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The voices against homophobia and transphobia must be heard

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Discrimination and violence experienced by lesbian, gay, bisexual and trans persons are deeply rooted in stigmatising stereotypes and prejudice. Sadly, many opinion makers, politicians and religious leaders have portrayed LGBT persons as a threat to the traditional notions of family and gender and ultimately the nation and religion. Inflammatory and aggressive discourse against LGBT persons, occasionally amounting to incitement to hatred, takes place in member states. It is of particular concern that such discourse rarely receives official condemnation.

Homophobic and transphobic attitudes can be found in all member states, although there are significant variations. Biased, outdated and incorrect information on what constitutes sexual orientation and gender identity is found in the media and many school books which contributes to the shaping of negative attitudes. The root causes of transphobia and homophobia must be seriously addressed so as to improve the human rights situation of LGBT persons.

Few politicians have fully stood up to this challenge. Instead, some have themselves contributed to popular prejudice through descriptions of LGBT people as dangerous propagandists who should not be allowed to be teachers or even show their “lifestyle choice” to others. In discussions about Gay Pride parades, some mayors have made intolerant and homophobic public statements or refused authorisation for their organisation. This kind of populism is most unfortunate and tends to “legitimise” discrimination.

There have also been failed and successful attempts to curtail the freedom of expression of LGBT persons through legislative measures in several member states. Such initiatives have aimed at imposing sanctions on those accused of “promoting homosexuality”. The legal texts adopted or proposed tend to be quite vague in their wording and could be implemented in a highly arbitrary manner. The promotion of paedophilia is also often associated with such law proposals, which is extremely insulting to LGBT persons.

These developments reinforce prejudice and stigmatisation and deny LGBT persons and others the opportunity to impart factual information about sexual orientation and gender identity. LGBT persons are made invisible and vulnerable to abuse by bullies and even representatives of public authorities. The absurd message of sanctions to LGBT parents and children is to shut up about their personal identities within their own families as well as in public life.

The human rights standards are absolutely clear. The European Convention on Human Rights – which is part of the national law in all Council of Europe member states – prohibits discrimination against persons on the grounds of their sexual orientation and gender identity. Human rights are universal. We are not talking about any new or special rights for LGBT persons but the fact that everybody is entitled to fully enjoy all human rights. The freedoms of expression and assembly, along with other rights, belong to LGBT persons as well as to other people and they must be scrupulously respected.

I have often highlighted the particularly vulnerable situation of trans persons among the “LGBT”. Trans persons face severe discrimination in many areas of life, not least in employment, education, health care and leisure activities. Bullying at school is common-place. Surveys have demonstrated that about half of trans persons hide their gender identity at work for fear of losing their job. At worst, trans persons are victims of violent hate crime. Forty-one transphobic murders have been reported in Europe since 2008.

Attitudes towards trans persons demonstrate ignorance and prejudice. The fact that “transsexualism” and “gender identity disorder” are often found in medical classifications for mental illness stigmatises trans persons and can restrict their decisions in the choice of care. Some people seem to have problems with the mere existence of human beings whose deeply felt identity is not the same as their appearance or the sex identified at birth. The aggression directed against trans people cannot, however, be dismissed only as a psychological problem of those who do not know better. These attitudes victimise a number of innocent and vulnerable persons and must therefore be countered actively.

Often problems start already at the stage when the state determines a person’s gender identity when issuing birth certificates, passports and other documents. Most transgender persons who want to state that they no longer identify with the gender as registered at birth have difficulties in processing those changes in official records. This in turn has caused a number of practical problems when showing identification papers: in the bank or the post office, when using a credit card, crossing a border or in other similar situations.

The hurdles encountered in legal recognition are related to the requirements imposed by the authorities. In addition to a medical diagnosis, the conditions for the legal recognition of the preferred gender often include provisions which demand impossible choices, such as the “forced sterilisation” and “forced divorce” requirements. This means that only unmarried or divorced transgender persons who have undergone surgery and become irreversibly infertile have the right to change their entry in the birth or civil register. In reality, this means that the state prescribes medical treatment for legal purposes, a requirement which clearly runs against human dignity and the rights to self-determination and physical integrity.

To require surgery as a condition for enjoying the right to one’s gender identity ignores the fact that only about 10% of transgender persons in Europe undergo gender reassignment operations. While official policy can make surgery a condition for gender reassignment to be recognised, such operations can present significant health risks to the persons concerned and they are not always covered by health insurance either.

The divorce requirement – regardless of whether or not the partners actually want to divorce – infringes on the rights to marriage, privacy and family life. It has a negative impact on the position of children, both in terms of their rights, as well as in terms of their relationships with their parents. In fact, in several countries, the parent who has undergone gender reassignment will lose custody rights. Such legislation needs to be reformed in the spirit of the best interests of the child.

Fortunately, several positive legal developments can be observed in member states. The highest courts in Germany and Austria have ruled that the infertility and divorce requirements are not in line with human rights standards. Such interferences on the physical integrity and privacy of individuals are not proportionate to the aims pursued. During my recent visit to Switzerland I was informed of similar developments in the Swiss legal system. Sweden is also in the process of ending the infertility requirement. Under Portuguese and Spanish laws on gender reassignment neither requirement applies. I urge all member states to review their legal provisions in this respect.

It is obvious that member states need guidance for fully implementing the human rights of LGBT persons. Last summer, my Office published a report and recommendations on the topic with this aim in mind. It is a tool for dialogue between the authorities, national human rights structures and civil society for further action in both legislative and policy fields.

Recent recommendations by the Committee of Ministers and the Parliamentary Assembly have already provided the political impetus for addressing sexual orientation and gender identity

discrimination in all member states. The Council of Europe has now initiated a technical assistance programme in this field which is much needed. Some member states also have good practices to share.

National and international monitoring is necessary to measure progress. National equality bodies and Ombudspersons should have a clear mandate to promote the human rights of LGBT persons. Change is only possible when there is a political will to recognise that problems exist and the determination to fight persistent prejudice and discrimination.

Factual information and awareness raising about sexual orientation and gender identity are essential. They are key for addressing prejudice and bringing about welcome changes in attitudes. That is why the freedoms of expression and assembly are so important for LGBT persons and all of us. The voices against homophobia and transphobia must be heard.