

# ECRI General Policy Recommendation No. 17 on preventing and combating intolerance and discrimination against LGBTI persons



Adopted on 28 June 2023

Strasbourg, 28 September 2023

European Commission  
against Racism and Intolerance

**ECRI**  
Commission européenne  
contre le racisme et l'intolérance

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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**on preventing and combating  
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contre l'intolérance et la discrimination  
envers les personnes LGBTI*

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# Introduction

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1. It is ECRI's mandate and the intention of this General Policy Recommendation (GPR) to work to prevent and counter discrimination and intolerance against lesbian, gay, bisexual, transgender and intersex<sup>1</sup> (LGBTI<sup>2</sup>) people, and to help to develop a society that is inclusive of LGBTI people.<sup>3</sup> In this context, it is important to emphasise that, while ECRI's GPRs are addressed to the national authorities of member States, preventing and combating discrimination and intolerance against LGBTI people and developing an inclusive society should be understood as the responsibility of all the members of society.

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1. Intersex people are born with biological sex characteristics that do not fit societal norms or medical definitions of what makes a person male or female. There are many forms of intersex. It is a spectrum or umbrella term, rather than a single category. For a full discussion and explanation of LGBTI terminology, please see the ECRI Glossary available on the website of the European Commission against Racism and Intolerance, <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ecri-glossary>.
  2. While the term "LGBTI" refers specifically to lesbian, gay, bisexual, transgender and intersex people, General Policy Recommendation No. 17 should be understood to cover all people, including non-binary populations, who experience discrimination, violence and intolerance on the basis of sexual orientation, gender identity or sex characteristics.
  3. ECRI has been addressing intolerance and discrimination against LGBT people since 2013, when it initiated its fifth country monitoring cycle. Within the Council of Europe, ECRI had been encouraged to engage with the rights of LGBT persons following the adoption by the Council of Europe Committee of Ministers of Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity. When drawing up the list of priority areas for its sixth country monitoring cycle, and following dialogue with both civil society actors and equality bodies in the member States, ECRI decided to further include the rights of intersex persons, and discrimination on the grounds of sex characteristics, as part of its work. In 2021, the Secretariat of ECRI published a Factsheet on LGBTI Issues and, through its country monitoring work, ECRI has adopted a robust approach in both identifying and advocating the human rights of LGBTI people.

2. Across the area of the Council of Europe, LGBTI people still experience high rates of discrimination and abuse, including violence, due to their sexual orientation, gender identity and sex characteristics.<sup>4</sup> Individuals may also be subjected to discrimination and abuse due to their association with LGBTI people and/or because of their perceived sexual orientation, gender identity and sex characteristics. Intolerance against LGBTI people manifests itself in complex and varied ways, and its consequences negatively impact the legal, social, political and cultural identities of LGBTI people.

3. There is no monolith or unidimensional LGBTI population in Europe. Yet, lesbian, gay, bisexual, transgender and intersex people do suffer discrimination and intolerance, which may be rooted in common problems such as sexism, misogyny, patriarchy and rigid beliefs about identity, body, sexuality and gender roles. While many lesbian, gay, bisexual, transgender and intersex individuals will identify under the broader LGBTI umbrella, other persons may believe that a catch-all “LGBTI” term does not sufficiently reflect the specificity of their lived experiences.

4. In developing measures to counter discrimination and intolerance directed towards LGBTI people, policy makers (local/regional and national) must take account of the diversity which exists across sexual orientations, gender identities and sex characteristics in Europe. This includes recognising individuals who come within more than one LGBTI sub-category, and who may experience various forms of intolerance and discrimination. In particular, ECRI recognises the unique experiences, challenges and vulnerabilities faced by lesbian, bisexual, transgender and intersex women. There must also be an understanding that, while strategies to assist one group among the wider LGBTI population, such as gay men or lesbians, do not undermine the rights of other populations, such as transgender and intersex people, such strategies may not address the specific needs of those other groups. Authorities must be alert to the requirements of all people and groups who experience discrimination and intolerance based on actual or perceived sexual orientation, gender identity or sex characteristics.

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4. Consistent with the ECRI Glossary (2023), ECRI understands *sexual orientation* to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. ECRI understands *gender identity* to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means). Importantly, *gender identity* also includes expressions of gender, including dress, speech and mannerisms. ECRI understands *sex characteristics* to refer to the chromosomal, gonadal and anatomical features of a person, which include primary sex characteristics, such as reproductive organs and genitalia, and/or in chromosomal structures and hormones; and secondary sex characteristics, such as muscle mass, breasts and/or structure.

5. Being LGBTI also cannot be separated from other characteristics, including “race”,<sup>5</sup> ethnic or national origin, citizenship, religion, gender, and disability status.<sup>6</sup> The extent to which an LGBTI person may face intolerance based on sexual orientation, gender identity or sex characteristics may be significantly shaped, altered or compounded by other key aspects of identity or lived realities, such as refugee status or belonging to the Roma or Traveller communities. At the outset of this GPR, ECRI affirms that, in seeking to effectively tackle anti-LGBTI violence and discrimination, it is vital to explicitly address the many ways in which LGBTI-phobia intersects with other phenomena, including racism, xenophobia, sexism, ableism and religious intolerance.

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5. Since all human beings belong to the same species, ECRI rejects theories based on the existence of different “races” (see, in this context, ECRI’s Opinion on the concept of “racialisation”, 2021).

6. The mandate of ECRI extends to the grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation, gender identity and sex characteristics. However, ECRI acknowledges that LGBTI people may experience discrimination on the basis of their sexual orientation, gender identity or sex characteristics, which also intersects with other characteristics that do not fall within its mandate, including disability, class, gender, political or other opinion, social origin, property, age and birth. In centring the protected characteristics of concern to it, ECRI should not be understood as implying that there is any hierarchy of discrimination or protected grounds. Rather, ECRI recognises how these additional characteristics can shape, alter and compound the ways in which LGBTI persons experience discrimination and intolerance across the Council of Europe area.





# I. Historical background

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6. Across Europe, the human rights of LGBTI people have known a complex and troubling history.<sup>7</sup> Lesbian, gay, bisexual, transgender and intersex individuals have historically been subject to stigmatisation, inequality and violence. They have been persecuted, ostracised and imprisoned, including through incarceration in Nazi concentration camps during World War II.

7. In many parts of Europe, consensual same-sex sexual activity remained a criminal offence until the latter part of the twentieth century. Such criminal laws, which were often broadly interpreted and applied, not only denied people the right to engage in the most basic acts of physical and emotional self-expression, but they were also used as justification in political and other public discourse for wider persecution, including blackmail, harassment and violence.

8. While laws criminalising homosexuality were more frequently directed against male same-sex intimacy, their existence also legitimised social and legal abuse against lesbian and bisexual women. Furthermore, far from indicating less hostility towards female same-sex sexuality as compared to their gay or bisexual male peers, the exclusion of female same-sex intimacy from the criminal law illustrates how, across the member States, lesbian sexuality was often forcibly hidden, suppressed and subject to social regulation, including pressure to enter different-sex relationships. In common with all women, lesbian and bisexual women were subject to structural discrimination, such as restrictions on owning property and entering employment, which may have acted as barriers to pursuing same-sex intimate relationships.

9. Criminal laws were also used to censure transgender, non-binary<sup>8</sup> and other gender non-conforming people, particularly through anti-cross-dressing laws, which denied individuals the right to publicly manifest and express their gender identity, and through the discriminatory application of anti-loitering statutes, which disproportionately targeted transgender persons in the informal economy and transgender people who lacked a regular housing status.

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7. *Discrimination on grounds of sexual orientation and gender identity in Europe*, 2nd ed, (Council of Europe's Commissioner for Human Rights, Council of Europe Publishing, 2011), 21-35.

8. *Non-binary* should be understood as an umbrella term for gender identities that fall outside the gender binary of male or female. This includes individuals whose gender identity is neither exclusively male nor female, a combination of male and female or between or beyond genders. Similar to the usage of transgender, people under the non-binary umbrella may describe themselves using one or more of a wide variety of terms. For the purposes of GPR No. 17, the term "transgender" should be understood as including non-binary people.

10. Outside of the criminal law, LGBTI people were often otherwise invisible. Civil and administrative equality law provisions, when introduced, frequently omitted sexual orientation, gender identity and sex characteristics. LGBTI people could be fired from their jobs, separated from their families, evicted from their homes, removed from their schools, and denied basic goods and services – all without any legal remedy. There was no recognition for same-sex family ties, and LGBTI persons frequently struggled to vindicate even basic rights to self-determination and bodily integrity.

## II. Advancement towards respect for the human rights of LGBTI people in Europe

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11. Against this troubling history, ECRI welcomes the fact that, in recent years, there have been important advancements across the Council of Europe area, including the formal decriminalisation of same-sex sexual intercourse in all member States. This progress towards greater respect for the human rights of LGBTI people is visible at all levels of European society – legal, political, social and cultural, though to different degrees across the member States.

12. There is evidence of growing awareness and greater acceptance of LGBTI people. Members of the general public, particularly younger generations, are not only more likely to have knowledge of the issues which affect LGBTI people, but also to have increasing contact with LGBTI people among their personal and professional networks.

13. By way of an example, in 2019, the EU Commission's Special Eurobarometer 493 survey identified growing support across the then 28 European Union countries for equality on the basis of sexual orientation, same-sex marriage and the acceptability of same-sex relationships.<sup>9</sup> This familiarity-through-proximity has been a key factor in breaking down the walls of exclusion for LGBTI people, and it has served as a catalyst for broader public conversations around diversity in sexual orientation, gender identity and sex characteristics.

14. In parallel with these changing social attitudes, and perhaps as a consequence thereof, there has also been an increase in the visibility of openly LGBTI persons within the public sphere. For example, a growing number of European politicians identify as LGBTI, including some who have served as the Head of Government or as the Head of State in their country. The election of LGBTI public representatives not only has significant symbolic importance, but it also increases the opportunity for LGBTI voices and experiences to be considered when local, regional and national policies are adopted.

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9. *Special Eurobarometer 493 – Discrimination in Europe: Publication Report* (European Union Commission, 2019), 122-127.

15. In the context of legal reform, the past three decades have seen quite swift changes with regards to the human rights of LGBTI people in some member States. From a position where criminal prohibitions continued to cast a shadow over LGBTI lives, a significant number of countries have adopted legal protections against discrimination, hate speech and hate-motivated violence against LGBTI persons.

16. Legal progress across Europe has resulted in greater equality for LGBTI people in broad sections of everyday life, including in employment, healthcare, education and housing.<sup>10</sup> Non-discrimination laws within the member States increasingly extend to cover transgender people. Furthermore, by 2023, 39 countries within the Council of Europe area provided procedures to obtain legal gender recognition.<sup>11</sup>

17. Within family law, which has long been a key roadblock to LGBTI equality, as of February 2023, 30 member States of the Council of Europe granted some form of legal status to the relationship ties between same-sex couples. In addition, 19 of these countries allowed for same-sex marriage. Registered partnerships were permitted for the first time in Europe in 1989, with the first same-sex marriages taking place in 2001. A growing number of member States now legally recognise LGBTI persons as parents and accord them full parental rights and responsibilities.

18. In recent decades, the institutions of the Council of Europe have played an important role in advancing the human rights of LGBTI people. The European Court of Human Rights (ECtHR), in particular, has issued a number of key judgments on sexual orientation and gender identity, precipitating reform across Europe and farther afield. From the landmark judgments in *Dudgeon v United Kingdom*<sup>12</sup> and *Goodwin v United Kingdom*,<sup>13</sup> which confirmed that laws criminalising homosexuality and absolute prohibitions on legal gender recognition are incompatible with Article 8 of the European Convention on Human Rights (ECHR), the ECtHR has identified numerous rights which LGBTI people should

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10. *Sexual Orientation Discrimination Law outside the Labour Market* (Publications Office of the European Union, 2020); *Trans and intersex equality rights in Europe – a comparative analysis* (Publications Office of the European Union, 2018).

11. *Implementation of the Recommendation CM/Rec(2010)5 of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity - Thematic Report on Legal Gender Recognition in Europe*, GT-ADI-SOGI(2022)7, Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) – Committee of Ministers of the Council of Europe, Working Group on sexual orientation, gender identity, gender expression and sex characteristics (GT-ADI-SOGI).

12. App. No. 7525/7 (ECtHR, 22 October 1981).

13. App. No. 28957/95 (ECtHR, 11 July 2002).

enjoy irrespective of sexual orientation or gender identity.<sup>14</sup> This case law has also been reinforced by important decisions of the European Committee of Social Rights on discrimination in sexual and reproductive health education,<sup>15</sup> and on sterilisation imposed as a pre-condition for legal gender recognition.<sup>16</sup>

19. The rights invoked by the ECtHR in cases involving LGBTI applicants or people supporting LGBTI equality have ranged from protection against degrading treatment, including protection against anti-LGBTI hate speech and violence,<sup>17</sup> and positive obligations to effectively investigate any such treatment,<sup>18</sup> the right to liberty and security,<sup>19</sup> the right to freedom of expression (pertaining to the promotion of the human rights of LGBTI people),<sup>20</sup> the right to freedom of peaceful assembly and association,<sup>21</sup> and the right to legal gender recognition without abusive requirements.<sup>22</sup> In the sphere of the protection of the right to family life, the ECtHR has been especially active, confirming that transgender individuals<sup>23</sup> and same-sex couples<sup>24</sup> can enjoy family life, extending equality protections for same-sex couples in areas, such as tenancy succession,<sup>25</sup> access to health insurance,<sup>26</sup> residence permits<sup>27</sup> and adoptions,<sup>28</sup> and acknowledging that State Parties to the ECHR have an obligation to provide legal recognition and protection to same-sex couples.<sup>29</sup>

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14. *Salgueiro da Silva Mouta v. Portugal*, App. No. 33290/96 (ECtHR, 21 December 1999); *Identoba and Others v Georgia*, App. No. 73235/12 (ECtHR, 12 May 2015); See generally the Factsheets of the European Court of Human Rights on *Homosexuality: Criminal Aspects, Sexual Orientation Issues and Gender Identity* at “Factsheets” (*European Court of Human Rights website*), <https://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c>. See also the Thematic Factsheets of the Department for the Execution of Judgments of the European Court of Human Rights, on LGBTI persons’ rights <https://rm.coe.int/thematic-factsheet-lgbti-eng/1680a3b2d7>.

15. *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia*, Complaint No. 45/2007 (2009).

16. *Transgender Europe and ILGA-Europe v. the Czech Republic*, Complaint No. 117/2015 (2018).

17. *Oganezova v. Armenia*, App. No. 71367/12, App. No. 72961/12 (ECtHR, 15 May 2022).

18. *Identoba and Others v. Georgia*, App. No. 73235/12 (ECtHR, 12 May 2015).

19. See e.g. *OM v. Hungary*, App. No. 9912/15 (ECtHR, 5 July 2016).

20. *Bayev and Others v. Russia*, App. No. 67667/09 (ECtHR, 20 June 2017).

21. *Bączkowski and Others v. Poland*, App. No. 1543/06 (ECtHR, 3 May 2007).

22. *AP, Garcon and Nicot v. France*, App. No. 79885/12 (ECtHR, 06 April 2017); *X and Y v. Romania*, App. No. 2145/16 (ECtHR, 19 January 2021).

23. *X, Y and Z v. United Kingdom*, App. No. 21830/93 (ECtHR, 22 April 1997).

24. *Schalk and Kopf v. Austria*, App. No. 30141/04 (ECtHR, 22 November 2010).

25. *Karner v. Austria*, App. No. 40016/98 (ECtHR, 24 July 2003).

26. *PB and JS v. Austria*, App. No. 18984/02 (ECtHR, 22 October 2010).

27. *Taddeucci and McCall v. Italy*, App. No. 51362/09 (ECtHR, 30 June 2016).

28. *X and Others v. Austria*, App. No. 19010/07 (ECtHR, 19 February 2013). In relation to the rights of transgender parents, see: *AM and Others v. Russa*, App. No. 47220/19 (ECtHR, 06 July 2021).

29. *Oliari and Others v. Italy*, App. Nos. 18766/11 and 36030/11 (ECtHR, 21 July 2015); *Fedotova and Others v. Russia*, App. Nos. 40792/10, 30538/14 and 43439/14 (ECtHR, 17 January 2023); *Buhuceanu and Others v. Romania*, App. Nos. 20081/19 and 20 Others (ECtHR, 23 May 2023).

20. The contribution of the ECtHR in advancing the human rights of LGBTI people has been reinforced through the work of other bodies and institutions within the Council of Europe. In 2010, the Committee of Ministers issued its key Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity. In this Recommendation, the Committee of Ministers specifically called upon member States to “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.”<sup>30</sup>

21. Similar recommendations have also been adopted by other institutions of the Council of Europe. In recent years, the Parliamentary Assembly has issued resolutions on, among other themes, equality for transgender<sup>31</sup> and intersex<sup>32</sup> persons, the right to private and family life regardless of sexual orientation,<sup>33</sup> and combating rising hate against LGBTI people.<sup>34</sup>

22. This work is reinforced by resolutions of the Congress of Local and Regional Authorities of the Council of Europe, which increasingly calls on local and regional authorities to protect LGBTI persons,<sup>35</sup> and which has affirmed that “neither values (cultural, traditional or religious), nor the rules of a ‘dominant culture’ in particular states can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender

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30. Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe, recommendation (2).

31. Resolution 2048 (2015) of the Parliamentary Assembly of the Council of Europe on discrimination against transgender people in Europe, Text adopted by the Assembly on 22 April 2015 (15th Sitting).

32. Resolution 2191 (2017) of the Parliamentary Assembly of the Council of Europe on promoting the human rights of and eliminating discrimination against intersex people, Text adopted by the Assembly on 12 October 2017 (35th Sitting).

33. Resolution 2239 (2018) of the Parliamentary Assembly of the Council of Europe on Private and Family Life: Achieving Equality Regardless of Sexual Orientation, text adopted by the Assembly on 10 October 2018 (3rd Sitting).

34. Resolution 2417 (2022) of the Parliamentary Assembly of the Council of Europe on combating rising hate against LGBTI people in Europe, Text adopted by the Assembly on 25 January 2022 (3rd Sitting).

35. Congress of Local and Regional Authorities of the Council of Europe, Resolution 380(2015) on Guaranteeing lesbian, gay, bisexual and transgender (LGBT) people's rights: a responsibility for Europe's towns and regions; Congress of Local and Regional Authorities of the Council of Europe, Resolution 470(2021) on Protecting LGBTI people in the context of rising anti-LGBTI hate speech and discrimination: The role of local and regional authorities.

identity.”<sup>36</sup> Furthermore, successive Commissioners for Human Rights, through their mandates to promote awareness of and respect for human rights across the member States, have played an important role in clarifying how human rights protections apply to LGBTI people in Europe, helping member States to adopt LGBTI-inclusive policies and identifying rights violations when they occur, through statements, country visit reports, human rights comments and Issue Papers.<sup>37</sup> The European Commission for Democracy through Law (Venice Commission) has taken an increasingly robust stance in defence of the rights of LGBTI persons, particularly where there are restrictions on access to or censorship of information relating to sexual orientation and gender identity.<sup>38</sup>

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36. Congress of Local and Regional Authorities of the Council of Europe, Resolution 380(2015) on Guaranteeing lesbian, gay, bisexual and transgender (LGBT) people's rights: a responsibility for Europe's towns and regions, (2). The same argument was used by the European Court of Human Rights in the case of *Beizaras and Levickas v. Lithuania*, App. No. 41288/15 (ECtHR, 14 January 2020).
  37. See e.g. *Human Rights and Gender Identity*, CommDH/IssuePaper(2009), Council of Europe Publishing, 2009); *Discrimination on grounds of sexual orientation and gender identity in Europe*, 2<sup>nd</sup> ed, (Council of Europe Publishing, 2011); *Human Rights and Intersex People – Issue Paper* (Council of Europe Publishing, 2015).
  38. European Commission for Democracy through Law, Hungary Opinion on the Compatibility with International Human Rights Standards of the Act LXXIX Amending Certain Acts for the Protection of Children, Opinion No.1059 / 2021 CDL-AD(2021)050, adopted at the 129<sup>th</sup> Plenary Session (Venice/online, 10-11 December 2021). European Commission for Democracy through Law, Opinion on the Issue of the Prohibition of So-Called “Propaganda of Homosexuality” in the Light of the Recent Legislation in Some Member States of the Council of Europe, Opinion 707 / 2012 CDL-AD(2013)022, adopted at the 95<sup>th</sup> Plenary Session (Venice, 14-15 June 2013).





# III. Continuing challenges for the human rights of LGBTI people in the Council of Europe area

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23. While ECRI welcomes these important advancements, it also recognises that many serious challenges remain. As with the examples of progress, the continuing challenges for the human rights of LGBTI people in Europe are multi-faceted, thus limiting the social inclusion, legal protection and participation in all walks of life of LGBTI people.

24. ECRI also acknowledges the importance of identifying, planning for, and counteracting new or emerging sources of intolerance and discrimination against LGBTI people. For example, while advances in technology have the potential to enhance the enjoyment of human rights and social participation of LGBTI persons, some forms of technology, such as artificial intelligence, including facial recognition and algorithmic systems, may also be used to undermine the privacy, security and equality of LGBTI people.

## **Lack of reliable data and adequate policies**

25. Across the Council of Europe area, there is a shortage of data regarding the prevalence, personal situations (e.g. health, economic and education status), intersectional characteristics, and lived experiences of LGBTI people. This absence of data is particularly notable with regards to lesbian, bisexual, transgender and intersex women. It may arise both from indifference among public officials to collecting data on sexual orientation, gender identity and sex characteristics, and from a fear among some persons about revealing their LGBTI status to third parties, including those in positions of authority. Although the emerging data, which does exist, points to significant problems for LGBTI people across Europe, the gaps in systematic and reliable data collection on LGBTI persons adds to the difficulties – both in preventing anti-LGBTI discrimination and in designing appropriate measures to promote the enjoyment of human rights by LGBTI people.

26. Without a consistent and evidence-based understanding of the lived experiences and of the challenges faced by LGBTI people, including those who experience intersectional discrimination, such as persons belonging to the Roma and Traveller communities, policy-makers are ill-equipped to identify and effectively target the actual needs of this diverse population. The result is an increased likelihood of policies being adopted based on stereotypes or assumptions. This risk is heightened in the case of lesbian, bisexual, transgender and intersex women, who, due to problems in recruitment and outreach for data collection, may be insufficiently or under-represented in current local, regional and national data. Furthermore, in default of comprehensive data on sexual orientation, gender identity and sex characteristics, it is increasingly easy for opponents to dismiss the human rights of LGBTI people as fringe or marginal concerns. ECRI reaffirms that an absence of data does not indicate that LGBTI people do not suffer intolerance, violence and other abuses.

27. The question of visibility and reliable data is particularly pressing in the context of intersex people. In many European countries, despite growing advocacy and formal condemnation, there has been limited success in preventing non-therapeutic medical or so-called “sex-normalising” procedures from being performed on intersex children without their free and informed consent, and without adequate information about the possible physical and mental effects on the persons concerned or their parents and guardians.<sup>39</sup> While a number of member States have enacted measures to prohibit or limit these interventions, the practice remains largely under-explored, and it is often decided within the discretion and regulation of domestic medical bodies and individual clinicians. These so-called “normalising” procedures, when carried out for social reasons – such as parental anxiety, aesthetic preferences or anticipated future stigmatisation<sup>40</sup> – and without a legitimate therapeutic justification, constitute a clear violation of human rights.<sup>41</sup> They can lead to lifelong consequences for intersex people, including sterilisation, severe scarring, loss of sexual functioning, psychological trauma, and the need for extensive follow-up treatment.<sup>42</sup>

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39. Resolution 2191 (2017) of the Parliamentary Assembly of the Council of Europe on promoting the human rights of and eliminating discrimination against intersex people, Text adopted by the Assembly on 12 October 2017 (35th Sitting); European Parliament Resolution of 14 February 2019 on the rights of intersex people (2018/2878(RSP)).

40. See generally: Resolution 2191 (2017) of the Parliamentary Assembly of the Council of Europe on promoting the human rights of and eliminating discrimination against intersex people, Text adopted by the Assembly on 12 October 2017 (35th Sitting).

41. Commissioner for Human Rights of the Council of Europe, *Human Rights and Intersex People – Issue Paper* (Council of Europe Publishing, 2015).

42. Resolution 2191 (2017) of the Parliamentary Assembly of the Council of Europe on promoting the human rights of and eliminating discrimination against intersex people, Text adopted by the Assembly on 12 October 2017 (35th Sitting).

Unnecessary and involuntary medical procedures raise important concerns for the rights to dignity, bodily integrity and protection from inhuman or degrading treatment.<sup>43</sup>

28. More generally, it also emerges from surveys that, even where member States have adopted policies in favour of LGBTI safety and equality, the populations concerned may continue to experience high rates of violence and discrimination. For example, findings from a survey across the then 28 European Union countries, plus Serbia and North Macedonia, revealed that 38% of respondents had experienced harassment in the previous year because they were LGBTI. In the same research, 21% of respondents indicated that they felt discriminated against at work because they are LGBTI and 37% of respondents felt similarly discriminated against in areas other than employment.<sup>44</sup> These findings also illustrate the potential limits of formal legal interventions and they suggest that, irrespective of the level of existing protections, a significant number of LGBTI people in Europe continue to live in situations of inequality, risk and violence.<sup>45</sup>

## Need for more determined action in the area of inclusive education

29. LGBTI students<sup>46</sup> are significantly impacted by the extent to which questions of sexual orientation, gender identity and sex characteristics, or questions relating to diversity in family forms, are not integrated into the policies and

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43. European Court of Human Rights, *M v. France*, App. No. 42821/18 (ECtHR, 19 May 2022); Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. No. A/HRC/31/57 (5 January 2016). The European Court of Human Rights has not yet ruled on whether so-called “normalising” interventions are compatible with the European Convention on Human Rights. However, in a judgment where the ECtHR ultimately held that the claim was inadmissible, see the discussion of the ECtHR of such procedures in the context of Art. 3; European Court of Human Rights, *M v. France*, App. No. 42821/18 (ECtHR, 19 May 2022).

44. European Union Fundamental Rights Agency, *EU-LGBTI: A long way to go for LGBTI equality*, Luxembourg, Publications Office of the European Union (2020).

45. See e.g. Marie-Anne Valfort, *LGBTI in OECD Countries: A Review*, OECD Social, Employment and Migration Working Papers, No. 198 (2017, OECD Publishing, Paris); Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe, *Combating rising hate against LGBTI people in Europe* (Doc. No. 15425, 17 December 2021); Resolution 2417 (2022) of the Parliamentary Assembly of the Council of Europe on combating rising hate against LGBTI people in Europe, Text adopted by the Assembly on 25 January 2022 (3rd Sitting).

46. For the purposes of GPR No. 17, ECRI, while acknowledging that substantive differences exist between students in different contexts and that those contexts will shape how students experience LGBTI-phobic discrimination and intolerance, uses the term “LGBTI students” to cover all LGBTI students, including those who are in pre-school and kindergarten education, as well as where appropriate students with LGBTI parents.

practices which govern all levels of education. A sensitive, age-appropriate and open approach to gender and sexuality can promote respect for LGBTI students and prevent cultures of bullying, harassment, discrimination and violence. In contrast, education policies grounded in silence or stigmatisation can reinforce the marginalisation of LGBTI students, and they legitimise anti-LGBTI prejudice.<sup>47</sup> Such environments create acute and chronic stress and have an adverse effect on the physical and mental health and well-being of LGBTI students.

30. In many European countries, educational curricula make little reference to LGBTI persons, and different family forms, either because of formal prohibitions or as a consequence of official ambivalence. The absence, either intentional or otherwise, of age-appropriate, inclusive educational resources, including comprehensive relationships and sexuality education, reinforces social isolation and serves to differentiate young LGBTI students from their peers.<sup>48</sup> Throughout Europe, LGBTI students are particularly vulnerable to bullying, violence and abuse,<sup>49</sup> often as a consequence of ignorance and misunderstanding around sexual orientation, gender identity and sex characteristics. Inclusive education is an important factor in preventing such misunderstandings. Depriving students of the opportunity to learn about ideas of respect, openness and inclusivity can only lead to further bullying and abuse.

## **Lack of formal recognition and protection for same-sex couples and LGBTI family ties**

31. Despite the considerable advances in recent years, there remain a number of Council of Europe member States without formal recognition or protection for LGBTI family ties. In these countries, relationships between same-sex couples are deprived of legal status, including marriage, registered partnership, or cohabitation. LGBTI people may also find that their same-sex relationship, formalised in one member State, is not given legal recognition where they move to another European country.<sup>50</sup> In practice, the absence of legal recognition exposes same-sex

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47. *Safe at school: Education sector responses to violence based on sexual orientation, gender identity/expression or sex characteristics in Europe* (Council of Europe, 2018), 37-39. See also: Commissioner for Human Rights of the Council of Europe, Human Rights Comment, "Comprehensive sexuality education protects children and helps build a safer, inclusive society" (21 July 2020).

48. See UNESCO, *International technical guidance on sexuality education: an evidence-informed approach* (UNESCO, 2018) <https://unesdoc.unesco.org/ark:/48223/pf0000260770>.

49. *Safe at school: Education sector responses to violence based on sexual orientation, gender identity/expression or sex characteristics in Europe* (Council of Europe, 2018), 22-24.

50. See e.g. Judgment of 5 June 2018, *Coman*, C673/16, EU:C:2018:385; *Relu-Adrian Coman and Others against Romania*, App. No. 2663/21 (ECtHR, Communicated on 9 February 2021).

couples to social and financial vulnerability, whereby they lack access to even basic social benefits and where they can be denied the right to make important next-of-kin decisions, including choices relating to urgent medical care.

32. LGBTI people may also have few protections in relation to their children. Excluded from all formal routes for creating a family, such as adoption and assisted reproduction, these LGBTI individuals, particularly non-biological parents, lack security for their existing family units, and they can be deprived of access to their children without effective legal recourse. This also has negative consequences for the right of children to enjoy family life. In a number of member States, LGBTI parents may also be deprived of their legal status as a parent even though this status was validly established in another member State.<sup>51</sup>

33. Some member States are now repealing, or failing to implement, previously adopted laws, which upheld the human rights of LGBTI people. This retreat, which is evident in the sphere of family life and other areas of law, materially reduces the safety and equality of LGBTI persons.<sup>52</sup> There is also growing evidence of national jurisdictions refusing to implement key protections for LGBTI people, such as partnership rights<sup>53</sup> and parenthood rights,<sup>54</sup> and the freedom to express an LGBTI identity,<sup>55</sup> even when required to do so by either the European Court of Human Rights or the Court of Justice of the European Union.

## Failure to ensure legal gender recognition and the protection of transgender people

34. In a number of European countries, access to legal protections, particularly those intended to cover transgender populations, such as the right to legal gender recognition, are made contingent on an individual satisfying abusive or invasive pre-conditions.<sup>56</sup> These preconditions for accessing basic rights can,

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51. Judgment of 14 December 2021, *V.M.A.*, C490/20, EU:C:2021:1008. See also: Alina Tryfonidou and Robert Wintemute, *Obstacles to the Free Movement of Rainbow Families in the EU: Study Required by the PETI Committee* (European Union, 2021).

52. See e.g. Omnibus Bill T/9934 (May 2020), Art. 3, Hungary; Constitutional Court of Bulgaria, Constitutional file No. 3/2018, Ruling No. 13 (27 July 2018); Draft Bill No. 301/1995 (March 2023), Slovakia.

53. Relu-Adrian Coman and Others against Romania, App. No. 2663/21 (ECtHR, Communicated on 9 February 2021); Judgment of 5 June 2018, *Coman*, C673/16, EU:C:2018:385.

54. Judgment of 14 December 2021, *V.M.A.*, C490/20, EU:C:2021:1008.

55. *Bayev and Others v Russia*, App. No. 67667/09 (ECtHR, 20 June 2017).

56. *Human Rights and Gender Identity*, CommDH/IssuePaper(2009), Council of Europe Publishing, 2009); *Implementation of the Recommendation CM/Rec(2010)5 of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity - Thematic Report on Legal Gender Recognition in Europe*, doc. GT-ADI-SOGI(2022)7, CDADI, GT-ADI-SOGI.

depending upon the jurisdiction, assume a number of different forms, such as obligations to undergo unwanted medical treatment or surgery, sterilisation, compulsory divorce from existing marriages, or paying substantial fees. The requirements frequently operate as an insurmountable obstacle for many transgender persons who want to exercise their human rights. There is also evidence that, despite general support for legal gender recognition, public attitudes in a number of European countries have hardened against this core human right.<sup>57</sup>

## Lack of legal guarantees for intersex persons

35. The absence of formal protections for intersex people is particularly acute. Few European countries provide express protection for intersex persons through the inclusion of “sex characteristics” as a formal ground in equality and anti-discrimination laws, as well as laws on combating hate speech and hate crimes. In other jurisdictions, it remains an open question as to whether domestic courts would interpret existing “sex” or “gender” protections to include unequal treatment of intersex people. This situation adds to the precarious position in which intersex individuals across Europe may find themselves.<sup>58</sup>

## Children’s rights and the exposure of LGBTI people to conversion practices

36. An area of particular concern is the protection of LGBTI children, as well as those young people who have LGBTI parents or guardians.<sup>59</sup> These children and adolescents may be excluded, either fully or partially, from LGBTI-inclusive laws, and their needs and wishes are too often subordinated to adult prejudices and biases. Such a situation is inconsistent with the core human rights principle that, in all actions concerning children, the best interests of the child should be a primary consideration.<sup>60</sup>

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57. *Special Eurobarometer 493 – Discrimination in Europe: Publication Report* (European Union Commission, 2019), 128-131.

58. *Trans and intersex equality rights in Europe – a comparative analysis* (Publications Office of the European Union, 2018); *Human Rights and Intersex People – Issue Paper* (Council of Europe Publishing, 2015). In 2022, the European Court of Human Rights, while rejecting a claim on the basis of admissibility grounds, suggested that it would protect the bodily integrity of intersex children and young persons in an appropriate litigation. See: European Court of Human Rights, *M v France*, App. No. 42821/18 (ECtHR, 19 May 2022).

59. See e.g. Council of Europe, *Council of Europe Strategy for the Rights of the Child (2022-2027)* (Council of Europe, 2022), 23.

60. United Nations Convention on the Rights of the Child, Art. 3(1).

37. LGBTI youth are especially vulnerable to conversion practices. These highly unethical interventions, which are sometimes referred to as so-called conversion “therapies,” purport to alter the sexual orientation and/or gender identity of individuals. Conversion practices can involve multiple forms of conduct, including physical, emotional or psychological ill-treatment, and they may also be perpetrated against LGBTI adults. Conversion practices have been condemned by human rights actors,<sup>61</sup> and they are prohibited in a growing number of European countries.<sup>62</sup> Although ineffective at achieving their stated aims, conversion practices can have lifelong negative impacts on the mental and physical well-being of LGBTI people. They undermine the rights of LGBTI people to live with dignity and free from inhuman or degrading treatment.

### Inappropriate handling of LGBTI asylum requests

38. Within the sphere of asylum and refugee law, a well-founded fear of persecution or ill-treatment due to being LGBTI is recognised as a ground for asylum.<sup>63</sup> However, even in countries where such recognition already exists, there is evidence that authorities may subject individuals to abusive assessments in order to determine the “credibility” of their sexual orientation.<sup>64</sup> This includes, but is not limited to, invasive questioning, psychological testing and drawing disproportionate inferences where people fail to initially raise the LGBTI-phobic motive for their experience of persecution. Such assessments are demeaning, and they have a disproportionate impact upon LGBTI people who may experience intersecting forms of discrimination on the basis of “race”, ethnic or national origin, citizenship and religion. Across the Council of Europe

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61. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, *Practices of so-called “conversion therapy”*, UN Doc. No. A/HRC/44/53 (1 May 2020). See also: Commissioner for Human Rights of the Council of Europe, “Nothing to cure: putting an end to so-called ‘conversion therapies’ for LGBTI people” (16 February 2023) <https://www.coe.int/en/web/commissioner/-/nothing-to-cure-putting-an-end-to-so-called-conversion-therapies-for-lgbti-people>.

62. See e.g. *Bans on conversion “therapies” The situation in selected EU Member States*, European Parliament Briefing (European Union, 2022).

63. Recommendation CM/Rec(2010)5 of the Committee of Ministers, 42-44. See also: United Nations High Commissioner for Refugees, “Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees”, HCR/GIP/12/09 (UNHRC) (23 October 2012).

64. Judgment of 2 December 2014, *A, B and C v. Staatssecretaris van Veiligheid en Justitie*, C148/13 to C150/13, EU:C:2014:2406; Judgment of 25 January 2018, *F v. Bevandorlasi es Allampolgarsagi Hivatal*, C473/16, EU:C:2018:36. See also: Commissioner for Human Rights of the Council of Europe, Human Rights Comment, “Open minds are needed to improve the protection of LGBTI asylum seekers in Europe” (Council of Europe, 11 October 2018).



area, LGBTI refugees and asylum seekers may also experience discrimination and intolerance outside asylum assessment procedures, including through unsafe accommodation, restricted access to necessary healthcare, and barriers to obtaining full legal recognition.

39. ECRI observes that, even in member States that recognise LGBTI individuals as refugees, some contexts may still pose a risk of persecution or ill-treatment. For example, in countries where laws or legal sanctions against LGBTI individuals exist but are not generally enforced, there may still be a risk of harm upon the return of an LGBTI person to such a country. This underscores the need for careful consideration of the individual circumstances of LGBTI asylum-seekers and refugees, as well as the need to respect their human rights and safeguard against discrimination, persecution and ill-treatment, including the principle of non-refoulement.

## **Growing anti-LGBTI hate speech and so-called anti-gender campaigns**

40. In recent years, several member States have seen an increase in political and other public discourse, particularly online, against so-called “LGBTI ideology” or “gender ideology”.<sup>65</sup> “Anti-gender” movements which oppose LGBTI rights often oppose campaigns for women’s rights as well, including for greater reproductive autonomy. They are often grounded on unsupported claims that protecting and advancing women’s rights and the rights of LGBTI people undermines national identity, religious freedom and traditional family values.<sup>66</sup> Anti-gender and anti-LGBTI rhetoric may also wrongly present the human rights of LGBTI people, particularly transgender people, as posing threats or risks to the rights of women and children. Across Europe, anti-gender campaigns have led to incendiary public speech, including some comments that could be qualified as intolerant or hateful towards LGBTI persons, particularly transgender individuals. In some member States, anti-gender language has been co-opted by domestic politicians, seeking to encourage resentment and portray themselves as defenders of traditional values.

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65. Resolution 2417 (2022) of the Parliamentary Assembly of the Council of Europe on combating rising hate against LGBTI people in Europe, Text adopted by the Assembly on 25 January 2022 (3<sup>rd</sup> Sitting).

66. See generally: *Combating rising hate against LGBTI people in Europe* (Doc. No. 15425 17 December 2021), Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe; ECRI, *Annual Report on ECRI’s activities covering the period from 1 January to 31 December 2021* (2021), (18)-(22); Commissioner for Human Rights of the Council of Europe, Human Rights Comment “Pride vs. indignity: political manipulation of homophobia and transphobia in Europe” (16 August 2021).

41. Where anti-gender rhetoric is embraced by political parties and politicians in power, bias against LGBTI people frequently intensifies among the general public, as this speech is viewed as having an official backing. Anti-LGBTI attitudes also become more entrenched when laws that are adopted substantially affect LGBTI people and their rights, or ban the circulation of information about LGBTI people in public institutions or public settings. Such laws and measures not only affect the individual persons concerned, but they also create a stifling climate in which LGBTI civil society organisations feel increasingly intimidated and restricted in their outreach work and public awareness-raising.

### **Lack of accountability for acts of anti-LGBTI hate speech and hate-motivated violence**

42. There is evidence, including from a number of cases dealt with by the European Court of Human Rights,<sup>67</sup> of hostility towards LGBTI people in some member States. This is particularly so regarding limitations on the right to peaceful assembly and – through the use of so-called “anti-Gay Propaganda” laws – regarding restrictions on LGBTI people openly expressing, discussing or disseminating information on sexual orientation, gender identity or sex characteristics.<sup>68</sup> There are numerous examples of national and other authorities across Europe either failing to protect LGBTI persons and groups from hate crimes, including violence or hate speech amounting to incitement to violence, particularly online, or refusing to properly investigate and prosecute such crimes when they occur, often in response to attempts by LGBTI people to exercise their rights to freedom of assembly or freedom of expression.

43. The refusal or reluctance of law enforcement officials and prosecutors to prevent, investigate and prosecute acts of violence and other acts of a criminal nature against LGBTI people deprives LGBTI persons of key human rights, including the protection against inhuman or degrading treatment or punishment, read in conjunction with the right to non-discrimination.<sup>69</sup> Lack of protection and accountability for such acts of violence and other criminal

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67. *Identoba and Others v. Georgia*, App. No. 73235/12 (ECtHR, 12 May 2015); *MC and AC v. Romania*, App. No. 12060/12 (ECtHR, 12 April 2016); *Beizaras and Levickas v. Lithuania*, App. No. 41288/15 (ECtHR, 14 January 2020); *Oganezova v. Armenia*, App. No. 71367/12, App. No. 72961/12 (ECtHR, 15 May 2022).

68. *Alekseyev v Russia*, App. Nos. 4916/07, 25924/08 and 14599/09 (ECtHR, 21 October 2010); *GenderDoc-M v. Moldova*, App. No. 9106/06 (ECtHR, 12 June 2012); *Bayev and Others v. Russia*, App. No. 67667/09 (ECtHR, 20 June 2017); *KAOS GL v. Turkey*, App. No. 4982/07 (ECtHR, 22 November 2016).

69. *Identoba and Others v. Georgia*, App. No. 73235/12 (ECtHR, 12 May 2015); *Sabalic v. Croatia*, App. No. 50231/13 (ECtHR, 14 January 2021).

acts creates a climate of fear and insecurity for LGBTI people. It severely curtails their participation in the civic, social and political life of member States. Such refusal or reluctance must also be understood within a wider European legal and social context of narrowing opportunities to discuss, express and affirm the human rights of LGBTI people. At the same time as authorities in some member States are failing to adequately investigate and prosecute anti-LGBTI hate crimes, including criminal hate speech, they are also, among other restrictions, banning LGBTI public marches, censoring LGBTI-related books, and labelling LGBTI publications as harmful to children.<sup>70</sup> In certain European countries, individuals may run a greater risk of arrest and prosecution for participating in a peaceful LGBTI demonstration than for perpetrating severe acts of violence against those attending that demonstration.

44. Where there is a failure to investigate and prosecute anti-LGBTI violence, this often results from attitudes of prejudice and discrimination. However, it may also be a consequence of ignorance, unsubstantiated assumptions and misunderstanding. While, within certain European countries, there are positive examples of LGBTI-focused training for law enforcement officials,<sup>71</sup> prosecutors and judicial officers, the availability and implementation of such programmes remains uneven across the member States. Accessible and culturally competent training programmes, designed in consultation with LGBTI civil society and tailored to the specific needs of law enforcement officials<sup>72</sup> and other criminal justice actors, can be an effective tool in preventing and combating anti-LGBTI stereotypes and biases, and creating trust among LGBTI people. Without such training, law enforcement officials, prosecutors and judges are more likely to approach anti-LGBTI incidents and crimes through a lens of incorrect assumptions, misunderstanding and prejudice.

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70. *Combating rising hate against LGBTI people in Europe* (Doc. No. 15425 17 December 2021), Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe; *Macate v. Lithuania*, App. No. 61435/19 (ECtHR, 23 January 2023). Resolution 2417 (2022) of the Parliamentary Assembly of the Council of Europe on combating rising hate against LGBTI people in Europe, Text adopted by the Assembly on 25 January 2022 (3rd Sitting).

71. See also, Council of Europe, Joanna Perry and Paul Franey, *Policing Hate Crime against LGBTI persons: Training for a Professional Police Response* (Council of Europe, 2017).

72. In this connection, law enforcement officials may include prison and other custodial staff when it comes to training and developing competencies on preventing and combating anti-LGBTI discrimination, hate speech and violence in places of deprivation of liberty, in particular immigration detention centres and prisons. See also the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

# Recommendations

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ECRI notes that the levels and forms of intolerance and discrimination against LGBTI people vary considerably among Council of Europe member States. The following recommendations, which also take account of findings from ECRI's country monitoring work, are intended as guidance to assist member States to prevent and combat discrimination and intolerance against LGBTI people, in co-operation with the communities concerned, bearing in mind the particular difficulties and problems in the various member States.

ECRI recommends that the governments of the member States:

## General principles

1. give a high priority to promoting and achieving equality for LGBTI people and to combating discrimination and intolerance against them, taking all positive measures, including legislation, administrative policies, and national strategies or action plans, to ensure that LGBTI people are safe, equally protected under the law and able to enjoy rights and freedoms to the same extent as all other members of society;
2. ensure that the measures taken to combat discrimination and intolerance against LGBTI people are carried out at all administrative levels (local/regional and national), and facilitate the involvement of a wide range of actors from different sectors of society, including the legal, social, religious, educational, civil society, and cultural spheres. Such measures should also address the impact of gender inequalities and gender-based harms. Policies enacted to increase gender equality should take appropriate account of the experiences of lesbian, bisexual, transgender and intersex women;
3. ensure that anti-hate crime and anti-discrimination laws and policies provide effective protection for LGBTI people, and refrain from adopting laws or policies, which victimise, discriminate against, or legitimise hate against LGBTI people;
4. ensure that all LGBTI people and groups can freely express and access views and information about their rights and their position in society, safely and free from harassment or attacks, and that they are fully protected by the police and other relevant authorities;

5. establish a comprehensive, accurate and reliable system to collect relevant and disaggregated data regarding LGBTI people, adhering to international data collection standards, and ensuring an intersectional perspective and respect for the principles of confidentiality, voluntary self-identification, and informed consent. The data should be collected for the exclusive use of promoting LGBTI equality and preventing and combating intolerance and discrimination against LGBTI people. Specific outreach efforts should be made to ensure that any data is, as far as possible, representative of the whole LGBTI population, including those who may experience intersectional discrimination, such as LGBTI people who belong to the Roma or Traveller communities. The experiences of lesbian, bisexual, transgender and intersex persons, particularly those who identify as women, should be accurately, adequately and appropriately accounted for in recruitment processes;

6. develop laws, policies, action plans, and other evidence-based measures, which acknowledge and reflect LGBTI people's lived experience of discrimination – understanding that such experiences may be shaped, altered or compounded by other key aspects of identity or personal experience, including “race”, ethnic or national origin, citizenship, gender, disability status, and religion. In establishing such comprehensive and effective laws, policies and action plans for LGBTI people, governments should mainstream an intersectional approach into their design, structure and application, and undertake periodic reviews to monitor the implementation of that approach;

7. ensure that national law effectively defines and prohibits discrimination based on actual or perceived sexual orientation, gender identity and sex characteristics and that it places public authorities under a duty to promote the equality of LGBTI people and to prevent discrimination in carrying out their functions. Prohibitions of discrimination, whether civil, administrative or criminal, should cover all areas of life, including education, employment, housing and healthcare. Authorities should ensure that anti-discrimination legislation extends to all LGBTI people, persons perceived as being LGBTI, and to persons who experience discrimination because of their association with LGBTI people or groups;

8. ensure that a comprehensive legal framework is developed, including civil, administrative and criminal law provisions, to effectively prevent anti-LGBTI hate speech, including online hate speech, and prosecute anti-LGBTI hate speech of a criminal nature and other hate crimes. Anti-LGBTI hate speech of a criminal nature and other hate crimes should not receive lower penalties than hate speech of a criminal nature and other hate crimes motivated by other protected grounds;

9. ensure that national criminal legislation covers acts of a criminal nature with an anti-LGBTI motive, and that any such motive can be considered as an aggravating circumstance in determining the appropriate penalties;
10. ensure that laws, regulations and policies applicable to internet intermediaries adequately cover protection against anti-LGBTI discrimination, hate speech and hate crime, taking into account multiple and intersecting forms of discrimination;

## **Policies and Institutional Co-ordination**

### ***National LGBTI Equality Strategies and Action Plans***

11. adopt, implement and properly resource a national equality strategy or action plan to promote and achieve equality and prevent and combat intolerance and discrimination based on actual or perceived sexual orientation, gender identity and sex characteristics;
12. ensure that any national equality strategy or action plan sets out concrete measures, such as proposed laws, government guidance, training programmes, funding support, and public awareness campaigns, to prevent anti-LGBTI hate speech and hate-motivated violence, and to achieve effective equality for LGBTI people in all areas of life, including education, employment, housing and healthcare;
13. ensure that any national equality strategy or action plan is developed, implemented and monitored in close consultation with relevant civil society actors, including LGBTI people;
14. conduct interim and final evidence-based, independent and publicly available evaluations of the implementation of any national equality strategy or action plan, with a view to re-adjusting implementation, as appropriate, or developing such further strategies based on lessons learnt, and where necessary addressing new threats to the human rights of LGBTI people. Interim and final evaluations should monitor the effectiveness of a national equality strategy or action plan in addressing intersectional discrimination that LGBTI people experience;

### ***Private and Family Life and Children's Rights***

15. ensure that all LGBTI people have effective enjoyment of the right to private and family life, and that family laws and other laws do not discriminate on the basis of actual or perceived sexual orientation, gender identity or sex characteristics;

16. extend legal recognition and protection to LGBTI people, and ensure that couples, who have formalised their same-sex relationship, have equal access to the same rights and benefits as individuals in legally recognised different-sex relationships, including property, maintenance and inheritance rights. Transgender and intersex people should have the right to form legal relationships in accordance with their legally recognised gender;
17. provide an effective legal framework for the recognition of LGBTI partnerships and other family ties of LGBTI people in cross-border situations;
18. ensure that the best interests of the child are a primary consideration in policy-making and in all administrative and judicial decisions for LGBTI children and for the children of LGBTI persons;
19. secure the adoption of effective protections against discrimination on the basis of actual or perceived sexual orientation, gender identity or sex characteristics when establishing the legal relationship between parents and their children. The objective should be to enable LGBTI people to enjoy equal treatment in particular in:
  - a. identifying who are the legal parents of a child;
  - b. defining who has legal responsibility for a child, and who has the legal right to make decisions about a child;
  - c. determining with whom a child will live or have contact with;
  - d. accessing adoption;
20. where member States permit the use of assisted reproductive technologies, prohibit discrimination in accessing those technologies due to actual or perceived sexual orientation, gender identity or sex characteristics;
21. guarantee that all children have the right to freely express their sexual orientation, gender identity or sex characteristics without discrimination, notably in the context of education;

### ***Prohibition of Conversion Practices***

22. enforce a comprehensive and effective legal prohibition, including on advertising and promotion, on all practices, which aim to convert or change the sexual orientation and/or gender identity of children, including how children express their sexual orientation and/or gender identity;
23. provide effective measures, including legal prohibitions or professional codes of practice, to ensure that no adult is subjected to involuntary or coercive practices, which aim to convert or change their sexual orientation and/

or gender identity, including how they express their sexual orientation and/or gender identity;

### ***Legal Gender Recognition and Access to Gender-Affirming Healthcare***

24. ensure that national law guarantees a quick, transparent, and accessible process based on clear, precise and foreseeable laws by which people can obtain legal gender recognition, and that individuals can change their name and sex markers on all official identity, social security and other public documents. Member States should ensure that legal gender recognition is accessible to intersex people;

25. guarantee that obtaining legal gender recognition is not contingent upon people submitting to abusive requirements, such as involuntary sterilisation and/or medical procedures; mental health diagnoses; forced divorce or the loss of family ties, including parental status; disproportionate financial costs; or evidence of so-called “real life experience” of living in accordance with their gender identity;

26. where people have been required to submit to sterilisation as a precondition for obtaining legal gender recognition, consider the award of compensation to the individuals concerned;

27. ensure that national law provides a clear and understandable pathway through which people whose birth was not registered in the member State can obtain legal gender recognition;

28. explore options to remove or lower age-based limitations on who can obtain legal gender recognition;

29. consider introducing additional gender categories, and review the need to include gender markers on identity, social security and other public documents;

30. ensure that the de-medicalisation of legal gender recognition is not used to withhold necessary gender-affirming healthcare for people who wish to undertake a medical transition. Member States should ensure, as far as possible, that transgender people have safe, affordable, and timely access to necessary gender-affirming treatments;

31. ensure that national rules regulating insurance coverage for gender-affirming healthcare do not discriminate on the basis of actual or perceived sexual orientation, gender identity or sex characteristics. Any limitation on insurance coverage for gender-affirming healthcare should respect the rights to private life, non-discrimination, and the highest possible standard of health attainable;



## *Intersex Persons*

32. take steps to adopt comprehensive, effective and dissuasive legal measures, which prohibit the performance of medically unnecessary surgeries (often referred to as so-called “sex-normalising” surgeries) and other non-therapeutic treatments until such time as intersex children are able to participate in decisions, based on the principle of free and informed consent. National laws should expressly acknowledge the right of intersex persons to bodily integrity;

33. clarify that social attitudes or preferences do not constitute a lawful justification for the performance of non-therapeutic medical procedures on the bodies of intersex people;

34. ensure that, where intersex people have been subjected to non-consensual medical interventions, they have access to all appropriate supports, including follow-up care and counselling if required. Persons who have been subjected to such treatment should have full access to their medical records;

35. where medically unnecessary surgeries or other treatments have been performed on intersex people, without their free and informed consent, consider the award of compensation to the persons concerned;

36. provide appropriate training to all healthcare professionals and policy makers, particularly medical students, which emphasises that intersex people have the right to bodily integrity and diversity. Governments should ensure that intersex people, including those persons who experience intersectional discrimination, and their representatives, play a central role in developing such trainings;

## *Asylum and Refugees*

37. guarantee that, under domestic asylum laws, LGBTI people, who have a well-founded fear of persecution or ill-treatment due to actual or perceived sexual orientation, gender identity or sex characteristics, can apply for and, where appropriate following an individualised risk assessment, obtain refugee status. Member States should refrain from dismissing an application for asylum on the basis that LGBTI persons, if returned to their country of origin, could avoid persecution or ill-treatment by concealing their sexual orientation, gender identity or sex characteristics;

38. ensure that LGBTI people receive appropriate support in asylum processes, and that they are not subject to inappropriate or abusive credibility assessments, which violate their dignity, constitute discrimination, or expose those individuals to demeaning treatment. This includes, but is not limited to, psychiatric testing; inappropriate, sexualised, or stereotyped questioning;

requesting or accepting explicit material to prove that a person is LGBTI; or drawing disproportionate inferences from an applicant's initial failure to mention the LGBTI-phobic motivation for their persecution or ill-treatment;

39. provide training to ensure that public officials, who process and adjudicate asylum claims, have sufficient knowledge to engage with LGBTI people in a culturally informed and competent manner and without stereotyped assumptions;

40. ensure that, while awaiting the outcome of their asylum application, LGBTI people have access to accommodation which is safe and in which they will not experience discrimination, from authorities or other residents. Governments should, as far as possible, respect the gender identity, including the expression of gender identity, of people who seek asylum, such as through the provision of appropriate healthcare, accommodation and identity documents;

## **Prevention**

### *Awareness-raising campaigns or programmes on LGBTI equality*

41. promote, conduct or support, such as through financial support, awareness-raising campaigns or programmes, including in co-operation with civil society, equality bodies and LGBTI people, to increase awareness and understanding among the general public of LGBTI equality issues. Member States should ensure appropriate inclusion of all LGBTI persons, including lesbian, bisexual, transgender and intersex women, as well as LGBTI people who may experience intersectional discrimination;

### *Training of Media Professionals*

42. encourage public media regulatory bodies to organise training sessions for media professionals on legal and other standards for LGBTI equality and on combating LGBTI-phobic hate speech, with a view to enforcing such standards, notably in the electronic media. Member States should ensure that national laws, which regulate the media, prohibit discrimination due to actual or perceived sexual orientation, gender identity or sex characteristics;

### *Preventing and combating LGBTI-phobia in and through education*

43. promote inclusion for LGBTI students at all levels of education, in consultation with representatives from the education sector and LGBTI civil society. This should include the development of mechanisms and guidelines on how educators and administrators can prevent, investigate and remedy violence,

bullying and harassment against LGBTI students, as well as the adoption of a zero-tolerance policy towards such acts in the education sphere;

44. develop suitable training for educators, particularly during their professional education, and for school and university teachers and administrators to ensure that they have sufficient knowledge and competence to understand and accommodate the needs of LGBTI students;

45. ensure that curricula at all levels of education, including comprehensive relationships and sexuality education, address LGBTI issues in a manner which is sensitive, age-appropriate and easy to understand. Discussion of LGBTI issues should be evidence-based and place particular emphasis on equality, diversity, and inclusion. Authorities should repeal any laws or policies, which prohibit the dissemination to students of materials because they include LGBTI content;

46. guarantee, as far as possible, that transgender and intersex students have access to educational services, including extra-curricular activities and facilities, in accordance with their gender identity;

### *Inclusive Recruitment and Workplaces*

47. introduce effective measures, which prohibit discrimination against LGBTI people and promote diversity and inclusion in the field of employment, including in recruitment policies, terms of employment, retention policies, promotion opportunities, disciplinary procedures, and dismissals;

48. encourage public and private sector employers to devise and implement policies or codes of conduct aimed at preventing and combating intolerance and discrimination against LGBTI people in access to employment and at the workplace, including persons with a transgender history or those who undertake a process of medical or social transition;

### *Codes of Conduct in the Political Sphere and in the Media Sector*

49. promote the adoption of codes of conduct by parliaments and other politically elected assemblies, which, while respecting the responsible exercise of freedom of expression, rejects anti-LGBTI hate speech;

50. encourage political parties and individual political actors, particularly those in positions of leadership, to actively oppose anti-LGBTI hate speech, notably through counter-speech, and to fully adhere to the principles and rules contained in the Charter of European Political Parties for a non-racist and inclusive society as endorsed by the Parliamentary Assembly of the Council of Europe;

51. encourage the adoption by print and electronic media outlets, including online media outlets, as well as by journalists' associations, of codes of conduct opposing hate speech targeted at LGBTI people or their supporters;

## **Protection**

### ***Freedom of Expression, Freedom of Assembly and Freedom of Association***

52. ensure that all LGBTI people have full and equal enjoyment of the rights to freedom of expression, assembly and association, enabling them to publicly express and discuss sexual orientation, gender identity or sex characteristics;

53. permit and protect peaceful public actions, including marches, protests, and demonstrations, which advocate for the human rights of LGBTI people. Governments should repeal any laws or administrative practices, which prohibit or limit, without lawful, legitimate and necessary reason, the right of LGBTI people to engage in such public actions or which treat those actions less favourably than other lawful marches, protests or demonstrations unrelated to the human rights of LGBTI people;

54. adopt adequate measures, including the provision of suitable police protection, to ensure that LGBTI people can exercise their rights to freedom of expression, assembly or association. This protection should be extended to people advocating for the equality of LGBTI persons and to service providers facilitating the exercise of human rights of LGBTI persons;

55. repeal any laws or administrative rules that prohibit or limit the publication of materials, simply because they include LGBTI content. Any decisions to legally restrict access to published materials, including the imposition of age limitations, should be made without discrimination based on actual or perceived sexual orientation, gender identity or sex characteristics;

56. ensure that victim support services, including helplines, incident reporting systems, legal and other counselling services and victim shelters, are available to adequately deal with LGBTI victims of discrimination, hate speech and hate crimes, or that they are fully inclusive of LGBTI people. Staff operating such services should receive appropriate training and funding to provide support, including training on the lived experiences of lesbian, bisexual, transgender and intersex women, as well as LGBTI people who experience intersectional discrimination;

## *Equality Bodies and Civil Society*

57. ensure that the mandates of equality bodies expressly cover discrimination based on actual or perceived sexual orientation, gender identity or sex characteristics. Equality bodies should have the same powers, resources, and responsibilities to provide effective protection for the human rights of LGBTI people as they do for the human rights of other groups within their mandate, including the right to issue recommendations and monitor their implementation;

58. ensure that civil society organisations that promote the human rights of LGBTI people are able to register and operate without discrimination and guarantee that such organisations, and individual human rights defenders promoting LGBTI equality, enjoy effective protection against discrimination, hate speech, hate crimes and abusive or vexatious litigation;

## **Investigation, prosecution and procedural law measures**

59. adopt and enforce codes of conduct for government and other relevant public officials that explicitly prohibit the use of language that incites, promotes, spreads or justifies violence, hatred, or discrimination against LGBTI people or individuals associated with LGBTI people, and to promote the use, where appropriate, of counter-speech and alternative speech to oppose this. Speech that justifies or incites violence and hatred against LGBTI people, including speech that is motivated by intersectional grounds, should be investigated and prosecuted in accordance with national hate speech provisions;

60. ensure that hate crimes committed against LGBTI persons are effectively investigated and prosecuted. Law enforcement agencies and prosecution services should adopt guidelines on the recording and investigation of such offences;

61. ensure that hate speech committed online, and motivated by anti-LGBTI bias, is punished in the same way as criminal offences that are committed offline, and that online anti-LGBTI hate speech is adequately addressed by means of effective investigation, prosecution and other appropriate measures;

62. support training and develop competencies on preventing and combating anti-LGBTI discrimination, including intersectional discrimination, hate speech and hate crimes for law enforcement officials,<sup>73</sup> prosecutors and judges,

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73. For the purpose of this specific recommendation, law enforcement officials may include prison and other custodial staff when it comes to training and competencies on preventing and combating anti-LGBTI discrimination, hate speech and violence in places of deprivation of liberty.

in co-operation and consultation with relevant civil society actors, including LGBTI organisations, and equality bodies;

63. ensure that, where a crime is committed against LGBTI people, those who are perceived to be LGBTI, or persons who are associated with LGBTI people, the possibility that it was motivated by anti-LGBTI bias is investigated from the beginning and forms an integral part of the investigation;

64. provide effective, accessible and intersectionally-aware support for victims and witnesses to report anti-LGBTI hate crimes. Authorities should implement trust-building measures to enhance co-operation between the police and LGBTI people, including through the facilitation of increased dialogue (e.g. regular meetings, community liaison officers) between LGBTI people and law enforcement agencies.



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