

Key legal trends in the protection of LGBT rights in the European Union 2008-2010

Article 21 falling under the 'Equality' Chapter of the Charter of Fundamental Rights of the European Union prohibits discrimination on grounds of sexual orientation.

Background

In 2007, the European Parliament requested the European Union Agency for Fundamental Rights (FRA) to conduct research on discrimination against lesbian, gay, bisexual and transgender (LGBT) persons. In 2008, the FRA published its first comparative legal analysis on homophobia, transphobia and discrimination based on sexual orientation and gender identity in the European Union. This factsheet outlines the key legal trends resulting from the updated legal analysis that the FRA undertook in 2010.

A report on the social situation of LGBT persons in the European Union was published in 2009 and more social research is foreseen for 2011 and 2012.

Key trends

The key legal trends that have occurred in the period 2008-2010 are illustrated by two graphs overleaf: Figure 1 differentiates between positive and negative trends touching upon key issues, while Figure 2 reflects the legal framework for the protection of LGBT rights in EU Member States. However, many EU Member States have not undertaken new legislative measures to protect LGBT rights since 2008.

Note: This overview does not refer to situations where no legal development or action could be observed. Therefore, it should only be taken as a specification of trends referring to changes actually observed in the period considered.

Trend 1: Highest number of positive initiatives in the field of equal treatment in free movement and family reunification law

The definition of 'family member' in legislation transposing EU law on free movement or on family reunification has been or is expected to be expanded in seven EU Member States – Austria, France, Hungary, Ireland, Luxembourg, Portugal, and Spain. Nevertheless, a negative trend has emerged in three EU Member States – Bulgaria,

Estonia and Romania – where same-sex marriages and partnerships contracted abroad are explicitly considered invalid, which makes it more difficult for same-sex spouses and partners to reunite. These trends highlight the conflicting approaches that persist in relation to free movement and family reunification of same-sex couples.

Trend 2: Substantial number of positive initiatives in asylum law

A positive trend has emerged in relation to the recognition of lesbian, gay and bisexual (LGB) people as a 'particular social group': With six additional EU Member States – Finland, Latvia, Malta, Poland, Portugal, and Spain – the total number of EU Member States that explicitly afford protection to LGB victims of persecution amounts to 23.

The legal update also reveals a negative practice in this area, namely the use of 'phallometric testing' in the Czech Republic as a method of assessing the credibility of a person claiming to be a gay man.

Trend 3: A mixture of positive and negative developments on freedom of assembly

While progress has been noted in Bulgaria, Poland and Romania, the right to organise pride events continues to be challenged in Latvia and Lithuania.

Trend 4: Moderate expansion of legal protection against sexual orientation and gender identity discrimination

A number of positive developments have been identified in this area, which may be specified as follows. There have been developments with regard to the extension of non-discrimination legislation covering sexual orientation beyond employment in the Czech Republic and the UK. In relation to the recognition of gender identity as autonomous ground or as 'sex' discrimination, positive changes have been observed in the Czech Republic, Sweden and the UK.

Finally, equality bodies in two Member States – Denmark and Estonia – have extended their mandate to cover sexual orientation discrimination.

Trend 5: Minimal increase in protection against abuse and violence (hate speech and hate crime)

Currently, there is no EU instrument to tackle expressions and crimes motivated by LGBT bias. While at the national level progress remains remarkably slow and uneven in this area, positive initiatives have emerged in Greece, Lithuania, Slovenia and the UK.

Trend 6: Setback with respect to freedom of expression

Lithuania appears isolated in its prohibition of dissemination of material that could be seen as ‘promoting’ homosexuality. In contrast, a number of EU Member States – Estonia, France, Germany, Netherlands, Spain and the UK – have chosen to actively promote the public acceptance of LGBT people.

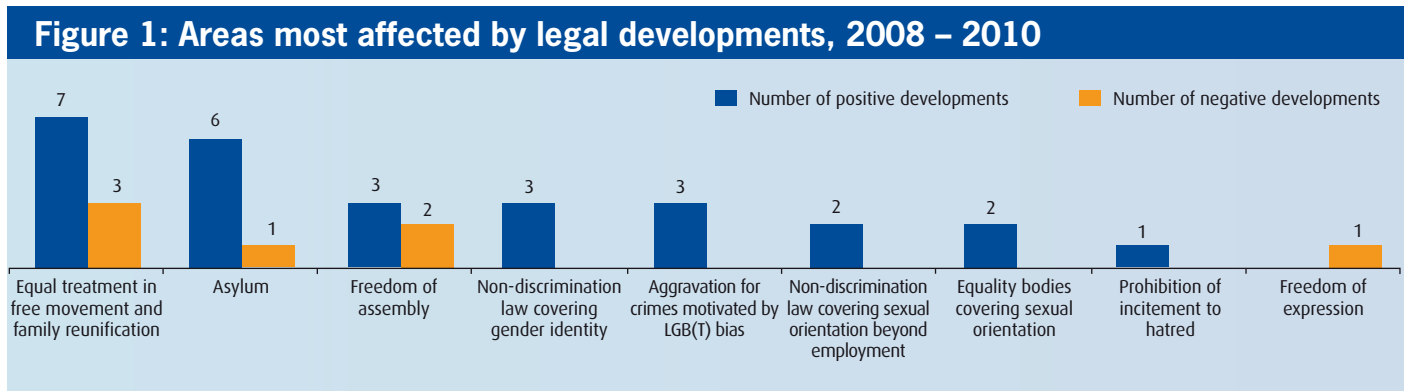


Figure 1 shows that the area most affected by both positive and negative legal changes is equal treatment of same-sex partners in free movement and family reunification. Other areas most affected by positive legal changes relate to asylum and freedom of assembly, which are also characterised by negative practices, and clarification of the protection for transgender people under non-discrimination law. Positive trends have been identified in the extension of non-discrimination law beyond employment, the mandate of equality bodies and criminal law. One negative development concerned freedom of expression.

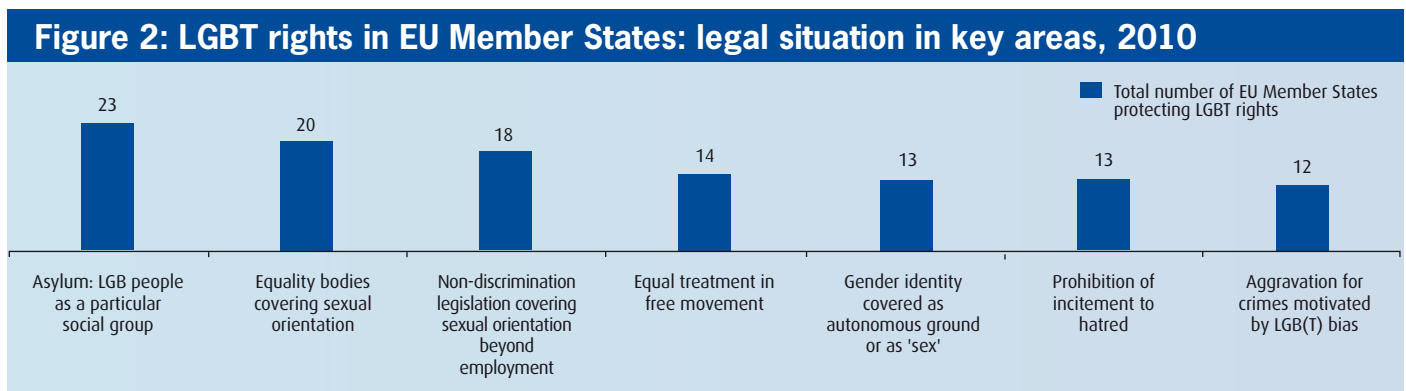


Figure 2 shows the mixed and uneven landscape in the protection of LGBT rights, existing both across the key areas considered and throughout the EU. It also shows, in a decreasing order, in which area LGBT rights are most protected in EU Member States (excluding employment, where all EU Member States provide for legal protection owing to Council Directive 2000/78/EC).

Further information:

The FRA comparative legal analysis *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity – 2010 Update* is online at: fra.europa.eu/fraWebsite/research/publications/publications_en.htm

An overview of FRA activities in the field of LGBT rights is available on the FRA website at: fra.europa.eu/fraWebsite/lgbt-rights/lgbt-rights_en.htm