



CHALLENGE PAPER

Towards LGBTI+ sensitive justice systems for children in Europe

Executive Summary

The Challenge Paper “**Towards LGBTI+ sensitive justice systems for children in Europe**” seeks to gather child justice and LGBTI+ experts and practitioners to examine the barriers that LGBTI+ children face when in contact with justice systems, and propose concrete actions to address these challenges.

While acknowledging the lack of research and data on the experiences of LGBTI+ children in the justice systems in Europe, we want to encourage experts to fill this gap, and professionals to start a discussion about **systems** that are at the same time **child-rights based and LGBTI+ sensitive**. As a matter of fact, the situation that emerges from the data available about experiences of discrimination of LGBTI+ people and LGBTI+ children across Europe, in different settings, is concerning and calls for immediate action.

Lesbian, gay, bisexual, transgender, intersex and gender nonconforming (LGBTI+) children across Europe still experience a number of significant obstacles and barriers in the fulfillment of their rights. A general lack of positive narratives about non-heterosexual sexual orientations and gender non-conformity, and about LGBTI+ children’s needs and stories are still highly prevalent across Europe.

The largest survey on the experiences of discrimination for LGBTI people in the EU and North Macedonia and Serbia, conducted by the European Union Agency for Fundamental Rights (FRA) in 2019, gives the most comprehensive account at European level, including children between 15 and 17 years.¹ The survey showed that LGBTI+ people in the EU face significant levels of discrimination, harassment, hate speech and violence, to the detriment of the full enjoyment of their fundamental rights.

For children, even just being perceived as LGBTI+ is still one of the major causes of **violence in school**², and when they identify themselves as LGBTI+ is cause of **rejection from their families, stigmatisation and exclusion within the community**. Furthermore, lack of understanding and sensitisation among adults and professionals makes LGBTI+ children who enter in contact with the justice and the child protection systems exposed to (further) victimisation.

¹ European Union Agency for Fundamental Rights, A Long Way to Go for LGBTI Equality. (LU: Publications Office, 2020), <https://data.europa.eu/doi/10.2811/582502>: this report presents select findings from FRA’s 2019 survey on LGBTI people in the EU and North Macedonia and Serbia, that involved almost 140,000 participants. Besides being the largest survey of this kind in the EU, it finally includes contrary the age category between 15 and 17, as well as intersex people – not included in the previous FRA survey.
² UN Special Representative of the Secretary-General on Violence Against Children, <https://violenceagainstchildren.un.org/content/most-vulnerable-children>

Key data and basic facts available about these experiences of discrimination of LGBTI+ children in different settings of their life include:³

- ➔ **53%** of children aged 15-17 have experienced **discrimination in some area of life**. The rate is even higher for trans (69%) and intersex (62%) respondents aged 15 to 17 (FRA, 2019)
- ➔ **47%** of children aged 15-17 experienced, in the year before the survey, **harassment** for being LGBTI. Among all respondents, trans (48%) and intersex (42%) indicate the highest rates of harassment (FRA, 2019)
- ➔ **37%** of children aged 15 to 17 are almost **never open about being LGBTI** (FRA, 2019)
- ➔ **Sex-“normalizing” surgeries on intersex children** are still very common across countries, often leading to long-term psychological trauma.⁴
- ➔ **Only 4 countries in Europe officially banned “conversion therapies”**, defined as “treatments aimed at changing a person’s sexual orientation or gender identity”⁵
- ➔ An estimated **20% to 40% of teenagers who are homeless identify as LGBTQ**, compared with 4% to 10% of non-homeless peers (Missing Children Europe 2020)⁶
- ➔ **4%** all the incidents of harassment reported during the FRA survey were **reported to the police**. 10% of the incidents of such harassment were not reported anywhere. (FRA 2019)
- ➔ **About 25%** of all respondents in the EU mentioned **fear of a homophobic and/or transphobic reaction from police** as the reason for not reporting a physical or sexual attack. This increases to **32%** for trans respondents across the EU (FRA 2019)

When it comes to justice systems, a growing body of research shows the harmful effects of detention and of the justice proceeding itself on all children – regardless of their individual characteristics – but also how being part of a minority group adds an additional layer to the risk of being victimised and of seeing their rights not fully upheld.⁷ **Discrimination in the justice system** (including in detention practices) is in fact **widespread and remains inadequately addressed**.⁸ Specifically, the **discrimination against LGBTI+ children within the justice system remains a significant issue that needs to be addressed** with urgency by the international community. The **lack of data in Europe is thus a great challenge** for documenting the experiences of these children and designing appropriate responses within the justice system, institutions of care, support frameworks and other settings.⁹

Non-discrimination is a fundamental right of all children, as one of the guiding principles of the CRC, (art.2) and it is central in effective access to justice and child friendly justice. Discrimination based on sexual orientation, gender identity or sex characteristics is prohibited under CoE and EU law. **Under EU law, both gender equality and anti-discrimination legal frameworks are key regarding fundamental rights of LGBTI+ children:** the first apply to discrimination based on gender (including gender reassignment) and the second apply to discrimination based on sexual orientation.

Regarding access to a fair justice for LGBTI+ children, the **CoE framework clearly addresses discrimination, and the Child-Friendly Justice Guidelines provide that the rights of children shall be secured without discrimination** on any ground such as sex, sexual orientation or gender identity.

Seeking LGBTI+ sensitive justice systems for children in Europe means, in other words, seeking the implementation of their rights under international law. It implies, among others:

- Non prosecution (civil or criminal) based on gender identity, expression or sexual orientation
- Non-discriminatory proceedings and fair disposition of justice

³ Other fundamental data and facts about the realities of LGBTI+ people, including children, come from key stakeholders in Europe who document the experiences and protect the rights of LGBTI+ people: ILGA Europe, IGLYO, Transgender Europe (TGEU) and OII Europe.

⁴ ILGA and OII Europe, Protecting intersex people in Europe: a toolkit for law and policymakers, 2019. According to the FRA survey, 62% of intersex respondents were subjected to surgery without any prior, full informed consent. (FRA, 2019)

⁵ European Parliamentary Research Service, Bans on conversion ‘therapies’ The situation in selected EU Member States, 2022.

⁶ Missing Children Europe, Figures and trends 2020 from hotlines for missing children and cross-border family mediators. not based on MCE research. This data comes from the American academy of paediatrics. <https://publications.aap.org/pediatrics/article/145/2/e20193752/68225/Runaway-Youth-Caring-for-the-Nation-s-Largest?autologincheck=redirected?nfToken=00000000-0000-0000-0000-000000000000>.

⁷ MacAra, L., and McVie, S., Youth Justice? The impact of system contact on patterns of desistance from offending, European Journal of Criminology, Volume 4 (3): 315–345, 2007; Petrosino, A., Turpin-Petrosino, C., Hollis-Peel, M.E., and Lavenberg, J.G., Formal processing of juveniles: effects on delinquency, Campbell review 2010; UN Global Study on Children Deprived of Liberty, 2019

⁸ UN Global Study on Children Deprived of Liberty, 2019

⁹ UN Global Study on Children Deprived of Liberty, 2019, p. 242

- Access to child-friendly and LGBTI+ sensitive procedures of individual assessment to identify their specific needs and strengths, with their best interests as primary consideration and in full compliance with their right to privacy and with their rights to a fair justice
- Access to effective remedies in case of violation of their rights
- Special protective measures especially in situation of deprivation of liberty
- A suitable asylum framework, accountability for human rights violations, monitoring and documentation of human rights violations of LGBTI+ children

This paper aims to shed the light on this challenge and to start from the available data and from the direct expertise of child justice and LGBTI+ experts, to bring to the **attention of policy makers and professionals working with children which are the specific needs of and barriers that LGBTI+ children can and do experience when they enter in contact with the justice systems.**

The objective of this paper is to **raise awareness about the different shapes that discrimination against LGBTI+ children involved in criminal and administrative proceedings can take**, and thus to **propose an LGBTI+ sensitive, child-rights-based and child-centred frame** that is aware of the intersectionality between gender identity, sexual orientation, sexual characteristics, age and experience with the justice system.

Three macro areas have been selected to start focusing the discussion about discrimination against LGBTI+ children as well as opportunities for prevention and resolution.

Making use of the data available and the experience of the experts involved in the development of this paper, **concrete examples are provided** throughout the Challenge Paper **of ways in which discrimination and victimisation of LGBTI+ children can occur** when they are involved in justice proceedings, across countries. Practical resolutions on how to prevent and respond to such forms of discrimination are offered.

Here below, snapshots of **the issues and practical examples** covered in the paper, followed by key actionable **recommendations**.

LGBTI+ Children and their contact and interaction with the police	
Main discrimination issues	Concrete examples of discrimination
LGBTI+ children and youth are disproportionately represented among runaway and youth who have been asked/ told/forced to leave their home.	A young couple of girl victims of hate crime are blamed by the police because they were kissing each other in public when they were assaulted.
Related to the previous point, LGBTI+ children can have multiple experiences of contact with the police in public spaces and so more exposed to risk of discrimination.	A boy with a feminine look, interviewed by the police as a suspect, becomes the subject of jokes and insults by the same police officers.
Looking 'queer' matters for children and young people, and it attracts more police attention.	A girl at the police station who has identifies herself as bisexual is threatened by the officer/s of sexual assault to make her 'decide' and 'be' heterosexual.
Police can have a large discretion which can lead to discriminatory applications of the law.	A homeless, trans girl is profiled as a sex worker by the police just because she lives on the street following rejection from her family.
Police officers are often not trained on children rights nor sensitised on LGBTI+ minorities.	A queer, non-binary look (not in line with the gender stereotypes that classify males and females), unaccompanied minor is waiting for his asylum request to be approved, after they fled his country because of their harsh anti-LGBTI legislation and fear for their life. In the asylum country they are continuously stopped and profiled by the police, just because of being black and queer.

LGBTI+ Children and deprivation of liberty	
Main discrimination issues	Concrete examples of discrimination
<p>LGBTI+ children are overrepresented in some criminal justice systems across the globe and at high risk of being subjected to arbitrary arrest and of institutionalisation.</p> <p>Criminalisation of survival strategies such as running away, selling drugs, sex work, theft, fleeing to another country is another factor that can lead to the detention of LGBTI+ children.</p> <p>When deprived of liberty, LGBTI+ children are at high risk of misplacement, isolation and violence, including lack of access to specific medical and psychological support.</p> <p>Staff in detention facilities are often not trained on children rights nor sensitised on LGBTI+ minorities.</p>	<p>A lesbian, migrant girl in administrative detention is subjected to continuous homophobic remarks and threats from the people she is in detention with.</p>
	<p>A gay boy in pre-trial detention is not given access to the showers as the other boys may feel 'uncomfortable'.</p>
	<p>A bisexual boy in detention is beaten up by a group of other boys because they claim he had looked at them in an inappropriate way.</p>
	<p>A trans girl is assigned to a detention centre for boys because her gender in the ID document has not been changed yet. In detention, she is then put in solitary confinement in order to 'protect' her. She does not have access to specialised psychological and medical treatment, nor to appropriate clothing and any other item appropriate to her gender expression.</p>
	<p>An intersex child in administrative detention is isolated from the others because the staff do not know how to protect them.</p>
	<p>A non-binary teenager is put in police custody with a group of boys based on their sex registered on the ID. They are mocked and threatened both by the other teenagers and by the police officers.</p>

LGBTI+ Children and the support systems	
Main discrimination issues	Concrete examples of discrimination
<p>LGBTI+ children face several layers of discrimination and rejection in many instances of their lives – community, family, education, health care, among others – which increase the risk to enter in contact with the justice system.</p> <p>LGBTI+ children not only do not report to the police, but they very rarely report to any other support person – because of fear of lack of understanding, fear of retaliation and/or because the use of inappropriate language by professionals.</p> <p>LGBTI+ children's experiences in schools can amount to frequent and severe forms of harassment and violence.</p>	<p>A girl is discredited by her gynaecologist when she shares that she has a relationship with another girl. That leaves her with many unanswered questions about safe sexual relationships, beyond a great sense of vulnerability and shame.</p>
	<p>A boy commits suicide after having been forced to undergo a 'conversion therapy' cycle following his coming out with the parents.</p>
	<p>A bisexual girl is bullied and discredited by her family and friends as her sexuality is considered 'just a phase she will grow out of'.</p>
	<p>A teenager who was assigned female at birth but identifies as male cannot get his family's approval for hormonal medical treatment and has been struggling with severe mental health problems while threatened by his family to be kicked out of their house.</p>
	<p>An intersex child is born, and the doctors autonomously decided that it is in the best interest of this child to undergo a surgery that assigns them 'female' sex. They will suffer severe physical and psychological consequences, with irreversible effects.</p>
	<p>A non-binary teenager who wants to play soccer is not accepted into the school because their physical appearance does not correspond to gender conforming rules.</p>

Call for action

This Challenge Paper aims to bring to light the importance of **starting and continuing the conversation about discrimination of LGBTI+ children in the justice system** and the **urgency to engage professionals and policy makers in targeted research, capacity building, awareness-raising and initiatives to push for a systemic change.**

This Challenge Paper hopefully marks **only the beginning of a discussion** around topics that for far too long have been considered taboo and that require now immediate and specific attention.

We encourage professionals to be champions in the realisation of fair, inclusive and LGBTI+ sensitive child justice systems, for the fulfilment of the rights that all children are entitled to.

We recommend any practitioner, policy maker and individual in contact with LGBTI+ children to **listen to children, be open, collect and learn from their stories**, as that remains the best way to see them, understand their struggle and work together to be part of the solution/s.

For this purpose, we propose 4 sets of **actionable recommendations towards**:¹⁰

1 LGBTI+ sensitive justice systems for children

Child-sensitive and child-rights-based services and practices that are also LGBTI+ sensitive will contribute to provide safe spaces for children to express themselves, in the full respect of their privacy and their agency, and to be treated in full respect of their best interests:

- 1a Allocating resources for **research and data collection about the experiences of LGBTI+ children involved in justice systems**, throughout the proceedings in criminal, administrative and civil justice, and on the links between being LGBTI+ and going missing
- 1b Providing **services for LGBTI+ victims of human rights violations and hate crime**
- 1c Ensuring the **availability of services, assistance and support appropriate to the specific needs of LGBTI+ children** in all facilities and through administrative and criminal proceedings
- 1d Developing multidisciplinary, robust, holistic and inclusive individual assessment protocols and tools, that take into account the diversities of gender, sexual orientation, gender expression and sexual characteristics, and include sensitive language and communication standards

2 Reinforced capacities of professionals working with children in justice systems on LGBTI+ needs

Child justice professionals and others working with children in contact with the justice systems should receive the adequate training and sensitisation to provide LGBTI+ sensitive responses and to better understand children's needs, motivations and strengths:

- 2a Ensuring **continuous sensitisation and awareness-raising activities** on SOGIESC¹¹ themes in all institutions working with children in the justice field, starting from police stations, detention facilities and migrant detention centres
- 2b Including sensitisation on gender and LGBTI+ minorities **in all capacity building activities** to professionals working with children in the criminal and administrative justice systems
- 2c Investing in **awareness and sensitisation campaigning** on hate crime especially targeted and jointly with LGBTI+ communities, for police management and leaders.

¹⁰ The full sets of detailed recommendations are proposed in the challenge paper.

¹¹ Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics

3 LGBTI+ inclusive legal and policy frameworks

European and national legislations need to secure safe and inclusive communities by providing appropriate legal and policy frameworks that specifically address and protect LGBTI+ people and children from violence:

- 3a Officially banning conversion therapies for LGBTI+ children, and 'normalising' medical procedures for intersex children across European countries
- 3b Issuing legislation and recommendations to allow legal gender recognition
- 3c Introducing legislation to protect people against homophobia, transphobia and hate crime against SOGIESC

4 LGBTI+ inclusive societies

Inclusive societies are necessary to strengthen trust among people, including authorities, preventing violence and crime, so preventing and reducing the risk of LGBTI+ children to come in contact with the law, and making sure they have LGBTI+ sensitive net systems if that happens:

- 4a Designing awareness-raising and sensitisation activities that are led by LGBTI+ children, including migrant children and asylum seekers, as well as children from other minority groups
- 4b Making schools safe and inclusive places, which offer sensitisation and education programmes against homophobia and transphobia, and educate children through inclusive curricula
- 4c Providing adequate resources in schools, hospitals, and community centres to provide LGBTI+ children with counselling and support and quality public programmes that offer transgender and intersex children and their families the medical and psychological support they need
- 4d Sensitising the media, families and communities, to disseminate positive narratives about LGBTI+ people in general, more specifically children, ensuring that social media have in place and implement clear and strong anti-hate crime and hate speech policies

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The following Network members endorse this Paper: CICS-Nova (Portugal), Children and Young People's Centre for Justice (Scotland), Defence for Children International (Belgium, Greece and The Netherlands), Deutsches Kinderhilfswerk e.V. (Germany), Hrabri telefon (Croatia), Ludwig Boltzmann Institute of Fundamental and Human Rights (Austria), Terre des hommes (Hungary) and Young in Prison (The Netherlands). The Paper is also endorsed by Missing Children Europe (Belgium) and Penal Reform International (International).

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Missing
Children
Europe



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