

Equality for all!

EU equality legislation against hate speech & discrimination on grounds of religion, belief, sexual orientation, gender identity and gender expression

On 26 March 2015, ILGA-Europe and ENORB, the European Network on Religion and Belief, jointly organised a ground-breaking event to examine existing and proposed equality legislation in Europe. The event aimed at identifying common experiences of discrimination between LGBTI people and religious and belief groups, gaining knowledge on EU anti-discrimination legal framework and exploring areas of potential tension in a spirit of dialogue and mutual understanding.

After presentations by Equinet and the European Commission on the EU anti-discrimination framework, participants brainstormed on their lived experiences of discrimination in the areas of health, education, employment and access to goods and services. In the afternoon, they worked on case-studies aiming at identifying together ways forward to overcome tensions and misunderstandings.

60 persons attended the event, representing ILGA-Europe and ENORB members, but also equality bodies, and policy makers at EU level.



Funded with the support of the PROGRESS Programme of the European Union, Open Society Foundations and Arcus Foundation



Agenda

09:30	<i>Registration</i>
09:45	<ul style="list-style-type: none"> ▪ Opening by Ulrike Lunacek, Vice-President of the EP & Co-President of the EP's LGBTI Intergroup ▪ Introduction by Evelyne Paradis (ILGA-Europe) and Alan Murray (ENORB)
EU anti-discrimination legislation – overview and future perspectives	
10:00	<ul style="list-style-type: none"> ▪ Overview on EU anti-discrimination legislation, Tamás Kadar, Equinet ▪ State of play of the negotiations on the equal treatment directive, Alvaro Oliveira, DG Justice, European Commission
11:00	<i>Coffee break</i>
Exploring discriminatory practices and hate speech faced by LGBTI people and religion and belief groups	
11:30	<p>Work in groups on 4 topics:</p> <ul style="list-style-type: none"> ▪ Employment ▪ Health ▪ Education ▪ Access to goods and services
12:30	<i>Lunch break</i>
Exploring areas of tensions between the grounds	
13:30	Work in groups on case-studies and recipes for success.
15:00	<i>Coffee break</i>
Identifying ways forward to overcome tensions	
15:30	<p>Debriefing in plenary by rapporteurs.</p> <p>Followed by panel discussions with:</p> <ul style="list-style-type: none"> ▪ Erica Howard, Middlesex University ▪ Mark Barwick, Human Rights Without Frontiers ▪ Jean Lambert, Member of the European Parliament ▪ Johan ten Geuzendam, European Commission, DG Justice
16:45	Concluding remarks
17:00	End of the event

Opening of the event

Evelyne Paradis, Executive Director of ILGA-Europe

The aim of the event is to understand what unites us. This event is the outcome of a few years of dialogue and relationship. Alan Murray, president of ENORB, came to see us as he wanted ENORB to engage on LGBTI issues. ILGA-Europe was enthusiastic for 3 reasons:

- ILGA-Europe is a human rights organisation so we want to defend the full human rights agenda, not only the human rights of LGBTI people.
- We need to fight stereotypes within the LGBTI movement, including against religion and belief (R&B) groups.
- Some of the opposition to the rights of LGBTI people is framed in religious language. So, we need to build alliances with religious people who speak the same language as us.

Alan Murray, President of ENORB

It has been a long journey, but it was important and worthwhile. We learnt a lot together. ENORB is an inclusive network of religions and beliefs of all kinds, committed to work for human rights and against all forms of discrimination. Our policy priorities focus on issues which are controversial, including combatting the anti-LGBT rhetoric which is found in some sections of religion or belief communities.

This is a journey that began at European level, and now we can also work together in member states, using grants to organise seminars on the intersection of sexual orientation-gender identity (SOGI) with religion and belief at national level.

Ulrike Lunacek, Vice-President of the EP & Co-President of the EP's LGBTI Intergroup

We are doing a ground-breaking exercise here. As a feminist, a lesbian and an atheist, I left the church. But I know that in all religions, there are people ready to fight for respect for all.

There are traditionally a lot of prejudices of one movement against the other. There has been recently more visibility and rights for LGBTI people, but in the same time, fundamentalism has risen and LGBTI people become scapegoats. Homosexuality is not only about sexuality.

Respect for diversity is in the treaties. I am also the rapporteur on the equal treatment directive. Having an anti-discrimination legislation that protects all groups is what unites us.

EU anti-discrimination legislation – overview and future perspectives

Overview on EU anti-discrimination legislation, Tamás Kadar, Equinet (see presentation on the page of the event)

At national and at European levels, minorities tend to work and think in silos. So this event is in itself a very good practice.

Reminders:

- When the EU (EEC at the time) was founded, its first aim was not human rights. But the Court of Justice quickly established human rights as general principles of EU law.
- 2000: treaty of Amsterdam and %ace+ and %employment+ directives. 2008: horizontal directive is proposed. 2009: Treaty of Lisbon (EU Charter of Fundamental Rights became binding).
- ECHR (not related to the EU but to the Council of Europe): article 14 + protocol 12 prohibit discrimination.
- Treaty on the European Union (TEU): articles 2 and 6: human rights, freedom, democracy, etc.
- Treaty on the functioning of the EU (TFEU): article 19 lists 6 grounds of discrimination on which EU is competent.
- EUCJ: no case so far on R&B, a few on SOGI (see presentation).
- NGOs should get in touch with national equality bodies at national level!

State of play of the negotiations on the equal treatment directive, Alvaro Oliveira, DG Justice, European Commission (see presentation on the page of the event)

- Not anyone of us has more fundamental rights than somebody else!
- History of the horizontal directive: commitment of the former-Commissioner Spidla and of the EP rapporteur: Ms Buitenweg.
- New EC: the directive is mentioned as a key priority for Ms Jourova in her mission letter.
- Council: With EPSCO Council of Dec. 2014, the debate moved from the technical level to political level. Malta and the Czech republic changed their position and the Latvian Presidency is doing a good job.

Questions and answers:

- Arguments behind the blocking of the directive: subsidiarity/legal basis, lack of impact assessment, definition of the scope of the directive needs to be more detailed (which leads to more discussions and risks of further disagreements).
- Strategic litigation: would be interesting and useful to have preliminary ruling at the EUCJ on R&B cases.

Experiences of discrimination on the grounds of R&B and SOGI

Participants brainstormed on their lived experiences of discrimination in the areas of health, education, employment and access to goods and services.

1- Employment

There is legislation against discrimination in employment at national and EU level, but in some member states this legislative protection is still patchy. Participants reported that overall a trend interpreting non-discrimination under the notion of %proportionality+ and %reasonable accommodation+ can be observed.

Discrimination in employment can be:

- Structural/systematic discrimination, e.g. in the structure or management of welfare systems and benefits (SOGI), national holidays (R&B) and symbols (R&B and SOGI)
- Individual/practices, such as discrimination in access to employment/recruitments: often there are already barriers for certain groups to even apply to certain jobs; harassment
- Common issues:
 - There is an argument about %neutrality+ in labour market that is getting stronger and stronger and is also used when applying anti-discrimination legislation
 - Lack of knowledge on rights
 - Problem of underreporting
 - Need for safe environment

2- Health

- Short presentation by Sam Rankin (Equality Network) on barriers to health for LGBT people:
 - Situation varies a lot between lesbians, gays, bisexuals or trans people
 - Trans face a whole bunch of problems when they seek gender reassignment treatment but also in general health.
 - If you're gay and not in a situation of intersectionality (multiple identities), you can get access to health without too many problems. Example of a gay man with learning difficulties who received negative comments by the health professional during a colonoscopy. The professional would probably not have done this with a gay man not disabled.
 - Negative experiences also of bisexual women in NHS (i.e. nurse saying : %it's unnatural to love both genders+).
- Discussion Barriers to Health on R&B grounds
 - Dietary requirements (i.e. pork or beef) not accommodated during hospital stays
 - Women wearing dress or symbols sometimes harassed or ignored
 - Women in some cases cannot request not to be treated by male doctors
 - Assumptions by healthcare providers that Muslim people will be sexist or homophobic
 - Difficult access to spiritual care when you're lesbian because providers assume that you won't want it.
- Other testimonies:
 - Forms to be filled in at the hospital/clinic: you must identify as either male or female
 - Health services not available for trans if they're women/men (breast or prostate screening) specific even if the person does need them!
 - However, there have also been some very good practices in Hungary and Slovakia, but probably only individual positive attitudes and not due to structural good practice by the hospitals.
- Common points:
 - Lack of needs accommodation
 - Experiences of harassment/negative comments

- Assumptions on SOGI/R&B and on needs of LGBTI people and R&B groups (+ lack of awareness on intersectionality)
- Refusal of treatments
- Lack of knowledge and know-how

3- Education

- Issues identified
 - Freedom of expression
 - Access to education
 - Bullying and harassment (personal + state-sanctioned + media)
- Strategies
 - Need human rights and citizenship education + whole-school approaches to creating inclusive environments
 - Schools can represent a diversity of role models in their curricula, such as representations of families, scientific and historical leaders
 - Side by side with human rights education, there are also specific programmes which should be offered that support students:
 - In understanding and developing healthy relationships and sexualities
 - In understanding and appreciating the diversity of religions and convictions which make up the fabric of Europe and the intercultural skills needed to engage differences
 - Diverse families/role models/sex and relationship education
 - Redefining norms so that there is no longer a label of ~~abnormal~~ applied to LGBTI and religious minorities, but rather more open-minds to the variety of expressions of identity which exist.
 - Human rights approach: not necessarily agreeing but respecting rights

4- Access to goods and services

There is a widespread evidence of discrimination in accessing goods and services in both public and private sector, affecting in various ways and forms LGBTI and various religious minority groups. Both of these communities should receive legal protection against unfair treatment in accessing goods and services at European and national level.

Issues identified:

- In areas such as hotels, public services, restaurants, etc, ~~objection of conscience~~ cannot be tolerated as a tool against LGBT. This minority group should be treated in the same way as anyone else. Even in relation to sensitive issues such as abortion, objection of conscience that is possible to be exercised by medical providers is not an absolute right, it should be balanced to serve the needs of the client: the hospitals needs to find ways to offer this service.
- It is avoidable to essentialize religious or any other identities from the both sides (SOGI and R&B): ~~all the Muslims are like these~~ ~~all the religious communities are against SOGI issues~~, ~~all LGBTI people are anti-religion~~: we need to find, explore and embrace the diversity within our own communities and recognise it as a value.

- Religious services such as weddings, blessings, etc. cannot be imposed and should reflect the ethos and theology of the specific faith traditions: however, a dialogue on these issues has to take into account the internal diversity of these communities (LGBTI is a part of it).

Strategies:

- Initiating a dialogue and finding ways of reasonable accommodation by the both sides: a mechanism of interaction, negotiation & mediation is needed.
- Secular organisations and religious entities can work in cooperation to tackle discrimination in this area;
- Freedom of religion and belief is important for the both groups and needs to be defended as a fundamental right: the religious exemptions can be protected against the state intrusion and discriminatory treatment, and not as incitement to discrimination based on sexual orientation and gender identity;
- Preparing guidelines and sharing good practices can be done in partnership with religious based organisations in areas such as health and social care

Working on case-studies to identify ways forward to overcome tensions and misunderstandings

Case-studies and recipes for success are available on the page of the event. The main findings and recommendations from the four groups are the following:

- Alliance-building/joint advocacy work between LGBTI and R&B groups
 - It is important to take the time to set up a culture of alliance-building outcomes will get more sustainable.
 - Need personal contacts and leadership to facilitate alliance-building.
 - A common enemy helps but it's better to fight FOR something than AGAINST.
 - Once there is a strong commitment to work together, details get less important and we can always overcome them.
 - To make further progress and touch upon more sensitive topics, it is useful to build on positive outcomes of initial joint initiatives.
 - Existing good practices of alliance building: FELGTB in Spain has a sub-group working on religion. In Bulgaria: Bilitis dialogues with a group of young orthodox.

- Reflecting & welcoming diversity among LGBTI/R&B groups
 - Awareness that we all have assumptions and that no group is homogenous.
 - Awareness that comments and jokes, even if not targeting one person specifically, are hurtful importance of providing safe space.
 - Make an effort to be in other people's shoes+
 - Need to address fears that prompt intolerance.

- Anti-discrimination/hate speech
 - Need to explore more closely what accommodation means and implies
 - Better to try hard to negotiate than to go to courts
 - Policy makers need to provide clear legislative frameworks

Identifying ways to overcome tensions - panel discussion

Dr. Erica Howard, Middlesex University

Dr. Erica Howard (with Dr. Alice Donald) authored of a study commissioned by ILGA-Europe: *The right to freedom of religion or belief and its intersection with other rights.*

Intersection of rights are often seen as clashing but there is a number of ground rules and principles that could be used when there is a situation of apparent conflict:

- Non-discrimination: there is no right to discriminate and the state should not discriminate between religions. Case-law in this area has reiterated that the requirement to provide goods and services is not an interference of the state or one there is interference, it is justified by the aim of non-discrimination.
- Impartiality: there should not be a focus on one religion or belief in particular.
- Respect of the right to believe: you are allowed to present your point of view and others are allowed to reject it. All groups need to be heard. Beliefs can be challenged but not the believer.
- Pluralism and tolerance: anyone needs to accept that their belief can be challenged. States have a job to promote tolerance. They should not interfere with doctrinal disputes unless they impact other people's rights.
- Proportionality: Balancing exercise between all interests involved (State, employer, service provider, members of the community, etc.). A case-by-case approach is needed.
- No hierarchy of rights: it is not a zero-sum game. There is a need to seek compromise, through reasonable accommodation . but this can never be used as an excuse for reducing someone's human rights.
- Objective of maximising all rights
- No arbitrary

Those principles should be used not only in courts but in wider public life. Ground rules for negotiation:

- Good faith and reciprocity
- Mutual respect
- Remaining non judgmental
- Avoid essentialising R&B/LGBTI groups
- Mediation/conciliation
- Take a step back from public debates which do not represent the more subtle reality of what's happening on the ground.

Mark Barwick, Human Rights Without Frontiers

What can be more basic than respecting the freedom to believe or to love someone?

Social transformation is a long-term process that belongs to us all (civil society, churches, mosques, etc.). There is a need for re-humanisation, and to get there requires a number of ingredients:

- Diversity education

- Alliance-building
- Acknowledging that there is no uniformity
- Local equality platforms . with leadership
- Affirming common values in a human rights framework
- Re-imagining marriage and family
- Monitoring hate speech and media messaging
- Creating joint initiatives

There is an emergency: why we can't wait, Martin Luther King.

Johan ten Geuzendam, European Commission, DG Justice

The European Commission is pleased with this initiative.

What's being done at EU level is limited by EU competences. But there are some positive elements:

- New high-level group on discrimination comprised of representatives of Member States and ngos
- Eurobarometer on non-discrimination published soon
- Joint high-level conference with the Vice-President Timmermans

We must not prioritise one ground of discrimination over another; we need to find a balance between rights. Rulings of the ECHR can guide interpretation of the EU law.

There is a need to send a strong signal that the EU is a place of tolerance for everyone's values (traditional and progressive ones) provided that the principle of non-discrimination is respected.

Jean Lambert, Member of the European Parliament

People have multiple identities and because they identify in one way does not mean that they behave in a specific way.

Rights of everyone need to be protected. There is a backlash from some political movements who try to play one group against another. Some people claim they defend women's rights for instance, but when you see how they vote and what they say, you can legitimately wonder.

There are debates around UK going out of the ECHR. Rights are under attack!

There is room for accommodation of rights, but there are also limits: hate speech and discrimination.

There is also a need to protect equality bodies.

Regarding the equal treatment directive: if we're not ready yet . then, can we put in place criteria to define when we'll be ready?

Conclusion

Alan Murray

Both groups experience pain and suffering, even if often, from completely different perspectives. What comes out of group discussions is a common human dimension. The fear disappears when we can share! Solidarity grows when we plan action together.

Evelyne Paradis

There are a lot of commonalities between experiences of both groups - in terms of coming-out for instance. There is a common desire to be humanised. It is very important that we do this work now together because beyond the need to protect our rights, we all need to defend a vision of society. This work will continue at national level and should also involve equality bodies.