

Lesbian, Gay, Bisexual and Transgender (LGBT) rights in the European Union

Article 21 falling under the 'Equality' Chapter of the Charter of Fundamental Rights of the European Union prohibits discrimination on the grounds of sexual orientation.

Policy context

Developments over the past years testify to the increasing awareness of the rights of lesbian, gay, bisexual and transgender (LGBT) persons in the European Union. The Lisbon Treaty, with the legally binding Charter of Fundamental Rights of the European Union, strengthens the framework of non-discrimination legislation. The EU is now required to combat discrimination, including that based on sexual orientation, in all its policies and activities.

At international level, consensus regarding the need to combat discrimination on grounds of sexual orientation and gender identity has been strongly reaffirmed, with the adoption of two recommendations and a resolution by the Council of Europe Committee of Ministers and the Parliamentary Assembly.

Against this background, in 2009, the European Parliament asked the FRA to examine the situation of LGBT persons, following the enactment of restrictive legislation on their rights in certain EU Member States.

Key findings

The FRA report on Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity reveals three underlying problems faced by LGBT persons in the European Union: that they are forced to live in silence and invisibility, suffer violent attacks, and are not treated equally, for example at work, by landlords or when moving around the European Union.

Mixed developments

As regards the protection of LGBT rights, legislative developments vary between EU Member States. The FRA research identified six main (interconnected) issues where both positive and negative trends can be identified:

- **Freedom of assembly and expression**

Challenges for LGBT Pride events or aggressive counter-protests, as well as improvements in the

protection of demonstrators; banning of information about same-sex relationships to minors.

- **Hate speech and hate crime**

Limited protection against acts of intolerance and violence towards LGBT people, and only a small number of Member States expand the use of criminal law to counter such incidents.

- **Unequal treatment and discrimination**

The protection for transgender people remains unclear despite EU case law; however, a substantial number of equality bodies cover sexual orientation in and beyond employment.

- **Free movement and family reunification**

The principle of equal treatment in this context is applied unequally: some EU Member States restrict or refuse the recognition of same-sex partnerships and marriages concluded in another Member State, while others expand their legislation in this field.

- **International protection of LGBT asylum seekers**

Many Member States continue to consider that asylum seekers seeking protection from persecution because of their sexual orientation or gender identity are not entitled to it if they can live in their own countries without 'revealing themselves'.

- **Gender reassignment**

Difficulties in accessing (free of charge) treatment, in obtaining legal recognition and equal treatment in most areas of social life, albeit some EU Member States have eased the situation.

Uneven landscape

These mixed developments show that progress is taking place at a different pace and unevenly throughout the European Union: major differences remain across EU Member States. Obstacles can largely be attributed to persisting intolerance and negative attitudes towards LGBT people.

Legislation and public acceptance go hand in hand

Unsettled trends across the EU may reflect or reinforce negative attitudes towards LGBT people and stereotyping. Equal rights in legislation are essential and are being affirmed in certain areas. However, public understanding and acceptance can hardly

be addressed solely through legal means, but require dialogue and engagement between governments and civil society to foster greater awareness of LGBT rights.

In this regard, the Council of Europe Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity provides useful guidance to EU Member States for improving the respect, protection and promotion of LGBT rights. The implementation of this recommendation will contribute to developing a more common approach to the fulfilment of these rights.

Proactive initiatives

Some national governments are adopting comprehensive plans for protecting LGBT rights. For instance:

The Netherlands adopted a comprehensive LGBT Policy Document 'Simply Gay' for the period 2008-2011. It constitutes a national action plan encompassing 60 different measures, including 24 projects sponsored by various government departments to improve the social acceptance and empowerment of LGBT citizens.

In Sweden, a government agency assists in 'combat[ing] the institutionalisation of heterosexuality in society' with the responsibility to promote democracy, tolerance and human rights.

The United Kingdom now includes a programme of work to 'tackle outdated prejudices and ensure equal chances for everyone, whatever their sexual orientation or gender identity' in its 'Programme for government'.

A number of EU Member States – Estonia, France, Germany, the Netherlands, Spain and the UK – have taken action to foster education and dialogue, especially in schools and educational establishments, with the aim of challenging negative attitudes towards homosexuality and LGBT people.

Evidence-based advice

Based on the findings of the FRA comparative analyses, sustained positive evolutions in the protection from sexual orientation and gender identity discrimination could be developed through proactive and coordinated action, such as:

- reinforcing and fine-tuning positive developments across all main policy areas;
- mobilising resources and assistance to EU Member States to enhance progress towards meeting the Council of Europe Recommendation for the protection of LGBT rights
- fostering initiatives with civil society to achieve greater understanding, acceptance and respect of LGBT experiences.

The FRA Opinions highlight more specifically the following:

- supporting the efforts for a 'horizontal directive' providing equal protection from discrimination on all grounds, including sexual orientation;
- avoiding the use of 'public order' exceptions to impose undue restrictions on LGBT-related events and other manifestations of LGBT identities or relationships;
- securing the right to receive unbiased information about LGBT persons and their relationships, and to live in an open and inclusive environment, especially important for LGBT children;
- ensuring the same level of protection against homo- and transphobic incidents as the one granted to hate speech and crime motivated by racism or xenophobia;
- ensuring the proper application of existing legal protection for transgender people provided for in EU law and explicit inclusion of 'gender identity';
- including same-sex partners, whether married, registered, or in a *de facto* union, within the definitions of 'family member', particularly in the context of free movement and family reunification;
- recognising sexual orientation and gender identity as a ground of persecution and improving the understanding and proper processing of asylum claims, especially avoiding the use of degrading and intrusive assessments of credibility of claims based on sexual orientation and gender identity;
- understanding gender identity as an element of private life and self-determination rather than as a psychiatric disorder, particularly in relation to rectification of the recorded sex or alteration of name on official documents;
- promoting more balanced public opinion on LGBT issues by facilitating dialogue between LGBT groups, the media, political representatives and religious institutions, for instance through a multi-agency approach and partnerships.

Further information:

The FRA comparative legal analysis *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity – 2010 Update* is online at:

fra.europa.eu/fraWebsite/research/publications/publications_en.htm

An overview of FRA activities in the field of LGBT rights is available on the FRA website at:

fra.europa.eu/fraWebsite/lgbt-rights/lgbt-rights_en.htm