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Government of the Netherlands

Introduction

IGLYO sees the world as a place where we, young people, in all our diversity are able to express and define our own sexual orientations, gender identities and gender expressions in our lives, communities and societies without barriers and can rise to our full potential, enjoy respect, celebrate diversity and positive recognition.

Article 1 of the Universal Declaration of Human Rights states: "All human beings are born free and equal in dignity and rights". Yet, it is the everyday reality, which shows us that not all human beings are able to fully enjoy their fundamental rights and freedoms and to be respected. Many people, and especially youth, are subjected to ill treatment, abuse, psychological and physical violence and discrimination due to their actual or perceived sexual orientation and/or gender identity and expression.

This is why IGLYO has come across the idea of developing its position paper on human rights. The paper aims at highlighting already existing principal instruments in this field and how they are applied to LGBTQ young people, how LGBTQ youth rights issues can be mainstreamed in the general human rights context, and at providing recommendations for international structures, states, policy and decision makers, as well as civil society organisations to advance equality of LGBTQ youth and students. We will be honoured if our member organisations and friends find this position paper applicable to their work at local contexts where LGBTQ youth and students are still fighting for equality and social inclusion.

IGLYO as a Human Rights organisation

IGLYO is the International Lesbian, Gay, Bisexual, Transgender, Queer Youth and Student Organisation, an important meeting point for LGBTQ youth and students in the pan-European region. IGLYO traces its beginnings to 1984. In that year, the International Gay Youth Congress held a conference called Friendship and Desires in Amsterdam. The event was so successful that it was followed up with subsequent conferences in Dublin and Oslo in each of the following years. It was at the Oslo conference in 1986, where IGLYO was established as a permanent organisation for lesbian and gay youth, later to also explicitly include bisexual, transgender, and queer youth and students. From then on, IGLYO has dedicated itself to the support of LGBTQ youth by hosting annual conferences and providing international outreach, especially in the field of advocating and lobbying for equality of rights for all LGBTQ young people in Europe and beyond.

As the pan-European voice of LGBTQ young people, IGLYO is actively involved in the process of advocacy and lobbying to promote the interests and advance equality of human and civil rights of this particular group. IGLYO's Strategic Plan 2011-2013 places human rights in the organisation's core focus areas. As an organisation, IGLYO promotes respect and recognition of diversity within our societies, with freedom from discrimination and protection of human rights, fundamental freedoms and liberties, and will combat and advocate against the following discrimination:

- Homo-, lesbo, bi-, trans- and queerphobia,
- Heteromativity and heterosexism,
- All forms of exclusion, discrimination and persecution.

We see the rights of LGBTQ young people within a human rights framework, emphasizing the dignity, liberty, and equality of all people regardless of sexual orientation and/or gender identity and expression.



Government of the Netherlands

IGLYO's history in Human Rights

In 1984, when IGLYO was founded, homosexuality in many European countries was still criminalised. Homosexual men, if identified, were imprisoned for years or treated in psychiatric facilities since homosexuality was perceived as a disease, too. At that time, young gays and lesbians decided to gather and challenge existing inequality. IGLYO was created as a need for better cooperation among local, regional and national LGBTQ youth and student organisations, as well as to unite forces in general human rights movement.

In 1984, First International Gay Youth Conference "Friendship and Desire" was held in Amsterdam, which was followed by the second one in 1985 held in Dublin. In 1991, a study session on HIV/AIDS took place in Strasbourg and covered issues including of human rights. The Conference on Society and Legislation was carried out in Dublin in 1994 and it was followed by the first "All Different - All Equal" campaign implemented in 1995, which IGLYO took active part in. In 1997, the Conference on Homophobia and Fascism was held in Pisa.

The 2000s kicked off with two major events - the Family Conference in Stockholm and the First Women's Conference in Berlin. In 2002, IGLYO hearing on LGBT youth in EU accession countries took place in Ljubljana. The Study Session on Homophobia was carried out in Budapest in 2003 and it was followed by the Second Women's Conference in Rijeka in 2004. In 2006, IGLYO participated in the second "All Different - All Equal" campaign and, in cooperation with ILGA-Europe, it published a report called "Social Exclusion of LGBTQI young people in Europe" and held a hearing on this matter in the European Parliament¹.

Since 2008, IGLYO has produced several issues of "IGLYO on..." publication, which focused on human rights of LGBTQ youth and students. They include "IGLYO on Human Rights", "IGLYO on Global Activism", "IGLYO on Pride", "IGLYO on Legislation", "IGLYO on Access" and "IGLYO on Progress".

In 2009, IGLYO held the conference "This Is Who We Are" that was built around the [Yogyakarta Principles](#). In 2010, we organised a conference on anti-discrimination law "[Legislating LGBTQ](#)".

As a player in the pan-European human rights field, IGLYO seeks out strategic partnerships to bolster capacity building and advocacy activities with other equality networks and youth-focused groups in Europe. IGLYO maintains partnership relations with European Network Against Racism, ILGA-Europe, Fundamental Rights Platform, European Youth Forum, United for Intercultural Action and many others. IGLYO makes sure that the voice of LGBTQ youth and students is heard at various meetings and activities regarding human rights in general and those of LGBTQ people in particular held with policy and decision makers.

IGLYO ensures that the needs of LGBTQ young people are considered in EU policy decisions. Particularly, IGLYO cultivates relationships with officials at the European Commission, members of the Intergroup on LGBT Rights at the European Parliament, and certain Permanent Representations to the Council of Ministers of the European Union - including the six-month rotating Presidency of the Council.

IGLYO's main focus in the EU right now is the Horizontal Anti-Discrimination Directive. IGLYO also maintains a relationship with Council of Europe, monitoring the developments of this pan-European body that affect almost all of our members. IGLYO is actively working with the Council of Europe on the implementation of its Recommendations of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

In addition to European level advocacy, IGLYO often lobbies national governments when situations that concern LGBTQ young people arise through issuing statements, open letters or petitions.

¹ IGLYO on 25 Years of Activism (March 2009)

Current context and Working Group

Nowadays, many young LGBTQ people across the world are, on a daily basis, subjected to acts of physical and psychological violence, harassment and bullying, multiple discrimination and hate crimes on grounds of their actual or perceived sexual orientation and/or gender identity and expression. Therefore, IGLYO believes it is essential to mainstream LGBTQ issues and ensure that the human and civil rights of LGBTQ youth and students are included in the daily agenda of organisations, networks, groups and experts working on youth issues, through advocacy and lobbying activities within regional and international structures such as European Youth Forum (YFJ), Council of Europe, European Parliament, European Commission, United Nations, etc.

Following the mission to promote the rights of LGBTQ youth and students by advocating, lobbying and informing in partnership with policy makers and key decision makers, in April 2011 IGLYO established the Human Rights Working Group (HRWG). The current key priority for this group, as identified in its Work Plan, is monitoring and responding to situations affecting human and civil rights of LGBTQ youth and students across the continent. The HRWG has been also involved in the production of this position paper on human rights of LGBTQ youth and students that will place the rights of LGBTQ young people firmly within a human rights framework.

CHAPTER 1: Defining Human Rights

Although the concept of human rights emerged thousands of years ago in Ancient Mesopotamia for the first time, and became even a considerable outcome of the 18th-century French Revolution, it is the middle of the 20th century when it finally acquired the shape and context known to us today. This chapter will try to provide an insight on what human rights are, how they evolved, what framework they are used in and what problems they have.

1.1. Human Rights framework

International human rights instruments and standards comprise a broad framework for the protection of fundamental human rights and freedoms of all human beings. The human rights framework is designed to be a legally, politically and morally binding set of principles for governments. A distinction must be made between legally binding treaties, covenants, statutes, protocols and conventions, and political statements such as declarations and principles.

Human rights obligations are those that states have undertaken by signing treaties, which are then ratified by national parliaments. The 1948 Universal Declaration on Human Rights is the most widely accepted definition of human rights known for now, encompassing civil and political as well as economic, social and cultural rights, all sharing the principles of universality and indivisibility. Its principles have subsequently been further developed in a range of international human rights instruments, some of which have been accepted by most states, others not. These instruments define specific standards for vulnerable groups, as well as collective rights for minorities and indigenous groups. According to the UN Office of the High Commissioner for Human Rights, “The principle of non-discrimination is fundamental in international human rights law and runs across all international human rights instruments inspired by the Universal Declaration, notably the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Today, all UN Member States have ratified at least one of the nine core international human rights treaties, and 80 percent have ratified four or more conventions that guarantee these rights”.²

² <http://www.ohchr.org/EN/Issues/Migration/Pages/HumanRightsFramework.aspx>

1.2. History of Human Rights

The idea of human rights emerged stronger after the Second World War. The atrocities of the Holocaust, extermination by Nazi Germany of over six million Jews, Sinti and Roma, homosexuals, and persons with disabilities horrified the world. Governments then committed themselves to establishing the United Nations, with the primary goal of achieving international peace and preventing conflicts. People wanted to ensure that never again would anyone be denied life, freedom, food, shelter, and nationality.

Member states of the United Nations pledged to promote respect for the human rights of all. To advance this goal, the UN established a Commission on Human Rights and charged it with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in the Charter.

On 10 December 1948, the then 56 members of the United Nations adopted the Universal Declaration of Human Rights (UDHR). This founding instrument is the internationally agreed document recognising that “all human beings are born free and equal in dignity and rights” (Article 1). The vote was unanimous, although eight nations chose to abstain. The influence of the UDHR has been substantial ever since. Its principles have been incorporated into the constitutions of most of the more than 185 nations now in the UN. Although a declaration is not a legally binding document, the Universal Declaration of Human Rights has achieved the status of customary international law.

Since then, the United Nations has adopted more than 20 principal treaties further elaborating human rights. These include conventions preventing and prohibiting specific abuses like torture and genocide and protecting especially vulnerable populations.

On a rather smaller scale, the Council of Europe was founded in 1949 to promote democracy, human rights and the rule of law across the continent. Then in 1950 The European Convention on Human Rights (ECHR) (formally known as the Convention for the Protection of Human Rights and Fundamental Freedoms) was drafted with the goal to protect human rights and fundamental freedoms in Europe. The convention entered into force on 3 September 1953. All Council of Europe member states (47 by now) are party to the Convention and new members are expected to ratify the convention at the earliest opportunity. One of the greatest achievements of the European Convention is that it established and has regulated work of the European Court of Human Rights, which deals with individual or collective claims against Council of Europe member states who failed to ensure equality of rights for their citizens.

1.3. Problems with Human Rights

Since the formation of the Universal Declaration of Human Rights and European Convention on Human Rights a number of other human rights treaties have been signed and ratified. Because most of the major human rights instruments were written in the period when LGBTQ people were criminally charged around the world or considered mentally ill due to their sexual orientation and/or gender identity and expression, finding the very definition of *sexual orientation* or *gender identity* in these treaties is infeasible. Regardless of this fact, all human rights instruments may be used to advance the objectives and rights of LGBTQ people, too. At the opening of the 21st session of the Human Rights Council, the UN Secretary General Ban-Ki Moon admitted that there is a long way until the rights of sexual and gender minorities are fully recognised and that there still remain challenges for LGBTQ individuals.³

However, having such advanced and highly appreciated instruments, homophobic and transphobic attitudes have been identified in all member states of the Council of Europe. A large number of member states have adopted legislative and other measures to prohibit discrimination and outlaw hate crimes against individuals on grounds of their sexual orientation and, though in fewer cases, also on grounds of gender identity. On the other side remain those member states that refuse to recognise equality of rights for LGBTQ individuals. Unfortunately, human rights

³ http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1643

continue to be a topic of controversy and selective application. Some states, like Russia for instance, not only systematically engage in violations of fundamental rights and freedoms of LGBTQ, but justify such state-sponsored inequality with traditional values.⁴

Discrimination on grounds of sexual orientation and/or gender identity and expression is still not legislatively addressed in many countries due to the fact that some instruments and recommendations are not binding by nature and each country applies them differently, depending on its officially proclaimed social values, political and cultural context, legal system, which makes application of human rights for LGBTQ people uneven all over Europe.

Because of this gap in legislation and the state's lack of interest in regulating discrimination on the grounds here discussed, LGBTQ persons run a serious risk of becoming victims of a hate crime or a hate-motivated incident, especially in public places. Violence may also take place within a family setting. Moreover, in some cases, for instance, police, may be involved in blackmailing and harassing LGBTQ persons. Often, victims do not report such violence to the competent authorities because of the lack of trust in law-enforcement agencies.

When facing struggles regarding housing or having become homeless, LGBTQ persons, especially youth, encounter particular difficulties while seeking shelter. They also face difficulties in shelter centers and may be exposed to harassment from other applicants.

Violent and discriminatory reactions have occurred when LGBTQ persons have collectively attempted to express their views, freely associate or gather for public demonstrations. In most member states of the Council of Europe the freedoms of association, expression and assembly of LGBTQ persons are respected. However, in a few states they have been systematically infringed. These states attempt to criminalise the so-called *propaganda of homosexuality* as to make it impossible for anyone to even talk positively or neutrally about LGBTQ issues in public.⁵

Transgender persons face significant problems in the process of transitioning and their legal gender recognition. In some member states of the Council of Europe, transgender individuals are able to have their preferred gender legally recognised, either through court decisions or by certain administrative practices. Other member states require, as a precondition for legal gender recognition, surgery leading to infertility, whereas some member states require the transgender person to be unmarried or divorced, which can leave couples without a legally recognised relationship after divorce.⁶

Same-sex couples wishing to marry can do so in seven member states (gender-neutral marriage) and in 13 other member states they can enter a registered partnership, which provides a form of recognition. The lack of access to marriage or registered partnership deprives same-sex couples of rights and benefits granted to different-sex couples. It has also consequences for same-sex couples having children as one of the partners may not have custody rights, inheritance and next-of-kin status, which need to be assured in the best interests of the child. Several member states allow second-parent adoption to same-sex couples, while other countries provide no access to it whatsoever.⁷

When talking about universality of human rights we have to understand that this idea creates space for ambiguity and interpretation. Most of the times this interpretation does not provide a clear way in which states can adopt

⁴ http://www.ishr.ch/council/376-council/1365-council-adopts-resolution-on-traditional-values-without-considering-expert-input?utm_source=ISHR+Publications+and+News&utm_campaign=09faa2ce30-RSS_Email_Campaign_Council&utm_medium=email

⁵ "Discrimination on grounds of sexual orientation and gender identity in Europe" Council of Europe publishing, page 8, September 2011.

⁶ "Discrimination on grounds of sexual orientation and gender identity in Europe" Council of Europe publishing, page 8, September 2011.

⁷ "Discrimination on grounds of sexual orientation and gender identity in Europe" Council of Europe publishing, page 9, September 2011.

laws to reach the fullest of their commitment made when signing treaties and other protocols. It is also necessary to bear in mind that the purpose of regulating and legislating may be the one of control regarding the norm. When thinking about human rights we should never forget that individuals and minorities 'have to' be included in the majority despite the differences that make them a minority. In this sense, the minority may feel excluded because it's mostly not behaving within the norm and what is socially accepted, and may feel that the human rights framework is not suitable.

The other concern is that, states and not people use the instruments that regulate human rights, meaning that it's not linear who is benefiting from this convention at times – people may not reach the privilege of the rights they are entitled to. Therefore, bearing in mind all these challenges, it is important to look at the several existing instruments that regulate LGBTQ issues and then have a practical view of the way these instruments can be used.

CHAPTER 2: Human Rights instruments

This chapter will introduce the most important human rights treaties and will attempt to highlight the most useful articles for LGBTQ individuals in realising their rights. Please note that there may be other articles that can be useful in advancing the rights of LGBTQ people depending on the issue at stake. The following chapter will exemplify how LGBTQ communities have utilised these treaties.

One should note that these instruments and treaties mentioned in this position paper do not contain all the possible legal documents that may be used to advance the rights of LGBTQ individual and communities. However, this should give a good overview to realise that international human rights framework has finally started to recognise the human rights of LGBTQ persons.

2.1. International Human Rights instruments

The Universal Declaration of Human Rights of 1948 (UDHR)

UDHR is *not* a legally binding document; therefore states cannot be hold responsible for violating the rights set forward in the declaration.

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*.

Article 3: Everyone has the right to life, liberty and the security of person.⁸

Article 20(1): Everyone has the right to freedom of peaceful assembly and association.⁹

International Covenant on Civil and Political Rights

ICCPR is a legally binding document; hence individuals and organisations may refer their cases to the Human Rights Committee if they feel that state is violating the rights set forward in the Covenant. Nearly all the UN member states have signed and ratified the document.

⁸ Protects individuals from homophobic and transphobic violence.

⁹ This article is particularly important to note if authorities ban LGBTQ parades or marches.

Article 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*.¹⁰

Article 6: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.¹¹

Article 9: Everyone has the right to liberty and security of person.¹²

Article 19(2): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.¹³

Article 21: The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.¹⁴

Article 22(1): Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.¹⁵

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*.¹⁶

International Covenant on Economic, Social and Cultural Rights

ICESC is a legally binding document; hence individuals and organisations may refer their cases to the Human Rights Committee if they feel that state is violating the rights set forward in the Covenant. Nearly all the UN-member have signed and ratified the document.

Article 2: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*.¹⁷

¹⁰ Protects LGBTIQ individuals from discrimination.

¹¹ Protects individuals from homophobic and transphobic violence.

¹² Ibid.

¹³ This article is particularly important to note if authorities ban LGBTQ parades or marches.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ See reference 4.

¹⁷ Ibid.

Article 6: “The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”¹⁸

Article 12(1): “The States parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁹

Yogyakarta Principles

The Yogyakarta Principles is a set of principles relating to sexual orientation and gender identity, intended to apply international human rights law standards to address the abuse of the human rights of lesbian, gay, bisexual, and transgender (LGBT) people, and issues of intersexuality. In essence it applied the existing human rights framework to LGBT people. No state party has signed or ratified the principles, but many states use the principles to advocate LGBT rights, e.g. Finland.

2.2. European Human Rights instruments

European Convention on Human Rights

European Convention on Human Rights is perhaps the most important human rights instrument on the continent. The Convention established the European Court of Human Rights where any individual who feels that their rights have been violated under the Convention by a state party can take a case to the Court. Unlike at the UN treaty bodies, the judgments finding violations are binding to the States concerned and they are obliged to execute them. The convention includes all the articles that can be found in UN instruments, as well and therefore they will not be listed separately in this document.

Employment Equality Directive, 2000/78/EC

It bars discrimination in employment, sexual orientation is explicitly mentioned. It applies to all EU member states.

Charter of Fundamental Rights of the European Union

Following the entry into force of the Lisbon Treaty in 2009 the fundamental rights charter has the same legal value as the European Union treaties. The Charter however only applies to EU law, not domestic law.

Article 21(1): Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or **sexual orientation** shall be prohibited.

Council of Europe Convention on preventing and combating violence against women and domestic violence

Commissioner for Human Rights advertises the convention to be “the first legally binding international treaty to

¹⁸ Employment discrimination. The Committee on Economic, Social and Cultural Rights has stated that the Covenant “prohibits discrimination in access to and maintenance of employment on grounds of ... sexual orientation”; General Comment No. 18 (right to work), at para. 12(b)(1).

¹⁹ Health discrimination. The Committee has stated: that Covenant “proscribes any discrimination in access to health care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of . . . sexual orientation”; General Comment No. 14, at para. 18.

include explicitly both sexual orientation and gender identity as prohibited grounds of discrimination.”²⁰ However, only eighteen European states have signed the convention, which prohibits discrimination on grounds of sexual orientation and gender identity.²¹

Article 4(3): The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, **sexual orientation, gender identity**, age, state of health, disability, marital status, migrant or refugee status, or other status.

Recommendation CM/Rec(2010)5 of the Council of Europe Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity²²

In March 2010, Committee of Ministers approved a recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity. Although the nature of the instrument is not binding, the recommendation encourages member states to examine their policies and legislation and investigate if they fulfil the criteria implemented in the recommendation.

CHAPTER 3: Timeline of application of international human rights law to LGBTQ people

LGBTQ movements and individuals around the world have employed both international and human rights instruments to make their rights recognised. This chapter will give a short overview on the cases concerning LGBTQ individuals heard at the Human Rights Committee and the European Court of Human Rights. Please note that LGBTQ cases have been heard in other international courts as well (such as the Inter-American Court of Human Rights) and at the national level where international human rights treaties have been used to strengthen the case of LGBTQ applicants.

3.1. Case studies

European Court of Human Rights: Dudgeon v United Kingdom, 1982

Dudgeon v United Kingdom was the first major LGBTQ case at the international level. While England, Scotland and Wales had decriminalised homosexuality, Northern Ireland upheld its sodomy laws. Dudgeon appealed to ECtHR and claimed that his right to privacy was violated when he was arrested under the sodomy laws. In the end, the Court found that there was a violation of Article 8 of the European Convention on Human Rights which proclaims: “Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ...for the protection of health or morals....”

In its judgment of 1982 the Court highlighted that the decriminalization of same-sex activities does not imply approval of such acts and the Northern Ireland should not worry that scrapping down the sodomy laws would lead to an increase of (approving) homosexual acts (Dudgeon v. the UK § 61). However, the Court recognizes the reasons given by Northern Ireland for criminalization of same-sex acts are relevant even though disproportional

²⁰ Council of Europe, Commissioner for Human Rights. “Discrimination on grounds of sexual orientation and gender identity in Europe.” p. 38

²¹ “Convention on preventing and combating violence against women and domestic violence.” Council of Europe. <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=210&CM=1&DF=&CL=ENG> (accessed September 22, 2012).

²² <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

and claims that “there can be no denial that some degree of regulation of male homosexual conduct... by means of the criminal law can be justified as ‘necessary in a democratic society’” (Dudgeon v. the UK § 49).

The United Nations Human Rights Committee: *Toonen v. Australia, 1995*

Toonen v. Australia was rather similar case to *Dudgeon v. United Kingdom*. Tasmania was the only state in the federal Australia that had not abolished its sodomy laws and Toonen took his case to the Committee, claiming that his right to privacy had been violated. UNHRC noted that all laws criminalising homosexual acts have been repealed throughout Australia and “that, even in Tasmania, it is apparent that there is no consensus as to whether Sections 122 and 123 should also not be repealed” (*Toonen v. Australia* § 8.6). Furthermore the Committee noted that because the provisions are not currently enforced, it “implies that they are not deemed essential to the prosecution to the protection of morals in Tasmania” (*Ibid*). The Committee found that adult consensual sexual activity in private is covered by the concept of “privacy,” and that Toonen was affected by the continued existence of the Tasmanian laws, which continuously and directly interfered with his privacy, despite their lack of recent enforcement.

European Court of Human Rights: *Alekseyev v. Russia, 2010*

GayRussia has been active in using the existing human rights instruments to challenge the discriminatory policies of Russia and successfully has won one court against the state. Nikolay Alekseyev brought a case before the European Court of Human Rights concerning the forbidding of 2006, 2007 and 2008 gay pride marches in Moscow. The campaign for Freedom of Assembly was initiated in 2005 when Nikolai Alekseyev announced the launch of Moscow Pride for the following year. The mayor of Moscow Yuri Luzhkov banned the public actions of sexual and gender minorities repeatedly in the following years and GayRussia systematically appealed the prohibition of gay pride march through Russia courts before the case was brought to European Courts of Human Rights.

Alekseyev contested that the banning of gay pride march in Moscow was a violation of their right to freedom of assembly under article 13 of the European Convention on Human Rights and furthermore he argued that Russia failed to provide an effective remedy under Article 13 against the violation of Article 11. Additionally he argued that Russia breached Article 14 (protection against discrimination in access to rights under the Convention). The Court unanimously agreed that Russia had violated all of three stated articles, and disagreed with the Government on many accounts. One of the most remarkable aspects of the judgment was that the Court disagreed with Russia’s stand on lack of consensus between member states to legitimacy of homosexuality, emphasizing that there was a long-standing consensus on the matter and referring to cases such as *Dudgeon V. United Kingdom*, *Smith and Grady v. United Kingdom* and *Karner V. Austria*. The Court also highlighted that banning of pride marches was disproportional action as Russia’s reasoning behind the prohibition was protection of children and vulnerable adults from homosexual propaganda. It also dismissed Russia’s claim it was legitimate to ban the pride for conflicting with the moral values of the majority and religious doctrine.

The Court’s decision was similar in *Bączkowski and Others v Poland* where the Court ruled unanimously that the banning of an LGBT pride parade in Warsaw, locally known as the Parada Równości (Equality Parade), in 2005 was in violation of Articles 11, 13 and 14 of the European Convention on Human Rights. This was the first ruling that affirmed that banning LGBT pride parades goes against the right to freedom of assembly and association (which is guaranteed in many legally binding regional and international human rights treaties).

CHAPTER 4: Mainstreaming

The human rights movement has made a giant leap from the point where it was, for instance, 50 years ago to what it looks like nowadays in terms of the recognition and protection of rights of LGBTQ people. However, this has happened not due to the natural and voluntary evolution in the mentality of mankind and, moreover, state governments across the globe (people are still prosecuted and killed for their sexual orientation and/or gender identity and expression in many countries), but rather owing to the relentless and ongoing struggle against prejudice and discrimination of LGBTQ individuals themselves. It had been a long way until we finally heard and realised that LGBTQ rights are human rights and vice versa.

The phenomenon and, rather, process underlying this progress is called *mainstreaming* and is universally admitted, incorporated and promoted even by the United Nations²³. However, what has mainstreaming done to the advancement of LGBTQ equality and is there more room in the general human rights movement for LGBTQ individuals, especially for the youth? These are the questions we try to answer with our everyday activity. IGLYO strongly believes that incorporation of LGBTQ issues and search for their adequate redress in the mainstream human rights mechanisms and agendas is mandatory by the mere fact that all human beings are born free and equal in dignity and rights. When we talk about equality, we refer to its universality; hence, this principle must be applied to everybody regardless of any criteria, including sexual orientation and/or gender identity and expression.

In its human rights work, IGLYO strongly advocates for the holistic approach towards ensuring, protection and respect of rights of LGBTQ youth by decision and policy makers, international political institutions, national governments and international organisations in the context of the mainstream human rights agenda. With this being said, we should not, nevertheless, forget that the response to mainstreaming of LGBTQ rights is uneven. Some encompass the idea, some strain to accept it, some overtly oppose it and others simply keep away from it. The hurdles to successfully mainstream LGBTQ rights within the general human rights movement are numerous and requirements to overcome this situation are exacting.

That is why IGLYO is convinced that one of the ways to change current reality is to closely work international political institutions, structures, governmental and non-governmental organisations, as well as national governments, by means of lobbying and targeting them either separately or all together, in coalitions with other human rights platforms and civil society organisations or on its own. In this much demanding process, IGLYO relies on its member organisations, who work on the grassroots level. Another approach to mainstream LGBTQ rights is to work across areas, and this is what we are going to dwell on in the next chapter.

CHAPTER 5: IGLYO's approach across areas

The LGBTQ issues and the struggles for equal rights have become acknowledged not within a particular area of human rights but within the general human rights framework. The LGBTQ movement for universal human rights and equal treatment has given visibility and recognition to the importance of issues regarding sexual orientation and gender identity and expression. IGLYO, however, goes beyond this achievement because human rights issues intersect in many other ways.

Being the voice for LGBTQ youth and students from across Europe, IGLYO advocates for recognition and eradication of the multiple discrimination phenomenon, which affects young LGBTQ people who combine other identities or belong to other communities, too. Age, race, ethnicity, nationality, disability, religious belief and other criteria may overlap sexual orientation and gender identity and expression thus bringing issues of fundamental human rights and freedoms to the whole new dimension.

Likewise, IGLYO puts a particular focus on education, health, access to goods and services, employment and housing for LGBTQ youth and students in Europe and will be advocating for universal equality in this areas

²³ <http://www.ohchr.org/EN/NewYork/Pages/MainstreamingHR.aspx>



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together with other civil society actors representing different platforms. IGLYO commits to make LGBTQ youth and student visible in the agenda of various policy and decision makers, as well as to carry them through as many areas as possible.

When we look at the human rights and the overall discussion around them, it is important to recognise that human rights have evolved and grown to become more encompassing and more inclusive of people, thus serving truly to their principles of invisibility, inalienability and universality. We have seen that even though much has been accomplished throughout years since their solid settlement, many people still remain deprived of their fundamental rights and freedoms due to their sexual orientation and/or gender identity and expression. Freedom of assembly and association, freedom of speech, access to education, healthcare and employment, non-discrimination and marriage equality, legal gender recognition and adoption of children by same-sex couples, the right to physical and psychological integrity are the issues yet to be achieved in many parts of Europe.

We finish this paper by concluding that IGLYO is committed to make LGBTQ youth and student issues visible so that, as full citizens, we achieve the same rights and can be perceived as equal regardless of and regarding sexual orientation and/or gender identity.



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Recommendations

IGLYO calls on the Council of Europe to:

- Strengthen the implementation of Recommendation of Committee of Ministers to member states on measures combating discrimination on grounds of sexual orientation or gender identity;
- Reinforce its commitment to combating hate speech and hate crimes in Member States;
- Ensure that Member States uphold to the provisions of the European Convention on Human Rights, especially guaranteeing adequate realisation of rights to freedom of assembly and freedom of expression to LGBTQ groups and individuals.

IGLYO calls on the European Commission to:

- Produce EU roadmap for LGBT equality;
- Promote the passage of the Horizontal Equal Treatment Directive with the strongest language available to protect from discrimination on the grounds of sexual orientation, gender identity and age in accessing education, healthcare, goods and services, employment and housing.

IGLYO calls on national governments to:

- Enforce existing laws prohibiting discrimination on the grounds of sexual orientation and gender identity;
- Pass comprehensive legislation to ensure prohibition of discrimination on the grounds of sexual orientation and gender identity;
- Pass legislation regarding hate crime and violence which includes sexual orientation and gender identity as aggravating circumstances;
- Ensure realisation of the rights to freedom of assembly, association and expression by LGBTQ groups and individuals;
- Remove any requirements for trans people that go against liberty and an individual's ability to self-determine gender with respect to bodily integrity;
- Repeal, where they were adopted, laws prohibiting so-called "propaganda of homosexuality" and commit to non-discrimination of people regardless of their sexual orientation and/or gender identity and expression;
- Adopt marriage equality and provide adoption rights to same-sex couples.

IGLYO calls on its Member Organisations to:

- Challenge inequality based on sexual orientation and/or gender identity and expression by all legal means;
- Create or join civil society coalitions to better address human rights violations based on sexual orientation and/or gender identity and expression;
- Use international and European human rights instruments to tackle violation of human rights and discrimination based on sexual orientation and/or gender identity and expression.



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Appendix

Resources

- **Social exclusion of young lesbian, gay, bisexual and transgender people in Europe (2006)**

This joint report by IGLYO and ILGA-Europe highlights the effect that discrimination on the ground of sexual orientation and gender identity has on young LGBT people's capacity to be socially included and to become active citizens. It also raises awareness about the multiple forms of discrimination that interact to put young LGBT people at a particular disadvantage and risk of exclusion. Its electronic or printed version can be provided upon request to IGLYO office.

- **The Yogyakarta Principles: The Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2006)**

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia, to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfill that precious birthright. The Principles are presented on <http://www.yogyakartaprinciples.org> in all six United Nations languages.

- **Human Rights and Gender Identity: Issue Paper by Thomas Hammarberg, Council of Europe Commissioner for Human Rights (2009)**

This Issue Paper was commissioned and published by the Commissioner for Human Rights for the purpose of contributing to debate or further reflection on current and important human rights matter - gender identity and expression. The Issue Paper can be accessed here: <https://wcd.coe.int/ViewDoc.jsp?id=1476365>

- **Discrimination on grounds of sexual orientation and gender identity in Europe (2011)**

This comprehensive report is the largest study ever made on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the 47 member states of the Council of Europe. The findings are presented in six thematic chapters followed by forward-looking conclusions. The Council of Europe Commissioner for Human Rights' recommendations on the issues that emerged from the findings of the study can be found at the beginning of the report. The electronic copy of this report can be accessed here: http://www.coe.int/t/commissioner/Source/LGBT/LGBTStudy2011_en.pdf

- **Combating discrimination on grounds of sexual orientation or gender identity: Council of Europe standards (2011)**

This publication contains the relevant legal and political texts adopted by the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. It should serve as a reference for the governments, international institutions, non-governmental organisations, media professionals and to all those who are professionally or otherwise involved or interested in protecting and promoting the human rights of lesbian, gay, bisexual and transgender persons. The electronic copy of this document can be accessed here: http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/LGBT_en.pdf

- **Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law (2012)**

This is a booklet issued by the United Nations Office of the High Commissioner for Human Rights, which sets out the legal obligations that UN Member States have towards LGBT people. It is designated to contribute to the debate both at the global level and at a national level, which is where implementation needs to occur. The publication can be accessed here: <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>



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- **Towards an EU roadmap for equality on grounds of sexual orientation and gender identity (2012)**

This European Parliament's study presents an overview of problems faced by LGBTI persons as identified in EU studies, along with EU actions taken in this area to date. It focuses in particular on the areas of Equality (including in the fields of employment, health, education, access to goods and services and housing); specific trans and intersex issues; diverse families and freedom of movement; freedom of assembly and expression; hate speech, hate crime and violence; and fleeing homophobia and transphobia. Based on these findings, it proposes recommendations with a timeline which could be included in a roadmap for equality on grounds of sexual orientation and gender identity. The study can be accessed here: <http://www.lgbt-ep.eu/wp-content/uploads/2012/10/European-Parliament-Study-PE462.482-Towards-an-EU-roadmap-for-equality-on-grounds-of-sexual-orientation-and-gender-identity.pdf>

Links

Institutions in Europe working in the field of LGBT human rights

- **European Court of Human Rights:** http://www.echr.coe.int/echr/Homepage_EN
- **The Council of Europe's Commissioner for Human Rights:** http://www.coe.int/t/commissioner/default_en.asp
- **The Council of Europe's LGBT Thematic Page:** http://www.coe.int/t/dg4/lgbt/default_en.asp
- **European Union Agency for Fundamental Rights (FRA):** <http://fra.europa.eu/en>
- **The European Parliament Intergroup on LGBT Rights:** <http://www.lgbt-ep.eu/>

Office of the United Nations High Commissioner for Human Rights

- **Combating discrimination based on sexual orientation and gender identity:** <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>

Civil Society organisations working in the field of LGBT rights

- **ILGA Europe - The European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association:** <http://ilga-europe.org/>
- **ILGA - The International Lesbian, Gay, Bisexual, Trans and Intersex Association:** <http://ilga.org/>
- **Transgender Europe:** <http://www.tgeu.org/>
- **The European Commission on Sexual Orientation Law (ESCOL):** <http://www.sexualorientationlaw.eu/>
- **The International Gay & Lesbian Human Rights Commission (IGLHRC):** <http://www.iglhrc.org/cgi-bin/iowa/home/index.html>
- **ARC International:** <http://arc-international.net/>
- **The Committee for the International Day Against Homophobia and Transphobia (IDAHO):** <http://www.dayagainsthomophobia.org/-IDAHO-english,41->
- **Amnesty International - EU Office:** <http://www.amnesty.eu/en/home/>
- **Human Rights Watch:** <http://www.hrw.org/>



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