

# Issue Paper on Human Rights and Gender Identity and Expression

Report in a nutshell

## Gender identity is firmly anchored in human rights law

Human rights are universal: they apply equally to everyone. There are therefore no 'special' rights for trans people. However, trans people face particular challenges in accessing their human rights. Many trans people face intolerance and prejudice, as well as systems and structures (legal, medical, and otherwise) which have not been designed with their needs in mind.

States have the primary responsibility to lift the barriers trans people are facing in exercising their human rights.

At international, regional and national level, there has been increasing recognition in recent years of how human rights apply to gender identity and gender expression, and corresponding momentum towards improved legal protection of the rights of trans people.

The European Court of Human Rights, for instance, has now recognised gender identity as falling fully within the Convention, as a component of personal identity (Article 8), and as being a ground protected by the prohibition of discrimination (Article 14). An increasing number of states also recognise gender expression as a protected characteristic.

The Paper addresses a non-exhaustive range of issues relating to trans people's enjoyment of human rights, with a focus on areas where there are particular obstacles, complexities or developing practices. This encompasses long-standing challenges relating to non-discrimination, violence, healthcare, family law, legal gender recognition (LGR), employment and asylum. It also includes topics which have been gaining in recognition, such as, gender expression and the interests and needs of non-binary people, and the specific needs of trans children and young people, as well as areas which have recently become the subject of increased controversy and misinformation, such as sports, comprehensive sexuality education, detention, sanitation and conversion practices.

## A topical and urgent human rights issue

Despite increased visibility and positive legal developments, trans people remain unable to enjoy their human rights on an equal footing with others, in practice.

Across Europe, they continue to face shocking 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 contextualised within a current backsliding on human rights, where marginalised groups are increasingly instrumentalised for political gain, and where anti-gender movements are gaining traction throughout Europe.

## Human Rights and Gender Identity and Expression



Issue Paper



## Who are trans people?

Trans (often referred to as 'transgender') people have a gender identity that is different from their sex assigned at birth. That gender identity may be male or female. Non-binary people, on the other hand, have a gender identity that falls outside the male/female binary.

## What is gender identity?

A person's deeply felt internal and individual experience of gender, which may or may not correspond with their sex assigned at birth.

## What is gender expression?

Each person's presentation of their gender through physical appearance.

See more in the glossary in the report.

The report complements the 2009 Issue Paper on '[Human Rights and Gender Identity](#)'.

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The Commissioner addresses this broader opposition to human rights, highlighting the co-ordinated, well-funded and cross-border nature of anti-gender advocacy, which exploits existing misconceptions and peddles misinformation about trans people. While this is particularly destructive of the rights of trans people, it ultimately threatens the human rights protection of everyone.

## Realising the human rights of trans people

Renewed commitment and action on the part of member states, grounded firmly in human rights principles, are therefore urgent.

The Commissioner addresses to Council of Europe member states **15 key recommendations** aimed at achieving real positive change in the lives of trans people and ensuring that they can enjoy their human rights.

A central paradigm is **affirming trans people's human dignity, physical and psychological integrity and personal autonomy**. In this regard, the Commissioner recommends providing access to **legal gender recognition** based on self-determination for trans people who want it. In addition, trans people should have access to **trans-specific healthcare** without a mental health diagnosis and without discrimination.

The Commissioner also calls on member states to respect **trans children's human rights**, without treating them differently because of their gender identity, including by ensuring that their views are given due weight in accordance with age and maturity and pursuing their best interests.

The Commissioner also articulates several recommendations tackling issues that have become a **flashpoint for hostile debate** in recent years and shows that **alleged conflicts of rights are often not borne out in reality and are mostly premised on harmful prejudices** about trans people. In principle, she calls for **inclusion of trans people** in accordance with their gender identity. If/when an issue arises, she urges member states to adopt a **case-by-case human rights-based approach** that preserves the human rights of all concerned to the greatest extent possible.

Noting the scarcity of official information about the lived experiences of trans people, the Commissioner calls on member states to **collect disaggregated data to guide effective and targeted policymaking** aimed at upholding trans people's rights in all areas of life.

The Commissioner calls on member states to **consult trans people and their organisations** when developing legal and policy measures that concern them. They should also ensure that **human rights defenders** protecting the human rights of trans people can **work in a safe and enabling environment**.

While the adoption of laws prohibiting discrimination, hate speech and hate crimes based on gender identity and expression is an essential first step, the Commissioner urges member states to ensure that these **laws are implemented**.

“ *Realising the rights of trans people is a matter of applying human rights equally to everyone, and states have the primary responsibility to lift the barriers trans people are facing in exercising their human rights.* ”

Dunja Mijatović  
Commissioner for Human Rights  
Council of Europe

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