

ILGA-Europe
HDIM
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Working Session 13: Tolerance and Non-Discrimination II

On the need to undertake further legislative and non-legislative action to combat intolerance and discrimination in the Balkans and in all the OSCE region

We welcome the opportunity provided by the Human Dimension Implementation Meeting to commend the work of the Office for Democratic Institutions and Human Rights (ODIHR) to respond to hate crimes directed at lesbian, gay, bisexual and trans (LGBT) communities. The mandate of the ODIHR covers the area of combating intolerance and discriminatory violence. The vast majority of the participating States, either through statements in such meetings or through other international commitments, such as Council of Europe Committee of Ministers Recommendations^[1], recognize that their OSCE commitments include combating homophobia and transphobia.

On behalf of Aleanca (Albania), Juventas (Montenegro), Lesbian Group Kontra (Croatia), Labris (Serbia), Sarajevo Open Centre (BiH), COC Netherlands, and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), we would like to remind all participating States of the consensual adoption of Ministerial Council Decision N°9/09 on combating hate crime. In this document, participating States confirmed and recognised principles that should constitute policy guidelines:

- They acknowledged that all criminal offences committed with a bias motive are hate crimes, and that these crimes should be punished by tailored criminal legislation;
- They agreed to collect and publish reliable data and statistics on all of these offences, and to encourage victims to report in order to carry out professional investigation;
- They agreed to introduce or further develop professional training for law-enforcement and prosecution agencies as well as for the judiciary;
- They insisted on the importance of support to victims and on the role different relevant actors, including from the civil society.

Despite these commitments, and despite the Annual Hate Crime Reports, the education and training manuals and the capacity building programmes devised by the ODIHR, violence continues to escalate. In 2011, it pushed the European Union's Fundamental Rights Agency to launch a broad survey on LGBT-phobic violence. At the end of last month, the NGO Transgender Europe published figures showing that nearly 700 trans people have been murdered in the world since 2008, more than 70 of them in Europe.

Our organisations strongly believe that OSCE participating States and specifically Western Balkans States should take note of the fact that, very often LGBT human rights are still denied in practice, and that this situation needs to be redressed.

I would like to continue on my colleague's speech and bring to your attention specific issues related to all countries of the Western Balkans region.

Firstly, in most countries of the region, there is no hate crime legislation at all. In some there is criminal offences recognised in the case of racism and sometimes other forms of discrimination, but which do not include sexual orientation or gender identity. Only one country has such a hate crime legislation: Croatia, which is not implementing it fully correctly.

Secondly, the lack of political will to implement hate crime legislation can be also identified in hate speech by state officials, which is common occurrence in all of our countries.

For example, the Minister of Human and Minority Rights from Montenegro stated: „Thinking of sexual minorities as equal to national minorities is an offence for national minorities. That can never be the same“

Thirdly, police misconduct is widespread. This includes violence and harrasment, refusing to take complaints as well as the lack of investigation in the case of violent incidents.

The most recent reported example, last August, is the case of a trans woman from Albania: the police made a false accusation without evidence, beat her up in the street and at the police station. Police officers then concealed evidence of assault, denied her access to medical care and forced her to sign documents without her consent.

In another case in Croatia, the police harrassed a lesbian women for years, trying to charge her for an alleged crime committed decades before. Harrassment included intrusive questioning, violation of private life, psychological violence outside and at police stations, abusive detention and deprivation of medical care.

In some countries there is no reporting of violence at all due to the lack of trust in police. When cases are reported to the police, officers often refuse to take reports and there is lack of investigation except in cases with high media attention.

Fourthly, various cases of violence are the result of the failure of participating States to ensure actual freedom of assembly. In some countries there have even been no attempts to have LGBT public assemblies, especially in Bosnia after the Sarajevo Queer Festival of 2008 ended in severe violence.

In Serbia in last 10 years there have been 5 attempts to organise Pride events, and only in 2010 it was allowed by the state. There is a failure of state institutions to deal with violent extremist groups. No later than last Sunday, the State used the threats of violence by extremist groups to justify the banning of the Belgrade Pride.

In Croatia there were attacks during and after LGBT Pride manifestations in Zagreb in 2002 and from 2007 to 2010, including organised violent anti-demonstrations in 2009 and 2010 that were not banned by the State although anti-demonstrators invited to violence and attacked Pride participants. The first Pride in Split this year ended in violence. The police and the City authorities never responded to requests for prevention and investigation against threats of violence, nor did they erase graffiti inviting to violence.

In the light of these violent incidents and of the general context in the OSCE region, our organisations would like to call on the OSCE and all its participating States to promptly and effectively deliver on all the commitments made in the last years. In particular:

1. We call on the OSCE and its institutions to take a new step in combating all manifestations of intolerance, by explicitly addressing homophobia and transphobia;
2. We strongly recommend that all Governments enforce existing criminal legislation to duly investigate all bias-based incidents;
3. We recommend that all participating states deliver on their commitment to enact tailored legislation to combat homophobic and transphobic hate crimes by introducing aggravating circumstances in sentencing perpetrators;
4. We remind participating States of their commitments to provide adequate education and training to all competent officials in the police, the prosecution services as well as the judiciary. In that respect, we emphasize the potential of ODIHR's inspiring publications and capacity building programmes;
5. Finally we call on all participating States to effectively ensure that peaceful public gatherings organised in the respect of the Constitution and other laws can be safely held. We call on governments to abide by commitments to respect the fundamental freedoms of assembly and association of LGBT people. Participating States must not only permit LGBTI pride parades and equality events. They should also guarantee the participants safety and security, as in the case of all peaceful public events.