

Factsheet on LGBTI issues



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Factsheet on LGBTI¹ issues

Secretariat of ECRI
European Commission
against Racism and Intolerance

Council of Europe

¹ For the terminology, see the definitions in [Council of Europe Commissioner for Human Rights 2011](#).

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The present factsheet has been prepared by the Secretariat of ECRI, in close consultation with the ECRI Task Force² on LGBTI issues. It aims to present ECRI key standards on issues of sexual orientation, gender identity and sex characteristics.³

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- 2 ECRI's Task Force on LGBTI issues was set up in July 2020 in order to prepare the ground for the drawing-up of a future General Policy Recommendation in accordance with ECRI's Roadmap for the years to come. As of 4 December 2020, the Task Force is composed of the following members: Michael FARRELL (ECRI member in respect of Ireland), Domenica GHIDEI BIIDU (ECRI member in respect of the Netherlands), Marin GURIN (ECRI member in respect of the Republic of Moldova), Cristian JURA (ECRI member in respect of Romania), Neza KOGOVSEK SALAMON (ECRI member in respect of Slovenia), Maria Daniella MAROUDA (ECRI member in respect of Greece), Elena MIHAJLOVA STRATILATI (ECRI member in respect of North Macedonia), Kristina PARDALOS (ECRI member in respect of San Marino) and Aslak SYSE (ECRI member in respect of Norway).
- 3 As reflected in the recommendations contained in ECRI country reports under the fifth and sixth monitoring cycles.

Introduction

ECRI has been addressing intolerance and discrimination against LGBTI persons in the context of its country monitoring work since 2013, when it initiated its fifth country monitoring cycle.⁴ Within the Council of Europe, ECRI had been encouraged to consider doing so following the adoption by the Committee of Ministers of its **Recommendation CM/Rec(2010)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity** in March 2010. In its work of opposing intolerance and discrimination against LGBTI persons, ECRI has drawn upon the developing case-law of the European Court of Human Rights interpreting the European Convention on Human Rights and on recommendations of the Committee of Ministers and resolutions of the Parliamentary Assembly of the Council of Europe. It also took due account of the relevant recommendations made by the Commissioner for Human Rights and decisions of the European Committee of Social Rights.

However, ECRI has not confined itself to just these sources because its role is also to review and draw attention to policies and practices that may lead to discrimination, exclusion or even persecution of minorities, including LGBTI persons, and to make suggestions about how to end such practices and protect against intolerance and discrimination.

The present factsheet, which is based on the recommendations made by ECRI as a result of its monitoring visits to member states, should be seen as a work in progress and not considered as exhaustive as ECRI may have to confront new problems in future years, notably from new technology and other developments which will require new responses. Furthermore, ECRI's recommendations should not be taken in isolation from relevant Council of Europe and other international standards.⁵

It should also be borne in mind that the precise nature and legal contexts and policy areas in which ECRI's recommendations have been made may vary significantly, depending on circumstances in the countries in question and the segment of the LGBTI community concerned.

4 ECRI started examining discrimination and intolerance towards LGBT persons in its fifth cycle of country monitoring (2013-2018) and towards Intersex persons in its sixth monitoring cycle. See also *Sexual orientation, gender identity and sex characteristics* (coe.int).

5 In its Roadmap published in September 2019 in connection with ECRI's 25th anniversary ECRI expresses the intention to engage in work on a new **General Policy Recommendation to combat intolerance and discrimination against LGBTI persons** (paragraph 8).

Legal framework

General principles

1. The authorities should take appropriate legislative measures with the aim of sending a clear message that intolerance against LGBTI persons is not acceptable, notably by submitting legislation or amendments to existing legislation to Parliament, in order to enshrine in law the equality and dignity of LGBTI persons in all areas of life.⁶

Criminal law

2. In accordance with ECRI's General Policy Recommendation No. 7, the grounds of sexual orientation, gender identity and sex characteristics should be explicitly included in criminal law provisions aimed at combating racism and intolerance. In this connection, criminal law should provide for effective, proportionate and dissuasive sanctions. It should also make public insults, public defamation and threats committed against a person or a group of persons on account of their sexual orientation or gender identity (or sex characteristics) criminal offences. Moreover, it should provide explicitly that LGBTI-phobic motivation constitutes an aggravating circumstance for any ordinary offence.⁷
3. Criminal legislation pertaining to hate speech should also include sexual orientation, gender identity and sex characteristics as prohibited grounds. While enacting or amending such legislation, the authorities should take inspiration from ECRI's General Policy Recommendations Nos. 7 and 15.⁸

Civil and administrative law

4. Civil and administrative anti-discrimination legislation and laws on combating hate speech should include sexual orientation, gender identity and sex characteristics as prohibited grounds.⁹ In this context, the authorities should take inspiration from ECRI's General Policy Recommendations Nos. 7 and 15.¹⁰
5. The authorities should introduce into the law the principle of sharing the burden of proof where discrimination complaints on grounds of sexual orientation, gender identity and sex characteristics are brought before the civil or administrative courts.¹¹

6 **Compilation of ECRI Country Reports Recommendations pertaining to LGBT Persons** (*fifth monitoring cycle*), §§ 176-180.

7 **Compilation of ECRI Country Reports Recommendations pertaining to LGBT Persons** (*fifth monitoring cycle*), §§ 190-197.

8 *Ibidem*, §§ 82-89.

9 *Ibidem*, §§ 26-33; 181-189.

10 *Ibidem*, §§ 82-89.

11 *Ibidem*, § 154.

Legislation on cohabitation and marriage

6. The authorities should provide a legal framework that allows same-sex couples to have their relationship formally and legally recognised and protected, without discrimination of any kind, in order to address the practical problems related to the social reality in which they live. The authorities should examine whether there is an objective and reasonable justification for any differences in the regulation of married and same-sex couples and abolish any such unjustified differences.¹²

Legislation on gender recognition and gender reassignment

7. The authorities should adopt legislation explicitly regulating the change of name and gender for transgender persons and establish clear guidelines for gender reassignment procedures and their official recognition, drawing inspiration from relevant Council of Europe standards. Such legislation should guarantee the full legal recognition of a person's gender reassignment and allow gender changes to be made, including gender markers, in personal documents (including identity cards, educational diplomas and employment certificates), in a quick, transparent and accessible way, without the requirement for gender reassignment surgery. Similarly, in line with the case-law of the European Court of Human Rights and the relevant decisions of the European Committee of Social Rights, legislation providing for recognition of persons in a gender other than that in which they were originally registered should not include any requirement as a precondition to legal recognition such as gender reassignment surgery, heavy hormonal treatment, sterilisation, divorce or extensive psychiatric examination.¹³
8. While drafting such legislation, the authorities should involve organisations that represent LGBTI persons and take into account the views of the equality bodies.¹⁴

Asylum legislation

9. The authorities should amend their legislation so that anyone who is in danger of being a victim of persecution in their country of origin on account of their sexual orientation or gender identity (or sex characteristics) may be granted refugee status.¹⁵

¹² Ibidem, §§ 222-232.

¹³ Ibidem, §§ 198-220; ECRI's 5th cycle monitoring report on Serbia, §100; ECRI 6th cycle report on the Czech Republic, §14. See, in this connection, European Court of Human Rights (ECtHR) (2020), [Gender Identity issues, fact sheet](#); ECtHR, [A. P., Garçon and Nicot v. France](#) application nos. [79885/12](#), [52471/13](#) and [52596/13](#), Judgment (6.4.2017); European Committee of Social Rights 2018: [Transgender Europe and ILGA-Europe v. the Czech Republic](#) § 89 and Resolution of the Council of Europe Committee of Ministers [CM/ResChS\(2018\)9](#).

¹⁴ [Compilation of ECRI Country Reports Recommendations pertaining to LGBT Persons](#) (fifth monitoring cycle), §§ 206.

¹⁵ Ibidem, § 221.

Data collection and research

10. The authorities should set up a comprehensive and reliable data collection system as regards discrimination or intolerance suffered by members of the LGBTI community, including in the form of offences motivated by hatred against this community. The data collected should include any specific bias motivation of incidents of hate speech and violence against LGBTI persons reported to the police as well as the follow-up given by the judicial authorities, and this data should be made available to the public. In this regard, they may also build on the expertise of the equality bodies, other human rights institutions and relevant NGOs and take active measures to tackle under-reporting of hate speech, taking inspiration from ECRI's General Policy Recommendation No. 15.¹⁶
11. The authorities should undertake researches/surveys on LGBTI persons, on their living conditions, as well as on discrimination and intolerance of which they may be victims, while ensuring respect for the principle of confidentiality, informed consent and individuals' voluntary self-identification as a member of a particular group.¹⁷

National strategies and action plans or programmes

12. Together with organisations that represent the LGBTI community, the authorities should draw up, adopt and implement a national strategy and/or an action plan (or a comprehensive programme) aiming to ensure that LGBTI persons can live on an equal footing with others. The strategy and/or action plan or programme for LGBTI persons, to be adopted either as a separate policy document or part of a national strategy or plan for combating discrimination, should include the objectives of protecting LGBTI persons against discrimination, hate speech and violence, raising awareness about their living conditions, promoting understanding of LGBTI persons and making their right to equal treatment a reality in all areas of life, including education, employment and health care. Such a measure should take inspiration from Recommendation CM/Rec (2010) 5 of the Committee of Ministers of the Council of Europe and from other existing plans and be properly funded. An inter-ministerial working group on LGBTI issues may be set up to ensure co-ordination among competent authorities, regular contacts with LGBTI NGOs and a speedy implementation of all the projects of the action plan.¹⁸
13. Where appropriate, the authorities should reinforce their responses against hate speech targeting LGBTI persons by entrusting a special inter-institutional working group with the development of a comprehensive strategy in this regard. This group should include the relevant authorities, equality bodies, and civil society organisations, including representatives of the LGBTI community and, to the extent possible, media representatives. This strategy should make effective use of ECRI's General Policy Recommendation No.15.¹⁹

¹⁶ Ibidem, §§ 37-50; 101-111.

¹⁷ Ibidem, §§ 155-175.

¹⁸ Ibidem, §§ 237-260.

¹⁹ Ibidem, §§ 155-175.

Prevention

Awareness-raising

14. The authorities should organise, together with the equality body(ies) and the relevant civil society groups, extensive awareness-raising campaigns to inform and raise awareness among all sections of the society about the prohibition of hate speech and discrimination against LGBTI persons, the legal provisions and rights existing in this field, and the procedures for reporting and filing complaints against instances of such speech.²⁰
15. Awareness-raising measures should include action aimed at informing the general public about the relevant criminal law provisions. The authorities should also include modules covering LGBTI-phobia in introduction courses for newly-arrived migrants in a way that avoids stigmatisation.²¹

Education

16. Curricula of school, university and vocational education should be revised in order to contain a section on LGBTI issues from the angle of the intolerance and discrimination that LGBTI persons can suffer.²²
17. The authorities should also, in consultation with the LGBTI community, implement measures to promote mutual tolerance and respect in education regardless of sexual orientation, gender identity and sex characteristics. These measures should address bullying of LGBTI pupils and students in education, with special attention given to textbook revisions to raise awareness on LGBTI issues and to fight LGBTI-phobic stereotypes and prejudices effectively. The authorities should also provide all pupils and students with the necessary information, protection and support to enable them to live without fear or concern, regardless of their sexual orientation, gender identity or sex characteristics.²³ They should also abolish any legal ban on the provision of information about homosexuality to children.^{24 25}
18. The authorities should ensure that all schools are encouraged to put in place a policy to prevent, monitor and respond to LGBTI-phobic incidents, including bullying, with guidelines for pupils, teachers and parents. The authorities should move on from general anti-bullying activities to developing and implementing group-specific modules against bullying of members of vulnerable communities, such as LGBTI children and young people. In this context, the authorities should take inspiration from ECRI's General Policy Recommendation No. 10 on inclusive education and link activities to existing and future national action plans for LGBTI persons.²⁶

²⁰ Ibidem, §§ 51-55.

²¹ Ibidem, §§ 150-152.

²² Ibidem, §§ 56; 268-282; 265-267.

²³ Ibidem, §§ 56; 268-282; 265-267.

²⁴ Ibidem, § 180. See, in this connection, European Court of Human Rights (2017), **Bayev and others v. Russia (application nos.67667/09, 44092/12 and 56717/12)**, Judgment.

²⁵ In line with the judgment of the European Court of Human Rights in the case Bayev and others v. Russia.

²⁶ ECRI 6th cycle report on Switzerland, §13; ECRI 6th cycle report on Belgium, §19; ECRI 6th cycle report on Albania, §11.

Training of professionals

19. Teachers should be trained on how to address intolerance and discrimination against LGBTI persons, promote understanding of and respect for LGBTI pupils in schools and to prevent bullying. Appropriate teaching material should be produced to that effect.²⁷
20. Law enforcement officials, prosecutors and judges should receive suitable training on hate speech against LGBTI persons and LGBTI-phobic hate crime. Co-operating partners in such training should also include equality bodies and the LGBTI community. Impact assessments should also be carried out to evaluate the effectiveness of training activities and if necessary, adjust them.²⁸
21. Appropriate training sessions on legal and other standards on combating LGBTI-phobic hate speech should be provided to media professionals.²⁹
22. In-service training programmes on LGBTI issues should be developed for all other relevant professionals (including healthcare professionals).³⁰

Protection

Rights to appropriate health care, physical integrity and bodily autonomy

23. Some segments of the LGBTI community may have specific medical needs, such as access to hormonal therapy and gender reassignment surgeries, as well as specific rights, such as the right to legal gender recognition and the right to physical and bodily autonomy, the denial or deprivation of which may constitute discrimination.
24. Where appropriate, the authorities should develop a policy against segregation in education and ensure its effective implementation. They should closely monitor the situation and ensure that any form of de facto segregation affecting Roma children in kindergartens and schools is ended.³¹
25. Intersex children's right to physical integrity and bodily autonomy should be effectively protected. Medically unnecessary sex-“normalising” surgery and other treatments of the kind should be prohibited until such time as the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent. Where it does not already exist, the authorities should swiftly enact legislation that prohibits unnecessary surgery and therapies on intersex persons. They should also establish services with low-threshold access that provide counselling and assistance to intersex persons and their parents.³²

27 **Compilation of ECRI Country Reports Recommendations pertaining to LGBT Persons** (fifth monitoring cycle) § 269; §§ 281-282.

28 Ibidem, §§ 94-100.

29 Ibidem, § 277.

30 Ibidem, § 277.

31 Ibidem, §§ 261-264.

32 ECRI 6th cycle report on Switzerland, §112; ECRI 6th cycle report on Austria, §101; ECRI 6th cycle report on Germany, §109.

Right to freedom of assembly

26. In accordance with the case-law of the European Court of Human Rights, the authorities should ensure that the right to freedom of assembly of LGBTI persons and activists and supporters is respected.³³

Responsibilities of public and other authorities and institutions

Government authorities

27. The relevant authorities should make public statements condemning LGBTI-phobic hate speech. They should also encourage and promote counter-speech by public figures in response to hate speech against LGBTI people. They should encourage speedy reactions by public figures, which would also seek to reinforce the values that such speech threatens.³⁴

Parliaments, political parties and leaders

28. Parliaments at all levels should have a code of conduct/code of ethics prohibiting and sanctioning LGBTI-phobic discourse and insults.³⁵
29. All political parties and political leaders on all sides should take a firm stand against intolerant discourse against LGBTI persons, instruct their members and representatives to refrain from making derogatory comments targeting individuals or a group of persons on grounds of their sexual orientation, gender identity or sex characteristics and to instead engage in counter-speech whenever offensive remarks have been made.³⁶

Religious entities

30. The authorities should discuss with the leadership of religious entities ways in which these entities can use their moral standing to prevent and combat hate speech against LGBTI persons (and ensure that their representatives treat those with different views with respect and refrain from making derogatory comments).³⁷

33 **Compilation of ECRI Country Reports Recommendations pertaining to LGBT Persons** (fifth monitoring cycle), § 285. See also, in this connection, European Court of Human Rights (2010), **Alekseyev v. Russia (application nos. 4916/07, 25924/08 and 14599/09)**.

34 **Compilation of ECRI Country Reports Recommendations pertaining to LGBT Persons** (fifth monitoring cycle), §§ 74-78; 57-58.

35 *Ibidem*, §§ 59-62.

36 *Ibidem*, §§ 63-67.

37 *Ibidem*, §§ 79-81.

The media

31. While respecting the principle of media independence, the authorities should establish effective regulatory bodies that can monitor incidents of LGBTI-phobic hate speech in print media, audio and audio-visual media services as well as Internet services. The authorities should provide the regulatory authorities for media services with the possibility of issuing warnings or demanding apologies in cases of LGBTI-phobic hate speech and related breaches of professional journalistic standards and ethics. They should set up a system of information-sharing through which the regulatory authorities for media services receive information from prosecutors and courts concerning cases that they forwarded in order to enable the regulatory authorities to improve and optimise their media monitoring activities.³⁸
32. The authorities should review their contracts with media outlets and cancel or not renew them in cases where media are known to engage in LGBTI-phobic hate speech, and also ensure that future contracts contain a clause stipulating that such hate speech will result in contract termination.³⁹
33. An evaluation of past initiatives in the media to prevent hate speech should be carried out with a view to building on existing efforts and expanding good practices.⁴⁰

Investigation, prosecution and procedural law measures

34. Cases of hate speech against LGBTI people should be fully investigated and, where appropriate, effectively prosecuted.⁴¹
35. In cases of violence against LGBTI persons, the authorities should ensure that the possible existence of a bias motivation should be made an integral part of investigations from their very beginning, particularly by providing clear instructions to police services, and they should ensure that the possibility of such motivation should be considered from the outset of judicial proceedings. The police should thoroughly investigate all cases of violence against LGBTI persons, and in particular by taking any LGBTI-phobic motives in ordinary offences fully into account. Prosecution services should ensure that investigations are opened in all cases of violence against LGBTI persons, in particular when there is evidence pointing to a possible application of the criminal law provisions on aggravating circumstances. The police and prosecution services should also adopt binding guidelines on the recording and investigation of such offences.⁴²
36. The authorities (such as the police and prosecution services) should set up specialised units to deal with racist and LGBTI-phobic incidents. When establishing such units within the police, the authorities should seek expert advice from equality bodies, relevant NGOs and international organisations.⁴³

38 Ibidem, §§ 68-73.

39 Ibidem, §§ 68-73.

40 Ibidem, §§ 68-73.

41 Ibidem, §§ 90-93.

42 Ibidem, §§ 114-136.

43 Ibidem, §§ 94-100; §§ 137-146.

37. The authorities should take steps to encourage victims and witnesses of LGBTI-phobic incidents to report such occurrences. In order to address the problem of underreporting, the authorities should implement confidence-building measures to enhance the co-operation between the police and the LGBTI community. Clear instructions should be issued to all police officers that no fee is to be charged for reporting LGBTI-phobic violence; the victims should always be informed accordingly. The authorities should also promote increased dialogue between members of the LGBTI community and the police in order to facilitate the reporting of LGBTI-phobic violence. They should set up dialogue (such as regular meetings or round tables) with LGBTI civil society groups in order to ensure that any instance of hate speech is reported. Such co-operation could also include the recruitment of LGBTI liaison officers or contact persons responsible for LGBTI-phobic issues in each police district services and prosecution services. These liaison officers or contact persons should work together as a network, with good communication between the police contact persons and those in prosecution services.⁴⁴
38. The authorities should create an independent police complaints service that will be tasked to investigate, inter alia, allegations of LGBTI-phobic violence or mistreatment committed by law enforcement officials.⁴⁵ They should also ensure that the notion of “protecting public morals” should not be used to justify or condone incitement of hatred against LGBTI persons.⁴⁶

Equality bodies

As called for by **ECRI General Policy Recommendation N°2 (revised)⁴⁷ on Equality Bodies to combat racism and intolerance at national level**, the mandates of equality bodies (independent anti-discrimination bodies) should cover discrimination on grounds of sexual orientation, gender identity and sex characteristics.⁴⁸ **ECRI’s General Policy Recommendation N°7 (revised) on national legislation to combat racism and racial discrimination⁴⁹** is also relevant in this context.

44 Ibidem, §§ 94-100; §§ 137-146.

45 Ibidem, §§ 147-148.

46 Ibidem, §§ 90-93.

47 Adopted in 1997 and revised in 2017, see point 4b of the Recommendation.

48 **Compilation of ECRI Country Reports Recommendations pertaining to LGBT Persons** (fifth monitoring cycle), §§ 34-36; 233-236.

49 Adopted in 2002 and revised in 2017.

The European Commission against Racism and Intolerance (ECRI) is a unique human rights monitoring body which specialises in questions relating to the fight against racism, discrimination (on grounds of "race", ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance in Europe.

ECRI was set up by the first Summit of Heads of State and Government of the member states of the Council of Europe in 1993 and became operational in 1994. As ECRI marks almost 30 years of combating racism and intolerance, current trends show that these are still persistent problems in European societies that require renewed efforts to be overcome.

ECRI is composed of 47 members appointed on the basis of their independence, impartiality, moral authority and expertise in dealing with issues of racism, discrimination, xenophobia, antisemitism and intolerance. Each Council of Europe member state appoints one person to serve as a member of ECRI.

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