.⁸

Freedom of assembly

Several states have seen bans of gay-related events such as Pride marches, as well as counter-demonstrations (sometimes sponsored by political or religious figures) and physical attacks on demonstrators. LGBT groups are also known to have encountered problems in renting premises for gatherings or accessing cultural or political venues.

Bans have been imposed on the pretext of the protection of morality due to the unpopularity of the message as well as the pretext of a threat to public safety due to potential counter-demonstrations. At the same time in some states public and religious figures have openly supported and participated in gay-related public events to show their support for equality. Not only must freedom of assembly be protected of itself as a human right, it also plays an important part in awareness-raising activities which can help to alter negative public attitudes.

On the basis of the foregoing it is suggested that the Committee might consider a recommendation along the following lines:

Recommends that member states, particularly at the local level, facilitate LGBT groups in their efforts to organise events given their importance to raising awareness among the public and combating prejudicial attitudes.

Recommends that member states have full regard to the right of freedom of assembly and freedom of expression and the jurisprudence of the European Court of Human Rights. Governments should take into account that freedom of expression in a democratic society should be guaranteed even where the views expressed may 'offend, shock or disturb'. National authorities should endeavour to guarantee the safety of participants and only ban LGBT events on grounds of ensuring public safety as a last resort.

GOOD PRACTICE BOX:

There are several examples of politicians expressing open support for LGB events. 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, among the 120,000 participants of the 2008 Pride event was the equality body of the city of Vienna; in Sweden, the Minister for EU Affairs opened the 2008 Stockholm EuroPride attracting more than 80,000 participants among which was the country's Lutheran Church; in Spain, the 2008 Madrid Pride was joined by the Equality Minister and hundreds of thousands of participants from all over Europe; in France, more than half a million joined the Paris Gay Pride in 2008 including the Mayor of Paris.

Where national surveys have been conducted, they have suggested that around 30% of LGBT people who are openly gay in the workplace face unfavourable treatment such as

harassment, social exclusion, and diminished opportunities for career advancement. It would seem that out of fear of these consequences around half of LGB people hide their sexual orientation in the workplace.

Currently EU legislation prohibits discrimination on the basis of sexual orientation and gender identity only in the context of the labour market. However some states have extended it to cover access to goods and services which is consistent with EU legislation on racial discrimination. At the same time it should be remembered that according to the jurisprudence of the European Court of Human Rights discrimination on the basis of sexual orientation can only be justified in very narrow circumstances (see e.g. *Karner v Austria*, Application 40016/98, 24 July 2003).

Accordingly, the Committee might consider a recommendation along the following lines:

Recommends that member states encourage employers to engage in training for staff to combat prejudicial attitudes.

Recommends that member states ensure that any discriminatory treatment based on sexual orientation or gender identity is prohibited in all spheres of economic, social, political and cultural life, unless there exists rigorous and objective justification.

GOOD PRACTICE BOX:

In **France**, *HALDE* [High Authority for the Fight Against Discrimination and for Equality] has developed and distributed the Diversity Charter [*la charte de la diversité*] to hundreds of French companies raising awareness and mobilising key stakeholders to review their practices in this area.

Diversity Programmes. The Stonewall Diversity Champions programme was established in the **United Kingdom** in 2001 to bring together organisations that wanted to tackle sexual orientation discrimination, share good practice, benchmark and develop ideas and promote diversity in the workplace. The companies involved have taken a number of steps outlined in the Stonewall Diversity Champions programme: For example, they have developed and promoted a written equality and diversity policy barring discrimination and specifically identifying sexual orientation as a dimension of discrimination; they have developed a working group/diversity team that includes LGB issues; they have established a lead person for LGB issues at board/chief executive level; they have established an LGBT network group for support, consultation and policy instruction at the workplace.

Education

Bullying and harassment of LGBT persons in educational settings appears to be commonplace, extending to verbal and physical abuse. This has resulted in social marginalisation and increased drop-out rates for LGBT youth. Research suggests that staff in educational institutions are rarely trained on how to address LGBT issues or prepared even to discuss sexual identity and sexual orientation openly.

The Committee might therefore consider including a recommendation to the following effect:

Recommends that member states consider the introduction of LGBT issues into the educational curricula and that LGBT persons are represented with respect and dignity.

Recommends that member states should encourage schools to provide a climate of safety and support for LGBT persons, including the adoption of policies to address the use of homophobic language or bullying and harassment on the basis of sexual orientation and gender identity.

Recommends that member states provide staff in educational institutions with appropriate training to confront prejudices and discuss LGBT issues with students.

GOOD PRACTICE BOX:

Anti-homophobic school bullying campaign: In Ireland, the initiative *Making Your School Safe* carried out by *The Equality Authority* and *BeLonG To* addressed school principals, teachers and students. It included a variety of activities, such as posters for schools carrying the message: 'Homophobic bullying is not acceptable in our school', booklets, fliers, etc. The project campaigned for further action by schools, for example, developing anti-bullying and anti-harassment policies, and codes of behaviour; including LGBT issues in school equality policies; training and empowering staff to address homophobic harassment and bullying in school more effectively; ensuring that guidance counsellors are properly trained in sexual identity issues.

Educational material for schools: In Belgium, the Education Minister of the French Community issued in 2006 an educational guidebook on homophobia at school that was sent to every primary and high school in the French-speaking region.¹ Also in Belgium, the Flemish government subsidised a pioneering project of the Region of Flemish-Brabant in 2007 developing an educational toolkit on 'gender diversity and transgender' for pupils from 14 to 18 years of age.

Health

Negative attitudes towards LGBT persons – including the view that homosexuality is medically treatable condition – often leads them to avoid medical attention which can have long term impacts on health. In addition LGBT persons tend to have higher rates of poor mental health, suicide and substance abuse than the general population. The fact that many LBG persons conceal their sexual orientation obscures the true extent of discrimination in the context of health care. The lack of recognition of same-sex partners as 'next of kin' also creates difficulties of access to information and decision-making about a partner's health and treatment, as well as problems with hospital visitation. In very few states is there ready access to reproductive health services for LGB persons, and medical expertise for

transgender persons wishing to undergo surgery is often not readily available or of a poor quality.

Accordingly the Committee might consider the following recommendations:

Recommends that member states encourage inclusion of LGBT dimensions in national health surveys.

Recommends that member states introduce adequate training for those involved in health care provision in order to combat prejudice against LGBT persons.

Recommends that member states examine the possibility for same-sex partners to claim 'next of kin' status.

GOOD PRACTICE BOX:

Training of healthcare professionals in LGBT competence: In **Sweden**, the LGBT NGO *RFSL* educates healthcare professionals in LGBT competence. During the last year, around 15 hospitals and student groups in the healthcare sector have taken the class. During 2007, *RFSL Stockholm* and *RFSL National* have started working on defining the criteria which would qualify a hospital as 'LGBT competent'.

Interviews revealed that in **France**, the rising number of lesbians coming to the LGBT Paris-IDF centre to ask for referral to non-biased gynaecologists led the centre to create a **Lesbian Health Guide** with addresses of 'friendly' gynaecologists. The guide addresses general health issues, in particular the risks of breast and uterus cancer.

Sports

Homophobia is found both in fan culture and among athletes where homophobic language is often used as an insult. Due to the risk of harassment or rejection from peers or fans LGBT persons are reluctant to be open about their sexuality. In contrast to efforts to tackle racism in sport there has been limited attention dedicated to addressing homophobia.

The Committee might therefore consider a recommendation to the following effect:

Recommends that member states support sports associations and fan clubs in developing awareness-raising campaigns on LGBT persons in sport and condemning manifestations of homophobia and related intolerances.

GOOD PRACTICE BOX:

In **Germany** the *Deutscher Fußball Bund* [German Football Confederation] launched a campaign entitled '*Football and Homophobia*' and signed a declaration against discrimination on grounds of sexual orientation in 2007.

Partnerships developing education programmes: From 2007 *The Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights* (RFSL) and *HomO* [the Ombudsman against Discrimination on grounds of Sexual Orientation Discrimination] have worked on a project with the *Riksidrottsförbundet* [National Sporting Federation] and *SISU*, an education organisation within sport. The project aims to educate coaches on LGBT issues. *RFSL* and *SISU* plan to develop education programmes and offer them to sports clubs. Meanwhile, *Riksidrottsförbundet* is designing and conducting studies on LGBT issues in sports.

Asylum

The 1951 Geneva Convention on Refugees prohibits the return of non-nationals to territory where they may face persecution by virtue of their membership of a particular social group. LGBT persons therefore qualify for protection and may apply for asylum. Research has suggested, however that the process of proving one's claim may be extremely difficult in practice. Firstly, immigration officials may not be trained in conducting interviews on intimate, sexual or taboo subjects. Secondly, claims may be rejected where individuals are regarded as untrustworthy (e.g. if that individual is married) or because the individual is expected to avoid persecution by concealing their sexuality in their country of origin. There are reports that certain countries conduct medical tests on claimants to determine their sexuality by measuring their physical responses to heterosexual erotica. This of itself would constitute an invasion of privacy and may constitute inhuman or degrading treatment contrary to the European Convention on Human Rights. Thirdly, LGBT persons in detention centres may experience ill-treatment from other detainees.

Accordingly the Committee may consider the following recommendations:

Recommends that member states develop guidelines for the treatment of LGBT asylum seekers during application procedures, including adequate training of officials. In particular the realm of sexual intimacy, as part of one's private life, should be respected. Governments should also be guided by UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity published on 21 November 2008.

Recommends that member states pay special attention to the needs of LGBT persons held in detention centres.

GOOD PRACTICE BOX:

The Migrationsverket [Swedish Migration Board] has examined the needs of vulnerable groups and the obligations they impose on the authorities and institutions involved in the application process. Since 2004 staff dealing with asylum seekers and involved in status determination procedures receive training in gender perspective and sexual orientation as a part of the Board's 'quality assurance' program. The Riksförbundet För Sexuellt Likaberättigande (RFSL) [Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights] contributed to the development of the training.

In **Belgium**, at *Commissariat Général aux Réfugiés et aux Apatrides* [General Commissioner for Refugees and Stateless Persons] a member of staff deals exclusively with asylum applications based on gender or sexual orientation, while guidelines concerning sexual orientation asylum applications have been worked out together with LGBT groups.

Multiple discrimination

Prejudices faced by LGBT persons may be compounded by discrimination on other grounds. For instance disabled or elderly LGBTs persons may experience 'asexualisation', isolation or stereotyping from carers and peers. Elderly or disabled LGBT persons may also face discrimination from other LGBT persons, and LGBT persons belonging to ethnic or religious minorities may face prejudice from those within their communities due to their sexuality, as well as prejudice from without due to their ethnicity.

National equality bodies often focus on only one ground of discrimination when dealing with complaints, especially during litigation, in order to maximise the chances of success. Furthermore, non-governmental organisations tend to exist around one particular theme. This means that individuals' diverse experiences of discrimination may not be adequately addressed.

The Committee may consider the following recommendations to be appropriate:

Recommends to the member states to develop strategies for dealing effectively with complaints on multiple grounds of discrimination, such as coordination between different national equality bodies.

Recommends to the member states to encourage the creation of multiple- ground NGOs or cooperation between NGOs specialisation in different grounds of discrimination in order to better support victims of multiple discrimination.

GOOD PRACTICE BOX:

A Dutch project concerning elderly LGBT persons was initiated by several civil society organisations with government funding. The project identifies the needs of elderly LGBT persons, particularly regarding social and medical care.

Multiple-ground NGOs: *Sabaah* is a civil society organisation focusing on ethnic minority LGBT persons in **Denmark**. It was founded to create a social network empowering ethnic minority LGBT people to tackle the problems they face in combining their sexual identity and ethnic minority background.

Transgender persons are those who wish to portray their gender identity differently from that assigned at birth, be this through body modification, cosmetics or clothing. The FRA's research shows that discrimination against transgender persons occurs in all the areas examined and to a similar extent as to LGB persons. However discrimination in the context of health and employment is more pronounced and public attitudes are even more negative than those facing LGB persons.

Discrimination on the basis of gender identity does not expressly feature as a prohibited ground of differential treatment within EU legislation, however the jurisprudence of the European Court of Justice has considered it to constitute a form of discrimination on the basis of gender. Sixteen of the EU Member States protect transgender persons against discrimination either by its classification as gender discrimination or sexual orientation or identity discrimination. In the remainder of the EU Member States it is not clear if transgender persons are protected from discrimination.

The Committee might consider the following recommendations:

Recommends that governments of member states promote awareness-raising activities to increase understanding of and combat prejudicial attitudes towards transgender persons.

Recommends that member states ensure that legislation and practice grants full recognition to an individual's new gender identity, including name change, social security number and other possible gender indicators.

Recommends that member states ensure express protection for transgender persons against discrimination.

Recommends that member states take into account that discrimination faced by transgender persons does not necessarily relate to their sexual orientation, but rather to the expression of their gender identity. Measures adopted to combat discrimination against transgender persons should reflect this.

GOOD PRACTICE BOX:

In the **United Kingdom**, the Department of Health has worked together with the transgender community to create a series of leaflets and guides available in hard copy and on the internet for all aspects of transgender health care. The various guides include one for GPs, a guide to hormone therapies, treatment of adolescents and a general guide to transgender people as workers and patients in the health service.

In the **United Kingdom** the public sector Gender Equality Duty requires all public authorities (including their contactors) to eliminate unlawful discrimination and harassment on the grounds of sex and to promote equality of opportunity between women and men, including transsexuals of both genders. The Gender Equality Duty has improved awareness of transgender people's needs in the workplace and led to an increasing number of employers training staff on transgender issues.

Lack of data

Generally there exists a shortage of data among EU member states relating to the prevalence of discrimination across different areas. Few member states keep statistics relating to sexual orientation and then only in specific contexts such as asylum and employment.

The Committee might therefore consider the following recommendation:

Recommends that member states promote research on discrimination on grounds of sexual orientation and gender identity in particular its extent, nature, causes and impacts, in order to provide evidence for effective policy-making.