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Discrimination on the basis of sexual orientation and gender identity

Committee Opinion¹

Committee on Equal Opportunities for Women and Men

Rapporteur: Ms Nursuna MEMECAN, Turkey, Alliance of Liberals and Democrats for Europe

A. Conclusions of the committee

The committee fully supports the draft resolution and the draft recommendation tabled by the Committee on Legal Affairs and Human Rights, and commends the Rapporteur, Mr Gross, for his excellent and comprehensive report.

The committee believes that discrimination on the basis of sexual orientation and gender identity can be magnified on the basis of sex and gender with lesbian, bisexual and transgender women, in particular, running an increased risk of violence. There can be instances of sex discrimination also within the lesbian, gay, bisexual and transgender people (LGBT) community. The committee commends the Committee on Legal Affairs and Human Rights for having gender mainstreamed the texts to be adopted and thus proposes no amendments.

B. Explanatory memorandum by Ms Memecan, Rapporteur

1. Definitions

1. When dealing with the question of discrimination on the basis of sexual orientation and gender identity on behalf of the Committee on Equal Opportunities for Women and Men, the first problem to be faced is a certain confusion over the terms of the debate: “sex” versus “sexual orientation”, “gender” versus “gender identity”.

2. It thus seems useful to repeat Mr Gross’ definitions here:²

“Sexual orientation” refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or of the same gender or of more than one gender. Sexual orientation is a profound part of the identity of each and every human being and covers heterosexuality, bisexuality and homosexuality. The latter has been decriminalised in all member states of the Council of Europe.

“Gender identity” refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond to the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

1. See the report tabled by the Committee on Legal Affairs and Human Rights, [Doc. 12185](#)
2. [Doc. 12185](#), p. 7.



3. Definitions of “sex” and “gender” are not uniform. However, as the Council of Europe Commissioner on Human Rights, Thomas Hammarberg, has pointed out in a recent paper, “it is important to distinguish between the notions of “sex” and “gender”. While “sex” primarily refers to the biological difference between women and men, “gender” also includes the social aspect of the difference between genders in addition to the biological element.”³

4. ILGA Europe, an association of LGBT activists, in its submission to the Council of Europe Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) charged with drafting the future Council of Europe convention on this matter, has even made the point that: “Homophobia and transphobia can be seen as heightened expressions of gender discrimination. Indeed, it has been argued that homophobia is ‘a weapon of sexism’, in that its effect is to deter and punish expression and behaviour which do not conform to, and therefore undermine, patriarchal concepts of gender and gendered roles”.⁴

5. Sexism and discrimination on the basis of sexual orientation and gender identity thus seem to have similar roots and seem to be linked, even if the concepts themselves are different.

2. Sex discrimination and gender-based violence against lesbian, bisexual and transgender women

6. It should thus come as no surprise that lesbian, bisexual and transgender (LBT) women experience gender-based violence both on account of their gender and because of the way their sexual orientation or gender identity challenges traditional concepts of gender and gender roles. Indeed, as ILGA Europe has pointed out, it is not always possible for LBT women to separate out their experiences of anti-lesbian and anti-women discrimination.⁵

7. In 2002, the then Special Rapporteur on violence against women told the UN Commission on Human Rights: “Gender-based violence is also related to the social construct of what it means to be either male or female. When a person deviates from what is considered ‘normal’ behaviour they are targeted for violence. This is particularly acute when combined with discrimination on the basis of sexual orientation or change of gender identity. Violence against sexual minorities is on the increase and it is important that we take up the challenge of what may be called the last frontier of human rights.”⁶

8. There is evidence that LBT women are particularly affected by some forms of gender-based violence, such as rape, sexual violence and harassment, and forced marriages.⁷ Member states should thus provide protection commensurate with the increased risk run by LBT women, and this should also be taken into account during the negotiations in the CAHVIO.

3. Discrimination and violence within the LGBT community

9. The LGBT community itself is not immune from discrimination and violence. Same-sex relationships can turn violent as well as heterosexual relationships. The difference is mainly one of concept: the Council of Europe believes, for example, that violence against women (including domestic violence) is the extreme (but logical) consequence of inequality between women and men. This concept is more difficult to apply to violence within same-sex relationships, when both perpetrators and victims are of the same sex.

10. Nevertheless, the existence of the violence cannot be negated. ILGA Europe, in its submission to the CAHVIO, cited a significant research project conducted in this area in the United Kingdom in 2003, the principal findings of which were summarised as follows:

- “In a sample of 1 911 lesbian and bisexual women, 22% had suffered physical, sexual, mental abuse or violence from a regular same-sex partner, while 19% had suffered some recurrent abuse.
- In a sample of 1 391 gay and bisexual men, 29% had suffered physical, sexual or mental abuse or violence from a regular male sexual partner, while 24% had suffered some recurrent abuse.

3. *Human Rights and Gender Identity*, Issue Paper, Commissioner for Human Rights, July 2009.

4. Submission to the Council of Europe Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence, ILGA Europe, 8 September 2009, p. 4.

5. *Ibid*, p. 5.

6. Oral statement at the 50th Session of the Commission on Human Rights, Radhika Coomaraswamy, UN Special Rapporteur on violence against women, its causes and consequences, 10 April 2002.

7. The Submission to the CAHVIO by ILGA Europe gives many examples from different countries and cites a number of studies.

- The differences between women and men for types of abuse were marginal. In both the most common form of abuse was emotional or mental abuse such as "insults, putting downs or belittling". Almost as many reported being physically attacked or hit."⁸

11. ILGA Europe concludes from these findings that victims of domestic violence in same-sex relationships (in particular, LBT women) should be covered by the future Council of Europe convention on action to combat violence against women and domestic violence.⁹ I am not certain, however, that this is a conclusion this committee – and indeed the Assembly – can share, since the committee and the Assembly have asked the Committee of Ministers to draw up a convention devoted to violence against women, including domestic violence (for the Assembly, domestic violence is only one form of violence against women). Indeed Assembly [Recommendation 1847 \(2008\)](#) proposes limiting the future Council of Europe convention to “the severest and most widespread forms of violence against women”.

12. Another thorny issue is sex discrimination within the LGBT community. For example, there have been several years of debate within the Cologne (Germany) LGBT community about the organisation of the annual “Christopher street day parade”, which many LBT women feel has become too sexualised and attacks the dignity of women (by, for example, allowing one of the biggest European brothels to participate, as well as both straight and homosexual followers of “sado-masochism” who parade their female sex “slaves”).¹⁰ Some LBT women have reacted by launching a “women’s pride” parade, but the debate is ongoing and bitter.

13. Finally, it is unclear whether LBT women can expect more or less solidarity than gay men from the LGBT community when, for example, “coming out”, fighting for their rights, or entering politics. In Germany, an openly gay man has recently become Vice-Chancellor and Minister for Foreign Affairs; the country already has several openly gay male mayors, but not a single openly lesbian one. It is thus quite possible that lesbians suffer sex discrimination even within their own community.

4. Conclusions

14. I would like to commend the Rapporteur of the Committee on Legal Affairs and Human Rights, Mr Gross, for his excellent and comprehensive report. The only thing the report sometimes lacks is gender-sensitivity – I am thus glad that I have been given the opportunity to point out that discrimination on the basis of sexual orientation and gender identity can be magnified on the basis of sex and gender – with lesbian, bisexual and transgender women, in particular, running an increased risk of violence due to remaining patriarchal structures in society. In addition, there can be instances of sex discrimination also within the LGBT community.

Reporting committee: Committee on Legal Affairs and Human Rights.

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Secretariat of the committee: Ms Kleinsorge, Ms Affholder, Ms Devaux

8. Ibid, p. 21.

9. Ibid, pp. 4-6.

10. See several articles in the German feminist magazine *EMMA*, for example in the July/August 2009 edition.