

Human Rights and Gender Identity and Expression



Issue Paper



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Human Rights and Gender Identity and Expression

Issue Paper
by the Council of Europe
Commissioner for Human Rights

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Summary

In 2009, the Commissioner's predecessor, Thomas Hammarberg, published a first [Issue Paper on Human Rights and Gender Identity](#). A landmark publication at the time in the field, it became a core document and reference for the work of human rights actors within Europe and beyond. In the succeeding 15 years, the human rights landscape for transgender (trans) people has changed significantly. There is now greater visibility and awareness of trans people at all levels of society, and significant progress has been made in certain areas to provide better legal protection and recognition of their human rights. As discussed in Chapter I, an increasing body of judgments and soft-law standards have been developed at the regional and international level, which have brought clarity, extended protection to areas not previously considered in the previous Issue Paper, and firmly anchored gender identity within human rights law. There is also greater understanding of the challenges and needs of trans people, as well as the application of human rights in different – and changing – contexts.

Despite these legal advances, trans people remain unable to enjoy their human rights on an equal footing with others today. Across Europe, trans people continue to face shockingly high rates of discrimination, violence and insecurity in their daily lives. Legal protection and recognition remains uneven across the continent, and in some countries, it is stalling or even regressing. All of this must be framed in the context of a current backsliding in respect of human rights, where marginalised groups are increasingly instrumentalised for political gain, and where anti-gender movements are increasingly well-organised, well-funded and gaining traction (Chapter III). While anti-gender narratives ultimately undermine the rights of everyone, their focus on so-called traditional norms around sex, gender and expression is particularly destructive of the rights of trans people.

Against this background, the Commissioner finds it both timely and urgent to provide an updated Issue Paper on human rights and gender identity and expression. First and foremost, it is crucial that harmful anti-gender narratives are addressed, and that issues relating to trans people are reframed within the paradigm of their human dignity and equality in the enjoyment of human rights. At the same time, a decade and a half after

the publication of the first Issue Paper, now is an opportune moment to take stock of progress, to push for renewed momentum for tackling long-standing challenges, and to provide guidance and pathways for ensuring that trans people can fully enjoy their human rights, set against the backdrop of contemporary knowledge and realities.

The Paper covers a range of issues relating to the enjoyment of human rights (Chapter II), the aim being to address matters where there are particular complexities, challenges, or developing practices, rather than to provide a comprehensive review. Certain areas addressed in the first Issue Paper – such as non-discrimination, violence, family law, healthcare, legal gender recognition (LGR), asylum and employment – are re-examined in view of recent developments. In addition, this Issue Paper addresses matters that have recently become a flashpoint for hostile public debate, such as access to single-sex spaces and categories in sport, sanitation, detention and in other facilities, and the related framing of trans people's rights as a fundamental threat to women's rights. It also addresses the rights and interests of trans children and youth in various settings, the recognition and protection of non-binary people, and interconnections with gender expression. Drawing on previous work carried out by the Commissioner, the Paper further considers how a number of issues specifically impact trans people and their human rights, including conversion practices, inclusive national curricula and comprehensive sexuality education, and the criminalisation of sex work.

Each thematic section provides an outline and discussion of the relevant human rights at stake, along with a short description of the current state of play for trans people in the region. Emphasis is placed on their lived experiences, including those who are further marginalised due to their characteristics or status. Where relevant, the Paper sets out and addresses common arguments or concerns relating to various issues, emphasising a human rights- and evidence-based process for resolving any real or perceived conflict of interests and freedoms. Guidance and recommendations on upholding the human rights of trans people are then offered, with a focus on ensuring strong human rights, legal and policy frameworks. As these frameworks must be effectively implemented, methods to increase capacity, raise awareness and positively influence societal attitudes are explored, while several examples of promising practices and tools across member states, the Council of Europe and other institutions are provided. A summary of key recommendations is provided at the outset, which aims to build on those already provided in the 2009 Issue Paper.

As stated at the outset in the introduction, the Commissioner recognises that the trans community is not homogeneous, but rather represents a diverse group of individuals with differing experiences, identities and views. She also acknowledges the deeply personal nature of the issues discussed, and the language used, in this area. Where possible, the Issue Paper attempts to reflect this diversity, by recognising multiple and intersecting forms of discrimination, and by emphasising the principle of personal autonomy and the importance of solutions which promote individualised approaches and meaningful choices. Regarding terminology, the Issue Paper sets out a working glossary for the purpose of ensuring that the concepts used are clear. While efforts have been made to ensure that terminology is based on current understanding and good practice, the Issue Paper does not purport to be an authority on the matter, nor to suggest that there is a one-size-fits-all solution to language in this field. The Commissioner is also sensitive to the fact that interpretations and the use of language may evolve over time.

The Issue Paper draws on country and thematic work carried out across the Commissioner's six-year mandate, with an emphasis on her conversations with trans adults and youth, trans and LGBTI organisations and human rights defenders. Information has further been gathered through consultations, country visits, roundtables, and meetings with a range of stakeholders. The Commissioner is extremely grateful to everyone who has shared their experiences and knowledge with her throughout this time.

Key recommendations

Detailed recommendations are included in each of the sections of the Issue Paper. Below is a selection of the Commissioner's key recommendations to Council of Europe member states:

1. Collect and record disaggregated data on the lived experiences of transgender (trans) and non-binary people, including discrimination and violence, to ensure effective and targeted policymaking to uphold their human rights in all fields of life.
2. Recognise (actual or perceived) gender identity and gender expression explicitly as prohibited grounds of discrimination in anti-discrimination legislation covering all fields of life and as aggravating factors in anti-hate speech and hate crime legislation. Ensure that these laws are effectively implemented, including by preparing policies to combat violence as well as discrimination and exclusion faced by trans people, notably in employment, healthcare, education, sports, and social protection and housing. Ensure that national equality bodies and national human rights institutions are mandated and resourced to examine the human rights of trans and non-binary people.
3. Immediately repeal, and refrain from adopting, laws or policies, which victimise, discriminate against, or legitimise hatred against trans people, including bans on legal gender recognition, bans on access to trans-specific healthcare, and bans on the public discussion of LGBTI people.
4. Ban and sanction the advertising and conduct of conversion practices targeting both children and adults and ensure that the ban covers gender identity and gender expression.
5. Adopt legislation which guarantees that trans people who want it have access to quick, transparent and accessible administrative procedures for legal gender recognition based on self-determination. These procedures should be accessible to minors with due regard to the child's views, maturity and best interests, and ideally without arbitrary age limits. Consider including a third gender option in identity, social

security and other public documents for those who seek it. Overall, review the need and proportionality of including gender markers on public documents at all.

6. Ensure that trans people have effective and stigma-free access to trans-specific healthcare services, including psychological, endocrinological and surgical procedures, without requiring a mental illness diagnosis, in line with the World Health Organisation ICD-11. Ensure that trans-specific healthcare is provided on the basis of free and informed consent, is covered by public health insurance schemes in accordance with national rules, is decentralised, adapted to individual health conditions, provided by trained medical professionals, and without discrimination.
7. Recognise the identity of trans school-age children and students in school settings, regardless of their legal gender/sex, including by allowing them to use their own names and pronouns, dress as they wish, and participate in sports and other activities according to their gender identity and expression.
8. Ensure that national laws prohibit discrimination due to gender identity and gender expression in all decisions relating to family life, including birth registration rules, custody, adoption and access to assisted reproductive technologies. When birth registration systems are gendered, trans people should be registered as parents in accordance with their gender identity, and alternative systems should continue to be explored to reflect the growing diversity of families.
9. Adopt robust laws and policies to ensure that everyone can take part in sports without discrimination or harassment due to actual or perceived gender identity and gender expression. National policies governing participation in sports should start from a position where trans people can participate according to their gender identity. Ensure that any limitation or restriction on participating in sport according to gender identity pursues a legitimate aim, is proportionate, and respects international human rights standards.
10. Ensure that, in both public and private locations, everyone is able to use the sanitation facilities in a dignified and safe manner, according to their gender identity when these are gender-segregated. As far as possible, ensure the presence of an all-gender inclusive option.
11. Recognise that a well-founded fear of persecution based on gender identity and gender expression may be a valid ground for the granting of refugee status under national law, and ensure that trans refugees,

asylum seekers and migrants have access to safe reception conditions, trans-specific healthcare services and legal gender recognition.

12. Ensure the safety of trans people deprived of their liberty, including by adopting robust policies to ensure a case-by-case review to determine the appropriate detention facility, and duly consider alternatives to detention. Unless they disagree, trans people should, in principle, be detained in accordance with their gender identity. Any decision to exclude trans people from a place of detention corresponding to their gender identity must be taken based on objective and clearly established criteria and must be implemented with proper regard for human rights standards.
13. Promote understanding and respect of trans and non-binary people through public outreach and awareness raising campaigns, as well as mandatory, comprehensive, scientifically based, and age-appropriate comprehensive sexuality education in schools which covers the diversity of gender identity and gender expression. Proactively counter rhetoric against the existence, rights and dignity of trans people, including misinformation and fear-mongering about trans people.
14. Consult and involve trans people and their organisations when developing legal and policy measures that concern them. Adopt and enforce effective measures to ensure that human rights defenders who support the rights of trans people can work in an enabling environment, without the threat of violence, discrimination or other abuse.
15. When designing relevant laws and policies or undertaking other measures, consider the role and responsibilities of all actors in countering discrimination and hatred and promoting the human rights of trans people, including public leaders, the media, internet intermediaries, as well as governmental and non-governmental organisations, private legal persons and associations in various fields.

Introduction

Background and context

In 2009, the Commissioner for Human Rights of the Council of Europe (Commissioner), Thomas Hammarberg, published an Issue Paper on [Human Rights and Gender Identity](#). Adopted at a time when the status of transgender (trans) people remained under-explored within research and human rights practice, the Issue Paper was a landmark publication in the recognition of gender identity in the Council of Europe.¹ It has been cited by a range of human rights bodies and mandate holders, both inside and beyond Europe. While many issues identified by the Commissioner were subsequently addressed by other organs of the Council of Europe, the 2009 Issue Paper remains a core statement on steps to be taken by member states to ensure that trans persons can equally access and enjoy their human rights.

In the years since 2009, there have been significant advancements in both the rights and visibility of trans individuals, as there has also been for the wider lesbian, gay, bisexual, trans and intersex (LGBTI) population. Trans people are now more visible at all levels of European society, including culture, politics, and sport. Since 2009, there has also been an expansion in the recognition of human rights as they relate to gender identity and gender expression, notably through the adoption of anti-discrimination and anti-hate legislation, as well as through extending protections into areas not considered within the 2009 Issue Paper, including a greater focus on children's rights and the legal status of non-binary individuals. Most member states now have legislation enabling legal gender recognition (LGR), with self-determination increasingly recognised as the best practice.

The situation has not, however, been uniformly positive for trans people. On the contrary, despite the progress made and the adoption of legislative frameworks, trans people across Europe are still exposed to worryingly high rates of discrimination, violence and harassment due to their actual or perceived gender identity and gender expression. At present, trans people throughout the Council of Europe area find themselves at a moment of acute precarity – with evidence of growing rates of hate crimes and hardening public opinions. Rhetoric, which is generally referred to as anti-gender,

and which is promoted by well-organised, well-funded transnational movements, is fanning the flames of prejudice and abuse against trans communities and legitimising broader anti-trans discourse in public spaces and online in too many member states. A growing number of European countries are either stagnating or regressing on their commitments to trans populations partly because anti-trans and anti-gender rhetoric is being manipulated for political gains.² Legal progress, while welcome, is unevenly distributed across the Council of Europe.

Updating the Issue Paper: aims and methodology

It is against this backdrop – a moment of tension between rising anti-trans prejudice and active efforts to counter it – that the Commissioner finds it relevant to update the 2009 Issue Paper to clarify how member states must apply the human rights framework so that trans people can fully enjoy their human rights. Although it cannot be exhaustive, the updated document seeks to chart developments for trans and non-binary people in Europe, offering analysis of the intersections of human rights, gender identity and gender expression and examples of current laws and practices. Each section of the Issue Paper aims to offer a stand-alone brief overview of a given topic with analysis of key human rights issues faced by trans people and of the measures that should be taken to remedy them. At this increasingly urgent time, the Commissioner hopes that the updated document can serve as a useful guidance tool for member states in identifying, protecting and reinforcing the human rights of trans people.

In preparing this publication, the Commissioner has drawn upon numerous activities undertaken during her mandate, as well as under the mandates of previous Commissioners since 2009. This work has included country visits, meetings with different stakeholders, roundtables, desk research and the publication of reports, recommendations, and human rights comments. Applying the learnings from these activities, the Commissioner has sought to illustrate the lived experiences of trans people across the Council of Europe area and the human rights issues they encounter.

In order to capture the experiences and needs of trans people, this Issue Paper re-examines a range of human rights issues that were already considered in the previous one. This includes the areas of non-discrimination, violence and hate crimes, family law, access to healthcare, legal gender recognition (LGR), migration and employment. The present Issue Paper also engages with additional issues, such as discrimination due to the external manifestation or ‘expression’ of gender, a fuller discussion of the rights of trans children, issues faced by non-binary people and the specific vulnerability of trans people at intersections of various

discrimination grounds. Finally, with the growing prominence and impact of coordinated anti-gender and anti-LGBTI movements in Europe as noted above, the Issue Paper explores how anti-gender rhetoric and campaigns impede and reduce human rights protection for trans people.

At the outset, the Commissioner acknowledges that there is no one, monolithic trans or non-binary population in Europe. All people experience their gender identity and gender expression in individual and diverse ways, impacted by a range of factors, including legal, social and cultural contexts. Personal experiences of gender identity may also depend upon how they intersect with additional characteristics, such as gender, “race”,³ disability, age, faith or belief, sexual orientation, sex characteristics, migration status, class, nationality or citizenship, family or marital status, or engagement in sex work. In designing laws and policies to protect and enforce the human rights of trans people, member states should acknowledge individualised and intersectional experiences, and they should avoid practices or measures which flatten or disregard diversity in gender identity and gender expression.

Terminology

The Commissioner recognises the deeply personal nature of terminology surrounding gender identity and gender expression. While common terms and definitions have emerged since 2009 within research and human rights practice, the Commissioner is aware that language evolves and must be used sensitively and further adapted as necessary. Within this report, the Commissioner adopts the following definitions:⁴

Cisgender: A person whose gender identity and gender expression corresponds to the gendered norm in a given society, that is to say the predominant social expectations based on the person's sex assigned at birth.

Gender: The socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.⁵

Gender Expression: Each person's presentation of their gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references. Gender expression may or may not conform to a person's gender identity.⁶

Gender Identity: Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.⁷

Gender Non-Conforming: Refers to gender expressions other than male or female.⁸

Intersex: 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. Sometimes a person's variations of sex characteristics become apparent at birth, sometimes only later in life, notably during puberty. There are many forms of intersex.

Legal Gender/Sex: A person's gender/sex as recorded by law, notably in personal and identity documents.

Non-Binary Adjective describing people whose gender identity falls outside the male/female binary. Non-binary is an umbrella term that encompasses a variety of gender experiences, including people with a specific gender identity other than man or woman, people who identify as two or more genders (bigender or pan/polygender) and people who do not identify with any gender (agender).⁹

Sex Characteristics: Each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.¹⁰

Sexual Orientation: Sexual orientation refers 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.¹¹

SOGI Abbreviation for sexual orientation and gender identity.

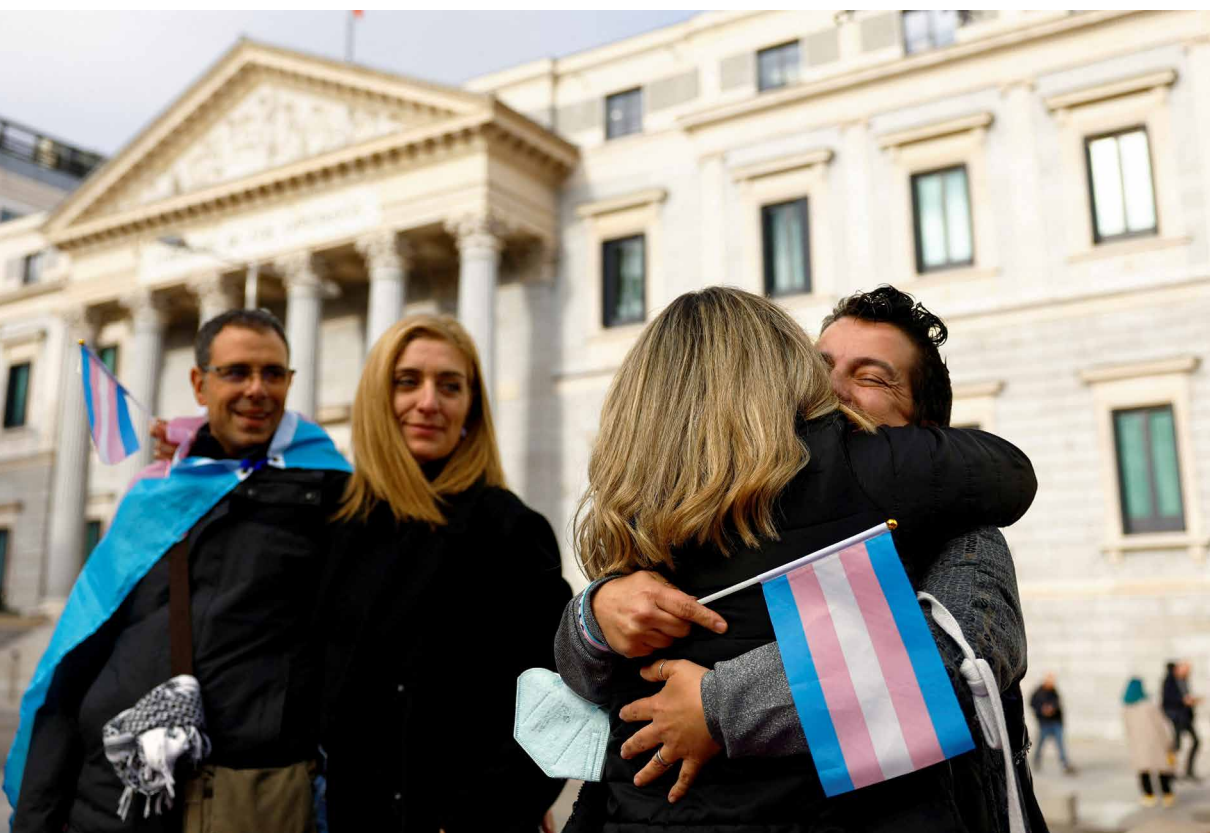
SOGIESC Abbreviation for sexual orientation, gender identity, gender, expression, and sex characteristics.

Trans Trans (often referred to as 'transgender') is an umbrella expression referring to persons who have a gender identity different from predominant social expectations based on the person's sex assigned at birth. The use of "trans" in the Issue Paper should be understood to include non-binary people unless otherwise stated. The Commissioner acknowledges and respects the fact that some non-binary people may not personally identify as trans.

Trans Man: A person who was assigned female at birth but whose gender identity is male.

Trans Woman: A person who was assigned male at birth but whose gender identity is female.

Transphobia Transphobia is an aversion to persons perceived as transgender based on prejudice. Individual, structural or institutional manifestations of transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of (actual or perceived) gender identity and gender expression.



People celebrate the approval of a bill introducing legal gender recognition based on self-determination outside Spain's Parliament in Madrid, Spain, 22 December 2022. ©REUTERS/Susana Vera

Chapter 1

International and regional human rights standards

A fundamental principle under international human rights law is that human rights are universal, inalienable and indivisible. They are universal because they are inherent in each person, irrespective of their personal characteristics and without discrimination. They are inalienable because they cannot be taken away. They are indivisible and interrelated because all rights have equal status and they are necessary to protect human dignity.

The universal character of human rights means that everyone has the same rights. In this regard, it is important to stress that there are no “special” rights for certain categories of people, but everyone should enjoy the same rights, in a meaningful manner for them. The section below therefore should not be viewed as showing the development of separate rights based on gender identity and expression, but rather as the progressive affirmation by regional and international human rights bodies that existing universal human rights apply in matters that involve gender identity and gender expression and that states need to take additional measures to ensure the effective enjoyment of human rights in this regard. The Commissioner emphasises that, the same way there are no rights specifically based on gender identity and expression, there are also no human rights that are specifically “sex-based”. At the heart of the struggle for women’s rights is precisely the call for the equal application of human rights to women.

There has been important progress in the past decade in securing clarity on how human rights standards relate to gender identity and gender expression. These developments have taken place at the local, national and international levels. They touch upon the concrete implementation of core protections under international human rights law for trans people, including bodily integrity, family life and non-discrimination. Emanating from judicial and political institutions, this growing body of standards reflects an emerging consensus among human rights actors that all people are entitled to dignity and equality irrespective of their personal

characteristics, including gender identity and gender expression. This section explores the changing international and regional landscape for the human rights of trans people since 2009. It first introduces the key advancements across the institutions of the Council of Europe, before charting parallel progress in the human rights systems of the Organisation of American States (OAS), the African Union (AU), and the United Nations (UN).

1.1 Council of Europe

The Council of Europe and the European Court of Human Rights (the Court or the European Court) have historically played an important role in identifying and elaborating human rights standards as they apply to gender identity and gender expression.¹² The institutions of the Council of Europe have continued this vital work in recent years, issuing rulings, resolutions and reports on the human rights of trans people.¹³ In July 2002, the Court delivered its landmark *Christine Goodwin v United Kingdom* judgment, affirming minimal obligations for member states to provide legal gender recognition (LGR). Although this judgment conferred a wide discretion on member states to impose pre-conditions for changing legal gender/sex, the Court has adopted a stricter lens of review since then, condemning sterilisation¹⁴ and surgical requirements,¹⁵ and affirming the member states' obligation to provide quick, transparent and accessible LGR procedures, which ensure a clear and foreseeable legal process for amending legal gender/sex.

When the Commissioner's Office published the 2009 Issue Paper on [Human Rights and Gender Identity](#), the Court had not declared whether unequal treatment based on gender identity was covered by the prohibition of discrimination enshrined in Article 14 of the European Convention on Human Rights (the Convention). However, in the *P.V. v Spain* judgment of 30 November 2010 and the *Identoba and others v Georgia* judgment of 12 May 2015, the Court confirmed that both *transsexuality* and *gender identity* fall within the scope of Article 14 of the Convention. The Court has also issued judgments on access to trans-specific healthcare and discrimination against trans parents.¹⁶ In 2018, the European Committee of Social Rights (ECSR) [concluded](#) that requiring sterilisation as a pre-condition for LGR is incompatible with the right to protection of health under Article 11§1 of the 1961 European Social Charter.

The case law of the Court and the Social Charter has been complemented and reinforced by the work of other Council of Europe institutions. In 2010, the Committee of Ministers adopted the landmark [Recommendation CM/](#)

[Rec\(2010\)5](#) on measures to combat discrimination on grounds of sexual orientation and gender identity. Acknowledging both the historical and contemporary impact of intolerance and discrimination against trans people, this Recommendation sets out concrete measures to protect the human rights of trans individuals in areas such as hate crimes, freedom of expression, education, employment, health, housing and detention. Two comprehensive reviews of the implementation of the Recommendation, in [2013](#) and [2019](#), as well as specific thematic reviews on [legal gender recognition](#) and on [hate crimes and other hate-motivated incidents](#) provide useful information about how member states have evolved their legislation and practice as regards the protection of trans people since the adoption of the Recommendation.

The Parliamentary Assembly of the Council of Europe (PACE) adopted [Resolution 2048 \(2015\)](#) which welcomes the “emergence of a right to gender identity” and calls upon member states to “explicitly prohibit discrimination based on gender identity in national non-discrimination legislation” and to “implement international human rights standards [...] without discrimination on grounds of gender identity.” In the sphere of LGR, it called on member states to develop “quick, transparent and accessible procedures, based on self-determination”. The PACE also adopted [Resolution 2239 \(2018\)](#) calling on member states to protect the right to respect for private and family life without discrimination on grounds of sexual orientation and gender identity, as well as [Resolution 2417 \(2022\)](#) on “Combating rising hate against LGBTI people in Europe”, which reiterated the need to strengthen legal protections on the basis of gender identity and gender expression, and condemned “highly prejudicial anti-gender, gender-critical and anti-trans narratives” which mischaracterise the rights of trans, non-binary and all LGBTI persons as “gender ideology” or “LGBTI ideology”. The Congress of Local and Regional Authorities has recognised that protecting the human rights and equality of LGBTI people is “essential to strengthen[ing] democratic inclusion” and has called upon regional and local authorities to “mainstream LGBTI equality and human rights in local and regional public policies.”¹⁷

The European Commission against Racism and Intolerance (ECRI) first began to examine intolerance against trans people during its fifth country monitoring cycle (2012-2018). Since that time, ECRI has developed a substantial [body of recommendations](#) addressing, among other topics, hate speech, violence and discrimination based on gender identity. In September 2023, ECRI adopted [General Policy Recommendation No. 17](#) on preventing and combating intolerance and discrimination against LGBTI people. The European Commission for Democracy through Law (Venice Commission) recently issued opinions recommending the repeal

or reform of national laws which would limit the provision of information about diverse gender identities to minors and prevent trans people from obtaining LGR.¹⁸

It is also notable that, in 2011, the Council of Europe [Convention on Preventing and Combating Violence against Women and Domestic Violence](#) (Istanbul Convention) explicitly named gender identity as a ground on which there should be no discrimination in implementing the Convention (Article 4(3)).

Since the publication of the 2009 Issue Paper, successive Council of Europe Commissioners for Human Rights have worked on promoting and protecting the human rights of trans people. Engaging in dialogue with the authorities of member states through letters and reports of country visits, human rights comments, and stakeholder consultations, they have provided guidance to protect trans people across a range of topics, including education, conversion practices, asylum and bodily integrity.¹⁹

1.2 Regional and international human rights standards: comparative perspectives and developments

Key human rights bodies and intergovernmental organisations outside Europe have also recognised human rights standards as they apply to gender identity and gender expression.

1.2.1 Organisation of American States

The different human rights bodies of the Organisation of the American States (OAS) have taken a leading role in protecting trans people. In a series of judgments and advisory opinions since 2011, the Inter-American Court of Human Rights (Inter-American Court) has confirmed that gender identity is a protected characteristic under the American Convention on Human Rights,²⁰ and that individuals have the right to documents, which “correspond to and coincide with their self-defined identity.”²¹ The Inter-American Court has recognised the international responsibility of State Parties where the fundamental rights of trans persons are violated through arbitrary arrest, torture, failures to investigate, and extra-judicial killings.²² It has also confirmed that violence against trans women falls within the scope of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).²³ The Inter-American Commission on Human Rights has called upon OAS member states to repeal or annul anti-trans policies,²⁴ and to include

“gender expression as a specific and distinct basis for discrimination in antidiscrimination legal provisions”.²⁵

1.2.2 African Union

The human rights institutions of the African Union have had fewer opportunities to consider the human rights of trans people. However, in 2014, the African Commission on Human and Peoples’ Rights (African Commission) adopted [Resolution 275](#) (ACHPR/Res.275(LV)2014) urging member States to “end all acts of violence and abuse [...] including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real [...] gender identities.” In 2017, in its [General Comment No. 4](#) on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), the African Commission observed that “[a]ny person regardless of their gender may be a victim of sexual and gender-based violence” and that “[a]cts of sexual violence against [...] lesbian, gay, bisexual, transgender and intersex persons are of equal concern, and must also be adequately and effectively addressed by State Parties.” The African Commission has included gender identity within its non-exhaustive list of grounds of discrimination for General Comment No. 4, and it has called upon States to enact specific measures to protect human rights defenders, including those who work on gender identity.

1.2.3 United Nations

Finally, at the international level, numerous human rights mandates and entities of the United Nations (UN) have expanded their consideration of the human rights of trans people and the interpretation of human rights law as it applies to them. The UN Human Rights Council (HRC) has “strongly deplor[ed] acts of violence and discrimination, in all regions of the world, committed against individuals because of their [...] gender identity.”²⁶ The UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity ([UN IE SOGI](#)) has emphasised that “[w]ithin international human rights law, there is a well-established framework prescribing respect for gender identity”²⁷ and that states should “adopt anti-discrimination legislation that includes [...] gender identity.”²⁸ The work of the UN IE SOGI builds on existing standards previously identified by the Office of the High Commissioner for Human Rights (OHCHR), which has consistently asserted that “all people, including lesbian, gay, bisexual and transgender persons, are entitled to enjoy the protections provided for by international human rights law”.²⁹ The OHCHR has also called for legal gender recognition procedures based on self-determination.³⁰

In the context of the Universal Periodic Review, states have formulated recommendations to other states on the protection of the human rights of trans people, for example the adoption of anti-discrimination laws covering the ground of gender identity, and the adoption of measures to effectively combat violence motivated by gender identity.³¹ The UN Human Rights Treaty Bodies (UN Treaty Bodies) – in General Comments, Communication Decisions, and Concluding Observations and Recommendations – have also provided an increasingly robust protection of trans people. This includes key statements from the Committee on the Elimination of Discrimination against Women,³² the Committee on Economic, Social and Cultural Rights,³³ and the Committee on the Rights of the Child (CRC). The CRC has emphasised the “rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy.”³⁴ In *G. v Australia* (2012), the UN Human Rights Committee confirmed that “the prohibition against discrimination under article 26 [of the International Covenant on Civil and Political Rights] encompasses discrimination on the basis of [...] gender identity, including transgender status.”

In recent years, the UN Treaty Bodies have identified and condemned numerous human rights violations against trans people, including the criminalisation and suppression of gender expression, the involuntary medicalisation of trans identities, and their unequal treatment due to gender identity or gender expression in key areas, such as employment, education and family life. Their work on the human rights of trans people has been supported by numerous UN Human Rights Special Procedures, including the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on Freedom of Religion or Belief, the Special Rapporteur on the Situation of Human Rights Defenders, the Special Rapporteur on the right to water and sanitation, and the Special Rapporteur on the right to health. The Working Group on Discrimination against Women and Girls has consistently included all women, including trans women, in its work.³⁵

Finally, a number of regional and national courts have referred to the Yogyakarta Principles – soft law principles on the application of international human rights standards to sexual orientation and gender identity – when advancing the rights of trans people.³⁶



A group of co-workers of diverse gender identities and expressions having a meeting.  Gender Spectrum Collection

Chapter 2

Enjoyment of human rights

2.1 Equality and non-discrimination

2.1.1 Advancing equality and non-discrimination protections in Europe

Regional protections against discrimination

Strengthening legal protections against discrimination has long been a priority to advance the rights of trans people in Europe. In *P. v S. and Cornwall County Council*, judgment of 30 April 1996, the European Court of Justice confirmed that EU sex equality rules in the field of employment extend to individuals who intend to undergo “gender reassignment”. In *P.V. v Spain*, judgment of 30 November 2010, the European Court of Human Rights confirmed that Article 14 covers discrimination in the enjoyment of Convention rights due to the “transsexuality” of a person. More recently, the Court has refined its case law to recognise “gender identity” as a protected characteristic under Article 14 of the Convention.³⁷

The emphasis placed by European courts on equality and non-discrimination has been reinforced in numerous standards and documents adopted by other institutions of the Council of Europe. For example, in 2010, the Committee of Ministers **recommended** that member states create and implement “legislative and other measures” to “combat discrimination on grounds of [...] gender identity.” Similarly, in its recently-published **General Policy Recommendation No. 17 (2023)**, ECRI called upon member states to ensure that “national law effectively defines and prohibits discrimination based on actual or perceived [...] gender identity” and that such laws place “public authorities under a duty to promote the equality of LGBTI people and to prevent discrimination in carrying out their functions.”

More recently, there has been an increasing awareness among international actors, including at the EU and **Council of Europe** level,³⁸ of multiple

and intersectional discrimination experienced by trans people. Multiple discrimination is the recognition that discrimination can take place on the basis of more than one characteristic. Intersectional discrimination is when two or more grounds of discrimination take place simultaneously and interact in a way that produces distinct and specific forms of discrimination.³⁹ Trans women, trans migrants, trans sex workers, trans people from minority ethnic backgrounds, those with a disability, chronic illness or HIV/AIDs, trans children, trans older persons and others, may have unique experiences and needs arising out of intersectional discrimination, which is often structural in nature. While the Court has not yet considered a case involving intersecting discrimination against trans people, it has provided “increasingly robust ground”⁴⁰ for multiple and intersectional discrimination to be properly taken into account. For example, in *B.S. v Spain*, judgment of 24 July 2012, the Court found that a sex worker of African origin was particularly vulnerable due to her “race”, gender and employment status, and considered that those vulnerabilities had not been properly taken into account by the domestic courts in a case involving police violence.

National protections against discrimination

In parallel with growing protections for trans people at the regional level, there have also been positive trends for trans-inclusive equality laws in member states. In a [report](#) for the European Commission in 2018, the European Network of Legal Experts in Gender Equality and Non-discrimination observed high rates of coverage for trans people in domestic equality laws across the 27 EU member states, as well as in the UK, Iceland, Liechtenstein and Norway. In 2023, 34 Council of Europe member states prohibited discrimination against trans people for employment, 29 for goods and services, and 30 for education.⁴¹ Although the information on the precise nature and scope of the current protections in some countries are not fully available to the Commissioner, she welcomes increasing equality rights for trans people, and calls on all member states to adopt and implement laws, which expressly prohibit discrimination on the basis of actual or perceived gender identity and gender expression.

In addition to legislative reforms, there have also been important rulings from national courts which have upheld the equality rights of trans people. For example, in Belgium, a civil court condemned a tour operator who would only accept a trans man onto a trip if the latter agreed to pay an extra fee for a single room.⁴² In Hungary and Germany, tribunals have found against employers who unjustifiably discriminated against trans women in job recruitment processes,⁴³ and in [Poland](#), an appeals court

ruled in favour of a trans woman who was required to wear a male uniform as part of her employment. In Ireland, the Workplace Relations Commission fined a barber who refused services to a trans man on the basis that the barber did not “cut ladies’ hair”.⁴⁴ In England, an Employment Tribunal issued a landmark [judgment](#) in 2020, confirming that the protected ground of “gender reassignment” covers people who are non-binary, gender fluid and transitioning. These judgments, and similar decisions in other member states, show a growing willingness among national judges to defend the rights of trans people. Yet, across Europe, the number of reported cases on anti-trans-motivated discrimination remains relatively small.⁴⁵ This may indicate that member states still have work to do to ensure that all trans people are aware of their right to non-discrimination, and can have this right effectively enforced. Equally, litigation brought by a single victim should not be relied on as the only way to ensure implementation of non-discrimination measures, and the role of Equality Bodies and national human rights institutions and other actors is crucial in this regard (see sub-section on policy and structures for combating discrimination and enhancing equality).

Moreover, current national legal frameworks are often not designed to take account of multiple or intersectional discrimination. A lack of awareness and training among law enforcement and judicial authorities may also contribute to a failure to adequately account for these complex forms of discrimination. On a more positive note, several member states have reported that their anti-discrimination legislation makes explicit provision for multiple forms of discrimination (Georgia, Norway, Serbia and Sweden), while in others, it is considered an aggravating circumstance (Austria, Romania), severe discrimination (Bosnia and Herzegovina, Croatia, North Macedonia, Slovenia), or it is included as a concept in specific legal fields (Poland, Greece) or in policy documents (Bosnia and Herzegovina, Ireland).⁴⁶

2.1.2 The lived experience of discrimination in Europe

Despite legal progress, in many parts of Europe, trans people continue to experience worryingly high rates of discrimination in their everyday lives. Indeed, in its 2022 first thematic report, the Council of Europe Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) [noted](#) that “progress achieved over the last decade in discussing gender identity or expression issues should be contrasted with the realities of discrimination faced by transgender persons.” There is an unfortunate absence of comparative data across all 46 member states of the Council of Europe – a fact which hinders a Europe-wide analysis of current inequalities. However, in 2020, the European Union Agency for Fundamental Rights (FRA) [LGBTI](#)

II Survey found that approximately one-third of trans respondents felt discriminated against when at work (35%) or when looking for work (32%) in the prior 12 months.⁴⁷ More than half (55%) of trans respondents felt discriminated in an area of life other than employment in the 12 months before the survey due to being LGBTI. For example, one-third (33%) of trans respondents felt discriminated against by school or university personnel, and one-quarter (25%) of trans respondents felt discriminated against when showing their identity documents. For trans respondents, reported rates of discrimination in all these areas were often significantly higher than for the cohort of LGBTI respondents as a whole.

Research on multiple and intersecting discrimination is comparatively scarce and has mostly been carried out by civil society organisations or academia.⁴⁸ Data from the [EU FRA LGBTI II Survey](#), as disaggregated and analysed by NGOs, indicates that reports of discrimination are significantly higher among certain groups of trans people, compared to trans respondents overall. When looking for work during the 12 months prior to the survey, approximately 45% of trans respondents with disabilities and 43% of trans women felt they had been discriminated against. Feelings of being discriminated within work, meanwhile, was experienced by approximately 45% of trans respondents with disabilities, 36% of trans women, and 41% of trans people from an ethnic minority background, including a migration background. The highest share of trans people who felt discriminated against by school or university personnel were trans people with disabilities (44%) and non-binary intersex people (44%).⁴⁹ Testimonies also provide an important insight into how characteristics may interact with one another. For example, trans people with disabilities report distinct barriers in accessing services, including healthcare, among others. For example:

“When trying to access gender-affirming healthcare as a disabled person, it’s common to find your disability used as a cause for concern by clinicians, often putting the brakes on your transition. For people with progressive illnesses or variable disabilities, our changing symptoms can be used to slow us down – it’s suggested we need to wait until our health stabilises before we choose to start hormones, for example - when in reality, our health has very little to do with how we experience being trans.” – a disabled trans activist from Northern Ireland.⁵⁰

Such data and accounts of trans people’s lived experiences are a reflection of the broader inequalities which affect trans people in Europe, and

evidence [negative public attitudes](#) towards trans people which, although changing, continue to persist across public, private and political spheres in many member states. Moreover, the limited information available indicates that experiences of discrimination are significantly higher among certain marginalised groups of trans people.

2.1.3 Policy and structures for combating discrimination and enhancing equality

The continued prevalence of discrimination and inequality for trans people illustrates the need for a comprehensive – and structural – approach to addressing and eradicating discrimination on grounds of gender identity and gender expression. While legal protections are a core pillar in fighting inequalities, member states must also invest in increasing capacity to prevent and punish acts of discrimination, as well as in supporting social and cultural initiatives to encourage a more open, informed and inclusive environment in Europe.

Effective strategies to address discrimination against trans people, including multiple and intersecting discrimination, require measures for public education and sector-appropriate training(s). In its [Resolution 2048 \(2015\)](#), the PACE recommended that member states “address the human rights of transgender people and discrimination based on gender identity through human rights education and training programmes, as well as awareness-raising campaigns aimed at the general public.” Recognising that discrimination against trans people often arises from misinformation, fear and lack of understanding, the Commissioner calls upon governments and other authorities to design, implement and properly fund public campaigns and trainings to increase awareness about the rights and lived experiences of trans communities.

Training in addressing discrimination against trans people should also be emphasised where there are groups, individuals or authorities who provide services or who work directly with the trans community. The provision of training can be particularly effective when designed or delivered in partnership with trans people or LGBTI organisations with relevant expertise. For example, in Bulgaria, a civil society group has provided training for medical professionals on the provision of healthcare to LGBTI people, while in Georgia, the Women’s Initiatives Supporting Group has held trainings with the police, Prosecutor’s Office, State Care Agency and legal service.⁵¹ In Czechia, a trans-focused NGO has been accredited by the Ministry of Education to work with educators on issues relating to trans students in schools. Although not an immediate panacea for public or institutional discrimination, such trainings can have an important impact in

terms of encouraging better understanding and greater sensitivity towards trans people.

In recent years, there have been a number of welcome initiatives to promote greater awareness and sensitivity towards the rights of trans people. A key strategy, recently seen in member states like [Albania](#), [France](#), [Norway](#), [Bosnia and Herzegovina](#), [Belgium](#), [Denmark](#) and [Sweden](#), is the adoption of trans-inclusive LGBTI action plans, which commit public authorities to specific policy objectives relating to LGBTI people. While the impact of LGBTI action plans varies depending upon political will, content and implementation, such strategies can be an effective means of both raising public awareness and challenging systemic inequalities. In Scotland, the devolved government has developed an [action plan](#) specifically directed towards non-binary people. At the local level, cities, such as [Leiden](#) in the Netherlands and [Zurich](#) in Switzerland, have adopted municipal action plans to address trans and wider LGBTI discrimination. On this point, the Commissioner encourages the use of tools for ensuring that action plans effectively enhance LGBTI equality, including, for example, the recently-published [guidelines](#) by the European Commission LGBTIQ Equality Subgroup. Moreover, through its country monitoring work, ECRI has provided concrete recommendations to member states on putting in place effective and comprehensive action plans and strategies.⁵²

The national human rights institutions (NHRIs) and equality bodies can play an important role in awareness-raising, training, outreach and support, strategic litigation, monitoring the implementation of anti-discrimination legislation and policy, issuing recommendations, and collecting and analysing equality data. They should be provided with the powers, resources and responsibilities to effectively provide protection, on grounds of gender identity and gender expression, in the same way as they do for the human rights of other groups within their mandate.⁵³ Important work is already ongoing in this field.⁵⁴

Improved collection and analysis of disaggregated data is required to better understand the experiences and causes of multiple and intersecting discrimination affecting trans people, and take measures to ensure that systems and services are accessible and inclusive for all. This should include participation of trans people, including the most marginalised groups among them, along with civil society, academics and other stakeholders, in the design and implementation of these systems, as well as comprehensive impact assessments, analyses and follow-up.

2.1.4 Gender expression

As already observed, an important development has been the increasing recognition – in both international and domestic law – of gender identity as a protected ground. Yet, there is less legal consensus on the protection of gender expression.

Gender expression is each person's presentation of their gender through physical appearance – including dress, hairstyles, accessories, cosmetics – as well as their mannerisms, speech, behavioural patterns, names and personal references. It may or may not conform to the socially-expected expressions typically associated with a person's gender identity.⁵⁵ Gender expression may often form the basis of discrimination and violence against individuals, including, but not limited to, trans and LGBTI people who may be seen to transgress expected social norms associated with male and female gender roles. In addition, it should be noted that anti-gender rhetoric concerning women-only spaces and other issues may have a knock-on impact on individuals who, due to their gender expression, are perceived to be trans, or to be "insufficiently feminine". In the [UK](#), for example, there have been reported incidents of cisgender women being harassed in women's toilets or other public spaces, due to having a more masculine gender expression.

Research on the causes, manifestations and impact of discrimination based on gender expression, including how it intersects with other grounds, as well as the responses to it, is comparatively lacking. The Commissioner therefore welcomes initiatives to address these gaps, such as the [study](#) planned by the CDADI into the risks and impediments to the full access of rights resulting from discrimination and violence on grounds of gender expression.

In 2023, only 17 member states covered gender expression in their national legislation – albeit, that number has grown rapidly in recent years.⁵⁶ In their recent resolutions, the [PACE](#) and the [Congress of Local and Regional Authorities](#) have expressly called upon member states to include gender expression in domestic non-discrimination and hate speech protections. Both the CDADI and the Venice Commission have also engaged with gender expression in their recent work.⁵⁷ ECRI, in its [General Policy Recommendation No. 17](#), observed that "[i]mportantly, gender identity also includes expressions of gender, including dress, speech and mannerisms."

Building upon these recent trends, the Commissioner strongly endorses the inclusion of gender expression in national non-discrimination laws. As the Inter-American Commission has noted, adopting distinct rules for gender expression not only gives the law "greater technical clarity and

specificity” but it also “provides more robust protection from discriminatory acts that may be based on such personal characteristics.”⁵⁸ By including gender expression in equality laws and policies, member states extend legal protection to all people – irrespective of their gender identity – who experience discrimination because of their actual or perceived expression of gender.

2.2 Gender identity and gender expression conversion practices

So-called conversion therapies (conversion practices) are systematic efforts aimed at changing or suppressing a person’s sexual orientation or gender identity or expression, and aligning it with the perceived dominant or desirable norm. In a Human Rights Comment published in 2023,⁵⁹ the Commissioner set out the numerous harms caused and the human rights violated by these practices. These practices are fundamentally unsound because they are based on the discriminatory premise that trans (and LGB) people must be changed. Numerous associations of mental-health professionals in Europe and beyond have condemned conversion practices as medically unjustified and unethical, and as causing significant harm to a person’s mental and physical health. The Comment provides guidance to member states for a holistic, human rights-based approach to ending these practices, which includes adopting a comprehensive ban, with sanctions, as well as other measures, including awareness raising about the harmful impacts of conversion practices, education and combating prejudices about LGBTI identities, redress or compensation and psychosocial assistance to victims. Conversion practices manifest in various forms, many of which specifically target trans children, youth, and adults, including those who are non-binary. In the UK, for example, research indicates that trans people experience high levels of exposure to these harmful practices.

In recent years, a number of European countries have moved towards adopting bans on conversion practices that target sexual orientation as well as gender identity and expression. As of January 2024, ten European countries have adopted bans on conversion practices, which include the ground of gender identity (Belgium, Cyprus, France, Germany, Greece, Iceland, Malta, Norway, Portugal and Spain). Most of these bans protect both minors and adults, with harsher sentences if the victims were under 18 or if they are ‘vulnerable adults’. The Commissioner has welcomed these measures and the fact that several other European countries are also considering a ban.

Nevertheless, the process of issuing a ban has stalled in some countries. Alarmingly, there were proposals in the UK and in Austria for planned

bans to omit trans people from their scope. Some actors have opposed comprehensive bans that include gender identity, on the unsound premise that trans people are in fact cisgender LGB people who do not accept themselves. First and foremost, such a position overlooks the existence of trans people and the serious harms and human rights violations caused by conversion practices, which apply equally to those who undergo these practices on grounds of gender identity or expression. It also disregards the fact that trans people may identify as LGB. Trans people overall experience greater abuse and discrimination than cisgender LGB people and enjoy even less societal and family support which makes them even more likely to be subjected to conversion practices, as mentioned above. The Commissioner has previously affirmed that “trans people deserve equal protection from such harm [i.e. conversion practices] and their exclusion from the scope of conversion practice bans would leave a significant, unjustifiable, and discriminatory gap in the protection of their human rights”.⁶⁰ She therefore reiterates that the grounds of gender identity and gender expression should be included within comprehensive bans on conversion practices, as one part of a multi-faceted approach to ending these practices.

As stressed in the Commissioner’s Comment, well-drafted bans should not target legitimate psychosocial counselling, which complies with clinical good practice, and is aimed at supporting a person in freely exploring, developing or affirming their sexual orientation, gender identity and gender expression, if and when needed. At the same time, the Commissioner expresses concern about the rise in certain member states of so-called “explorative therapies” which, under the guise of helping a person explore their gender identity or expression, fundamentally have the same objectives as conversion practices, namely, repressing that gender identity or expression if it does not correspond to the sex assigned at birth.

2.3 Legal gender recognition

Legal Gender Recognition (LGR) is the recognition in law of a person’s gender identity, which allows individuals to change their sex/gender marker and other gender-related information, and may also be reflected in names, social security numbers/personal identification numbers, titles etc., in public registries, records, identification documents and other similar documents (such as educational certificates).⁶¹ In the *Christine Goodwin v United Kingdom* judgment of 11 July 2002, the Court recognised that the failure to provide any means of obtaining LGR violated the right to respect for private life (Article 8 ECHR). In recent years, whether and how individuals can change their legal gender/sex has become a source of growing legal, political and social debate throughout Europe.

At the outset, it is important to acknowledge that not all trans people wish to obtain LGR. Some individuals may be comfortable giving expression to their gender identity without formally amending their legal gender/sex. Furthermore, other people, irrespective of their gender identity, may prefer a system under which gender/sex markers are not included in personal identity documents. While it is vital that the law can take account of gender in particular circumstances, notably to discourage and remedy gender-based discrimination and violence, many of the reasons why LGR is currently necessary would not apply if individuals were no longer required to mark their legal gender/sex on identity, social security and other public documents. The UN IE SOGI has expressed “significant doubts as to the real need for the pervasive exhibition of gender markers in official and non-official documentation, which appears to be fulfilling the vestiges of needs that have long been superseded or adhering to a rationale that should have never been applied in the first place.”⁶² In an [Issue Paper on Human Rights and Intersex People](#) published in 2015, the Commissioner similarly recommended that member states consider the proportionality of requiring gender markers in public official documents. In some member states, such as Germany, identity cards do not display the legal gender/sex marker of the individual, while a similar approach was adopted for national identification documents in [Belgium](#) as of 2022 and will be implemented in the [Netherlands](#) by 2025. [Norway](#) has decided to phase out gender-specific identification numbers from 2032.

At the same time, for many people, having a legal gender/sex which matches their gender identity carries great importance. Across the member states, living with an inaccurate legal gender/sex marker may partially or fully restrict enjoyment of basic rights, such as access to health, social welfare, education and marriage.⁶³ Trans people report that, without accurate legal gender/sex markers, they often experience barriers in using everyday services, such as increased questioning when using public transport or banking facilities. Lack of documentation may expose trans people to disproportionate acts of surveillance and, in some cases, it may create heightened risks of violence and discrimination by state and non-state actors. This may be particularly evident during humanitarian crises or other emergencies, and when seeking emergency services or protection measures.⁶⁴ Withholding or suppressing access to LGR can also have broader social implications. Where national laws fail to validate the gender identity of trans people, this encourages and legitimises a culture of disrespect and intolerance among the general public. Finally, obtaining LGR may carry a deeply personal symbolism for some individuals, providing formal acknowledgment of their internal experience of gender.

2.3.1 The right to LGR

Since the 2009 Issue Paper, the European Court of Human Rights has consistently reaffirmed that member states have a positive obligation under Article 8 of the Convention to provide access to LGR. It has emphasised that any procedures for LGR must be “quick, transparent and accessible” and that they must be both clear and foreseeable for an applicant.⁶⁵ The Court has been increasingly willing to find a violation of the Convention where obtaining LGR in a member state is legally, administratively or practically impossible.⁶⁶

Despite progress in recent years, – including the existence of legal or administrative measures for LGR in 37 member states⁶⁷ – since 2020, there has been a regrettable regression within certain member states, such as [Hungary](#), [Bulgaria](#) and in [Russia](#)^{*} which have barred or limited the ability of individuals to access LGR. The Commissioner is furthermore concerned that the execution of several of the Court’s judgments mentioned above remains outstanding. Moreover, applicants for LGR across Europe are still obliged to satisfy a range of (often abusive) conditions before the national law in order to affirm their gender identity.

In addition to removing these conditions, as discussed below, the Commissioner recommends that, when implementing LGR, member states should introduce specific legislation, which clearly establishes the process and rules for amending legal gender/sex. When member states adopt clear and unambiguous laws for LGR, this increases the accessibility of procedures for applicants, and it reduces the discretion of judges or administrators to impose unfair or abusive pre-conditions. It should also be possible to appeal a decision on LGR, and there should ideally be supervision of enforcement of the legislation, to ensure its correct implementation. Furthermore, where not already in place, member states should ensure a proper level of inter-connectedness across all existing systems for recording legal gender/sex markers. This will ensure that, if a person obtains LGR, they are entitled, as far as practicable, to have their correct legal gender/sex marker acknowledged on all identity, social security and other public documents, and, if possible, automatically. Registration and the use of data in public records should also reflect a person’s LGR to the greatest extent practicable. At the same time, confidentiality, privacy and data protection measures must be duly considered and built into any legal framework, both during the LGR procedure and afterwards, so that information about a person’s

* On 16 March 2022, the Committee of Ministers adopted a [decision](#) by which the Russian Federation ceased to be a member of the Council of Europe, after 26 years of membership.

gender history is not inadvertently or intentionally revealed in a manner which violates the right to privacy. There should also be limited retention periods for personal data.

2.3.2 Requirements to obtain LGR

Diagnosis: Obtaining LGR in half of the member states requires evidence of a mental health diagnosis or psychological evaluation (diagnosis requirement).⁶⁸ Although the Court has so far not held that diagnosis requirements are incompatible with the Convention, the Commissioner joins other Council of Europe and regional and international⁶⁹ human rights voices in recommending the repeal of such conditions, on the basis that they pathologise trans people and undermine their human dignity. Furthermore, such requirements perpetuate historic tropes about trans people being confused or mentally ill, undermine the validity of how trans people experience their gender identity, and potentially expose applicants for LGR to harmful or stereotyped psychological assessments.

Physical interventions: In at least 11 member states, requirements for LGR continue to include sterilisation⁷⁰ and invasive physical interventions, such as mandatory surgical interventions. Unwanted medical procedures and sterilisation violate the core right to physical integrity and the right to the protection of health, often involving painful and irreversible bodily alterations, and represent an unlawful interference with Article 8 of the Convention.⁷¹ Throughout her mandate, the Commissioner has condemned such requirements in various member states, including in [Czechia](#), [Slovakia](#) and [Georgia](#). As stated by the Court, such procedures coerce trans people into an “impossible dilemma” of choosing between their right to bodily integrity and their right to LGR. They may also result in a person forfeiting their capacity to have children and to found a family, as further discussed in the section on family life. These interventions are imposed under circumstances, which are incompatible with the guarantee of free and informed consent to medical treatment. The Commissioner encourages member states to consider ways to ensure reparation and rehabilitation for individuals who have previously submitted to sterilisation as a pre-condition for LGR, noting that several member states, including [Sweden](#) and the [Netherlands](#), have already adopted such initiatives.

Divorce: A growing number of member states have repealed the requirement to dissolve a marriage or other formal relationship before obtaining LGR. However, across Europe, “divorce requirements” remain a feature of LGR laws in many countries.⁷² As already denounced by the Commissioner in the 2009 Issue Paper, divorce requirements, all the more so where there are no alternatives to marriage in contravention of Strasbourg

case law,⁷³ may lead to the loss of a number of rights and protections that the couple had previously acquired, including, for example, access to a partner's health insurance or pension, certain family-related employer's benefits, inheritance and taxation rights or the ability to make medical decisions. Divorce requirements also have insufficient regard to the best interests of children. As underlined by the CDADI 2022 [thematic report](#) on LGR in Europe, such requirements reduce the ability of young people to enjoy respect for their right to family life with their parents, and they may compromise the legal security of families where a parent legally transitions. The Commissioner calls on member states to remove such requirements, in line with numerous similar recommendations by other regional and international human rights bodies.⁷⁴

Finally, a number of further requirements may be imposed which hinder and delay trans people's access to LGR, including mandatory waiting periods, limitations based on a previous or current conviction, mandated mental health treatment or assessment for a certain period of time, or real-life experience/tests (requirements to live full-time in the so-called gender role of the gender with which a person identifies). The purpose of such requirements, for the sake of changing legal gender/sex, may be questioned, particularly insofar as they undermine the self-determination of trans people.

2.3.3 Self-determination

Since the publication of the 2009 Issue Paper on human rights and gender identity, there has been a shift in focus towards the question of whether individuals should be able to access LGR through self-determination. Under a self-determination model, applicants obtain LGR through a simple administrative procedure, often a statutory declaration submitted to a public office, without having to satisfy additional legal or medical requirements, such as the consent or diagnosis of a healthcare professional.

Across the Council of Europe, 11 member states now provide access to LGR by way of self-determination,⁷⁵ with a number of other member states considering doing the same. Similar laws also exist in a number of countries beyond Europe, for example, in Argentina and New Zealand.

For many trans people, self-determination procedures are preferable for several reasons. Streamlining and simplifying the application process, self-determination removes the requirement to engage with judicial, administrative and medical bureaucracies that can operate as insurmountable barriers – particularly for trans people who are further marginalised and more vulnerable to discrimination due to other

characteristics. More fundamentally, however, self-determination involves the symbolic recognition that trans people are the ultimate arbiters of their own legal gender, without a requirement for third party confirmation or approval. While the Court has so far not held that the Convention guarantees a right to LGR through self-determination, such procedures are recommended as a human rights best practice by numerous bodies and mandate holders, including within the UN, the Organization of American States and the Council of Europe.⁷⁶ The Commissioner has also consistently recommended self-determination as the most effective means of realising LGR, and therefore of respecting and upholding trans people's personal autonomy and identity, both of which are encompassed by the right to private life under Article 8 of the Convention in this sphere.⁷⁷

Self-determination laws have been opposed by some individuals and groups who argue that creating more accessible LGR procedures for trans persons will have the unintended consequence of facilitating cisgender men who seek to obtain inappropriate access to women-only spaces, thereby compromising their safety, or who seek to benefit from social advantages intended for women. The Commissioner is not convinced by arguments that adopting self-determination compromises or conflicts with the rights of women and girls. At the outset, it should be noted that the applicable standard for obtaining LGR and access to women-only public spaces are not necessarily linked – given that access to many such spaces often does not depend on showing identity documents (see section on sanitation, for example). Objections to self-determination on this basis are therefore misleading in many cases. Nevertheless, as such arguments may elicit and further marginalisation and intolerance of trans people, it is important that they are addressed.

Rather than being the source of abuse for women and girls, trans people (particularly trans women) experience high levels of discrimination, gender-based and sexual violence, resulting from misogyny, patriarchy and gender-based control; in other words, they are far more likely to be victims than perpetrators of abuse (see section on violence). The Commissioner deeply regrets public and political discourse in some member states, where in the context of policy discussions around LGR, the experiences of discrimination and violence (to which many trans persons are routinely subjected) are distorted and mischaracterised.⁷⁸ Opposition to self-determination, grounded in arguments of safety, frequently simplify or misrepresent experiences of gender-based and sexual violence against women and girls, which often takes place within the private sphere and in circumstances where women and girls know their perpetrator. Similarly, they disregard the high rates of gender-based abuse which already exist in

societies without self-determination laws, and unconvincingly suggest that limiting how trans people obtain LGR will materially influence the conduct of abusive men.

Importantly, in those European countries which have already adopted self-determination laws, the suggestion that men use LGR procedures to abuse women, or for other fraudulent or abusive purposes, is not borne out.⁷⁹ In any case, concerns about misuse of LGR procedures would be more appropriately dealt with by measures which specifically deter and punish such conduct. For example, self-determination laws in Belgium and Ireland contain specific provisions allowing for censure or the annulment of LGR, where there is evidence of fraud.

In light of the above, including the benefits of self-determination for trans people, and the lack of demonstrable risk of harm, foregoing self-determination procedures on the basis of concerns about safety appears to be both ineffective and disproportionate. The Commissioner sees it as a simplistic – and mistaken – solution to the complex phenomenon of gender-based violence and misogyny, which rather requires measures targeting the real perpetrators of such violence. A similar conclusion can be reached for arguments relating to the (somewhat theoretical) risk of fraudulent misuse of self-determination LGR procedures for other purposes, particularly given the ability to target any such risks through more commensurate and focused measures.

2.3.4 LGR for non-binary people

Access to LGR for non-binary people is an issue which has gained legal and political prominence. Although a lack of inclusion for non-binary people is a problem for many areas of law, it is perhaps most prominent in the rules on changing legal gender/sex. At present, LGR for non-binary people remains a rare exception across the Council of Europe.⁸⁰ Therefore, even where member states provide the option to amend one's legal gender/sex, applicants must nevertheless select from only male or female options. The comparative legal invisibility of non-binary people persists despite the fact that, in the [EU FRA LGBTI II Survey](#), the majority (51%) of trans people identified as being outside the gender binary.⁸¹ The current dearth of non-binary-inclusive domestic laws may embolden public rhetoric that dismisses non-binary experiences as frivolous or as not real.

In recent years, the legal and social disadvantages for non-binary people who are shut out of LGR laws have been emphasised by a number of the most senior domestic courts in Europe.⁸² In a 2023 case in the [Netherlands](#), a Court of Appeal in Amsterdam observed that, as a result of the failure

to register a person's gender fluid identity, the individual was at times unable to even leave their house, and that "[g]ranted the application for LGR would take a heavy weight from the shoulders of the applicant and be beneficial for their mental well-being." In a landmark judgment from 2017 in [Germany](#), the Constitutional Court found that excluding non-binary people from LGR laws violated the national Basic Law:

"...The General Right of Personality also protects the gender identity of persons who can be assigned neither the male nor the female sex [...] There is an interference with their fundamental right because the current civil status law requires that sex be registered, but does not allow a gender entry other than female or male [...] This interference with fundamental rights is not justified..." (para 36).

Recently in the *Y. v France* judgment of 31 January 2023, the European Court of Human Rights concluded that, under Article 8 of the Convention, member states currently retain a wide margin of discretion as to whether they introduce categories beyond male and female, because of a lack of consensus around non-binary LGR across Europe. Therefore, while the Court has so far not interpreted the Convention to include a right to non-binary recognition, the Convention equally does not require the recording of legal gender/sex, let alone in a binary manner. Member states can therefore choose to adopt measures that improve respect for the human rights of non-binary people. The Commissioner calls on member states to consider including a third legal gender marker in identity, social security and other documents, as well as public registries, for those who seek it.

There are several considerations that member states may take into account in this regard. First, despite concerns about legal and administrative uncertainty, a small number of member states (including Austria, Germany and Iceland), and a growing list of jurisdictions outside of the Council of Europe (including India, California and Tasmania), have introduced LGR options for non-binary people. The legal developments in these countries may provide some guidance, and lessons learned, for future reforms throughout Europe, including about the risks of limiting non-binary recognition to intersex persons (discussed further below). Second, where member states are unable to enact full recognition of non-binary genders, for example in birth certificates; authorities might consider providing at least some identity documents with additional legal gender markers, for example with passports – as is the case in member states like Denmark. In Malta, the Gender Identity, Gender Expression and Sex

Characteristics Act only allows individuals to obtain legal recognition of a binary gender. However, people in Malta can apply for Maltese identity cards and passports with an “X” gender marker. Furthermore, Maltese law recognises legal gender markers other than male or female, or the absence thereof, where they are recognised by a competent foreign court or other responsible authority. While such a document-by-document approach will not be possible in all member states, it could ensure the integrity of national law while also providing minimum protections to non-binary populations. Third, and as a first step, research (like in [Norway](#), for example) and cross-country dialogues would facilitate a better understanding both of potential options for future reform and of the lived experiences of non-binary people in those countries. Such measures are encouraged by the Council of Europe’s [ECRI](#)⁸³ and [CDADI](#), and the European Commission’s [LGBTIQ Equality Strategy](#), among others.

Finally, as noted in more detail at the outset of this Chapter, member states should reflect, in specific situations, upon the need and proportionality of using legal gender/sex markers on identity, social security and other public documents.⁸⁴ To the extent that legal gender/sex markers may serve no beneficial purpose in promoting gender equality or preventing gender-based discrimination, there may be greater utility in removing formal markers rather than reforming the current binary system.

2.3.5 LGR and intersex people

Across the Council of Europe, many of the legal and political debates regarding LGR have historically prioritised the experiences of trans people. Yet LGR procedures may also have significant relevance for intersex people, as previously discussed by the Commissioner in the [Issue Paper on Human Rights and Intersex People](#). This is not only because some intersex individuals may also be trans, but it is also because the personal situation of certain intersex people – including those who have been assigned as an infant to a legal gender/sex that is inconsistent with their gender identity – may require obtaining LGR later in life. As previously stressed by the Commissioner, member states must ensure that national LGR rules are fully accessible to intersex applicants. This means reviewing existing or proposed laws and repealing or omitting provisions, explicit or implicit, which would restrict the capacity of intersex persons to access LGR (for example diagnosis requirements which are not applicable to intersex people). Member states, when designing or reforming LGR procedures, should include relevant intersex stakeholders, including intersex-led organisations, at all stages of the process. It is also important not to assume that all intersex people want or require a non-binary legal gender. Rather than focusing on sex characteristics or bodies, access to non-binary LGR should prioritise the

gender identity, lived experiences and self-determination of applicants.

2.3.6 LGR for minors

The topic of LGR for children raises particular sensitivities in many member states, with opposition frequently centring on the belief that minors lack the capacity to understand what it means to change their legal gender/sex marker or that they may be easily manipulated to seek such change. However, data from the [EU FRA LGBTI II Survey](#) indicates that most adult trans people realised that their gender identity did not match their sex assigned at birth before reaching the age of 18 (72%). Across Europe, a majority of countries either prohibit or restrict access to LGR for children, although a growing number are introducing a pathway before the age of 18 years (often supervised). At present, 18 countries allow minors to obtain some form of LGR, with rules and requirements varying across states.⁸⁵ In some countries, such as Spain and Germany, the highest courts have condemned policies which unduly restrict the right of minors to access LGR.⁸⁶

At the outset, it is important to stress that not all trans children will want LGR before the age of majority – preferring to explore and express their gender identity in different ways, such as social transition (using different pronouns/name, publicly expressing their gender identity through choice of clothing, etc.). Where this is the case, it is important that public institutions and service providers, including schools, respect the gender identity and expression of all children, irrespective of their legal gender/sex (see section on education). Moreover, the changes in documents and registers that matter most to children may well be different to those of adults. For instance, it may be most appropriate to focus on ensuring that there is easy access to procedures for changing children’s first names. However, absolute prohibitions or disproportionate restrictions on LGR for minors are inconsistent with the right of the child to have their views being given due weight in accordance with their age and maturity, as enshrined in Article 12 of the CRC and hamper national authorities in pursuing the best interests of individual trans young people.⁸⁷

Arguments that LGR prematurely or inappropriately medicalises young people and their bodies are misplaced since, as noted, no person, irrespective of age, should have to submit to physical medical interventions or diagnoses as a pre-condition for LGR in the first place. Obtaining LGR does not entitle children to subsequently access a medical transition pathway, as medical transitions are governed according to distinct ethical, clinical and professional standards. Similarly, while there is no evidence to suggest that children are systematically seeking to amend their legal gender/sex

because of the undue influence of their peers and/or social media, it is an unfortunate reality that many trans young people repress their gender identity and delay coming out for many years, for fear of rejection or other negative consequences.⁸⁸

Some member states have included additional safeguards in their laws on LGR for young people. In Malta, for example, there is no age limit for children who seek LGR. However, under 16 years, the person with parental authority or the tutor must apply to the Civil Court on behalf of the child, with the court having due regard of the views of the child and ensuring that the best interests of the child are the paramount consideration.

Fundamentally, for LGR under the age of 18 years, the Commissioner recommends that member states should adopt procedures which are both accessible and transparent, and which have at their core a commitment to ensuring that children have access to impartial and objective information, are fully heard in the process, and that their best interests are the primary consideration.⁸⁹ In this regard, arbitrary age limits to access LGR may not be the best approach to elicit maximal participation of the child. Rather, the age at which a child can access LGR should be guided by an assessment of the individual child's level of maturity and understanding.

2.3.7 LGR and migration

In most member states, LGR is only available to nationals, which bars refugees, asylum seekers and migrants.⁹⁰ As discussed in other sections of this Issue Paper, when trans refugees, asylum seekers and migrants are unable to obtain LGR, their access to private and public services, as well as their capacity to engage in work, is limited.

This is particularly concerning for trans refugees, asylum seekers and migrants who come from countries where LGR is not available at all, and where they are not able to obtain identification documents from their country of origin which are consistent with their gender identity. In most member states, even where an individual has been granted refugee status because of persecution on the basis of actual or perceived gender identity or gender expression, they will be unable to change their documents because they are not in possession of a birth certificate from the host country.⁹¹ The lack of LGR procedures in some member states has also driven trans people to migrate within Europe, as reported for instance by civil society organisations in Hungary. These individuals will have to wait years to acquire citizenship of the host country and only then will they become eligible for LGR.

The Court has affirmed in *Rana v Hungary*, judgment of 16 July 2020, that

absolutely withholding LGR from trans people who do not have a national birth certificate violated the right to respect for private life under Article 8 of the Convention. Any rules for regulating access to LGR should be proportionate, and there should be room for exceptional cases (for example, where it is not possible to obtain LGR in the country of origin). Across a few member states, efforts are being made to accommodate this situation. Germany and Greece have made LGR available to refugees and stateless persons, and Belgium and the Netherlands have made LGR available to migrants and foreign residents. Among countries with a self-determination model, Malta, Norway, and Switzerland provide LGR for refugees; Iceland and Luxembourg also provide LGR to non-national residents and asylum seekers; Malta, Luxembourg and Switzerland provide LGR to stateless persons; Norway provides LGR to all migrants and foreign residents. In Denmark, anyone with a social security number can access LGR; in Ireland, any non-citizen resident can use LGR if their country of origin does not provide for this option.

2.4 Violence, hate crimes and hate speech

The 2009 [Issue Paper](#) underlined that many trans people live in fear and face violence in the course of their lives, which manifests in hate speech, physical and sexual violence, police brutality, domestic violence, and murder. It noted moreover that incidents motivated by anti-trans sentiment often show a high degree of cruelty and brutality. In recent years, despite considerable improvements in legal protection from hate speech and hate crimes on grounds of sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC), there has been a significant rise in the manifestation of hate against LGBTI people, communities, human rights defenders and organisations.⁹² This negative trend appears to be fuelled in no small part by anti-gender campaigns across Europe and in other parts of the world (see Chapter III on gender identity and the broader opposition to human rights). Considering these recent developments there is an urgent need for member states to fully grasp the issues at hand, and to take comprehensive and integrated measures for effectively preventing and combating anti-trans violence and hatred.

2.4.1 Violence, hate crime and hate speech: the state of play

Between 2008 and September 2023, the [Trans Murder Monitoring](#) project documented 203 murders of trans people in 21 European countries with most victims in Türkiye (65), Italy (48), Spain (16), France (14), and the UK (13). Murders in Armenia, Belgium and Slovakia were reported for the first time during the last reporting year. These murders reflect the striking

anti-trans brutality observed worldwide, including asphyxiation, torture, decapitation, burning, kidnapping and rape. ECRI has also reported on anti-trans murders in several of its country reports.⁹³ Over the past years, threats and attacks against trans people have significantly increased in several member states, including [France](#), [Germany](#), [Switzerland](#) and the UK. In [England and Wales](#), for instance, there were 4,732 hate crimes recorded against trans people in the year up to March 2023, an increase of 11% on the previous year and the highest number of anti-trans crimes since 2012.

Notably, trans people are more likely to suffer violence compared to cisgender LGB people: within EU member states the [EU FRA LGBTI II Survey](#) found that 17% of trans respondents had been physically or sexually attacked in the five years before the survey due to being LGBTI (compared to 11% of all respondents) and 63% had been harassed in the 12 months before the survey (compared to 49% of all respondents). In over a third of cases the violence was sexual or a combination of physical and sexual assault. Other factors such as age, gender, migration background, “race”, ethnicity and disability could significantly increase trans people’s vulnerability to violence. Trans women, for example, were most likely to be harassed and assaulted. According to civil society reports, most of the victims and survivors of anti-trans hate crimes and murder are trans women, trans femmes (i.e. trans people who lean toward notions of femininity, but do not necessarily identify as women), sex workers, and migrants.⁹⁴ Moreover, because of marginalisation, violence, and discrimination, trans people are disproportionately likely to rely on sex work as a means to survive. This exposes them to dangerous working conditions, significant levels of violence, including police violence, sexual violence, and extortion, especially when sex work is criminalised (see section on Employment). The [2023 Trans Murder Monitoring](#) showed that 78% of the victims in Europe were sex workers and, where data was available, at least 45% were refugees and migrants.

The [EU FRA LGBTI II Survey](#) study showed that, among trans people, minors (aged 15-17) were the most likely to experience violence and harassment. The 2023 Trans Murder Monitoring report, moreover, highlighted that the age group with the most murder victims was 19 to 25 years old. For many trans minors and young people, family can be a first site of rejection, humiliation, harassment and violence, including physical, sexual and psychological, threats of being forced to leave the home, and of pressure to undergo conversion practices.⁹⁵ A UK [study](#) found that, among the LGBT+ people surveyed, trans people had experienced higher levels of abuse from family members (43% compared to 29%). During the COVID-19 pandemic, this situation escalated and many trans people, particularly children and youth, were subjected to violence at home. A lack of trans-inclusive or

sensitive services and shelters to turn to was a further aggravating factor.

Anti-trans violence is also commonly perpetrated by the police, with many reports of harassment, violence, rape, arbitrary arrest, detention, extortion, and blackmail being documented in several member states.⁹⁶ Trans people of “racial” and ethnic minorities, those with a migration background, those with disabilities, and those who engage in sex work, are at particularly high risk of police abuse and profiling.⁹⁷ Bias and violence by the police undermine the trust of communities in law enforcement, making it less likely that they would report hate crimes to the authorities.

Human rights defenders, associations, events and spaces focusing on LGBTI issues, and more specifically on the rights of trans people, are also increasingly the target of attacks. In [Bulgaria](#), a far-right presidential candidate was one of the attackers against the Rainbow Hub where a trans community event was taking place. Drag story time events have been attacked, threatened and disrupted or otherwise elicited hateful responses including in [France](#), [Finland](#), [Ireland](#), [Sweden](#), [Switzerland](#) and the [UK](#). Violence at public demonstrations is a further source of concern. The European Court has in [several cases](#) found violations where the authorities failed to provide adequate state protection to the participants and organisers of LGBTI-themed events from foreseeable attacks.⁹⁸ There have also been incidents of police violently dispersing peaceful LGBTI protests or events, as mentioned above. Trans people have been specifically targeted at Pride marches which had otherwise taken place peacefully for years, for example in [France](#) and [Germany](#). Trans human rights defenders and activists also report being the subject of threats of violence and death, harassment and physical attacks on them and on the offices of NGOs.⁹⁹

Anti-trans hate speech, meanwhile, has been increasing and it is now alarmingly common across the entire region, as addressed by the [PACE](#), the [Commissioner](#), and [ECRI](#). It should be noted that hate speech is understood and defined differently across member states, and that it may be difficult in individual cases to determine whether an expression reaches the threshold of hate speech, particularly for the purposes of criminal law. Nevertheless, international texts underline the importance of developing a common understanding of the concept and of its effects. The Committee of Ministers’ [Recommendation CM/Rec\(2022\)16](#) on combating hate speech defines hate speech as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or a group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status, including gender identity.¹⁰⁰ Hate speech therefore covers a range of expressions which varies in severity and harmfulness, and states should ensure that a range of calibrated measures

are in place to prevent and combat it, including prohibition in criminal law, for the most severe cases. Robust debate and freedom of expression are fundamental to the fabric of a democratic society. At the same time, the Commissioner stresses that freedom of expression is not an absolute right, and it comes with responsibilities and duties, particularly when it intersects with the rights of marginalised or vulnerable groups. The European Court has found on many occasions that it may be necessary in a democratic society to restrict certain forms of expression that spread, incite or promote hatred based on intolerance, when certain factors are present. This extends to protecting LGBTI people from severely hurtful and prejudicial comments, as the Court found in the case of *Lilliendhal v Iceland*, judgment of 12 May 2020. The Commissioner underlines the responsibility of public authorities to promote respect for diversity and to regulate public debate when it amounts to hate speech or incitement against trans people, ensuring that the general right to freedom of expression is balanced with their rights and dignity. Moreover, the Court has established that hate speech may even fall under the scope of Article 17 (prohibition of abuse of rights) and therefore be excluded entirely from protection under the Convention.¹⁰¹

Online anti-trans hate speech, for instance comments on messaging apps, social media, and other platforms, is an increasingly serious issue across the region. Trans children and young people are particularly vulnerable to online hate speech and cyberbullying.¹⁰² Specific practices may be used to target trans people online, including so-called deadnaming (using a trans person's name given at birth, which they no longer use, identify with, and/or have in legal documents), outing someone as trans and/or posting past photographs of them. These practices demean the person's identity and undermine their dignity, but they may also expose them to further harassment, hatred and violence. Doxing is a specific form of harassment involving publication of personally identifiable information about an individual without their consent. It may involve posting a person's home address, personal contact details or place of work, which may stir up fear or even manifest in harassment and violence offline. Trans human rights defenders have also been subject to similar online abusive campaigns, including recently in the UK. Anti-trans speech may also perpetuate harmful narratives about trans people, for example, by falsely claiming that being trans is linked to child grooming or abuse, or through denying the very existence of trans people.

2.4.2 Impact of hatred

The impact of manifestations of anti-trans hatred, including harassment, should not be underestimated. The [EU FRA LGBTI II Survey](#) has documented that 52% of trans respondents experienced psychological problems

(depression or anxiety) following the last hate-motivated violent incident they suffered, and 38% were afraid to go out or visit places. In the case of minors, these rates were 62% and 44%, respectively. There have also been reports of death by suicide, apparently as a direct consequence of transphobic harassment. In Italy, for example, three trans women died by suicide following the intense public debate on the hate crime bill in 2021. Anti-trans hatred in its various manifestations may also push trans people out of their homes, schools, and communities and increase their vulnerability to discrimination, violence, poverty, marginalisation, police profiling, homelessness, and forms of precarious work. Anti-trans hate has also in some cases resulted in tangible legal changes which have limited trans people's rights and contributed to their marginalisation and social exclusion.¹⁰³ More broadly, hate speech and other manifestations of hostility may have a chilling effect on the freedom of expression of trans people, leading to their withdrawal from online and public spaces, and on the work of human rights defenders working on trans issues.

As in the case of other social groups, there is a risk of hate speech contributing to incidents of physical violence.¹⁰⁴ In England and Wales, for instance, the 2022-2023 Home Office [report](#) on hate crime found that the protracted discussion of trans issues by politicians, media and social media throughout the year may have led to a significant increase in anti-trans hate crimes during that period.

2.4.3 The role of public figures

As stated by the Committee of Ministers in its 2022 [Recommendation CM/Rec\(2022\)16](#) on combating hate speech, public officials have a strengthened responsibility to refrain from engaging in, endorsing or disseminating hate speech. This recommendation holds significant relevance because individuals in positions of authority have more opportunities to disseminate their message and sway public opinion. Consequently, the influence of their words on potential wrongdoers, who might feel empowered to replicate this harmful behaviour, can be more pronounced. By contrast, such figures can and should play an important positive role in addressing hate speech and violence, through publicly condemning it and showing support for the human rights of trans people.

As documented in the Commissioner's 2021 [Human Rights Comment on political manipulation of homophobia and transphobia](#), unfortunately, government representatives and other politicians in many member states often perpetuate stigma and hate against trans people for political gain. Anti-LGBTI speech has become particularly common during elections or parliamentary debates, for instance on law reform regarding hate crimes,

hate speech, LGR, or healthcare provision, including, recently, in [Austria](#), [Azerbaijan](#), [Belgium](#), [Germany](#), [Hungary](#), [Poland](#), [Türkiye](#) and the [UK](#). In Germany, far-right politicians have publicly [denied](#) the existence of trans people and have [mocked](#) gender diversity. In the UK, both the UN IE SOGI, and the Commissioner, have noted abusive and toxic political discourse, as well as its apparent trickle-down effect on anti-trans speech and intolerance within society.¹⁰⁵ In countries where there is legislation which actively targets trans people in place, for instance in Hungary and in Russia, hate speech from political leaders has been particularly common. Religious leaders have also targeted trans people and their human rights, labelling them “[cursed by God](#)” or “[satanic](#)”. However, holding politicians, public figures, and religious leaders accountable may be challenging. Where codes of conduct are available for public authorities, for example, they may not include specific provisions on transphobic speech.¹⁰⁶

2.4.4 The role of the media and internet service providers

The role of media and internet providers in shaping negative public discourse about trans people has become increasingly influential. As gatekeepers of information and influencers of public opinion, their role in combating hate speech is not just a legal obligation but an ethical imperative to foster a more harmonious and tolerant world and to avoid media and online spaces becoming breeding grounds for hatred and intolerance.¹⁰⁷

Regrettably, the media have sometimes played a significant part in stigmatising and vilifying trans people over the years, as elaborated in the Commissioner’s 2022 [report following her visit to the UK](#), and as reported, for example, in [Germany](#), [Ireland](#), [Hungary](#) and [France](#). Media reporting about transphobic violence often features misgendering, use of deadnames and disrespectful language about the victims. The Commissioner has also condemned the spread of anti-LGBTI speech by media outlets in [Georgia](#), which has contributed to the legitimisation of violence and intolerance.

Therefore, there is an urgent need for the media to uphold its responsibility to inform with accuracy, fairness, and respect. Media organisations should establish and enforce rigorous editorial guidelines that identify and prevent the dissemination of hate speech and intolerance, including of transgender people. In addition, journalists should receive regular and appropriate training to recognise and responsibly report on sensitive issues relating to gender identity or gender expression, avoiding language, divisive and harmful narratives, sensationalism or stereotyping that could incite discrimination or violence, spread disinformation or reinforce stigmatisation.¹⁰⁸ National and international civil society organisations

have made available [resources](#) for the media on how to better report on trans people and their experiences, and the media should make use of such tools. Self-regulation plays a crucial role in this context. Media outlets must adopt and strictly adhere to codes of conduct that explicitly condemn hate speech, including on the grounds of gender identity and gender expression. Independent regulatory bodies, such as press councils or ethics committees, should oversee adherence to these codes, providing a mechanism for accountability and redress in cases of ethical breaches.¹⁰⁹

Finally, the role and responsibility of internet intermediaries should be properly taken into account when considering responses to anti-trans hate speech and violence. The 2022 [Recommendation CM/Rec\(2022\)16](#) of the Committee of Ministers on combating hate speech stresses that member states should, in line with its 2018 [Recommendation CM/Rec\(2018\)2](#) on internet intermediaries, delineate the roles and responsibilities of internet intermediaries in addressing online hate speech – notably not to make accessible or disseminate hate speech that is prohibited by law. Internet intermediaries should adopt measures, such as community standards, ethical codes, due diligence assessments, complaint and review mechanisms, that are attuned to and explicitly consider intolerance and hatred based on gender identity or expression. Similarly, internet intermediaries should engage in dialogue with and the promotion of awareness among users of their rights and freedom online.

2.4.5 Improving member state responses

The Commissioner observes that disaggregated hate crime data concerning LGBTI people is still scarce. Available data is overwhelmingly collected and published only by civil society, and she welcomes systems put in place to collect data about hate crime against LGBTI people, including in [Ireland](#), [France](#) [Malta](#), [Poland](#) and [Norway](#).

Council of Europe standards recommend that member states ensure their anti-hate crime laws and policies provide effective protection for trans people, and that they refrain from adopting measures which legitimise hatred against them.¹¹⁰ This is even more urgent in the current anti-trans climate, detailed above. While noting considerable progress in the years following the 2009 Issue Paper, the Commissioner remains concerned that less than half of Council of Europe member states (21, and some parts of the UK) have enacted hate crime legislation where gender identity is included in the definition of hate crime as a protected characteristic (compared to 29 member states which have included sexual orientation in the definition).¹¹¹ 18 member states, and some parts of the UK and Bosnia and Herzegovina, have enacted hate speech legislation where

gender identity is expressly included as an aggravating factor (compared to 31 member states, along with some parts of Bosnia and Herzegovina which have included sexual orientation as an aggravating factor).¹¹² In a number of countries, comprehensive hate crime and hate speech laws that would cover gender identity and expression, for instance in Germany, [Italy](#), [Norway](#) and [Ukraine](#), have sometimes been met with opposition, based on arguments to the effect that gender identity, for instance, is a “controversial concept”, or that it “threatens women’s rights or religious freedoms”.

Regarding online hate speech, measures should be taken to ensure that content amounting to hate speech, including incitement to violence, is promptly removed, investigated and prosecuted. This may require cooperation between the authorities and social media platforms or other internet intermediaries, and states should provide clear rules around this cooperation. Consideration should also be given as to whether new forms of harassment and abuse, including doxing, are adequately and effectively covered by existing laws and policies.

Even where laws are in place, challenges remain in ensuring their effective implementation.¹¹³ Whether due to institutional or individual prejudice or hostility, a lack of awareness or capacity, in many cases, the police, prosecutors, and the judiciary fail to record transphobic violence, investigate or press charges (even in cases of serious violence). Where prosecution does take place, the bias motivation of anti-trans attacks often remains ignored and/or crimes are mishandled as less serious charges. In a considerable body of judgments, the European Court has found a violation for failure of state authorities to conduct effective investigations into hate crimes and violence against LGBTI persons including during pride or other events.¹¹⁴ Similarly, while transphobic speech has not been specifically addressed by the Court, in *Beizaras and Levickas v Lithuania*, judgment of 14 January 2020, the Court established that the authorities’ failure to investigate homophobic speech on a social media platform violated Articles 8 ECHR (private and family life) and 13 (right to effective legal remedies) and was discriminatory (Article 14). Moreover, in some cases, law enforcement professionals turn against trans people who try to report violence against them. In Georgia, for example, in a case where trans women sex workers were victims of a hate crime and sought to report it to the police, they were charged for their sex work under a law that prohibits petty hooliganism and the violence against them was not investigated.¹¹⁵ In [Montenegro](#), a second instance court overturned a ruling establishing an attack against a trans man as a transphobic hate crime and subjected the victim to inappropriate and intrusive questions.

Training to sensitise law enforcement authorities and the judiciary about

transphobic hate speech and hate crimes is essential. Yet it is often unavailable or optional.¹¹⁶ In many states, it is provided by civil society organisations without sustainable funding. The Commissioner encourages member states to use the Council of Europe's manual on [Policing Hate Crime against LGBTI persons: Training for a Professional Police Response](#) as a useful tool in this endeavour. She is also encouraged by good practices, for example in France, the Inter-ministerial Delegation for Combating Racism, Antisemitism and Anti-LGBT Hatred (DILCRAH) provides specific training on hate crimes and hate speech for law enforcement and the judiciary. In Lithuania, meanwhile, the General Prosecutor published a [manual](#) in 2020 on investigating hate crimes and hate speech including against LGBTI people, and the police have changed its crime recording system to allow for early flagging of hate crimes. The creation of specialised units or contact persons within the police and other authorities to deal specifically with transphobic hate crime is also to be encouraged. In some cities in [France](#), specialised investigators and magistrates deal specifically with (transphobic) hate crime. Specialised units or [positions](#) within the law enforcement authorities have been put in place in Bosnia and Herzegovina. In 2021 in Spain, the Ministry of Interior [set up](#) hate crime groups in the country's two law enforcement bodies, the civil guard and the police. Measures should also be taken to reach out to vulnerable groups, to increase trust in the police and to address the problem of underreporting.¹¹⁷ At the same time, measures can be explored to make reporting crimes easier – for example, through the creation or funding of dedicated apps, phone lines, or third-party reporting, particularly at community centres, victims' support centres or through equality bodies.

In practice, support specifically for trans victims is scarce or lacking in most member states. Where available, it is routinely provided by civil society organisations. Although these organisations may be able provide expertise or support from within the community (and may therefore be held in higher trust by trans victims of violence), they often lack adequate funding and resources. During the COVID-19 pandemic, the demand for online support spaces (including peer groups and counselling) increased significantly, and groups and organisations worked beyond their capacities. In Spain, for instance, civil society [reported](#) a 266% rise in the number of trans people calling in for help during this time. Authorities should ensure adequate and reliable funding to these services and consider how to avoid and address gaps or restrictions in their provision, keeping in mind that they bear the ultimate responsibility for ensuring victim support. In line with international standards, including the [EU Victims' Rights Directive](#), the [Recommendation CM/Rec\(2023\)2](#) Committee of Ministers on rights, services and support for victims of crime, and as detailed in the CDADI 2023 thematic review [report](#)

on SOGIESC-based hate crime,¹¹⁸ states have a duty to protect and support victims of hate crime according to a set of minimal standards. Authorities should ensure that support services are trans-inclusive and -sensitive. Trans people should have access to emergency housing or shelters on a non-discriminatory basis, as guaranteed by the [Istanbul Convention](#) (Article 4, paragraph 3) and elaborated by GREVIO (the body of independent experts responsible for monitoring the implementation of the Convention). Member states should also take measures to meaningfully consult civil society in the development of trans-inclusive victim support services.

More broadly, civil society organisations and other human rights defenders working to counter anti-trans violence should be meaningfully consulted and/or supported in the development and provision of policies and services, including trainings, educational and awareness-raising initiatives, monitoring, reporting and analysis of violence and hatred. Authorities should further ensure that civil society organisation members and property are provided with adequate protection against violence and attacks and that any incidents are effectively investigated and prosecuted. Authorities should also publicly condemn these acts.

2.5 Detention

Trans people experience heightened vulnerability in situations of arbitrary arrest and detention, and in situations of lawful detention, including in police stations, prisons, medical facilities, and immigration detention centres.¹¹⁹

2.5.1 Freedom from unlawful or arbitrary arrest and detention

As a first step, member States should adopt effective measures to guarantee that no person is subject to arbitrary or unlawful arrest and detention¹²⁰ due to their actual or perceived gender identity and gender expression. In particular, state authorities must ensure that broad or vague laws, such as those protecting public morals and health or prohibiting public loitering, are not used to profile, indirectly criminalise and detain trans persons.¹²¹ Trans sex workers, trans people from ethnic and ethnic minorities and trans migrants, among others, experience high levels of arbitrary arrest and police mistreatment.¹²² In addition to clear laws and orders prohibiting unlawful arrest and detention because a person is trans, appropriate training for all personnel in law enforcement and the criminal justice system is required so that they can provide informed, sensitive and culturally competent services without discrimination due to actual or perceived gender identity or gender expression.

2.5.2 Trans people in detention

Trans people in prisons, and other long-term detention facilities, such as immigration detention centres, are exposed to violence and discrimination, both from other detainees and from those in positions of authority. Trans women, in particular, face increased risks of physical and sexual violence, especially where they are housed in male detention facilities.¹²³ In its 2023 report to the [Italian](#) authorities, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) documented the traumatic case of a trans woman who reported being sexually abused and assaulted by other inmates in an Italian prison – even though she was officially housed on a protection wing. Similarly, in its reports to respectively the [German](#) authorities (2022), [Spanish](#) authorities (2017) and [Greek](#) authorities (2022), the CPT cited incidents of trans persons being referred to as “it”, trans women being verbally abused and forced to wear male clothing, and of trans women having no access to female custodial officers. Trans people in detention are also routinely searched by officers of a different gender and denied trans-specific healthcare, while trans detainees experiencing intersectional discrimination due to multiple vulnerabilities, such as ethnic origin, age, migration status, disability or sexual orientation or HIV status are in an even more precarious position.

In regard to immigrant detention facilities, the European Court found in its judgment *O.M. v Hungary* of 5 July 2016, which concerned the detention of a gay asylum seeker, that authorities, should take particular care in relation to the placement of vulnerable asylum seekers (including LGBTI people), “in order to avoid situations which may reproduce the plight that forced these persons to flee in the first place.” Nevertheless, trans asylum seekers have been placed in immigration detention facilities for indefinite periods, where the risk of harassment and abuse is high.¹²⁴ The Commissioner restates the importance of clearly enshrining in law and policy the use and priority of alternatives to immigration detention,¹²⁵ and urges member states to ensure that these are fully implemented in relation to trans asylum seekers and migrants, for whom detention may have particularly serious negative consequences.

Member states must ensure the safety of all persons deprived of their liberty, through the adoption of clear policies and instructions as well as the delivery of proper training of those who supervise and provide services to trans people in detention. Where a trans or non-binary person in detention has experienced transphobic abuse, authorities should promptly investigate any allegation and, if appropriate, impose a proportionate sanction and reparation.

One issue that has attracted increased attention in recent years, primarily due to sensationalist media reporting in certain countries, is the question of which prison estates trans people should be assigned to, given that most prisons in Europe separate inmates according to gender. The Commissioner stresses that, in making such a decision, a primary consideration must be the safety of all people within a detention facility, including the concerned detainee.

As a starting point, the Commissioner recommends that trans persons are detained in accordance with their gender identity, after consultation with the trans person. The Committee for the Prevention of Torture (CPT) has consistently advised that “transgender persons should either be accommodated in the prison section corresponding to their gender identity or, if exceptionally necessary for security or other reasons, in a separate section which will best ensure their safety.”¹²⁶ As confirmed by the CPT and the UN Sub-Committee on the Prevention of Torture, solitary detention should not be used, including to ensure the safety of trans individuals.¹²⁷ This practice is recognised to have a detrimental impact on the physical and mental health of detainees and it is particularly harmful for minors.

In some situations, there may be reasons to exclude a trans person from a unit corresponding to their gender identity. Each decision to include or exclude a trans person should be taken on a case-by-case basis, applying objective, transparent and clear criteria based on established facts and not on assumptions or social prejudice. The decision should be proportionate and legitimate, and it should not result in the trans detainee being put in a situation where they would be subjected to abuse. Particularly problematic are blanket bans excluding trans women from female prisons, which are often proposed on the basis of inaccurate assertions that trans women present an inherent threat to cisgender women or that violent men pretend to be trans women in order to enter these prison estates. Indeed, despite disproportionate media coverage of exceptional cases, there is no evidence that trans women would pose a systemic risk to other inmates in female prisons, based on current practice. In some countries, such as Italy, authorities have established specific facilities to house trans prisoners.¹²⁸ While this option may be preferable for some individuals, particularly where it reduces exposure to physical and sexual abuse, there should be no general policy whereby trans inmates, irrespective of preference, would be automatically separated from the general prison population.

The fact that an individual has not obtained legal recognition of their gender identity should not, in itself, be sufficient to exclude a trans person from facilities that accord with their gender identity. This is particularly important given the numerous barriers which trans people continue

to face in accessing legal gender recognition (LGR) across Europe, as noted above. In light of the clear affirmation, including by the Court, that recognition of a person's gender identity is part of respecting their right to respect for private and family life, prison authorities should take the necessary measures to acknowledge the gender identity and expression of a detainee through respect for preferred names, pronouns and external expressions of gender, including dress. In Malta, for example, the 2016 [Trans, Gender Variant and Intersex Inmates Policy](#) sets out comprehensive guidance on respecting the gender identity of trans inmates, including policies on, among other issues, names, pronouns, clothing, showers and changing facilities. In addition, member states should ensure that, while in detention, trans people have access to LGR processes and to all necessary healthcare, including trans-specific healthcare.

2.6 Family life

Since the Commissioner published the 2009 Issue Paper, domestic lawmakers, judges and other public officials have adopted many welcome measures to strengthen the access to rights and privacy of trans people and their families. Yet, despite these positive developments, across Europe, there remain substantial barriers to the full respect of private and family life for trans people.

2.6.1 Parenthood

The Commissioner observes that there continues to be widespread societal prejudice that trans people cannot or should not become parents. This has led to discriminatory laws and practices, which are preventing trans people from enjoying their right to respect for family life (Article 8 of the Convention). Yet, across Europe, there are trans individuals who either are currently parenting or who would like to parent a child.

At present, trans people are limited in their ability to reproduce and to have children with whom they share a biological connection. As noted above in the section on LGR, in at least 11 member states, applicants must submit to sterilisation as a precondition for obtaining legal gender recognition and/or access to certain forms of transition, such as trans specific surgeries. Imposing sterilisation as the price of LGR means that trans people may be put in the position of having to choose between recognition of their gender identity and the opportunity to become a parent. Other trans-specific medical treatments can in some instances also result in infertility and they should never be imposed without consent to obtain LGR. Even where trans individuals can maintain their capacity to reproduce,

discrimination in providing access to assisted reproductive technologies (ART) is common, even though this is often the only possibility for them to have biological children, either by choice or for medical reasons. In this regard the European Parliament has [acknowledged](#) that “transgender men and non-binary persons may also undergo pregnancy” and affirmed that those individuals should “benefit from measures for pregnancy and birth-related care without discrimination on the basis of their gender identity.”

In areas of parenting that are not based on biological connection, while member states can freely organise national rules on adoption and foster parenting, the Commissioner stresses that these rules should apply in a way that does not discriminate on the basis of gender identity and gender expression.

As already stated above in the section on LGR, imposing divorce as a condition for LGR is an excessive measure which can have severe consequences for the members of the family and access to rights acquired by couples in a stable relationship, for example, in relation to common property, inheritance rules etc. When couples with children separate, trans people should not lose custody or access to their children because of their gender identity and expression. As shown by a growing body of cases before the Court, national courts are alleged to have ended contact with children,¹²⁹ or agreed that children should be placed in state care,¹³⁰ solely or primarily because of the gender identity of their parent or carer. As clearly stated by the Court in its *A.M. and Others v Russia* judgment of 6 July 2021, this is incompatible with the right to protection from discrimination under Article 14 of the Convention (read in conjunction with Article 8). There is no evidence that having or spending time with trans parents has an inherently negative impact upon children, and courts cannot justify removing contact on the basis that children may suffer discrimination because of the gender identity of their parents.¹³¹ The Commissioner calls upon member states to protect the rights of trans parents, and to ensure that any decision regarding custody and access to children upholds the right of the child to be cared for by both parents, with the best interests of the child being of primary consideration.

2.6.2 Parental status

Although trans people can obtain recognition of their gender identity without compromising their reproductive capacities in a growing number of member states, and therefore trans people becoming parents is increasingly a reality, the necessary reform of national processes regarding parentage of their children is lagging behind. Most member states continue to register trans parents on the birth certificates of their children according

to their sex assigned at birth. This means, for example, that when a trans man gives birth, he will be designated as the child's "mother", with mention of the man's sex assigned at birth and, in some cases, former name, even after he has obtained legal gender recognition. Similarly, a trans woman who provides sperm for the conception of the child would be recorded as the "father", even though their legal gender is female.

In the recent judgments *A.H. v Germany* of 29 January 2020 and *O.H. and G.H. v Germany* of 4 April 2023, the Court held that the German authorities which had refused to register trans parents according to their legal gender on the birth certificates of their children had not disproportionately interfered with Article 8 of the Convention. Yet, registering a trans parent according to their sex assigned at birth can have significant implications for the right to respect for private and family life of the trans parent, as well as the child and the spouse.

First, this creates an important inconsistency between how the law views the parents and their families and the social and lived reality they experience. This inconsistency, particularly where it results in trans parents and their children having documents which do not reflect how the family publicly presents, has the potential to hinder the ability of families to navigate public services, such as education, healthcare and access to social welfare. Second, conferring parental roles according to sex assigned at birth may also increase the potential for "outing" the gender history of trans individuals, including placing children in the situation of having to involuntarily reveal or discuss that their parents are trans. This exposes trans parents and their families to heightened risks of transphobic discrimination and abuse. Furthermore, this practice is inconsistent with the Commissioner's recommendation above that member states should ensure that LGR, once obtained, is effectively transcribed in all official documents. Approaches preventing harm and preserving the best interests of both trans parents and their children need to be considered.

Like the PACE in its [Resolution 2239 \(2018\)](#) on "Private and family life: achieving equality regardless of sexual orientation", the Commissioner encourages member states to ensure that trans parents' gender identity is correctly recorded on the birth certificates of their children including for non-binary parents who may use a legal gender marker other than male and female. She welcomes a growing number of good practices in this regard, in the form of laws or court decisions, which demonstrate that adaptations are possible. According to available information, at least five member states (Belgium, Iceland, Malta, Slovenia and Sweden) have laws that provide some recognition of the parental status of trans parents.¹³²

For example, Sweden and Iceland have laws allowing trans parents to be registered on their children's birth certificates according to their legal gender.¹³³ In 2022, a Court of Appeal in France recognised the maternal parentage between a trans woman and her daughter, who was conceived after the woman had obtained LGR.¹³⁴ In Malta, parents are asked to provide the names of "Parent 1 at birth" and "Parent 2 at birth" on the Notification for Declaration of Birth.¹³⁵ This approach has the benefit of embracing all experiences of parentage and all types of families. However, proposals for a more gender-neutral approach to pregnancy and parenting sometimes encounter opposition. The Commissioner believes that recognising the unique experience and inequalities which women and mothers experience when having children need not prevent member states from also adopting rules which respect and accommodate the diversity of all people who can become pregnant and who are parents, including trans people, across Europe.

2.6.3 Trans families across borders

The uncertainty created by the potential non-recognition of parental status constitutes a significant barrier to the freedom of movement of trans people and their families throughout the Council of Europe. As national parenthood laws often result in trans people and their children holding inconsistent identity or parental documents, any mismatch in their official papers is likely to be amplified and scrutinised when trans individuals travel between countries and personal documentation is checked. Discrepancies in passports or birth certificates sometimes lead to trans individuals being subjected to additional questioning by border officers, being separated from the rest of their family, or being accused of abduction if their papers do not show a clear potential link with their children.

Discrepancy between the laws of member states and the absence of mutual recognition laws on parenthood, may also have consequences for acquiring citizenship, particularly where the parental link between a child applicant and their trans parent (the source of the claim to citizenship) is established in one member state but is not recognised in the member state in which the child seeks to obtain citizenship.

Within the limited context of the European Union, the European Commission has proposed [a draft Regulation](#) to ensure that parental status established in one member state is valid across the Union. Although the proposed Regulation would not require member states to register trans parents according to their legal gender, it would mean that a trans individual who becomes a parent in one member state does not lose their status when they travel to other EU countries. Adoption of the Regulation would be a

welcome step toward reducing insecurity for all families, including families with trans parents.

2.7 Education

All children have the right to safe and quality education without discrimination.¹³⁶ As of July 2023, 30 member states have enshrined this right in national legislation and explicitly mentioned gender identity and/or gender expression as a protected ground, in line with [Recommendation CM/Rec\(2010\)5](#).¹³⁷ Nevertheless, research has shown over the years that the situation of trans children and young people remains concerning in education settings.

Schools are often the first institutional setting where trans children and adolescents will experience the denial and policing of their identities. According to the [EU FRA LGBTI Survey II](#) (2020), one in three trans people have experienced discrimination in education settings. This is a worrying increase from one in four at the time of the first [EU FRA LGBT Survey](#) (2013). According to civil society analysis of the 2020 EU FRA LGBTI Survey, the rate of discrimination experienced was significantly higher among trans youth compared to the general LGBTI population.¹³⁸

High levels of bullying and violence are also present in higher education settings. Trans youth are more likely to experience bullying, including misnaming, misgendering, and being ridiculed, teased, insulted or threatened in school and other educational settings. The 2021 [Inclusive Education Report](#) by the International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Youth and Student Organisation (IGLYO), which covered children and young people between the ages of 13 and 24, found that 54% of LGBTI students experienced bullying at least once in school. This rate was 90% among trans women, 59% among trans men and 45% among non-binary and gender non-conforming people. In the UK for instance, 45% of cisgender LGB students and 64% of trans students experience bullying and nearly 1 in 10 trans students have received death threats at school.¹³⁹ A trans student stated, for example:

“I have recently started at a new university. I was laughed at, ridiculed, and became the butt of jokes that normally gender me as a woman. This has been constant since day one.”¹⁴⁰

2.7.1 Impact of discrimination and violence in school

Discrimination, exclusion, rejection, and violence within their families

and at school impacts the academic performance and right to education of trans school-age children and university students.¹⁴¹ They have a high rate of dropping out of the education system,¹⁴² with the rate of changing classes or schools being significantly higher among trans youth under 24 than among cisgender LGB peers in the same age group.¹⁴³ Bullying in school can consequently have a serious impact on a student's future social and professional life.

Worryingly, according to [UNESCO](#), bullying can impact mental health and lead to depression, anxiety, loneliness, stress, self-harm and suicidal thoughts among students. In this regard, the numbers of LGBTI students having considered suicide are alarming. For example, over half of LGBTI students in Denmark and 82% of LGBTI students in Northern Ireland have thought of suicide.¹⁴⁴ Reports that several trans teenagers died by suicide due to transphobic bullying in Europe, including in France, Italy, and Greece are highly concerning.¹⁴⁵ The UN Committee on the Rights of the Child recently [urged](#) Switzerland to ensure that its national suicide prevention action plan includes targeted measures for trans adolescents.

Specific challenges faced by trans students

In addition to bullying, trans students experience a number of specific challenges that can have a detrimental impact on their physical and mental wellbeing and on their ability to focus in class. For example, the above mentioned IGLYO study found that one in two trans, non-binary and gender non-conforming respondents thought that teachers and other school staff never or rarely respected their gender identity and less than 1 in 10 trans, non-binary and gender non-conforming respondents said that their gender identities were respected in school-related documentation. A [study](#) in Portugal found that almost half of trans and non-binary students said their teachers refused to respect their chosen name. Similar findings are available in many other countries.¹⁴⁶

Schools can support trans children by adopting policies that respect social transitioning, for example by recognising their name and pronouns, in class and on class rosters, or when the child is participating in gendered sports activities or accessing toilets that are gender-segregated, in line with the approach outlined in this Issue Paper (see sections on sanitation and on sports) and in line with the best interests of the child. These accommodations do not take much effort but can be life-changing, and in some cases life-saving, for many trans children. In Italy, individual universities and secondary schools have introduced procedures to recognise a student's name and gender prior to LGR.¹⁴⁷ Even in countries that provide for LGR for

minors, the Commissioner stresses that LGR should not be a condition for schools to respect a child's gender identity as the child should feel free to explore its identity outside of formalised procedures.

Where LGR is available and has been sought, the authorities need to ensure that education certificates and diplomas obtained before LGR are duly amended to reflect the correct name and gender marker of the person concerned. Failure to do so can constitute a significant barrier to accessing further education or employment later in life.

It is fundamentally the duty of member states to design and implement measures to address discrimination, violence, exclusion, and bullying in schools, including through information materials, teaching aids, training, equality and safety policies and action plans. The PACE [Resolution 2097 \(2016\)](#) on "Access to school and education for all children" calls on member states to introduce measures to address homophobic and transphobic bullying, and ECRI has also [recommended](#) a number of member states provide training for teachers on how to address LGBTI-phobic violence and discrimination and how to take targeted action against anti-LGBTI bullying. The Commissioner notes that this work should always be done in close consultation with trans people and trans organisations, and particularly, trans students.

Where progress has been made in anti-bullying measures, including the adoption of national or regional policies, actions tend to focus on sexual orientation and not on gender identity and gender expression. According to the IGLYO study, only 17 member states have action plans in place that cover gender identity and expression and the implementation of these action plans is often poor. Due to the lack of national policies and centralised action plans, it is left up to the discretion of individual schools to protect trans youth, which can easily leave those most vulnerable behind. Indeed, the response from schools is often poor and most teachers do not intervene in cases of sexual orientation, gender identity and expression and sex characteristics (SOGIESC)-based bullying because they are poorly prepared to address violence or discuss issues related to SOGIESC. While civil society in many countries has developed resources for children, parents, and schools on tackling transphobic bullying and exclusion, for instance in Slovenia, Denmark, and Germany, targeted responses are largely lacking at the state level.¹⁴⁸

On a positive note, Malta's [Policy on Inclusive Education in Schools](#) (2022) bolsters the safety and inclusion of trans students, by providing them recognition and ending gender segregation in uniforms and some sports. In Portugal, article 12 of the [2018 law on self-determination](#) specifically

foresees the adoption of measures and policies in the field of education for the protection of trans and intersex students, for instance allowing them to use an 'alias' of their choice.¹⁴⁹ In Luxembourg, the 2019 [National Action Plan for the promotion of the human rights of LGBTI](#) people foresaw the preparation of guidelines by the Ministry of Education on allowing trans students to use the name and gender marker aligned with their gender identity in schools and/or universities. In [France](#), trans people have been able to use their first name of choice in higher education.

2.7.2 National curricula and the inclusion of gender identity and expression

In line with Article 29 of the Convention on the Rights of the Child and the general principle that the best interests of the child should be a primary consideration, member states should promote mutual tolerance and respect in schools. This includes providing objective information with respect to gender identity and expression (for instance in school curricula and educational materials) and providing pupils and students with the necessary information, protection and support they need to live in accordance with their gender identity and freely express their gender. The above-mentioned PACE [Resolution 2097 \(2016\)](#) calls on member states to ensure access by LGBTI children to quality education by promoting respect for, and the inclusion of, LGBTI persons as well as by disseminating of objective information about issues concerning sexual orientation and gender identity.

However, across the region, it is rare that students receive information about gender identity and expression issues in school. Few member states have developed and implemented inclusive national curricula that cover SOGIESC issues in a meaningful way. Where SOGIESC issues are part of the curriculum but not mandatory to cover, it will be up to the discretion of the school or the teacher to address gender identity and gender expression issues. There are some positive practices, including the national curriculum guide adopted in 2013 in Iceland which encourages schools to draw on gender studies, queer theory and multicultural studies to discuss SOGI issues.¹⁵⁰ In 2021, the Scottish government launched a free [Implementation and Evaluation Toolkit](#), which provides a structured pathway to support teachers in effectively delivering LGBTI inclusive Education in their own school settings in alignment with the national approach, and engage their school community in the process.

Some countries have legislation in place that makes it difficult or impossible for students to access LGBTI-inclusive content in schools. Several member states, namely Azerbaijan, Latvia, Lithuania, Hungary, as well as Russia, have

all adopted legislation to block the sharing of SOGIESC-related information to minors. Other countries, such as Romania, Ukraine and Armenia, have also attempted similar bans. LGBTI-related events and symbols have been banned, monitored and scrutinised in countries, including Poland and Türkiye. Naturally, these measures negatively impact trans pupils and students and the way others relate to them. In 2017, in the case of *Bayev v Russia*, judgment of 20 June 2017, the Court took a clear stance against such laws and ruled that a legislative ban on “propaganda of non-traditional sexual relations aimed at minors” harms children, is discriminatory, and reinforces prejudice against LGBTI people which is incompatible with the values of a democratic society.

Another key issue is that students may receive outdated and prejudicial information about trans people in school, which can contribute to discrimination, violence, and exclusion. The Commissioner is concerned about the use of textbooks in schools, both public and private, which use outdated, pathologising, and stigmatising approaches to discussing gender identity and gender expression.¹⁵¹

2.7.3 Comprehensive sexuality education (CSE)

The Commissioner has stressed in a 2020 [Human Rights Comment](#) that the right to receive comprehensive sexuality education (CSE) that is accurate, age-appropriate and covers diverse SOGIESC is an integral part of the right to education and has a wide range of benefits for all children and society as a whole. It can counter stigma and discrimination, shatter stereotypes and misinformation, prevent gender-based violence, and reduce health risks. Overall, comprehensive sexuality education protects children, helps build a safer, inclusive society, and can help save lives. The Council of Europe [Strategy for the Rights of the Child 2022-2027](#) identified CSE as a key measure to prevent and protect children from violence. The [Lanzarote Convention](#) sets out that children, during primary and secondary education, should receive information on the risks of sexual exploitation and sexual abuse, in the more general context of information on sexuality. In its [Resolution 2284 \(2019\)](#) on “Addressing the health needs of adolescents in Europe”, the PACE has, for instance, recommended that schools and colleges should have mandatory CSE curricula in place.

Nevertheless, CSE in schools has been a heated topic across the region. Anti-gender movements have instrumentalised this issue, claiming that comprehensive sexuality education harms children and violates the rights of parents. Some falsely suggest that trans people, as well as teachers and family members supportive of trans children, are trying to ‘groom’ minors to become trans by introducing them to the so-called ‘gender ideology’.

Fewer than half of member states have mandatory CSE available to students and not all of these include gender identity and expression in their scope.¹⁵² In other member states, CSE curricula either do not exist or are not mandatory for schools to implement.¹⁵³

In existing sexuality education curricula, LGBTI people are sometimes completely excluded, or worse, stigmatised. In the [decision](#) on the collective complaint No 45/2007 against Croatia, the European Committee on Social Rights has affirmed that sexual and reproductive health education should never fuel discrimination and stereotypes. In a 2021 [opinion](#) concerning Hungary, the Venice Commission established that excluding objective information about different forms of SOGIESC from the curriculum on sexuality education reinforces discrimination and creates an unsafe and unfriendly environment where LGBTI children can be subject to bullying, harassment and even health-related risks.

Particularly in recent years and as highlighted in the Commissioner's above-mentioned Human Rights Comment, CSE has been under continued attacks across the region, including in the UK, Poland, Romania, Hungary, Spain, Italy and other countries. International human rights standards on the right to freedom of religion or belief do not entitle parents to withdraw children from sexuality education classes where relevant information is conveyed in an objective and impartial manner, based on current scientific and educational standards.¹⁵⁴ The European Court has established that parents may not refuse a child's right to education on the basis of their convictions and clarified that this encompasses the right to sexuality education.¹⁵⁵

Nevertheless, schools are not a substitute for parental guidance and parents can enlighten and advise their children in line with their own convictions. Schools should be supported to engage with parents and take their views into account as long as they do not contradict the very aims of sexuality education, the best interests of the child, or human rights standards. In a positive development, in 2020, the Government of Wales removed the possibility for a parental veto on CSE and the Welsh High Court affirmed that CSE, as well as diversity and inclusion, were fundamental values of British society.¹⁵⁶ Other positive examples include the [Ukrainian](#) Ministry of Education which, at the end of 2019, decided to support the introduction of civil society peer-led training programmes on sexuality education and HIV prevention in schools. In Albania, the Ministry of Education co-developed a module "Competencies for Life and Sexual Education", as well as a module on LGBT issues.¹⁵⁷

Teacher training is an essential measure to improve the approaches of schools toward trans pupils. In several member states, there is some form of teacher training on LGBTI issues available, but mostly on a voluntary basis

and with variations in terms of scope and depth regarding gender identity and expression issues.¹⁵⁸ Across the region, civil society organisations have played an important role in providing resources to schools and teachers on how to create safe school environments for LGBTI students and/or how to address bullying.

2.7.4 Freedom of assembly and association in school settings

Children and youth have the right to freedom of association and peaceful assembly. In public school settings, this means that they should be able to form peer groups for trans individuals and/or allies, as well as organise events on international days and other activities. The Commissioner remains concerned that in several member states, including [Poland](#), and [Türkiye](#), such activities have been prohibited by schools, students have been reported, and events have been forcibly dispersed.

2.8 Sport

All people, irrespective of personal characteristics including their gender identity and gender expression, can derive physical and emotional benefits from participating and competing in sporting activities.¹⁵⁹ This is particularly true for children and young people, who may learn new skills, create interpersonal relationships and supplement their educational development through sport.

The [Revised European Sports Charter](#) makes clear that access to sport for all is considered to be a fundamental right, while the Committee of Ministers [Recommendation CM/Rec\(2010\)5](#) on measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity underlines that sport activities and facilities should be open to all without discrimination on grounds of gender identity.

Member states retain the primary responsibility to protect human rights in this field and they should base their domestic sports policies and legislation on fundamental rights and principles, including those set out in the Sports Charter. The role of non-governmental and non-profit sports organisations, as well as other stakeholders, is highly important. The Revised Charter provides that its implementation may be entrusted also to non-governmental sports authorities or sports organisations, and that member states should invite relevant stakeholders to take account of the principles set out thereunder.¹⁶⁰ Meanwhile, the Committee of Ministers [Recommendation CM/Rec\(2016\)3](#) on Human Rights and Business, which builds on the [UN Guiding Principles of Business and Human Rights](#), makes clear that business enterprises, including sports bodies, have a

responsibility to respect human rights. Finally, the Court has found that the actions of privately-owned sports federations, subsequently decided upon by the Court of Arbitration for Sports (CAS) are capable of engaging the responsibility of the state: the European Court can therefore determine whether there has been a violation of the Convention in these cases, including on grounds of respect for private life or non-discrimination.¹⁶¹

The right of trans people to participate and compete in sport has become a topic of growing legal and political debate.¹⁶² Policy makers and sport associations are increasingly being called upon to consider whether and how gender identity should impact the right to participate and compete in sporting activities. In 2021, the International Olympic Committee issued its ["Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations"](#) which provides some guidance in this field. However, too often, public discussions around trans inclusion in sport are conducted in stigmatising terms lacking nuance. This results in insufficient consideration of the relevant human rights, ethical, scientific and legal concerns at play, as well as in a failure to resort to the level of nuance that is required in this field. Preventing or overly regulating trans people's access to sport violates several of their human rights, including the right to respect for private life, when forced to disclose their gender history, the right not to be discriminated against, the right to work (in the case of professional athletes) and the right to the best attainable standard of health.

In recent years, much public and political attention has focused on the specific issue of trans women competing in gender-segregated sports, based upon the allegation that they have a physiological advantage. In some cases, the participation of trans women has been presented as an existential threat, reducing opportunities for other women and girls, and increasing the potential for fraud or abuse by men pretending to be women to compete in female categories for better results.¹⁶³ Similar objections have been raised in opposing the inclusion of intersex women. These narratives play into wider tropes about trans women as deceptive or fraudulent and, like the opposition to self-determination laws previously discussed in this Issue Paper, often aim to reinforce unfounded claims that the human rights of trans people threaten those of women and girls. In 2022, in the [report](#) underpinning [Resolution 2465 \(2022\)](#) on "Ending discrimination against women in the world of sport", the PACE noted the need to respond to the growing influence of "anti-gender movements in Europe and the United States seizing on the subject of sport and calling for LGBTI athletes to be excluded and denied recognition". The Commissioner notes that the current nature of the public debate around the inclusion of trans women in sports is not only affecting the rights of trans people but

also has a negative impact on all women participating in sport, by creating moral panic and exposing women and girls with a more masculine body or gender expression to suspicion.

The Commissioner emphasises that women categories in sport have played a crucial role in enabling women's access to sports and in improving gender equality in sport. She also acknowledges the importance of preserving fairness in sporting competitions for all, while acknowledging that such fairness is impacted by a variety of factors including various physiological characteristics, economic and social circumstances, access to training facilities etc. However, the current framing of the debate, which suggests that fairness towards women in sports is in conflict with inclusion of trans people, is misleading and should be reconsidered. There is no evidence that trans women competitors are currently overrunning women's sport, nor is there evidence that male fraudsters are systematically using trans rights for personal gain. The Commissioner recommends an approach based on facts and on human rights, one which maximises everyone's rights to the furthest possible extent.

In sport activities that are gender segregated, organisers and regulatory bodies should work with trans people and trans or LGBTI organisations to maximise opportunities for participation. As a first consideration, it is important to stress that the majority of sports participation in Europe is recreational, with individuals seeking, among other goals, to stay healthy, make friends and have fun. This is particularly important for individuals who may suffer greater marginalisation and lower mental health, including trans people. As a trans person in Germany has reported:

“to me, sports is a connection to my body. Sometimes during your transition, there are a lot of changes and things you have to understand. It's nice to channel this energy while doing sports, it gives you a kind of orientation while you are doing your transition.”¹⁶⁴

In those circumstances, and balancing the rights to respect for private life and non-discrimination, the Commissioner recommends ensuring that trans people can participate in sport according to their gender identity. In its above-mentioned Resolution 2465 (2022), the PACE similarly recommended that member states “ensure full and equal access to the practice of sport to all women and, to this end, allow transgender and intersex athletes to train and compete in sports competitions consistent with their gender identity”.

Beyond recreational sports, any restrictions on participation based on gender identity that may be contemplated, possibly in professional sports, should satisfy a strict human rights test, namely it should be determined in law, pursue a legitimate aim and be proportionate to that aim, i.e. it should be as specific as possible, introducing a case-by-case approach, go no further than required and accommodate trans inclusion where possible.

Proportionality demands an objective assessment, taking into account the nature of the sport; the relevance of physiology for that sport as evidenced through reliable and verified data, (including in sub-categories of a given sport); the level of competition; and the gender category to which any restriction is applied. Absolute or sweeping bans without reference to levels of competition, different disciplines within sports, or relevance of physiology cannot be justified. In this regard, a [recent position paper](#) on the protection of human rights in sport without discrimination based on SOGIESC by a group of UN Special Procedures mandate holders found that the categoric exclusion of trans and intersex women from women's sports is a prima facie violation of human rights obligations under the principle of non-discrimination and of the right to privacy.¹⁶⁵

While acknowledging that some non-binary people may prefer to participate or compete outside of 'male' or 'female' categories, the Commissioner warns that requiring all trans individuals to compete in 'third' or 'open' categories potentially violates the prohibition of discrimination under Article 14 of the Convention (read with Article 8) on the basis of gender identity and that it may only serve to further entrench the marginalisation and stigmatisation of trans people across Europe. In 2019, the Berlin Triathlon created a third category for competitors, but athletes were provided with the choice (rather than an obligation) to self-select into that category, and they were able to do so irrespective of their legal gender.¹⁶⁶ This is an example of good practice when incorporating non-binary people into sporting competitions, but attention should be paid to ensure that such third categories are not tokenistic, but rather placed on equal standing with male and female categories.

While policy makers including sport associations enjoy some margin of discretion in identifying the most appropriate policies for different levels of competition within their sports, any regulation must ensure meaningful respect for the human rights of trans people. In developing proposed restrictions or prohibitions, policy makers should consult with all relevant stakeholders, including trans participants and organisations. In the above-mentioned [Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations](#), the International Olympic Committee specifically advises that "when drafting, reviewing, evaluating

and updating eligibility criteria, sports organisations should meaningfully consult with a cross-section of athletes who may be negatively affected in order to prevent harm” and that “any decisions affecting an athlete’s ability to compete should follow the basic standards of procedural fairness, including neutrality and impartiality.”

Policy makers should also consider whether and how their proposals will be practically implemented at all levels of participation in sport and they should reflect upon the ways in which more restrictive policies (and how they are communicated), notably in professional sports, might limit trans people’s ability to join local sporting groups and negatively impact social perceptions about the participation of trans people in sports.

More generally, the Commissioner recommends that in consultation with relevant stakeholders, including trans people and trans organisations, member states should adopt robust laws and policies to ensure that everyone can take part in sports without discrimination, harassment or violence, including online abuse or transphobic hate speech from spectators, in relation to their gender identity and gender expression. Measures to raise awareness and increase capacity, such as guidelines, trainings and other tools, as well as appropriate infrastructure in the form of changing rooms and toilets that allow for privacy for all (see section on sanitation), should be encouraged. In that regard, in Germany, the Commissioner notes positively that several tools have already been developed by civil society organisations, including a [Charter for Gender Diversity in Sport](#) aimed at sports clubs or associations, with accompanying educational modules. She further notes that the EU and Council of Europe are currently carrying out a [joint project](#) on combating hate speech in sport, by providing technical assistance to authorities and other stakeholders to develop comprehensive strategies. Sport can play an important role in increasing respect for diversity, bringing about societal change, and fostering inclusion. It should not be used to reinforce prejudices against trans people.

2.9 Employment

Everyone has the right to work, rights while in work and the right to adequate social protection without discrimination.¹⁶⁷ The Council of Europe Committee of Ministers [Recommendation CM/Rec\(2010\)5](#) sets out that states should establish and implement appropriate measures which provide effective protection against discrimination on grounds of gender identity in employment and occupation in the public as well as in the private sector. Those measures should cover conditions for access to

employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation. The PACE [Resolution 2048 \(2015\)](#) echoes the same guidance to member states. ECRI's [General Policy Recommendation No. 17](#) recommends that public and private employers devise policies or codes of conduct to combat discrimination against LGBTI people in access to employment and at the work place, "including persons with a transgender history or those who undertake a process of medical or social transition". Importantly, the Committee of Ministers [Recommendation CM/Rec\(2010\)5](#) also emphasises the need to provide effective protection of the right to privacy of trans people in the context of employment and to avoid disclosure of their gender history.

Over the past decade, an increasing number of member states have adopted legislation that protects from discrimination in employment on the basis of gender identity. While the first review of Recommendation CM/Rec(2010)5 carried out by the Committee of Ministers in 2013 reported that a "majority of 29 [respondent] states" had adopted legislation that included gender identity as a prohibited ground of discrimination in employment, civil society organisations now [report](#) that 35 member states have enacted such legislation as of July 2023 and 16 states also prohibit discrimination on the basis of gender expression. Despite these positive legislative developments, in reality, trans people continue to experience significant challenges in exercising both their human right to work and employment-related rights – a situation which requires urgent attention by member states.

First of all, trans people continue to face significant obstacles to simply enter the labour market.¹⁶⁸ The 2020 [EU FRA LGBTI II Survey](#) found that less than a third of trans respondents (27%) were in paid employment at the time of the survey and 43% were out of the workforce, compared to 27% in the general population at the time, according to [Eurostat](#). Furthermore, a civil society intersectional analysis of the survey data further found that trans respondents with a migrant or ethnic minority background were significantly more likely to do unpaid and/or voluntary work and that trans people with disabilities were particularly unlikely to be employed.

There are a number of factors that contribute to the exclusion of trans people from work. Family rejection may result in homelessness and the need to focus on survival. Systemic and institutional discrimination faced in education, healthcare, and other areas of life may affect an individual's circumstances, and thus, their chance of reaching their full potential in terms of gaining adequate employment, often leaving them disproportionately dependent on social protection benefits. Significant

stigma around trans identities, prejudices, and societal bias may result in trans people being denied jobs. According to the [EU FRA LGBTI II Survey](#), 32% of trans people have experienced discrimination when looking for work in the past 12 months, compared to 10% of all LGBTI respondents. As documented by the CDADI existing societal prejudices are being further aggravated by rising anti-gender discourse (further discussed in Chapter III) with multiple consequences for trans people, including reduced access to employment.¹⁶⁹ Lack of LGR is another factor creating difficulties for trans people when applying for work, due to a mismatch between their gender identity, their "appearance" and their personal documents. The European Commission has documented the beneficial impact of LGR for trans people in the field of employment, in that it enables them to apply for jobs without revealing their gender history, helps them gain respect for their gender identity by their employer or allows them to wear work badges (displaying first name and/or gender marker) without fear of being outed, among others.¹⁷⁰

Difficulty finding employment in the formal economy leads to many negative consequences for trans people. First, disproportionate rates of trans people, and in particular trans women, trans migrants, and trans people of ethnic minority background, are likely to work in criminalised and/or informal settings, including sex work.¹⁷¹ Most member states maintain some form of criminalisation of sex work, either criminalising the sex worker, their clients or other third parties such as landlords.¹⁷² As stated by the Commissioner for Human Rights in a recent [Human Rights Comment](#), and by other human rights bodies, the criminalisation of sex work exposes sex workers, including trans people, to further discrimination, health risks, violence, murder, and police abuse, and it also strips them from accessing employment-related benefits, including sick pay, pensions, or parental leave, and rights, such as the right to unionise.¹⁷³ The Commissioner calls on member states to end any kind of criminalisation of sex work and to uphold the human rights of sex workers.

A lack of employment further contributes to the socio-economic marginalisation of trans communities and heightens their vulnerability to poverty and housing insecurity, particularly during emergencies such as the COVID-19 pandemic, as discussed in the section on poverty and housing. It also jeopardises trans people's access to sick leave and healthcare, both general and trans-specific, resulting from a lack of medical insurance coverage and sickness benefits. Furthermore, as discussed in the section on healthcare, in many member states, trans-specific healthcare is not covered or is only partially covered by general public health insurance schemes and it can therefore be prohibitively costly for individuals to access.

When they are employed, trans people face a number of specific challenges in relation to their rights at work, both in the public and private sector – a few of which are discussed below. Privacy is an immediate concern. There are significant risks that trans people’s gender history may be revealed in the process of applying for work. A former name or legal gender, for instance, may still be included on education certificates, older applications, evaluations or recommendations. This information should never be unnecessarily disclosed to the employer and other employees. To that effect, regulations should be in place that mandate schools of all kinds, training centres and former employers to amend a person’s documents upon request after they have obtained LGR.

Most adults spend a significant part of their life in the workplace, and work settings can be a source of discrimination and harassment for trans people.¹⁷⁴ The [EU FRA LGBTI II Survey](#) found that 35% of trans people have experienced discrimination at work, compared to 23% of all LGBTI respondents. 37% of trans respondents in the EU hid their identity at work. The European Commission’s [report](#) on LGR recognition in the EU documents that openness about one’s gender identity has led to dismissal, discrimination and harassment at work, having to change jobs, being passed over for promotion, and having duties, hours, and levels of seniority changed. It also found that being out as trans is particularly difficult in jobs where gender stereotypes are strong, or where roles and uniforms are gendered. A Hungarian civil society [study](#) for instance found that almost half of trans people had been outed at work, intentionally misgendered and called by their deadnames; and more than half were asked inappropriate questions about their medical transition. It is positive that, in several cases where trans people were fired because of their gender identity and expression, courts and national human rights institutions have reprimanded employers, in certain member states such as Poland, Hungary, and North Macedonia, as well as in Russia.¹⁷⁵

Furthermore, trans people may socially and/or legally and/or medically transition at some point in their work life. Going through these processes has directly led to stigmatisation, harassment, bullying, and expulsion, including at work, as widely reported by trans people from across Europe. From a practical point of view, medical transitioning may involve undergoing surgical interventions, which will require recovery time. In almost all member states, medical transitioning does not grant eligibility for medical leave. There are, however, positive developments in this area. In Ghent, Belgium, civil servants [are entitled](#) to 20 days of transition leave. In Iceland sick leave for transition-related surgery is now also [provided for](#), following a 2023 ruling of the Icelandic Supreme Court. In The Netherlands, some private [companies](#) have introduced transition leave even though

there is no legal obligation to do so yet.

Finally, trans people might face discriminatory treatment during retirement if they have changed their legal gender, for instance if the law considers their sex assigned at birth in pension procedures.

Member states should take measures to help uphold trans people's right to work and labour-related rights while in work. At the outset and as further discussed in the section on education, it is crucial that trans children and trans youth can benefit from a supportive environment in school so that they can achieve academic success. Equality and inclusion policies, temporary special measures, sensitisation, and reporting procedures (among others) can also have a positive impact on trans people's employment experiences.¹⁷⁶ For example, a [2021 Ministerial Decision in Greece](#) identified trans people as a vulnerable group in the employment sphere, including them in the employment agency's special programs and making them eligible to apply for work assistance and access benefits. The scheme also encouraged employers to hire trans people and covered most of their salary and social security.

In addition to policies, there needs to be an ongoing, genuine and dedicated leadership commitment on the part of employers and businesses to create an inclusive work environment. In this field too, it is encouraging that a number of positive practices have developed in recent years. In the Netherlands, several municipalities have signed action plans to make workplaces more trans-inclusive.¹⁷⁷ Diversity or LGBTI Charters have been signed by hundreds of companies, public institutions, and NGOs in Estonia, France, and other countries.¹⁷⁸ In Spain, dozens of companies have joined the NGO FELGTBI+'s nationwide trans-focused job inclusion program, called "YesWeTrans".¹⁷⁹ Municipalities and NGOs in several countries have made available guides for employers on creating safe and inclusive workplaces for trans and gender-diverse people.¹⁸⁰

2.10 Poverty and housing

Everyone has the right to protection against poverty and social exclusion and the right to housing. The Commissioner underscores that combating poverty and fighting social exclusion is not only a matter of social policy, but it is also a requirement flowing from the state's commitments undertaken under several international and regional human rights instruments.¹⁸¹ As stressed in the Committee of Ministers [Recommendation CM/Rec\(2010\)5](#) on Measures to combat discrimination on grounds of sexual orientation and gender identity, member states should ensure that everyone can enjoy these rights without discrimination on the basis of gender identity and

gender expression, and they should pay appropriate attention to the risks of homelessness faced by LGBTI people, including trans children and youth.

Economic marginalisation and poverty seriously affect trans communities across the region. Data in this field is particularly scarce and principally produced by civil society.¹⁸² The Commissioner urges member states to collect disaggregated data on poverty and homelessness affecting trans people in order to guide policy making in this field. It is indicative that the [EU FRA LGBTI II Survey](#) found that almost half (46%) of trans respondents had difficulty making ends meet and that this rate was highest (54%) among trans women. In the Netherlands, a 2022 [official study](#) on the life situation of LGBTI people found that, in terms of their socio-economic situation, more than half of trans people fell into the lowest income category, almost twice as often as the overall population.

Poverty among trans people is both a symptom and a cause of the human rights violations previously discussed in this Issue Paper. Discrimination, violence, and poverty mutually reinforce each other – they are both causes and consequences that loop in a vicious cycle. In practical terms, this means that violence or rejection at home, especially for trans children and youth, combined with systemic and institutional discrimination in access to education, healthcare, and employment can all push trans people into economic deprivation, which will then expose them to more violence, policing, harassment, health issues, and other difficulties. Furthermore, a lack of effective access to LGR can also have a serious impact on trans people's ability to enjoy their social and economic rights, given that having documents that do not match a person's gender identity and expression can make it more difficult to continue in education, find a job, secure housing, or open a bank account. Another factor of poverty among trans people relates to trans-specific healthcare, which, if not available through public health or insurance schemes, can be prohibitively expensive, and push some trans people into debt.¹⁸³

The COVID-19 pandemic has shed light on and exacerbated the deeply entrenched socio-economic vulnerabilities affecting trans people.¹⁸⁴ Many trans people suddenly lost their income – often because they were in informal employment (see section on employment). Without a stable income, paid leave, or savings, the most vulnerable among them faced even greater economic vulnerability. This has also exacerbated existing difficulties faced by trans people in enjoying their right to housing, which are discussed below.

Trans people routinely experience discrimination when seeking to rent accommodation. One in five trans respondents to the [EU FRA LGBTI II](#)

[Survey](#) reported experiencing discrimination when looking for housing in the 12 months preceding the survey. According to trans human rights organisations, in some member states trans people also experience evictions due to being trans, or because of a mismatch between their gender identity or expression and their legal documents.¹⁸⁵ For example, civil society organisations have documented trans people being evicted due to their gender identity in Armenia, Azerbaijan, and Türkiye.¹⁸⁶

As noted in the section on employment, due to systemic discrimination, many trans people, and particularly undocumented trans migrants, trans youth, and trans Black people and people from ethnic minorities, rely on informal sources of income as a means of survival, including sex work. Some of them do this work at home. As a result of laws targeting sex work, landlords have been criminalised for renting apartments where sex work is taking place, which has led them to evict sex workers from their homes.¹⁸⁷

Trans people also experience high levels of homelessness. According to the [EU FRA LGBTI II Survey](#), one in four trans people have experienced some form of homelessness, such as having to stay with friends or relatives, at a shelter, or living on the streets. The most common reasons for trans people's homelessness are financial problems, including insufficient income, or personal problems, such as relationship or family difficulties. Trans children are at high risk of being cast out of their home due to family rejection, or of having to leave to avoid violence, abuse and harassment by family members.¹⁸⁸ As they often find themselves in situations of economic precarity and homelessness, trans people, and in particular trans migrants, young people, Black people and people from ethnic minorities, may be particularly affected by laws and policies penalising homelessness, which constitutes discrimination on the basis of socio-economic status.

There are a number of steps that member states should take to curb poverty and economic marginalisation among trans communities and to uphold their right to housing. As a starting point, member states should commit to address the root causes that prevent trans people from being fully included in society and from earning an adequate income. Access to good laws on LGR in line with the recommendations above in this Issue Paper is crucial. Member states should also work for better societal understanding and acceptance of trans people and tackling discrimination in the fields of education, employment, housing and access to healthcare (among others). This includes adopting laws that prohibit discrimination based on gender identity and gender expression in all fields of life and ensuring their effective implementation. 24 member states provide legal protection from discrimination on the basis of gender identity in the area of housing.¹⁸⁹

At present, trans people face considerable difficulties in accessing existing support in the field of social protection and housing. Where the state is hostile towards trans people or where engaging with the authorities is a source of harassment and violence, trans people may have no choice but to avoid seeking help through formal channels. Civil society organisations have documented negative attitudes against LGBTI people among social workers, for instance, which may deter some from asking for support.¹⁹⁰ During the COVID-19 pandemic, many trans people reported being unable to access state benefits such as financial assistance, housing benefits, and emergency relief packages due to the mismatch between their gender identity or expression and their ID documents.¹⁹¹ Member states should organise dedicated training for social and welfare workers to better understand the needs and specific circumstances of trans people. It is encouraging that social workers and other professionals have benefitted from trainings on how to better support LGBTI clients, organised by civil society organisations for instance in Czechia, Hungary and Türkiye.¹⁹² Member states should ensure that their policies on poverty reduction and housing take into consideration the needs of trans people and that they include measures tailored to address these, in close consultation with trans people and trans rights organisations. As a positive practice, Ireland's [Youth Homelessness Strategy](#) (2023-2025) identifies trans youth as particularly vulnerable and lists targeted measures. Another group requiring attention is older trans people and their specific needs in home care as well as residential care.

In the field of homelessness, many trans people choose to avoid shelters for fear of harassment and violence by other users or staff.¹⁹³ Trans youth are reported to be particularly affected. A [2021 FEANTSA LGBTIQ Youth Homelessness in Europe survey](#) covering 32 European states found that only five of them had targeted services for trans youth experiencing homelessness. Member states should ensure that trans people can have access to shelters that are well-equipped to provide a safe environment and services adapted to their needs.

A specific issue relates to making sure that trans people can have access to shelters, including when these are gender-segregated, without discrimination based on their gender identity and expression. As with other types of gender-segregated facilities and services (see sections on detention, sanitation and sports), the Commissioner recommends against a blanket exclusion of trans women from shelters intended for homeless women, as this could amount to discrimination on the basis of gender identity and expression. Instead, she recommends a case-by-case and participatory approach that seeks to maximise inclusion, as already practiced by some shelters in some member states. It is important that

placement in line with a trans person's gender identity or expression does not require that they have obtained LGR.

As part of arguments seeking to pit the rights of women against those of trans people, anti-gender actors have argued that trans women should be barred from women's shelters, for the protection of women. These narratives are based on the false premise that trans women are men in disguise seeking to abuse women. Women's shelters with decades of experience (including domestic violence shelters) in [Scotland](#) and [Germany](#) have provided information showing successful inclusion approaches and no evidence of attacks by trans women in women's shelters. It is underscored that barring access to shelters in line with a person's gender identity and expression will often leave trans people with no alternative, which will further expose them to homelessness and violence. Furthermore, it is important to address the fact that non-binary persons may have no safe shelter to turn to at all. For non-binary persons, consultation and participation regarding the placement in gendered facilities is particularly important. In some member states, civil society has put in place housing alternatives specifically for trans and/or LGBTI people but many of these initiatives struggle financially in the absence of institutional support.

The Commissioner applauds the support provided by civil society organisations, in particular LGBTI and trans organisations, to trans people experiencing poverty and homelessness. During the most difficult months of the COVID-19 pandemic, these organisations often reorganised their work to provide much-needed support in the form of rent and utilities assistance, temporary shelter, food, clothing and hygiene kits, among others.¹⁹⁴ At the same time, the Commissioner reiterates that it is the obligation of member states to provide such support or to ensure its provision by other, non-state actors, in a sustainable manner.

2.11 Healthcare

Everyone has the right to the highest attainable standard of health and to enjoy this right without discrimination, including based on gender identity and expression.¹⁹⁵ However, trans people continue to face considerable challenges in enjoying this fundamental right. This section discusses two main aspects: first, challenges in accessing general healthcare, including care related to sexual and reproductive health and rights and HIV/AIDS; and second, access to trans-specific healthcare, including psychological, endocrinological, surgical and other care that some trans people wish to access or undergo.

As a first point, however, it is necessary to recall that a key factor influencing

trans people's health and access to health care has been the long-standing existence of international and national medical classifications that define being trans as a mental illness – in the same way homosexuality had previously been classified a mental illness until it was removed from the World Health Organisation (WHO)'s International Statistical Classification of Diseases and Related Health Problems (ICD) in 1992. As [recognised](#) by UN and regional human rights entities, including the Commissioner, the fact that LGB and trans people have unnecessarily and unjustifiably been labelled as mentally ill (a phenomenon called pathologisation) is one of the root causes behind many of the human rights violations that they face. It contributes to discrimination and hate, as well as to their marginalisation in education, health, employment and housing, among other areas. It justifies conversion practices, forced or coercive sterilisation, unwanted medical interventions, and psychiatric evaluations, including as a requirement for LGR or healthcare access. In its [Resolution 2048 \(2015\)](#) on "Discrimination against transgender people in Europe", the PACE stated that the pathologisation of trans people is disrespectful of their human dignity, and an obstacle to social inclusion.

A crucial development took place in 2019 when the WHO's Assembly of States removed trans identities from the chapter on mental, behavioural or neurodevelopmental disorders in the [ICD-11](#), listing instead a diagnosis of "gender incongruence" in the chapter on conditions related to sexual health. As was the case previously with homosexuality, this was a historic step in recognising that being trans is not a mental illness. It was welcomed as a positive step by [UN human rights experts](#) and the Council of Europe, including the Commissioner.¹⁹⁶ The Commissioner calls on member states to implement the ICD-11 in their national medical classifications and to ensure that no mental disorder diagnosis is required, neither for access to LGR nor for access to trans-specific healthcare, as further discussed below. It is unfortunate that ICD-11 continues to include a diagnosis specifically for pre-pubertal children ("gender incongruence of childhood") which is medically unnecessary given that trans children at that age do not require any physical medical treatment, and it creates unnecessary stigma by suggesting that something is wrong with children who experience their gender identity or express their gender diversely.

2.11.1 General healthcare

It has been shown that trans people experience high rates of mental and physical health problems.¹⁹⁷ The discrimination, exclusion from employment, poverty and homelessness, as well as stigmatisation and violence which they experience, as discussed above in this Issue Paper, all contribute to generally worse health outcomes for the trans people

affected, including children and youth. The impact of these challenges on trans people's mental health and well-being, such as depression, anxiety and suicidal thoughts are concerning.¹⁹⁸

At the same time, when they seek care in general healthcare settings, trans people commonly face discrimination, mistreatment, ignorance, misgendering, denial of care, and other significant barriers to accessing the right to health. The [EU FRA LGBTI Survey II](#) found that at least one in three trans people had experienced discrimination by healthcare or social services personnel in the past 12 months, compared to one in five in 2012 when it conducted its first survey.¹⁹⁹ Some subgroups of trans people face particularly high rates of discrimination in healthcare settings, including Black people and people from ethnic minorities, people with disabilities, refugees, asylum seekers and migrants, sex workers, children and older people, poor and homeless people, and non-binary, non-heterosexual, and gender non-conforming people.²⁰⁰ One reason for this discrimination is the lack of knowledge and training of medical professionals about trans people and their needs. Due to existing or anticipated negative experiences, some trans people delay or avoid seeking medical care, or seek care through unregulated sources, which can further jeopardise their health and well-being.

Member states should take appropriate legislative and other measures to ensure that trans people can enjoy the highest attainable standard of health without discrimination on grounds of gender identity and expression. Currently, 27 of 46 member states have legislation in place that protects individuals from discrimination in healthcare on the basis of gender identity.²⁰¹ Including objective and unbiased information about trans people in the formal curricula of medical professionals would be another important step, together with on-the-job training. There are useful experiences of civil society organisations providing such training.²⁰²

Sexual and reproductive health and rights

In the section on LGR above, the Commissioner deplored that access to LGR in several member states remains contingent upon submitting to unwanted and unnecessary medical interventions, including sterilisation or other treatments capable of leading to sterility. As explained above, the Court has found that forced sterilisation and surgeries violate the right to respect for private life under Article 8 of the Convention.²⁰³ Sterilisation is furthermore a serious violation of trans people's right to sexual and reproductive health. The European Committee of Social Rights has [affirmed](#) that sterilisation seriously impacts a person's health, physical and psychological integrity, and dignity. It also emphasised that trans people have the right to give free

consent when accessing medical treatment, on an equal basis with others.

Free consent to medical interventions should be fully informed. In the area of reproductive health, trans people are entitled to receive information about the potential impact of trans-specific treatment (including hormone treatment and surgeries), on their fertility, which is often not the case according to anecdotal evidence.²⁰⁴ As discussed in the section on family life, they should also have access, under the same conditions as others and without discrimination, to care that could preserve a person's reproductive ability, for instance prior to accessing trans-specific medical interventions. Trans people should also have access to medically assisted reproduction and/or cost coverage on an equal basis with others. As a positive practice, Belgian fertility clinics, the Flemish centre for adoption and Foster Care Flanders co-operated with trans organisations and made available relevant [information](#) on reproductive health and adoption for trans people. In [Malta](#), trans people have been able to preserve their gametes for free prior to undergoing trans-specific healthcare interventions since 2020. [Spain](#) extended IVF access not just to single, lesbian and bisexual women, but also to trans people.

Trans people face barriers in accessing other sexual and reproductive services. Across member states, trans people who have obtained LGR have been denied notification, provision, and reimbursement of gynaecological care, cervical cancer screenings, abortion, contraception, and prostate examinations, because these services are provided based on the patient's legal gender/sex. Many trans men and non-binary people have the capacity to be pregnant²⁰⁵ and, as stressed in a recent [Issue Paper](#) by the Commissioner on sexual and reproductive health and rights, it is essential that gynaecological and pregnancy-related care is available to them. This care should be provided without discrimination and in a manner that makes trans service users feel safe and supported. There are positive practices; for example in the Netherlands, the [United Kingdom](#) and in [Ireland](#), authorities and health providers have published information brochures and guidance for medical professionals on these matters. The Commissioner recommends that member states take measures to ensure access to healthcare according to each person's specific needs, regardless of their legal gender, gender identity and expression.

HIV/AIDS

HIV/AIDS is a health issue of particular concern for trans people, because of the exclusion, marginalisation and poverty they experience, and the disproportionate rates of sex workers in the community. Within the region, Eastern Europe is of particular concern in terms of new HIV infections.²⁰⁶ Globally, trans women are 14 times more likely to acquire HIV than other

adult women (15-49) in the general population,²⁰⁷ and engagement in sex work can further increase this risk. There is a lack of data about trans men, but existing research suggests that they are also disproportionately affected.²⁰⁸ Due to stigma, discrimination, violence, and the criminalisation of sex work, safely accessing HIV-related services is difficult for many trans people.²⁰⁹ Some subgroups may be particularly vulnerable in this regard, for example, a recent study in [Spain](#) highlighted asylum seekers and undocumented migrants. Economic marginalisation and poverty may further mean that trans people cannot afford HIV/AIDS medication, if it is not reimbursed. In addition, access to HIV-related medications such as pre- and post-exposure prophylaxis (PrEP and PEP) is unevenly accessible in the region, with medication and services identified as insufficient in many member states. Member states should collect relevant data to develop targeted interventions that comprehensively address the unique prevention and care needs of trans people on their territories in relation to HIV/AIDS.

2.11.2 Trans-specific healthcare

Some trans people may require certain treatments and procedures, such as hormone treatment, psychological care, different types of surgery, including facial feminisation surgery, mastectomy and genital surgery, and other medical interventions, such as lasting hair removal and voice training. Evidence shows that, for trans people who desire it, acquiring physical characteristics that match one's gender identity generally improves health, well-being and quality of life.²¹⁰

There is still no human rights-based trans-specific healthcare protocol across Europe or globally that states could easily transpose and implement.²¹¹ As a result, there are vast differences across the region as to whether trans-specific healthcare is available at all; what requirements trans people have to fulfil in order to access care; how centralised care provision is in terms of geographic location and decision-making; whether trans-specific care is covered by public and private health insurance plans; how many medical professionals are trained in this field; and the quality of medical interventions.

As already discussed in the 2009 Issue Paper, trans-specific healthcare is an integral part of the right to health. The Committee of Ministers' [Recommendation CM/Rec\(2010\)5](#), PACE's Resolutions [2048](#) (2015) and [2417](#) (2022), and ECRI have reiterated this right and clarified that trans people should have effective access to psychological, endocrinological and surgical expertise without being subject to unreasonable requirements.²¹² The Court's case law has found that the denial of trans-specific medical

treatment when required to obtain LGR constituted a violation of Article 8 of the Convention.²¹³ All trans people should have access to trans-specific healthcare without discrimination. However, research shows that certain trans people, including neurodiverse, non-heterosexual, non-binary people, as well as refugees, asylum seekers and migrants, prisoners, people with disabilities, and people with a high Body Mass Index, face multiple forms of discrimination, exclusion and denial of care.²¹⁴

The Commissioner urges member states to consider the key principles set out below in order to ensure access to trans-specific healthcare in a human rights-compliant manner.

First, access to trans-specific healthcare should not require a mental disorder diagnosis, in line with the ICD-11 changes described at the beginning of this section. Unfortunately, almost all member states maintain a mandatory psychiatric diagnosis to access trans-specific healthcare services. These requirements often act as a barrier to access healthcare, leading to humiliating and intrusive interviews by medical professionals based on prejudices and anticipated narratives that are contrary to trans people's human dignity. For any health condition, a medical diagnosis is routinely necessary to access care. While a medical diagnosis (such as the one included in ICD-11) may be necessary for trans people to access trans-specific healthcare services and reimbursement, this should not be a psychiatric diagnosis. In this regard, the Commissioner reaffirms her predecessor's position in the 2009 Issue Paper that "from a human rights and health care perspective no mental disorder needs to be diagnosed in order to give access to treatment for a condition in need of medical care".

Second, medical treatment must always be administered according to the patient's needs and best interests. Just like in other medical treatment settings, trans people should be involved in decisions about different treatment methods and they should have access to individualised care; they should never be coerced to follow a fixed set of interventions. It is important to note that there is no blanket rule as to what kinds of medical care trans people may want to access. Some may want and need to access all available interventions, and others will not want to change their bodies at all. The [EU FRA LGBTI Survey II](#), for instance, found that less than a third of trans respondents have changed their body to match their gender identity. However, for trans people who do want or need to access medical care, this is often a necessity to make a meaningful life possible. Regrettably, current practice often relies on outdated stereotypes about what trans people want to look like, which effectively prevents many from accessing healthcare.

“As a non-binary trans person [...] I could not receive treatment in a GIU (Gender Identity Unit) because I felt forced to lie and pretend to be a binary trans man, and this in my case would be unfeasible because what I’m doing is a low hormone treatment dose to reach only a certain level of changes and when changes have taken place I will lower the dose. Conventional professionals would most likely not respect this type of process and pressure me to accept a binary transition pack or to remain without treatment.” Non-binary person, age 34, Spain²¹⁵

Further, the Commissioner emphasises the importance of the informed consent model, as set out in Article 5 of the Council of Europe’s [Oviedo Convention](#). Informed consent centres on the capability and autonomy of the person seeking care, whereby medical professionals provide accurate, accessible, age-appropriate, comprehensive, and up-to-date information about the benefits, consequences, and risks of any healthcare intervention, and assist the service user in making the best decision for themselves. Just like in any other area of healthcare, trans-specific healthcare is constantly evolving. It should be developed with the same level of precaution and scientific oversight and trans people deserve the same level of dignity and respect when seeking to access trans-specific healthcare that is available at a given time.

Finally, trans-specific health care should be available and accessible, including financially. However, it is uncommon that all forms of trans-specific care options are available within the public health system of a single country.²¹⁶ For instance, there are shortages and limited kinds of hormones in several countries, with the COVID-19 pandemic having made matters even worse.²¹⁷ Interruptions in treatment can have serious negative health impacts. The Commissioner urges member states to ensure that the provision of hormonal therapy is listed under essential healthcare services and that trans people are able to access hormones, including during crisis situations. Furthermore, the centralisation and monopoly of trans-specific healthcare has caused serious challenges for trans people, not least a lack of choice in providers, long waiting lists, and extensive travel.²¹⁸ Civil society surveys in 2022 showed that 60% of trans people in [Norway](#) and 40% of trans people in [Finland](#) were unable to obtain trans-specific healthcare. In many countries across the region, there are long waiting times for a first appointment, ranging from one to five years or more. Forced to wait for extended periods, some trans people choose to self-medicate with hormones that they acquire from unregulated sources and that they take without being monitored by a healthcare professional,

and this can jeopardise their health.²¹⁹ Where trans-specific healthcare is not publicly funded, it can be prohibitively expensive (see section on poverty and housing). With regard to affordability, the European Court has concluded in two judgments that limitations on reimbursements must be lawful, objective and proportionate and that insurance plans should cover medically necessary treatment, which trans-specific healthcare is, for trans people who need it.²²⁰ Member states should ensure that trans-specific health care is sufficiently available, including through training and involvement of general healthcare practitioners as appropriate and that care is covered by public medical insurance schemes.

Child-specific considerations in trans-specific healthcare

Children usually start to develop a sense of their identity around the age of three, but many experiment with gender throughout their childhood and adolescence. A fraction are children whose gender identity does not match their sex assigned at birth. It is important to stress that, for many trans children in general, and in any case for pre-pubertal children, care is most often not medical, but entails receiving objective, age-appropriate information about the spectrum of gender expressions.²²¹ Information, counselling and emotional support for the child and for their parents should also be provided, together with support for the child in school and in their communities, as further discussed in the section on education. Such support has been shown to positively impact trans children's mental health.²²²

Some medical interventions are available in certain member states for adolescents. Puberty and accompanying physical changes can be a difficult time for all children, and some (but not all) trans children may experience intense distress because of the mismatch between their biological sex characteristics and their gender identity. In such cases, some children may wish to access so-called puberty blockers, which delay puberty and can greatly alleviate psychological distress caused by it.²²³ These types of puberty blockers have long been prescribed for cisgender children who enter puberty prematurely. As they get older, some trans minors may also wish to access hormonal therapy and surgeries.²²⁴ As in all other areas of health, member states must collect scientific data, on a voluntary basis, for the constant long-term improvement and safety of trans-specific healthcare, including for children.

From a human rights perspective, all children have the right to the best attainable standard of health and trans children should not be treated differently because the care they require relates to gender identity. Any

medical treatment must always be administered in the best interest of the individual. Children have the right to be heard and have their views given due weight in accordance with their age and maturity in all decisions and actions affecting them, as prescribed by Article 12 of the [UN Convention on the Rights of the Child](#). Meaningful participation is increasingly considered as a key standard for achieving high-quality care for children.²²⁵ It equips children with a sense of control, which results in increased cooperation with procedures, better adjustment and adherence to treatment, and reduced conflicts arising from these processes. Ultimately, it also improves the quality of the healthcare, as the child brings unique expertise from their own lived experience. Children should therefore always be consulted on health decisions that concern them, and, even at a young age, participate in the planning design and delivery of health care.

Trans children's capacity and competence to consent to trans-specific treatment must be evaluated and sought in the same way as it is for other healthcare areas and for other children, keeping in mind the particular importance of gender identity for the development of the child's personality. To be able to make informed decisions, children must be provided with age-appropriate information about the nature and consequences of care pathways in order to ensure that they are able to make their choices on the basis of their free and informed consent. This process should be completed on a case-by-case basis, taking into account the evolving capacity, age and maturity of the child concerned. For this purpose, member states should build capacity within the medical profession, including those working on trans-specific healthcare, around the best approaches and tools to secure young people's participation. Involving external authorities, such as courts, is a burdensome interference with the child's rights as well as discriminatory if only applied in the case of trans-specific healthcare. Similar to when children wish to access legal gender recognition, there should be procedures in place to safeguard the child's right to be heard and their right to make decisions about their health should one or more parents/guardians disagree with those choices.

In its [General Comment No. 20 \(2016\)](#), the UN Committee on the Rights of the Child emphasised that LGBTI and trans children have the right to respect for their physical and psychological integrity, gender identity and emerging autonomy. UN human rights mechanisms and the Commissioner have [called for](#) ensuring access to trans-specific care for young trans people who seek it. The UN Special Rapporteur on the Right to Privacy has recognised the denial of trans-specific healthcare to children as a violation of their right to bodily integrity and autonomy.²²⁶

Opposition to trans-specific healthcare

Trans-specific healthcare has come under attack in recent years and there has been a concerning rolling back of trans-specific healthcare provision in several European states (as well as in the United States) in part due to targeted campaigns in this field.²²⁷ As the most alarming and most recent example, Russia **banned** all forms of trans-specific healthcare provision in July 2023. Medical staff involved in trans-specific healthcare have come under pressure and some are subjected to harassment in some member states. In some member states, the opposition has particularly targeted trans-specific healthcare provision for minors. This is often grounded in misconceptions alleging that children would be manipulated into seeking certain medical interventions, subjected to some kind of harmful propaganda, or would be coerced into undergoing invasive surgeries at an early age. These myths have no scientific basis and they significantly harm children's access to much-needed care and support. They also disregard the ability and maturity of children to develop and express their own wishes and needs. In fact, clinicians in the Netherlands, for example, have shared that trans adolescents are cautious when deciding whether and when to access certain forms of treatment.²²⁸ Concerns about possible regret following interventions have also been voiced in several states. While regrets about any kind of medical treatment can be a valid concern in general, there is no reason to treat trans-specific healthcare decisions differently or with more alarm. As a general rule, all medical interventions carry with them the risks of side effects and possible long-term consequences which should be carefully considered and discussed in line with general principles of medical ethics.

2.12 Sanitation

While the human right to sanitation is not explicitly mentioned in international and regional human rights instruments, it is derived from and it is an integral part of the right to an adequate standard of living, which is protected by the International Covenant on Economic and Social Rights.²²⁹ In its 2016 [Resolution 70/169](#) recognising the human rights to safe drinking water and sanitation, the UN General Assembly stated that the right to sanitation entitles everyone "to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and socially and culturally acceptable and that provides privacy and ensures dignity." Access to appropriate sanitation facilities is fundamental to protect human dignity and an integral part of safeguarding the right to health.

People whose gender expression diverges from the norm – whatever their gender or gender identity - have long experienced discrimination, harassment, and violence when trying to use gender-segregated public toilets because of the policing by other users of whether their looks correspond to the gender norm. Access to toilets by trans people has been further jeopardised in recent years in certain member states because the growing anti-rights and anti-gender discourse in Europe, discussed in Chapter III, is spreading stigmatising misinformation suggesting that trans people pose a threat to cisgender women and/or children in toilets and that gender-neutral bathrooms would also be likely sites of sex crimes, including in schools. Additionally, opponents to LGR procedures based on self-determination have argued that these would allow ‘men’ to enter women-only spaces – ignoring the fact that men do not need to pretend to be women to harass women and that access to public toilets is in any case not subject to presenting one’s identity documents.²³⁰ These allegations are unsubstantiated. Many trans people already use bathrooms in line with their gender identity regardless of what legal gender recognition models are in place and without any security consequences for others. There is no available information about a correlation between LGR based on self-determination and an increase in harassment and assault against women.²³¹ A [survey](#) of countries with a self-determination model for LGR (Iceland, Luxembourg, Malta and Portugal) found no reports of negative consequences in the use of gender-segregated facilities. The Commissioner recognises that women, both cisgender and trans, have been disproportionately impacted by harassment and violence in public toilets and she affirms that it is crucial to ensure that sanitation facilities are safe for *all* women. This will not be achieved by scapegoating trans people, however, but by taking measures against the actual perpetrators of such harassment.

Alarmingly, trans children and youth have also been singled out and vilified for wanting to use toilets at school that match their identity. UNICEF has recognised that rules obliging students to use the bathroom according to their sex assigned at birth have exposed trans and gender-diverse children to harassment, embarrassment, humiliation, and confusion.²³²

The Commissioner, like the UN Special Rapporteur on the human rights to safe drinking water and sanitation, stresses that where only gender-segregated toilets are in place, states must ensure that everyone is able to use the bathroom that matches their gender identity.²³³ Indeed, barring trans people from using toilets that correspond to their gender identity essentially results in preventing them from accessing sanitation altogether in places where only gender-segregated toilets are available. Having a trans man use the women’s or a trans woman use the men’s toilet would

create confusion for all and only increase the likelihood of harassment and violence against these individuals. Lack of access to sanitation constitutes a health concern, as it may lead people to resist eating and drinking to limit toilet use, and impact urinary and digestive functions.²³⁴ Ultimately, lack of access to sanitation may discourage trans people from going to certain places and living a public life.

While member states must ensure that trans people can enjoy the right to sanitation without discrimination or fear of violence, in both public and private buildings and settings, they have discretion over the specific measures that allow for this. Many types and models of toilets already exist, including single-sex or gender-segregated toilets, unisex toilets, single-stall toilets, and other solutions. In public facilities and in some states unisex single-stall bathrooms have long been in place – for example, on airplanes, single-stall outdoor toilets, or bathrooms without any gender marking in some public libraries, healthcare clinics, hotels and other settings. As a positive practice, some cities in Switzerland, Belgium, Slovenia and Denmark have widely introduced gender-neutral bathrooms, most notably in schools.²³⁵ In 2021, the Hungarian Ombudsman issued an opinion that employers must ensure their workers can use toilets and changing rooms in accordance with their gender identity.²³⁶ In addition to practical measures, authorities also have a role in ensuring that public and/or political discourse does not create an environment that condones harassment and violence against trans people and to counter disinformation, including with regard to access to sanitation.

2.13 Asylum

Trans people may be forced to leave their home countries and seek protection in Europe due to various reasons including war, discrimination, violence, and persecution, including based on gender identity and gender expression.²³⁷ Trans asylum seekers and particularly those belonging to ethnic minorities, will often continue to face discrimination, harassment, violence, sexual exploitation and trafficking in their new home. This is compounded by strong anti-immigrant and anti-trans rhetoric in some member states, which has had a serious negative impact on asylum seekers' rights, their safety and well-being. Considering the rising anti-trans rhetoric and the rolling back of rights in certain member states, trans people may also seek to leave and seek protection in another Council of Europe member state. This section focuses on two challenges that trans asylum seekers may face in seeking safety, requiring urgent attention: namely, asylum legislation, and procedures and reception conditions.

Certain other issues of importance are covered in other relevant sections. This includes access to trans-specific healthcare (see section on health), and the situation of trans persons deprived of their liberty in relation to their migration status (see section on detention). Access to LGR for trans refugees, asylum seekers and migrants is discussed in the section on LGR. Furthermore, while the focus in this section is on trans refugees and asylum seekers, it should be acknowledged that the above-mentioned environment also impacts on other trans migrants who may move to or within Europe for a variety of reasons, including employment, education, family or other personal circumstances. They are also likely to experience more difficulties in their everyday life. Some of these issues are addressed specifically in other sections, such as the sections on access to employment and recognition of their families or parenthood. Irregular trans migrants, including rejected asylum seekers, may be particularly vulnerable to discrimination, violence and trafficking.²³⁸ The specific vulnerability of trans asylum seekers and migrants is acknowledged throughout the Issue Paper.

2.13.1 Challenges in asylum legislation and procedures

Like everyone else, trans people must enjoy protection against *refoulement*, that is, they must not be sent to a country where they would face persecution in the meaning of the 1951 UN Refugee Convention, where their life or freedom would be threatened, or where they would face the risk of torture, inhuman or degrading treatment or punishment, including because of their gender identity. It is widely recognised that trans people constitute a “particular social group” under the 1951 Refugee Convention.²³⁹ As set out in [Recommendation CM/Rec\(2010\)5](#) of the Committee of Ministers of the Council of Europe, member states should recognise that a well-founded fear of persecution based on sexual orientation and gender identity may be a valid ground for the granting of refugee status and asylum under national law. The 2012 [UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity](#) provides detailed guidance in determining a well-founded fear of persecution in the case of trans applicants. Some member states recognise that criminalisation *per se* amounts to persecution, even if criminalisation is not consistently implemented, which the Commissioner considers a good practice.²⁴⁰

Only 26 member states recognise gender identity as a ground for international protection in law, and implementation is lacking in some of these states.²⁴¹ In three additional European countries, policies and other positive measures have enabled trans people to receive international protection, but without being enshrined in law.²⁴² While policies and other

measures are welcome in this regard, they do not effectively guarantee consistent practice in the long run. As a result, it is crucial that member states ensure that a well-founded fear of persecution based on gender identity and gender expression is a valid ground for granting international protection under national law.

An additional barrier in recognising the protection needs of trans people relates to concealment. Many trans people try to suppress their gender identity and expression to avoid persecution, family rejection, or violence.²⁴³ Asylum authorities have sometimes used a person's history of concealment, or their ability to conceal their gender identity or expression, as grounds for refusing international protection. However, it needs to be stressed that the idea that a trans person could be safe in their country of origin if they conceal their gender identity cannot be a valid reason for refusing an application. This principle has been stressed in relation to sexual orientation by the Court of Justice of the EU in a judgment dating back to 2013.²⁴⁴ The European Court of Human Rights issued a similar finding in *I.K. v Switzerland*, decision of 18 January 2018 (para 24). Although these cases related to sexual orientation, the same should be understood to apply to gender identity. Indeed, trans people have the right to freely express themselves on an equal basis with others and to be free from the harm, psychological or other, that concealment can cause.

Beyond the issue of inadequate grounds for international protection, trans people face other difficulties during asylum procedures. First, it is of particular importance that member states take adequate measures to provide care and protection to the most vulnerable in asylum procedures, which includes the obligation to detect vulnerabilities at the earliest stage of asylum procedures. This should be fully applied to trans persons too. Further, few European countries have guidelines in place for interviewing trans and LGBTI applicants.²⁴⁵ Case workers may be unaware of gender identity and expression issues and/or may conflate these with sexual orientation.²⁴⁶ Across Europe, trans asylum seekers, including minors, have reported negative experiences during their asylum procedure, such as intrusive questioning, or a denial of their identities. Another common obstacle in the asylum process is the late disclosure of persecution based on gender identity due to a lack of trust in migration authorities and fear of harassment from other asylum seekers. This behaviour should be explained to interviewers and not held against the asylum seeker in credibility assessments.

The [UNHCR Guidelines on International Protection No. 9](#) recommend that interviewers should be adequately trained to work with trans applicants, remain objective, make sure they do not rely on stereotypes, and handle

personal information confidentially, among other considerations. For instance, case workers should not expect that every trans applicant has undergone some form of medical intervention, as not all trans people wish to do so or have access to hormonal therapy and surgeries. In view of this, it is important that member states make full use of existing tools, including those produced by civil society organisations, to ensure that asylum staff are equipped to deal with asylum applications of trans persons. In this respect, they are particularly encouraged to make use of the [online course](#) on LGBTI persons in the asylum procedure, developed by the Council of Europe on Human Rights Education for Legal Professionals (HELP).²⁴⁷

Considering the importance of creating trust and space to transmit asylum-relevant information, accelerated procedures may be particularly unfavourable to trans asylum seekers, as is the case for other particularly vulnerable asylum seekers.²⁴⁸ Similarly, civil society has expressed concern about the use of ‘safe country of origin’ lists, as these could be used to declare an asylum application inadmissible because a country is generally safe, without having sufficiently regard for the specific risks faced by trans and LGBTI applicants.²⁴⁹ In this instance, the removal of countries that criminalise LGBTI people from safe third country lists is a useful first step.

2.13.2 Reception facilities

Discrimination, harassment, physical, emotional and sexual violence, and threats against trans individuals are common in reception facilities, both by other asylum seekers and staff.²⁵⁰ Often, reception facilities are divided into gender-segregated sections. The placement of trans asylum seekers requires careful attention. Trans asylum seekers have been housed in gender-segregated accommodation that exposed them to physical and sexual violence, for example, the placement of trans women in accommodation for men significantly increases this risk.²⁵¹ For example, a trans asylum seeker stated:

“They would not recognise my gender identity and they placed me with men. The consequences were catastrophic for me. An experience like that, being raped, is adding to your context and makes you more vulnerable. Then I ended up in a human trafficking ring. My life became worse than it was already.”²⁵²

Trans asylum seekers are also at risk of isolation in reception settings, for instance, some will try to self-isolate to avoid harassment and violence. This was further exacerbated during the COVID-19 pandemic.²⁵³ Due to isolation, trauma, and the overall stress of an asylum procedure, trans asylum seekers are at high risk of mental health challenges, self-harm and

suicide during the asylum process.²⁵⁴ In some member states, asylum seekers, including trans people, are placed in small towns for months or years, waiting for a decision. In these circumstances, trans asylum seekers may have minimal access to civil society organisations and/or community services and/or trans-specific healthcare provision, which may be available in bigger cities. It may therefore be necessary to take extra measures to ensure that trans asylum seekers can access the appropriate support networks.

Member states should consider gender identity and expression as a relevant factor in identifying an asylum applicant's specific reception needs – a practice that is already in place in France or Belgium.²⁵⁵ The [online tool](#) on the Identification of Persons with Special Needs (IPSN) of the European Union Asylum Agency (EUAA) can be helpful in this work as it covers SOGI in a standalone section.²⁵⁶ Given that many trans asylum seekers will not have had access to LGR in their country of origin, this should be done regardless of whether a trans person's legal documents match their gender identity.

Some countries have provided trans asylum seekers with safer housing options, including in single rooms, separate sections in centres, private apartments or LGBTI-specific housing. In a handful of member states, including Austria, Belgium, Germany, Italy, Spain, Sweden, and the UK, some LGBTI asylum seekers and refugees can access safe housing options either in a shelter, private, or shared apartment for LGBTI persons or specifically for LGBTI refugees.²⁵⁷ It is also important to ensure that trans people are safe in these different settings.

While separate housing may be good practice, not all trans people will feel comfortable or safe in these facilities. It should also not be presumed that trans asylum seekers always want to be placed in a facility that matches their gender identity or legal gender, if that exposes them to more harassment or violence. As previously [stated](#) by the Commissioner, member states have a broad obligation to ensure that LGBTI asylum seekers are protected from harassment, discrimination and violence, including in reception centres, but there may not be a single 'best model' on how to do this. There should always be consultation with the individual asylum seeker on the kind of placement that they feel is safest for them. Equally important is that the staff within reception centres and other housing facilities are trained on how to work with LGBTI asylum seekers; that residents are provided with clear information about the inclusion of LGBTI people; that authorities cooperate and involve trans organisations in the planning and implementation of housing services; and that where separate housing options exist, that member states provide long-term funding.



A group of people march at London Trans Pride, 8 July 2023.
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Chapter 3

Gender identity and broader opposition to human rights

As previously acknowledged by the Commissioner and other Council of Europe bodies, a central challenge in securing the equal human rights of trans people – as well as LGBTI people – has been the rising influence of coordinated, well-funded and cross-border so-called ‘anti-gender’ and more broadly anti-rights campaigns throughout Europe.²⁵⁸ In recent years, they have noticeably increased their focus and advocacy against trans people specifically, exploiting existing societal misconceptions and fears about them.

It is recalled that, historically, the rejection of the concept of gender originates in the opposition from conservative religious entities to advances in women’s rights around the International Conference on Population and Development (Cairo, 1994) and the Fourth World Conference on Women (Beijing, 1995). These were perceived to challenge the so-called traditional family.²⁵⁹

Nowadays, there is not one or overarching anti-gender movement in Europe. Indeed, anti-gender campaigns are often striking in that they consist of opportunistic alliances of otherwise politically disparate individuals and organisations. Yet, a common feature of anti-gender advocacy across member states is the grounding in a rigid (often absolutist) understanding of sex, which is defined to be immutable and determinative of social roles, including within the context of familial relationships. Under a broad anti-gender framework, binary sex rather than gender is prioritised as the only acceptable basis for social organisation, with emphasis placed on biological essentialism. Conservative anti-gender actors insist on heterosexuality, strict gender roles and so-called ‘traditional family’ models. For them, experiences of sexuality and gender which deviate from the supposed heterosexual or cisgender “ideal”, and advocacy for the rights of all LGBTI people, are condemned as abnormal, an unwanted foreign influence, ideological and/or threatening – particularly to women, children

and religious freedom.²⁶⁰ Anti-gender narratives and disinformation about LGBTI people are furthermore used by agents that exploit sensitive topics in order to sow division and polarise societies, and whose primary objective is to undermine democracy and human rights.²⁶¹

As discussed throughout this Issue Paper, anti-gender narratives have had a material impact on the ability of trans people to enjoy their human rights in numerous fields. Trans people face increasingly hostile and toxic public discourse across several member states – where prejudiced, and sometimes outright misleading rhetoric has fostered a culture of mistrust and vilification of trans people, in a way that undermines their basic human dignity. Anti-gender campaigns have also slowed down ongoing legislative reforms aimed at protecting the human rights of trans people, including in the field of LGR or basic protection against hate crimes and hate speech.²⁶² The hardening public debate, stoked by anti-gender rhetoric, is also resulting in greater threats to the work of trans human rights defenders, their organisations and others actors who support trans people.²⁶³ These threats can take numerous forms, and they have extended to a wide net of persons supporting trans people, including human rights defenders working on broader issues who support the human rights of trans people, academics, and healthcare providers.

A key element of anti-gender rhetoric has been the claim that upholding the human rights of trans people compromises or threatens the rights of others, for example, women, children, and, more recently, cisgender LGB people. As previously discussed in the Issue Paper, these alleged conflicts of rights often appeal to unfounded fears and prejudices about trans people. For example, narratives presenting trans people as predatory and a threat to the physical safety of women or children are not supported by evidence and are highly discriminatory. Similarly, claims that protecting the rights of trans people may limit the capacity of lesbian and gay people to choose same-sex partners disregard the fundamental principle of consent in forming relationships.²⁶⁴ Meanwhile, claims that children may be unduly coerced or influenced by so-called ‘gender ideology’ deny the autonomy and agency of children, and validate harmful practices of silence and invisibility that hurt minors who are exploring their gender identity.

As the Commissioner has already stated in the [report on her visit](#) to the United Kingdom, she is of the opinion that arguments framing the protection of trans people as undermining or as being irreconcilable with women’s rights and acquired benefits should be firmly rejected. Indeed, human rights law and national equality frameworks are sufficiently robust to acknowledge and protect all experiences of gender, while also addressing the unique challenges faced by women.²⁶⁵ Acknowledging gender identity

as a protected ground does not prevent legislatures and courts from also taking meaningful action to ensure and promote equality on the basis of sex. Furthermore, ensuring that trans women benefit from the same protection as all other women extends the reach of these protections and does not diminish them for cisgender women. Indeed, rather than being in competition against each other for protection, trans people and cisgender women are far more likely to share similar experiences of gender inequality, harmful stereotyping and gender-based violence. As stated in this Issue Paper, if there are real cases of competing interests, member states have the duty to resolve them through a careful and well-informed balancing exercise, on a case-by-case basis, and with a view to preserving each group's rights to the greatest extent possible. Adopting sweeping measures overriding the human rights of trans people for the benefit of another group is incompatible with member states' obligations under international human rights law to protect the rights of everyone.

Beyond trans people, the Commissioner has witnessed the far-reaching impact of anti-gender campaigns across multiple human rights issues during her mandate. Under the guise of resisting an undefined 'gender ideology', anti-gender campaigns have organised resistance and attacks against sexual and reproductive health and rights; against laws to combat domestic violence; against comprehensive sexuality education; and against legal reforms to enhance LGBTI rights, including the legal recognition of same-sex relationships.²⁶⁶ Anti-gender rhetoric has also played a key role in undermining the Council of Europe Istanbul Convention. Several member states have resisted ratifying it²⁶⁷ and the President of Türkiye withdrew the country from the convention in 2021, citing an apparent inconsistency with national social and family values. Exploiting anti-gender arguments to oppose the Istanbul Convention severely disadvantages all persons it seeks to protect against gender-based and domestic violence, particularly women.

Although such anti-gender rhetoric often stems from a small number of persons in member states, the resources and coordinated nature of anti-gender campaigns mean that they often enjoy a disproportionate voice in public and political conversations. An important factor in the increasing reach of anti-gender rhetoric is the fact that it has been co-opted by certain politicians for personal or party advantage, as previously documented by the Commissioner in her [Human Rights Comment](#) "Pride vs. Indignity: Political manipulation of homophobia and transphobia in Europe". Across the Council of Europe, there has been a growing trend of political figures demonising trans (and LGBTI) people – often to stoke populist anxieties, and to present themselves as defenders of national culture, family values

or religious traditions. The PACE, in the report underlying [Resolution 2417](#) (2022) on “Combating rising hate against LGBTI people in Europe” has observed “trend[s] of politicians verbally attacking LGBTI people” in numerous member states, including Albania, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Estonia, Finland, Hungary, Latvia, North Macedonia, Slovakia and Türkiye. There are other well-documented examples in other member states such as Spain, the United Kingdom, as well as in Russia, among others.

The use of anti-gender rhetoric has been particularly prevalent during election campaigns to increase electoral support.²⁶⁸ Throughout Europe, political candidates frequently invoke hate-filled and misinformed anti-gender arguments, not least as a strategy to detract from other social, economic or political failings or to stoke up so-called ‘culture wars’ for electoral purposes.²⁶⁹ The political parties and leaders that embrace anti-gender narratives often tend to pursue broader anti-rights and anti-democratic objectives, including challenging the rule of law and international human rights norms, undermining media freedom and the civic space, as well as targeting women’s rights, asylum seekers, migrants and ethnic minorities. By allying with them and by enabling their rise, anti-gender movements are both a conduit and a product of the current backsliding of human rights and democracy in Europe.

There is an urgent need for member states to proactively counter anti-gender rhetoric, by countering false narratives and by fostering inclusion, for the protection of the human rights not only of trans people, but of all.

Endnotes

1. The Council of Europe Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), [Thematic report on legal gender recognition in Europe: First thematic implementation review report on Recommendation CM/Rec\(2010\)5](#), 2022, p. 14.
2. Council of Europe Commissioner for Human Rights, [Pride vs. indignity: Political manipulation of homophobia and transphobia in Europe](#), Human Rights Comment, 2021.
3. The terms “race” and “racial” are used to indicate grounds of discrimination, hate crime and hate speech, as referenced in international and national standards and other documents. The use of these terms does not imply endorsement of any theories based on the existence of different human “races”.
4. The definitions have drawn from a number of sources, including those referenced, and the glossary of terms provided by the Council of Europe’s SOGIESC Unit [Because Words Matter](#).
5. Council of Europe, [Convention on preventing and combating violence against women and domestic violence](#), 2011, Article 3(c).
6. [Yogyakarta Principles + 10](#), Preamble.
7. [Yogyakarta Principles](#).
8. ILGA-Europe, [Our Glossary](#).
9. International Labour Organisation, [Inclusion of lesbian, gay, bisexual, transgender, intersex and queer \(LGBTIQ+\) persons in the world of work: A learning guide](#), 2022, p. 69.
10. [Yogyakarta Principles + 10](#), Preamble.
11. [Yogyakarta Principles](#).
12. The European Court of Human Rights, [Factsheet - Gender identity issues](#), 2023.
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