



ILGA-Europe's key demands to combat manifestations of homophobic and transphobic intolerance and prejudice in Europe, including incitement to discrimination, hostility and violence

ILGA-Europe's vision is of a world freed from any form of discrimination on the grounds of sexual orientation, gender identity and gender expression; a world where the human rights of all are respected and everyone can live in equality and freedom.

Position on combating homophobic and transphobic speech and prohibiting incitement to discrimination, hostility or violence

ILGA-Europe considers it of the responsibility of public authorities to adopt comprehensive strategies to combat prejudice, to promote dialogue, education and mutual respect to achieve full inclusion of lesbian, gay, bisexual, trans and intersex (LGBTI) people in a society free from intolerance.

ILGA-Europe believes that one of the main conditions for strategies against prejudice to be successful is that public authorities guarantee LGBTI people's freedom of expression. This includes the capacity of LGBTI organisations' to engage into open public debates on behalf of their members, without having to conceal fundamental aspects of their identities, ideas and positions.

To combat manifestations of prejudice and incitement, ILGA-Europe calls on public authorities to adopt sound anti-discrimination and awareness raising policies, and to work consistently in the area of education. Public authorities should also adequately train their personnel. They should support the development of initiatives and mechanisms to tackle manifestations of intolerance in all relevant sectors such as the media, sport organisations, religious communities.

ILGA-Europe calls on the competent legislator to prohibit incitement to discrimination, hostility and violence on all grounds, including sexual orientation, gender identity and gender expression. This must be done in the respect of international human rights standards in order to also protect freedom of expression. In practice, this means that prohibition of such incitement must always be provided by law, and be necessary and proportional to its objective.

ILGA-Europe's position is based on international human rights standards. It respects the principle of indivisibility of human rights and establishes no hierarchy between rights and freedoms, including freedom of thought, conscience and religion. It can by no means be understood as an attempt to limit the expression of different opinions in the frame of legitimate political debates relating to the rights of LGBTI people.

Key demands

A. COMPREHENSIVE POLICIES TO COMBAT MANIFESTATIONS OF INTOLERANCE TARGETING LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX (LGBTI) PEOPLE

All Member States of the Council of Europe, by means of the Committee of Minister's Recommendation CM/Rec(2010)5, have agreed that public authorities and elected officials shall "refrain from homophobic and transphobic statements, in particular to the media, and publicly disavow intolerant speech whenever it occurs." They have committed to raise awareness and train their staff at all institutional level on the responsibility to refrain from any statement that could reasonably be understood as legitimising homophobic or transphobic hatred or discrimination. Awareness raising and training efforts should also address the responsibility of public officials to promote social inclusion and respect for the human rights of lesbian, gay, bisexual, trans and intersex people whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

ILGA-Europe considers that these commitments should be regarded as a minimal basis and that public authorities at all levels should adopt ambitious approaches.

- ILGA-Europe calls for general and specialised equality training to be generalised among the personnel of all public authorities and elected officials. Such training should explicitly address the question of intolerant speech and provide guidelines to prevent it from happening and to publicly and formally disavow it whenever it occurs. This should address all forms manifestations of intolerance and prejudice targeting LGBTI people and other communities, regardless of whether such intolerant speech meets the threshold of incitement.
- ILGA-Europe calls for independent equality institutions to be mandated by the States to promote research on discrimination and intolerance. Such work should have the aims to build institutional knowledge and to monitor manifestations of intolerance and prejudice targeting LGBTI people, as well as to identify policy priorities to tackle such manifestations.
- ILGA-Europe calls for general and targeted public information campaigns to be launched on the prevention of manifestations of intolerance and prejudice targeting LGBTI people. Campaigns should particularly address sensitive areas such as manifestations of intolerance on-line or in sports.
- ILGA-Europe calls for primary, secondary and tertiary education curricula to include modules on the prevention of manifestations of intolerance and prejudice against LGBTI people. Such modules should be complemented with concrete anti-bullying policies.
- ILGA-Europe calls for existing media regulation mechanisms to promote equality and non-discrimination, including on the grounds of sexual orientation, gender identity and gender expression. ILGA-Europe underscores the importance of the principles of editorial independence, plurality and transparency. The media and their relevant professional organisations should be encouraged to develop and adhere to national and international codes of conduct reflecting equality principles, to address issues of concern to all groups in society, including LGBTI people, and to provide equality training to their staff. Media should also be encouraged to raise awareness on the harm caused by manifestations of intolerance, prejudice and discrimination, including intolerant speech and negative stereotyping of LGBTI people.

- ILGA-Europe calls for the role of civil society organisations, and more specifically community-based organisations, to be recognised in all policy actions designed to tackle manifestations of intolerance and prejudice. This implies that the expertise and experience of these organisations are recognised and that, when relevant, partnerships are formalised to collaborate on programmes aiming at tackling manifestations of intolerance and prejudice.

B. PROHIBITION OF INCITEMENT TO DISCRIMINATION, HOSTILITY AND VIOLENCE ON ALL GROUNDS, INCLUDING SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION

Incitement to discrimination, hostility and violence should be prohibited according to international human rights standards defined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- ILGA-Europe calls for incitement to discrimination, hostility and violence on all grounds, including sexual orientation, gender identity and gender expression, to be prohibited by law at the national and European levels. To avoid a narrow reading of the relevant provisions, all lists of prohibited grounds on incitement should be non-exhaustive.
- ILGA-Europe considers there can be no hierarchy between discrimination, hostility or violence grounds. As a result, in all jurisdictions that already adopted legislation prohibiting forms of incitement to discrimination, hostility and violence, ILGA-Europe calls for sexual orientation, gender identity and gender expression to be explicitly included in the lists of prohibited grounds on incitement, on an equal footing with other prohibited grounds.
- National and European Union legislation as well as Council of Europe and OSCE commitments on prohibition of incitement should be based on clear and accurate definitions of the concepts of “incitement”, “discrimination”, “violence” and “hostility”. All definitions should be based on sound and consistent human rights standards. In that respect, ILGA-Europe commends the conceptual work proposed by ARTICLE 19 in the Policy Brief *Prohibiting incitement to discrimination, hostility or violence*.
- ILGA-Europe calls for legislation to clearly define guidelines for Courts to assess all incitement cases on a case-by-case basis and in a coherent way. In that respect, ILGA-Europe commends the conceptual work performed by ARTICLE 19 in the Policy Brief *Prohibiting incitement to discrimination, hostility or violence*, and in particular the six-part test model it proposes. This test is based on a review of six characteristics of any suspected case of incitement: the context of the expression; the position and level of authority of the speaker/proponent of the expression; the intent of the speaker/proponent of the expression to incite to discrimination, hostility or violence; the content of the expression; the extent and magnitude of the expression (including its public nature, its audience and means of dissemination); and the likelihood of the advocated action occurring, including its imminence. ILGA-Europe considers that sanctions should be applied wherever this comprehensive review provides enough evidence of the seriousness and harmfulness of the case.
- ILGA-Europe calls for legal prohibition of incitement to be provided for through an adequate set of legal mechanisms. All sanctions for incitement should be provided by law and be necessary and proportionate. All sanctions for incitement should be consistent with other European or national legal frameworks combating discrimination, hostility and violence.
- In the case of incitement to discrimination, prohibition should be provided for in the framework of the applicable anti-discrimination legislation, in case such legislation

exists in a given jurisdiction. Sanctions for incitement should never be more severe than the sanctions applicable in the case of actual discrimination.

- In the case of incitement to hostility or violence, prohibition should be provided for in the framework of civil, administrative or criminal legislations. Criminal sanctions should be considered only in the cases of incitement to acts of hostility or violence that are defined as criminal offences in a given jurisdiction. Sanctions for incitement should never be more severe than the sanctions applicable in the case of actual acts of hostility or violence.
- Alternative sanctions such as work of general interest may be considered in certain instances.
- The applicable legislation should provide a range of remedies to victims, such as tort claims, the right of correction and the right to reply.