

# PROTECTING LGBTQI RIGHTS IN EUROPE

Submission to the second review of the  
Council of Europe Recommendation  
on measures to combat discrimination  
on grounds of sexual orientation or gender identity  
(CM/Rec(2010)5).  
October 2018.

Submission by:



Endorsed by:



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Government of the Netherlands

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# INTRODUCTION

## Background

In 2010 the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity established the gold standard of LGBT rights in Europe. Agreed unanimously by the 47 Council of Europe member states, it was the first and only agreement between governments to combat discrimination against LGBT people in Europe. Although not legally binding, it was based solidly on existing legally binding international and European human rights obligations. Member states therefore have a clear duty to implement its measures. It has been widely used by states and civil society alike in an effort to improve the lives of LGBT people in Europe.

European LGBTQI, trans and intersex networks submitting this report welcome the initiative of the Council to review the progress of implementation of the recommendations for the second time in 2018.

The 2018 review is a crucial opportunity for the Council to assess the level of and progress in implementation among member states and identify implementation gap. Since the Recommendation was adopted in 2010, there have been significant gains in the Council of Europe region that secured legal rights for LGBTQI people. However, the work on LGBTQI equality is nowhere near done. Worrisome backlash, a rhetoric of hate, populism, nationalism, and state-led persecution in a number of member states remind us that efforts to combat violence and discrimination on grounds of SOGIESC must be reaffirmed, continued, and strengthened.

This assessment will help guide the Council's work in supporting member states regarding implementation. The submitting organisations welcome that during this second review, the Council extended the invitation for civil society organisations and national human rights structures (NHRs) to also submit reports.

The first review in 2013 provided the opportunity for states to report progress and identify challenges. Although NGOs were not officially invited to submit parallel reports at the time, many did.<sup>1</sup> These civil society reports have been effectively used for domestic advocacy since, as they included a thorough analysis of developments and remaining gaps.

Between March and July 2018 ILGA-Europe and Transgender Europe (TGEU) supported 11 LGBTQI and 5 trans organizations in preparing country reports on 16 member states (Armenia, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, Finland, Georgia, Hungary, Lithuania, FYR Macedonia, Montenegro, Poland, Portugal, Serbia, Sweden). These have also been submitted to the Council of Europe SOGI Unit and are available on the two organizations' websites.<sup>2</sup> ILGA-Europe and TGEU acknowledge with thanks the support of the Dutch government for this project.

### **Scope and limitations**

This report is co-authored by ILGA-Europe, Transgender Europe, and Organisation Intersex International (OII) Europe and further endorsed by the International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Youth and Student Organisation (IGLYO), the European Lesbian\* Conference (EL\*C) and the Network of European LGBTIQ\* Families Associations (NELFA).<sup>3</sup> Following the provisions of the Recommendation, it provides a summary of the 16 country reports; an overview of key research in Europe since 2010; and highlights of evolving human rights standards set by the Council of Europe or the United Nations in the past 8 years.

The report primarily focuses on findings in the 16 participating countries and does not aim to provide a comprehensive overview of the status of implementation of all 47 member states. However, the geographic spread of the report and the number of reports submitted, allows for identification of trends and problems throughout the region, which have been highlighted in the key findings section of this report.

The report provides a summary of key issues in the 16 countries. For more detailed information, the country reports should be consulted. The 16 country reports measured the level of implementation of the Recommendation against the revised standard checklist provided by the SOGI Unit. In addition, they relied on information gathered from ministries and key authorities at country level; and research publications. In a few cases, the report draws on examples from other countries. These arise from research data from the submitting organizations.

The report focuses on the needs and situation of lesbian, gay, bisexual, trans, queer, and intersex (LGBTQI) people, but where specified by country reports, research, or the context, it refers to specific subgroups within the LGBTQI umbrella such as LBQ, LBT, LGBT, LGBTI, etc.

## **Reflecting new benchmarks for LGBTQI rights**

Human rights are an evolving concept and as such, human rights standards related to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) issues have significantly developed since 2010. The Council of Europe has adopted a number of resolutions, reports and statements, which have progressively raised the bar for the Council and member states alike, particularly with regards to the rights of trans and intersex people. In particular, the PACE adopted Resolution 2048 on Discrimination against transgender people in Europe in 2015 and Resolution 2191 on Promoting the human rights of and eliminating discrimination against intersex people in 2017. Inter alia, Resolution 2048 urges states to provide for legal gender recognition based solely on self-determination and consider including a third gender option in identity documents for those who seek it.<sup>4</sup> Resolution 2191 calls on states to, for instance, prohibit non-consensual and medically unnecessary sex-“normalising” surgery, sterilisation and other treatments practised on intersex children and consider making sex registration on identity documents optional for everyone.<sup>5</sup> It also recommends to add “sex characteristics” as a specific prohibited ground in all anti-discrimination legislation.

International human rights standards have also significantly evolved in the past eight years. UN mechanisms, including Treaty bodies and Special Procedures, have issued concluding observations, recommendations, decisions and statements on SOGIESC issues since 2010. The mandate of the UN Independent Expert on SOGI was successfully established in 2016.<sup>6</sup> In July 2018 the fourth<sup>7</sup> thematic report of the Independent Expert was published, examining the process of depathologization and state obligations with regards to gender recognition. The groundbreaking 2006 Yogyakarta Principles<sup>8</sup> were reviewed and amended by a group of high-level experts in 2017, now constituting the Yogyakarta Principles plus 10 (YP+10) Principles.<sup>9</sup> The YP+10 include nine new principles and 111 additional state obligations on the application of existing international human rights law in relation to SOGIESC. In June 2018, the World Health Organisation (WHO) removed trans identities from the mental health disorders chapter of ICD-11. The global trans community had been fighting for this historic achievement over many years.

It is important that these developments are reflected in reviews of the Recommendation and this report fully takes all these international and European human rights standards into account when reporting on the Recommendation.



## KEY FINDINGS

### Overall

- States have made significant progress in the past years in securing rights and freedoms for LGBTQI people. There is however, backlash on human rights across Europe, fueled by populism, anti-democratic opinions and far-right extremism. This has negatively impacted LGBTQI human rights defenders and LGBTQI communities at large, as they are often the first target.
- Legal measures against discrimination and violence are in place in the vast majority of member states. Implementation however continues to be insufficient, leaving LGBTQI people vulnerable against hate crimes and hate speech or in the areas of healthcare, education, employment or housing discrimination.
- Legal instruments protecting against violence and discrimination are most often only inclusive of sexual orientation. Gender identity has been increasingly included over the past years. Gender expression and particularly sex characteristics however, are very rarely included.
- Where implementation is insufficient, it is often civil society that tries to fill this gap. For instance, NGOs have provided support services for hate crime victims, collected data about cases of violence and discrimination, raised awareness about intersex human rights violations, held trainings to judiciary, law enforcement, healthcare professionals or teachers, run shelters catering to the needs of LGBTQI people, or established their own sports clubs. These initiatives have been indispensable. They are however not sustainable and in no way able to replace measures that governments are obliged to take.

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

#### Hate crimes

- Rise of political groups and movements, who wish to retract human rights and equality laws, and civil society scapegoating across Europe have had particularly negative impacts on more vulnerable groups, and in some countries particularly targeted LGBTQI people.
- Hate crimes against LGBTQI people are common across Europe. One in four LGBT people have been victims of hate crimes (in the EU). Trans people are most at risk of violence, including assaults motivated by transphobia, racism, sexism, xenophobia, and anti-sex worker sentiment. At least 123 trans people were reported murdered in Europe between 2008 and November 2017.

- There is no statistical data on how hate crimes affect intersex people, but anecdotal evidence from various European countries suggests that intersex people are also victims of biased violence, including hate crime and hate speech in family settings, on the streets and in other environments.
- Despite these alarming numbers, only 26 countries in Europe have hate crime legislation inclusive of sexual orientation, 15 cover gender identity and a mere three cover sex characteristics. Investigations into hate crimes against LGBTQI people are inadequate and ineffective. Hate crimes are regularly processed as misdemeanors.
- Only one in five attacks are reported to the police (in the EU), mostly because of fear or a lack of trust. When reporting, victims commonly experience further harassment by the police. Police officers are one of the most common perpetrators of violence against trans people.
- Training of police and the judiciary remains limited and is mostly done by civil society, and therefore is not extensive or sustainable enough.
- In most reporting countries, there are no special measures to protect LGBTQI detainees and no data is collected.
- Data collection is lacking and mostly carried out by civil society.

### **Hate speech**

- One in two LGBT people have experienced some form of verbal harassment (in the EU): lesbian, bisexual women, and trans people most often.
- Hate speech against LGBTQI people has been increasing, including online, and includes violent descriptions of how LGBTQI people should be attacked and murdered.
- Hate speech is prohibited by law in several countries, but implementation is severely lacking. Public officials rarely condemn these instances and in some cases perpetuate hate rhetoric themselves.

### **Freedom of association**

- In the majority European states, the right to freedom of association can be effectively enjoyed without discrimination.
- To varying degrees, civil society space has been shrinking in many member states, i.e. governments have restricted the work of civil society working on SOGIESC issues. Governments have created a hostile working environment for human rights defenders, launched smear campaigns, or placed excessive administrative burdens on associations.

- In a number of states the state has restricted the right of LGBTQI groups to receive state funding or labeled those receiving foreign funds as foreign agents. In many states public funding is available for LGBTQI associations, but is insufficient.
- Attacks, harassment, and intimidation of defenders of LGBTQI rights by state and non-state actors continue to be prevalent, both offline and online.
- LGBTQI NGOs have reported numerous obstacles in being appropriately consulted on relevant laws and policies, such as a lack of political will or transparency; cutting of funds; lack of rules; unrealistic deadlines. In a number of countries (Croatia, Lithuania, Montenegro, Serbia) LGBTQI human rights defenders have been increasingly consulted.

### **Freedom of expression and peaceful assembly**

- Freedom of expression can be effectively enjoyed without discrimination on SOGI in all member states. In Lithuania and Russia the state has introduced laws that limit this right. In a number of other countries (Georgia, Croatia, Hungary, Macedonia) this freedom has been curtailed by a lack of sanctions on attacks against LGBTQI people; the monopolization of state media; or targeted lawsuits against individuals and organizations.
- Freedom of assembly is limited in 13 member states. Authorities have failed to authorize Pride marches or significantly hindered the work of organizers (Bosnia and Herzegovina, Serbia, Hungary, Lithuania).
- In a number of states authorities routinely fail to take appropriate measures to protect participants of peaceful demonstrations from attempts to disrupt their freedom of assembly (Georgia, Macedonia, Montenegro).
- Freedom of expression and peaceful assembly have been restricted on grounds of public health, morality and order in Lithuania, Poland, Hungary, and Montenegro.
- Authorities have failed to condemn unlawful interferences with these freedoms in Georgia, Hungary, and Lithuania.

### **Right to respect for private and family life (focusing on trans and intersex specific issues)**

- Of the 47 member states, 41 have some procedure on how gender is recognized, in 31 it is set out by law. Most states require trans people to undergo invasive medical examinations, tests, interventions or procedures when accessing legal gender recognition. 34 states still require a mandatory psychiatric diagnosis, 14 require sterility, 27 require medical interventions and 21 divorce.

- It is alarming that some countries require trans people to undergo invasive interventions to access legal gender recognition, but when trans people want to access them, they are either not available in the country and/or not covered by public insurance.
- In recent years, a number of states have reformed their legal gender recognition procedures in an effort to put in place a procedure that is more compatible with human rights standards. Legal gender recognition is based on self-determination in Malta, Denmark, Ireland, Norway, Belgium and Portugal.
- Even where legal gender recognition is provided on the basis of self-determination, trans minors often face additional barriers.
- As a positive development, Malta introduced third option gender markers based on self-determination, as part of legal gender recognition processes. Ireland and Scotland have announced they will do the same as part of their ongoing legal reform.
- Intersex people may also want to access legal gender recognition and change their gender marker in their documents. In some countries, they first need to wrongly and forcibly declare they are trans to be able to do this.
- In some countries, such as Hungary or Estonia, there are measures ensuring the person's name and gender marker are changed in non-state documents. In others, trans people face barriers in this regard.
- Trans asylum seekers and refugees face additional barriers in accessing legal gender recognition.

### **Right to respect for private and family life (excluding trans and intersex specific issues)**

- No member state criminalizes same-sex sexual acts.
- A growing number of states grant the opportunity to same-sex couples to have their relationship formalized as marriage or registered/life partnership. The number of states where same-sex marriage is legal has tripled from five to 15. Cohabitation is recognized in 20 states.
- At the same time, a number of states have introduced legal measures or hate campaigns against rainbow families, including by limiting the definition of marriage or family by law or in the constitution.
- Even where same-sex couples are legally recognized, they enjoy less legal protection than others. LGBTQI people who want to have children face barriers in adoption, fostering, medically assisted reproduction, administrative procedures and educational settings. Exercising their freedom of movement is a difficulty for LGBTQI couples and their children.

- In 8 of 16 reporting countries, there is no legal recognition of same-sex couples and families.
- In some states, the law provides for the protection of special or sensitive personal data, which includes “sexual life”. In Poland, NGOs have expressed concern over data collection about same-sex partnerships and marriages conducted abroad.
- Automatic co-parent recognition is only available in 11 European countries, joint adoption in 17, and second-parent adoption in 18. In a number of countries, single individuals are allowed to adopt, but married couples are preferred in practice.
- Medically assisted insemination is available for same-sex couples in 13 countries and for single individuals in 26. In practice however, single LB women are rarely able to exercise this right.

## Employment

- 38 states prohibit discrimination in employment on the basis of sexual orientation, and 28 on the basis of gender identity. The protection on grounds of GI has increased by 21 in the past seven years. Yet LGBTQI people face most discrimination in the field of employment, compared to any other sphere of life. Trans people are twice as likely to experience discrimination due to their gender identity, than cisgender LGB people due to their sexual orientation.
- Intersex people often face discrimination at work on the basis of their appearance or gender expression. Due to hospitalization or trauma related mental health problems, intersex people may need to take time off for longer periods. Gaps in their education or employment history might be difficult to explain to employers. Intersex people have also reported to be refused employment because of their diagnosis or medical history.
- Legal protections are often not comprehensive and there are few measures in place encouraging employers to create a safe work environment for LGBTQI people.
- Trans people commonly face difficulties changing education or work papers after changing their legal gender or name. There is a lack of measures to ensure that the gender history of trans employees is not disclosed without the consent of the person concerned.

## Education

- Discrimination, bullying and violence against LGBTQI youth continue to be prevalent in schools. Bullying may affect youth who are perceived to be LGBTQI or whose gender expression

diverges from the norm. It has long term effects on educational and work prospects, including mental health problems, suicidal thoughts, a drop in performance or dropping out.

- Trans students are particularly affected by bullying and a lack of support by teachers and staff when it comes to responding to harassment, or respecting names, pronouns and identities. Non-consensual medical interventions on intersex children have a severe impact on their participation and prospects in school.
- In over 30 countries there are legal protections in place to ensure children can enjoy their right to education without discrimination: 32 cover SO, 22 GI and only 3 SC. Implementation is lacking across Europe. In most European countries there are no guidelines, codes of conduct, teacher training etc. in place to guarantee a safe environment in schools. In some countries NGOs have tried to fill these gaps.
- School curricula commonly fail to include SOGIESC issues and in many countries they contain harmful or negative information about LGBTQI people.

## Health

- LGBTQ and particularly trans and intersex people continue to experience significant health disparities, reporting worse physical and mental health compared to the general population.
- One in 10 LGBTQ people (in the EU) have experienced discrimination in healthcare settings, including denial of treatment or inappropriate questions. Discrimination is more common among trans people and lesbian women. Due to fear of mistreatment, LGBTQI people often postpone seeking medical help, which has a negative impact on their health status.
- Healthcare professionals lack knowledge about LGBTQI people and their healthcare needs and there is little training in place to support them. Existing training initiatives are most often carried out by civil society and not sustainable.
- Intersex people face discrimination, sexual harassment and violence in medical settings. In the majority of states, so called “normalizing surgeries” are carried out on intersex children, without their full, free, and personal consent. Coerced surgeries have a severely negative impact on intersex people’s physical and mental health. To date, Malta and Portugal are the only countries in the world that have banned them.
- Intersex people routinely have their medical information withheld from them or are met with unsupportive or incompetent GPs. There is a lack of non-medicalised counseling for intersex people and their families, and a lack of healthcare protocols and training for medical professionals.

- 25 states offer legal protection against discrimination in healthcare on the ground of sexual orientation and 17 on grounds of gender identity. Yet measures to ensure that these laws are implemented and that healthcare provision meets the needs of LGBTQI people are greatly lacking.
- Although the overwhelming majority of European countries do not classify homosexuality as an illness, conversion/reparative therapies are still common, for instance in Poland, Croatia, or Finland. Member states have slowly started to ban these by law, but more action is needed.
- Gender affirming care for trans people routinely falls short of meeting the highest attainable standard of care. Trans people are often forced to undergo medical examinations, tests, hormonal treatment and even sterilization to access legal gender recognition.
- Trans people have difficulty accessing quality care and are routinely subjected to unreasonable requirements, such as a mandatory psychiatric diagnosis, or real life test. Services are often lacking and trans people need to go private or abroad to access them. Waiting periods are extensive, leaving trans people without care for years. Doctors are often incompetent and unable to provide adequate information on available treatments and their impact. Non-binary trans people, trans people with disabilities and trans asylum seekers face additional barriers in accessing care.
- Only a handful of European countries ensure that public insurance covers most gender affirming healthcare services, and in some, no coverage is available at all. Services covered by public insurance are often unavailable, inaccessible or of bad quality. Limitations on insurance coverage are often not lawful, objective or proportionate, but discriminatory. In many European countries, medical examinations and invasive procedures, such as sterilisation, are a requirement for legal gender recognition, but still not covered by public insurance. This means that trans people need to finance human rights violations committed against them.

## **Housing**

- Discrimination in housing continues to be an issue, particularly among trans people and lesbians. Legal protection is rare and when laws are in place, implementation is lacking.

- LGBQI and particularly trans people are disproportionately affected by homelessness because of the discrimination and violence they face from families, partners, and in their communities. Homelessness services or safe houses for victims of domestic violence are unprepared to support them.
- There is an apparent lack of research about LGBTQI homelessness regionally and in individual states.
- In some countries LGBTQI groups have established safe houses, but these lack funding and have not been sustainable.

## **Sports**

- Discrimination continues to be an issue, particularly for trans and intersex people.
- Some countries have laws or policies in place, but no specific measures to combat LGBTQI-phobia in sports, improve inclusion, or raise awareness.
- Hate speech at sports events remains common and measures are lacking to combat it. Even when laws are in place, perpetrators are rarely prosecuted.
- Trans and intersex people face additional barriers in recreational competitive sports, including exclusion and harassment.
- In some countries LGBTQI people have formed their own recreational sports associations. Competitive athletes who are out as LGBTQI are rare.

## **Right to seek asylum**

- The vulnerability of asylum seekers and refugees has notably increased in the past years, LGBTQI migrants, asylum seekers, and refugees being at a high risk of harassment and violence, by state and non-state actors, including vigilante groups. They suffer harassment and abuse on the basis of homophobia and transphobia intersecting with racism and xenophobia. Trans asylum seekers are at heightened risk of violence, human trafficking, health problems, alcohol and drug abuse and suicidal thoughts.
- In 24 member states the law recognizes sexual orientation as a ground of persecution. Gender identity is recognized in 15 countries, and sex characteristics in three. In most countries, however, there is also no specific guidance or training for authorities on how to process these claims.
- In many countries asylum officers continue to base their decisions on stereotypical notions of SOGIESC and lack understanding and knowledge of LGBTQI issues. Some have introduced fast track procedures. Safe country lists often fail to take into account the situation of LGBTQI people.



- Far too often, LGBTQI asylum seekers face detention during their asylum process and there are few measures in place to prevent violence and harassment against them.
- Trans asylum seekers are routinely placed in reception centers or detention facilities that are unsafe for them and/or do not match their gender identity. Only a handful of countries recognize the gender identity and names of trans asylum seekers, and in some countries trans refugees are unable to access legal gender recognition even after their refugee status was granted. Trans asylum seekers have little access to, or information about, gender affirming healthcare.

### **National human rights structures**

- In 10 of the 16 reporting countries, national human rights structures are clearly mandated to work on discrimination based on SOGI.
- NHRs in these countries have published thematic reports on LGBTQI issues, worked on individual cases, made recommendations to the government, or carried out awareness raising work.
- In Poland, the government has restricted the budget of the NHRI presumably for political reasons. In Croatia, one ombudsperson was removed in the middle of their term and the annual reports of two ombudspersons were not adopted by the parliament. Such measures seriously threaten the independence and effectiveness of NHRs. NGOs have also expressed concern about the independence of the Macedonian NHRs.

### **Discrimination on multiple grounds**

- In seven of the 16 reporting countries, the legislative framework does not cover multiple discrimination.
- In four states, anti-discrimination laws cover multiple discrimination and affirm its severity, but implementation remains lacking. There are very few cases in which discrimination or violence on multiple grounds was sanctioned. In some cases policy documents include multiple discrimination but omit SOGIESC as grounds.

## RECOMMENDATIONS

### Call to member states

- To adopt comprehensive strategies and action plans designed to fully implement all aspects of the Recommendation and the review process, in close consultation with LGBTQI organisations.

### Recommendations to the Council

- To show political leadership and commitment to LGBTQI rights.
- To conduct further reviews of implementation of the Recommendation at three year intervals.
- To, in its report on the 2018 review of the Recommendation, fully acknowledge the human rights standards set out in the Council of Europe PACE Resolution 2048 (2015) “Discrimination against transgender people in Europe” and Resolution 2191 (2017) on “Promoting the human rights of and eliminating discrimination against intersex people”, as well as the Yogyakarta Principles + 10, and fully integrate the grounds of gender expression and sex characteristics into the next review processes accordingly.
- To further institutionalise the work on LGBTQI human rights in the Council’s structure. To this end, set-up an intergovernmental body responsible for this area of work in the Council of Europe structure.
- To build on the work of the SOGI Unit supporting member states in implementing the Recommendations by providing technical assistance upon request. To this end, the capacities of the SOGI Unit should be strengthened and it should be ensured that the Unit has the resources to maintain and increase the scale of its work supporting member states in implementing relevant human rights standards, as well as supporting the mainstreaming of sexual orientation, gender identity, gender expression and sex characteristics into the work of the Council of Europe.
- To ensure sufficient resources and support structures for bodies responsible for monitoring the implementation of human rights standards by the member states, such as the SOGI Unit and the European Commission against Racism and Intolerance.

## GUIDE TO THE THEMATIC CHAPTERS

Each thematic chapter starts with an overview of relevant regional and international human rights standards.

For example:

### CHAPTER 1

## Right to life, security and protection from violence

### Regional and international human rights standards

Principle 30 of the 2017 **Yogyakarta Principles plus 10** establishes that everyone, regardless of SOGIESC, has the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group.

This is followed by an introduction to key issues and a summary of research findings over the past years.

The chapters then assess the level of implementation of each paragraph of the Appendix, primarily on the basis of the 16 country reports. **The paragraphs of the appendix can be identified by this design:**

**2** Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

Lastly, case studies are presented at the end of each chapter. For example:

### CASES

#### Poland

In 2017, Lambda Warsaw registered a case in which two **lesbian** girls were mistreated by police officers. They faced an unpleasant situation in a restaurant where they were given looks and the waiter issues a bill that was too high. Because the conflict could not be solved, they called the police.

## CHAPTER 1

# Right to life, security and protection from violence

### Regional and international human rights standards

Principle 30 of the 2017 **Yogyakarta Principles plus 10** establishes that everyone, regardless of SOGIESC, has the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group. The Principle sets out ten state obligations, including the obligation to prevent, investigate, prosecute, punish and provide remedies for discrimination, violence and other harm, whether committed by State or non-State actors; gather data; identify the nature and extent of attitudes, beliefs, customs and practices that perpetuate violence on grounds of SOGIESC; provide training to police and judiciary; establish victim support services; ensure access to effective complaints procedures and remedies.

Principle 36 on the right to the enjoyment of human rights in relation to information and communication technologies calls on states to take all necessary legislative and other measures to prevent, remedy and eliminate online hate speech, harassment and technology-related violence against persons on the basis of SOGIESC. As an additional recommendation, the YP+10 urges states to take measures to encourage the general public to respect diversity based on SOGIESC in sports, including measures to eliminate hate speech, harassment, and violence at sports events.

## A. Hate crimes

Rising levels of populism, nationalism and civil society scapegoating across Europe has had particularly negative impacts on vulnerable groups, including **LGBTQI** people.<sup>10</sup> In **Britain** for instance, where Brexit has stirred hateful rhetorics towards minorities, the incidence of hate crimes against **LGBT** people has been steadily rising in the past three years. Stonewall has documented a dramatic rise in hate crimes on the basis of sexual orientation, from 9% in 2013 to 16% in 2017.<sup>11</sup> **LGBT people of color, disabled LGBT people** and those belonging to **non-Christian faith** have faced even more violence than their peers.<sup>12</sup> In some countries hateful rhetoric specifically targets **LGBTQI** people, who are portrayed by media and politicians as a threat to traditional structures such as marriage or family.

Each year, national LGBTQI organizations report hate crime cases to the Office for Democratic Institutions and Human Rights (ODIHR). On the basis of these inputs, ODIHR documented hate crimes against **LGBT** people in at least half of European states in each of the reporting years between 2010-2016, including physical assaults and murder.<sup>13</sup> Hate crimes against LGBT people tend to be committed by groups and rise in numbers around the time of Pride events.<sup>14</sup> The UN Special Rapporteur on Violence against Women indicated that violence due to **sexual orientation, gender identity and expression** are “characterized by levels of serious physical violence that in some cases exceed those present in other types of hate crimes”.<sup>15</sup>

In its 2012 LGBT survey, the European Union Agency for Fundamental Rights (FRA) reported that one in four **LGBT** people in the EU have been physically or sexually attacked or threatened with violence.<sup>16</sup> **Trans** people are particularly at risk of violence: a third of trans people in the EU have experienced attacks or threats and they were also more likely to be attacked multiple times.<sup>17</sup> In **Britain** for instance, **trans** people routinely face more hate crimes (41%) than cis **LGB** people (16%). The data also shows that LGBTQI people whose **gender expression** differs from the societal norm are twice as likely to have suffered violence.<sup>18</sup> Although there is no statistical data on the situation of **intersex** people, intersex people, whose gender expression and/or physical appearance differ from the societal norm are likely to find themselves in a similar situation. Attacks with a sexual element were more common among **bisexual** women and **trans** people.<sup>19</sup>

**Trans** people are at particular risk of structural and interpersonal violence, and this violence is commonly motivated by transphobia, racism, sexism, xenophobia, and anti-sex worker sentiment.<sup>20</sup> TGEU recorded 143 cases of hate crimes against **trans** people in Central and Eastern Europe and Central Asia in 2016<sup>21</sup>, 92 in 2015<sup>22</sup>, and 69 in 2014<sup>23</sup>. In these cases, the majority of the victims were **trans women sex workers** and police were one of the most common perpetrators.<sup>24</sup> Other abusers included organised hate crime groups or people posing as clients.<sup>25</sup> In **Macedonia**, most hate crimes against LGBT people targeted trans sex workers and some were perpetrated by police. Police violence and criminalization of sex work both lead to further violence against non-state actors, including family, (ex-)partners, or clients.<sup>26</sup> When police are the perpetrators, victims are even less likely to report these cases.

According to the Transrespect versus Transphobia Worldwide (TVT) research project of TGEU, at least 123 **trans** people were reported murdered in Europe between 2008 and November 2017.<sup>27</sup> A third of these victims were **migrants**, many from Latin American countries.<sup>28</sup> Globally, of those whose profession was known, 62% of victims were **sex workers**.

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

Civil society organizations (CSOs) in the 16 participating countries<sup>29</sup> have reported that investigations into hate crimes against LGBTQI people are inadequate and ineffective. In **Macedonia**, some attacks were immediately reported to the police, but no investigation followed. In **Lithuania**, the authorities continuously fail to effectively investigate and in some cases refused to start pre-trial investigations. In **Poland** and **Croatia**, there are no government issued guidelines for dealing with hate crimes against LGBTQI people and there are no liaison officers that victims could turn to. In **Croatia**, NGOs are aware of a case where a police officer refused to record a complaint of a transphobic hate crime.

In **Portugal** and **Croatia**, there are vulnerable victims units within the police, but no LGBTI specific units or liaison officers. In **Macedonia**, there are also no special units or liaison officers. In Sarajevo, **Bosnia and Herzegovina**, there is one contact person for LGBTI hate crimes, which has been welcomed as a good starting point by civil society. In **Montenegro**, there are LGBTI contact officers in every municipality, but trust in the police still remains alarmingly low.

There are mechanisms for investigating crimes by police or prison staff in **Montenegro** and **Croatia**, but no cases have been reported by victims. Therefore, it is hard to tell whether they work in practice.

**2** Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

In the increasingly hostile political environment where hate crimes and hate speech thrive, it is deeply worrying that there has been no increase in legal protections against hate crime on the basis of **SOGIESC** across Europe.<sup>30</sup> Only 26 member states have hate crime legislation in place that includes sexual orientation, 15 cover gender identity and a mere two<sup>31</sup> cover sex characteristics.<sup>32</sup> These numbers have not changed since 2014.<sup>33</sup>

In some cases, states introduced policies tackling hate crimes, but did not renew them once they expired. In the **Netherlands**, local civil society organisations have urged the government to draft a specific action plan for tackling hatred.<sup>34</sup> The government has committed to renew the plan, but has not done so to date. In **Croatia**, three such policies were in force until 2016 and only one has been renewed so far.<sup>35</sup>

Anti-LGBT bias motivated crimes are included in hate crime legislation in **Serbia, Portugal, Montenegro, Croatia, Hungary (SOGI)**<sup>36</sup>, and in some entities of **Bosnia and Herzegovina**. Implementation, however, remains inconsistent or lacking. Attacks are often processed as misdemeanors and not as hate crimes; victims suffer further harassment by the police. In **Lithuania** only sexual orientation is covered.

In **Macedonia, Poland, Bulgaria, and Armenia** SOGIESC are not included as protected grounds. In **Macedonia**, an ongoing law reform may result in inclusion. In **Bulgaria**, most hate crimes are left uninvestigated and unpunished, or recorded as hooliganism. In a murder case of a gay man, the court found a homophobic motive but could not issue a more severe punishment as sexual orientation was not mentioned in the law.

**3** Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity-related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

The FRA noted that only one in five attacks or threats are reported by **LGBT** people to the police.<sup>37</sup> The most common reasons included doubting that the authorities would do anything, thinking the incident was not serious enough, or fear of LGBTQI-phobic reactions of the police, other people, or the perpetrator.<sup>38</sup> Other reasons are the normalization of such experiences, concerns about being outed, and not knowing how reporting would be beneficial or where and how to report.<sup>39</sup> When cases are reported, they rarely result in the perpetrators being held accountable: in **Turkey** for instance, only 11% of reported cases resulted in an appropriate sentence for the perpetrators.<sup>40</sup>

In **Macedonia**, less than a third of victims report hate crimes. Those that do, commonly experience further harassment and inappropriate treatment by the authorities. In **Portugal**, the government has refused to cooperate on UNI-FORM which is a reporting tool that allows LGBTI victims to directly report to the police. Victim support services are run by civil society and are thus underfinanced and unsustainable. In **Croatia**, hate crimes can be reported to the police in text or online, but reporting among LGBTI victims is a mere 8%. Awareness raising work has mostly been done by civil society without long-term commitment from the police. In **Serbia**, reporting is low and 85% of LGBT people indicated they do not trust the police. In **Hungary**, one in every two LGBT people have been victims or witnesses of hate crimes but less than 10% have reported. In **Poland**, only four out of 100 hate incidents are reported and there are no measures taken by the state to encourage victims to report.

TGEU highlighted that police officers are one of the most common perpetrators of violence against **trans** people.<sup>41</sup> Therefore, it is no surprise that trans victims, for instance as reported in **Macedonia**, are reluctant to report: they do not trust in the justice system and fear further victimisation, or even punishment, such as for sex work related offenses.<sup>42</sup> In **Macedonia** there is an online system for reporting misconduct by police, but the state has not made any efforts to inform the public about this.



In some cases, police officers who violate a **trans** person file a complaint against the victim for “resisting a police officer’s request” or “insulting law enforcement officials”.<sup>43</sup> In other cases, police have turned against trans people when they reported a hate crime. In **Georgia** in 2016, when victims/survivors called the police after an attack, the police arrested and pressed charges against them and did not make an effort to identify and punish the perpetrators.<sup>44</sup> The charges included resisting the request of a police officer and petty hooliganism.

Training of police and the judiciary remains limited and is mostly done by civil society, and therefore is not extensive or sustainable enough. In **Portugal, Bosnia and Herzegovina, Poland, Montenegro and Lithuania**, LGBTI specific trainings for police have only been done by NGOs. In **Hungary** hate crimes are only an elective course for police. In **Montenegro**, there have been numerous training events for the judiciary, but hate crime cases are still not handled appropriately. In **Macedonia**, authorities claim they provide training for police officers, but some of the curriculum is extremely transphobic, suggesting that trans people attack women as a form of revenge.

**4** Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

In most reporting countries, there are no special measures to protect LGBTQI detainees and no data is collected. In **Montenegro**, the new Code of Conduct prohibits discrimination on SOGI grounds in prisons. In **Poland**, prisons do not have any measures in place and take action only on an individual basis.

In places of deprivation of liberty, trans people routinely face inhumane and degrading treatment. They are disproportionately subjected to violence, torture, and other forms of ill treatment.<sup>45</sup> In the **UK**, two **trans** prisoners died in custody in 2015.<sup>46</sup> **Trans** prisoners are commonly placed in gendered facilities that do not match their gender identity and/or expose them to more violence by prisoners or guards.<sup>47</sup> In **Hungary, Montenegro, Poland, and Lithuania**, trans people are accommodated on the basis of their legal gender. Trans people

in prisons are often denied gender affirming care or the possibility to express their gender.<sup>48</sup>

**5** Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

There is no official data gathered by the state in Armenia, Bosnia and Herzegovina, Lithuania, Macedonia, Serbia, and Portugal. In these countries, data collection is mostly done by civil society. On a positive note, the Portuguese LGBTI Action Plan foresees data collection in the future.

In Montenegro, records of hate crimes are kept by the state and stored electronically, allowing for transparent and easy access. In Croatia, a government office gathers data on hate crimes, including against LGBT people. Two Ombudspersons also publish such data annually. In Poland, the data collection system was created by the Polish Police and covers homophobic/transphobic motivation of the perpetrators. However, it is not mandatory to record this motive and official data is minimal. The gap is apparent when this data is compared to that gathered by NGOs.<sup>49</sup>

## CASES

### Poland

In 2017, Lambda Warsaw registered a case in which two **lesbian** girls were mistreated by police officers. They faced an unpleasant situation in a restaurant where they were given looks and the waiter issued a bill that was too high. Because the conflict could not be solved, they called the police. The officers who came handcuffed them and called them “fat bitches” and “dykes”. They took them to a sobriety facility and searched through their belongings. They refused to give their names and their place of work.

### Montenegro

Hana Konatar, a **trans** woman, coordinator in Association “Spectra”, and visible activist during the Pride events, was brutally beaten up on the street near her home in Podgorica in 2017. Some of the bystanders supported the attackers. Konatar reported the case to the police, with the support of Association “Spectra” and “Queer Montenegro”. After the perpetrator was identified, the officer in charge tried to persuade Konatar to drop the charges, which she refused to do. The Prosecutor proceeded with the case, but Konatar was never notified of the developments. In June 2018 she received a phone call from the General Court in Podgorica, and was informed that two hearings were held without her. The Court stated that “she could not be reached on her telephone and her address was missing in the report”, even though she provided this information in the police report. The next hearing is scheduled for September 2018.

## **Macedonia**

In one case, on 9 September 2013, a **trans** woman was attacked and injured with a knife. The perpetrator was identified and called into the police station but was released after the interview. The legal procedure is still ongoing. In another case, on 13 October 2013, another trans woman was attacked and hurt on her head and her stomach by a group of three perpetrators. The case was reported to police by the survivor of the hate crime, but the perpetrators were neither identified nor prosecuted.

## **Croatia**

In the late evening, a **gay couple** was wandering around and hugging on the street near their apartment in Zagreb. When approaching their home, the couple noticed three younger persons, staring at them in a threatening way and approaching them. Although one of the partners had earlier experiences with homophobic violence in the city, this time he did not want to “correct” his behavior just because he was expected to. The couple decided to keep holding hands “no matter what happens” as they were being approached. Immediately after they passed each other, the three homophobes turned to the couple and started shouting: “Faggots!”, “You’re disgusting!”, “You should be ashamed!”, “We will slaughter you, faggots!” and “We will kill you!”. The couple was then physically attacked, kicked and beaten. The police arrested the perpetrators on the spot, who were later sentenced on misdemeanor charges. Zagreb Pride filed a criminal report, but as this happened too late (three days after the attack), the prosecutor dismissed it.

## **Bulgaria**

Mihail Stoyanov was a 25-year-old medical student murdered in 2008 in the park Borisova Garden, with many bruises and haemorrhages found on his body. He was kicked by his attackers until they broke his windpipe, which led to his death. In 2010, two young men were arrested as suspects for the murder. In their testimony to the police, the two men admitted that they had “cleared the park of gays” and systematically beat gay men in the park Borisova Garden, i.e. their behavior was not incidental.

## B. Hate speech

According to the FRA, one in two **LGBT** people in the EU have experienced some form of verbal harassment. **Lesbian, bisexual women, and trans people** were most likely to suffer verbal harassment, such as name calling, bullying, or ridiculing.<sup>50</sup> Hate speech against LGBTQI people also includes violent descriptions of how LGBTQI people should be attacked and murdered. Reporting organizations also highlighted the prevalence and increase in hate speech, including online. Hate speech significantly increases around the time of Pride events, such as in **Serbia** or **Macedonia**, or in times of public debate around same-sex marriage such as in **Croatia**.

**6** Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

**7** Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

**8** Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

Even where hate speech on SOGIESC grounds is prohibited by law, implementation is usually severely lacking. In **Serbia** the law is in place, but hate speech is common by MPs, church leaders, public officials, the media, and on social media alike, especially around Pride marches. The situation is similar in **Bosnia and Herzegovina, Croatia** and **Portugal**. In **Croatia**, hate speech on SOGIE is prohibited, but judiciary response has been inconsistent and inadequate and most reports of hate speech to the police or state prosecutors have been rejected. In **Montenegro** and **Lithuania**, some hate speech provisions only cover sexual orientation.

The *Beizaras v. Lithuania* case is currently pending at the European Court of Human Rights (ECtHR), focusing on the failure of the authorities to investigate and sanction homophobic hate speech online.<sup>51</sup> In **Montenegro**, hate speech is prohibited and the penalty is harsher if the perpetrator is a public official. The National Strategy for improvement of life quality of LGBT persons 2013-2018 obliges the government to promote respect and tolerance, and several such campaigns have been implemented.

Hate speech against LGBTI people is not prohibited by law in **Poland**, **Bulgaria** and **Armenia** and authorities have taken no steps to curb it. There have been several instances of hate speech by MPs in **Poland**. In **Macedonia** the legal provisions on hate speech do not include SOGIESC, despite two recent law reforms in 2014 and 2018 and the tangible increase of hate speech. When hate speech is reported, there are no charges pressed against perpetrators.

## CASES

### Croatia

“We live in some form of Yugo-caliphate. The successors of the former system have found the new ideology – the gender ideology. They have substituted Marxism, Titoism and the anarchy of the self-management for gender ideology. So now you have gender neutral toilets? What are those? One for men trapped in a female body, one for women trapped in a male body and so on. I would say that we don’t need other countries to dictate us to legalize pedophilia, zoophilia...In fact, you have a pedophile political party in the Netherlands. In some countries zoophilia and coprophagia are legal. In some countries the biggest awards are given to the abortionists. Abortionists who have aborted tens of thousands of children. No, we don’t need those kinds of role models. We need to create our own destiny and look up to the countries who are not the slaves of the European Union and global order or mister Soros and his buddies here in Croatia” Željko Glasnović, Member of Croatian Parliament, debating Convention on Preventing and Combating Violence against Women and Domestic Violence, March 12, 2018.

### Lithuania

In December 2014, **two gay men** posted a public picture on a personal Facebook profile, showing them kissing. The picture received more than 2,400 “likes” and more than 800 comments. The majority of online comments were inciting hatred and violence against LGBT people in general, while a number of comments were directly threatening the two gay men in question. Some examples of the posted comments include “Faggots should be burnt”, “You both should be thrown into gas chambers”, “You are fucking gays, you should be exterminated”, and “Kill them!”. LGL lodged a complaint under the Criminal Code on behalf of the two gay men in question to the Prosecutor General regarding 31 comments on their social media profile. On 30 December 2014 the Klaipėda District Prosecutor’s Office issued a decision not to start a pre-trial investigation regarding the complaint in question. LGL appealed the decision, which was dismissed by the District



Court saying “the individual by posting a picture of two kissing men in a public sphere should have and must have foreseen that eccentric behavior really does not contribute to social cohesion among individuals with different views in the society and promotion of tolerance.” The decision was upheld by the second instance court. In February, 2015 the Klaipėda Regional Court indicated that the two men’s action can be interpreted as an attempt to intentionally tease or shock individuals with different views or encourage posting of negative comments”. In August 2015 the two gay men in question submitted a complaint to the ECtHR, and the case is pending.

### **Hungary**

On 10 July 2017, after the annual Budapest Pride March, the pro-government newspaper Magyar Hírlap published an opinion piece entitled “Let’s stop here!”. The author argued that homosexual propaganda and Pride Marches should be banned, **“homosexuals”** should be barred from becoming teachers or theater directors, and registrars and police officers should be allowed to decline their participation in celebrating same-sex registered partnerships and protecting homosexual events. The Media Council found that the article contained hurtful and degrading language on homosexuality and called for curtailing the constitutional rights of homosexuals, which amounted to incitement to exclusion. The Council imposed a 150 000 HUF (appr. 500 EUR) fine on the newspaper.

## CHAPTER 2

# Freedom of association

### Regional and international human rights standards

In June 2013 the **Council of the EU** adopted Guidelines to promote and protect the enjoyment of human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, reaffirming its commitment to protect LGBTI human rights defenders.<sup>52</sup>

The **YP+10** includes six additional state obligations relating to the right to the freedom of peaceful assembly and association (Principle 20)<sup>53</sup>, clarifying that international human rights law obliges states to respect, protect and facilitate the formation of associations working on SOGIESC issues; ensure these can seek, receive and use funding; ensure that there are no burdensome requirements or unjustifiable limitations on registration; ensure that these rights apply equally to associations that are unregistered; take affirmative action measures to support the freedom of association of groups marginalized on the basis of SOGIESC and service providers working with them. The YP+10 also includes two additional state obligations relating to the right to promote human rights (Principle 27)<sup>54</sup>, calling on states to put in place a mechanism for the protection on human rights defenders working on SOGIESC issues; and to ensure the participation of groups and individuals in political decision-making processes that affect them.

In the majority European states, LGBTQI associations have been able to freely operate without direct state obstruction over the past years.<sup>55</sup> However, shrinking civil society space has been increasingly present in Europe in the past ten years, i.e. governments have restricted the work of civil society and human rights defenders. These measures have often specifically targeted LGBTQI organizations. To varying degrees, civil society space has been shrinking in many member states (e.g. **Armenia, Azerbaijan, Croatia, Georgia, Hungary, Macedonia, Moldova, Poland, Russia, Ukraine**), and governments have put in place barriers for civil society working on SOGIESC issues to receive foreign funding, participate in consultations, hold gatherings, or set up organizations.<sup>56</sup> Excessive administrative burdens have also been used to hinder the work of CSOs.<sup>57</sup> As documented by ILGA-Europe, more than two in five LGBTQI organisations in countries with shrinking civil society space have reported restrictions in registration (43.5%) or burdensome registration requirements to receive foreign money (42.6%). More than one third (37.7%) reported that their government did not allow organisations to receive funding from foreign entities.<sup>58</sup>

In addition, the rise in hateful rhetoric across Europe, including LGBTQI-phobic hate speech, has led to an increase in real life attacks on the offices of LGBTQI organisations, that intimidate human rights defenders and hinder their work. Smear campaigns by state actors that aim to delegitimize and stigmatize civil society, serve to encourage such attacks.<sup>59</sup>

**9** Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

ILGA-Europe has reported on the state of freedom of association in the annual Rainbow Europe Index since 2009. In 2018 clear violations were documented in **Azerbaijan, Greece and Russia**.<sup>60</sup> In **Azerbaijan**, NGOs, including LGBTI organisations, face barriers in receiving funding from abroad and report interference in their activities by the public authorities.<sup>61</sup> In **Greece**, the Athens Museum of Queer Arts was denied permission to operate as an association in 2017, after a court ruling took place which included homophobic language.<sup>62</sup>

In **Russia**, LGBTI organizations have been put on the “foreign agents” list and fined for not voluntarily registering as such.<sup>63</sup>

In **Hungary**, **LGBTI** organizations can be founded and freely operated, but the government has created a hostile and threatening work environment for civil society in the past years. Attacks have included smear campaigns, financial investigations against human rights NGOs, including several LGBTQI organizations who were put under investigation by the Government Control Office (KEHI). A similar investigation process was conducted in **Macedonia**, against NGOs receiving funding from Open Society Foundations or USAID, including the LGBTI Support Center. Although the audit found no irregularities, the investigation was continued for another 6 months, greatly obstructing the Center’s work. In **Georgia**, LGBTI organizations can be registered freely, but human rights defenders fear potential future threats because the text of the Civil Code allows for denying registration if the organization’s aims are “opposed to the recognized moral”.<sup>64</sup>

LGBTQI organizations in **Bulgaria, Croatia, Lithuania, Montenegro, and Portugal** enjoy the right to freedom of association without discrimination. Interestingly in **Croatia**, the attacks on the rights of **LGBTIQ** people in 2013 during the referendum initiative to ban same-sex marriage has motivated more LGBTQI people to be more active and visible. The number of LGBTQI groups and activities have significantly risen since.

**10** Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

Even though **LGBTQI** organizations in Europe have been growing in number, only one-third receive external funding, ie. financial support from governments, foundations and NGOs.<sup>65</sup> Groups focusing only on the issues of specific subgroups within the LGBTQI umbrella have historically had less funding and fewer paid staff.<sup>66</sup> **Trans**<sup>67</sup> and **intersex**<sup>68</sup> groups generally have very little funding and very few paid staff. In Europe, 73% of **trans** groups operate on less than 10,000 USD per year. Few trans groups apply for government funding, and when they do, they are less likely to be successful.<sup>69</sup> **Intersex** groups receive almost no government funding.<sup>70</sup>

Government funding is most common in Northern (46%) and Western Europe (40%) and least common in Asian<sup>71</sup> and Eastern European countries (8%). Shrinking civil society space countries have low levels of government funding.<sup>72</sup>

In its smear campaign since 2014, the **Hungarian** government has labeled NGOs as being foreign agents governed by foreign interests. NGOs receiving more than 22.000 EUR from abroad now need to register as “foreign funded” NGOs. Previously, the government launched financial investigations against NGOs who were grantees of the EEA/ Norwegian Civic Fund, including several LGBTQI groups. In principle, **LGBTQI** NGOs can apply for state funding, but funding priorities largely exclude LGBTQI rights work, and only very little public money is distributed to LGBTQI NGOs.

In **Montenegro, Lithuania, and Portugal**, LGBTQI groups have access to some public funding, but have reported that funding is insufficient. In **Croatia**, public funding is available to LGBTIQ organizations, but since the 2015 elections, the government has placed severe limitations on funding for civil society. Politicians have also used hateful rhetoric towards civil society and LGBTIQ organizations specifically. In **Estonia**, public funding is freely available to LGBTI groups, but a recent example from a city council (see under [Cases](#)) highlights that funding can be withdrawn in a discriminatory manner. In **Macedonia**, LGBTI groups have very limited access to public funding. In **Bulgaria**, no public funding is available for LGBTI NGOs.

**11** Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

Attacks, harassment, and intimidation of **LGBTQI** human rights defenders by state and non-state actors continue to be prevalent, both offline and online.<sup>73</sup> In 2017, the **Armenian trans** organization RightSide NGO was harassed by a member of the Yerevan City Council, and its beneficiaries were physically attacked by an unidentified man. The police and the General Prosecutor closed the case without further explanation. In 2016 and 2017, the offices of several **Polish LGBTQI** groups were attacked, with slogans such as “white power” and “no queering” written on their doors and men trying to enter the premises.<sup>74</sup> In the **Czech Republic**, a white supremacist website published the names and addresses of many LGBTQI and Roma rights activists.<sup>75</sup> In **Montenegro**, LGBTI groups and activists are generally protected from violence, but in some cases attacks against office spaces were not adequately sanctioned. There are no specific protective measures in **Croatia, Estonia** or **Macedonia**.

In **Serbia**, a recent positive development is the establishment of local networks in seven cities, consisting of local authorities, including the police and civil society; these are in place to prevent violence and discrimination against LGBT people.

In **Hungary**, it is increasingly difficult to find venues that would welcome LGBTQI events. Several such cases were referred to the Equal Treatment Authority, which found discrimination. In **Georgia**, LGBTI groups have been discriminated against when trying to rent office spaces.

**12** Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

**LGBTQI** NGOs continue to report numerous obstacles in being consulted by policy and decision makers. These include a lack of information, a lack of rules on what consultations would look like, a lack of political will to listen to civil society, tight timelines, a lack of transparency about who is consulted, cutting of funds, and a lack of trust between state and civil society.<sup>76</sup> In **Estonia**, the involvement of LGBTI groups in the policy making process is often dependent on the willingness of the public servant responsible. In **Macedonia**, the new government has been inviting LGBTI groups and activists to consultations, but in light of the lack of procedures in place, this is done on an ad hoc basis. In **Hungary**, involvement and consultation are severely limited by the government failing to publish draft laws as part of compulsory public consultations, or one-day deadlines for input. The LGBT Working Group of the government's Human Rights Roundtable involves LGBTI groups, but their recommendations are often left unanswered or are rejected.

As a positive example, LGBTQI groups in **Croatia** have been consulted and involved effectively, but only until 2015. Representatives of LGBTQI groups have been appointed as members of governmental bodies or working groups, including on life partnership or legal gender recognition. In **Lithuania**, LGBT rights experts have been consulted on the issues of hate crimes and legal gender recognition. However, some authorities are more open for consultation than others. In **Montenegro**, the law ensures that NGOs can participate in law and policy making processes. LGBTI groups have been part of a governmental working group on registered partnership. In **Serbia**, cooperation between the state and LGBT groups has recently improved. For instance, LGBT organizations were included in the drafting of the Anti-Discrimination Strategy and Action Plan 2014-2018.

## CASES

### **Bosnia and Herzegovina**

“When it comes to LGBTI organisations, main holders of activism and advocacy for human rights of LGBTI persons, freedom of association feels more like a privilege that should be earned, and not a constitutional right.” Sarajevo Open Center, Bosnia and Herzegovina

### **Estonia**

In 2018, two applications of SevenBow, the main organizer of LGBT film festival Festheart, were recommended by the Rakvere cultural commission to deserve the maximum funding amount, and were submitted to the Rakvere city council. The council reduced one of the grants five times, without any justification, having fully accepted all the other recommendations of the commission. The council members who belong to the Conservative People’s Party of Estonia publicly confirmed in the media that the decision was taken on their initiative, because they believe that the film festival and the concert series are so-called “gay propaganda”, not cultural events.

### **Georgia**

On May 21, 2016 the following threatening Facebook post was shared on the internet: “Where is the main office of LGBTI persons in Tbilisi? Hey people, let’s go there and paint it in different colors... Let’s set the date and take this thing seriously.” The user was sharing this post with 8 other people and in comments people wrote: “Let’s buy some brooms”, “Let’s take oil and teach them what are the purposes of the human body parts” etc. WISG reported the post to the police, as well approached the Public Defender’s Office. The police established that there were no elements of crime and the investigation was cancelled.

## CHAPTER 3

# Freedom of expression and peaceful assembly

### Regional and international human rights standards

The YP+10 includes establishing Principle 36 on the right to the enjoyment of human rights in relation to information and communication technologies, setting out that secure digital communications, including the use of encryption, anonymity and pseudonymity tools, are essential for the full realisation of human rights, including freedom of opinion, expression, peaceful assembly and association.



As reported by ILGA-Europe in May 2018, freedom of expression is limited in two member states. In **Lithuania** and **Russia**, the government has put in place anti-propaganda, censorship, or similar laws at national or local level that limit freedom of expression. In several other countries, governments have taken more subtle steps to intimidate LGBTQI people and organizations and limit their right to freedom of expression.

Freedom of assembly is currently limited in 13 states.<sup>77</sup> In these countries, laws, policies or practices have restricted the full exercise of the right to free assembly, and LGBTQI public events are either obstructed in some way or not sufficiently protected.

**13** Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

There have been no limitations of the right to freedom of expression in **Bulgaria** or **Portugal**. The **Georgian** state does not hinder the right to freedom of expression of LGBTI people, LGBTI focused websites and pages are free to run. However, the government remains silent when LGBTI people suffer hate speech or hate crimes. In **Croatia**, despite the seeming lack of state obstructions, an unprecedented number of court decisions and lawsuits have been used to intimidate and silence LGBTIQ people and organizations. The related financial costs have been a huge burden to bear. These attempts have created an environment of censorship and fear, severely affecting freedom of expression and assembly.

Similarly in **Hungary**, there is no direct hindering of this right. However, the government has completely monopolized public media and it is nearly impossible for LGBTQI organizations to appear on such outlets. In **Macedonia**, access for LGBTI groups to public media is very limited. When LGBTI people are featured in the media, their portrayal is often negative. In **Poland**, LGBTI groups can freely distribute information, but get no state support to do so. However, some positive examples are documented at the local level or by the Polish Commissioner for Human Rights who has actively promoted LGBTI rights.

**14** Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

In **Croatia, Bulgaria, and Montenegro**, the right to freedom of assembly can be effectively enjoyed. In **Armenia**, no big LGBT events have taken place to date, but smaller trans events have been held without problems.

In **Bosnia and Herzegovina**, the Sarajevo Open Centre cancelled their 2017 IDAHOT march as the responsible ministry failed to answer their formal and lawful application for a permit, effectively banning the event. The Ombudsperson found a violation of the right to freedom of assembly. In **Serbia**, Pride marches between 2014-2018 took place without major incidents. However, organizers are not protected from threats and each year it is uncertain if the authorities will issue a permit for the march. In **Hungary**, Pride marches have been held since 1997, with severe attacks in 2007 and 2008. The counter-rallies have significantly decreased since 2013, but the police has kept refusing to allow the march to take place without fences, which many have interpreted as an attempt to hide the Pride march from the public eye. Organizers requested a last minute change of the route in 2017 to avoid the fences. The Pride was safe, but the person named as the main organizer was fined for the last minute change - the sanction was decreased by the court to a warning. In 2018, the police was more cooperative and the event took place largely without fences.

In **Lithuania**, organizers of the 2013 Baltic Pride faced several obstacles and engaged in strategic litigation to secure their right to assembly. First, the march was relocated by authorities from a central avenue to a remote location. Second, they banned the event by disagreeing about the time and place of the event. Both decisions were struck down by local courts and found illegal or disproportionate. As a result of successful litigation, LGBT events since the rulings, including Baltic Pride 2019, have been organized without any obstacles.

**15** Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

The **Georgian** state has repeatedly failed to protect participants of LGBTI themed demonstrations and events. In 2017, organizers canceled the Miss Transgender competition due to threats of violence on Facebook and no effective support from the state. Between 2012-2013 the state failed to protect IDAHOT marches and participants were brutally attacked. In 2014, organizers cancelled the march due to fears of violence and the lack of state protection. In 2015, three IDAHOT events were held in a strictly confidential manner. In 2016, the state failed to protect the marchers again. One activist who posted stencils in support of IDAHOT around the city, was arrested by the police. In 2017 the march had to be cancelled. In **Macedonia**, events during Pride Weekends have been regularly attacked by extremists, and police provided no effective protection. In a 2013 case, about 30 participants were attacked at an event (see more under Cases). Most were traumatized and two injured. There has not been any prosecution of the perpetrators to date. Police officers were drinking beer in a bar nearby while the attack was carried out. In **Montenegro**, a number of Pride events were also not protected by the police.

In **Poland**, police has effectively protected participants of LGBTI assemblies but there is no adequate sensitization of preparation of police officers in advance of such events. Officers have also failed to provide protection when counter-demonstrators used hate speech. In **Croatia**, police were trained in 2011, 2013, and 2016 on protecting LGBT persons in their exercise of this right. Pride Marches have been held continuously in Zagreb and Split and between 2014-2017 there were no counter protests or attacks. In 2014, a Pride March was also held in Osijek. Hate crimes however continue to be recorded during Pride season.

**16** Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

The 2009 anti-propaganda legislation in **Lithuania** has been used to limit the right to freedom of expression of LGBT persons, which was upheld by several court decisions. This has caused a chilling effect among online media outlets, who have started branding LGBT news items as suitable only for adults. In **Poland**, lawful limitations on freedom of expression in law have recently been used to curb the rights of LGBT people.

In 2012 the mayor of Ásotthalom, **Hungary** adopted a local decree to ban propagating same-sex marriage - this was later found unconstitutional by the Ombudsperson and was annulled by the Constitutional Court.

In **Montenegro**, some LGBTI gatherings, such as Niksic Pride 2015, have been banned for reasons of “public safety”. It is worrisome, that instead of providing ample police protection to the participants, the authorities decided to ban the march.

**17** Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

The **Georgian** government has failed to condemn rights violations against LGBTI people, including hate speech online or violent attacks against activists. Public authorities in **Lithuania** have also failed to condemn any interference with freedom of expression. In **Hungary**, no government officials have publicly condemned attacks against the Pride march or petitions aimed at banning it. On the contrary, public officials such as the mayor of Budapest, continue to condemn and distance themselves from the Pride march.

The **Montenegrin** LGBT strategy 2013-2018 obliges the government to tackle hate speech and encourage media to promote respect and diversity and avoid negative or stereotypical portrayals of LGBT people. Trainings for media representatives have been held, implemented by the state, in cooperation with the SOGI Unit. Positive portrayal in the media has increased.

## CASES

### Macedonia

Skopje Pride Week 2013 opened with a screening at the LGBTI Support Centre. A mob of 30 people gathered in the nearby street and approached the Centre shouting homophobic slogans and threats and throwing bottles, stones, and pyrotechnical materials at the Center. Two people suffered minor injuries and everyone was traumatized. The police officer who was in the Center tried to stop the attackers and was injured as a consequence. Meanwhile, his colleagues from outside, as shown in the security camera's recording, left their positions instead of trying to stop the attackers. LGBTI activists monitoring social media before the opening of the Pride Weekend, reported higher presence of hate speech and calls for violence against LGBTI people, adequately informed the police and demanded better protection. This yielded no results. Most of the police officers assigned to protect the participants, were drinking beer in the nearby café at the time of the attack. The surveillance recordings clearly show the identities of the perpetrators, but no one has been arrested or prosecuted to date.

### Poland

During the 1st Equality March in Częstochowa in July 2018 two participants were carrying a rainbow flag on which they depicted the Polish state symbol - the white eagle. After receiving a complaint from one of the counter-demonstrators, the Minister of Interior and Administration tweeted about the case, stating that there will be a formal investigation. Immediately after publishing this comment, one of the district prosecutor's office in Częstochowa launched a formal investigation into a possible crime of slandering Polish symbols. These actions were met with criticism by independent media, various NGOs and citizens. For example, KPH prepared a special frame to be added to profile pictures on Facebook with the slogan "The rainbow does not slander", which immediately went viral. Many people signed a petition to the Ministry. The actions of the Ministry and prosecutor were regarded as a way to threaten LGBT people and discourage them from participating in public life and expressing their identity freely.

## CHAPTER 4

# Right to private and family life (focusing on trans and intersex specific issues)

### Regional and international human rights standards

The **European Court of Human Rights** has held that the freedom to define one's gender identity is a fundamental aspect of self-determination (*Van Kück v. Germany*)<sup>78</sup> ; that a person's gender identity is one of the most intimate areas of a person's private life (*YY v. Turkey*)<sup>79</sup> ; and that requesting infertility as a requirement of legal gender recognition is a violation of the right to private and family life (*A.P., Garçon and Nicot v. France*).<sup>80</sup>

In 2013, the **UN Special Rapporteur on torture, cruel, inhuman or degrading treatment or punishment** affirmed that the forced sterilisation of trans people and non-consensual, medically unnecessary surgeries on intersex children amount to torture and ill-treatment.<sup>81</sup>

In April 2015, the **PACE** adopted its resolution on **Discrimination against transgender people in Europe** and inter alia, called on Member States to ensure legal gender recognition is ensured on the basis of self-determination. It also called for the inclusion of a third gender marker option.<sup>82</sup>

In October 2017, the **PACE** adopted its resolution on **Promoting the human rights of and eliminating discrimination against intersex people**. The resolution clarifies state obligations with regards to the right to legal gender recognition of intersex people.<sup>83</sup> It also called on states to consider making the registration of sex on birth certificates and other identity documents optional for everyone.

The 2017 **YP+10** establishes Principle 31 on the right to gender recognition<sup>84</sup> and two new state obligations relating to the right to privacy (Principle 6).<sup>85</sup> Principle 31 reaffirms the right to legal gender recognition on the basis of self-determination; calls for the availability of a multiplicity of gender options; urges states to abolish mandatory sex registration in identity documents such as birth certificates, identification cards, passports and driver licences, and as

part of someone's legal personality. The additional state obligations on Principle 6 relating to the right to privacy, call on states to ensure that requirements for individuals to provide information on their sex or gender are relevant, reasonable and necessary as required by the law for a legitimate purpose in the circumstances where it is sought, and that such requirements respect all persons' right to self-determination of gender; and ensure that changes of the name or gender marker, as long as the latter exists, are not disclosed without the prior, free, and informed consent of the person concerned, unless ordered by a court. Additional state obligations relating to Principle 17 on the right to the highest attainable standard of health call on states to ensure access to the highest attainable standard of gender affirming healthcare, on the basis of an individual's free, prior and informed consent; ensure that gender affirming healthcare is provided by the public health system or, if not so provided, that the costs are covered or reimbursable under private and public health insurance schemes.

On 18 June 2018, the **World Health Organisation** published **ICD-11**, in which all trans-related diagnoses were moved from the mental disorder chapter to a newly added chapter on conditions related to sexual health.<sup>86</sup> This means that being trans is no longer considered a psychiatric disorder.

In October 2018, the **European Committee of Social Rights of the Council of Europe** found that legal requirement for transgender persons in the Czech Republic to undergo medical sterilization in order to have their gender identity recognized seriously impacts a person's health, physical and psychological integrity, and dignity. The Committee emphasised the importance of the right to give free consent when accessing medical treatment.<sup>87</sup>

Human rights standards set by the Council of Europe and the UN have clearly established that legal gender recognition (LGR) must be quick, transparent, accessible and based solely on the self-determination of the person concerned. Yet most European states require **trans** people to undergo invasive medical examinations, tests, interventions and procedures when accessing legal gender recognition. 34 states still require a mandatory psychiatric diagnosis, 14 require sterility, 27 require medical interventions and 21 require divorce.<sup>88</sup> Such prerequisites violate a person's dignity, physical integrity, right to form a family, and right to be free from degrading and inhumane treatment. These requirements, or the lack of legislation altogether, mean that most trans people are stuck with documents that do not match their gender identity.

In recent years, a number of states have reformed their legal gender recognition procedures to ensure compatibility with human rights standards. **Malta** was the first European country in 2015 to put in place a legal gender recognition procedure that is a quick, transparent, and accessible administrative process and based on the self-determination of the person concerned. Five other countries, **Denmark** (2014), **Ireland** (2015), **Norway** (2016), **Belgium** (2017), and **Portugal**<sup>89</sup> (2018) also provide for a procedure on the basis of self-determination. In **Belgium**<sup>90</sup> and **Denmark**<sup>91</sup> there are waiting periods of three and six months, so the process is not quick. Others states have also engaged in law reform, but failed to fully uphold human rights standards. For instance, **Greece** adopted a new legal gender recognition law in 2017, which abolishes the sterility requirement, but trans people need to be unmarried and appear before a judge before changing their name or gender.<sup>92</sup> Although a growing number of member states are engaging in law reform to improve national laws on LGR, most are still lagging behind Council of Europe standards.

Worryingly, even where legal gender recognition is provided on the basis of self-determination, trans minors often face additional barriers. In **Greece**, minors aged 15-16 must appear before a medical commission.<sup>93</sup> In **Ireland**, young people aged 16-17 had to fulfil additional requirements, but this will be revoked later this year.<sup>94</sup>

The World Professional Association for Transgender Health (WPATH) affirms that a very high proportion of trans teenagers continue to live in their self-determined gender after adolescence.<sup>95</sup> As trans people come out at an increasingly young age, it is crucial for the social recognition and acceptance of their identities, as well as for their self-esteem and personal development, that they are not excluded from legal recognition and, as a consequence, from education and employment opportunities.



As a positive development, a number of European countries have started introducing third option gender markers as part of legal gender recognition processes.<sup>96</sup> Domestic and international human rights bodies have also called for this option or the abolishment of mandatory sex registration.<sup>97</sup> The ability under national law to obtain recognition with an “X” gender marker option would bring relief to many trans people, for example those trans people who are still in the process of transitioning and who may not wish to specify their gender, as well as intersex people who may identify as both male and female, and people who identify differently, such as gender fluid or non-gendered.<sup>98</sup> Where third option gender markers are introduced, it is essential that they are not forcibly imposed on intersex or trans people, but instead, made available as an option for everyone. It is also crucial that they are available on the sole basis of self-determination.<sup>99</sup>

The majority of trans people (73%) participating in the FRA survey did not identify within the gender binary spectrum.<sup>100</sup> The majority of respondents (64%) to the largest non-binary survey (895 total respondents) to date in Europe, carried out by the **Scottish** Trans Alliance, also welcomed an option for a gender marker besides male or female.<sup>101</sup> A trans focused survey in **Bosnia and Herzegovina** also found that two-thirds of respondents wanted a third option gender marker.

**Denmark’s** 2014 gender recognition reform allows people to apply for a passport with an “X” gender marker.<sup>102</sup> In 2017, **Malta** introduced third option gender markers that people can access on the basis of self-determination and through a simple administrative procedure.<sup>103</sup> In March 2016, the **Scottish** government announced the recognition of gender identities other than male or female in forthcoming legal reform to be enacted by the Scottish Government.<sup>104</sup> In June 2018, a **Dutch** court ruled that binary options on official documents are too restrictive and should be revised.<sup>105</sup> In July 2018, the **Irish** government announced that their legal gender recognition law reform will be inclusive of non-binary trans people and offer a third option as well.<sup>106</sup>

In October 2017, the **German** Constitutional Court issued a judgment in the case of an intersex applicant, ordering the parliament to recognize the right to privacy of people who do not identify as male or female.<sup>107</sup> The Court called for the introduction of a third gender option or the abolishment of sex registration altogether. In August 2018, the new draft bill was presented. Unfortunately, the bill fails both intersex and trans people: it requires intersex people to present a diagnosis of disorder of sex development (DSD) and completely excludes non-binary trans people. It has been widely criticized by local and regional trans and intersex organizations.<sup>108</sup> In June 2018, the **Austrian** Constitutional Court published a similar judgment, in the case of an intersex

applicant. The Court ruled that the authorities have to provide for an “X” option, leave the sex category empty, or delete it altogether.<sup>109</sup>

**Intersex** people, including those who have been subjected to a violation of their bodily integrity through surgeries and other medical treatments, may have been assigned a sex/gender at birth that does not fit their gender identity. Some may therefore want to access legal gender recognition and change their gender marker in their documents. Very often the only available LGR is for trans people. However, an intersex related medical diagnosis is most often considered an exclusion criterion for a trans related diagnosis, leaving these intersex people without any possibility to change their gender marker in countries that require a trans diagnosis for LGR.<sup>110</sup>

**19** Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

Domestic courts, regional and international human rights mechanisms are increasingly calling for the full abolition of gender markers on official identity documents, and the curtailing of collection of gender and sex information wherever possible in public records.<sup>111</sup> There is an ongoing need for aggregate data on sex and gender as part of gender equity data monitoring by states. However, sex and gender data, when collected for these purposes, should be collected voluntarily and on the basis of self-determination only, with at least one additional coding option in addition to the possibility for the code to be marked unspecified (e.g. X), and stored only in aggregate in fulfillment of the right to privacy.<sup>112</sup>

In **Croatia**, data on a person’s gender assigned at birth is stored in the Birth Registry, but if gender is legally changed this information remains confidential and is not seen in the issued birth certificate. In **Estonia** and **Cyprus**, information about a person’s gender assigned at birth remains unchanged on their birth certificate, even after legal gender recognition. The **Estonian** Chancellor of Justice found that this is justified and cannot be considered too cumbersome, as it allows one to link the person to their activities and legal relations prior to LGR, and birth certificates are otherwise not used for identification. The data is also stored and handled safely, allowing only persons with appropriate rights to access them, and logging every access electronically. In **Finland**, the law does not include gender identity or gender history as sensitive data. There is a lack of proactive measures that would provide protection.

**20** Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

**21** Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

Of the 47 member states, 41 have some legal gender recognition procedure in place and in 31 this is set out by law. The law in **Bulgaria** recognizes the right of a person to change their name or gender marker, but there are no procedures in place. In **Cyprus**, LGR is an ad-hoc procedure, not codified into law. Legal gender recognition is largely unregulated in **Georgia**. In **Hungary**, from the early 2000s there has been an uncodified practice allowing for LGR without medical interventions. In 2016, the Commissioner for Fundamental Rights called for the adoption of legislation codifying the procedure. The government suspended LGR for over a year, meanwhile several trans people turned to the European Court, claiming that this suspension violated their human rights. The case is still pending. In December 2017 a new government decree on registries was adopted, which contains a brief provision on legal gender recognition. LGR was briefly resumed, but suspended once again in June 2018. The Ministry of Human Capacities argues that the current practice is not in line with data protection legislation, in particular with the EU General Data Protection Regulation (GDPR). In **Lithuania**, the 2001 Civil Code includes the right to change one's gender marker, but the enabling legislation has never been adopted. In *L. v. Lithuania* (2007) the European Court of Human Rights found that this was a violation of the right to private and family life. In 2014 the Committee of Ministers applied the enhanced supervision procedure, but Lithuania has still not remedied the situation.

There is no law or administrative procedure regulating LGR in **Macedonia** and **Serbia**. Trans people in **Macedonia** have been able to change their names to one associated with a different gender, but only three people have been able to change their gender marker. Seven other cases are pending at the national courts, and one at the European Court. LGR is not clearly regulated in **Montenegro**, but the law formally gives the rights to LGR to trans people.

Worryingly, the Ministry of Internal Affairs has interpreted the law as requiring sterilization. Trans people can change their name without any restriction. NGOs have presented a draft law to regulate LGR in 2016. Requirements of legal gender recognition across Europe run contrary to human rights standards established by the Council of Europe and the UN. In **Armenia**, trans people are required to get a psychiatric diagnosis for name change and be sterilized to access legal gender recognition. In **Bosnia and Herzegovina**, LGR requirements are a diagnosis, hormonal therapy, and sterilization. In **Croatia**, LGR is conditional upon a psychiatric diagnosis and a social worker's statement and although not legally required, a "real life experience" period. In Bulgaria, LGR needs to be approved by a court, but its requirements are not set in law. Some judges have denied LGR requests, others ordered trans people to start hormonal therapy before changing their gender marker. In **Cyprus**, LGR requires irreversible surgical procedures, including sterilization. Civil society documented that less than half of trans people in **Estonia** want to transition medically - most just want legal recognition. Yet, LGR is conditional upon the decision of a committee of medical experts and hormonal therapy. The process takes an average of six years. In **Finland**, trans people are required to get a psychiatric diagnosis, undergo HRT and sterilization, demonstrate a year of "life experience" in their self-determined gender, to access LGR. Legal gender recognition is largely unregulated in **Georgia**, but in practice trans people are required to undergo HRT and sterilization to access it. In **Hungary**, requirements are a psychiatric diagnosis, expert opinion of a gynaecologist/urologist, being single, and over 18. Until 2017, the only way for trans people to change their gender marker in **Lithuania** was to undergo sterilization abroad, pay for the procedure themselves, and go to court in Lithuania and request LGR. As a positive development, courts started granting LGR without sterilization in April 2017, and 18 trans people have been able to change their gender markers so far (see more under Cases). The requirement in **Montenegro** is sterilization. Forced sterilization is a requirement of LGR in **Serbia**, along with humiliating and invasive procedures such as forensic exams or measurements of genitalia. In **Poland**, LGR is available and conditional upon a psychiatric diagnosis and divorce. Even though HRT and surgeries such as mastectomy are not required, they increase the chances of receiving a diagnosis and a positive judgment at the court. Sterilization is not a requirement and is strictly prohibited before LGR.

It is alarming that some countries require trans people to undergo invasive interventions but these are not available in the country and/or not covered by public insurance. For instance, most gender affirming care is not available in **Bosnia and Herzegovina** and **Lithuania**, so trans people have to access them abroad, covering the costs on their own.

None of the required interventions are provided by the healthcare system or covered by public insurance in **Georgia**.

Divorce is not a requirement in **Croatia**, but since both marriage and life partnership are determined according to the partners' legal gender, the union could be considered annulled after change of legal sex/ gender marker. The same applies in **Estonia** if the person was married before LGR.

Following legal gender recognition, it is essential that key documents, such as education and work certificates, reflect the person's correct name and gender marker. There are no measures in place to ensure the person's name and gender marker are changed in such non-state documents in **Croatia, Cyprus, Montenegro, and Poland**. Educational institutions in **Estonia** must reissue certificates to reflect the person's self-determined gender. In **Finland**, educational institutions and employers are recommended by the state to reissue certificates after someone has changed their gender marker. In **Hungary**, documents, including diplomas, work permits, and passports are duly changed after LGR.

LGR is not available to **asylum seekers** in **Sweden** and it is also not an option to have their temporary identity card (LMA card) reflect their self-determined name and gender. This exposes trans asylum seekers to further discrimination and violence. In one case, the authorities changed a trans woman's LMA card to ensure her safety, but such practice is not regulated. Those with **refugee status** face painfully long waiting periods before being able to change their gender marker. Some have reported facing transphobic and racist treatment when trying to change their information after LGR, in banks for instance. In such cases, trans refugees did not take legal action, for fear of losing their refugee status.

Trans youth in **Portugal** need parental consent and a medical report to access LGR. This is despite 23,000 signatures that trans activists handed to the Portuguese Parliament earlier in July. Minors under 16 are completely excluded.<sup>113</sup> Trans youth are not able to access legal gender recognition in **Finland**. In **Poland**, legal gender recognition is available regardless of age. If a person is under 18 years of age, they have to be represented in court by the curator - a legal representative assigned by the court.

**22** Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

In 42 countries, trans people who have undergone legal gender recognition, can marry a person of the opposite sex.<sup>114</sup>

## CASES

### **Bulgaria**

The Sofia City Court (SCC) gave two completely controversial judgements concerning the recognition of the gender of trans people. In the first judgment the SCC ruled that trans people cannot be obliged to undergo surgery, as this would be coercion or “blackmailing”. The Court also stated that requiring such a surgery might be considered under the Criminal Code as inflicting grievous bodily injury. At the same time, the SCC ruled in another judgment that trans people need to prove before the court their serious and irrevocable decision and that they can do this by starting hormonal therapy. This judgment was upheld by the Bulgarian Supreme Court.

### **Georgia**

Applicant D and K, both trans men, applied for legal gender recognition. Both of them were refused by the Georgian authorities, who argued that they must undergo gender reassignment surgery. Such surgeries are not provided by the state healthcare system or required by law. With their documents featuring their gender assigned at birth, both men have been subjected to humiliating treatment and verbal abuse when they have shown their IDs, for instance at doctors’ offices or at the bank. They have been unable to find a permanent job and applicant D has faced difficulties raising his children. The two cases are currently pending at the European Court, communicated on 6 September 2018 as joint applications. Both applicants have argued that their right to be free from torture and their right to respect for private and family life were violated - these will all be examined by the Court.

## Lithuania

Two judicial decisions of 7 April 2017 and 2 May 2017 by the Vilnius City District Court have changed the course of domestic jurisprudence of granting legal gender recognition. The cases concerned two trans individuals, who had not undergone irreversible gender affirming surgeries (implying sterilization) as this medical procedure is not available in Lithuania. Both applicants had obtained the psychiatric diagnosis of “gender dysphoria” (ICD-10 code F64.0), started hormone replacement therapy, undergone mastectomy and transitioned socially. Both applicants requested the civil registry to change their personal identification documents, but were refused due to the absence of the relevant national legislation. The applicants turned to the court, which granted both of them the right to change their gender marker and personal identification number in their IDs. After these positive developments, personal identity documents were changed for 16 trans individuals without the requirement of sterilization. Based on this jurisprudence, LGR requirements at the moment are a psychiatric diagnosis and self-identification as belonging to the opposite gender. Nevertheless, LGR could still be sanctioned only by the court’s decision as no administrative procedure is in place. Furthermore, the process is not based on self-determination and also fails to recognize non-binary trans people.

## **Montenegro**

In March 2017, V.M., a trans woman, was denied the right to change her first name by the Ministry of Internal Affairs. After submitting her request, she received a phone call from the officer processing her case, who tried to convince her to withdraw the request for a “female name” and choose a gender-neutral one. Queer Montenegro submitted a report to the Protector, who established discrimination and ordered the Ministry to ensure V.M. can change her personal name as she pleases, without requesting her medical documentation to confirm her gender affirming process. The Ministry had cases of trans people changing their personal name without any restrictions afterwards, but never contacted V.M. Those who managed to change their name were all trans men, who often face less difficulties in Montenegrin society.

## **Poland**

In December 2013 (case file no. I CKS 146/13) the Supreme Court stated that if a trans person undergoing a legal gender recognition procedure has children, these children should also participate in the proceedings as defendants. This decision of the Supreme Court was criticized by NGOs and the Commissioner for Human Rights. The Commissioner decided to join one of the legal gender recognition proceedings in the case of a trans person with children. Thanks to the Commissioner’s intervention the Appellate Court in Lodz decided (in its judgement of December 2017) not to follow the Supreme Court’s judgment. Eventually, the Appellate Court in Lodz recognized the legal gender of the claimant without the need to involve the claimant’s children.



## Sweden

“I lost 5kgs in less than two weeks just trying to get my bank documents changed to reflect my new legal gender marker and names. I went to different offices where I was met with subtle ridicule, suspicion and humiliation. In most cases the personnel were lethargic in handling my case. I had to call several times and on three different occasions my sensitive documents were reportedly lost and I had to resubmit them. It took me three months before I could have full access to my bank account. All my trans life I had never felt so helpless.”

Testimony by a trans man with refugee status

## CHAPTER 5

# Right to private and family life (excluding trans and intersex specific issues)

### Regional and international human rights standards

In Resolution 1728 (2010) the **PACE** called on member states to introduce registered partnership.<sup>115</sup>

In his 2011 report the **Council of Europe Commissioner for Human Rights** recommended that states grant the same rights and benefits to same-sex couples as to others; make adoption available to same-sex couples and LGBT individuals; recognize the parental rights of same-sex parents and trans people after their legal gender recognition; and allow access to LGBT people to assisted reproduction.<sup>116</sup> In 2017 the Commissioner urged European countries to introduce same-sex partnerships “at the very least” and “seriously consider” opening up civil marriage to same-sex couples.<sup>117</sup>

In 2014 the **European Court of Human Rights** issued its judgment in the *Oliari and others v. Italy*, asserting that the absence of a legal framework recognizing same-sex relationships violates the right to respect for private and family life, as provided by the European Convention of Human Rights (ECHR) in article 8.<sup>118</sup>

The 2017 **YP+10** includes additional state obligations Principle 24 on the right to found a family.<sup>119</sup> These include the obligation to protect children from discrimination and violence due to the SOGIESC of their parents, guardians, or other family members; issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents; enable access to methods to preserve fertility without discrimination on grounds of SOGIESC, including before hormonal treatment or surgeries; and ensure that surrogacy, where legal, is provided without discrimination based on SOGIESC.

In June 2018 the **CJEU** ruled in the *Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* case that in the EU directive on the exercise of freedom of movement the term “spouse” is gender-neutral and may therefore cover the same-sex spouse of an EU citizen.<sup>120</sup>

There is a clear trend across Europe that a growing number of states are granting the opportunity to same-sex couples to have their relationship formalized as marriage or registered/life partnership.<sup>121</sup> In 2010, a mere five European countries allowed same-sex couples to marry, whereas in 2018 15 do so.<sup>122</sup> The number of countries where registered partnership is available has also increased from 15 to 22 and in the case of cohabitation, from 13 to 20. The extent of rights and responsibilities attached to marriage, registered/life partnership, and cohabitation of same-sex couples have also steadily increased.<sup>123</sup> For instance, there has been a significant rise in the number of countries allowing for joint adoption (8 to 17) and second-parent adoption (11 to 18).<sup>124</sup>

In stark contrast to these positive developments, there has also been backlash against rainbow families<sup>125</sup> in Europe, including legal restrictions, hate campaigns and harassment. A number of states have introduced a limiting definition of marriage in their constitutions (e.g. **Croatia, Georgia, Hungary, Latvia, Slovakia**). Some also limit or have considered limiting the definition of “family” (e.g. **Romania, Croatia**<sup>126</sup>, **Lithuania**<sup>127</sup>) in the same way, which affects not only couples but children of same-sex couples as well. It is worrisome that in some countries this step could be decided by referendum, such as most recently **Romania**.<sup>128</sup> In **Russia**, proposals have been made by the state to remove children from LGBTI parents.<sup>129</sup>

Overall, family rights still remain a major area of discrimination in Europe. Most European countries provide only partial protection to rainbow families and some offer no safeguards at all.<sup>130</sup> Same-sex partners can risk ending up in legal limbo.

On the basis of research in the past three decades, there is a clear scholarly consensus that living in a rainbow family does no harm to children.<sup>131</sup> Yet, when **LGBTQI** people decide to have children, they face a lack of adequate and equal rights, information on possibilities, and acceptance by society.<sup>132</sup> They also need to cope with additional financial burdens, as medically assisted procreation is often only available abroad and not covered by insurance. Adoption rights are in most European countries limited to married couples, and even if single individuals are allowed to adopt, they might not be preferred. The same applies for fostering.<sup>133</sup> Children in LGBTQ<sup>134</sup> families, without legal ties to all their parents, can risk growing up in fear and uncertainty. This can wrongly separate children from their parents in cases of divorce or the death of the only legally recognised parent. It can also result in denial of access to a partner’s or the children’s parents’

health insurance coverage, benefits, inheritance, and more.<sup>135</sup> LGBTQ couples also have limited access to foster care, medically assisted reproduction, or surrogacy, even in countries where these are offered to different-sex couples.<sup>136</sup> Rainbow families routinely face discrimination and difficulties in everyday life matters, such as filling out official documents that provide the categories “father” and “mother”, or getting family discounts in public places, such as pools. LGBTQ parents and children are also continuously forced into disclosing sensitive information about their family. Gaps in educational systems perpetuate this: school curricula in most countries do not mention rainbow families and some public libraries “hide” children’s books on the topic.<sup>137</sup>

It is increasingly common that more than two LGBTQI people come together to create a family, in order to become biological parents, avoid expensive and anonymous sperm donation, or simply because this is how they want to raise children and share parental responsibilities. Yet, there is no legal recognition for family structures with more than two parents. Lawmakers are currently discussing this option in **Denmark** and **the Netherlands**.

Rainbow families also face difficulty in exercising their freedom of movement, as a lot of countries do not recognize same-sex partners as family members. In 2012 the FRA documented that 30% of LGB people who live in another EU Member State and in a legally recognised same-sex partnership, experienced discrimination in accessing benefits or services on the basis of their relationship being same-sex.<sup>138</sup> Married same-sex couples often find themselves in a legal limbo when moving to a new country. This is particularly an issue if their new place of residence does not recognize their partnership legally, but it may also happen when same-sex marriage is legal in both countries.<sup>139</sup> The transcription of birth certificates is also a pressing issue for multinational rainbow families.<sup>140</sup>

**Trans** people are often forcibly deprived of the option of reproduction, as in many countries they have to be sterilized or undergo medical treatments that cause infertility, to access legal gender recognition (more information in Chapters 4 and 8). Regulations may also require trans people to get divorced before legal gender recognition (LGR), tearing apart families.

**18** Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

None of the 47 Council of Europe states criminalize same-sex sexual acts between consenting adults.<sup>141</sup> Consensual same-sex sexual acts were decriminalized in **Poland** in 1932, **Hungary** in 1962, in **Croatia** and **Montenegro** in 1977. The age of consent was equalized in **Hungary** in 2002, in **Croatia** in 1988. The age of consent is unequal in **Greece**: 15 for different sex couples and 17 for gay men.<sup>142</sup>

**19** Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

**Georgian, Lithuanian, Montenegrin** and **Polish** law provides for the protection of special or sensitive personal data, which includes "sexual life". In **Georgia**, disclosure of such information to a third party is a criminal offence. Yet, WISG has documented cases of such disclosure. The majority of victims refused to take legal actions, however. One particular issue was registered in the foster care system, whereby potential foster parents have access to information that the foster agency keeps about children, which may include information about their SOGIESC. In **Poland**, NGOs have expressed concern over data collection about same-sex partnerships and marriages conducted abroad (see more under [Cases](#)). **Croatian** NGOs are not aware that police or other authorities keep registries on sexual orientation, but there is no legislation or measure to prohibit this practice.

**23** Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

Cohabitation is recognized in 20 European states.<sup>143</sup> National legislation in **Croatia** confers rights and obligations on unmarried couples, both same-sex and different-sex couples. Following an amendment to the **Hungarian** Civil Code in 1996, same-sex cohabiting couples enjoy the same rights and obligations as different-sex couples, except in the field of assisted reproduction. The rights and obligations of unmarried couples remain largely unregulated under **Estonian** legislation. The **Polish** legal system does not regulate the rights and obligations of unmarried couples, including same-sex unions. The rights of cohabiting same-sex partners have been asserted in some court cases, but legal protection is not adequate or consistent.

**24** Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

Same-sex marriage is legal in 15 European states and registered partnership in 22.<sup>144</sup> Same-sex marriage has most recently been approved in **Finland, Malta, and Germany**.<sup>145</sup> In **Germany**, however, the status of intersex individuals with a blank gender marker is still unclear, as marriage is defined as available for two people of the different or same sex.<sup>146</sup> Life partnership for same-sex couples was introduced in **Croatia** in 2014 and up until the end of 2017, 238 partnerships had been concluded. The Registered Partnership Act was adopted in **Estonia** in 2014, making available such legal recognition for different and same-sex couples. However, the implementing provisions have not been adopted, causing problems for couples. Marriage is defined as a union between a man and a woman. Registered partnership was introduced in **Hungary** in 2009. Marriage has been defined as a union between a man and a woman since 2012. The rights and obligations of registered partners are equivalent to those of a married couple, except in parenting and taking the partner's name. In addition, registered partners have faced difficulties in enjoying their rights due to the lack of awareness or willingness of public authorities to apply the legislation (see under [Cases](#)).

In **Slovenia**, the bill to legalize same-sex marriage was adopted by the parliament in March 2015, but conservative forces managed to force a referendum on the issue.<sup>147</sup> It is worrisome that the bill was rejected and same-sex marriage was not introduced. Instead, same-sex couples can enter a civil union with rights similar to marriage.

**25** Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

There is no legal recognition of same-sex couples and families in **Bosnia and Herzegovina, Bulgaria, Georgia, Lithuania, Macedonia, Montenegro, Poland, and Serbia**. In **Bosnia and Herzegovina** and **Serbia** two-thirds of LGB people would want to be in a registered partnership if this was an option. The **Serbian** Anti-Discrimination Strategy and a related Action Plan (2014-2018) foresaw the drafting of a model law which would regulate same-sex partnerships, but this activity has not been implemented to date. Same-sex couples face discrimination related to adoption, property, housing, inheritance, pension, etc.

Constitutions in **Bulgaria, Croatia, Georgia**<sup>148</sup>, **Lithuania, Montenegro, Hungary, and Poland** define marriage as a union between a man and a woman.<sup>149</sup> **Bulgaria** scored the lowest in the Eurobarometer research on same-sex marriage support: only 17% of the population support it. In 2011, the **Lithuanian** Constitutional Court stated that the constitutional concept of family life does not mean a lack of protection for families not founded on the basis of marriage. In 2016 however, the parliament voted in favor of a constitutional amendment that clarifies that family does in fact not include same-sex couples. The amendment has not been adopted yet. In 2017 the parliament voted down a proposal to recognize unmarried different-sex and same-sex couples. In **Poland**, proposals to legally recognize same-sex partnerships have been repeatedly submitted to the parliament in the last 15 years, but to no avail. Same-sex couples have no means to address practical issues related to the social reality in which they live, including taxes, health insurance, inheritance, adoption, and social security benefits. On a positive note, the Polish constitution does not contain an explicit ban on same-sex marriage. The constitution regulates only one form of marriage, that between a man and a woman, declaring that marriage in this form deserves special protection from the state. Such wording however does not exclude the possibility of establishing other forms of marriage in law. The **Montenegrin** National LGBT Strategy 2013-2018 obliges the state to prepare the draft Law on Registered Partnership and recognize same-sex partnerships. The draft law, prepared with the input of LGBTI organizations, will be discussed in parliament in December 2018.

The law in **Bulgaria** recognizes marriage concluded abroad, but recognition of same-sex couples has been refused in practice until a recent positive court judgment in June 2018.<sup>150</sup> In **Poland**, same-sex marriage or registered partnerships concluded abroad are not recognized. Anecdotal evidence also suggests that civil servants have held back official documents when Polish same-sex couples wanted to marry abroad.<sup>151</sup> Same-sex partnerships are not recognized in **Armenia**, but interestingly the Ministry of Justice published a statement recognizing the validity of marriages formed abroad. The statement did not discuss the gender of the spouses. Theoretically, this could mean recognition of same-sex marriages or partnerships.

**26** Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

Automatic co-parent recognition, i.e. that a child born to a same-sex couple is recognised from birth as the child of both partners, is only available in 11 European countries, most recently in **Finland** (2018).<sup>152</sup> In **Croatia**, the Family Act sets out that parental responsibility and adoption of a child are considered primarily in the child's best interest, without discrimination based on SOGI. Same-sex couples cannot adopt, but the institute of partner-guardianship with equal rights and obligations to second parent adoption exists. Nevertheless, same-sex couples and their children continue to face discriminatory judiciary practice and the Croatian government continues to exclude life partners from new policies and law proposals. In **Poland**, the primary consideration when taking decisions concerning the relationships between a parent and a child is the child's best interest, but negative opinions on LGBT parents are sometimes used in courts as an argument against custody over a child.

**27** Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

Joint adoption is available for same-sex couples in 17 European countries, and second-parent adoption in 18.<sup>153</sup> Since legal changes in 2016, same-sex couples have access to joint and second parent



adoption in Portugal. Adoption is legally possible for single people in **Bosnia and Herzegovina**, but the procedure is so difficult that few decide to try. In **Bulgaria**, single persons or married couples are allowed to adopt. Joint and second parent adoption are not allowed in Bulgaria. In **Croatia**, same-sex couples cannot legally adopt. In **Estonia**, second parent adoption is legal for same-sex couples, but joint adoption is only allowed if the child has had some relationship with the couple. In **Hungary** and **Poland**, single persons are also allowed to adopt, but the preference is given to married couples. In **Lithuania** and **Montenegro**, married couples can adopt and single-parent adoption is only allowed in “exceptional circumstances”. NGOs are not aware of any LGBT person who has exercised the right to adopt in either country. However, the Ministry of Labour and Social Welfare confirmed that there is no prohibition for an LGBT person to adopt a child. Prior to 2010, anyone could adopt in **Macedonia**, regardless of their marital status. The law was then amended and adoption is now limited to individuals who are married. In **Serbia**, more than half of LGB people reported that they would want to adopt a child. By law however, lesbian women are not allowed to adopt.

**28** Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

Medically assisted insemination is available for same-sex couples in 13 countries and for single individuals in 26. In practice however, single LBQ women are rarely able to exercise this right. Many lesbian couples access medically assisted reproductive treatment abroad, which places significant financial burdens on them and also leads to difficulties in registering their child adequately.<sup>154</sup>

Same-sex couples and any women, regardless of sexual orientation or marital status, have been able to access assisted reproductive techniques in **Portugal** since 2016. Artificial insemination is available for single women and unmarried different sex couples in **Estonia**. There are no specific measures in place for unmarried lesbian couples, but artificial insemination is accessible to all single women. There have been no complaints about discriminatory treatment.

Assisted reproduction is not legally available to lesbians in **Hungary**. The practice of adoption has been inconsistent and discriminatory, as affirmed by the Commissioner for Fundamental Rights. In **Macedonia** and **Montenegro**, married and single women and women in cohabitation can access IVF, but the law does not protect against discrimination on grounds of SO. In **Poland**, lesbians applying for IVF as single women could access IVF, but since the adoption of the new law in 2015 clinics have been refusing the right to use their services for lesbian couples and single women. In **Serbia**, lesbian women are not allowed to access IVF. The law in **Bosnia and Herzegovina** and **Lithuania** only allows legally recognized couples to access fertility treatment, and therefore same-sex couples are excluded. In **Croatia**, medically assisted fertilization is available to married and partnered women or single women, who have been diagnosed with infertility. There are no recorded cases where this right was exercised by LBQ women.

## CASES

### Bulgaria

The Private International Law Code of Bulgaria recognizes marriage concluded abroad. In 2017, a Bulgarian lesbian couple, who had got married in the UK, received a refusal to reflect their married status on their personal registration cards. The municipality based their decision on the fact that the couple were two women. The couple were thus deprived of inheritance rights, tax benefits, matrimonial shared property, and adoption rights. The decision of the municipality was upheld by the first instance court. The case is currently pending before the Supreme Administrative Court in Bulgaria. Later in 2017, the couple received a refusal from the Centre for Assisted Reproduction for financing an IVF procedure. The Centre argues that the reason for the refusal is that two women cannot have children in a natural way. The couple appealed and the court judgment is pending.

### Estonia

For three years the case of Kristiina and Sarah Raud has been making headlines. Estonian, Kristiina Raud, and American, Sarah Raud, got married in the US in 2015 and decided to move to Estonia. Since a foreigner can apply for a residence permit upon marrying an Estonian citizen, Sarah Raud applied for it in 2017. The Police and Border Guard Board refused to issue a residence permit, as their interpretation of the Aliens Act does not foresee issuing residence permits to spouses of the same sex. On April 16, 2018 the Supreme Court of Estonia announced their decision not to process Sarah's appeal, which meant that the district court's ruling, according to which the state of Estonia does not recognize Sarah and Kristiina's marriage as grounds for issuing a permanent residence permit, will remain in force.

## Hungary

In 2015 two surviving registered partners turned to the legal aid service of Háttér Society complaining that they were ordered to pay inheritance tax, even though spouses have full inheritance tax exemption.

Following the intervention of Háttér Society the tax authority revoked both decisions and returned the already paid inheritance tax. Since the two separate, but very similar cases made it likely that the problem was of systemic nature, Háttér Society requested the National Tax and Customs Administration (NTCA) to reconsider all similar cases. Rather than reviewing their prior practice, the NTCA responded that in consultation with the Ministry of National Economy they arrived to the conclusion that registered partners are not entitled to any tax benefits afforded to spouses. Háttér Society turned to the Commissioner for Fundamental Rights, who found the practice unlawful and discriminatory.

A lesbian couple from the Southern Hungarian city of Pécs decided to become parents via adoption. Since Hungarian legislation does not allow joint adoption for same-sex couples, they decided that one of them will legally apply to adopt. From the beginning of the procedure they were very open about their relationship, and the psychological assessment found that they are particularly suitable to become parents. In a few months' time they were offered a 16-month-old girl. The adoption procedure was already very advanced when one day the child protection service called them and said: due to an intervention from "above" the adoption procedure had to be stopped. The couple turned to the Commissioner for Fundamental Rights, who found that several fundamental rights were infringed in the procedure, such as the right of the child to protection and care and the right to fair procedure, and as a whole the procedure amounted to discrimination based on sexual orientation.

## Poland

In 2017 the deputy Prosecutor General recommended regional prosecutors gather data on the registration of foreign same-sex marriage certificates in the Polish Civil Register Office and on issuing marital status certificates for persons who entered into same-sex marriage abroad. NGOs have been concerned about such data collection and fear that it is to create a chilling effect to discourage Polish citizens from entering same-sex marriages or partnerships. The General Prosecution did not clarify the reasons or goals of such a measure. At the time of issuing this recommendation (and as of July 2018) there has not been a single administrative decision/court judgment registering a foreign same-sex marriage certificate in the Polish Civil Register Office or issuing a marital status certificate for someone who entered into same-sex marriage abroad. NGOs are concerned that the recommendation aimed to create a “chilling effect” to discourage Polish citizens from applying for any form of legal recognition of their same-sex relations. Later in 2017 the group of Polish NGOs sent a request to the Inspector General for Personal Data Protection (GIODO) asking for the verification of whether such data collection complied with Polish legislation. The Inspector has not responded to this request.

## CHAPTER 6

# Employment

### **Regional and international human rights standards**

The **YP+10** affirm in Principle 37 on the right to sanitation that states need to ensure that both public and private employers provide safe access to sanitation without discrimination on grounds of SOGIESC. The YP+10 also introduce an additional obligation relating to Principle 2 on the rights to equality and non-discrimination setting out that states must take all appropriate steps to ensure that reasonable accommodation is provided, where needed, in order to promote equality and eliminate discrimination on the basis of SOGIESC, including in employment.

In September 2015 the **United Nations** adopted Agenda 2030 for Sustainable Development and its 17 Sustainable Development Goals (SDG). Although these are not human rights standards per se, they have been increasingly incorporated in the work of UN human rights mechanisms. Goal 8 on Decent Work and Economic Growth calls on states to achieve full and productive employment and decent work for all women and men, including for young people and to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

The FRA found in 2012 that LGBT people in the EU face most discrimination in the field of employment, as compared to other spheres of life.<sup>155</sup> One in five **LGBT** people who were employed and one in eight who were looking for a job felt discriminated on the basis of their SOGIE. When looking for a job, **trans** people were twice as likely to experience discrimination than their cisgender LGB peers. One in three trans people were discriminated against when trying to find employment,<sup>156</sup> and being open about their trans status increased the risk of negative experiences.<sup>157</sup> For fear of discrimination, a third of **LGBT** people were not out at work.<sup>158</sup> The most common experiences include negative remarks and behavior or unequal treatment.<sup>159</sup> **Trans** people were most likely to experience both.<sup>160</sup>

**29** Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These 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.

38 member states prohibit discrimination in employment on the basis of sexual orientation, and 28 on the basis of gender identity.<sup>161</sup> It is positive that since 2011, 20 countries added gender identity as a protected ground in their legislation.<sup>162</sup> The prevalence of discrimination in Europe despite this however, is alarming. It is also concerning that EU legislation does not protect trans people in a consistent manner:<sup>163</sup> protection extends only to trans people who have medically transitioned or are planning to do so.

Human rights defenders in the 16 countries reported that legal protection against discrimination is not comprehensive and there are few measures in place encouraging employers to create a safe work environment for LGBTQI people. Discrimination is widespread and the level of reporting is extremely low.

In **Bulgaria**, the anti-discrimination law covers sexual orientation, but labour law does not cover any of SOGIESC grounds. In **Bosnia and Herzegovina**, the extent of legal protection from discrimination in employment varies from region to region. In **Macedonia** there are no legal protections in place.<sup>164</sup> In both countries, more than a third of LGBT people have reported being discriminated against at work. Very few have reported these cases.

The legal framework is in line with the Recommendations in **Estonia**. There is further need for awareness raising among employers and encouraging reporting among victims of discrimination. In **Georgia**, legal protections include SOGIE as grounds, cover the private and public sector, and all phases of employment. However, WISG reports that LGBTI people face most discrimination in employment. Due to a lack of legal gender recognition, trans people are at particular risk of discrimination. Many stop trying to find work, to avoid further harassment. LGBT people have also reported quitting jobs for this reason. Similarly in **Hungary**, the legislative framework is in place, and inclusive of SOGI, but employment is the most difficult sphere of life for LGBTI people: one in three have experienced discrimination and almost two thirds have heard hurtful or negative comments about LGBTI people at work.

In **Poland**, employment is the only sphere where SOGI based discrimination is prohibited in the legal framework. However, legal tools are rarely used due to the high risk of potential negative consequences for the employees. However, discrimination is widespread and reporting low. In **Croatia**, the law protects LGBT people on SOGIE grounds, but discrimination remains widespread: 54% LGBT people hide their sexual orientation or gender identity in the workplace, while 7% of LGBT people have felt discriminated against at their workplace.

In **Cyprus, Lithuania, and Montenegro** the law protects from discrimination on the ground of sexual orientation only. Discrimination remains high, especially among trans people. Reporting is alarmingly low and due to lack of GIE inclusion, trans people have no avenue to seek remedies. In **Montenegro** many trans people take up sex work, which is penalized, thus exposing them to further discrimination. In **Armenia**, trans people face severe bullying in school, and consequently many do not manage to enter higher education. Employers rarely hire them and they remain at risk of homelessness and victims of trafficking. In **Portugal**, the law only covers sexual orientation, but the complaint form launched by the Labour Conditions Authority for discrimination cases, includes gender identity as well.

There are no special measures to support vulnerable groups within the LGBTIQ community in any of the 16 states. In **Sweden**, trans asylum seekers face difficulties finding work or opening a bank account if their gender identity and expression do not match their temporary ID card. As LGR takes a long time, refugees continue to face this barrier for extended periods.



**Intersex** people often face work discrimination on the basis of their appearance or gender expression.<sup>165</sup> They also face particular barriers in employment. Because of hospitalization or trauma related mental health problems, intersex people may need to take time off. Gaps in their education or employment history might be difficult to explain to employers.<sup>166</sup> Intersex people have reported being refused employment because of their diagnosis or medical history.<sup>167</sup> Once employed, intersex people have reported intrusive curiosity about their body, and disbelief or rejection by their colleagues and bosses when they disclosed they were intersex.<sup>168</sup> These experiences reportedly have driven intersex people to miss work, increasing their chance of losing their job.<sup>169</sup>

Some **intersex** people receive disability benefits due to physical impairments they have suffered because of unconsented surgeries they underwent.<sup>170</sup> However, depending on the country, a disability status may lead to further discrimination.

**30** Particular attention should be paid to providing effective protection of the right to privacy in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

There are no measures in place in **Croatia, Cyprus, Montenegro,** and **Poland** to guarantee that educational institutions and employers change names and gender markers on certificates once a person has undergone legal gender recognition. **Cyprus** lacks procedures to prevent the disclosure of someone's name and gender assigned at birth. In **Finland**, gender identity or gender history are not considered sensitive data and there are no proactive measures for protection. In **Estonia** and **Hungary**, certificates are duly changed after LGR. In **Finland**, the state recommends educational institutions and employers to reissue certificates.

**Intersex** people change their legal gender on the basis that it was wrongly assigned at birth in some countries (e.g. Germany).<sup>171</sup> However, other than with trans related legislation, this option does not include specific legal protection of the right for privacy.

## CASES

### Croatia

In 2013, a **trans** woman reported to Zagreb Pride harassment and discrimination at the workplace. Her superiors and colleagues refused to use the name and gender she identified with, she was not allowed to change her email according to the new name, even after the completion of a legal name change. In addition, she was prevented from communicating with clients and was exposed to various forms of mobbing. Ultimately, the superiors have put pressure on the victim of discrimination to sign a voluntary termination of agreement, thus preventing the initiation of procedures for the protection of her employment rights.

### Cyprus

“I am still scared of the prospect of a job. Out of necessity, I look for specific jobs where I have heard that other trans individuals were accepted. I cannot go just anywhere, given the explanations I would have to offer regarding my identity card...” Testimony by a trans man

### Georgia

In 2014 a 20 year old **lesbian** woman had to “voluntarily” leave her workplace in central Tbilisi. She suffered discrimination because of her sexual orientation, including verbal harassment, mocking, and isolation, after other employees had learned that she was a lesbian. She did not want to report the case to the relevant authorities. Despite repeated reassurance of confidentiality, she feared that if she did report to the Public Defender, her employer would learn she was a lesbian and she wanted to avoid further problems.

## Hungary

In 2015 a **trans** woman from a small village in Western Hungary applied for a job at a clothes shop. She had been living and dressing as a woman for six years, but had not yet applied for legal gender recognition. She turned up at the job interview, but when the sales manager saw her credentials bearing a male name, she told her that they were seeking a female shop assistant, and then laughed at the applicant when she reaffirmed she was a woman. The woman turned to the Equal Treatment Authority who found that the employer discriminated her on the basis of her gender identity. The Authority also found that seeking a female shop assistant exclusively was direct discrimination on the basis of sex. As a sanction, the Authority forbade future unlawful conduct, and ordered that its decision be published online.

## Sweden

“Although I really want to work since I have “Att UND” (right to work) on my LMA card, I am finding it a huge challenge because the gender marker and names on this card place my life at risk and discrimination. Since I do not speak Swedish, I could get a job in the migrant community if it were not for my LMA card.” Testimony by a trans asylum seeker

## CHAPTER 7

### Education

#### **Regional and international human rights standards**

In 2013 the **PACE** adopted Resolution 1948 on Tackling discrimination on the grounds of sexual orientation and gender identity and recommended states to strengthen their work on preventing homophobic and transphobic bullying in schools, by putting in place projects addressing students, teachers, and staff.<sup>172</sup>

In April 2015 the **PACE** adopted Resolution 2048 on Discrimination against transgender people in Europe, urging states to make legal gender recognition available, regardless of age. It also calls for the provision of information and training to educational professionals on the needs of trans people, with a focus on their privacy and dignity.<sup>173</sup>

On the International Day Against Homophobia, Biphobia and Transphobia (IDAHOBIT) on 17 May 2015, several **international and regional human rights mechanisms** published a statement, calling attention to bullying and violence that LGBTI children face in school and at home, and which may lead to homelessness, poverty and social exclusion. They highlighted that some children are refused admission or expelled from school because they are LGBTI.<sup>174</sup>

Goal 4 of the **SDGs** on Quality Education, adopted in 2015, calls on states to eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.

In January 2016 the **PACE** adopted Resolution 2097 on Access to school and education for all children, reiterating some of the standards enshrined in the Recommendation, but with the inclusion of intersex children. The resolution calls on member states to “ensure access for lesbian, gay, bisexual, transgender and intersex children to quality education by promoting respect and inclusion of LGBTI persons and the dissemination of objective information about issues

concerning sexual orientation and gender identity, and by introducing measures to address homophobic and transphobic bullying”.<sup>175</sup>

In March 2016, the **Council of Europe** published its Strategy for the Rights of the Child (2016-2021), which affirms the need to do research on the situation of LGBT and intersex children and assess their needs regarding anti-discrimination measures.<sup>176</sup> In August the Council published Equal opportunities for all children: Non-discrimination of lesbian, gay, bisexual, transgender and intersex (LGBTI) children and young people, explicitly and consistently including the assessment of the situation and needs of intersex children in Europe.

In November 2016 **UNESCO** adopted a “Call for Action by Ministers: Inclusive and equitable education for all learners in an environment free from discrimination and violence”, which was signed by 29 Council of Europe member states.<sup>177</sup> The states pledged to monitor violence in schools on the basis of sexual orientation, gender identity and expression; establish comprehensive policies to prevent and address such violence in educational settings; provide learners human rights-based and accurate information about gender related issues through curricula, campaigns, etc.; provide training and/or support to teaching staff; take other actions to ensure inclusive and safe school environments; and evaluate responses to violence. There has been no follow up on this Call for Action, so it remains uncertain to what extent these measures have been implemented.

In November 2017 the **PACE** adopted Resolution 2191 on Promoting the human rights of and eliminating discrimination against intersex people and called for “campaigns to raise awareness among the professionals concerned [...] as regards the situation and rights of intersex people”.<sup>178</sup>

The **YP+10** introduces an additional state obligation relating to Principle 2 on the rights to equality and non-discrimination, urging states to ensure that reasonable accommodation is provided, where needed, in order to promote equality and eliminate discrimination on the basis of SOGIESC, including in education.

Relating to Principle 16 on the right to education, the YP+10 establishes that states must ensure inclusion of comprehensive, affirmative and accurate material on sexual, biological, physical and psychological diversity, and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in curricula, taking into consideration the evolving capacity of the child; and ensure inclusion in teacher training and continuing professional development programmes. The newly established Principle 36 on the right to truth calls on states to ensure that the facts and truth of the history, causes, nature and consequences of discrimination and violence on grounds of SOGIESC are disseminated and added to educational curricula with a view to achieving a comprehensive and objective awareness of past treatment of persons on grounds of SOGIESC.

IGLYO's LGBTQI Inclusive Education report affirms that schools continue to be unsafe for young people who are, or are perceived to be, **LGBTQI**, many of whom struggle daily, experience bullying or violence, and are often left without any support from teachers and school staff.<sup>179</sup> Harassment may also affect students who are not LGBTQI, but whose gender expression does not fit the cultural norm.<sup>180</sup>

The prevalence of experienced violence is between three and five times higher among **LGBTI** learners than among their non-LGBTI peers.<sup>181</sup> A school climate survey, conducted by **LGBTQI** organisations in 12 Council of Europe member states with the support of GLSEN found that between 33 and 64% of students feel unsafe because of their sexual orientation and that 95% of LGBT students have heard homophobic or transphobic remarks.<sup>182</sup> UNESCO reported that the most common form of anti-**LGBT** school violence in Europe is psychological violence.<sup>183</sup>

The FRA survey documented that 18% of respondents experienced bullying in school on the basis of their sexual orientation or gender identity. An alarming 80% witnessed anti-**LGBT** bullying or violence.<sup>184</sup> 67% of **LGBT** pupils tried to hide their identity to stay safe.<sup>185</sup>

Discrimination and violence in school can increase anxiety, loneliness, stress, low self-esteem, self-harm, depression, and suicide.<sup>186</sup> It may lead to students feeling unsafe, avoiding school activities, performing poorly, missing class or dropping out of school entirely.<sup>187</sup> IGLYO's 2013 study further highlighted that bullying has long-term impact, including on **LGBTQI** young people's plans for the future or their ability to secure or retain jobs.<sup>188</sup>

**Trans** students face particular difficulties in educational settings. The FRA reported that compared to their cisgender LGB peers, **trans** people are more likely to have negative experiences in school. 29% felt discriminated in school and 82% hid their identity.<sup>189</sup> **Trans** students' experiences include school staff failing to acknowledge their gender identity, name, and pronouns; being barred from wearing uniforms or using bathrooms that match their gender; missing out on sports and other activities because their gender identity or expression is not respected; not being represented in school curriculum; and schools not having policies to support trans youth or prevent bullying and harassment.<sup>190</sup>

There is very little research on the experiences of **intersex** students,<sup>191</sup> but there is significant anecdotal evidence reported by intersex people to organizations such as OII Europe.

Intersex students may face problems in enrolling at school.<sup>192</sup> They have also reported facing discrimination and bullying at school and in further education, such as derogatory language, psychological and physical violence, or if their gender expression, stature or other parts of their appearance does not conform with the female or male norm.<sup>193</sup> Places where the body becomes visible to others, such as toilets and changing rooms, are common areas of anxiety and reported harassment, regardless of whether the intersex person has had a so-called ‘normalising’ surgery performed on them or not. This issue is also pertinent for **trans** youth.<sup>194</sup>

On an even more alarming level, **intersex** individuals face educational impairments directly linked to the violation of their bodily integrity. Most surgeries, which are performed at an early age, lead to several follow-up operations over the years. Some children drop out of school as a result of this long-term recovery process. Unwanted hormonal treatment, in childhood or puberty, with the aim of altering the body towards the assigned sex has also been reported to coincide with a decrease in school grades.<sup>195</sup> This physical and psychological strain often prevents **intersex** people from developing their full potential and leads to underachievement at school.<sup>196</sup> As a result, these children and young adults face significant difficulties in obtaining a higher education degree and are at risk of poverty when growing older. Intersex people who manage to achieve higher education still struggle with the combined impact of the human rights violations they experienced and the discrimination they still face in adulthood.<sup>197</sup>

**Intersex** people do not appear in educational curricula at all or only as an imaginative product of mythology (“hermaphrodite”), as an example of abnormality or viewed in a pathological way, in biology texts, medical handbooks or encyclopaedias. Sex education does not take into account that bodies other than so-called “male” or “female” bodies exist, and thus increase the feeling of shame, secrecy, not existing at all or being a fraud at a vulnerable age.<sup>198</sup>

**31** Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.



As of April 2018, 32 member states prohibit discrimination in education on the ground of sexual orientation,<sup>199</sup> 22 on grounds of gender identity,<sup>200</sup> and 3<sup>201</sup> on the ground of sex characteristics.<sup>202</sup> Legal protection from discrimination, however, continues to be rarely accompanied by practical measures to ensure a safe educational environment for LGBTQI students. In **Montenegro** and **Poland**, none of the relevant legal instruments prohibit discrimination in education on grounds of SOGIESC. Meanwhile, research by NGOs shows high levels of homophobia and transphobia in schools. In **Bosnia and Herzegovina**, the extent of legal protection varies from region to region, with no unified law on state level. In **Bulgaria**, the law only covers sexual orientation. Dropping out of school is alarmingly common among LGBTI pupils and 50% of students who experienced bullying have attempted suicide. Few schools have introduced measures to create a safe environment for LGBTI students. In **Macedonia**, only one of the three relevant legal instruments covers sexual orientation. Bullying is common, and LGBTI youth experience high levels of depression, hopelessness or suicidal thoughts. A 2018 study noted that almost half of **LBQ** girls experienced bullying in schools.

In **Croatia**, the law covers SOGI, but the government has not adopted any programs or guidelines to combat harassment and violence in schools. NGOs report that discrimination and violence is prevalent: one survey documented 22% of **LGBTI** pupils having experienced violence and 31% discrimination. Another survey conducted with Croatian students highlighted that most have homophobic views. A homophobic and transphobic environment in schools and universities is also prevalent in **Georgia**, as highlighted by the Public Defender in his 2017 annual report. Research in **Georgia** and **Poland** documented that **boys/men** whose gender expression did not fit the norm were particularly vulnerable to bullying.

In **Hungary**, the law provides protection against discrimination on SOGI grounds in education, but there are no policies, codes of conduct or handbooks addressing the needs of LGBTQI students. A recent study found that more than half of **LGBTQI** students have been harassed and more than two thirds have heard homophobic or transphobic slurs in school. In **Lithuania** the Ministry of Education and Science adopted the new General Program on Health, Sexual Education and Family Planning in 2016, which contains comprehensive guidelines on SOGI related education. According to LGL's research, schools have no guidance on how to implement the program. LGL also documented that half of LGBT young people feel unsafe and 95% have experienced anti-LGBT hate speech at school. 90% of LGBT students were thinking of leaving the country after high school.

**Trans** students face additional barriers across the board. In **Cyprus**, the state does not provide any recognition of trans students' gender identity in education. This would only be possible if they had gone through legal gender recognition, which is contingent on medical interventions. Trans students have also reported bullying and a lack of response from teachers. In some cases teachers advised the students to change their self-expression. In **Finland**, there are no guidelines to ensure a safe environment for trans students. A 2017 study documented that non-binary trans students are particularly vulnerable to bullying, both from peers and teachers. There are no guidelines in **Lithuania** either. The draft law on legal gender recognition may include trans youth over 16, but LGL highlighted the need to complement this with guidelines and recommendations in educational settings. In **Montenegro**, there are no specific measures protecting trans or intersex pupils. Teachers usually refuse to call trans students by their chosen names. Teachers and staff in **Poland** have little to no knowledge about trans issues and there are no measures to support trans pupils. In some cases, names were changed on attendance lists, but only with parental consent. Schools have no law to refer to when they want to support trans students. There are no trans specific measures in place in **Serbia**. Trans refugees in **Sweden** reported humiliation and isolation in education and dropping out. As of 2017, school certificates in **Croatia** no longer include the gender of the student or the name of their parents, which is a positive development for **trans** youth and children whose parents are of the same sex. However, schools generally do not respect the self-determined name and gender of trans students. There are no policies on gendered facilities either. Due to a lack of comprehensive LGR legislation, schools have failed to change certificates even after someone has officially changed their gender marker and name.

**32** Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

IGLYO reports that as of 2017, less than half of European states have adopted a national action plan to prevent and tackle bullying faced by **LGBTQI** pupils or, at least, have an LGBTQI action plan that tackles discrimination within education.<sup>203</sup> Most action plans only cover sexual orientation (21), and gender identity and/or expression (18) - only 5 are inclusive of sex characteristics or mention intersex students.<sup>204</sup> 18 European states have some form of system in place to support and guide **LGBTQI** students if needed.<sup>205</sup> 21 provide some information about SOGIESC issues.<sup>206</sup> There is very little support and training for teachers and school staff on addressing anti-LGBTQI bullying and violence.<sup>207</sup> In most countries states do not provide such training or such training is not mandatory. NGOs try to fill that gap but do not have the resources to have a wide reach. As of 2016, only four member states had introduced mandatory teacher training on LGBTQI issues: **Malta** and **Sweden** covering SOGIESC issues, **Norway** SOGIE and **France** only SO.<sup>208</sup> **Malta's** groundbreaking Trans, Gender Variant and Intersex Students in Schools policy has been commended by leading trans and intersex NGOs.<sup>209</sup>

In **Cyprus**, the Education Ministry published an Anti-discrimination Code of Conduct and Guide for Handling and Recording Discriminatory Incidents, inclusive of trans issues. In practice however, it is left to each individual school to implement this. In many cases, particularly in terms of reported transphobic discrimination cases, it has not been applied. In **Lithuania**, the government issued Recommendations on Implementation of Violence Prevention at Schools, but failed to mention SOGIESC.

In **Poland**, the obligation to conduct anti-discrimination activities involving the entire school, introduced under the previous government, was removed in August 2017 by the Minister of Education. The change was heralded as a success by the right-wing think tank Ordo Iuris. Although teachers have shown interest, there is no training in place to support them in addressing bullying. NGOs have organized some activities for students and in schools they have cooperated with civil society to adopt policies against discrimination. In **Croatia**, the government has not implemented any safety or equality policies nor action plans concerning anti-LGBT school bullying. Existing programs are run by civil society only. The government has provided limited training on anti-discrimination for teachers and even this was not mandatory. In **Estonia**, even though bullying has been a widely discussed issue in recent years, there is no training or guidelines by the state that would help schools prevent it. Teachers have expressed that they do not know how to approach LGBTI topics in general.

In **Macedonia**, there are no efforts by the state to introduce training or any other tangible action aimed at creating a safe environment for LGBTI pupils. However, the Bureau for Development of Education has recently established a working group to propose models of comprehensive sex education, and representatives of LGBTI organizations have been invited to join this. In **Montenegro**, limited training has taken place and was run by NGOs. Teachers have shown willingness and interest in learning and providing support for LGBTI pupils, and would greatly benefit from a state run training program. There is no information or support provided for LGBT students in **Serbia**.

There continues to be little or no affirming information in curricula about SOGIESC issues in most European countries. 17 states include in the curricula some information about sexual orientation, 14 about gender identity and expression, and two about sex characteristics.<sup>210</sup> In **Bosnia and Herzegovina, Croatia, Hungary, Lithuania, Macedonia, Poland, and Serbia**, school curricula and textbooks still contain negative and harmful information about LGBTI people (see under Cases). In **Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Poland, and Serbia** curricula are heavily based on cisheteronormative stereotypes. In Lithuania, public schools have distanced themselves from these topics and teachers are unwilling to learn. In **Poland**, there is no mention of trans and intersex issues in curriculum and, overall, education on LGBTI issues has been more damaging than useful.

## CASES

### Croatia

The Handbook for Teachers and School Associates in Primary Schools provides guidelines for teachers to provide a brief explanation of the term “homosexuality”, only if there is an interest from students. It refers to “homosexuality” in the context of concepts such as pedophilia and incest. The notion of same-sex marriages and families in the Handbook for Secondary Schools is referred to as “a controversial issue”, while the topic of same-sex couples with children is called “an extremely controversial topic”. Furthermore, there is a statement that “in some countries there are families with parents of the same sex”, leading to the conclusion that there are no such families in Croatia.

### Cyprus

“At the beginning of this school year, I went with my mother to request a change in my name on all the school’s documents. I am in the last year of lyceum and wanted my leaving certificate to bear the name that represents the gender I feel I belong to. My mother said that she would sign an authorizing document, if required. This was not accepted because the school authorities said the law would not permit such an action.” Testimony by a trans boy

## Hungary

In 2013 the two mothers of a 13-year old boy decided to find a new school for their son. The boy's interview with the future headmaster went fine, and a trial week was agreed upon. At the end of the interview, the mother told the teacher that she was raising the child with her same-sex registered partner. The teacher did not react in person, but the next day she wrote an email stating that "due to their family status" the child could not be admitted to her class. The family turned to the Equal Treatment Authority. The school argued in the procedure that they based their decision on the best interest of the child as they only wanted to prevent bullying. The Authority found that the rejection amounted to discrimination based on sexual orientation and imposed a 50,000 HUF (c. €600) fine on the school. The family also turned to the court for compensation: agreeing with the legal assessment of the Authority, the court awarded the mother 350,000HUF (c. €1,100) in non-pecuniary damages.

## Lithuania

In April, 2017 a student from Žemaitė Gymnasium in Telšiai published photos from a class on religious education on Facebook. The photos displayed slides shown to the tenth grade students by their teacher. The slides contained information that "homosexual" persons are "murderers and cannibals, often enjoy sadomasochism and rape children". "Most serial killers who killed and ate their victims were homosexuals," stated one of the slides. The Office of the Equal Opportunities Ombudsperson and the General Prosecutor's Office started official investigations into the matter. The Minister of Education and Science publicly stated that "the teacher providing such materials for students should not be teaching in a public school." However, after the investigation by General Prosecutor's Office was terminated, the teacher in question received an administrative sanction of warning and continued teaching.

## **Macedonia**

According to a university textbook on “Criminological Psychology” authored by Prof. Liljana Batkoska, crossdressers experience “uncontrolled impulses” and “unstoppable needs” to cross-dress, which can lead them to commit “very brutal” acts of violence against women if they are prevented from cross-dressing. Prof. Batkoska then claims that these acts of violence are directed against women as a form of “revenge,” because nature has “punished” the transvestites “by not giving them a complete female form”.

## **Poland**

Kacper, a 14-year-old boy, committed suicide in September 2017 after long-lasting harassment and physical abuse in his school in Gorczyn. According to information revealed by the media, teachers never intervened despite the bullying going on for a long time. The school’s principal was aware of the fact that Kacper had faced problems and had asked to be transferred to another class.

## **Portugal**

In 2017, a lesbian couple kissed in public in a secondary school in Vagos (town in the north of Portugal). The school Board and other school staff reprimanded the students for “not being respectful in public” despite public statements mentioning that the situation had nothing to do with the students’ sexual orientation. In response to this case, a group of dozens of students of the school organised a peaceful demonstration in the school and it went viral on social media. Their reaction started the movement #SchoolWithoutHomophobia, enabling similar protests in other schools in Portugal.

## CHAPTER 8

# Healthcare

### **Regional and international human rights standards**

In October 2013 the **PACE** adopted Resolution 1952 on the Child's right to physical integrity and called on states to ensure that no-one is subjected to unnecessary medical or surgical treatment that is cosmetic rather than vital for health during infancy or childhood, [and to] guarantee bodily integrity to persons concerned.<sup>211</sup>

In 2013 the **UN Special Rapporteur on torture, cruel, inhuman or degrading treatment or punishment** recognized that reparative or conversion therapies; forced sterilization of trans people; and involuntary genital normalizing surgeries on intersex children amount to torture and inhuman treatment.<sup>212</sup>

In 2014 several **UN mechanisms** issued a joint statement noting that intersex persons have been subjected to cosmetic and other non-medically necessary surgery in infancy, leading to sterility, without informed consent of either the person in question or their parents or guardians. They highlighted that such practices have also been recognized as human rights violations by international human rights bodies and national Courts."<sup>213</sup>

In 2015 the former **Commissioner for Human Rights of the Council of Europe**, Nils Muižnieks, published an Issue paper Human Rights and Intersex People, calling on member states to end medically unnecessary "normalising" treatment of intersex persons when it is enforced or administered without the free and fully informed consent of the person concerned and to provide ways forward in terms of protection against discrimination of intersex people, adequate recognition of their sex on official documents and access to justice. The Commissioner had condemned "normalising surgeries" in opinion pieces earlier.<sup>214</sup>

In recent years, **UN treaty bodies** have issued more than thirty recommendations, 26 to Council of Europe member states, to end irreversible and medically unnecessary surgeries on intersex people.<sup>215</sup>



Goal 3 on Good Health and Well-being of the **SDGs**, adopted in 2015, calls on states to end the epidemic of HIV, to promote mental health and well-being, ensure universal access to sexual and reproductive health-care services, and achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all. Goal 5 on Gender Equality urges states to end all harmful practices, for instance child, early and forced marriage and female genital mutilation.

In April 2017 the **European Court of Human Rights** issued its judgment in the *A.P., Garçon and Nicot v. France* case, setting the legal precedent for all member states to end forced sterilisation in legal gender recognition procedures.<sup>216</sup>

In November 2017 the **PACE** issued Resolution 2191 Promoting the human rights of and eliminating discrimination against intersex people, calling on member states to end pathologisation and harmful medical treatment, including surgeries and other medical treatment and to cover intersex people against discrimination on the grounds of sex characteristics.<sup>217</sup>

The 2017 **YP+10** set out in Principle 36 on the right to bodily and mental integrity, that states must guarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and self-determination; ensure protection from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics; combat stereotypes based on sex and gender that justify modifications to sex characteristics, including of children; ensure that children are fully consulted and informed regarding any modifications to their sex characteristics necessary to avoid serious physical harm, and ensure that any such modifications are consented to by the child concerned in a manner consistent with the child's evolving capacity; ensure that the concept of the best interest of the child is not manipulated to justify practices that conflict with the child's right to bodily integrity; provide adequate, independent counselling and support to victims of violations, their families and communities, to enable victims to exercise and affirm rights to bodily and mental integrity, autonomy and self-determination.

The YP+10 introduce additional state obligations relating to Principle 17 on the right to the highest attainable standard of health that call on states to protect all persons from discrimination, violence and other harm on the basis of SOGIESC in healthcare settings; ensure access to the highest attainable standard of gender affirming healthcare, on the basis of an individual's free, prior and informed consent; ensure that gender affirming healthcare is provided by the public health system or, if not so provided, that the costs are covered or reimbursable under private and public health insurance schemes; take all necessary measures to eliminate all forms of sexual and reproductive violence on the basis of SOGIESC, including forced marriage, rape and forced pregnancy; ensure access, without discrimination, to pre and post-exposure prophylaxis (PrEP and PEP); ensure access to a range of safe, affordable and effective contraceptives, including emergency contraception, and to information and education on family planning and sexual and reproductive health, without discrimination; take all necessary legislative and other measures to ensure access to quality post-abortion care, and remove any barriers that may hinder timely access to affordable and quality abortion services, without discrimination; prevent the disclosure of HIV status, as well as personal health and medical information related to SOGIESC, such as gender affirming treatment, without the free, prior and informed consent of the person; ensure that legal provisions, regulations or any other administrative measures on the donation of blood, gametes, embryos, organs, cells or other tissues do not discriminate on grounds of SOGIESC; ensure inclusion of affirmative material on sexual, biological, physical and psychological diversity and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics in medical curricula and continuing professional development programmes.

The additional state obligations relating to Principle 10 on the right to freedom from torture and ill-treatment sets out that states must recognise that forced, coercive and otherwise involuntary modification of a person's sex characteristics may amount to torture, or other cruel, inhuman or degrading treatment; prohibit any practice and repeal any laws and policies allowing intrusive and irreversible treatments on

the basis of SOGIESC, including forced genital-normalising surgery, involuntary sterilisation, unethical experimentation, medical display, “reparative” or “conversion” therapies, when enforced or administered without the free, prior, and informed consent of the person concerned.

On 18 June 2018 the **World Health Organisation** published ICD-11, in which all trans-related diagnoses were moved from the mental disorder chapter to a newly added chapter on Conditions related to sexual health.<sup>218</sup> This means that being trans is no longer considered a psychiatric disorder.

In 2018, **the European Committee of Social Rights of the Council of Europe** found that legal requirement for transgender persons in the Czech Republic to undergo medical sterilization in order to have their gender identity recognized seriously impacts a person’s health, physical and psychological integrity, and dignity. The Committee emphasised the importance of the right to give free consent when accessing medical treatment.<sup>219</sup>

**LGBTQI** people continue to experience significant health disparities, reporting worse physical and mental health compared to the general population.<sup>220</sup> Their poorer state of health is closely interrelated with the prevalence of discriminatory care and treatment they receive in healthcare.<sup>221</sup> Their increased risk of anxiety, depression, self-harm, substance misuse, and suicidal thoughts are also closely interlinked with the discrimination and violence they experience at home and in their communities.<sup>222</sup> **Trans and intersex** people are particularly likely to have poor mental health and face barriers accessing mental health services.<sup>223</sup> **Intersex** people are at a critically high risk of psychological stress, self-harm, and suicidal thoughts.<sup>224</sup>

Roughly one in 10 **LGBT** people in the EU experience discrimination in healthcare.<sup>225</sup> Among **trans** people, this rate was almost twice as high: almost one in five felt discriminated because they were trans. These numbers are affirmed by other studies.<sup>226</sup> **Lesbian women** are also more likely to experience discrimination in healthcare than the LGBT average; 13% compared to 10%.

The most common experiences **LGBTQI** people face in healthcare are difficulty in accessing services; having to change their GP or specialist doctors on account of their negative reaction; receiving unequal treatment when dealing with medical staff; forgoing treatment for fear of: discrimination or intolerant reactions, specific needs not being taken into account, inappropriate curiosity, pressure, or being forced to undergo any medical or psychological test.<sup>227</sup> **Trans** people are more likely to experience inappropriate curiosity or their needs being ignored.<sup>228</sup> **Trans people with disabilities, young or poor trans people, or sex workers** experience discrimination significantly more often.<sup>229</sup> Alarming, being out to doctors about being **LGBTQI** make matters worse and significantly increases the risk of discrimination.<sup>230</sup> Reporting remains alarmingly low, with only one in ten victims reporting to the authorities.<sup>231</sup>

Healthcare professionals continue to lack knowledge and understanding of the situation and needs of **LGBTQI** people. They often perpetuate anti-**LGBTQI** attitudes and fail to provide quality care.<sup>232</sup> GPs often do not know how or where to refer **trans** people for services.<sup>233</sup> General health practitioners very often lack knowledge about the existence of people with variations of **sex characteristics** or do not even know that **intersex** people exist at all. There is a serious lack of training for healthcare professionals that affects all subgroups within the **LGBTQI** umbrella. Existing training initiatives are often sporadic or carried out by civil society, i.e. project run and not sustainable.

Negative experiences often result in **LGBTQI** people postponing going to see a doctor or refusing to disclose their sexual orientation or gender identity. For instance, 55.8% of trans people surveyed by TGEU reported having delayed going to the doctor for general healthcare, most often because of fear of prejudice from healthcare providers or not having confidence in the services provided.<sup>234</sup> Disbelief, prejudices, and disgust by healthcare personnel has also led intersex people to avoid seeking healthcare.<sup>235</sup>

National surveys<sup>236</sup> and civil society reports have clearly shown that **intersex** people lack protection of their right to health in Europe, and have been facing discrimination, sexual harassment and violence in medical settings. A recent UK study found that intersex people have experienced unsupportive or incompetent GPs; a lack of information or advice about being diagnosed with an intersex condition; embarrassment and anxiety about seeing doctors; and difficulty accessing sexual health and mental health services.<sup>237</sup> Intersex people have also had medical information about interventions they were subjected to as children withheld from them.<sup>238</sup> Additionally, there is a lack of coverage for needed medication (e.g. after the removal of hormone producing tissue) by health insurances.<sup>239</sup>

Coerced surgeries on **intersex** children significantly impact in a negative way on the future adult's physical and mental health. An intersex focused German study found that almost 50% of the participating adults reported psychological problems and a variety of problems related to their physical well-being and their sex life. Two-thirds made a connection between those problems and the medical and surgical treatment they had been subjected to. Participating children reported significant disturbances, especially within their family life and in relation to their physical well-being.<sup>240</sup> Another German study in 2008 found that well over half the participants (62%) showed clinically relevant psychological stress; 47% had suicidal thoughts; and 13.5% reported past self-harm.<sup>241</sup> An Australian study of intersex people's experiences documented that 60% considered suicide, compared to roughly 3% in the general population.<sup>242</sup>

**33** Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

**LGBTQI** people continue to face human rights violations in treatment and care.<sup>243</sup> As of April 2018, only 25 European countries offer protection against discrimination in healthcare on the ground of sexual orientation,<sup>244</sup> and 17 on grounds of gender identity.<sup>245</sup> Even where legal protections are in place, implementation is greatly lacking and **LGBTQI** people face high-levels of discrimination.

The **Montenegrin** Law on Health Protection prohibits discrimination on grounds of SOGI. The national Strategy for the improvement of life quality of LGBT persons 2013-2018 calls for the improvement of healthcare and training of medical staff, but implementation is lacking. Only NGOs carry out training and awareness raising. The National Strategy for Combating HIV/AIDS 2015-2020 only includes men who have sex with men (MSM), therefore alienating, for instance, trans women. The **Croatian** Anti-Discrimination Act also prohibits discrimination in healthcare on the grounds of SOGI, but there are no measures in place to ensure access to services or provide for specific needs of LGBTIQ persons. The National Health Care Strategy for 2012 – 2020 does not mention LGBTIQ health, including the mental health; there are no surveys, curricula or training including SOGIESC issues. With the exception of the National Plan for HIV/AIDS Prevention, none of the specific health prevention programs include LGBTIQ people. NGOs have documented that LGB people hide their identities at the doctors, and LGBTIQ people often have no trusted doctor to turn to.

In **Bosnia and Herzegovina**, the Law on the Rights, Obligations and Responsibilities of Patients prohibits discrimination on the basis of sexual orientation, but there are no measures to respond to the healthcare needs of LGB or trans and intersex people. The **Macedonian** Law on Protection of the Rights of the Patients prohibits discrimination on the basis of sexual orientation, but the Law on Health Protection does not cover SOGIESC. In **Georgia**, there are several laws relating to healthcare, that prohibit discrimination on the ground of sexual orientation. However, healthcare professionals lack knowledge about SOGIE issues and LGBT people commonly face discrimination and mistreatment. There are no specific measures in place to address the needs of LGBT people. As a positive step however, the Georgian Constitutional Court abolished the ban on “homosexuals” donating blood.

Healthcare laws do not include LGBTI people in **Serbia**, and healthcare staff lack training. LGBT people often choose not to disclose their identity to their doctors, even when this information would be relevant. Most mistreatment was reported relating to blood donations or gynaecological/urological exams. The health of LGBTI people is not

included in any equality legislation or policy documents in **Poland**. They are excluded from health plans, surveys, training programs, prevention programs and their needs remain invisible. Awareness raising activities are only carried out by NGOs. In **Bulgaria**, LGBT people routinely face stigmatizing treatment and as a consequence, many choose not to discuss crucial health issues with their doctors. Refusal of care is also a key issue, particularly for LGBT people living with HIV, and trans people. Between 2016–2017 there was a severe lack of viral load testing kits in Bulgaria, which resulted in poor services for HIV patients.

In **Armenia**, trans people have faced mistreatment by doctors or a denial of services because their gender expression did not match their ID. Many have reported avoiding going to doctors for fear of discrimination. Trans people in **Armenia** are at a high risk of HIV/AIDS, but were omitted from the National Plan against AIDS. Prevention programs are only run by NGOs and are not financially supported by the state. Some of these programs are tailored to men who have sex with men (MSM), and therefore trans women are reluctant to use them.

**34** Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

Although the overwhelming majority of European countries do not classify “**homosexuality**” as an illness, conversion/reparative therapies are still common. The UN Special Rapporteur on torture reported that **LGBT** people are often subjected to forced treatment in an effort to “cure” them, including electroshock and other “therapy”, which may cause psychological and physical harm.<sup>246</sup> He recognized that these treatments amount to torture, cruel, inhuman or degrading treatment or punishment.<sup>247</sup> Only **Malta**<sup>248</sup> and two regions in **Spain**<sup>249</sup> have explicitly banned conversion therapies.<sup>250</sup>

In **Finland**, conversion therapies are banned in public facilities, but not outside the healthcare system. They are offered by some religious groups.

Conversion therapies are not banned in **Croatia** and NGOs have received reports from LGBT people, including youth, that psychiatrists advise them to conform to heterosexuality or accept themselves in their gender assigned at birth. Although homosexuality is not classified as a disease in **Poland**, conversion therapy is legal and sometimes supported by the government. In March 2017 the Polish prime minister awarded the “Truth-Cross-Liberation” award to the “Courage” group from Lublin for “spiritual and therapeutic help to people with unwanted sexual tendencies and their families”.

The **Montenegrin** health system is based on ICD-10: homosexuality is not considered a disease. In **Bulgaria**, many doctors still perceive homosexuality as an illness. A number of medical textbooks in **Georgia** describe homosexuality as a behavioral disorder. The **Serbian** Health Society states that homosexuality is not an illness, but some medical textbooks handle it as such.

**35** Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

Gender affirming care routinely falls short of meeting the highest attainable standard of care, which may have a detrimental effect on the physical and mental well-being of **trans** people.<sup>251</sup> It may deteriorate mental health problems, such as depression, anxiety, or suicidal thoughts. Some may decide to self-medicate and access hormones on the black market, without medical supervision of any kind.<sup>252</sup> Some trans people take up sex work to pay for quality services or simply have access, and thus become even more vulnerable to violence.

Trans people in **Armenia** are required to undergo surgeries to access legal gender recognition, but due to a lack of any guidelines from the state, these interventions are carried out in secret. Patients are required to sign a form stating that they take full responsibility for any risks. With regards to hormonal treatment, most trans people self-medicate, as there are no specialized endocrinologists in the country. To date, only one doctor has prescribed hormones. There are no specialized health services for trans people in **Bosnia and Herzegovina**. In **Bulgaria**, fearing criminal proceedings, doctors are reluctant to prescribe hormones. Self-medication is therefore common. In **Cyprus**, doctors and nurses have reported that they lack knowledge about trans healthcare needs. Trans people also lack information about the provision of services. In **Macedonia**, doctors and nurses lack knowledge and expertise in trans health. Trans healthcare is not recognized by the state and is unavailable.

Trans healthcare is also not regulated in **Georgia**, and the few services trans people can access are not covered by insurance. In **Hungary**, access to adequate trans healthcare is severely limited by the lack of standards and guidelines. The scarcity of care providers results in limited choice and heightened vulnerability. Trans topics are not



adequately included in medical training curricula. Gender affirming care is unavailable in **Lithuania**, forcing trans people to go abroad and cover the costs themselves. When it comes to hormones, many self-medicate. There are no regulations in **Poland** that would ensure trans people's access to gender affirming care. There are few doctors who have expertise in gender affirming care, which results in trans people having little access to quality services. Those who can, go private or abroad.

### Unreasonable requirements

**Trans** people throughout Europe continue to be subjected to unreasonable requirements when accessing gender affirming healthcare, such as a mandatory psychiatric diagnosis, forced medical examinations and interventions, or forced sterilization. Forced sterilization violates the right to be free from torture and cruel, inhuman, or degrading treatment or punishment,<sup>253</sup> and the right to respect for private and family life.<sup>254</sup>

Requiring **trans** people to get a mandatory psychiatric diagnosis has contributed to stigma, discrimination and abuse, in the remit of healthcare and beyond. Requiring a diagnosis is also a form of medical gatekeeping that obstructs trans people's access to healthcare services or gender recognition. Welcomed by trans organizations worldwide, on 18 June 2018 the **World Health Organisation** published ICD-11, in which all trans-related diagnoses were moved from the mental disorder chapter to a newly added chapter on Conditions related to sexual health.<sup>255</sup> It is hoped that ICD-11 will be formally adopted in 2019 and duly applied by member states.

Doctors or medical commissions, having the power to decide whether someone can access gender affirming care, can also require trans people to prove they are trans enough by passing a "real life test", or conform to gender stereotypes. Doctors may willfully obstruct access.<sup>256</sup> In **Estonia** for instance, endocrinological and surgical services are dependent on the decision of the committee of medical experts, which is contrary to the Law of Obligations that says healthcare must be based on the consent of the person concerned.

### Access to gender affirming healthcare

In many member states, gender affirming healthcare is not available or trans people can only access some services, but not others.<sup>257</sup> Services are often only provided in a limited number of hospitals or medical centers, in bigger cities.<sup>258</sup> In **Croatia**, only hormone replacement therapy (HRT) and mastectomies are available - for any other surgeries trans people need to go abroad and pay for themselves.

Trans healthcare is only provided in bigger cities. In **Cyprus**, genital reconstruction surgeries are not available at all. In **Montenegro**, trans people have access to HRT and mastectomies. The state has an agreement with the Belgrade Gender Team, which allows trans people to access other forms of gender affirming care there. However, trans people cannot choose between the various procedures of surgeries. Trans women cannot access breast augmentation, as only “basic procedures” are covered by the agreement. Trans people have also faced a serious lack of hormones in Montenegro. NGOs have lobbied the Ministry of Health but have not received a response for a year. As a result, many trans people have started self-medicating. In **Portugal**, trans people have difficulty accessing services, and doctors lack competence. There is one facility, in Coimbra, to which trans people are directed.

In countries such as the **UK** or **the Netherlands**, where a broad range of services are available in theory, there are often excruciating waiting times, leaving trans people to wait for years for a single appointment.<sup>259</sup> Some decide to go private, but given the socio-economic vulnerability of most trans people, this is only an option for a lucky few. In **Cyprus**, trans people have waited for years to access medical interventions, some of which are required for legal gender recognition. In **Finland**, the two hospital units responsible for trans healthcare are overloaded, waiting times are very long, and the process lacks transparency. Those who can afford it, tend to go private to access surgeries faster. Others self-medicate hormones.

Some trans people face multiple barriers, including **non-binary trans people** who are often asked to choose a binary gender to access hormones or surgeries. In **Finland**, non-binary people are diagnosed with F64.8 (instead of F64.0), and in some areas mastectomy is not offered to people with this diagnosis. **Trans people with disabilities** are routinely questioned about their capacity to decide over their care choices. Those with **psychosocial disabilities or mental health problems** are often entirely barred from access.<sup>260</sup> In **Sweden**, **trans asylum seekers** are not entitled to gender affirming care, as this does not count as “emergency healthcare that cannot be postponed”. Many self-medicate and others suspend their treatment, both of which potentially result in serious health risks. **Trans refugees** face long waiting periods and most are unable to go private.

## Healthcare without a trans person's free and full consent

Trans people continue to be subjected to medical procedures without their consent. Their access to gender affirming healthcare or legal gender recognition ([Chapter 4](#)) is often conditional to medical examinations and interventions, or a mandatory diagnosis. 34 countries in Europe still require a psychiatric diagnosis and 14 require sterilization before legal gender recognition.<sup>261</sup> This violates the right of every person to self-determine their gender identity and also the care they receive.

## Medically unnecessary and irreversible surgeries on intersex people

**Intersex** people have become much more visible in the past eight years and have been acknowledged as a specifically vulnerable group of the population due to the pathologization and severe human rights violations they face all over Europe.<sup>262 263</sup>

Intersex bodies are seen as a medical problem that need to be altered or fixed.<sup>264</sup> In at least 21 EU states, such as **Bulgaria** or **Poland**, so called “normalizing surgeries” are carried out on intersex children, without their full, free, and personal consent.<sup>265</sup> Other examples include **Bosnia and Herzegovina** and **Montenegro**. In **Croatia**, there is no information about medical practice, but there is no ban on intersex surgeries. **Finland** also does not have a ban in place. However, there is one healthcare district that refuses to perform such interventions.

Intersex people's health is often jeopardized by these surgeries and other medical interventions. An intersex-focused German study found that 81% of the participants had been subjected to one or multiple surgeries due to their DSD<sup>266</sup> diagnosis. These interventions take a long time and might have complications, leading to a severe impact on the person's physical health.<sup>267</sup> They are also traumatising and humiliating and can be harmful for the person's mental health.<sup>268</sup> They can take a long time and post-operative complications are common. There are long-term effects on intersex individuals' mental health and well-being. Additionally, the sex assigned to children at an early age may not correspond with their identity and feelings later on.

To date, **Malta** is the only country in the world that has banned medically unnecessary surgeries on intersex children.<sup>269</sup> **Portugal** recently adopted a similar law, but the wording of the law does not introduce a clear ban. Instead it bans all deferrable surgeries and other medical interventions on intersex children until the “moment in which the person's gender identity is manifested”, after which “interventions [...] are to be carried out with the person's express and informed consent, through the person's legal representatives”.<sup>270</sup>

A lot will depend on clear and comprehensive implementation guidelines to ensure the right to bodily integrity of intersex people will be fully protected by this legislation as was intended.

There is a significant lack of non-pathologizing psycho-social and peer support for intersex people and their families all over Europe. In a 2015 study from Germany, 90% of the study's participants; intersex adults as well as parents of intersex people, counselling professionals and intersex experts, stated that there were not enough counselling services available for intersex adults. 95% pointed to the lack of services for intersex children, adolescents and their parents. Almost all participants considered comprehensive counselling services important in order to avoid premature decisions.<sup>271</sup>

In 2013 another study found that parents of intersex children who are provided with medicalised information are almost three times more likely to consent to surgery than those who receive de-medicalised information.<sup>272</sup>

Providing independent, non-medicalised counselling is therefore a key factor for societal change, and for preventing invasive and irreversible surgeries and other medical treatments on intersex individuals, without their free, personal and fully informed consent.

**36** Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

Only a handful of countries ensure that public insurance covers most gender affirming healthcare services, including **the Netherlands, the UK, Germany and Belgium**. In some countries, such as **Georgia, Macedonia, Lithuania, Russia and Poland**, hardly any coverage is available.<sup>273</sup> The UN Office of the High Commissioner for Human Rights highlighted that gender affirming care is often “prohibitively expensive”, with few services being fully funded by state insurance.<sup>274</sup> These concerns have been echoed by the Council of Europe Commissioner for Human Rights,<sup>275</sup> and also UN mechanisms such as CEDAW.<sup>276</sup>

In **Finland** trans healthcare is covered by public insurance, but low income individuals might still struggle with expenses such as user fees, which are not paid for. The **Croatian** Anti-Discrimination Act prohibits discrimination in insurance provision on the grounds of SOGI. Until 2017, mastectomy costs were covered, but since the new Minister of Health was appointed, this practice has changed. Exams prior to HRT are covered by state insurance, but HRT coverage itself is inconsistent:

it has been easier for trans men than for trans women to get coverage. In **Estonia**, HRT are covered in half and surgery costs are not covered, as they are categorized as plastic surgery.<sup>277</sup> The lack of coverage for surgeries has been found discriminatory by the Gender Equality and Equal Treatment Commissioner and the law may change in the near future. In **Bulgaria**, surgeries “relating to sex change” are covered by state insurance, but hormones are not. In **Hungary**, only 10% of the costs of the gender affirming treatment is covered by mandatory health insurance, as opposed to 50-98% for other treatments. A few trans people have successfully applied for equity-based coverage, and secured funding for their vaginoplasty this way. In **Montenegro**, public insurance covers 80% of gender affirming care costs. However, trans people face serious gatekeeping, as they first have to submit supporting documents from a general medical practitioner, endocrinologist, surgeon, psychiatrist, psychologist and social worker, as well as opinions of the Consilium of Clinical Centre of Montenegro, together with a request to the State Insurance Fund.

Limitations on insurance coverage are often not lawful, objective or proportionate, but discriminatory. Conditions for insurance coverage are rarely set out in law or policy. Some insurance companies cover the least expensive procedures, while others draw an ad hoc distinction between medically necessary and aesthetic procedures. Trans people also routinely face gatekeeping by individual doctors, medical commissions, or insurance inspectorates who have the power to decide if they can access services and if those services will be covered. Psychiatric diagnosis is often a prerequisite for insurance coverage.<sup>278</sup>

Services covered by public insurance are often unavailable, inaccessible or of bad quality.<sup>279</sup> As a result, trans people often go abroad or turn to private doctors to access the care they need, which places a significant financial burden on them.

In many European countries, medical examinations and invasive procedures, such as sterilisation, are a requirement for legal gender recognition, but still not covered by public insurance. This means that trans people need to finance human rights violations committed against them.<sup>280</sup>

Some trans people face multiple barriers when trying to access insurance coverage. For instance, some countries exclude **non-binary and gender nonconforming people** from coverage, either explicitly or in practice.<sup>281</sup> **Trans people with disabilities** are also faced with heightened barriers.<sup>282</sup>

## CASES

### Cyprus

“One doctor advised me to go to church... Thereafter I went to an endocrinologist. They told me they couldn’t take me on and could not undertake such a responsibility. They told me to wait awhile longer. By this point I had secured a report from a psychologist and psychiatrist, but they still wouldn’t accept to see me. But this particular (endocrinologist) had also told a friend of mine that we were all perverts [...] To get the result I wanted took me a year and a half of hormone treatment – possibly even two years – in order for the changes to be visible. And because the doctor was inexperienced, he had not had a similar case previously, he, too, was afraid to prescribe me a high dosage.” Testimony by a trans man

### Hungary

A trans woman visited a urologist to request a medical opinion for her legal gender recognition procedure. The urologist rejected to issue the opinion, and said that he would be ashamed if his son would do such a thing, adding that the woman could just as well have a hole made on her arm, as her vagina would be completely insensitive. The woman turned to the Equal Treatment Authority, and the parties settled: the hospital apologized, agreed to draft guidelines to urologists on trans issues together with the applicant, and to submit those guidelines to be published in a urological journal.

### Montenegro

Some trans people who were in need of healthcare services have been outed by their doctors to their families or other medical staff. In one case, a nurse was familiar with one trans man who requested access to the gender affirming process, not being aware that he is experiencing severe family violence. After she received his documents and appointed him to a medical practitioner, she outed him to his family, revealing the fact that he is starting with his transition, which brought to an escalation of family violence. He did not want to report the case, because he did not want to “inflict the damage to the nurse and worsen his family situation”.

## Poland

The Trans-Fuzja foundation recorded several cases of refusal to sell prescription medicines to trans people undergoing gender affirming procedures, in relation to the personal identification number (PESEL) provided on the prescription. In one such case a transgender woman was refused female hormone drugs due to having a male PESEL number. Another case concerned a refusal to sell a prescribed medicine recommended for gynaecological problems to a transgender man after his legal gender reassignment. The pharmacy employee justified her refusal based on the male PESEL number on the prescription and the customer's gender expression.

## Sweden

A trans woman asylum seeker in Sweden resorted to a hunger strike, protesting the living conditions in an LGBTQI asylum housing facility and the denial of her access to hormonal treatment. She was denied care despite presenting evidence that she had already started the treatment in her home country. She was told she could gain access if/when she got refugee status. At the time of the interview [with a local NGO], she had been off her hormonal supply for four months and feeling depressed because of the negative effects. Two of her fellow housemates in a similar situation were previously cleared by their caseworkers to access hormones.

## CHAPTER 9

# Housing

### Regional and international human rights standards

The 2017 **YP+10** introduced Principle 34 on the right to protection from poverty, setting out that everyone has the right to protection from all forms of poverty and social exclusion associated with SOGIESC and that poverty is incompatible with respect for the equal rights and dignity of all persons, and can be compounded by discrimination on the grounds of SOGIESC.<sup>283</sup> The Principle includes state obligations to take all necessary legislative, administrative, budgetary and other measures, to ensure the progressive reduction and elimination of all forms of poverty associated with or exacerbated by SOGIESC; promote social and economic inclusion; ensure participation and inclusion of those experiencing poverty on grounds of SOGIESC in policy making; ensure data collection; ensure access to effective remedies for violations of human rights, including those caused by non-State actors, that result in poverty and exclusion, and that adversely affect persons on the grounds of SOGIESC.

Goal 1 of the **SDGs** on No Poverty, adopted in 2015, calls on states to reduce at least by half the proportion of men, women and children of all ages living in poverty, achieve substantial coverage of the poor and the vulnerable, and ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.



In 2012, the FRA documented that one in eight (13%) **LGBT** people who had looked for a house or apartment to rent or buy in the last 12 months had felt discriminated against during this process because of being LGBT.<sup>284</sup> This rate was 16% among **lesbian women** and 17% among **trans** people.<sup>285</sup> Lesbian women and trans people were also more likely to experience discrimination when accessing other services, i.e. at bars, sports facilities, shops or banks.

There continues to be very little data on the exact scale of homelessness among **LGBTQI** people in Europe.<sup>286</sup> In the UK for instance, 25% of young homeless people identify as **LGBTQI**. In the US and Canada, this number is as high as 40%.<sup>287</sup> For **intersex** people no data exists as of now. However, intersex people have reported being homeless to OII-Europe. Considering the consequences of violation of bodily integrity, shame and taboo, on intersex people's access to employment as well as on their mental health, intersex people are at risk of poverty and, therefore, at risk of becoming homeless.

**LGBTQI** people are disproportionately affected by homelessness because of discrimination and violence in their families;<sup>288</sup> a history of trauma;<sup>289</sup> poor mental health;<sup>290</sup> bullying and violence in schools; or discrimination in housing.<sup>291</sup> Intimate partner violence may also force **LGBTQI** people out of their homes. There are very few state measures in place to prevent or address LGBTQI homelessness. Homelessness services and shelters are often lacking knowledge on SOGIESC issues and are thus unable to provide appropriate support.<sup>292</sup> As a result, **LGBTQI** homeless people are more likely to stay on the street than others.<sup>293</sup> LGBTQI organizations are also often ill-equipped to address homelessness within the community.<sup>294</sup> In some countries, due to lack of state support, they have been the ones to start running shelters. However, these efforts need to be accompanied by state support.

**Trans youth** face high rates of abuse and rejection in their families, many of them being evicted from their homes by family members. There is a lack of research data from Europe, but other studies highlight the severity of the issue. For instance, in Latin-America 44-70% of **trans women and girls** felt they had to leave home or were evicted.<sup>295</sup> A US study found that trans people who had to leave their home were twice as likely to experience homelessness or engage in sex work.<sup>296</sup> Another US study found that one in four trans people experience homelessness or are at risk of it.<sup>297</sup> Key causes include family rejection, bullying in school, and discrimination in the sphere of employment.<sup>298</sup>

**Trans sex workers**, including migrant sex workers, often work in the streets and are homeless.<sup>299</sup> Trans people often face harassment and violence at homeless shelters.<sup>300</sup> **LGBTQI asylum seekers** and **refugees**,<sup>301</sup> and **LGBTQI elders**<sup>302</sup> are also at increased risk of homelessness.

**37** Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

In **Bosnia and Herzegovina** the anti-discrimination law prohibits discrimination in housing on the grounds of SOGISC, but the government has not shared any positive examples to show that the law is implemented. The **Croatian** anti-discrimination law covers housing and the grounds of SOGIE. However, LGBT people and especially same-sex couples often face discrimination in housing. The government has not taken any measures to raise awareness of this issue or adequately implement the law. In **Estonia**, the Gender Equality Act provides protection on the grounds of GIESC, but not on SO. The **Bulgarian** anti-discrimination law does not cover housing and the law on housing does not cover discrimination. The Hungarian Equal Treatment Act provides protection on SOGI grounds, but there are concerns about enforcement. For instance, there are no information materials that would explain these provisions in plain language to private landlords, so it is questionable if the law is effective. In **Lithuania**, the anti-discrimination law does not explicitly include housing and only covers sexual orientation. There have been discrimination cases documented, but they are rarely reported to authorities. There are no legal protections in **Montenegro, Poland, Portugal, and Serbia**. In **Portugal** however, the National Strategy for the Integration of Homeless People (2017-2023) covers sexual orientation.

LGBT people in **Georgia** have reported discrimination when trying to rent housing. Despite the recommendations of the Public Defender, this remains an issue. In **Hungary**, reports about discrimination when renting or buying apartments remain rare, which is most likely linked to a general tendency not to be out to sellers/landlords out of fear. In **Montenegro** many LGBTI people experience discrimination when trying to rent a flat. This has particularly been an issue for trans people, for instance when having to show their ID documents that do not match their gender expression. Trans people are also at higher risk of homelessness.

**38** Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

The Sarajevo Open Centre in **Bosnia and Herzegovina** has received numerous calls from LGBT people who had to leave home and had no safe shelter to go to. Some shelters are accessible for **lesbian and bisexual women** who are victims of domestic violence, but none for **gay or bisexual men** and **trans** people. Safe houses in **Bulgaria** are also not prepared to address the needs of LGBTI people. Many LGBTI young people are rejected by their families and become homeless in **Georgia**, but there are no state programs in place to support them. However, the Gender Equality Council of the parliament has recently issued recommendations to the government, that include the need to make shelters for victims of domestic violence accessible to vulnerable groups, including **LBT women**. In **Hungary**, there are no programs targeting LGBTI homelessness and a severe lack of research data. Domestic violence shelters target women and their children, but **men** escaping abusive same-sex partners might not find placement. There are no specific measures to ensure LGBTI people's access to homeless or domestic violence shelters in **Lithuania**. LGL conducted a needs assessment, which showed that there is a dire need for a shelter for LGBT youth who have lost parental support after coming out. In **Poland**, there are no effective measures to address LGBTI homelessness, or homelessness in general. In **Portugal**, LGBTI victims of domestic violence can get emergency housing support in one shelter in the North of Portugal, supported by the municipality.

In **Macedonia**, 39% of LGBTI people have faced discrimination trying to access social services. In 2017, the LGBTI Support Center opened a shelter to be able to provide appropriate support for LGBTI people in crisis. The shelter has not received any financial support from the state. In **Montenegro** a similar shelter is run by LGBT Forum Progres. In **Poland**, two NGOs ran a safe hostel between 2015-2016, but they had to close it due to a lack of funding.

## **CASES**

### **Bulgaria**

In 2017, the case of a young gay boy became public. The boy was constantly violently abused by his father in a small Bulgarian city. The violence against the child became very serious and with the help of a few individuals and the Centre for Sexual Health, the boy was taken out of his home and placed in an institution where his biological family could not approach him. Although this case ended positively for the child, there are no functioning programmes for prevention of homelessness, nor are there any shelters or other adequate emergency accommodation for LGBTI people.

### **Croatia**

The applicant, in a same-sex relationship, decided to rent a flat she had previously viewed with her same-sex partner. The landlord asked questions regarding the sexual orientation of the applicant, and once it was acknowledged that she was lesbian, refused to rent the flat. The applicant claimed that she was directly discriminated against because of her sexual orientation. In 2014, Zagreb Municipality Court established discrimination and ordered the defendant to pay compensation of 5000HRK. In 2016, Zagreb County Court in the second instance ruling dismissed the first instance verdict and ordered the proceedings to be repeated. The appeal court believed that the first instance court did not clearly establish that the discrimination was based exclusively on the grounds of sexual orientation. There has not been any development since.

## Georgia

“I was hiding this fact [sexual orientation/gender identity] from my family because I knew a negative reaction that would follow from both of my parents as they are too conservative. [...] They found out about my partner. My friends and I had spent a year to get my family to face the fact that it is so and they had to accept me; you are not going to kill me, right? Finally I came out; my mother locked me at home in order to ‘change,’ ‘cure’ and ‘set me right’, otherwise I would be dead for her. She started to harass and beat me in front of her friends. Moreover, she demanded to see doctor and cure me; in short she had massive hysterical outbreaks; during one of them my sister opened the door and said that they could no longer stand me and demanded me to leave. I tried firstly, with my friends and secondly, with WISG to return home for my personal belongings but no one opened the door. Then we called police as I did not even have my ID and finally they opened the door to the police officer. They barely gave my ID to the officer; stated that everything else belonged to them”.<sup>303</sup> Testimony by a lesbian woman.

## Hungary

In May 2017 a 68 year old lesbian woman requested from the local government to be admitted as a co-tenant in the apartment rented by her registered partner. The relevant subcommittee of the local assembly rejected her request without providing any reason. The local government also failed to inform her that as a registered partner she can live in the apartment as a co-tenant without special permission as spouses -and thus registered partners- have statutory permission to reside in public housing rented by their spouses.

## CHAPTER 10

### Sports

#### Regional and international human rights standards

In 2016 the **UN Special Rapporteur on Health** noted that discriminatory policies against intersex athletes “have led to women athletes being discriminated against and forced or coerced into ‘treatment’ for hyperandrogenism [...] a number of athletes have undergone gonadectomy (removal of reproductive organs) and partial cliteroidectomy (a form of female genital mutilation) in the absence of symptoms or health issues warranting those procedures.”<sup>304</sup>

In 2016 the **Council of Europe** adopted the Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events, which calls for policies and procedures against “any racist or other discriminatory behaviour”.<sup>305</sup>

The **UN Office of the United Nations High Commissioner for Human Rights (OHCHR)** has pointed out that “being intersex of itself does not entail better performance, whereas other physical variations that do affect performance, [...] are not subjected to such scrutiny and restrictions”.<sup>306</sup>

The 2017 **YP+10** establish additional state obligations relating to Principle 2 on the rights to equality and non-discrimination, setting out that states must ensure that all individuals can participate in sport in line with the gender with which they identify, subject only to reasonable, proportionate and non-arbitrary requirements; ensure that all individuals can participate in sport without discrimination on the grounds of SOGIESC; and adopt legislative, policy and other measures in line with international human rights

norms and standards to eliminate bullying and discriminatory behaviour at all levels of sports, on the basis of SOGIESC.<sup>307</sup>

It also makes recommendations to sports associations that they must incorporate the Yogyakarta Principles and the YP+10 in their work, including by taking practical steps to create welcoming spaces for participation in sport, such as installing appropriate changing rooms or sensitizing the sporting community; ensure that all individuals who wish to participate in sport are supported to do so irrespective of SOGIESC, and that all individuals are able to participate without restriction, subject only to reasonable, proportionate and non-arbitrary requirements to participate in line with their self-declared gender; remove, or refrain from introducing policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary, irreversible and harmful medical examinations, testing and/or procedures in order to participate as women in sport; take measures to encourage the general public to respect diversity based on SOGIESC in sports, including measures to eliminate hate speech, harassment, and violence at sports events.

Doing sports and attending sports events continues to be difficult for many **LGBTQI** people. As documented by the FRA, 10% of LGBT people who accessed sports or fitness facilities, felt personally discriminated against.<sup>308</sup> This rate was 15% among **trans** respondents.<sup>309</sup> A Scottish survey found that 62% of **LGBT** respondents have witnessed homophobia or transphobia in sport, and 73% felt that they were a barrier for people who wanted to take part in sports. 57% would be more likely to do sports if it was a safer environment.<sup>310</sup> The study also found that **homophobic** slurs continue to be prevalent during sports games, including in school.<sup>311</sup> Teachers and school staff rarely intervened.<sup>312</sup>

**39** Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

It is rare that homophobia, transphobia and discrimination are effectively combated by member states. In **Poland**, the 2015 government action plan Sport Development Programme until 2020 proposes some actions against homophobia in sports, but these are not being implemented. The state authorities do not engage in raising awareness of LGBT issues in sports in any way. In **Montenegro**, the Law on Sports does not cover discrimination on grounds of SOGIESC, but the Strategy for improvement of life quality of LGBT people 2013-2018 provides a set of strategic goals and protective measures for LGBT persons in sports. There are no specific measures in place however to protect trans and intersex athletes from exclusion or discrimination. The government has supported campaigns to support the inclusion of LGBT people in sport, but human rights defenders state that more action is needed. The Law on Sports in **Bosnia and Herzegovina** guarantees equal access to sports regardless of SOGI, but civil society cannot confirm that these provisions are being implemented. In **Croatia**, the Sports Act states that sports must be accessible regardless of sex and sexual orientation and the Anti-Discrimination Act forbids discrimination in sports on grounds of SOGIE.

NGOs in Bulgaria, Croatia, and Poland highlighted the need for research on LGBTQI people's experiences in sport.



**40** Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

Discriminatory and hateful insults during and in connection with sports events remain alarmingly common and measures to tackle them are scarce. There are no measures in place to prevent exclusion, insults, or intolerance against LGBTQI athletes in **Croatia, Estonia, Hungary, Lithuania, Poland, or Serbia**. Homophobic insults have increased at sports events in **Georgia** and **Serbia**. Hate speech is also common at sports events in **Croatia** and **Poland**, especially at soccer games. These incidents are rarely condemned by sports associations or authorities in **Poland**. In **Poland**, homophobic hate speech addressed to unspecified recipients is not a criminal offence. Prosecution is impossible in these incidents, as there is no individual who can be perceived as the victim. In **Serbia**, homophobic hate speech at sports events has never been sanctioned. In **Macedonia**, 35% of LGBT people have survived or witnessed homophobic behaviour at sports events, but these acts are usually considered misdemeanors and not criminal acts. The law in **Bosnia and Herzegovina** prohibits incitement to hatred and violence in sports based on SOGI, but there is no information about implementation. In **Hungary**, anti-discrimination campaigns in sports are rare in general, and are only limited to racism and xenophobia.

In **Portugal**, the state has supported some anti-discrimination initiatives in sports by civil society, including financially.

**Trans and intersex** people have reported avoiding sports facilities in fear of harassment, including in changing rooms.<sup>313</sup> Given the beneficial impact of doing sports on mental health problems and the disproportionately poor mental health of trans and intersex people, this is alarming.<sup>314</sup> Many trans people report that they would want to do more sports before undergoing gender affirming surgeries, yet often avoid them.<sup>315</sup> Trans refugees in **Sweden** have reported that they have difficulty accessing sports facilities because of the mismatch between their ID cards and their gender expression. Trans asylum seekers are unable to go to gyms, as most require a personal number - their LMA card will not be sufficient.

**Trans and intersex** people also face barriers in competitive sports. In 2016 the International Olympic Committee adopted guidelines on the inclusion of **trans** athletes.<sup>316</sup> They currently place no restrictions on trans men competing. Trans women however must have declared their gender as female for at least 4 years and have testosterone levels below 10 nmol/L for at least 12 months prior to competition.<sup>317</sup> The IOC further states that if a trans woman does not meet these requirements yet, they can compete with men.<sup>318</sup> Such a rule further excludes trans athletes, instead of addressing discrimination. Policies greatly vary on the national level and depending on the sport, but many follow IOC regulations.<sup>319</sup> These excessive requirements are contrary to research evidence that explain that trans women who have transitioned post puberty do not have a biological/anatomical advantage compared to other athletes.<sup>320</sup> They also significantly contribute to trans people's negative experiences in sports.<sup>321</sup>

**Intersex** athletes face a specific set of obstacles. There have been several cases of female intersex athletes who have been disqualified from sports competitions on the basis of their intersex traits.<sup>322</sup> In 2015 an interim judgement in Chand v. Athletics Federation of India and the International Association of Athletics Federations (IAAF), had suspended these kind of discriminatory practices, due to lack of scientific evidence that would show that testosterone was the decisive factor for the athlete's performance.

In April 2018, however, the IAAF introduced new "Eligibility Regulations for Female Classification (Athletes with Differences of Sex Development)" for a number of international events.<sup>323</sup> All **intersex** women whose testosterone level exceed 5 nmol/L will be forced to take drugs that suppress their natural testosterone level, in order to be eligible.

According to sports experts, testosterone is only one of many factors that impacts performance and the naturally occurring differences in humans, e.g. oxygen uptake, capillary density, or the ability to tolerate high levels of lactic acid, are intrinsic for sports competition.<sup>324</sup> Such regulations, established by one of the highest sports bodies in the world, might lead to further discrimination of **intersex and trans** athletes in all areas of sports. In addition, implementation practices of these regulations may include discriminatory practices and the violation of the athletes' right to privacy. The possible physical and psychological side-effects of coerced medication that intersex athletes might undergo, also need to be taken into account.

**41** Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

In some countries, **LGBTQI** people have formed their own sports clubs to create a safe environment. This is the case in **Bulgaria, Croatia, Hungary, and Poland**. In **Hungary**, some of these sports associations have reported difficulties in collaborating with mainstream sports clubs and decision makers. None of them receive state funding. There is a lack of awareness about the needs of trans athletes in **Hungary**, even among LGBTQI sports groups.

**LGBTQI athletes** in competitive sports are invisible in **Bulgaria, Croatia, and Hungary**. In **Poland**, an American athlete who plays in a Polish basketball team came out as lesbian in 2017. The first Polish athlete to be out is a professional swimmer, who came out as bisexual in 2018.

## CASES

### Croatia

Vlatko Marković, president of the Croatian Football Federation and Zdravko Mamić, executive vice-president of Zagreb Football Club Dinamo stated to media that a “homosexual person” could not be a member of the Croatian Football Team. Class action lawsuits were filed against both men. Both cases were rejected by the Zagreb County Court, stating that Mamić and Marković were entitled to a “value judgement”. In the appeal process, the Supreme Court accepted the complaints, established discrimination and ordered Marković to pay for the publishing of the verdict and apologise to LGBT people.<sup>325</sup>

The appeal against Mamić was rejected by the same court. Since the statements made by Marković and Mamić were almost identical, a request for revision was filed. The revision decision was issued on June 17, 2015, and it reversed the Supreme Court judgment from April 18, 2012 and the County Court in Zagreb from March 24, 2011, and established discrimination against LGBT people by Mamić in his statement from November 2010. The judgement ordering an apology from Zdravko Mamić was announced in early 2016.<sup>326</sup>

### Georgia

In October 2017, a member of the Georgian national football team Guram Kashia played in an Eredivisie match wearing an LGBTI flag and handcuffs, demonstrating his support for LGBTI people. Kashia’s activism was endorsed by Georgian human rights defenders. President Giorgi Margvelashvili also affirmed his support for Kashia, along with the newly elected mayor of Tbilisi, and the Georgian Football association (GFA). This support was followed by the protest of ‘Georgian March’ at the GFA, requesting the expulsion of Kashia from the team and an apology from the GFA for supporting LGBTI people. Protesters shouted homophobic slurs and burnt a rainbow flag outside the GFA. Eight people were arrested on charges of resisting police and minor hooliganism. On 6 November, a second protest took place against ‘LGBT propaganda’ in football. The Orthodox Parents’ Union marched against the ‘anti-Christianity propaganda’.

## Hungary

The Atlasz LGBTQ Sports Association was looking to rent a swimming lane for their sports day to take place on 4 February 2017. After confirming the price and availability of the lane, the local government-owned swimming pool cancelled their reservation when they found out the rentee would be an LGBTQ sports association. The association turned to the Equal Treatment Authority who found that the cancellation amounted to discrimination based on sexual orientation and gender identity, and imposed a fine of 1 million HUF (appr. 3 000 EUR). The Authority found that the swimming pool's claim that the cancellation was due to overcrowding was not substantiated by evidence, and that the house rules of the swimming pool were amended only after the legal procedure was launched to support the legal argumentation of the company. The Metropolitan Court of Budapest upheld the decision of the Authority.

## Lithuania

In 2013 the Lithuanian MP Petras Gražulis was seen leading basketball fans in an anti-gay chant during the Eurobasket championship in Slovenia. The video was published on YouTube. In the video the MP is seen initiating and then leading a group of Lithuanian basketball fans in a repeated chant of "Whoever is not Jumping is a Faggot!" The video has more than 28000 views and it is still available online. The Lithuanian Basketball Federation condemned the incident.

## CHAPTER 11

# Right to Seek Asylum

### Regional and international human rights standards

In 2012 **UNHCR** published its Guidelines no. 9 on Claims to Refugee Status based on Sexual Orientation and/or Gender Identity, which consistently and explicitly mention trans and intersex asylum seekers and refugees.<sup>327</sup>

In 2013 the **European Court of Justice** established that “homosexual individuals” constitute a particular social group under the Refugee Convention; the criminalisation of same-sex relationships only constitutes persecution when implemented; and that applicants must not be required to conceal their sexual orientation.<sup>328</sup> In 2014 the Court ruled that assessing an asylum claim must be based on the person’s situation and not stereotypical notions and that questions about the claimant’s sexual practices and tests to prove one’s sexual orientation are contrary to human rights.<sup>329</sup> In 2018 the Court declared the illegality of the use of psychological reports based on projective personality tests in determining the sexual orientation of asylum seekers.<sup>330</sup>

The 2017 **YP+10** includes additional obligations relating to Principle 23 on the right to seek asylum setting out for instance, that states must ensure that no person is denied asylum on the basis that a person may conceal or change their sexual orientation, gender identity, gender expression or sex characteristics in order to avoid persecution; ensure sensitive and culturally appropriate guidelines and training on SOGIESC for agents involved in the process of determination of refugee status and in managing reception conditions; ensure that inappropriate, invasive, unnecessary or coercive medical or psychological testing or evidence is not utilised to assess a person’s self-declared SOGIESC; provide access to medical care and counselling appropriate to those seeking asylum, recognising any particular needs of persons on the basis of their SOGIESC, including with regard to reproductive health, HIV information and therapy, hormonal or other therapy, and gender affirming treatment; ensure that detention should only be used as a last resort and that solitary confinement should never be used as a protective measure; and that asylum seekers must have access to healthcare, including counseling, HIV information and therapy, hormonal or other therapy, and gender affirming care.<sup>331</sup>

The influx of asylum seekers to Europe has significantly grown in the past years, culminating in the highest number of entrances in 2015. The vulnerability of asylum seekers and refugees has notably increased during this time, due to the xenophobic, populist, racist and nationalistic rhetoric that has gained ground in numerous member states.<sup>332</sup> In several countries, state officials have openly supported xenophobic attacks or waged campaigns against migrants.<sup>333</sup> In **Hungary**, the government has placed billboards across the country inciting hostility against migrants and put in place fences and transit zones at the border to limit the number of asylum seekers entering to one per day. The prison-like conditions in receptions have been criticized by the ECRI and the European Court.<sup>334</sup>

**LGBTQI** people make up a sizeable group among asylum seekers who flee to Europe seeking safety.<sup>335</sup> Because of their SOGIESC, they often face additional discrimination and violence throughout their journey, arrival, asylum process and as recognized refugees.<sup>336</sup> If turned down, many may stay in the country undocumented and are more prone to discrimination and violence.<sup>337</sup>

In 2017, the FRA highlighted the following as key issues in the area: lack of interviewing guidelines sensitive to LGBTI people's needs; asylum officers relying on stereotypical views on SOGIESC when assessing claims; unsafe accommodation; lack of training for asylum officers, interpreters and staff in reception centers; lack of guidelines on the provision of gender affirming care.<sup>338</sup> Access to information also remains a concern.<sup>339</sup> There is also a lack of data on the number of asylum claims on the grounds of SOGIESC, which affects policy making. These issues have all been reiterated in ILGA-Europe and TGEU member organizations' reports.

**LGBTQI migrants** are at a high risk of harassment and violence by state authorities, private companies or individuals, and vigilante groups.<sup>340</sup> The level of reporting and recording of hate crimes remains low.<sup>341</sup> Victim support services are inadequate in supporting **LGBTQI asylum seekers**.<sup>342</sup> LGBTQI migrants often suffer harassment and abuse on the basis of homophobia and transphobia intersecting with racism and xenophobia, as reported by trans refugees in Sweden. In one case, a trans asylum seeker was attacked on racial and transphobic motives by security guards at a train station. Their case was dismissed by the police.

In 2016, TGEU reported that **trans asylum seekers** in Europe are at a heightened risk of violence, human trafficking, health problems, alcohol and drug abuse and suicidal thoughts.<sup>343</sup> During their asylum process, trans asylum seekers are likely to be placed in gendered facilities not always respecting their gender identity, which may increase risks of harassment and violence.<sup>344</sup> It is essential that trans asylum seekers are consulted about their placement and are accommodated with a view to minimizing any harm they could face.

Good practices have been documented by ILGA-Europe and include guidelines for handling **LGBTI** asylum claims, LGBTI specific data in country information, trainings, or appointing staff in reception centers focusing on LGBTI persons.<sup>345</sup>

**42** In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

In 24 member states the law recognizes sexual orientation as a ground of persecution. Gender identity is recognized in 15 countries, and sex characteristics in three.<sup>346 347</sup> Although the number of states recognizing sexual orientation has not changed since 2012, the inclusion of gender identity increased from three to 15 countries in six years.<sup>348</sup> In 9 countries there are specific asylum policies that cover sexual orientation; gender identity is covered in 11, and sex characteristics in one country.<sup>349</sup>

In most countries however, such as **Bosnia and Herzegovina, Bulgaria, Croatia, Finland, Lithuania** and **Poland**, there is no official data on the number of cases where the state provided refugee status on the basis of SOGIESC. Specific guidance for authorities on how to process these claims is also greatly lacking. NGOs in **Hungary, Portugal, Poland, Lithuania**, and **Sweden** noted that trainings for asylum officers would be essential. **Croatian** human rights defenders noted the lack of trained translators or ignorance about SOGI issues on the part of police officers. Trans asylum seekers in **Finland** have expressed concern that authorities do not understand trans issues. When provided, training is irregular and covers an insufficient number of asylum officers. Trainings are often organized by civil society and are not sustainable enough.



In **Croatia, Lithuania, Macedonia, and Serbia** the law recognizes SOGI as grounds of persecution. In **Estonia**, the law does not explicitly mention SOGI, but practice shows that the law is applied in a way that is inclusive. Gay men from **Tajikistan** for instance, have been recognized by the **Estonian** authorities as constituting a vulnerable group. In **Hungary**, only SO is mentioned in law, GIESC are not. Yet trans claimants have been able to get refugee status. In **Bulgaria**, sexual orientation is covered, but it is unclear whether trans applicants would be able to get protection. In **Bosnia and Herzegovina**, the Law on Asylum was recently amended, but despite advocacy by civil society, lawmakers failed to use this opportunity to include SOGI as grounds.

Family unification is difficult for **LGB** refugees as laws routinely fail to recognize same-sex partners as spouses. This is also the case in **Bulgaria**. In **Sweden**, LGBTQ refugees are not able to provide evidence of their family status that is required for unification, such as marriage, cohabitation or registered partnership, as they often come from countries where same-sex activities are criminalized.

**43** Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

Despite standards set by the Council of Europe, UNHCR, or the European Court of Justice, the FRA documented that in many EU countries asylum officers continue to base their decisions on stereotypical notions of SOGIESC and lack understanding and knowledge of **LGBTI** issues.<sup>350</sup> They routinely ask invasive questions, or subject LGBTI claimants to various tests to prove their SOGIESC. In **Estonia**, psychological tests are still used to determine a claimant's sexual orientation. In **Sweden**, trans asylum seekers have reported that the authorities make decisions on the basis of stereotypes and are not knowledgeable about trans issues.

Recently, several member states have started using accelerated and fast-track procedures (safe countries of origin, safe third countries, subsequent applications, etc.), which make any individual assessment of claims difficult and thus also entail great risks for **LGBTQI** asylum seekers.<sup>351</sup> Because of stigma, shame, or lack of information, **LGBTQI** asylum seekers may disclose their identity late and during fast-track procedures the real reason for their fleeing may not be discovered.<sup>352</sup>

**Polish** activists have also documented that late disclosure or the option of internal flight have been used as reasons to deny LGBTI asylum claims. Asylum seekers have also been pushed back at the Poland-Belarus border, affecting LGBTI people fleeing Chechnya. In **Georgia** and **Macedonia** the law specifically states that asylum seekers cannot be sent back to danger, including if persecuted on grounds of SOGI.

Country information that is used in asylum procedures often lacks specific information on **LGBTQI** rights.<sup>353</sup> Safe country lists commonly fail to recognize the situation of **LGBTQI** people. In **Croatia**, the safe country list includes Tunisia, Morocco, and Algeria, where same-sex relations are criminalized. In **Sweden**, a **trans** asylum seeker was deported back to Greece as part of the Dublin procedure, even though she was sexually and physically abused there. The authorities argued that Greece was a safe country.

**44** Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

Far too often, **LGBTQI** asylum seekers face detention during their asylum process. In the *O.M. v Hungary* judgment (2016), the Strasbourg Court established that detaining LGBTI people may reproduce “the plight that forced these persons to flee in the first place”.<sup>354</sup> ILGA-Europe and ECRE have also condemned the detention of LGBTI asylum seekers.<sup>355</sup> Accounts from **Estonia, Poland, Bosnia and Herzegovina, and Macedonia** highlighted the lack of measures that would prevent violence against LGBTI people in detention or in reception centers. Trans people in **Finland** have reported being unsafe in reception centers, while LGBTI claimants suffered humiliating treatment and abuse from staff and peers in **Hungary**. There are no special protection measures in place in **Bulgaria**, and in 2017, Youth LGBT Organization received information about numerous cases where gay asylum seekers were raped in the asylum center.

**Trans** people are routinely placed in housing on the basis of their legal gender, such as in **Poland** or **Montenegro**. Very few countries recognize the name and gender identity of trans asylum seekers, which would be essential to respect their privacy and prevent forced outing, harassment and discrimination. **France** and **Hungary** provide for such recognition during the asylum process.<sup>356</sup> In **Hungary** however, official legal gender recognition is only available to citizens, leaving trans refugees exposed to discrimination and violence. The Constitutional Court has recently found this gap in the law unconstitutional and a case is pending at the Strasbourg Court.<sup>357</sup> Other countries, such as **Sweden** or **Denmark**, only recognize chosen names and gender identities upon a diagnosis and once a residence permit has been granted.<sup>358</sup> The **Swedish** state provides for safe housing for LGBTQI asylum seekers, but these are often in smaller towns where trans people feel vulnerable and isolated. Many try to conceal their identity to stay safe.

Trans asylum seekers also face barriers accessing gender affirming care, including hormonal treatment.<sup>359</sup> There is generally a lack of information on trans healthcare, often with NGOs stepping in and providing emergency support to trans claimants, such as in **Montenegro**. Some trans asylum seekers already started hormones before fleeing - their lack of continued access to hormones can be detrimental to their physical and mental health.<sup>360</sup> In **Sweden** for instance, asylum seekers are entitled to “healthcare that cannot wait”, but that does not include trans specific healthcare. Waiting times for trans healthcare can be excruciatingly long for any trans person in **Sweden**, but trans asylum seekers are not in the position to skip these lines by going private.

## CASES

### Sweden

“After 7 months of waiting in limbo my interview date finally arrived, but it seemed everyone was prepared apart from the interpreter. Not only was he not knowledgeable on trans terminology during the interview, he was also misinterpreting what I said especially whenever I mentioned trans. After a few interjections to correct him, my lawyer from RFSL eventually ordered that the interview be stopped and requested for a postponement until a competent interpreter could be provided. It took another three months for me to get an interview date, I felt like I was back to square one, the waiting was depressing.”  
Testimony of a trans asylum seeker

### Denmark

“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.” Fernanda Milàn – Guatemala, Denmark<sup>361</sup>

### Malta

“What gave me hope during those nine months of travelling across the desert and the sea was that I was going to the land of the free where I would get support and be embraced and would be not only tolerated, but also celebrated. When LGBTQI refugees arrive, they encounter a different reality. Xenophobia, racism, populism and very harsh anti-immigration rhetoric.” Kim Abdi – Somalia/Kenya, Malta

### United Kingdom

“I was refused asylum three times. At first I did not even have a lawyer. When I was interviewed, the Home Office’s interpreter told the official: ‘This is one of the strangest interviews I have ever done.’ The Home Office refused to believe that I am trans; they treated me like a liar. They continuously referred to me as a woman. I felt like they were attacking me.” Adam – Egypt, United Kingdom

## CHAPTER 12

# National human rights structures

### **Regional and international human rights standards**

The 2017 **YP+10** includes an additional recommendation for National Human Rights Institutions to ensure that in their programmes and activities they take action on human rights issues relating to SOGIESC, mainstream those issues in all their functions, including complaint handling and human rights education, and promote the inclusion of people of diverse SOGIESC in their leadership and staff.

**45** Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

National Human Rights Structures (NHRS) are clearly mandated to address discrimination on grounds of sexual orientation and gender identity in **Bosnia and Herzegovina, Bulgaria**<sup>362</sup>, **Croatia, Estonia**<sup>363</sup>, **Georgia, Hungary, Lithuania**<sup>364</sup>, **Montenegro, Poland**, and **Serbia**. Some NHRSs have been particularly effective in making recommendations, raising awareness and dealing with individual complaints.

In **Bosnia and Herzegovina** the Ombudsman presented a special thematic report on the rights of LGBT people in 2016. In recent years, it has published statements in support of LGBT gatherings and has called on authorities to ensure the safety of participants. Following a complaint in 2018, it initiated an investigation into alleged violations of LGBT people's freedom of assembly. The Gender Centre of FBiH, RS and the Agency for Equality of Sexes BiH, include LGBT issues in their operational plans and have hosted roundtables and trainings.

In **Bulgaria**, the Commission for Protection against Discrimination has worked on several sexual orientation discrimination cases, including regarding hate speech against LGBT people, and issued fines. In one case they ruled against an employer who released from work an openly gay man, and the employer paid a fine. There is no information on its work regarding discrimination on the ground of gender identity. The Ombudsman has not worked on SOGI cases so far.

In **Georgia**, the Department of Gender Equality (within the Office of Public Defenders), monitors and promotes gender equality, and its mandate covers SOGI issues. The Department has made important statements and recommendations about anti-LGBT violence and LGR in its annual reports. The Department of Equality is a quasi judicial body that can receive cases and make recommendations. Over the past three years the Department received over 300 complaints, roughly 10% of which were related to SOGIE. The office established discrimination in numerous cases and affirmed that LGBTI people are some of the most vulnerable in Georgian society.

In **Hungary**, the Equal Treatment Authority handles individual cases and carries out some awareness raising work. The Commissioner for Fundamental Rights can, however, address systemic issues, and has done so with regards to legal gender recognition, registered partnership and adoption, and intersex issues. The Commissioner, who is considered an important ally for the LGBTI community, has published statements in support of IDAHOT and Budapest Pride, and in 2014 wrote a welcome letter to the participants of the 5th European Transgender Council in Budapest and TranszFeszt.

There are several NHRs in **Montenegro**. The Protector of Human Rights and Freedoms actively works on discrimination based on SOGI, with some clear and important decisions in the past five years. The Gender Equality Committee of the Parliament of Montenegro has failed to address the human rights of trans people so far.

In **Estonia**, the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner can accept complaints about SOGI based discrimination, but their recommendations are not binding. The **Lithuanian** Office of the Seimas' Ombudsperson has not shared any information with LGL about any activities it has undertaken on LGBT issues. The Office of the Equal Opportunities Ombudsperson has the mandate to investigate discrimination cases on the ground of sexual orientation. It can also publish reports, make recommendations on laws and policies, and conduct surveys, but it cannot initiate judicial proceedings. The Office has stated that it would process cases relating to gender identity under the ground of gender. Serbia has several NHRs in place and all of them have dealt with SOGI based discrimination cases to some extent. However, LGBT people have reported a lack of trust in these institutions.

The Ombudsperson's Office in **Portugal** is not mandated to work on SOGIESC based discrimination. NHRs in **Macedonia** are not mandated to work on SOGIESC issues. However, the Commission for Protection Against Discrimination adopted a Protocol for determining the procedure for dealing with cases for protection from discrimination based on sexual orientation and gender identity. This is a positive step, but there have been no measures to inform LGBT people of it. NGOs are also concerned about the independence and expertise of the Commission. Of the 18 complaints submitted to the Commission by civil society, the Commission found discrimination in only three. It stopped the procedure or issued an unclear opinion in three cases. The mandate of the Ombudsman does not include SOGI, but the Ombudsman signed a Memorandum of Cooperation with the LGBTI

Support Center in 2016, affirming that it will work on SOGIESC issues. Unfortunately the Ombudsman has not undertaken any relevant activities and has failed to mention LGBTI people in its annual report.

Some measures in **Croatia** and **Poland** have threatened NHRIs. In Croatia, all complaints related to SOGI are submitted to the Gender Equality Ombudsperson. NGOs have been concerned about the political pressure on some ombudspersons since the 2015 election. For instance, one ombudsperson was removed in the middle of their term and the annual reports of two ombudspersons were not adopted by the parliament. Although none of these measures were LGBTI specific, they have undermined the independence of NHRs. There are two NHRIs in **Poland** and both can work on LGBT issues. The Commissioner for Human Rights (RPO) is an independent body that has extensively addressed the issue of intolerance based on SOGI. The institution has weakened since 2015, when its new chief was appointed and became a constant object of attacks of right-wing politicians (see more under Cases). The Government Plenipotentiary for Civil Society and Equal Treatment (PRT) had meaningful cooperation with LGBT organizations between 2011-2015, but its role has become marginal since the 2015 elections.



**CASES****Poland**

In 2015, Adam Bodnar was appointed as the Commissioner for Human Rights. Because Bodnar's activities and statements do not comply with policies of the Law and Justice government, the Parliament has been granting the RPO a budget which is tighter than requested. Moreover, different politicians and people related to the Law and Justice party are constantly trying to discredit Adam Bodnar and his work. This situation raises deep concern among NGOs, as these actions might result in weakening the office of the RPO and hampering its effectiveness to perform its tasks.

## CHAPTER 13

# Discrimination on Multiple Grounds

LGBTQI people constitute a heterogeneous group, whereby different systems of oppression affect certain subgroups in specific ways. **Lesbian and bisexual women** and **trans** people experience discrimination on the basis of their gender to a much larger extent than gay and bisexual men do.<sup>365</sup> **Intersex children** who are subjected to surgery without their consent and intersex seniors who lack access to adequate elderly care, face violence or discrimination on grounds of their sex characteristics and age. Non-consensual medical interventions have a severely negative impact on how intersex children perform in school, which affects their future educational prospects and **socio-economic status**.

**Trans** people who belong to **disability** minority groups, are **young**,<sup>366</sup> poor, or engage in **sex work**, experience discrimination significantly more often in general healthcare.<sup>367</sup> **Trans people with disabilities** are routinely denied access to gender affirming care and legal gender recognition.<sup>368</sup> **Migrant trans sex workers** are at particular risk of discrimination and violence because of transphobia, racism, xenophobia and anti-sex worker attitudes.<sup>369</sup> In the UK for instance, **LGBT people of color, disabled LGBT people** and those belonging to **non-Christian faith** face even more violence than their peers.<sup>370</sup>

In several countries, NGOs have started to address the situation of various subgroups in the community, do research, organize events and improve their overall work on intersectionality. In **Poland**, civil society has invested in doing more research on intersectional discrimination; in **Hungary**, some subgroups have organized events for their community. Regional organizations such as ILGA-Europe and TGEU have also increasingly addressed intersectionality in their work, i.e. making available more scholarships to their events for marginal subgroups or by publishing research reports, social media campaigns and policy papers on elderly **LGBTQI** people, disability, sex work, race or asylum. The mainstreaming of intersectionality within the work of civil society, may positively inform policies, and make policies more targeted and effective.

**46** Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Anti-discrimination laws cover multiple discrimination in a number of member states, but implementation is rather flawed. In **Bosnia and Herzegovina**, the Law on Prohibition of Discrimination was amended in 2016 to include multiple discrimination with the intention of affirming its severity. However, recognizing, understanding, proving and adequately sanctioning multiple discrimination has been an issue. The **Croatian** Anti-Discrimination Act includes multiple discrimination and defines it as a “more serious” form of discrimination. Zagreb Pride, however, is not aware of any court cases that focused on multiple discrimination and included SOGI. There are no specific measures in place to address discrimination against subgroups of LGBTQI people. NGOs have documented that within the LGBTQI community women face significantly more sexual violence. Further, trans women are excluded from safe houses for victims of partnership violence. Research about other subgroups is currently lacking. **Georgian** law also includes multiple discrimination. WISG has documented that LBT women are at particular risk of multiple discrimination. The Georgian state however has failed to include LBT women in measures addressing domestic violence. The **Macedonian** anti-discrimination law defines multiple discrimination as a severe form of discrimination.

**Bulgaria, Estonia, Hungary, Lithuania, Poland, Serbia, and Sweden** do not recognize multiple discrimination in their legislative framework. The **Estonian** Gender Equality and Equal Treatment Commissioner has examined several cases of multiple discrimination implying that the Gender Equality Act and the Equal Treatment Act should be interpreted as including multiple discrimination. No such court cases have taken place, however. In **Hungary**, some policy documents include multiple discrimination, but not SOGI. Research is lacking. In recent years, Roma LGBTI people, Jewish LGBTI people, and LGBTI people with hearing disabilities have organized events, but these initiatives only reached a very limited number of people. The **Lithuanian** Office of the Equal Opportunities Ombudsperson has stated that it could in theory address cases of multiple discrimination, but no such complaints have been submitted. There is limited reference to multiple discrimination in Polish law, namely only in the Labor Code.

Despite civil society recommendations, the Equal Treatment Act does not cover multiple discrimination. NGOs have done some research, including on SOGIESC intersecting with disability and the situation of rural LB women. The **Serbian** National Strategy for Gender Equality for the Period 2016-2020 covers multiple discrimination and explicitly mentions “women of different sexual orientation”. However, no special measures have been adopted to address multiple discrimination. According to research by civil society, one-third of LGBT respondents have experienced multiple discrimination, most on the ground of their gender, others on grounds of their race, ethnicity or disability. Trans asylum seekers and refugees in **Sweden** have reported discrimination on grounds of their gender identity and race or ethnicity, both by state and non-state actors. Reporting remains low for fear of losing one’s asylum case or refugee status.

## CASES

### Hungary

On 6 July 2013 three men, among them two Roma, were heading home from the Budapest Pride march when they met a group of 20 - 30 protesters dressed in black, marching in a military formation. The group forced the three men to stop, shouted “You are faggots! You are gypsies!” at them, and beat them up. The assault ended when police arrived on the scene, however, they did not apprehend any of the perpetrators, nor did they check their identity. The police also claimed that the victims disappeared. After widespread media attention the police conducted a thorough investigation and charged six people for violence against a member of a community based on sexual orientation and ethnicity. The court found five of them guilty. The second instance court also found the defendants guilty, and added that chanting homophobic slurs as part of a larger group was also unlawful.

### Sweden

“During the process of registering my gender marker change with private sector I encountered many hurdles which I feel were related to my race. I was treated with suspicion and even denied services whenever I tried to use my old identity card. I knew this treatment was wrong, I just didn’t know where to report.” Testimony of a trans asylum seeker.

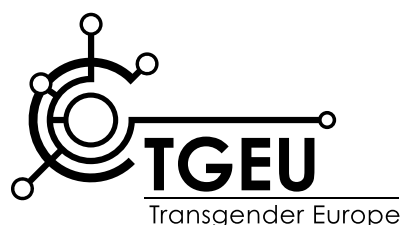
## ANNEX 1: SUBMITTING AND ENDORSING ORGANISATIONS

**ILGA-Europe** are a driving force for political, legal and social change in Europe and Central Asia. Our vision is of a world where dignity, freedoms and full enjoyment of human rights are protected and ensured to everyone, regardless of their actual or perceived sexual orientation, gender identity, gender expression and sex characteristics.

ILGA-Europe are an independent, international non-governmental umbrella organisation bringing together more than 500 member organisations in 53 countries. We are part of the wider international ILGA organisation, but ILGA-Europe were established as a separate region of ILGA and an independent legal entity in 1996. ILGA itself was created in 1978.

The two main pillars of ILGA-Europe work are advocating for human rights and equality for LGBTI people before European institutions and supporting national level advocacy, and strengthening the LGBTI movement in Europe and Central Asia by providing training and support to LGBTI groups.

[www.ilga-europe.org](http://www.ilga-europe.org)



**Transgender Europe** (TGEU) is a European-based umbrella organisation supporting, fighting, and advocating for the rights of trans people across Central Asia and Europe. TGEU is committed to intersectional justice and trans rights through advocacy, campaigning, researching, community building, and networking with alliances. TGEU represents more than 115 member organisations and groups in 44 countries. TGEU's vision is a world free from discrimination where every person can live freely according to their gender identity or expression without interference.

[www.tgeu.org](http://www.tgeu.org)

**OII Europe** (Organisation Intersex International Europe) is the umbrella organisation of European human rights based intersex organisations with member organisations in all Council of Europe regions. OII Europe was founded on Human Rights Day, 10 December, during the Second Intersex Forum at Stockholm in 2012.

OII Europe's goals are:

- full implementation of human rights, bodily integrity & self-determination for intersex people
- legal prohibition of non-consensual medical & psychological treatment; medical practitioners or other professionals should not conduct any treatment to the purpose of modifying sex characteristics which can be deferred until the person to be treated can provide informed consent
- promotion of self-awareness, visibility and recognition of intersex people
- full protection against discrimination & the adoption of sex characteristics as a protective ground
- education of society on intersex issues from a human rights perspective

[www.oiiEurope.org](http://www.oiiEurope.org)



The **European Lesbian\* Conference** (EL\*C) is a collective of lesbian, queer, bi and trans women registered as an NGO, which aims to create a network of lesbians in Europe and Central Asia.

EL\*C's Objectives:

- To fight for full and equal rights for all lesbians\* & eliminate discrimination and intersectional oppression
- To increase visibility for underrepresented lesbians\* and decrease stigma
- To strive for an increase in overall well being of lesbians\*
- To increase available data and exchange knowledge on the lives of lesbians\*
- To increase funding for lesbian\* led or centered projects
- To build a strong network of lesbians\* based in Europe and Central Asia

EL\*C's Activities:

- Community and alliance building with NGOs and institutions
- Advocacy and awareness raising work at European and international levels
- Biennial conference organizing in a different location each time
- Report writing & data analysis on lesbian\* specific issues

<https://europeanlesbianconference.org/>





**IGLYO** (International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex (LGBTQI) Youth & Student Organisation) is the largest LGBTQI youth and student network in the world with over 95 member organisations in 40+ countries, with an estimated reach of over 3.000 youth activists. As a youth development organisation, IGLYO builds the confidence, skills and experience of LGBTQI young people to become leaders within the LGBTQI and human rights sectors. Through cross-cultural exchange and peer learning, IGLYO also creates a powerful collective of youth activists across Europe and beyond, who can share strategies and visions, and foster values of international solidarity. Finally, IGLYO ensures the voices and experiences of LGBTQI young people are present and heard by decision-makers at European and international levels. IGLYO achieves these outcomes through international trainings and events, targeted capacity building programmes, inter-cultural exchanges and peer learning, online tools and resources, and digital story-telling and campaigning.

[www.iglyo.com](http://www.iglyo.com)

**NELFA** is the Network of European LGBTIQ\* Families Associations. It was founded in 2009 to unite European associations of lesbian, gay, bisexual, trans, intersex and queer parents (LGBTIQ\*) and their children under one umbrella organisation. It was incorporated under Belgian law (aisbl) in 2012, the official headquarters are located in the RainbowHouse in Brussels.

With 32 associations representing 26 European countries and thousands of LGBTIQ\* families, NELFA promotes the exchange of information among its members and assists in creating and developing LGBTIQ\* families associations. NELFA works to ensure that children raised in LGBTIQ\* families in Europe are granted the same rights as others. NELFA encourages European governments to adopt legal systems and equal opportunity policies that do not discriminate against LGBTIQ\* families, whether it be legally, financially, educationally or socially. NELFA also works to ensure the freedom of movement of LGBTIQ\* families within the EU without their family life being compromised by entering or settling in another member state.

[www.nelfa.org](http://www.nelfa.org)

## ENDNOTES

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122. <https://www.ilga-europe.org/rainboweurope> See the period between 2010-2018.
123. Ibid.
124. Ibid.
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130. Rainbow Families in Europe. NELFA keynote speech at the Fourth Equal Opportunities Office Awareness Event for IDAHOT in the General Secretariat of the Council of the European Union. Brussels, 17 May 2018. <http://nelfa.org/inprogress/wp-content/uploads/2018/07/IDAHOT-Council-2018-cut-draft.pdf>
131. What does the scholarly research say about the well-being of children with gay or lesbian parents? A collection by Cornell University.

- <https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-wellbeing-of-children-with-gay-or-lesbian-parents/>. See also The International Family Equality Day (IFED) Network Annual Report 2017. p. 84. <https://internationalfamilyequalityday.org/wp-content/uploads/2017/10/IFED-2017-annual-report.pdf>
132. Supra 130.
133. Same-sex couples in Greece are now allowed to foster children, but joint adoption remains prohibited. Source: NELFA, August 2018.
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- successfully registered their son. NELFA. 13 July 2018. <http://nelfa.org/2018/07/13/nelfa-press-release-3-may-2018/>
155. Supra note 16, p. 28.
156. Ibid., 29.
157. Ibid.
158. Ibid., p. 30.
159. Ibid., p. 31.
160. Ibid.
161. Supra note 30.
162. See Rainbow Europe 2011 [https://www.ilga-europe.org/sites/default/files/Attachments/map-b\\_side.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/map-b_side.pdf). There has been no change since 2011 with regards to the inclusion of sexual orientation.
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166. Ibid.
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169. Supra note 110, p. 12.
170. Ibid.
171. §27 PStG Feststellung und Änderung des Personenstandes, sonstige Fortführung. <https://dejure.org/gesetze/PStG/27.html>
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193. The World Bank, UNDP (2016): Investing in a Research Revolution for LGBTI Inclusion, p. 12. <http://documents.worldbank.org/curated/en/196241478752872781/Investing-in-a-research-revolution-for-LGBTI-inclusion>
194. Supra note 190.

195. Unpublished findings by OII Francophonie collected via peer counselling and reported to OII Europe in 2016.
196. Surya Monroe, Daniela Crocetti, Tray Yeadon-Lee, with Fae Garland and Mitch Travis (2017): *Intersex, Variations of Sex Characteristics and DSD: The Need for Change*. University of Huddersfield, p. 50 <http://eprints.hud.ac.uk/id/eprint/33535/1/Intersex%20Variations%20of%20Sex%20Characteristics%20and%20DSD%20%20the%20Need%20for%20Change%20reportOct10.pdf>
197. The Netherlands Institute for Sociological Research (2014): *Living with intersex/DSD. An exploratory study of the social situation of persons with intersex/DSD*. Written by Jantine van Lisdonk. Appendix B Prevalence table for intersex/dsd, p. 42 [https://www.scp.nl/english/Publications/Publications\\_by\\_year/Publications\\_2014/Living\\_with\\_intersex\\_DSD](https://www.scp.nl/english/Publications/Publications_by_year/Publications_2014/Living_with_intersex_DSD)
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200. *Ibid.*, Rainbow Europe does not collect data on gender expression.
201. Bosnia and Herzegovina, Malta, and Spain. *Supra* note 179.
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204. Albania, Andorra, Bosnia and Herzegovina, Malta and Spain. *Ibid.*
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206. *Ibid.*
207. *Out in the Open: Education sector responses to violence based on sexual orientation and gender identity/expression*. UNESCO. 2016. <http://unesdoc.unesco.org/images/0024/002447/244756e.pdf> 15
208. France, Malta, Norway, and Sweden. *Supra* note 205.
209. *Trans, Gender Variant, and Intersex Students in Schools Policy*. Ministry for Education and Employment, Malta. June 2015. <https://oiieurope.org/wp-content/uploads/2017/04/Trans-Gender-Variant-and-Intersex-Students-in-Schools-Policy.pdf>
210. *Supra* note 205.
211. Resolution 1952 (2013) on Children's right to physical integrity. Parliamentary Assembly of the Council of Europe. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20174&lang=en>
212. *Supra* note 81.
213. Qtd. in *The fundamental rights situation of intersex people*. European Union Agency for Fundamental Rights. April 2015. <http://fra.europa.eu/sites/default/files/fra-2015-focus-04-intersex.pdf>. These UN entities were the World Health Organisation (WHO), the Office of the High Commissioner for Human Rights (OHCHR), UN Women, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the UN Development Programme (UNDP), the UN Population Fund (UNFPA) and the UN's Children's Fund (UNICEF).
214. A boy or a girl or a person – intersex people lack recognition in Europe. Human Rights Comment. Commissioner for Human Rights of the Council of Europe. 9 May 2014. <https://www.coe.int/en/web/commissioner/-/a-boy-or-a-girl-or-a-person-intersex-people-lack-recognition-in-euro-1> See also *LGBTI children have the right to safety and equality*. Human Rights Comment. Commissioner for Human Rights of the Council of Europe. 2 October 2014. <https://www.coe.int/en/web/commissioner/-/lgbti-children-have-the-right-to-safety-and-equality>

215. OII Europe has made available a comprehensive and regularly updated list of UN recommendations on intersex issues. International Intersex Human Rights Movement – Resource List – Update June 2018. OII Europe. <https://oiieurope.org/international-intersex-human-rights-movement-resource-list/>
216. Supra note 80.
217. Supra note 5.
218. Supra note 85, p. 11.
219. Supra note 87.
220. A number of reports have addressed this issue since 2013, including the FRA’s Health4LGBTI report (p. 39), TGEU’s 2017 healthcare report, or TGEU’s insurance report (unpublished).
221. Supra note 16.
222. H4LGBTI pg 25.
223. Overdiagnosed but Underserved. Trans Healthcare in Georgia, Poland, Serbia, Spain, and Sweden: Trans Health Survey. Transgender Europe. October 2017. [https://tgeu.org/wp-content/uploads/2017/10/Overdiagnosed\\_Underserved-TransHealthSurvey.pdf](https://tgeu.org/wp-content/uploads/2017/10/Overdiagnosed_Underserved-TransHealthSurvey.pdf) TGEU compared its data to the numbers of the European Quality of Life Survey (EQLS) of 2012. TGEU also documented that six out of ten (57.6%) trans respondents were at risk of poor mental health and that of all trans groups, non-binary trans people had the worst mental health state.
224. Jörg Woweries, Dr. med. (2012): Deutscher Ethikrat. Stellungnahme zur Situation von Menschen mit Intersexualität in Deutschland. Berlin. [https://www.ethikrat.org/fileadmin/PDF-Dateien/Stellungnahmen\\_Sachverstaendige\\_Intersexualitaet/Woweries\\_-\\_Expertenbefragung.pdf](https://www.ethikrat.org/fileadmin/PDF-Dateien/Stellungnahmen_Sachverstaendige_Intersexualitaet/Woweries_-_Expertenbefragung.pdf) ; See also: Equality Office (2018): UK National LGBT Survey. Summary report, p. 24. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722314/GEO-LGBT-Survey-Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722314/GEO-LGBT-Survey-Report.pdf); See also: K. Schützmann, L. Brinkmann, M. Schacht, H. Richter-Appelt (2007): Psychological distress, self-harming behavior, and suicidal tendencies in adults with disorders of sex development, Archives of Sexual Behavior, Vol 38, No. 1, p. 16-33. PACE (2017): Report, Part C Article 49-50
225. Supra note 16, p. 20.
226. Supra note 223.
227. Supra note 16, p. 40.
228. Ibid.
229. Supra note 223.
230. Ibid.
231. Ibid. The question was about whether someone reported the last incident.
232. FRA H4 58.
233. Is Britain Fairer? The state of equality and human rights 2015. Equality and Human Rights Commission, UK. 2015, p.55. <https://www.equalityhumanrights.com/sites/default/files/is-britain-fairer-2015.pdf>
234. Supra note 223.
235. Supre note 110, p. 11.
236. The Netherlands Institute for Social Research (2014): Living with intersex/DSD. An exploratory study of the social situation of persons with intersex/DSD by Jantine van Lisdonk; Participants of the study, who were diagnosed as adults, reported that they were treated very poorly and with a significant lack of sensitivity by the doctors, when the diagnosis was delivered, and that they didn’t get adequate and comprehensive information about the diagnosis or suggested treatments.
237. Of the respondents 2% (1,980) identified as intersex, see: Government

- Equality Office: UK National LGBT Survey. Summary report, p. 24 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722314/GEO-LGBT-Survey-Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722314/GEO-LGBT-Survey-Report.pdf)
238. Ibid.
239. Source: OII Europe, August 2018.
240. Supra note 224.
241. Ibid. Jörg Woweries (2012), p. 15
242. H4 pp 25.
243. H4 39
244. Supra note 30. ILGA-Europe only collected data on this between 2016-2018. The number was the same in these three years.
245. Supre note 88. ILGA-Europe and TGEU only collected data on this between 2016-2018. The number was the same in these three years.
246. Supra note 81.
247. Ibid.
248. Supra note 30. Affirmation of Sexual Orientation, Gender Identity & Gender Expression Act, Malta. Adopted in December 2016. <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104431/127380/F1207646794/MLT104431.pdf>
249. Supra note 30. The two regions are Valencia (Ley 8/2017) and Madrid (Ley 3/2016).
250. There is no law in the UK banning conversion therapies, but the ban has strong support from Government including the Department of Health. It also has support from NHS England and other prominent psychotherapy leaders.
251. Human Rights and Gender Identity. Issue Paper. Commissioner for Human Rights of the Council of Europe. 2009. <https://rm.coe.int/16806da753>
252. “Pathologization – Being lesbian, gay, bisexual and/or trans is not an illness” For International Day against Homophobia, Transphobia and Biphobia. Joint statement by international and regional human rights bodies. 17 May 2016. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19956&LangID=E>
253. Supra note 81.
254. Supra note 80.
255. World Health Organisation moves to end classifying trans identities as mental illness. Transgender Europe. 18 June 2018. <https://tgeu.org/world-health-organisation-moves-to-end-classifying-trans-identities-as-mental-illness/>
256. Supra note 233, p. 55.
257. Trans healthcare lottery: insurance coverage for trans specific healthcare An overview on the basis of 17 countries in Europe. Transgender Europe. To be published.
258. Ibid.
259. Ibid.
260. Ibid.
261. Supra note 88.
262. Supra note 215.
263. Supra note 9
264. Supra note 110, p. 9.
265. The fundamental rights situation of intersex people. European Union Agency for Fundamental Rights. April 2015. <http://fra.europa.eu/sites/default/files/fra-2015-focus-04-intersex.pdf>.
266. DSD: Disorder of Sex Development. It is a medical umbrella term, which was introduced in 2006 by a Clinician Consensus Statement. Together with new categories of syndromes, it replaced the older medical terms. The term refers to intersex sex

characteristics as characteristics that are ‘deviant’ from the norm of male and female bodies and thus need to be ‘disambiguated’ or ‘fixed’.

267. Ibid.

268. Supre note 214. A boy or a girl or a person – intersex people lack recognition in Europe.

269. OII-Europe applauds Malta’s Gender Identity, Gender Expression And Sex Characteristics Act. OII Europe. 4 December 2014. <https://oiieurope.org/oii-europe-applauds-maltas-gender-identity-gender-expression-and-sex-characteristics-act/>

270. Portugal adopts law protecting intersex people. OII Europe. 12 July 2018. <https://oiieurope.org/portugal-adopts-law-protecting-intersex-people/>

271. Bundesministerium für Familie, Senioren, Frauen und Jugend (2016), p. 13.

272. Jürg C. Streuli, Effy Vayena, Yvonne Cavicchia-Balmer & Johannes Huber (2013): Shaping parents: impact of contrasting professional counseling on parents’ decision making for children with disorders of sex development, Journal of Sexual Medicine, Vol. 8 No. 3, pp. 1953–1960 <http://www.ncbi.nlm.nih.gov/pubmed/23742202>

273. Supra note 257.

274. Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law. UN OHCHR. 2012, p. 51. <https://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

275. Supra note 251, p. 11.

276. Supra note 86, p. 11.

277. The Estonian Ministry of Social Affairs and Kranken Kassa/Estonian Health Insurance Fund have said on numerous occasions publicly that the health insurance does not cover surgeries. At the same time, there are doctors who are able to go around the system and provide trans-specific health care. Source: TGEU, August 2018.

278. Supra note 86, p. 11.

279. Supra note 257.

280. Ibid.

281. Ibid.

282. Ibid.

283. Supra note 9.

284. EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey - Results at a glance. European Union Agency for Fundamental Rights. May 2013, p. 18. [http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance\\_en.pdf](http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf)

285. Supra note 16, p. 41.

286. LGBTIQ homelessness. In: Homelessness in Europe. The Magazine of FEANTSA - The European Federation of National Organisations Working with the Homeless AISBL. 2017, p. 2. [https://www.feantsa.org/download/fea-008-17-magazine\\_v333480239002912617830.pdf](https://www.feantsa.org/download/fea-008-17-magazine_v333480239002912617830.pdf)

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294. Homelessness and LGBT people in Spain. the Federación Estatal de Lesbianas, Gays, Transexuales y Bisexuales (FELGBT) & the RAIS Fundación. In: Homelessness in Europe. Supra note 286.
295. Supra note 20, p. 8.
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298. Ibid.
299. Ibid, p. 10 and 14.
300. Supra note 295.
301. Ibid.
302. Supra note 295.
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## About this report

In 2010 the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity established the gold standard of LGBT rights in Europe. Agreed unanimously by the 47 Council of Europe member states, it was the first and only agreement between governments to combat discrimination against LGBT people in Europe.

European LGBTQI, trans and intersex networks submitting this report welcome the initiative of the Council to review the progress of implementation of the recommendations for the second time in 2018.

The 2018 review is a crucial opportunity for the Council to assess the level of and progress in implementation among member states and identify implementation gap. Since the Recommendation was adopted in 2010, there have been significant gains in the Council of Europe region that secured legal rights for LGBTQI people. However, the work on LGBTQI equality is nowhere near done. Worrisome backlash, a rhetoric of hate, populism, nationalism, and state-led persecution in a number of member states remind us that efforts to combat violence and discrimination on grounds of SOGIESC must be reaffirmed, continued, and strengthened.

This assessment will help guide the Council's work in supporting member states regarding implementation.