

ILGA-Europe's Feedback on the European Commission's 2009 Progress Reports

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The European Commission monitors annually the progress made by the Western Balkans and Turkey towards European integration and sets out new targets for the countries to further progress towards that integration.

On 14 October, 2009 the European Commission published its 2009 Progress Reports highlighting the progress made by the candidate and potential candidate countries as well as the challenge they face and the reforms they should undertake in order to meet the conditions set for the EU membership.

The reports can be found at: http://ec.europa.eu/enlargement/press_corner/key-documents/reports_oct_2009_en.htm

ILGA-Europe welcomes the way in which the human rights of LGBT people are raised in this year's progress reports. LGBT issues are covered in all reports and stronger language is used by the Commission when referring to the human rights violations of LGBT people and to the non-compliance of the states to their human rights obligations under European/Accession partnerships. It is also positive to notice that the reports give concrete recommendations to the states to introduce anti-discrimination laws and policies in line with the EU acquis at the same time emphasizing the need to level up 'the protection against discrimination in practice' in the countries where the laws were enacted. LGBT issues were particularly well covered in the reports on Turkey and Serbia.

The inclusion of LGBT rights in the progress reports is to a very large part a result of documentation of human rights violations and the active advocacy work by local LGBT organizations and ILGA-Europe and good cooperation with the European Commission. ILGA-Europe and its member and partner organisations in the Western Balkans and Turkey have provided the European Commission with detailed documentation on human rights violations against LGBT people. Written contributions to the progress reports were provided to the Commission by ILGA-Europe in May 2009. In addition, in June 2009 ILGA-Europe facilitated the participation of 5 activists from Croatia, Former Yugoslav Republic of Macedonia, Turkey, Bosnia and Herzegovina and Serbia in consultations with the European Commission on progress reports. ILGA-Europe also supported local LGBT organisations in building the necessary capacities and resources to document the human rights violations of LGBT people and use that documentation for advocacy in national and international level.

ILGA-Europe together with its partners and allies will continue the advocacy and lobby to ensure that the Commission covers human rights issues of LGBT people in the future progress reports and incorporates them in partnership agreements with the countries. The Commission's progress reports are one of the most important tools at hand for the EU in influencing the human rights situation of vulnerable minority groups in candidate and potential candidate countries. The gradually wider and more self-evident inclusion of LGBT human rights in the Commission's monitoring system and in the progress reports means that LGBT rights are recognised within the European Union and that it is expected and demanded of the future members that they comply with the EU standards on human rights.

ILGA-Europe encourages the Commission to continue promoting the human rights of LGBT people and asserting the principles of non-discrimination and equality in accession negotiations with the countries.

Country by country feedback

The report on Turkey refers to discrimination against LGBT people in the workplace, in the hands of medical professionals, law enforcement bodies and during the judicial procedures. It also speaks of violent attacks and killings of LGBT people with particular reference to transgender people. The report reads *'There have been several cases of discrimination at the workplace, where LGBT employees have been fired because of their sexual orientation. Provisions of the Turkish Criminal Code on 'public exhibitionism' and 'offences against public morality' are sometimes used to discriminate against LGBT people. The Law on Misdemeanours is often used to impose fines against transgender persons. Homophobia has resulted in cases of physical and sexual violence. The killing of several transsexuals and transvestites is a worrying development. Courts have applied the principle of 'unjust provocation' in favour of perpetrators of crimes against transsexuals and transvestites. The Turkish armed forces have a health regulation which defines homosexuality as a 'psychosexual' illness and identifies homosexuals as unfit for military service. Conscripts who declare their homosexuality have to provide photographic proof. A small number have had to undergo humiliating medical examinations'*. The report also refers to the ruling of the Court of Cassation against the closure of the Lambda Istanbul Solidarity Association in April. The European Commission maintains that ruling which makes the legality of the association conditional on not 'encouraging lesbian, gay, bisexual, transvestite and transsexual behaviour with the aim of spreading such sexual orientations' is not compatible with the EU's rejection of homophobia and its anti-discrimination standards. Also there are several explicit references to the fact that the existing national legislation does not provide for specific protection on the grounds of sexual orientation.

While giving credit to the government of Serbia for the adoption of comprehensive anti-discrimination law this year the Commission points to the existing gap between the laws and their actual implementation. The report states *'New anti-discrimination legislation introduced a rule prohibiting hate speech. A similar prohibition also exists in the Public Information Law and amendments to the Penal Code in August 2009 have further elaborated provisions against hate speech. However, in spite of the legal*

framework, incidents involving hate speech, threats and physical attacks against journalists, human rights defenders and the lesbian, gay, bisexual and transgender (LGBT) population have not been properly investigated and perpetrators have not been brought to justice.' The Commission also spells out the inability of the Serbian authorities to guarantee the safety of the participant of this year's Belgrade Pride Parade which had to be cancelled at the last minute.

The report on Bosnia and Herzegovina urges the authorities to take actions to ensure the freedom of assembly and association for LGBT people and to respond promptly and bring to justice those responsible for threats and violence against human rights defender, including LGBT human rights defenders. The report further states that *'Social discrimination and exclusion of lesbian, gay bisexual and transgender (LGBT) people remain widespread. Physical attacks, ill-treatment and acts of intimidation against these groups have continued. There has been no official condemnation of such acts by government authorities. Effective investigation and prosecution need to be ensured.'*

The report on Croatia states that *'More needs to be done to tackle discrimination on grounds of sexual orientation. Lesbian, gay, bisexual and transgender people are subjected to threats and attacks. Many cases are not followed-up adequately by the police and prosecutors, or remain unreported'*. While giving credit for the progress in the field of anti-discrimination, the Commission maintains that *'The level of protection against discrimination in practice and the judicial prosecution of acts of discrimination is not in line with EU standards.'*

The report on the Former Yugoslav Republic of Macedonia points to the fact that *'The Framework Law on Non-Discrimination has not yet been enacted and the existing legal provisions are not fully aligned with the acquis.'* It further states that *'Neither the Constitution nor the existing legislation identifies sexual orientation as a basis of discrimination. Lesbian, gay, bisexual and transgender (LGBT) people are not protected against direct or indirect discrimination and are stigmatised, particularly in rural areas.'*

The reports on Albania, Montenegro and Kosovo speak about the discrimination and marginalisation of LGBT people and urge the governments to take actions to promote respect for the LGBT community.