

Combating discrimination
on grounds of sexual orientation
and gender identity
in Council of Europe Member States

A review of the Recommendation CM/Rec(2010)5 of the Committee of Ministers

employment **combating** **education**
discrimination
housing health sports
freedom of association

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Combating discrimination on grounds of sexual orientation and gender identity in Council of Europe Member States

Steering Committee for Human Rights (CDDH)

CDDH Report on the implementation
of Recommendation CM/Rec(2010)5
of the Committee of Ministers
to member States on measures to
**combat discrimination
on grounds of sexual orientation
or gender identity**

[adopted by the CDDH at its 92nd meeting
(26–29 November 2019)]

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Abbreviations and acronyms

the Court	European Court of Human Rights
the Convention	European Convention on Human Rights
SOGI	sexual orientation and gender identity
LGBT	lesbian, gay, bisexual and transgender
NHRI	national human rights institutions
ECRI	European Commission against Racism and Intolerance
PACE	Parliamentary Assembly of the Council of Europe
EASO	European Asylum Support Office
UNHCR	United Nations High Commissioner for Refugees
EU	European Union
NGO	non-governmental organisation
CSO	civil society organisation
CDDH	Steering Committee for Human Rights

Background

1. The CM/Rec (2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity¹, adopted on 31 March 2010, as well as its explanatory memorandum, were prepared by the Steering Committee for Human Rights (CDDH).
2. The Recommendation enhances the enjoyment of all human rights by lesbian, gay, bisexual and transgender persons. The main message of the Recommendation is that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large. The text of the Recommendation is the first instrument drawn up by the Committee of Ministers dealing specifically with the question of discrimination based on sexual orientation and gender identity.
3. Three years after its adoption, the CDDH, at its 77th meeting (19-22 March 2013) adopted its report on the implementation of the Recommendation (CM(2013)36-add2) and transmitted it to the Committee of Ministers. At the 1189th Deputies' meeting (22 January 2014, item 4.1), it was agreed that the issue of the implementation of the provisions of the Recommendation would be reconsidered in four years' time.
4. The CDDH, at its 87th meeting (6-9 June 2017, CDDH(2016)R87) noted that it would be invited to examine as from 2018 the issue of follow-up to the Recommendation following the first implementation report of 2013.

¹ At the 1081st meeting of the Ministers' Deputies.

5. On the basis of this decision, the Secretariat in co-ordination with the Network of European Governmental LGBTI Focal Points, has elaborated a questionnaire on existing measures and examples of good practices related to the implementation of the Recommendation, which has been approved by the Bureau of the CDDH and disseminated to member states, national human rights institutions, and NGOs.
6. The CDDH gave guidance for the preparation of this report on the implementation of the Recommendation, to be submitted to the Committee of Ministers preferably by the end of September 2019. The competent authorities were invited to reply to the questionnaire by 30 June 2018 at the latest.
7. On the basis of the replies to the questionnaire, the Secretariat prepared a report which was submitted for adoption to the CDDH at its 92nd meeting (November 2019). During the meeting, two delegations made declarations regarding the text²
8. 42 out of 47 states replied to the questionnaire submitted, namely: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, North Macedonia, Turkey, Ukraine and United Kingdom. The number of respondent states in 2013 was 39.
9. In addition, contributions were submitted by ILGA-Europe, Transgender Europe, OII Europe, the European Lesbian* Conference and the European Trade Union Confederation, as well as national implementation reports by LGBTI organisations for Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, Finland, Georgia, Hungary, Lithuania, North Macedonia, Montenegro, Poland, Portugal, Serbia and Sweden.

² The Delegation of Poland made the following interpretative declaration: "Poland considers that the Report on the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity (document CDDH(2019)R92Addendum4) does not alter paragraphs 25-28 of Appendix No. 1 to Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity. In particular, paragraph 126 of the present Report does not impose an obligation on member States to introduce in their domestic law the institution of same-sex unions or the legislation providing for the recognition and protection of same-sex unions". The Delegation of the Russian Federation reiterated that it dissociated itself from the content of the comments on this Recommendation for the reasons expressed in the declaration appended to the report of the 69th meeting of the CDDH (document CDDH(2009)019, Appendix IV) and did not participate in their adoption.

10. The review was complemented with desk research from various national sources and reports by the Council of Europe monitoring bodies, principally the European Commission against Racism and Intolerance (ECRI), as well as the Council of Europe Commissioner for Human Rights. The latter two categories of sources were important in order to supplement replies of the member states. Quite naturally replies from the member states tended to emphasise achievements whereas civil society organisation's reports focused more on problems and needs for improvements.

Trends and Challenges

11. Four years after the first review of the implementation, a considerable number of member states have made substantial progress regarding the legal and social recognition of LGBT persons, albeit often in a challenging context. Political leadership and the greater visibility of the LGBT movement combined with support and guidance from the Council of Europe (the Court, ECRI, PACE, Congress) were among the driving forces behind this progress.

12. However, a climate of opposition to LGBT human rights has simultaneously gained ground in certain European countries linked to populist homophobic and transphobic rhetoric and the emerging anti-gender movement. Reference can be made to actions such as referenda to amend constitutions requiring limitations on the definition of marriage, hate speech by high-profile politicians, authorities banning or failing to protect LGBT public events and attacks against human rights defenders.

13. Recognition of the human rights of transgender and intersex persons has gained considerable visibility. Some member states have gone beyond the minimum standards set by the Recommendation either through adoption of legislative and policy measures or rulings of national jurisdictions. Regarding intersex persons, Malta and Portugal adopted legislation banning sex-“normalising” surgeries and other member states (Belgium, Bosnia and Herzegovina, Finland, Germany, Greece, Norway and Spain) revised anti-discrimination legislation to include sex characteristics as a protected ground.

Some states have exceeded the minimum standards set by the Recommendation either through a variety of legislative and policy measures or rulings of national jurisdictions.

Lack of disaggregated data, financial resources and awareness, and failure to systematically revise legislation impend progress on equality for LGBT persons

14. The execution of European Court of Human Rights judgments by member states and the policy recommendations by monitoring bodies such as ECRI have contributed to this progress, with several countries either adopting or reviewing legislation concerning sexual orientation and gender identity equality (France, Georgia, Greece, Italy, Lithuania and Romania).
15. Malta has adopted the most progressive legal framework on gender recognition worldwide so far, giving gender identity constitutional protection. Belgium, Denmark, Greece, Ireland, Luxembourg, Norway and Portugal removed medical requirements (depathologisation) from legal gender recognition procedures, instead basing them on the self-determination principle.
16. Since 2013, several states have reviewed legislation concerning sexual orientation and gender identity. The majority of them have adopted new legislation in line with the Recommendation. However, implementation is often hampered by a lack of political will, a lack of disaggregated data assessing the situation of LGBT persons, and a lack of resources and awareness. As an alternative to legislation, some member states have implemented measures such as national action plans and strategies, and have set up cross-sectoral working groups. These policies contribute to LGBT equality to some extent, although they should be complementary to legislative measures.
17. Although some member states established dialogue with civil society organisations when designing policies and legislation, the sustainability of civil society initiatives remains a concern due to lack of public funding, recognition of legitimacy by authorities and regular inclusion in consultation procedures.
18. The inclusion of the grounds of sexual orientation or gender identity in hate crime legislation is progressing. By 2018, 25 member states included the ground of sexual orientation in their legislation and 15 did so with regard to gender identity. However, effective implementation of existing legislation remains a challenge and LGBT hate crimes continue to be under-reported.
19. Some progress was made with the inclusion of sexual orientation in hate speech legislation. However, this is not the case with gender identity which remains rarely established as a prohibited ground in the hate speech legislation. The main challenges include difficulties for victims to access the justice system, the rise of hate speech in social media and the fact that public officials making homophobic or transphobic statements are rarely sanctioned.

20. In the majority of member states, the right to freedom of association can generally be enjoyed without discrimination on the basis of sexual orientation and gender identity. However, ECRI reports refer to attacks against defenders and NGO premises, defamation campaigns, cuts in funding and prolonged financial investigations. This negative trend is closely linked to the rise of populism and intolerance, which often makes NGOs and their staff the first targets of intimidation and harassment. Insufficient adoption of targeted measures to protect human rights defenders remains a concern.

21. In the majority of the member states, the right to freedom of expression and assembly on topics dealing with sexual orientation and gender identity can be exercised without significant restrictions. All the states that replied mentioned the existence of measures to ensure non-discrimination for both freedom of expression and assembly. A positive development is the increasing number of countries hosting annual pride parades where the protection by law enforcement agents is effective. At the same time, monitoring reports indicate that certain states still fail to take sufficient measures to protect participants of peaceful demonstrations. In addition, restrictions have been introduced in some member states through legislation or administrative decisions banning LGBT events.

22. Several positive trends are identified in relation to private and family life. By 2018, 27 member states had adopted laws on either same-sex partnerships or same-sex marriages, 17 had extended access to joint adoption and 18 to second-parent adoption. Assisted reproductive treatment is provided to same-sex couples in 13 member states and to single persons in 26. A growing challenge is the need for more comprehensive protection during divorce and custody proceedings of LGBT parents.

23. Improvements have been made in a number of member states since 2013 in addressing SOGI-based discrimination in employment. For EU countries, these positive legislative changes are a direct consequence of EU law³. Nonetheless, only 18 states report having measures in place to protect transgender persons in the context of employment, which shows a legislative gap in protection.

**More than half
the Council of Europe
member states
ensure legal
recognition of
same-sex couples.**

³ 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/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.

24. There is an increase in the number of state responses to SOGI-based violence and bullying in education contexts. The main challenge lies in ensuring that these responses are systematically implemented and are part of a comprehensive educational strategy that is regularly monitored and evaluated. There is a general neglect towards policies specifically targeting transphobic bullying.

Sterilisation as a requirement for legal gender recognition is still a reality in 13 member states.

25. Regarding health, sterilisation as a requirement for legal gender recognition represents one of the major issues affecting the lives of transgender persons. In 2017, the Court ruled that requiring sterilisation was a violation of the right to respect for private life⁴. Also, in 2018 the European Committee of Social Rights concluded that the sterilisation requirement cannot be considered as compatible with the right to protection of health as guaranteed by Article 11§1 of the Charter⁵. In 2018, 27 member States had in place legislation where this is not a requirement, compared to 11 in 2013. However, 13 States reported that they still require sterilisation.

Homeless LGBT youth who have lost parental support due to coming out is a pressing issue in many countries.

26. Housing legislation rarely specifies SOGI as a discrimination ground. The issue of homelessness remains a serious concern, particularly concerning LGBT youth and the enhanced risk they face when parental support is withdrawn after coming out.

27. Sports continue to be a hostile environment for LGBT persons where little real progress is being made compared to other areas. Despite a definite increase in the number of states reporting measures to tackle discrimination (7 in 2013, 35 in 2018), the invisibility of LGBT persons is evident. Very few professional sports persons have come out as LGBT. This situation is a consequence of the lack of inclusive policies in the sports sector regarding SOGI.

Continued access to healthcare for transgender asylum seekers remains largely unaddressed.

28. Persecution based on SOGI is officially accepted as a valid ground for granting refugee status in the majority of respondent states. The protection needs of transgender asylum seekers, namely continued access to healthcare, remain however largely unaddressed. Shortfalls in asylum pertain specifically to reception conditions and the fact that

⁴ A.P., Garçon And Nicot v. France, judgement of 6 April 2017, § 131.

⁵ European Committee of Social Rights, Complaint 117/2018: “80. The Committee considers that surgical gender reassignment surgery as required for a change of gender identity is not necessary for the protection of health. Obliging an individual to undergo such serious surgery which could in fact be harmful to health cannot be considered as being consistent with the obligation that the state refrain from interfering with the enjoyment of the right to health and in such cases States must eliminate the interference. Any kind of medical treatment which is not necessary can be considered as contrary to Article 11, if obtaining access to another right is contingent upon undergoing it.”

capacity-building and awareness-raising measures, such as specific training for asylum officers, are often implemented on an ad hoc basis.

29. Some trends reflected in the 2013 Review are continuing, with discrimination on the grounds of sexual orientation now generally enshrined in most NHRI mandates, either explicitly or indirectly. Gender identity is nevertheless covered to a lesser extent. While not flagged as a specific issue in 2013, NHRI's work on LGBT issues has been complicated by negative trends affecting the work of NHRIs. These include budgetary constraints, an adverse social and political climate and, at times, political pressure on NHRIs to refrain from focusing on discrimination on grounds of SOGI.
30. There are various interpretations of the concept of multiple discrimination across states and a small number has addressed this in national law. The lack of domestic court case law of the implications of discrimination on a plurality of grounds, including SOGI, is a further challenge. Research on multiple discrimination is scarce and has mostly been conducted through civil society and academic initiatives.



Section 1



Implementation and dissemination of the Recommendation



he Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

31. An increasing number of member states are keeping SOGI legislation under review. Review of measures concerning sexual orientation is often accompanied by review of measures regarding gender identity, a positive development in relation to the 2013 Review. When no reviews were undertaken regarding sexual orientation, gender identity was also not considered.

Anti-discrimination laws were accompanied by the creation of implementation bodies tasked with conducting surveys, awareness-raising campaigns, developing legislative proposals and developing statistical data.

32. Since 2013, 34 states reviewed legislative and other measures for direct or indirect discrimination on the ground of sexual orientation and 33 states did the same review for discrimination on the ground of gender identity.
33. Several states revised anti-discrimination legislation either by enlarging the scope of expressly prohibited grounds of discrimination to include sexual orientation and gender identity on an equal footing (Albania, Belgium, Georgia, Greece, Luxembourg, North Macedonia, Slovak Republic), or by including sex characteristics (Montenegro, the Netherlands) or gender expression (Norway, the Netherlands). The Swiss society agreed by referendum, in February 2020, on the addition of the ground of sexual orientation. Poland mentions encompassing gender identity within the criterion “sex”. Some member states mandated the Commissioner for Equality or Anti-Discrimination or prosecution bodies to submit recommendations for the amendment of legislation (Albania, Georgia and Serbia).
34. A number of newly adopted anti-discrimination laws were accompanied by the setting up of implementation bodies tasked with conducting surveys, awareness-raising campaigns, developing legislative proposals and developing statistical data (Georgia).
35. Review of legislation also focused on removing barriers to equality in the workplace (Iceland), on considering life partners as family members in the gender-based or domestic violence legislation (Malta, Croatia, Greece - regardless of cohabitation), on the recognition of sexual orientation and gender identity as factors that warrant special guarantees for asylum seekers or subsidiary protection (Portugal) and on legislation granting access to civil unions to same-sex couples (Italy, Greece). In cases where this review was only partially undertaken, states focused on mapping the needs of implementing the Recommendation and developing an action plan (Bosnia and Herzegovina), or conducting ex-ante and ex-post analysis on the implementation of new legislation (Finland).
36. Measures to redress discrimination based on SOGI, even if partial, are now available in 35 member states, which marks considerable progress to the 2013 Review process (19). Policy or legislative measures to combat discrimination on the grounds of SOGI have been adopted in 35 member states. Four of these states (Luxembourg, Moldova, Slovak Republic, Ukraine) replied that they have partially implemented measures for combating discrimination on the ground of sexual orientation, while five did so for the ground of gender identity (Monaco, Lithuania, Luxembourg, Slovak Republic, Ukraine).

Redress mechanisms are essential to ensure that LGBT persons can be compensated vis-à-vis previous discriminatory measures.

37. By 2018, 19 member states had adopted and implemented thematic or transversal action plans on SOGI with the majority of the respondents mentioning the inclusion of the Recommendation. Montenegro answered that the Recommendation was a starting point in producing the first ever SOGI strategy and improving national legislation.

Half of the respondents mentioned the creation of cross-sectoral working groups for the implementation of the Recommendation.

38. Since the 2013 Review, there has been significant progress as far as the adoption of measures to collect and analyse data on discrimination on the ground of sexual orientation is concerned. By 2018, 29 member states had adopted and implemented or partially (seven) implemented such measures, while in the 2013 Review only 11 states had such measures in place. Five member states still lack measures to collect information on this ground. Measures to collect and analyse data on discrimination on the ground of gender identity have equally been adopted by 29 member states, compared to eight in 2013. In 2018, nine member states had partially implemented such measures. From all the states that replied having some measures in place to collect data on sexual orientation, only one mentioned not doing the same for gender identity.

By the end of 2018, 29 member states had put in place measures on data collection on SOGI compare to 11 in 2013

Andorra, Finland, the Netherlands and Spain: Agreements were established with research centres or with national institutes to conduct surveys.

Austria, Bosnia and Herzegovina and Georgia: Creation of legal obligation on ministries to compile databases for monitoring and reporting on cases of discrimination or establishing governmental structures tasked with collecting and analysing data.

North Macedonia: Enactment of laws establishing an obligation on governmental institutions to collect data on several grounds, including sexual orientation and gender identity.

Montenegro: Establishing the practice of compiling data from different entities such as prosecutor's office, police and courts to monitor the implementation of laws and help create policy proposals to improve the quality of life of LGBTI persons.

Finland, Denmark: Thematic data collection on specific issues (sports, education, multiple discrimination).

39. Effective, proportionate and dissuasive legal remedies are in place in 34 states, while seven mentioned having implemented them only partially. Concerning measures to raise awareness and facilitate access of victims to such remedies, when the violation is committed by a person acting in an official capacity, a majority of 32 states replied positively, with nine mentioning only partial implementation. This represents a significant improvement compared to the 2013 Review with 17 states having in place awareness-raising measures

Sweden: Since 2018 transgender persons who were forced to undergo sterilisation procedures as a result of the previous legislation can apply for financial compensation.

United Kingdom: The Policing and Crime Act 2017 confers an automatic pardon on deceased individuals convicted of certain consensual same-sex sexual activities previously criminalised as sexual offences.

Section 2



**Right to life,
security and protection
from violence**



Right to life, security and protection from violence

Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

40. Since 2013, eight member states have explicitly added sexual orientation and gender identity as protected grounds in their hate crime legislation. Generally, legislative provisions on gender identity-related hate crimes remain however more ambiguous, especially as gender identity often does not exist as a separate discrimination ground in legislation. Some states have signalled that gender identity is nevertheless covered in practice through the interpretation of other motives. Overall, ensuring prosecution of hate crimes when grounds of sexual orientation or gender identity are identified as biases is still an area for further improvement. Despite positive legislative developments, implementation remains a challenge. In particular, the number of LGBT-related investigations is low according to reports.

More systematic efforts are needed to overcome a ‘LGBTI blind’ approach by law enforcement officials in order to address the under-reporting of LGBTI hate crimes.

41. Knowledge and skills in law enforcement and the judiciary remain a concern, since their absence can lead to an “LGBT-blind approach” by officers. While efforts have been reported concerning the provision of training, this is often optional and curricula frequently fail to include LGBT-specific issues. The implementation of training, often depending on resources from civil society or international support, raises concerns regarding its sustainability.

France: The Inter-ministerial Delegation combatting racism, anti-Semitism and anti-LGBT hatred (DILCRAH) has been training police students and gendarmes on how to deal with hate speech and hate crime since 2016. They also organise seminars for magistrates as part of their “life-long” training. A network of investigators and specialised magistrates has been set up in the cities of Marseilles and Orléans and this will be extended throughout the country. The aim of these training sessions is to address the LGBTI dimension of hate crime in order to improve the support to victims and the reporting of homophobic or transphobic hate speech and hate crime. This is in addition to civil society actions.

Lack of awareness of procedural aspects and lack of trust in law enforcement might constitute factors for the under-reporting of hate crimes.

42. With a few exceptions, procedures to investigate SOGI-related hate crimes by law enforcement are dealt with internally by police units, raising possible conflicts of interest. In some states, the institution of the ombudsperson represents yet another avenue or the only avenue. Lack of awareness of procedural aspects and lack of trust in law enforcement might constitute factors for the under-reporting of hate crimes. In attempting to encourage reporting, initiatives such as anonymous complaint platforms have been established, albeit mostly by civil society. Only nine states reported having established special units for investigation of SOGI-related hate crime.

Training and codes of conduct for prison officials lack development

43. Information on **LGBT in the criminal justice** system is limited and tends to group LGBT under the category of “vulnerable persons”. Decisions regarding health concerns or risks of violence towards LGBT detainees are based on security and safety needs as they arise. Placement in individual cells is reported as a way to address risks of violence. The placement of transgender detainees seems to be largely based on legally recognised gender while the preference of the person is rarely considered. Training and codes of conduct for prison officials are underdeveloped, especially when compared to the training offered to other categories of public officials.

Malta: In 2016, the Corradino Correctional Facility adopted the Policy on Trans, Gender-Variant and Intersex Inmates which addresses, among others, issues of registration and placement of LGBT detainees.

United Kingdom: The 2016 instruction on managing transgender offenders for prison and probation services aims at providing adequate care and management of transgender offenders.

Belgium: Inter-Federal Action Plan against Discrimination and Violence against LGBTI 2018-2019 foresees guidelines with concrete procedures and instructions on how to appropriately deal with a transgender detainee. Specific training on LGBT issues for penitentiary staff is also foreseen.

44. Efforts have been made by some states to improve the collection of hate crime data and, in some instances, data systems have been improved to include SOGI as motivations for the crime. However, replies indicate that disaggregation of such data remains a challenge. The lack of inclusion or clarity regarding SOGI hate crime in the legal framework may negatively affect how data on such crimes are collected. Since legal protection for gender identity as a specific ground for hate crime remains limited, it is also less visible in collected data.
45. Other factors may hamper the effective collection of SOGI-related hate crime data. The lack of a “working definition” of hate crime for law enforcement and the lack of specific regulation or guidance for police officers on how to register data sometimes result in different practices across the country, with the collection of data varying according to the public institution concerned. When data are collected, gaps between official statistics and NGO data have been flagged.
46. While under-reporting may play a role in this state of affairs, the methodology used for collecting such data may also be a relevant factor. In particular, questions have been raised with regard to systems that leave the determination of the crime motive to the appreciation of law enforcement. Furthermore, the data may refer to different stages of proceedings and issues of co-ordination between agencies (justice and police) may lead to variations in statistics. The lack of attention paid to the perception of the victim or another person reporting the crime has also been raised as a problematic issue.

Replies indicate that disaggregation of such data remains a challenge.

Poland A new data collection system was put in place in 2015 in the police force and the Ministry of Interior and Administration. A working definition of hate crime is used to record cases, which allows police officers to register a crime as hate-motivated. Specific motivations are later verified, based on the content of the file. Statistics in each administrative district are collated monthly by specialised hate crime co-ordinators.

Norway: A guide for the police force on registering bias-motivated crimes, including on grounds of sexual orientation, was released in 2018 to create systematic procedures on the monitoring and registration of hate crimes across all police districts in the country.

States are expected to take measures to combat all forms of expression, including in the media and on the internet, which could incite, spread or promote hatred or discrimination against LGBT persons. Public officials have a responsibility to refrain from such statements and should promote tolerance. This section examines progress made in improving legislation to combat hate speech.

Criminalisation of hate speech seems to be gaining ground among the replying states with 65% of positive replies.

47. With 65% of positive replies, criminalisation of hate speech seems to be gaining ground among the replying states. Progress was reported in Sweden, where gender identity is explicitly included in hate speech legislation, while others maintain non-explicit legislation. New or improved provisions criminalising hate speech on SOGI have been adopted in Cyprus (2015) and Portugal (2018).

48. The use of social media platforms to combat hate speech has grown in recent years. Responses indicate that several states focused on establishing a European response. Responses pointed to the work of the “EU High Level Group on combating racism, xenophobia and other forms of intolerance” on countering hate speech online and the “EU Code of Conduct on countering illegal hate speech online” in co-operation with Facebook, Microsoft, Twitter, YouTube and the European Commission.

Lithuania: In the wake of the Court's judgment in the case of Delfi AS v. Estonia, 2015, it is reported that Lithuanian online media outlets have introduced more effective monitoring and removal systems for online comments inciting hatred and violence.

- 49.** Documents such as codes of ethics may not necessarily include specific wording on the responsibility of public authorities to refrain from making statements that could legitimise hatred against LGBT persons. Prosecuting public officials and public figures such as religious leaders disseminating such hatred remains a challenge. In some states, cases have been brought to NHRIs but with no judicial follow-up. Condemnation of politicians for inciting hatred has seldom been reported in replies.

Prosecuting public officials and religious leaders who disseminate such hatred continues to be a challenge



Freedom of association



Freedom of association

S

tates should take appropriate measures to ensure the right to freedom of association without discrimination for organisations working to promote LGBT rights. This includes removing discriminatory administrative procedures and excessive formalities for registration, providing access to public funding for NGOs without discrimination, effectively protecting human rights defenders and carrying out consultations with NGOs on law and policy impacting LGBT persons.

- 50.** There are no obstacles to the registration of NGOs mentioned in the states' replies received. However, from other sources, obstacles to the registration and regular functioning of LGBT NGOs became apparent.
- 51.** Concerning non-discrimination in access to public funds for LGBT NGOs, 33 countries replied that there is no discrimination. 15 countries provided specific examples of such a funding. Two states reported the non-existence of state funding of NGOs.
- 52.** A majority of member states considered general criminal law, hate crime or anti-discrimination provisions to be sufficient for the protection of human rights defenders. However, few good practices were reported, which indicates a likely gap between equality de jure and equality de facto.
- 53.** Simultaneously, attacks on human rights defenders protecting the rights of LGBT persons were extensively reported between 2013 and

2018. These include both attacks on the defenders directly and on the offices of their NGOs⁶ and are attributed to the wider human rights backlash led by populist or far-right groups, which consider LGBT defenders among their first targets. This underlines the vulnerability of human rights defenders to aggression and violence and calls for increased awareness and commitment on the part of states to provide protection.

- 54. The number of states consulting NGOs during the drafting process of legislative and policy measures increased slightly, with 30 answering positively compared to 24 in 2013. Measures adopted consist of including NGOs in working groups and government committees, as well as collaborating in the elaboration of national action plans and laws. Five states indicated that they partially consult NGOs (Czech Republic, Germany, Lithuania, Moldova and Slovak Republic).
- 55. In a number of countries, LGBT NGOs have been increasingly consulted since 2013, notably in Albania, Croatia, Georgia, Greece, Lithuania, Montenegro, North Macedonia and Serbia. Simultaneously, a negative trend of reducing consultations with NGOs is noticed in some states.

Ireland: The authorities organised widespread consultations as part of the drafting of the LGBTI+ National Youth Strategy 2018-2020. This consisted of 4 000 young people and 99 stakeholders, including NGOs. Representatives from LGBT NGOs were also invited to be part of the oversight committee for the development of the strategy.

⁶ Statement of the Commissioner for Human Rights, on the occasion of the International Day Against Homophobia, Transphobia and Biphobia (2019), “*Let’s defend LGBTI defenders*”, available at <https://www.coe.int/en/web/commissioner/-/let-s-defend-lgbti-defenders?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissione2Fthematic-work%2Flgbti>

Freedom of expression and peaceful assembly



Freedom of expression and peaceful assembly

M

ember states should take measures to ensure that the right to freedom of expression and peaceful assembly can be effectively enjoyed without discrimination on the basis of SOGI. This section covers the implementation of measures dealing with the freedom to receive and impart information on subjects dealing with sexual orientation and gender identity; the protection of participants of peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons; preventing restrictions and abuse of legal and administrative provisions; and publicly condemning unlawful interferences with the right to freedom of expression and assembly.

- 56.** In a number of countries, there has been an increase in the number of annual pride events carried out with the protection and collaboration of law enforcement, including in Georgia, Montenegro, Moldova and Serbia. Nevertheless, between 2013 and 2018, authorities in a number of countries did not sufficiently protect participants or hold accountable those who perpetrated violence against the demonstrators⁷.
- 57.** In relation to the freedom to receive and impart information, there has been substantial progress in the participation of authorities and support in raising visibility of LGBT issues. Notably, the involvement of government agents and parliamentarians in relevant initiatives was mentioned by Andorra, Croatia, Montenegro, North Macedonia, Serbia, and Slovenia.

Georgia, Montenegro, Moldova and Serbia have seen an increase in the number of annual pride events taking place with the protection and collaboration of law enforcement.

⁷ Statement of the Commissioner for Human Rights on the occasion of the 2018 pride season (2018), “The long march against homophobia and transphobia”, available at <https://www.coe.int/en/web/commissioner/-/the-long-march-against-homophobia-and-transphobia?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fthematic-work%2Fgbti>.

- 58.** Arbitrary restrictions in some member states nevertheless raise concerns. Campaigns smearing the work of human rights defenders were seen in these countries and one country has applied an anti-propaganda law.
- 59.** A majority of 34 states replied that the police provide protection for peaceful demonstrations without discrimination. Seven member states did not respond to this question, but no state answered in the negative.
- 60.** There is an increase in the number of training programmes implemented for law enforcement officers on preventing unlawful disturbances to peaceful assemblies. In some states, the sustainability and regularity of this training is unclear, since many are organised by NGOs and international organisations instead of national authorities.
- 61.** Several states replied not having measures resulting in restrictions to the freedom of assembly on the basis of public health, morality or order. In addition, replies mentioned that measures against such infringements exist in the form of national legislation and legal remedies. These include complaint mechanisms, ombudspersons and equality court.

Bosnia and Herzegovina: : After an initial lack of authorisation by the Ministry of Transport for a peaceful march to mark the International Day Against Homophobia, Transphobia and Biphobia, the Ombudsperson and the Ministry of Human Rights issued a recommendation that the processing of requests for human rights demonstrations should be reviewed in the shortest time possible.

Croatia: The Office for Gender Equality covered the security expenses linked to the LGBTIQ Prides Marches in 2012 and 2013.

- 62.** While increasing hostility to LGBT groups from representatives of some State authorities has been noted between 2013 and 2018, public condemnation of unlawful interferences with the right to expression and assembly have become more common in 16 of the responding countries. Authorities or politicians publicly condemning attacks and other infringements of the rights to freedom of expression and assembly of LGBT groups were mentioned by several States (Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Czech Republic, Denmark, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Slovak Republic, Slovenia, Spain and the United Kingdom).

**Right to respect
for private
and family life**



Right to respect for private and family life

M

ember states are required to protect the right to respect for private and family life of LGBT persons.

This section examines measures in five areas: legal gender recognition; rights of transgender persons to marry; rights extended to unmarried couples and rights under registered partnerships and marriage; parental responsibility and guardianship; and assisted reproductive treatment.

63. Progress is evidenced by the increasing number of measures adopted by states to guarantee full legal gender recognition in all areas of life. These vary in extent but aim to facilitate adapting official documents by state and non-state actors to reflect legal gender, including in educational and work certificates. Notwithstanding this, many transgender persons continue to face extensive obstacles in changing their gender marker with public institutions and private organisations.

64. Compared to the 2013 Review, where no country allowed legal gender recognition based on self-determination, today eight states do so and have introduced quick and transparent procedures (Belgium, Denmark, Greece, Ireland, Luxembourg, Malta, Norway and Portugal). Other states, such as Switzerland, have initiated a change in their legislation to introduce such procedures based on self-determination.

Belgium, Denmark, Greece, Ireland, Luxembourg, Malta, Norway and Portugal have made progress by upholding the principle self-determination on legal gender recognition.

Norway: The Gender Recognition Act grants individuals the right to have their gender marker changed in public registers and passports through a simple and transparent procedure. People over the age of 16 can apply for change in legal gender by themselves. Children between the ages of 6 and 16 must apply together with their parents.

65. Despite this progress, the majority of countries are still not aligned with the Recommendation. Procedures are often not accessible, quick or transparent. 13 countries continue to require surgery, sterilisation, and/or medical treatment. One country requires a “complete medical transition” involving surgery, hormonal treatment and psychological evaluation to change the legal gender marker. In a number of other countries, reconstructive surgery and endocrine treatments are not available and transgender persons must travel abroad to undergo the required procedures.
66. A medical diagnosis or expert decision is required in at least 17 countries. Equally, quick procedures are often not provided. In at least seven countries, gender marker change is only granted through a judicial procedure.
67. In some countries, legal gender recognition is not regulated, leading to inconsistency and legal uncertainty in the practice, procedure and requirements. In others, legal gender recognition procedures do not even exist in practice, leaving transgender persons unable to change their name or their gender marker.
68. Most countries report that upon changing the legal gender marker, transgender individuals can marry persons of the opposite sex. At the same time, transgender persons are often forced to divorce their spouses before applying for legal gender recognition in countries where there is no same-sex marriage. While there are various practices reported by states, in the absence of regulation, grey areas of legal uncertainty exist. One member state indicated not requiring divorce but did not specify which measures are in place to protect a couple’s decision to remain married. Another indicated that a court may annul the marriage in the absence of same-sex marriage in the country, but does not refer to any legal provisions regulating the annulment.
69. Concerning legal recognition to same-sex couples, of those countries that grant rights to unmarried couples, 16 replied that they equally extend them to same-sex unmarried couples, usually under a cohabitation status. Of the replies received, 21 countries indicated that they either extend legal recognition to same-sex couples in the form of same-sex marriage (13) or same-sex partnerships (8).

Malta: The Marriage Equality Act introduced gender-neutral language that ensures all provisions are applied to all couples irrespective of sexual orientation or gender identity. Malta also reports that gender neutrality is increasingly commonplace in legal formulations.

Finland: Similarly, gender-neutral amendments were introduced in the Family Law in 2017.

Switzerland: Since 2007, same-sex couples have the option of formalizing their union as part of the registered partnership institution. In accordance with a draft revision of the Civil Code, under discussion in Parliament, it is planned to open the marriage to all couples.

70. Multiple countries indicated that partners of citizens in same-sex couples can apply for residence permits for family reasons. Nevertheless, some countries have restricted the ability of refugees to reunite with their partners, which results in hardship and discrimination for LGBT refugees whose country of origin does not allow same-sex marriage/partnership.

71. Among the respondents, 25 member states indicated that there was no discrimination on the ground of sexual orientation and 24 indicated the same on the ground of gender identity in decisions on parental responsibility and guardianship.

72. From all the responding countries, 14 extend adoption rights to same-sex couples, either through second-parent or joint adoption.

The extension of adoption rights to same-sex couples, either through second-parent or joint adoption exists in 14 states.

In autumn 2016, the Government awarded £100,000 to New Family Social, the UK's only LGBT adoption and fostering charity, to improve the assessment, matching and ongoing support of LGBT people going through the adoption process. A good practice guide for Regional Adoption Agencies has also been published.

73. Among the 22 states which provide assisted reproductive treatment, 17 offer it to single lesbian women, while 16 also offer it to unmarried lesbian couples. Some countries stated that such treatment is available only to single women or women in different-sex marriages.



Employment



Employment

Member states are required to protect LGBT employees from discrimination on grounds of sexual orientation or gender identity in both the public and private sector. This section examines measures covering the conditions for access to employment and promotion, dismissals, pay and other conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

- 74.** Legislation prohibiting **discrimination in public sector employment** on the grounds of sexual orientation exists in 34 states, while 32 reported having such legislation in place in the private sector. Regarding legislation prohibiting discrimination based on gender identity, 29 states reported having legislation in place in public sector employment, with one indicating that legislation is in progress. 28 states indicated such legislation is in place for the private sector.

34 states have legislation prohibiting discrimination in public sector employment on the grounds of sexual orientation, while 32 reported having such legislation in place in the private sector.

Andorra: In 2018, the Andorran Parliament approved a new version of the Labour Code, which includes the gender-neutral terms “parents” and “partners” (Articles 31-34) when it comes to employment-related rights. This has been welcomed by civil society as granting equal rights to same-sex couples.

- 75.** In some states, legislation covering employment does not specifically prohibit discrimination on the grounds of sexual orientation and/or gender identity. Where legislation does specifically prohibit these types of discrimination, this is not always effective in

practice, since the mechanisms for protection are not well implemented. This may result in cases of discrimination remaining unreported.

Lack of access to legal gender recognition procedures, such as legal name change, often results in transgender persons being forced into unemployment or into unofficial employment with poor working conditions and remuneration.

76. A total of 32 states report that measures to protect LGBT persons in accessing employment exist on the ground of sexual orientation, while three suggest such measures are in progress. In relation to measures prohibiting discrimination on the ground of gender identity, 29 report having implemented measures, with four suggesting this legislation is in progress.

Iceland: In 2018, the government passed the Equal Treatment in the Labour Market law, which outlaws discrimination in employment on multiple grounds, including sexual orientation, gender identity and gender expression. The law applies to several scenarios, such as recruitment processes, decisions on promotion/pay and access to training. Employers found to be violating the act will be subject to daily fines.

77. Some states referred to measures in place that consider the **heightened vulnerability of specific LGBT groups**: LBT women are protected by legislation in 19 states; 18 states have measures targeting persons with ethnic minority backgrounds; 17 states have measures for persons with disabilities; LGBT sex workers have the least protection with only 11 states reporting measures that consider their specific vulnerabilities.
78. There is some progress in implementing measures to promote the **employment of transgender persons** and their experiences in employment, albeit limited. 22 states report having measures in place to protect the privacy of transgender persons regarding the disclosure of their gender history and former name in the context of employment, which remains a low level for workplace protection of transgender persons.

Belgium: The Flemish Staff Regulations (Flemish Community and Region - Belgium) now provide for a service exemption for healthcare services for transgender persons. A staff member who undergoes a care procedure for transgender persons benefits from working time of up to 20 days during an entire career for the medical examination and psychological counselling taking place during working hours.

The Netherlands: In 2018, the Amsterdam municipality enacted the first ever transition leave regulation. Although it is a minor improvement, it does enhance stability for transgender employees and human resource management alike. NGOs continue lobbying for regulations on transition leave nationally.

Education



Education

Member states need to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity. This section examines progress across four key areas: national policies, training, curricula and support for transgender students.

- 79.** Responses demonstrate positive developments in a number of member states. Out of 42 responses, 33 member states specifically forbid discrimination on grounds of sexual orientation in education (23 in 2013) and 27 states specifically forbid discrimination on grounds of gender identity in education. In addition, 31 states indicated education staff have access to anti-discrimination training or support on LGBT issues (18 in 2013), and in 30 states national curricula include objective and evidence-based information on sexual and gender identity (15 in 2013). Finally, 15 states have indicated the existence of policies or other measures to support transgender students. Despite an increase in LGBT-inclusive interventions, it is also clear that LGBT-inclusive responses are not systematic and vary greatly in their scope. For example, in several states addressing LGBT issues in class depends on the individual school or teachers, while educational staff lack access to adequate training to prevent and address SOGI-based violence.
- 80.** States may address SOGI-based violence in the education sector within the framework of a broader legislation. For example, Albania, Bosnia and Herzegovina, Croatia, Montenegro and Slovenia prohibit discrimination and violence within the general anti-discrimination legislation. On the other hand, Germany, Finland and the United Kingdom protect the rights of LGBT students within a national equality law.

There is also a notable trend to address SOGI-based violence in the education sector within broader national LGBT action plans or strategies.

- 81.** There is also a notable trend to address SOGI-based violence in the education sector within general national LGBT action plans or strategies. Since the 2013 Review, LGBT action plans or anti-discrimination strategies have been developed in Albania, Belgium, Denmark, Ireland, Malta, Montenegro, Norway, Portugal, Serbia and the United Kingdom.
- 82.** Responses indicate that anti-discrimination training courses with explicit references to LGBT issues are not mandatory and most typically take place in-service or are developed and run by NGOs. Training is not always available nationwide or is not delivered on an ongoing basis. The responses indicated that in some contexts the training may have been organised only once.

Bosnia and Herzegovina: In 2015, one NGO organised a training course for educational staff in secondary education. The course was supported by the cantonal Ministry of Education.

Luxembourg: In 2014, the Psychological Centre for Schools piloted a training course to raise education professionals' awareness of marginalised topics, including sexual orientation and gender identity.

Belgium, Ireland, Germany, Norway, Portugal, Sweden and the UK: specifically indicated that training delivered by NGOs is endorsed and financially supported by the government or teacher training agencies.

Portugal: LGBT issues are included in the National Strategy of Education for Citizenship, jointly developed by the Ministry of Education and the Secretary of State for Citizenship and Equality. The strategy was launched as a pilot project in 2017 and expanded to all schools in the school year 2018-2019. In August 2019, the Government approved an Order aiming, among others, to create conditions for adequate protection of gender identity, gender expression and sex characteristics, against all forms of social exclusion and violence within the school context, ensuring respect for autonomy, privacy and Self-determination of children and young people who perform social transitions of identity and gender expression; and adequate training directed to teachers and other professionals of the educational system in the context of issues related to gender identity, gender expression and the diversity of sexual characteristics of children and young people, with a view to their inclusion as a process of socio-educational integration.

- 83.** Most references to SOGI in the curricula are very recent. For example, Denmark, France, Germany (the State of Berlin), Montenegro and Norway have all reformed their national curricula between 2016 and 2018 to include specific references to sexual and gender diversity.
- 84.** Although it is encouraging that the number of states with inclusive curricula has increased since 2013, teaching on LGBT issues is often not mandatory. The decision to discuss sexual and gender diversity is left to the discretion of individual schools or teachers in a majority of states. Belgium and the United Kingdom were the only states that indicated a move towards mandatory LGBT-inclusive curricula.

Most anti-discrimination training courses with explicit references to LGBT issues typically take place in-service or are developed and run by NGOs, and are not mandatory

Belgium: The Flemish Parliament approved in 2018 a new school curriculum for the first year of secondary school, making it mandatory for schools to educate students about sexual orientation, gender identity and gender issues.

United Kingdom: The government intends to make Relationship Education mandatory in 2019 in all primary schools, and Relationships and Sex Education (RSE) mandatory in all secondary schools. The government has indicated that the guidance will support teaching that is age-appropriate and relevant to all pupils, whatever their developing sexual orientation or gender identity.

- 85.** The 2013 Review did not cover the scope of support for transgender students. In 2018, just under one third of all respondents (Albania, Belgium – Flemish community, Croatia, Denmark, Finland, France, Iceland, Ireland, Malta, Monaco, the Netherlands, Norway, Serbia, Slovenia, Spain and the United Kingdom) indicated having adopted measures to protect the rights of transgender students either at national policy level, within LGBT-specific action plans or in individual educational institutions.

Malta: In 2015, the government introduced a comprehensive policy for transgender, gender-variant and intersex children in education, which mandates schools to protect students' privacy, offer gender-neutral facilities, offer counselling and information and adopt inclusive policies and language.

Slovak Republic: The Higher Education Act was amended in 2018, obliging universities and colleges to issue new certificates for trans persons who have changed their legal gender.

Iceland: In 2016, the University of Iceland changed registration procedures to allow transgender students to change their names on all documents.

- 86.** Measures to allow new education certificates for transgender persons are under preparation in Denmark, while Sweden is examining options to reform its current Gender Recognition Act. Ireland plans to introduce a policy template with an emphasis on transgender and intersex persons within its LGBT+ National Youth Strategy 2018-2020.

Health



Health

Member states are requested to adopt measures ensuring effective enjoyment of the highest standard of healthcare without discrimination on grounds of sexual orientation or gender identity. This section examines the extent to which legislation of member states complies with the Recommendation and considers the measures (or lack thereof) implemented in the fields of i) access to high-standard healthcare, ii) identification of a same-sex partner as next of kin and iii) transgender specific healthcare and intersex rights protection.

- 87.** A majority of 34 responding states reported having measures in place to ensure the enjoyment of the **highest attainable standard of health without discrimination on grounds of SOGI**, in comparison with 22 states in the 2013 Review. Nevertheless, only a few states have adopted measures specifically referring to SOGI. In practice, non-discriminatory and effective access to healthcare for LGBT persons seems to remain a challenge in all member states.
- 88.** 25 states indicated that the specific needs of LGBT persons are taken into consideration in national health plans. These include suicide prevention measures (Belgium – depending on the community, France, Ireland, Norway and the United Kingdom), health surveys, medical curricula and training courses, and materials (Belgium – depending on the community, Denmark, France, Germany, Ireland, the Netherlands, Norway, Poland and Sweden).

United Kingdom: The 2018 LGBT Action Plan appoints a National Adviser for improving LGBT healthcare; the adviser will focus on reducing health inequalities affecting LGBT persons and on facilitating their access to public health services.

- 89.** In regard to frameworks to identify same-sex partners as next of kin, 28 states reported that no obstacles existed within their legislation. In Finland, specific legislation is currently being prepared.

Poland: Legislation states that the term “next of kin” refers to any person indicated by the patient.

Luxembourg: Legislation provides that patients can be assisted in health procedures and decisions by any person of their choice.

Czech Republic: Any family member (including registered partners) or any other person designated by the patient can obtain information on their health condition or give consent to necessary intervention in case of emergencies.

Ireland: The Health Service Executive (HSE) started to develop a framework for the establishment of national gender clinics and multidisciplinary teams for children and adults. Parts of the HSE 2018 budget were allocated to increase capacity and address the waiting times, and to immediate service needs of children, adolescents and adults in transition.

- 90.** Trans-specific healthcare services are reported as existing by 26 states. Finland and the United Kingdom mention the existence of specialised trans-specific healthcare providers. However, in most states, specialised mental health, endocrinological and surgical services appear not to be adequate in quality nor quantity, often having personnel lacking specific training on trans issues. Positive measures were adopted by France, Ireland, the Netherlands, Norway, Portugal and Sweden. However, there is a discrepancy between state replies and other monitoring reports, particularly regarding asylum seekers.

Austria: Following the CPT visit to Austria (2014) and its recommendation, transgender persons in prisons (and, where appropriate, in other closed institutions) should have access to assessment and treatment according to their gender identity. At the beginning of 2019, Austrian authorities granted registration of the change of gender to one detainee. Procedures for modification of personal data concerning gender identity for two other transgender prisoners are under way.

91. Most responses argue that specific cost coverage requires an “illness” condition. However, specific healthcare needs of trans persons can and should be met, similarly to other non-pathologising codes which do not require a diagnosis of ill health, such as preventive healthcare interventions, vaccinations or pregnancy. Reimbursement of trans-specific healthcare is guaranteed in 17 member states and partially in six others.

Ireland: A Treatment Abroad Scheme is in place. It provides the cost of approved specialised trans-specific healthcare in another EU/EAA state or Switzerland. The scheme allows for patients normally residing in Ireland to be referenced for treatment in these other states.

92. Generally, responses highlighted the existence of legislation providing that no medical intervention should be performed without written, free and informed patient consent. However, specific legal regulations on patient consent to sex-reassignment surgery appear to be non-existing in the majority of responding states. In addition, access to trans-specific healthcare in most countries is conditional on the healthcare providers’ criteria, not the patient’s decision and informed consent. In regard to underage persons, the right of the child to participate in decisions according to their age and maturity⁸ often conflicts with parental rights. A worrying consequence is the rights of underage trans persons not being respected and their access to care being denied.
93. Although trans identities have been depathologised in the World Health Organization’s new ICD-11 and the European Court of Human Rights and the European Committee on Social Rights⁹ have found that requirements of sterilisation or treatment likely to result in sterility are incompatible with human rights standards, 13 countries still require sterilisation as a precondition to legal gender recognition procedures. This requirement directly affects trans persons’ rights, equally in relation to trans-specific healthcare, as it often determines how trans-specific healthcare is set up and reimbursed.
94. The practice of “sex-normalising” surgeries on intersex children is still a particularly problematic issue. Such surgeries have only been banned in Malta, Portugal and Spain (regionally). In the vast majority of countries, no explicit prohibition to perform the surgery without the child’s consent exists.

The World Health Organization clarified that trans identities are no longer considered (mental) pathologies in the International Statistical Classification of Diseases and Related Health Problems version 11 (ICD-11).

⁸ United Nations Convention on the Right of the Child.

⁹ United Nations Convention on the Right of the Child.A.P., Garçon And Nicot v. France, judgement of 6 April 2017, § 131; European Committee of Social Rights, Complaint 117/2018 § 80.

Although LGBT conversion therapies are widely condemned, only Malta, Spain (regionally) and the United Kingdom have completely banned the practice.

95. Concerning conversion therapies, Ireland, Norway, Spain and the United Kingdom submitted specific remarks on this issue in their replies, while no specific prohibition or criminal or civil sanction appears to be in place in the large majority of states.

Ireland: The recent LGBTI+ National Youth Strategy contains an action to prohibit the promotion or practice of conversion therapy by health professionals in Ireland (Ref. 8b). A draft bill, The Prohibition of Conversion Therapies Bill 2018, is currently in the legislative process.

Norway: So-called "conversion therapy" is considered unethical by the Norwegian Psychiatric Association.

Spain: Some regions expressly prohibit conversion therapies and similar procedures trying to alter a trans person's identity. For example, sanctions against such therapies are provided in Law No. 2 of 29 March 2016, adopted by the Community of Madrid.

United Kingdom: The National Health Service is a co-signatory to a Memorandum of Understanding by the main registration and accreditation bodies for psychotherapy and counselling practitioners to put a stop to this treatment.

Housing



Housing

Member states must adopt measures that will grant effective and equal access to adequate housing and social services provided in the event of homelessness, without discrimination on grounds of sexual orientation or gender identity. This section examines how national legislation complies with the Recommendation, as well as the measures taken to this effect.

- 96.** As in the 2013 Review, 26 of the responding states reported having taken the necessary measures to ensure effective and equal access to adequate housing without discrimination on grounds of sexual orientation or gender identity.
- 97.** Most of the answers referred to general principles or clauses of non-discrimination protecting the ground of sexual orientation – and, more rarely, gender identity – which would also apply to the field of housing. Legislation referring to access to housing with SOGI as protected grounds exists in Austria, Finland, Ireland, Lithuania, Luxembourg, the Netherlands, Norway, Slovenia, Spain, Sweden and the United Kingdom.
- 98.** Access to social services is granted with explicit reference to non-discrimination based on SOGI in 25 states. Nevertheless, no provision ensuring non-discriminatory access to shelter with specific respect to sexual orientation or gender identity exists, and no state programmes specifically targeting LGBT homelessness are mentioned in the replies.

Only Portugal and Sweden appear to have taken state or state-supported initiatives to address the specific needs of LGBT persons in relation to homelessness.

99. State or state-supported initiatives to address the specific needs of LGBT persons in connection to homelessness appear to have been taken only in Portugal and Sweden. As a consequence, provision of shelters designed specifically for LGBT persons falls mostly on private associations who support LGBT groups.



Sports

Member states are required to put measures in place to prevent, counteract and punish discrimination on grounds of sexual orientation or gender identity during and in connection with sports events, and to encourage dialogue with sports organisations and fan clubs. This section identifies the measures, including awareness-raising measures, in place to tackle such discrimination implemented by states and civil society.

100. There have been some positive developments since 2013 in policies and action plans in Denmark, Ireland, Italy, Norway, Portugal, Sweden and the United Kingdom, and other states, reflecting further progress towards implementation of the recommendations in the field of sports.

Denmark: The National Olympic Committee and Sports Confederation of Denmark, the Danish Elite Sport Organisation and Team Denmark have issued an ethical code for all athletes, coaches, officials, leaders, and supporters involved with sports and sports events in Denmark. The code emphasises equal treatment of all, regardless of gender, race, ethnicity, political or sexual orientation.

101. However, in certain states where laws and policies exist, implementation seems to lack effectiveness, and in other states, measures to tackle discrimination in sports do not explicitly refer to SOGI.

SOGI issues can remain unaddressed in codes of conduct due to lack of collaboration between sports bodies and LGBT associations and lack of knowledge of the relevant issues.

- 102.** There are examples where discrimination in sports is not dealt with by national law but instead regulated by the sports event organiser (Lithuania). Alack of collaboration between sports bodies and LGBT associations and lack of knowledge of the issues can result in SOGI issues remaining unaddressed in codes of conduct. Some states made no progress in this field.
- 103.** Awareness-raising campaigns reflect positive collaboration between a variety of stakeholders in some states, including Denmark and Portugal, to tackle homophobia and the acceptance of LGBT persons in sports. In other states, despite the increasingly difficult environment with homophobic language used at sports events, such collaboration does not yet exist.
- 104.** Conferences on issues of homophobia and transphobia in sports are few and far between. This is despite the learning opportunity they present around the experience of LGBT persons in sports, which is largely lacking research and collaboration between key actors. The best examples reported include the 2017 conference Queering Football: Addressing Homophobia at Mega Sports Events in Ljubljana on the issue of homophobia at sporting events. It involved representatives of international and national sports organisations, NGOs, clubs, athletes, LGBT groups, activists and university teachers from 17 countries. In 2019, Germany holds a conference led by a Berlin Sports Club for queer sports clubs to support networking opportunities.

Finland: A criterion of state funding for sports bodies is to have and develop equality plans which must include the protection of LGBT persons.

Georgia: A brave move made by a member of the Georgian national football team, Guram Kashia, involved him wearing LGBT flag-handcuffs at a match in solidarity with LGBT persons. The act was applauded by LGBT groups and human rights defenders and by the President of Georgia, the Mayor of Tbilisi and the Georgian Football Association. However, fans marched against the move asking for him to be removed from the team, shouting homophobic slurs and burning a rainbow flag outside the Georgian Football Federation. Further marches took place against “LGBT propaganda in football” led by religious institutions.

**Right to
seek asylum**



Right to seek asylum

Member states are required to respect the principle of non-refoulement and to adopt measures to protect LGBT asylum seekers and those deprived of their liberty from risks of physical and verbal violence. This section examines asylum legislation with relevance to LGBT rights and highlights developments in assessing asylum claims based on SOGI and in ensuring a safe environment for LGBT asylum seekers deprived of their liberty.

105. As in 2013, a majority of states reported that a well-founded fear of persecution based on SOGI is recognised. In most cases, this recognition is indirect as such claims are usually covered under the umbrella category of “membership of a particular social group” stated in the 1951 Refugee Convention. The explicit recognition in domestic law of LGBT protection needs more attention.

106. EU states have generally highlighted the alignment of their legislation with Article 10 of the Qualification Directive (2011/95/EU)¹⁰ and have referred to provisions in their legislation, policy documents and domestic jurisprudence confirming the Directive’s approach. However, not all states have reported explicitly covering both sexual orientation and gender identity. Recent legislation that includes gender identity was reported in Croatia, Portugal and Spain.

¹⁰Article 10 of the Qualification Directive: “Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.”

The legal protection of trans asylum seekers has rarely been addressed in the responses

- 107.** Some non-EU states have also reported that a well-founded fear of persecution based on sexual orientation or gender identity is recognised explicitly in legislation as valid grounds for granting the status of asylum or subsidiarity protection (Montenegro, North Macedonia, Serbia). In some states, this recognition applies only to sexual orientation.
- 108.** The legal protection of trans asylum seekers has rarely been addressed in the responses, which raises particular concerns about the rights of transgender refugees. On the one hand, it is important that specific measures are implemented to ensure that trans asylum seekers have access to staff appropriately trained when requesting refugee status. Such training should encompass not only reception officers, but also interviewers, translators/interpreters and other officers who might directly or indirectly be involved in the claim process. On the other, measures addressing the specific conditions of asylum centres must be implemented to ensure that trans asylum seekers have access to particular healthcare if required (such as hormone replacement therapy) and to prevent discrimination, harassment and violence both from staff and from other asylum seekers. On a positive note, Portugal pointed out that in accordance with its 2018-2021 Action Plan, amendments to its asylum law to include gender expression are foreseen.
- 109.** State responses generally confirmed that concealment of sexual orientation or gender identity was not considered as an acceptable way of avoiding human rights violations after return to a country of origin. However, like in the 2013 Review, state replies do not provide a clear understanding of the operationalisation of this principle.
- 110.** Replies indicate a general acceptance that no recourse to psychological tests should be had and that applicants should not have to provide a detailed account of their sexual practices or produce “evidence”. Some more detailed replies suggest that the interpretation of the use of medical expertise may vary. It was regularly indicated that the matter is not regulated or that no specific measures have been taken to prevent such instances. Some states have, however, reflected these principles in their internal guidelines, prohibiting this practice (Belgium, the Netherlands).
- 111.** The process of gathering evidence is a particularly challenging issue as regards LGBT asylum seekers during asylum procedures. Beyond the dissemination of materials, the issue of the training of asylum officials remains a key issue. In the 2013 Review process,

guidance for staff tasked with handling SOGI-based asylum claims was unevenly developed and few states referred to specific training. In the 2018 review process, awareness of the need for adequate LGBT asylum-related training in selected EU countries seems to have increased. The focus is on providing staff with adequate tools for interviewing LGBT applicants and making decisions for applications based on SOGI, and such training sessions are often provided for newly recruited staff or delivered on an ad hoc basis. In many instances, EASO or UNHCR play a leading role in such training. Nevertheless, this training is often not part of the regular curricula.

Training that provides asylum officials with adequate tools for interviewing LGBT applicants is a key issue, but often it is delivered on an ad hoc basis.

112. Half of the state replies regarding the provision of safe and non-discriminatory environments for LGBT asylum seekers deprived of their liberty are either negative or do not respond to the question. In general, states do not seem to have put in place specific preventive measures. Notably, most states report on measures taken on an ad hoc basis, depending on individual circumstances, or they refer to procedures applying to “vulnerable persons in detention”. A possible ad hoc measure would be the transfer from one detention centre to another or the placement of the person in an individual room. In the case of Finland, LGBT asylum seekers are routinely offered an individual room irrespective of whether there exists an immediate risk to their safety. In Sweden, the migration agency provides enhanced safety accommodation for transgender asylum seekers in reception centres. Access of NGOs to detention facilities has proven important in the provision of assistance to LGBT asylum seekers and, in some cases, has helped in ensuring that their needs are met.

113. The tightening of asylum rules also has a negative effect on LGBT asylum seekers, especially when conditions in reception centres are inappropriate for the number of asylum seekers hosted and when no particular care is given to the needs of LGBT asylum seekers, owing to a lack of human or financial resources. Internalised homophobia, biphobia or transphobia are particular concerns for fast-track procedures, since LGBT asylum seekers may not initially be willing to disclose their sexual orientation or gender identity. In such instances, it is imperative that there are late disclosure measures in place to ensure that the principle of non-refoulement is respected and that the applicant’s SOGI is still taken into consideration for refugee status determination.



National human rights structures



National human rights structures

M

Member states are required to ensure that national human rights institutions (NHRIs) are clearly mandated to address discrimination on grounds of sexual orientation or gender identity. This section examines the specific mandate of NHRIs and how they deal with SOGI discrimination issues. In so doing, it will focus on NHRIs as understood by the Principles relating to the Status of National Institutions (Paris Principles)¹¹ and shall therefore not cover the work of governmental or parliamentary structures, even though some of the state replies referred to these.

114. The mandate of NHRIs usually follows the grounds covered by the legislation on non-discrimination. It either mentions sexual orientation and gender identity explicitly or refers to the grounds covered by the legislation. A lack of clarity or explicit provision on gender identity has been reported in some instances. It has nevertheless been overcome in practice, with some NHRIs pursuing work on gender identity through a broader interpretation of other grounds within their mandate (“gender”, “sex”). A positive development is that legislative amendments are foreseen in selected countries to include an explicit reference to gender identity, for example in Lithuania.

115. There may be more than one NHRI dealing with the issue of LGBT claims, in which case it is important to have a system for channeling the case to one institution. Some NHRIs, for example in Finland, have created working groups to address specific challenges

¹¹ www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx

(Working Group on *LGBT children and children living in rainbow families of the Children Ombudsman*). NHRIs in many states have experience in dealing with LGBT issues, with NHRIs usually involved in information activities such as collecting data and reporting, dealing with LGBT complaints, providing recommendations for LGBT policies and laws and, in some cases, acting *ex-officio*.

- 116.** In practice, some challenges have been raised about NHRIs operating in an adverse political climate in certain countries with budget cuts, political pressure and attacks undermining their work. NHRIs independence, the lack of trust of victims and/or awareness of NHRIs' role are also issues. The low level of compliance with NHRI's recommendations, with a limited number of cases followed up was also highlighted by various Council of Europe reports (ECRI, CDDH).¹²

Bosnia and Herzegovina The Ombudsman elaborated special reports in 2017 on the situation of LGBT rights which was based on broad consultations, including with selected individuals, representative CSOs, academic experts and state authorities. The Ombudsman reports to the general public and the Parliamentary Assembly.

¹² CM(2017)92-add5, Analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, Human Rights defenders and national institutions for the promotion and protection of Human Rights, prepared by the CDDH and of which the Committee of Ministers took note of in September 2017.

Discrimination on multiple grounds



Discrimination on multiple grounds

Member states are required to have legal provisions in place to prohibit discrimination on multiple grounds, including on grounds of SOGI. This section examines the extent to which legislation addresses multiple discrimination, reviews its understanding by states, reflects on the role of NHRIs, and on initiatives or research aimed at raising awareness on the issue of multiple discrimination.

- 117.** There are different understandings and interpretations of the concept of multiple discrimination across states and a small number has addressed this in national law. The lack of domestic case law on the implications of discrimination on a plurality of grounds, including SOGI, is a challenge. Research on multiple discrimination is scarce and has mostly been conducted at the initiative of CSOs and Academia.
- 118.** While most states reported tackling multiple discrimination in 2013, the 2018 replies indicate that the understanding of the concept still varies. In general, non-discrimination legislation includes an extensive (and sometimes non-exhaustive) list of grounds. State replies tend to highlight that national legislation recognises multiple discrimination even in the absence of an explicit provision.
- 119.** Few states reported having included an explicit provision on multiple discrimination in their anti-discrimination legislation (Georgia, Norway, Sweden). In other countries, multiple discrimination is referred to as an “aggravating circumstance” (Austria and Romania) or “severe discrimination” (Bosnia and Herzegovina, Croatia, North Macedonia, Slovenia). In Poland, the concept is included in sectoral

legislation (Labour Code). In Greece, the concept was initially limited to employment before being extended to other fields. Some states have introduced or will introduce the concept in policy documents (Bosnia and Herzegovina, Ireland, Serbia).

- 120.** Some NHRIs have played a positive role in drawing attention to multiple discrimination. In the Netherlands, the Equal Treatment Commission proposed to include the concept in the General Equal Treatment Act. In Sweden, the Equality Ombudsman brought several multiple discrimination cases to court.

Estonia: The Gender Equality and Equal Treatment Commissioner reviewed several cases of multiple discrimination, confirming that both the Gender Equality Act and the Equal Treatment Act should be interpreted as including the possibility of multiple discrimination.

Multiple discrimination appears to have received limited attention by governments, the judiciary and civil society

- 121.** In general, multiple discrimination appears to have received limited attention by governments, the judiciary and civil society. This is clear in other sections, including employment, where the specific protection of vulnerable LGBT groups, including sex workers and those with disabilities, is only ensured by a minority of states. Some states like Belgium – depending on the community, Denmark, Finland or Italy have signalled that intersectionality is used for funding equal opportunities and LGBT projects.

Recommendations and Follow-up



Recommendations and Follow-up

122. Comprehensive equal treatment legislation should be accompanied by appropriate policy measures for implementation and coupled with regular reviews to ensure effective responses to constantly evolving human rights challenges of LGBT persons.
123. Member states which currently have no anti-discrimination legislation in place specifically protecting sexual orientation or gender identity should move towards appropriate protection of these grounds.
124. Where hate speech and hate crime legislation does not explicitly recognise criminal acts on the basis of motives linked to the victim's sexual orientation or gender identity, member states are asked to address this gap by legislation that makes it possible to consider these motives as "aggravating circumstances".
125. Member states should focus on building alliances and involving civil society organisation in the design, implementation and monitoring of policies addressing equality for LGBT persons. Particular areas in which this is needed concern freedom of association, expression and peaceful assembly.
126. Following the trend in recent years in Europe and in line with the European Court of Human Rights case law, member states should ensure that a specific legal framework exists providing for appropriate recognition and protection of same sex unions.
127. In line with the European Court of Human Rights case law and following the example of a great number of member states, sterilisation and other compulsory medical treatment as requirements for legal gender recognition of transgender persons should be abolished.

128. Member states should ensure inclusiveness and LGBT diversity management in the public and private sector to promote a safe working environment.
129. Member states should review their national educational curricula to ensure it includes factual and non-judgmental information about sexual orientation and gender identity and provide ongoing support, including training, guidance and resources, for teachers and other educational staff so that they feel competent and confident to prevent and address SOGI-based violence.
130. Member states should ensure that trans-specific healthcare (hormonal treatment, surgery and psychological support) is accessible and are invited to ensure that it is reimbursed by the public health insurance schemes, taking into account national budgetary constraints.
131. In their social housing policies member states should acknowledge the high risk of homelessness faced by young LGBT persons excluded from their families and provide an effective response.
132. Member states policies should promote visibility of LGBT persons and address homophobic and transphobic violence in sports.
133. Member states should ensure practical guidance and regular training for all those involved in the asylum procedure, including interviewers, decision makers and interpreters, so that claims for asylum by LGBT persons are handled in a respectful, informed and sensitive way.
134. Member states are encouraged to ensure that the mandate of national human rights institutions clearly addresses discrimination on grounds of sexual orientation and gender identity and that their complaint mechanisms are accessible to LGBT persons.
135. Member states should take steps towards protection against discrimination on multiple grounds (LBT women, LGBT refugees, LGBT ethnic minorities, LGBT persons with disabilities).
136. Member states should take into consideration the specific needs of LBT women in particular as regards free of prejudice and discrimination access to health care protection from gender-based violence, sexism and non-discrimination in accessing social rights.
137. On the basis of the replies from member states to the questionnaire, the CDDH invites the Committee of Ministers to take note of this report, encourage member states to continue their efforts to implement the provisions of the Recommendation, and continue to provide them with Council of Europe support, notably in the framework of the Steering Committee on Antidiscrimination, Diversity and Inclusion (CDADI).

Combating discrimination
on grounds of sexual orientation
and gender identity
in Council of Europe Member States

"...Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity..."

Recommendation CM/Rec (2010)5
of the Committee of Ministers to member states
on measures to combat discrimination
based on sexual orientation or gender identity

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