Discrimination on grounds of sexual orientation and
gender identity in Europe

Torino, 28 October 2011
Structure of presentation

• Introduction
• Short video of the launch of the report
• Presentation of key findings
• How can the report be used by LGBT organisations
  – *Perspective ILGA-Europe*
  – *Perspective TGEU*
• Discussion
Introduction

• Research and data collection from governmental, non-governmental and NHRI experts in all 47 member states of Council of Europe

• Focus on period 2004-2010 / two sets of data:
  • Data of a social/sociological nature
    – Desk research and field visits to MS
  • Data of a legal nature (legislation, case law)
    – Desk research + national reports from experts

• Report has 6 thematic chapters and 36 recommendations.
1. Attitudes and perceptions
Attitudes and perceptions

- Criminalisation
- Medicalisation
- Perceptions of ‘the nation’, religion and traditional values
- Perceptions of LGBT persons’ visibility and use of public space
- Media
2. Legal standards and their implementations
Legal standards and implementation

- No ‘new rights’ or ‘special rights’.

- International and European human rights standards apply equally to everyone regardless of sexual orientation and gender identity.

- Articles prohibiting discrimination in human rights treaties interpreted to cover sexual orientation and gender identity. For example:
  - General Comment 20 UN Committee on ESCR
  - General Recommendation 28 CEDAW Committee
  - General Comment 4 Committee on Rights of the Child (only s.o.)

- Both sexual orientation and gender identity are directly included in the new CoE Convention preventing and combating violence against women and domestic violence (2011).
Legal standards and implementation

• Recommendation 2010(5) of the CM to member states on measures to combat discrimination on grounds of sexual orientation and gender identity.
3. Protection: violence and asylum
Data from official sources

- **ODIHR**: 15 CoE member states report that they collect data on crimes committed against LGBT persons. However, only 4 of these 15 submitted comprehensive data. For example:

  - **United Kingdom**: in 2007, 988 criminal court cases were initiated against suspects of LGBT hate crimes; 759 persons were convicted, while in 2009 these figures had risen to 1,078 and 868 respectively.

  - **Germany**: recorded in 2009 164 crimes motivated by a bias against sexual orientation, 45 of which were violent crimes.

  - **Sweden**: in 2008, 1,055 hate crimes against LGB persons were recorded of which 1,046 had a homophobic motive. In the same year 14 crimes were recorded against transgender persons.

  - Public authorities in **Turkey** counted seven murdered transgender persons in 2008 and 2009.
Data from NGOs

- **ILGA-Europe**: Hate killings against LGBT persons in the period 2005-2008 in the Netherlands, Portugal, the Russian Federation, Turkey and the United Kingdom.

- **The Transgender Murder Monitoring Project**: 36 hate killings in Council of Europe member states in period 2008 - 2010: Italy and Turkey (13 cases each), Spain (3 cases), Germany and the UK (2 cases each), Albania, Portugal and Serbia (1 case each).
Other forms of violence (1)

• Violence and harassment by state actors:
  – Police raids in LGBT bars/clubs, cruising areas
  – Pressure on LGBT persons to pay bribes to police ‘in exchange of’ not being *outed* to family, employer etc

• Collection of sensitive private data by state actors
  – Databases on convicted gay/bisexual men for consensual (then illegal) same-sex acts
  – Fingerprints, photos taken of LGBT persons
Other forms of violence (2)

- Violence in the family:
  - Violence can be physical (beatings), psychological (emotional pressure, control), verbal (calling names)
  - Violent behaviour by parents to LGBT children (when 'coming out') or by partners in a relationship

_Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence_ also applies to lesbian, bisexual and transgender women! **16 member states signed the convention but no ratification yet (minimum needed in order to enter into force: 10 ratifications)**
4. Participation: freedoms of assembly, expression and association
Situation in member states

- In 5 member states LGBT organisations faced obstruction or refusal in the registration process.
- In 3 member states attempts to criminalise ‘propaganda of homosexuality’.
- In 12 member states bans or impediments when organising LGBT Pride events.
5. Privacy: legal gender recognition and family life
Same-sex partnerships: European Court of Human Rights jurisprudence

- Does not yet grant same-sex partners the right to marriage but:

- Marriage with reference to Article 12 ECHR on the right to marry may also include unions between partners of the same sex

- Same-sex partners enjoy family life in the sense of Article 8 ECHR

- Should ensure that same-sex couples are not treated less favourably than cohabiting different-sex couples
Legal recognition of gender reassignment

- European Court of Human Rights has ruled that gender reassignment must be recognised

- 24 member states have adopted legislation on gender reassignment

- In 13 other member states no or only partial legislation was identified, but transgender persons able to have their reassigned gender recognised through court decisions or administrative practices
Divorce requirement for legal gender recognition

- **Blue**: Divorce is a legal requirement
- **Light Blue**: Not legal requirement
- **Yellow**: Unclear/No information
- **Dark Blue**: Divorce requirement declared unconstitutional
6. Access to health care, education and employment
How can the report be used by LGBT organisations?
Suggestions

- Refer to the report in your dialogue with authorities
- Translate the report (or sections thereof)
- Use the recommendations in reviewing your country’s track record
- Distribute among human rights organisations
- Organise a meeting to further disseminate the report
More information

• Download report on: www.coe.int/commissioner or order copy
• Translations in French, Russian, Norwegian (*forthcoming*)
• Summary translations in Turkish and Serbo/Croatian
• Background document (215 pages!) and country reports
• Speeches of WHO, EU, UN, OSCE and (non) governmental representatives on our website
More information

Dennis van der Veur
Adviser to the Commissioner

dennis.van-der-veur@coe.int