

SEXUAL ORIENTATION AND GENDER IDENTITY (SOGI)

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The Council of Europe is the continent's leading human rights organisation. It includes 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

Questions
and Answers

The Council of Europe standards and mechanisms seek to promote and ensure respect for the human rights of every individual. These include equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender (LGBT) persons.

Assuming its leading role in human rights protection, the Council of Europe Committee of Ministers adopted on 31 March 2010 the Recommendation CM/Rec (2010)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. This recommendation is the first instrument in the world dealing specifically with one of the most persistent and difficult forms of discrimination. It sets out the principles deriving from existing European and international instruments, with particular emphasis on the European Convention of Human Rights and the European Court of Human Rights case law.

The recommendation identifies specific measures to be adopted and effectively endorsed by member states to combat discrimination, ensure respect for LGBT persons, promote tolerance towards them and ensure that victims have access to legal remedies.

WHAT IS SEXUAL ORIENTATION?

Sexual orientation refers to each person's capacity for profound emotional, affectional and sexual attraction for, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

WHAT IS GENDER IDENTITY?

Gender identity refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, "gender expression") such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. Gender identity should be differentiated from sexual orientation.

WHAT DOES TRANSGENDER MEAN?

Transgender persons include persons who have a gender identity which is different from the gender which was assigned to them at birth, and persons who wish to portray their gender identity in a different way from the gender assigned to them at birth. It includes those persons who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes among many others, persons who do not identify with the labels "male" or "female", transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned "female" at birth but has a gender identity which is "male" or within a masculine gender identity spectrum. A transgender woman is a person who was assigned "male" at birth but has a gender identity which is female or within a feminine gender identity spectrum.

WHAT ARE LGBT HUMAN RIGHTS?

LGBT rights are not special rights. LGBT rights are the same, universal human rights enjoyed by all persons. These rights include: freedom to demonstrate, freedom to establish associations, freedom to live without violence or a threat to life, the right to education and employment, the right to respect for family and private life – all part and parcel of fundamental universal human rights.

DO LGBT HUMAN RIGHTS INCLUDE FREEDOM OF ASSEMBLY AND PEACEFUL DEMONSTRATIONS?

The right to freedom of assembly, the right to organise peaceful demonstrations, are fundamental human rights which should be enjoyed by all without discrimination on any ground. Only very serious reasons may be used to restrict this freedom. They are prescribed by law and enforced when they are in the interest of national security or public safety, to prevent disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Case law of the European Court of Human Rights has clearly emphasised that peaceful demonstrations in favour of human rights of LGBT persons cannot be banned on the grounds of hostile attitudes to the demonstrators or their cause.

WHY IS IT IMPORTANT TO COMBAT STEREOTYPES, PREJUDICES AND HATE SPEECH AGAINST LGBT PEOPLE?

Outdated information and harmful stereotypes increase stigmatisation and discrimination of LGBT people. There is a need to disseminate unbiased and factual information about sexual orientation and gender identity in the media, schools and society at large. Human rights education and awareness-raising campaigns promoting respect for LGBT people's human rights are ways in which to achieve this.

It is also necessary that states combat all forms of expression which may incite, spread, or promote hate or other forms of discrimination against LGBT people, also in the media and internet. Such hate speech should be prohibited and publically condemned.

It is particularly important to recognise that the lack of objective information may contribute to the harassment and bullying of young persons who are or are perceived to be LGBT. The failure to address the issues of sexual orientation or gender identity may also have harmful consequences for the self-esteem of young lesbian, gay, bisexual and transgender people. That is why age appropriate, objective information and support should be accessible in educational institutions.

CAN CULTURE, TRADITION OR RELIGION BE USED TO DENY LGBT PEOPLE THEIR HUMAN RIGHTS?

Universal human rights should be ensured without discrimination. Culture, tradition, religious values, or the rules of a "dominant culture" cannot be used to justify hate speech, violence or any other type of discrimination on grounds of sexual orientation or gender identity.

The history of human rights has often been a history of challenging outdated, unequal traditions and practices. Human rights have often been acquired after realising that prevalent cultural norms, practices or traditions were not fair to all people. Ending racial segregation and fighting for women's rights are two examples.

WHY CAN'T I EXPRESS MY CRITICAL OPINION ABOUT HOMOSEXUALITY?

The right to freedom of expression is a basic pillar of democratic societies and there needs to be very substantial reasons for limiting it. This freedom may be restricted if publically expressed opinions may cause harm to others, if opinions were considered to be hate speech or incite hatred towards LGBT persons.