

## **List of issues and practical measures for possible inclusion in the draft recommendation**

### **Hate crimes and hate-motivated incidents**

- Sexual orientation and gender identity among aggravating factors under criminal law with regard to the commission of a crime (violence, harassment, bullying), with appropriate criminal penalties.
  
- Allegations of hate crimes and other biased-motivated incidents are effectively investigated and those responsible brought to justice and punished in order to avoid impunity.
  
- Training for law enforcement personnel and other competent public officials to raise awareness of the specific situation of and problems faced by LGBT persons. Consultation of LGBT organisations about the development of such training programmes.
  
- Adequate support for victims of homophobic and transphobic crimes and other incidents, as any other victims of hate crimes, in order to encourage the reporting of these crimes by the victims themselves or by human rights defenders.
  
- Structures within public administrations providing advice on governmental policies regarding the protection of LGBT persons and acting as an interlocutor for other relevant stakeholders (different governmental sectors, NGOs, Nation Human Rights Institutions, Ombudsman institutions).
  
- Awareness of hate crimes against LGBT persons by Hate Crime Focal Points, as established within the framework of the OSCE/ODIHR.
  
- Efficient data collection on hate crimes including to raise awareness about the specificities of homophobic and transphobic crimes and plan adequate measures to effectively combat such crimes.

### **“Hate speech”**

- Sexual orientation and gender identity to be included among aggravating factors under domestic law with appropriate penalties.
- Awareness-raising on the disruptive effects in societies of “hate speech”, including homophobic and transphobic discourse, particularly when taking the form of threatening verbal abuse and inciting to violence, whilst at the same time safeguarding the fundamental importance of freedom of expression.
- Role and responsibilities of politicians, public officials, opinion leaders and other leaders of different communities (social, cultural, religious or otherwise) regarding the use of responsible and non-violent discourse and in promoting tolerance and respect for LGBT persons.
- Role and responsibilities of the media for the strengthening of respect, tolerance and mutual understanding regardless of sexual orientation and gender identity, and for avoiding stereotypical representations of LGBT persons.
- Codes of conduct of media professionals to prevent and counter the use of homophobic and transphobic language.
- Role of existing international cooperation as well as mutual assistance between law enforcement bodies with regard to the dissemination of homophobic and transphobic language on the internet.

### **Respect for private life**

- Discriminatory legal provisions criminalising certain homosexual acts, in particular any differences with respect to age of consent for same-sex and heterosexual acts.
- Protection of personal data against misuse and public disclosure, including where references are made to a person’s sexual orientation or gender identity. Handling of criminal records which include references to a person’s sexual orientation or gender identity, detained by the authorities. Other special records on gays, lesbians, bisexuals and transgender persons.
- Forced marriages including cases of LGBT persons forced into heterosexual marriage.
- Refusal to grant child custody solely on grounds of sexual orientation or gender identity

- Exclusion from the possibility of adopting solely on grounds of sexual orientation or gender identity in situations where national legislation allows single and unmarried individuals to adopt children.
  
- Discrimination on grounds of sexual orientation and gender identity regarding rights, benefits and obligations enjoyed by married and de facto couples.
  
- Non-discriminatory access on grounds of sexual orientation and gender identity to legal parenthood in situations where children are already living with same-sex couples, taking into account the primary importance of the best interest of the child.
  
- Access to full legal recognition of gender reassignment, including the alteration of all relevant official documents within a reasonable time.
  
- Misuse of gender reassignment medical treatment as a precondition to the enjoyment of individual rights affecting private life.
  
- Divorce as a mandatory requirement for accessing gender reassignment treatments. Negative impact on the right to respect for private and family life of such mandatory divorce requirements, notably in respect of the best interest of children in such families.

### **Freedom of movement**

- Discriminatory rules having a negative impact on the effective enjoyment of freedom of movement of individuals, couples and families on grounds of sexual orientation and gender identity.

### **Rights of children and young people**

- Prevention and remedying of bullying and harassment based on sexual orientation or gender identity. Tolerance and respect for LGBT children and young adults (Council of Europe Compass Manual on Human Rights education of young people) in order to guarantee to all children and young persons the right to education in a safe environment.
  
- Negative stereotypical portrayals of LGBT persons in school curricula and educational materials.
  
- Access of young persons to appropriate information on sexual orientation and gender identity, including on sexual health.

- Training for teachers regarding difficulties faced by young LGBT persons at school.

### **Employment-related issues**

- Legal protection for individuals being denied access to employment or dismissed on grounds of sexual orientation or gender identity.
- Diversity policies and other measures taken by employers of both public and private sectors to prevent exclusion and marginalisation on grounds of sexual orientation and gender identity and to ensure equal opportunities of LGBT persons at the workplace.
- Prevention and remedying of discrimination on any ground including sexual orientation and gender identity regarding recruitment, promotion, dismissal, conditions of employment and remuneration in the public and private sector.
- Awareness-raising to encourage tolerance and respect for LGBT persons in the working environment, including the use of a responsible discourse, without stereotypes, notably in the police and the armed forces.
- Awareness of complaint mechanisms, such as equality bodies, National Human Rights Institutions and ombudspersons, of specific problems faced by victims of discrimination and harassment in the working environment on grounds of sexual orientation and gender identity.
- Particular problems of exclusion of transgender persons on the labour market, notably obstacles linked to the length of legal recognition procedures.

### **Housing**

- Discrimination in accessing and keeping one's housing, including on grounds of sexual orientation and gender identity, and notably with regard to the enjoyment of tenancy rights for same-sex couples and different-sex couples.
- Risks of homelessness faced by young persons and children by reason of their sexual orientation or gender identity. Social measures, such as the establishment of structures providing advice and shelters.

### **Freedom of association**

- Obstacles to the effective enjoyment of freedom of association by LGBT persons.
- Misuse of registration rules and other administrative procedures, including excessive formalities, resulting in the denial of the effective enjoyment of freedom of association of LGBT persons.
- Obstacles faced by human rights defenders, particularly in the form of pressure, threats or violence hindering work in defence of LGBT persons' rights. Possibility for Human rights defenders to bring complaints on behalf of LGBT victims or assist them in bringing complaints before courts or other competent bodies.
- Non-discriminatory access to state funding where available of NGOs which defend the rights of gay, lesbian, bisexual and transgender people.

### **Freedom of expression and assembly**

- Obstacles to an effective enjoyment of freedom of expression on grounds of sexual orientation or gender identity.
- Bans of peaceful demonstrations, in favour of the rights of LGBT persons or others, simply because of the existence of attitudes hostile to the demonstrators or to the causes they advocate.
- Necessary measures to protect peaceful demonstrations from hostile and violent actions by others.
- Ill-founded refusals by local authorities, for reasons related solely to issues of sexual orientation or gender identity, of permissions to hold peaceful demonstrations in venues where demonstrations are usually allowed.
- Awareness among representatives of local authorities of their duty to protect the enjoyment of the right to freedom of assembly and expression by all persons, including LGBT persons.
- Specific problems faced by transgender persons in expressing their gender identity, notably through their clothing, especially in contexts where a gender-based dress code is imposed (e.g. schools, workplace).

## **Various forms of detention (custody, prison)**

- Adequate and effective protection to LGBT persons who are arrested, remanded in custody or detained, and notably preventive measures against any ill-treatment.
- Effective investigations into any allegation of ill-treatment of LGBT persons, in particular when under the responsibility of state agents.
- Need for effective and accessible structures for LGBT victims, given their particular vulnerability, to report homophobic and transphobic incidents.
- Risk of additional restrictions, in particular with the placement in solitary confinement, for LGBT persons in detention as a result of measures to protect them from attacks from other inmates.
- Placement of transgender persons in a prison ward not corresponding to their preferred gender identity, with risks of abuse from other inmates.
- Denial to transgender persons of the possibility to start or continue their gender reassignment treatment whilst in detention.
- Adequate training on human rights issues related to sexual orientation and gender identity issues for law enforcement and prison officials in order for them to properly understand and respond to the specific problems faced by LGBT persons.

## **Health-related matters**

- Equal enjoyment by all, including LGBT persons, of the highest possible standards of health.
- Effective protection against discrimination against LGBT persons in having access to healthcare services, including in relation to sexual and reproductive health. Harassment of LGBT persons in contacts with healthcare providers.
- Negative effects on LGBT persons' medical support due to the lack of adequate references in medical codes of conduct which could contribute to preventing discrimination and to ensuring that all persons are properly taken care of, with due attention paid only to their medical needs.

- Detrimental effects for transgender persons of the use of legal recognition of gender reassignment as a requirement for access to healthcare (and conversely).
- Adequate training and awareness-raising programmes on sexual orientation and gender identity for medical staff. Involvement of LGBT persons and organisations in the development of such programmes.
- Significantly higher suicide rates among LGBT persons, especially young individuals, compared to heterosexuals and non-transgender young persons and children, as well as higher risks of psychological vulnerability.
- Update of medical curricula to reflect medical needs of LGBT persons, including with respect to the special situation of HIV positive LGBT persons.
- Unavailability of health insurance covering the costs of gender reassignment treatments.
- Wrongful application of instruments for the classification of diseases, by representatives of the health and medical profession, resulting, for example, in the branding of homosexual or bisexual orientation as a mental disorder in violation of the relevant instruments of the World Health Organisation.

## **Sport**

- Discrimination on grounds of sexual orientation or gender identity in the practice of any sport, sport being a key factor in social integration.
- Equal opportunities for the participation of LGBT persons in professional or recreational sports, regardless of, and with full respect for their sexual orientation and gender identity.
- Codes of conduct developed by sports authorities, as an important means to prevent and remedy discrimination on grounds of sexual orientation and gender identity in sports.
- Common use of hate or bias motivated slurs or insults with reference to sexual orientation or gender identity, during sport events, especially in the context of mediatised sport events.
- Obstacles to transgender persons being able to practice any professional or recreational sport and see their gender preference respected, notably concerning access to changing facilities.

## **Asylum seekers, refugees**

- Acceptance of well-founded fear of persecution on the basis of sexual orientation or gender identity as a valid ground for the granting of asylum status and recognition of refugee status.
- Risks of violence, and other forms of hostility against refugees and asylum seekers in compounds for reasons related to their sexual orientation or gender identity.
- Risks of LGBT persons to be returned to countries where they may face a well-founded fear of torture, persecution, or any other form of ill-treatment based on their sexual orientation or gender identity

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