

Provisional edition

Discrimination on the basis of sexual orientation and gender identity

Resolution 1728 (2010)¹

1. ... Gender identity refers to each person's deeply felt internal and individual experience of gender. A transgender person is someone whose gender identity does not correspond to the gender he or she was assigned at birth.

2. Under international law, all human beings are born free and equal in dignity and rights. Sexual orientation and gender identity are recognised as a prohibited ground of discrimination. ...

3. ... The lack of knowledge and understanding about sexual orientation and gender identity is a challenge to be addressed in most Council of Europe member states, since it results in an extensive range of human rights violations, affecting the lives of millions of people. Major concerns include physical and verbal violence (hate crimes and hate speech), undue restrictions on freedom of expression, freedom of assembly and association, violations of the right to respect for private and family life, violations of rights to education, work and health, as well as regular stigmatisation. As a consequence, many LGBT persons across Europe live in fear and have to conceal their sexual orientation or gender identity.

4. Transgender persons face a cycle of discrimination and deprivation of their rights in many Council of Europe member states due to discriminatory attitudes and to obstacles in obtaining gender reassignment treatment and legal recognition of the new gender. One consequence is the relatively high suicide rate among transgender persons.

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7. Hate speech by certain political, religious and other civil society leaders, and hate speech in the media and internet are also of particular concern. The Assembly stresses that it is the paramount duty of all public authorities not only to protect the rights enshrined in human rights instruments in a practical and effective manner, but also to refrain from speech likely to legitimise and fuel discrimination or hatred based on intolerance. The boundary between hate speech inciting to crime and freedom of expression is to be determined in accordance with the case law of the European Court of Human Rights.

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13. ... LGBT people should not have to fear being stigmatised and victimised, either in the public and private spheres.

14. The Assembly considers that the Council of Europe has the duty to promote a clear message of respect and non-discrimination so that everybody can live in dignity in all its member states.

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16. Consequently, the Assembly calls on member states to address these issues and in particular to:

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16.4. condemn hate speech and discriminatory statements and effectively protect LGBT persons from such statements while respecting the right to freedom of expression, in accordance with the European Convention on Human Rights and the case law of the European Court of Human Rights;

16.5. adopt and implement anti-discrimination legislation which includes sexual orientation and gender identity among the prohibited grounds for discrimination, as well as sanctions for infringements;

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16.7. ensure that discrimination on the basis of sexual orientation and gender identity can be effectively reported to judicial and non-judicial bodies and ensure that national human rights structures and equality bodies effectively address these issues;

16.8. sign and ratify Protocol No. 12 to the European Convention on Human Rights providing for a general prohibition of discrimination;

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16.11. address the specific discrimination and human rights violations faced by transgender persons and, in particular, ensure in legislation and in practice their right to:

16.11.1. safety;

16.11.2. documents that reflect an individual's preferred gender identity, without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy;

16.11.3. access to gender reassignment treatment and equal treatment in health care areas;

16.11.4. equal access to work, goods, services, housing and other facilities, without prejudice;

16.11.5. relationship recognition, in accordance with the case law of the European Court of Human Rights;

16.12. introduce or develop anti-discrimination and awareness-raising programmes fostering tolerance, respect and understanding of LGBT persons, in particular for public officials, ... as well as schools, the media, the medical profession and sporting circles;