



A “Living Instrument” For Everyone: The Role of the European Convention on Human Rights in Advancing Equality for LGBTI Persons

Conference to mark the 70th anniversary of the European Convention on Human Rights

Date	8 October 2020
Location	Seminar Room, Human Rights Building (avenue de l'Europe Strasbourg F-67075 France) Digital: livestream

CONCEPT NOTE

The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights (“the Convention”), opened for signature in Rome on 4 November 1950, is perhaps the most successful and illustrious international legal instrument in the history of humanity. It enshrines the view that common understanding and observance of human rights, together with an effective political democracy, are prerequisites for ensuring justice and peace on the European continent. The Convention catalogues the fundamental rights and freedoms that represent the core values of a liberal democracy and establishes a mechanism to hold the High Contracting Parties accountable at a supranational level for the violations of these rights imputable either directly or indirectly to a State.

This supervisory mechanism (“the Convention mechanism”) is a shared responsibility between the State Parties and the European Court of Human Rights (“the Court”), established on 21 January 1959 “to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and Protocols thereto”. The Court’s approach to the exercise of its powers to interpret the Convention is based on the premise that the latter is “a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic States today” in a manner “consistent with the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic state”. Over the course of the past seven decades, the Convention has evolved to reflect the rapid evolution of societal norms and attitudes in every area of human life, including sexual orientation and gender identity.

Sexual orientation and gender identity are aspects of who we are. To be denied the effective enjoyment of the right to freedom of private and/or family life, of expression, or of assembly, to be ostracised or assaulted on account of one’s perceived failure to fit in the strictly construed societal mould of gender roles is to be denied the opportunity to exercise autonomy over one’s life.

Equality, pluralism and tolerance are notions inherent in a democratic society. Seeing democracy as one of the most progressive achievements of humanity, the Court has consistently put a strong emphasis on the need to protect an individual from the oppression by the majority. In the Court’s own words, “although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position”.

The Convention mechanism is undeniably far from perfect. However, notwithstanding multiple limitations inherent in the functioning of a supranational arbiter, an application to the Court remains a powerful – and, in some instances, the only – tool to assert a claim to equality that has its practical uses. LGBTI persons within the jurisdiction of a Member State of the Council of Europe seeking redress against alleged violations of the rights and freedoms guaranteed by the Convention have a vested interest in accessing information on examples of a successful litigation of a case involving a SOGIESC element.

The primary purpose of the Conference is to celebrate the achievements in advancing equality for LGBTI persons with a view to bringing a SOGIESC issue before national jurisdictions and before the Court. It is addressed both to legal professionals and members of the general public interested in the topic. Another important aim of this Conference is to bring together a wide range of actors, including Judges of the Court, representatives of various bodies of the Council of Europe, and representatives of civil society with a view to approach the themes under discussion in a transversal manner.

The Conference will focus on three major topics: (i) the situation of transgender persons; (ii) same sex civil unions and equal marriage; (iii) hate speech directed at LGBTI persons.

PROGRAMME

Venue	Seminar Room (Human Rights Building, rez-de-jardin)
Time	9.20 a.m. – 3.10 p.m. Central European Time
9 a.m.	Registration of the participants present on-site
9.20 a.m.	Screening of a short film
9.30 a.m.	<p>Opening remarks Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe Mariarena Tsirli, Deputy Registrar and Registrar-elect of the ECHR</p> <p>Moderator Eleni Tsetsekou, Head of the SOGI Unit</p>
9.45 a.m.	<p>Keynote speech Robert Spano, President of the European Court of Human Rights</p>
10.10 a.m.	<p>Panel I</p> <p><i>The long road to ensuring respect for human dignity of transgender persons: Christine Goodwin v. the United Kingdom and the Court's subsequent case-law</i></p> <p>Moderator Jeroen Schokkenbroek, Director of Anti-Discrimination, Council of Europe</p> <p>The <i>Christine Goodwin</i> judgment was a remarkable success when it was adopted in 2002. It gave momentum to an important reform at the national level that resulted in the adoption of the UK Gender Recognition Act 2004. Moreover, this judgment played a pivotal role in the success of the litigation brought by Ms Lydia Foy before the Irish courts, which, in its turn, led to the adoption of the Irish Gender Recognition Act 2015. However, the <i>Christine Goodwin</i> judgment was a milestone on the long road, not the end of it. Has Europe made further advances as regards equality for transgender persons?</p>
10.15 a.m.	Michael Farrell , First Vice-Chair, European Commission against Racism and Intolerance; Counsel to Ms Lydia Foy, <i>via videoconference</i>

10.30 a.m.	Clare Brown , Head of Section, Department for the Execution of Judgments of the ECHR, <i>via videoconference</i>
10.45 a.m.	Masen Davis , Interim Executive Director, TGEU, <i>via videoconference</i>
11 a.m.	Questions and Answers
11.15 a.m.	Break: disinfection of the room
11.30 a.m. Panel II	<p>Oliari and Others v. Italy – a success story in the field of recognition and protection of same-sex civil unions</p> <p>Moderator Breifne O’Reilly, Ambassador, Permanent Representative of Ireland to the Council of Europe</p> <p>The <i>Oliari and Others</i> judgment and the <i>Legge Cirinnà</i> adopted in response to it give a brilliant example of the capacity of the Convention human-rights protection mechanism to bring about an important societal change in a relatively short span of time through close cooperation between various actors responsible for the mechanism (in particular, the Court itself, the Department for the Execution of Judgments of the ECHR, and the national authorities). Could this successful example be reproduced in the Member States of the Council of Europe that have not granted legal recognition to same-sex couples?</p>
11.35 a.m.	Yonko Grozev , Judge and Section President, European Court of Human Rights
11.50 a.m.	Robert Wintemute , Professor of Human Rights Law, School of Law, King’s College London
12.05 p.m.	Matteo Fiori , Lawyer, Department for the Execution of Judgments of the ECHR
12.20 p.m.	Giuseppe Maria Mezzapesa , Counsellor, Italian Court of Audit, and expert of UNAR – Italian Equality Body, <i>via videoconference</i>
12.30 p.m.	Géraldine Mattioli-Zeltner , Adviser, Office of the Commissioner for Human Rights
12.40 p.m.	Questions and Answers
1 p.m.	Lunch break
2 p.m. Panel III	<p>Hate speech directed at LGBTI persons: a new frontier. Cases of Beizaras and Levickas v. Lithuania and Lilliendahl v. Iceland</p> <p>Moderator Nina Nordström, Ambassador, Permanent Representative of Finland to the Council of Europe</p> <p>Freedom of expression is undoubtedly one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment, but does it include the right to verbally attack another person solely because of their sexual orientation or gender identity? In 2020, the Court’s answer is an emphatic ‘no’. In two recently adopted ground-breaking legal acts, the <i>Beizaras and Levickas v. Lithuania</i> judgment and the <i>Lilliendahl v. Iceland</i> decision, the Court took a stand against hurtful and hateful online comments directed at LGBTI persons.</p>

2.05 p.m.	Egidijus Kūris , Judge, European Court of Human Rights
2.20 p.m.	Arpi Avetisyan , Senior Litigation Officer, ILGA-Europe, <i>via videoconference</i>
2.35 p.m.	Patrick Penninckx , Head of Information Society Department, Council of Europe
2.50 p.m.	Questions and Answers
3 p.m.	Concluding remarks Tatiana Trussevits , Legal Advisor, SOGI Unit