



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



CommDH/Speech(2016)5
English only

LGBTI people are not second-class citizens

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European Governmental LGBTI Focal Point Network Roundtable
Strasbourg, 17 November 2016

It is a great pleasure for me to meet you all today to discuss how we can improve the protection and promotion of the human rights of lesbian, gay, bisexual, transgender and intersex people (LGBTI). The very fact that governments' representatives, focal points, members of international organisations and NGOs meet to discuss such an important issue, is a testimony of the increased attention to the problems LGBTI people face in enjoying their human rights.

Today, an increasing number of countries in Europe have finally recognised civil unions among same-sex partners. A space where LGBTI people are increasingly free to live their lives as they see fit.

At the same time, we should not be misled by these achievements, as discrimination against LGBTI people and regressive tendencies still prevent a complete emancipation of our societies from stereotypes and prejudices based on sexual orientation and gender identity.

This is why I have devoted a great lot of attention to the human rights of LGBTI people since I took up office four years ago. I have looked into laws and practices in many of my country visits and thematic reports, addressing lawmakers and experts, the media and the public at large with the aim of raising awareness on the many challenges we still have to tackle.

Today, I would like to review with you some of the most pressing challenges that I think should receive more attention and the tools available to respond to them.

A mixed picture

As Article 14 of the European Convention on Human Rights sets out, the enjoyment of rights and freedoms must be secured without discrimination on a number of grounds. European countries have achieved a lot of progress in addressing discrimination of LGBTI people. During my work, I have been particularly pleased to see that in several countries awareness raising of the human rights of LGBTI people has resulted in improved laws and practice. This progress is largely due to the extensive work of advocacy done by NGOs and grassroots organisations. A long established jurisprudence of the European Court of Human Rights has also been a powerful contributing factor to lift up the protection of LGBTI people in many fields, from the prohibition of ill-treatment to the right to liberty and security, family life and prohibition of discrimination.

The picture is however tarnished by persisting and new worrying challenges, both in terms of legislation and lack of political will to raise awareness among the public, civil servants and law enforcement officers about the human rights of LGBTI people. In my work, I have sought to draw the public's and policy-makers' attention to the human rights of LGBTI people in various national contexts, listening in some cases to representatives of member state governments or parliaments dismissing issues pertaining to LGBT rights as being "exotic", "politicised", "exaggerated" or a matter to be dealt with "in line with local cultural or religious sensibilities".

Some problems that I have encountered are well known: countries which still hinder LGBTI people's rights to express their opinions, in spite of a clear obligation to uphold the right to freedom of

expression and of assembly; so-called “anti-LGBTI propaganda laws” passed off for measures necessary to protect children; homophobic statements, including by leading policy makers; or hate crimes against LGBTI people remain unpunished.

These are long-standing issues that we still have to solve, but on which plenty of work and awareness-raising activities have been done and are under way.

Today I would like to focus on three less visible, yet equally important problems that I have observed during my work.

Deleterious medical practices

The first is the widely neglected human rights violations of intersex children and adults, who are all too often victims of violence and harmful medical practices including in Europe. Europeans remain largely unaware of the painful personal histories of intersex people and the human rights violations they face. Stereotypes and norms grounded on the binary female-male classification have led to unnecessary medical and surgical interventions and hormonal treatments on intersex people, as well as a climate of incomprehension in society.

On the occasion of the international intersex awareness day, last 26 October, I joined UN and regional experts in calling on governments to end this shameful situation, which is often perpetuated by keeping parents of children with intersex traits unaware of the alternatives or the potential negative consequences of the medical acts. They also often face pressure to agree to surgeries or treatments that lack medical indication, necessity or urgency and are mainly driven by social prejudice, stigma associated with intersex bodies and administrative requirements to assign sex at the moment of birth registration.

Profound negative impacts of these often irreversible procedures have been reported, including permanent infertility, incontinence, loss of sexual sensation, causing life-long pain and severe psychological suffering, including depression and shame linked to attempts to hide and erase intersex traits. In many cases intersex people do not even have access to their own medical records or original birth certificates. Moreover, the early “normalising” treatments do not respect intersex persons’ rights to self-determination and physical integrity.

Unsafe environment

A second problem to which we should devote more attention is widespread negative public attitudes towards LGBTI people, and in particular bullying in schools. Two years ago I already underscored that LGBTI children have the right to safety and equality, but regrettably I have observed little progress.

Although precise statistics are lacking, it is estimated that the actual or assumed sexual orientation or gender identity of a child is the second most common reason for bullying. According to the 2013 FRA survey the vast majority of participants recalled harassment against LGBT students during their time in school. That survey confirmed the results of previous studies carried out by ILGA and IGLYO, as well as by other organisations in the USA. In addition, an Irish study concluded that over half of LGBT respondents aged 25 or younger had given serious consideration to ending their lives. As a consequence, LGBTI children’s educational achievement is negatively affected and their rights to education without discrimination and to enjoy the highest attainable standard of health seriously disregarded.

In some countries, this problem has been intensified by laws banning information about LGBTI people. The targets of these measures have not only been LGBTI activists, but also those expressing solidarity with their struggle for equality and others who have sought to disseminate factual information about sexual orientation and gender identity. These laws are often so vaguely worded that they may outlaw any public discussion or public activity surrounding LGBTI issues.

In addition, public debate has been poisoned by disinformation about the so called rainbow families and their ability to raise children. Although laws are increasingly granting the possibility for same-sex couples to marry or live in otherwise legally recognised relationships, there has been an emotional debate that has diverted attention from facts, propagating specious argument about same-sex

couples rearing children. Although this discourse is disproved by an increasing amount of scientific research, playing with people's emotions keeps reinforcing unsubstantiated messages that feed negative public attitudes towards LGBTI in many European countries.

Insufficient safeguards in immigration

The third concern relates to the difficulties that LGBTI asylum-seekers face in Europe. As both UNHCR and the European Parliament have pointed out recently, the specific forms of gender-based persecution are all too often not recognised in asylum procedures. UNHCR also noted that LGBTI asylum-seekers and refugees are subject to social exclusion and violence in countries of asylum by both the host community and the broader asylum-seeker and refugee community. Acceptance of LGBTI asylum-seekers in reception and immigration detention centres is also very low, including in countries considered as safe.

Moreover, persecution on the basis of sexual orientation is not sufficiently taken into account in decisions on asylum claims by LGBTI asylum-seekers and refugees. LGBTI organisations and defenders have also pointed out that national authorities lack LGBTI-sensitive training, which can have negative consequences on their protection, in particular as regards the respect for the right to privacy.

Closing the gaps

These issues may sound familiar to experts and defenders of the human rights of LGBTI people. But they are less known by policy makers, law enforcement officials and the public, both at national and local level, in many of our member states.

Our task is to raise awareness about this issue and provide states with the tools to tear down all the barriers which still prevent millions of people from enjoying their human rights.

If we fail, millions of LGBTI people will continue to suffer from discrimination, a condition that has been shown to have negative consequences on LGBTI people's education prospects and health. Children will pay a particularly high price, also because they are often victims of rejections and incomprehension in their own families. In addition, not resolving these problems deals a fundamental blow to the foundations of human rights law and Europe's system of protection, grounded on member states' commitment to uphold the universality of human rights.

We therefore have both a moral and a legal urgency to ensure that LGBTI people enjoy their rights on equal footing with others. Achieving this goal will result in more inclusive and diverse societies where everybody is treated equally. For this, we need a systematic plan articulated on a number of key measures.

The first measure is a more serious implementation of anti-discrimination laws. Although most member states have legislation in place which bans discrimination on the basis of sexual orientation or gender identity, it is rarely comprehensive. Too few member states criminalise incitement to hatred on grounds of sexual orientation or gender identity and treat homophobic or transphobic motivation as an aggravating circumstance in common crimes. The case law at national level on instances of homophobic or transphobic hate speech is thus far relatively sparse, while political and public discourse on LGBT issues, especially on the internet, is often vilifying and stigmatising. For this reason, States have to improve their legislation and better implement it, in a way which abides by the jurisprudence of the European Court of Human Rights as well as by the standards adopted at the international level, like the recommendations of the Council of Europe Committee of Ministers, of the Parliamentary Assembly, and the decisions of the European Social Charter.

Legislation alone, though, will not be enough. Awareness about LGBTI rights should be strengthened across all public institutions and private companies alike. Rather than keeping LGBTI issues in the closet, state institutions must fulfill their human rights obligations to all and help counter prejudice against LGBTI people. If public opinion is hostile to LGBTI rights, the state has the obligation to counter this hostility and raise awareness among the public.

States should pay particular attention to the need of LGBTI children. Legislation and policies affecting LGBTI children have to take into account the best interests of the child and their right to physical and mental integrity. Governments have to take systematic action to improve the protection of LGBTI children from violence and bullying in all fields of a child's life. To this end, they should strengthen child protection services across states' institutions, adopt legal requirements and specific policies for addressing homophobic and transphobic acts, and develop teaching materials that do not perpetuate stereotypes about gender and sexuality.

Awareness raising and training on the specific needs of LGBTI people seeking asylum is also needed in the immigration system, in particular when it comes to the handling of claims and health care needs. Standards and guidelines exist, both at the Council of Europe and UN levels, and states have to implement them more seriously. A key measure is the training of asylum and immigration officials, as well as of border police on issues related to LGBTI asylum seekers.

Lastly, States have to consider the situation of intersex people and carry out a thorough revision of legislation, policies and public discourse. This includes prohibiting medically unnecessary surgery and procedures on intersex children, strengthening the safeguards to protect them from discrimination in all spheres of life and combating heads-on the stereotypes, stigma and pathologisation of intersex people. Social services and health professionals should also provide intersex children and their parents with adequate information, support and counselling, acting in a transparent way, in particular when it comes to access to medical records and receiving information. When operations are not necessary on medical grounds, they should only take place at an age when intersex persons can give their consent and participate actively in decisions about treatment and sex assignment. States have also the duty to prosecute those responsible of violating the human rights of intersex people and provide victims of such violence with adequate legal redress, psychological support and compensation.

States have the primary responsibility to adopt and implement these measures, but they should not be alone. They should cooperate and involve international organisations and national human rights structures which can provide states with the necessary expertise to handle LGBTI issues in a human rights compliant and, therefore, non-discriminatory way. The civil society, experts, the media, private companies and families should also be part of the transversal effort of making our societies more inclusive.

Ensuring equality

The difficulties LGBTI people face in enjoying their human rights on equal footing with others are complex. They are still victims of legislative obstacles, lack of awareness by state officials and well-rooted prejudices among the majority population.

Europe has made much progress in addressing some of these problems, but this no reason to rest on our laurels. We still have to eradicate old discriminatory practices and address emerging ones. For this, states have to develop and embrace a holistic approach based on human rights able to ensure that LGBTI people can finally live their lives free from fear and discrimination.

The enjoyment of human rights is universal and it cannot be conditioned on a person's sexual orientation or gender identity. That's why we must aim for a society in which LGBTI people will no longer be treated as second-class citizens.