

“Trade Unions against Discrimination”
ETUC project

5th Learning Seminar on LGBTIQ

Background document

1. International legal framework

The protection of LGBTQI+ persons is closely connected to the normative framework on anti-discrimination. At the global level, the Universal Declaration of Human Rights¹ (UDHR) of 1948 is the primary source; the principle of non-discrimination is also embodied in Articles 2 and 26 of the **International Covenant on Civil and Political Rights**² (ICCPR) and Article 2 of the **International Covenant on Economic, Social and Cultural Rights**³ (ICESCR). It may be argued that the normative development of LGBTQI+ rights over the years, and during the 2000s in particular, has been based on the interpretative extension of the ICCPR. In its 1994 decision in **Toonen v. Australia**⁴, the UN Human Rights Committee — which is responsible for the ICCPR — declared that laws criminalizing consensual same-sex relations between adults are in violation of international human rights law.

In December 2008 United Nations General Assembly (UNGA) made a **Statement on human rights, sexual orientation and gender identity**, supported by 68 countries from five continents. The Statement reaffirms the principle of non-discrimination and condemns executions, arbitrary arrest or violations of human rights on the basis of sexual orientation or gender identity. The fight against the most serious forms of human rights violation – explicitly discriminatory laws and institutional violence included – was also at the heart of repeated resolutions by the UN General Assembly⁵.

In the course of the 2000s, the efforts of UN agencies and bodies led to important developments and to an expansion of LGBTQI+ rights. A crucial step was the elaboration of the so-called **Yogyakarta principles**⁶. This is a non-binding interpretive text elaborated by a gathering of independent human rights experts in 2006; on 10 November 2017 a panel of experts published additional principles expanding on the original document and reflecting developments in international human rights law and practice since the 2006 Principles⁷. The new document also contained 111 “additional state obligations”, related to areas such as torture, asylum, privacy, health and the protection of human rights defenders. The Yogyakarta principles are intrinsically

¹ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

² <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

⁴ UN Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994), <https://juris.ohchr.org/casedetails/702/en-US>.

⁵ <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/united-nations-resolutions-sexual-orientation-gender-identity-and-sex-characteristics>

⁶ <https://yogyakartaprinciples.org/>

⁷ The Yogyakarta Principles plus 10: <http://yogyakartaprinciples.org/principles-en/yp10/>

intersectional, as they affirm “that sexual orientation, gender identity, gender expression and sex characteristics are each distinct and intersectional grounds of discrimination, and that they may be, and commonly are, compounded by discrimination on other grounds including race, ethnicity, indigeneity, sex, gender, language, religion, belief, political or other opinion, nationality, national or social origin, economic and social situation, birth, age, disability, health (including HIV status), migration, marital or family status, being a human rights defender or other status.”

The issue of health and access of LGBTQI+ persons to the health system has been tackled by the WHO. In 2022, a **Guideline Development Group⁸ (GDG)** has been set up to develop health policy guidelines for “trans and gender diverse people”: the guideline (still under development) aims to address specific health challenges that negatively impact the rights of trans and gender diverse adults in accessing quality health services, undermining their quality of life and life expectancy. This new guideline will focus on 5 areas: “provision of gender-affirming care, including hormones relating to adults; health worker education on and training for the provision of gender-inclusive care; provision of health care for trans and gender diverse people who have suffered interpersonal violence, based on their needs; health policies that support gender-inclusive care; and legal recognition of self-determined gender identity for adults”. Protecting physical and psychological health is crucial, also in terms of the adverse effects that the so-called “conversion therapies” may have on LGBTQI+ people and, to a disproportionate extent, on younger persons⁹.

With regard to inclusion and rights protection in the sphere of labour, the ILO produced a training guide: **Inclusion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in the world of work¹⁰**. The guide focuses on the need to move “from policy to practice” and is specifically aimed at governments, employers' organisations and businesses, trade unions and workers. On the role that trade unions can play, the need for forms of representation and freedom of association is highlighted, along with the positive potential that collective bargaining can play.

2. Legislation at European level

In EU law, the fight against LGBTQI+ discrimination is part of the broader framework to combat all forms of discrimination, included sexual orientation, promoted by the European Union through a series of directives and regulations aimed at protecting the fundamental rights of all.

The EU legal framework on combating LGBTQI+ discrimination is based on:

⁸ <https://www.who.int/news/item/20-06-2024-update-on-the-guideline-development-group-on-the-health-of-trans-and-gender-diverse-people>

⁹ UN Special Procedures, Independent Expert on sexual orientation and gender identity, *Report on conversion therapy*, <https://www.ohchr.org/en/calls-for-input/report-conversion-therapy>

¹⁰ https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40gender/documents/publication/wcms_846108.pdf

- The **Treaty on the Functioning of European Union** (TFUE, art. 10)¹¹, together with the **Charter of Fundamental Rights** (art.21)¹², lays the ground to implement the policies and regulations aimed at preventing discrimination all discrimination forms, sexual orientation and gender identity discrimination included.
- **Directive (2000/78/EC)**¹³, establishing the general framework for equal treatment in employment and occupation, adopts an intersectional approach to prohibiting all discrimination, including discrimination based on sexual orientation and gender identity.
- **Directive (2012/29/EU) on victims' Rights**¹⁴ provides protection to victims of crime, including persons who are victims of violence based on sexual orientation or gender identity.
- **Recommendation CM2010(05)**¹⁵ of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. The content of the Recommendation covers measures to ensure the rights of LGBTQI+ persons in a number of areas including: employment; education, health; housing; combating hate crimes; the right to freedom of association; the right to respect for private and family life. As regards employment: "member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimization".

Over the last decade, several **resolutions**¹⁶ have been adopted by the **European Parliament** against homophobia and discrimination related to sexual orientation and gender identity, calling on the

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT>

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT> The Charter of Fundamental Rights of the European Union prohibits all forms of discrimination, including discrimination by racial and ethnic origin, religion, disability, age and sexual orientation.

¹³ *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0078> The Directive, in addition to equal treatment at work between men and women, focuses in Articles 10, 11 and 12 on the prohibition of direct and indirect discrimination at work based on religion or belief, racial and ethnic origin, disability, age or sexual orientation.

¹⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

¹⁵ [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%2209000016805cf40a%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%2209000016805cf40a%22],%22sort%22:[%22CoEValidationDate%20Descending%22]})

¹⁶ *European Parliament resolution of 4 February 2014 on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity* (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014IP0062>); *List of actions by the Commission to advance LGBTI equality adopted in 2016* https://commission.europa.eu/system/files/2017-06/lgbti-actionlist-dg-just_en.pdf; *European Parliament Resolution of February 2019 on The future of the LGBTI List of Actions (2019-2024)* https://www.europarl.europa.eu/doceo/document/TA-8-2019-0129_EN.html; *European Parliament resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones* (https://www.europarl.europa.eu/doceo/document/TA-9-2019-0101_EN.html); *European Parliament resolution of 14 February 2019 on the rights of intersex people* (https://www.europarl.europa.eu/doceo/document/TA-8-2019-0128_EN.html); *European Parliament resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone* (https://www.europarl.europa.eu/doceo/document/TA-9-2021-0089_EN.html).

Commission to guarantee the rights of LGBTQI+ persons, adopt a strategic approach promoting equality for LGBTQI+ people, and adopt an intersectional perspective in its future work on LGBTQI+ rights. On 6 July 2022, the European Parliament adopted a Resolution entitled **Intersectional discrimination in the EU: socio-economic situation of women of African, Middle-Eastern, Latin American and Asian descent**¹⁷. The resolution highlights the specific struggles that trans and LGBTI people face in accessing education, employment, healthcare and *housing*. The resolution also makes specific recommendations for trans people, including targeted campaigns to combat discrimination in the labour market, especially for trans migrants and asylum seekers. The resolution includes a definition of what intersectional discrimination means and why using this as a lens through which to consider all policy helps to address inequalities from a comprehensive, systemic and structural perspective : “whereas many women face intersecting inequalities and discrimination in the EU; whereas intersectional discrimination refers to a situation in which several grounds of discrimination operate and interact with each other, for example gender with other grounds of discrimination, such as race, colour, ethnic or socio-economic status, age, sexual orientation, gender identity and expression, sex characteristics, genetic features, religion or belief, nationality, residence status, migrant background, or disability, among others, in a way that is inseparable and produces specific types of discrimination”.

On this basis, on November 2020, the European Commission released **the LGBTIQ Equality Strategy 2020-2025**¹⁸. The Strategy promotes equality and protection of LGBTQI+ people's rights and focuses on four main pillars: 1) tackling discrimination against LGBTIQ people; 2) Ensuring LGBTIQ people's safety; 3) Building LGBTIQ inclusive societies; 4) Leading the call for LGBTIQ equality around the world. The strategy promotes an *intersectional perspective*: discrimination affects LGBTIQ people at every stage of life, including employment, job searching, career, and retirement, despite European laws protecting rights. Many face difficulties in finding stable and fair jobs, increasing the risk of poverty, social exclusion, and homelessness. Discrimination based on sexual orientation, gender identity/expression, and sexual characteristics also impacts the physical, mental, and sexual health, as well as the overall well-being of LGBTIQ people. On 25 September 2024, the European Commission published a report on the **Implementation of the LGBTIQ Equality Strategy 2020-2025**¹⁹; the EC noted that “social acceptance of LGBTIQ people” has increased, and that “LGBTIQ people are more open about their sexual orientation, gender identity or sex characteristics in their social environment than in 2019”. However, the report also noted an increased risk of violence and hate speech, along with growing distrust for institutions: “unreported incidents of discrimination, violence and harassment were common among the respondents, coupled with a prevailing lack of confidence in governmental efforts to counter prejudice and intolerance”.

¹⁷ <https://tgeu.org/eu-parliament-intersectional-discrimination-resolution/>

¹⁸ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en

¹⁹ Report on the implementation of the LGBTIQ Equality Strategy 2020-2025, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en

In July 2024, the President of the Commission, Ursula Von der Leyen, presented the political guidelines for the next European Commission 2024-2029²⁰ in which she recalled the achievements of the **Union of Equality strategy** while also highlighting that “equality is not yet a reality. We must continue to do more for everyone to live, thrive and lead, regardless of who they are”. The political guidelines announce the post-2025 initiatives: an updated strategy on LGBTIQ equality and developing a new anti-racism strategy and new Gender Equality Strategy.

Finally, the Court of Justice of the European Union (**CGEU**) has taken important action over the years to combat discrimination on the grounds of sexual orientation and gender identity, issuing significant judgments aimed at guaranteeing the rights of LGBTIQ+ workers²¹, and protecting the rights of the children of same-sex couples²².

For many years the approval of the “Horizontal Directive”²³ on combating discrimination has been awaited. The Commission’s delay has been repeatedly criticised by ETUC, civil society organisations and the European Parliament itself²⁴.

3. Trade unions

In recent years, ETUC has strengthened its commitment for the promotion of LGBTIQ+ rights. In 2017, to celebrate union participation to the Europride, the **Madrid Declaration - The Rights Of LGBTIQ* People in the Workplace**²⁵ defined the agenda of priorities for both trade unions and European and national institutions: full transposition and implementation of the existing EC Directives and approval of the “Horizontal Directive”, as much as inclusion of anti-discrimination issues in collective bargaining, connection between labour rights and civil rights, and promotion of a greater cultural awareness among social partners.

“**LGBTIQ rights are trade union rights!**”²⁶ is the title of the document adopted in 2021 by ETUC's Executive Committee, which lays down the European confederation's position on the **EU Strategy**

²⁰https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf p. 20

²¹ Case P v S (1996): The Court ruled that the dismissal of a transgender person constitutes discrimination based on sex <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A61994CJ0013>

²² Case Coman and Hamilton (2018): the judgment established that member states must recognise residence rights for same-sex spouses of EU citizens, even if same-sex marriages are not legally recognised in their territory. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CA0673>

²³ <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-anti-discrimination-directive?sid=8801>

²⁴ European Parliament resolution of 19 April 2023 on combating discrimination in the EU – the long-awaited horizontal anti-discrimination directive (2023/2582(RSP), https://www.europarl.europa.eu/doceo/document/TA-9-2023-0111_EN.html

²⁵ ETUC, Madrid Declaration on 'The Rights of LGBTIQ* People in the Workplace', <https://www.etuc.org/en/document/madrid-declaration-rights-lgbtqi-people-workplace>

²⁶ *LGBTIQ rights are trade union rights! ETUC position on the EU Strategy for lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) equality 2020-2025*, Adopted at the Executive Committee Meeting of 3-4 June 2021, <https://www.etuc.org/en/document/lgbtiq-rights-are-trade-union-rights-etuc-position-eu-strategy-lesbian-gay-bisexual-trans>

for lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) equality 2020-2025²⁷.

ETUC welcomes and praises the European Commission's commitment while *“the Trade Union (TU) movement notices, with disappointment, that the strategy did not mention TUs as partner for cooperation, nor does it recognise their important role when it comes to registering progress in eliminating discrimination at the workplace”*. While the importance *“to combat hate crime, hate speech and violence directed at LGBTIQ people”* is underlined, the difficulties emerging in the current European social and political context are also emphasised: *“progress of anti-discrimination legislation has stopped, and the existing protection and rights, not exclusively but especially regarding pathways to legal gender recognition, are eroding due to a backlash from forces of intolerance”*.

ETUC expressed satisfaction with the European Commission's willingness to ensure a more rigorous enforcement by member states of the **Employment Equality Directive**²⁸ of 2000, but reiterated the need to involve trade unions so as to achieve *“inclusive workplaces, where a person's sexual orientation and gender identity, gender expression or variation in sex characteristics must never be a barrier to decent working conditions and a safe working environment”*.

The emphasis on rights in the workplace does not neglect the external social, institutional, and personal dimensions. Discrimination of LGBTIQ+ workers runs deep in society, and an intersectional approach can help recognising these root causes: *“discrimination does not stop at the company's doorstep and trade union representatives must be particularly vigilant in combating all forms of discrimination, including multiple discrimination. Discrimination in the labour market - whether in recruitment, in carrying out work or in career advancement - for being a woman, having/belonging to ethnic minority, being young or having a disability can combine with homophobia and transphobia and must be fought at the same level”*.

ETUC is committed to increasing its affiliates' efforts to build more inclusive trade unions by way of cultural and organisational advancements, but above all the European confederation insists on the need to advance LGBTIQ+ rights in the world of work through the means of collective bargaining, in light of the intersection between the dimensions of social life and multiple discrimination experienced by LGBTIQ+ persons: *“collective bargaining is a vital tool for affirming LGBTIQ rights in all spheres of private, family, social and working life. The ETUC will promote collective agreements in the broader fight against all kind of discrimination in the workplace”*.

Support for LGBTIQ+ rights is part of the long-term commitment of ETUC and its affiliates to build more inclusive and more attractive trade unions for workers²⁹. As stated in the **ETUC Action Programme 2023-2027**³⁰, the renewal of trade unions should follow a multidimensional and

²⁷ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en

²⁸ https://employment-social-affairs.ec.europa.eu/policies-and-activities/rights-work/tackling-discrimination-work/legislation-employment-equality-directive-200078ec_en

²⁹ At least since the Paris (2019) and Vienna (2023) Congresses, in addition to the training and research programs developed over the last decade by ETUI.

³⁰ *Etuc Action Programme 2023-2027. Adopted by the Etuc 15th Statutory Congress (Berlin, 23-26 May 2023)*, https://www.etuc.org/sites/default/files/document/file/2023-06/ETUC%20Action%20Programme_Together%20for%20a%20Fair%20Deal%20for%20Workers_0.pdf

intersectional strategy: “ensure that workplaces and trade unions are safe and inclusive places for women, people of colour, workers with disabilities and members of the LGBTI community”. This must have concrete consequences in terms of internal rules, union training, organising strategies, promotion of a leadership open to diversity, and this approach should be reflected in all aspects of union life and action: “building on the ETUC Code of Conduct and in line with the ETUC Charter of Values, the ETUC will actively promote inclusive trade unions. Trade unions have to represent society and organize and be a safe place for women, people of colour, the LGBTI community and workers with disabilities. Together with ETUI, the ETUC will develop training on organising and attracting members. The ETUC will promote, with ETUI, trade union leadership programs for female trade unionists, of colour, LGBTI and with disabilities”. The emphasis on collective bargaining is confirmed, in line with the Madrid Declaration of 2017 which already considered it essential to defend LGBTQI+ rights: “social partner involvement and collective bargaining as vital tools for affirming LGBTQI* rights in all possible spheres of private, family, social and working life”.

4. Let’s start thinking about... LGBTQI+ and intersectionality

A slightly lower percentage of LGBTQI+ persons in Europe say they experienced discrimination in social life and at work; at the same time, however, trust in governments has diminished and aggression, violence, ill-treatment and abuse in a wide range of social contexts have increased. The intersectional nature of discrimination against LGBTQI + people also emerges:

LGBTIQ people often feel discriminated against on several grounds based on multiple and intersecting characteristics. One in seven (14 %) of the respondents who feel discriminated against as LGBTIQ people mention ‘disability’, 9 % indicate ‘religion or belief’ and 7 % cite their ‘ethnic or immigrant background’ as additional grounds for discrimination.³¹

People belonging to groups that are particularly vulnerable to discrimination (disabled people, persons with low levels of education, refugees, people with a migrant background) are more easily discriminated against if they are also LGBTQI+ persons:

More respondents who define themselves as asylum seekers or refugees reported experiencing discrimination because of being LGBTIQ (54 %) than those who do not identify as such (37 %). A similar tendency can be observed for those who identify as minority in terms of religion (47 % v 37 %), ethnicity or migrant background (43 % v 37 %) and in terms of skin colour (43 % v 37 %).³²

The social and economic status of LGBTQI+ people, especially when intersected with other conditions (migrant status/background, ethnicity), can make them more vulnerable to discrimination, harassment and abuse, including with regard to their employment status and consequent access to public and welfare services:

³¹ FRA – European Union Agency for fundamental Rights, *LGBTIQ at a crossroads: progress and challenges*, <https://fra.europa.eu/en/publication/2024/lgbtiq-crossroads-progress-and-challenges#publication-tab-1>

³² Id.

An individual who identifies as LGBTI and is also from a migrant community outside of the EU may face discrimination in employment due to their SOGIESC³³, as well as discrimination due to their ethnicity, migration status or religion. This may lead to them being less likely to be in paid work and more likely to do unpaid or volunteer work, creating additional disadvantages. These economic disadvantages, in turn, can lead to difficulties accessing healthcare services or finding suitable housing, further compounding the effects of discrimination and disadvantage.³⁴

³³ Sexual Orientation, Gender Identity and Expression, and Sex Characteristics.

³⁴ ILGA Europe, Equinox Initiative for Racial Justice, *Intersections: The LGBTI II Survey – Migrant and Racial, Ethnic and Religious Minorities Analysis*, <https://www.ilga-europe.org/report/intersections-migrant-racial-ethnic-religious-minorities-diving-into-the-fra-lgbti-ii-survey-data/>