

6. Access to health care, education and employment

6.1. Introduction

Access to health care, education and employment is crucial to each person's life and well-being. In early life, access to school and consequently education as a means to access paid work can make goods and services available that are indispensable to adult life. In retirement, access to work-related pension and other benefits contribute to a person's autonomy. Underpinning both education and employment is access to health care and the right to the highest attainable standard of health. Access to health care, education and employment are thus interlinked. In fact, a standard of living that is adequate for a person's health is impossible without basic social services and housing as well as food, clothing and medical care, as highlighted by Article 25 of the Universal Declaration of Human Rights.

This chapter considers how LGBT persons in the Council of Europe member states enjoy these three rights in light of the fact that international standards prohibit discriminatory access to health care, education and employment on grounds of sexual orientation or gender identity.³⁴⁹ In practice, however, this chapter will demonstrate that several impediments prevent LGBT persons from enjoying these rights in a full and effective way.

6.2. Health

The right to enjoy the highest attainable standard of health involves both entitlements and freedoms. Among entitlements is a system of health protection that makes facilities available to all people without discrimination on any grounds. Freedoms include the right to control one's own body including one's sexual and reproductive freedom, and to be free from non-consensual medical treatment, experimentation and torture. The UN Committee on Economic, Social and Cultural Rights underlines both dimensions in a general comment adopted in 2002, which recognises sexual orientation³⁵⁰ as a prohibited ground for discrimination in accessing the highest attainable standard of health. In 2009 it explicitly recognised gender identity among the prohibited grounds as well.³⁵¹

349. Three General Comments from the UN Committee on Economic, Social and Cultural Rights confirm this: General Comment No. 14, The Right to the Highest Attainable Standard of Health, paragraphs 8, 12(b), 18, and General Comment No. 20, Non-Discrimination in Economic, Cultural and Social Rights, paragraph 32, and General Comment No. 13, The Right to Education, paragraphs 1, 6d and 37.

350. UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health, paragraph 8.

351. UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Cultural and Social Rights, paragraph 32.

Different UN special rapporteurs have cited these standards. In 2009 the UN Special Rapporteur on the Right of Everyone to Enjoy the Highest Attainable Standard of Physical and Mental Health emphasised the stigma on vulnerable communities such as LGBT people that “prevents legislative and policymaking institutions from addressing their health-related matters adequately”.³⁵² He went on to note that attempts to “cure” those who engage in same-sex conduct are not only “inappropriate”, but could potentially cause significant psychological distress and increase “stigmatisation”. In 2001 the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment referred to reports that “members of sexual minorities have received inadequate medical treatment in public hospitals – even after having been victims of assault – on grounds of their gender identity”.³⁵³

Since 2007 three recommendations of the Committee of Ministers included references to the right of LGBT persons to health protection.³⁵⁴ Among other things, they recommended the member states to “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” and also to “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”.³⁵⁵

A question of definition

As a whole, the threat of non-consensual medical intervention has decreased for lesbian, gay and bisexual persons since the WHO removed homosexuality from its *International Classification of Diseases* in 1990.³⁵⁶ Nevertheless, this report found that these outdated classifications still influence medical practice as well as the contents of educational materials in schools, evidenced by examples identified in some of the Council of Europe member states, including Montenegro, the Russian Federation, Serbia, Croatia and Turkey. Not only was such information found in secondary school textbooks, but also in academic

352. Human Rights Council, “Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover”, A/HRC/14/20, 27 April 2010, paragraphs 22-23. In 2004 the (then) UN Special Rapporteur, Paul Hunt, also raised concerns regarding LGBT persons’ access to health; see E/CN.4/2004/49, paragraph 24 and Hunt P. and de Mesquita J., “The Rights to Sexual and Reproductive Health”, University of Essex, 2006, p. 7.

353. “Report of the UN Special Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, UN Doc. A/56/156, 3 July 2001, paragraph 22.

354. Committee of Ministers Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms, adopted on 21 November 2007; Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010; Committee of Ministers Recommendation Rec(2006)18 on health services in a multicultural society, adopted on 8 November 2006.

355. Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010, section VII. Health, paragraph 33.

356. The World Health Organization, *International Classification of Diseases*, 1990.

literature for medical students. NGOs report that some psychotherapists are still addressing the homosexuality of their clients as a medical or psychiatric problem. In Turkey the military still considers homosexuality as pathology rendering men “unfit to serve” in the armed forces.³⁵⁷ Gay or bisexual men who apply for exemption from military service undergo “degrading medical and psychological tests”³⁵⁸ or have to prove their homosexuality, which may have an impact on their future job prospects if applying to work for the authorities.

Two other classification schemes have direct influence on the way Council of Europe member states approach transgender persons when they want to access gender reassignment treatment. The WHO considers transsexualism as a “mental and behavioural disorder”³⁵⁹ and the American Psychiatric Association³⁶⁰ includes the term “gender identity disorder” among mental health disorders. Both schemes categorise transgender persons as mentally disordered. Such definitions could influence, for example, the way the military perceives transgender persons as evidenced by a regulation issued by the Bulgarian Ministry of Defence in which transsexualism is perceived as a sexual disorder, making transgender people unfit for military service.³⁶¹

There is gradually growing support for the view that transgender people should be able to access relevant medical treatment and have their preferred gender legally recognised without a diagnosis of being mentally disordered. The Gender Recognition Act in the United Kingdom supports this view, as do the World Professional Association for Transgender Health and many activists for transgender rights worldwide.³⁶² The WHO’s revision of its medical classification, which is planned for publication in 2013, is an important opportunity for reviewing the place of transsexualism within the classification.

Two Council of Europe member states have announced a revision of their national classification systems. In 2009 the National Board of Health and Welfare in Sweden made changes to its national classification system and in 2010 France announced it would delete transsexualism from the list of “long-term psychiatric conditions”.³⁶³ It is, however, too early to assess the impact of the decree in France, where clarifications on the practical implications of the announcement are still needed.

357. Armed Forces Health Regulation, Paragraph 17, also quoted in national contribution (sociological report) on Turkey, p. 15.

358. Commission of the European Communities, “Turkey 2008 Progress Report”, 2009, p. 26.

359. World Health Organization, *International Statistical Classification of Diseases and Related Health Problems*, Tenth Revision, Version for 2007.

360. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th edn, Text Revision: DSM-IV-TR, Washington, DC, 2000.

361. FRA national contribution (legal report) on Bulgaria, p. 32.

362. The Gender Recognition Act 2004; World Professional Association for Transgender Health, “WPATH De-Psychopathologisation Statement”, 26 May 2010; see also “Human Rights and Gender Identity”, issue paper published by the Office of the Commissioner for Human Rights, 2009.

363. Décret No. 2010-125 du 8 février 2010 portant modification de l’annexe figurant à l’article D. 322-1 du code de la sécurité sociale relative aux critères médicaux utilisés pour la définition de l’affection de longue durée “affections psychiatriques de longue durée”.

The state of health of LGBT persons

According to the few studies on the health situation of LGBT persons conducted in Council of Europe member states, LGBT persons have a higher incidence of poor health than heterosexual persons. A study in Belgium, for instance, found that LGB persons are twice as likely to have a chronic disease as the average citizen, which confirms findings by other studies.³⁶⁴ A Norwegian report from 2007 shows that young lesbians and gay men often experience loneliness and depression.³⁶⁵ Another report from Norway of 2006 shows that the relatively high level of bullying, harassment and violence to which LGB youth are exposed is linked with high levels of health risk behaviours: "LGB teenagers who have been exposed to severe physical maltreatment reported higher levels of sexual-risk behaviours, substance abuse, suicide ideation, and loitering about in the city."³⁶⁶

Suicide by LGBT persons, especially when they are young, has been identified as an urgent issue. The Parliamentary Assembly of the Council of Europe adopted a resolution in 2008 in which it expressed its concerns that suicide rates among young LGBT persons are significantly higher than among their peers. It notes that this heightened risk is due to the stigmatisation, marginalisation and discrimination which they experience in society.³⁶⁷

Studies in member states found an alarmingly high percentage of LGBT persons who had attempted or considered committing suicide. For example, in a Danish study, it was found that the percentage of LGBT persons who had considered (16%) or attempted (11%) suicide is about twice as high as the average population.³⁶⁸ Of these attempts 61% were carried out by people under 20 years of age and 6% by children under 12.³⁶⁹ A 2007 Norwegian report found young LGBT persons over-represented among youth with high-risk behaviours and suicide ideation.³⁷⁰ Similarly, in France an NGO survey found that 34% of young transgender persons aged 16-26 had attempted

364. van Heeringen C. and Vincke J. "Suicidal acts and ideation in homosexual and bisexual young people: a study of prevalence and risk factors", *Social Psychiatry and Psychiatric Epidemiology No. 35* (2000), pp. 494-99.

365. Hegna K., "Homo? Betydningen av seksuell erfaring, tiltrekning og identitet for selvmordsforsøk og rusmiddelbruk blant ungdom. En sosiologisk studie", Norsk institutt for forskning om oppvekst, velferd og aldring (NOVA), Rapport 1/07, 2007, Oslo, p. 87.

366. Moseng B. U., "Vold mot lesbiske og homofile tenåringer. En representativ undersøkelse av omfang, risiko og beskyttelse – Ung i Oslo 2006", Norsk institutt for forskning om oppvekst, velferd og aldring (NOVA), Rapport 19/07, Oslo, 2006, p. 53.

367. Parliamentary Assembly of the Council of Europe, Resolution 1608 on Child and teenage suicide in Europe: a serious public health issue, 2008, paragraph 10.

368. Gransell L. and Hansen H., "Lige og ulige? Homoseksuelle, biseksuelle og transkønnedes levevilkår", Copenhagen: CASA and Landsforeningen for bøsser og lesbiske, 2009, p. 121.

369. Moseng B. U., "Vold mot lesbiske og homofile tenåringer. En representativ undersøkelse av omfang, risiko og beskyttelse – Ung i Oslo 2006", Norsk institutt for forskning om oppvekst, velferd og aldring (NOVA), Rapport 19/07, Oslo, 2006, p. 53.

370. Hegna K., "Homo? Betydningen av seksuell erfaring, tiltrekning og identitet for selvmordsforsøk og rusmiddelbruk blant ungdom. En sosiologisk studie", Norsk institutt for forskning om oppvekst, velferd og aldring (NOVA), Rapport 1/07, 2007, Oslo, p. 56.

to commit suicide.³⁷¹ A United Kingdom study reported that almost 30% of transgender persons had attempted to end their lives.³⁷²

Some studies suggest that the share of lesbian and bisexual women participating in screening for breast, cervical and uterine cancer is low possibly because they themselves and medical professionals assume they are low-risk groups. Their vulnerability to HIV/AIDS and other sexually transmitted infections (STIs) is largely unknown and often disregarded in awareness-raising campaigns.³⁷³ Some good practice, however, can be reported from member states such as Ireland, which includes in its health strategy a focus on lesbian and bisexual women in all its campaigns on cancer and STIs. Staff are required to have specialist knowledge of lesbian and bisexual women's health problems and a non-judgmental attitude to their sexual orientation.

Obstacles accessing health care: prejudices, stigmatisation and risk of disclosure

A first obstacle in accessing health care is identified in NGO reports³⁷⁴ which find a significant level of mistrust between LGBT patients and their health care providers which may lead to LGBT persons not seeking medical care if they need it or withholding information about their sexual orientation or gender identity. For example, in Germany a study showed that lesbian women do not reveal their sexual orientation to health services due to fear of discrimination.³⁷⁵ A large survey among lesbian and bisexual women in the United Kingdom in 2008 showed that nearly half said they conceal their sexual orientation from health professionals.³⁷⁶

Mistrust between LGBT persons and their medical practitioners may be fed by fears that the privacy and confidentiality of one's health status, sexual orientation or gender identity and medical records is not respected. For example in Albania in 2006, after the arrest of some LGBT persons on suspicion of prostitution,³⁷⁷ the media reported that two of the arrested persons were HIV-positive and printed their police photos. In Ukraine the Police Act permits police officers to "reveal and inform the medical establishments in an established order about persons who constitute a group at risk of HIV/AIDS, and to bring these people, as well as persons infected by HIV/AIDS, by sexually transmitted diseases ... at the request

371. Homosexualités & Socialisme, Mouvement d’Affirmation des jeunes Gais, Lesbiennes, Bi et Trans, Enquête sur le vécu des jeunes populations trans en France, 2009, p. 1.

372. Whittle S., Turner L., Combs R. and Rhodes S., "Transgender EuroStudy: Legal Survey and Focus on the Transgender Experience of Health Care", Brussels, 2008, p. 49.

373. ILGA, "Lesbian and Bisexual Women's Health: Common Concerns, Local Issues", 2006, p. 18.

374. Quinn S., "Accessing Health: the Context and the Challenges for LGBT People in Central and Eastern Europe", ILGA-Europe, 2006, p. 57.

375. Dennert G., "Die gesundheitliche Situation lesbischer Frauen in Deutschland: Ergebnisse einer Befragung (Dissertation)", Nürnberg: Med. Diss. FAU Erlangen-Nürnberg, 2004.

376. Hunt R. and Fish J., "Prescription for Change. Lesbian and Bisexual Women's Health Check", Stonewall, 2008, p. 3.

377. National contribution (sociological report) on Albania, p. 8.

of a medical establishment and authorisation of a prosecutor, for a compulsory examination and treatment".³⁷⁸

When they seek health care, LGBT persons sometimes perceive that they experience worse treatment in the health service than their peers. For example, reports and statements from NGOs in Albania³⁷⁹ and Azerbaijan,³⁸⁰ challenged by the health ministries of both member states,³⁸¹ refer to hospitals which allegedly have refused to treat transgender women in accident and emergency departments. In Turkey, the Istanbul Provincial Human Rights Board has reported on similar problems as well as on the lack of privacy for medical examinations of transgender women.³⁸²

A second obstacle is the prejudiced attitude of medical staff towards LGBT persons, which may be caused by the fact that their knowledge is based on outdated approaches to homosexuality and transgenderism. Doctors may assume that their patients are heterosexual, and if proved otherwise, the medical staff may feel uncomfortable or unduly focus on sexuality, instead of the actual health issues reported by the patients.³⁸³ Several examples of good practice to combat this obstacle can be identified within the Council of Europe member states, for example in the United Kingdom where a guide for health and social care staff who work with transgender persons has been produced.³⁸⁴ In Sweden educational trainings on LGBT issues have been run by an LGBT NGO and attended by health care students and professionals. In the Russian Federation the Society of Psychoanalytic Therapy has adopted a Code of Ethics that prohibits discrimination on different grounds, including sexual orientation.

A third problem reported is that same-sex partners are not recognised as next of kin in countries that do not grant some form of legal recognition to same-sex partners. In practice it means that patients in life-threatening conditions, or suffering from chronic illness, may find their life partners excluded from decision-making processes about their treatment. Sometimes the partners are not allowed at their bedside. In Estonia, the female partner of a woman who gave birth was not allowed to be present at the birth of the couple's child.³⁸⁵ A visitor to a gay man living with HIV in a hospital in St Petersburg was report-

378. Article 10, paragraph 21 of the Police Act No. 565-12, 20 December 1990.

379. National contribution (sociological report) on Albania, p. 11.

380. "The Violations of the Rights of Lesbian, Gay, Bisexual, Transgender Persons in Azerbaijan", an NGO shadow report presented to the UN Human Rights Committee, July 2009.

381. National contribution (sociological report) on Albania, p. 11 and national contribution (sociological report) on Azerbaijan, p. 15.

382. Report of TC Istanbul Valiliği, Sayı B054VLK4340300/521/37648; national contribution (sociological report) on Turkey, pp. 16-17.

383. Gibbons M., Manandhar M., Gleeson C. and Mullan, J., "Recognising LGB Sexual Identities in Health Services: The Experiences of Lesbian, Gay and Bisexual People with Health Services in North West Ireland". Equality Authority of Ireland, Dublin, 2008, pp. 46-47.

384. *An Introduction to working with transgender people: information for health and social care staff*, Department of Health, United Kingdom, 2007.

385. FRA national contribution (sociological report) on Estonia, p. 8.

edly told by the ward nurse that “this is no place for the meeting of faggots”.³⁸⁶ Other examples from the United Kingdom show that access to a partner’s hospital ward can vary according to the discretion of ward staff.³⁸⁷

Finally, according to NGOs, gay and bisexual men face situations where they are assumed to be HIV-positive when accessing health services. HIV/AIDS had, and still has, a profound influence on the LGBT community. After being discovered in the 1980s, HIV/AIDS sparked a significant debate and media interest, often using a sensationalist approach referring to HIV/AIDS as the “gay cancer”. Despite the fact that the introduction of new medication in the mid 1990s has brought some improvements in living conditions, stigmatisation of persons living with HIV/AIDS is still widespread. In some member states gay and bisexual men have been automatically barred from donating blood. Whereas blood donor centres in some member states have changed their policies and focus on risk behaviours rather than the sexual orientation of the donor, other member states continue to bar gay and bisexual men categorically. The European Court of Human Rights set an important standard when it ruled that an HIV-positive person cannot be refused a residence permit on the basis of his health status.³⁸⁸

Specific obstacles for transgender persons when accessing health services

Transgender persons who wish to undergo gender reassignment treatment can face a range of obstacles when trying to access health services. The European Court of Human Rights has established that states have a positive duty to provide for the possibility to undergo gender reassignment as “medically necessary” treatment, which should be covered by insurance schemes. Failure to provide this places a disproportionate burden on a person “in one of the most intimate areas of private life”, according to a groundbreaking ruling in 2003.³⁸⁹ The Court restated this in another case in 2007.³⁹⁰

Twenty-eight member states offer full or partial gender reassignment treatment to transgender persons (Austria, Belgium, the Czech Republic, Germany, Denmark, Estonia, Finland, France, Hungary, Greece, Georgia, Iceland, Ireland, Italy, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, the Russian Federation, Serbia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and Ukraine). The differences between these 28 member states are significant, ranging from member states where quality expertise centres are available and those where some but not all necessary treatment is available. In Malta and

386. National contribution (sociological report) on the Russian Federation, p. 34.

387. Stonewall, “Prescription for Change. Lesbian and Women’s Health Check”, 2008, p. 14.

388. European Court of Human Rights, *Kiyutin v. Russia*, Application No. 2700/10, judgment of 10 March 2011, paragraph 74.

389. European Court of Human Rights, *van Kück v. Germany*, Application No. 35968/97, judgment of 12 June 2003, paragraph 82.

390. European Court of Human Rights, *L. v. Lithuania*, Application No. 27527/03, judgment of 11 September 2007, paragraph 59.

Ireland, for example, hormonal treatment is available, but no surgery. In yet other member states services are only available in one city.

In 13 member states (Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, Montenegro and San Marino) no facilities needed for gender reassignment treatments were identified. Transgender persons from these 13 countries wishing to undergo gender reassignment would then have to go abroad (they are explicitly advised to do so in some member states). For the remaining six member states information on availability of health facilities is unclear.

A person who wants to access gender reassignment treatment must usually meet a strict and unified “one size fits all” list of requirements. Such requirements may be based on legislation or regulations, though often this is rather a matter of custom and practice. Generally requirements include medical and psychological assessments of the applicant and/or the diagnosis of gender dysphoria or gender identity disorder (following the WHO classification). Yet other member states require applicants to undergo a “real-life experience” (RLE) by living in the preferred gender for a specified length of time, which varies by state. Doctors may assess the “success” of such RLE on the basis of the person’s clothing taste and gender-normative behaviour. According to transgender persons, they have to perform in a highly stereotypical way, often going to the extremes in their preferred gender to fit the eligibility criteria. Other requirements include the risk of suicide of the client, absence of “homosexual inclinations”, or vague concepts such as “no serious flaws in the ability for social adaptation”.³⁹¹ Concerns have also been raised by transgender persons in relation to medical professionals who have large decision-making powers over their access to treatment.

Financial obstacles to accessing gender reassignment treatment

The European Court of Human Rights has required states to provide insurance to cover expenses for “medically necessary” treatment, which gender reassignment surgery is a part of.³⁹² However, research for this report shows that access to health care insurance is highly problematic in at least 16 countries (Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Lithuania, Moldova, Montenegro, Poland, Romania, the Russian Federation, Serbia, Slovakia and Turkey). In these countries transgender persons claim that they must bear the financial burden of medically necessary health care themselves.

391. National contribution (legal report) on Ukraine, p. 32.

392. European Court of Human Rights, *van Kück v. Germany*, Application No. 35968/97, judgment of 12 June 2003, paragraphs 47, 73 and 82 and *L. v. Lithuania*, Application No. 27527/03, judgment of 11 September 2007, paragraphs 59 and 74.

In the remaining 31 member states, research for this report shows that there is partial or full reimbursement.³⁹³ In Germany, Portugal, Sweden and Italy public health insurance covers most if not all expenses related to a person's gender reassignment treatment. In Greece, Iceland and Ireland, payment by public health insurance for treatment abroad has been reported, though not confirmed as a general rule. In San Marino, since gender reassignment facilities are not available in the country, transgender persons may have the costs of surgeries performed abroad reimbursed by the national health fund. Hungary's health insurance cover for gender reassignment treatment is 10% of the total costs. In the Netherlands, not all surgery is covered, and some surgery is covered only partially. Malta covers only hormone treatment. Norway covers costs for some but not all transgender persons, depending on the particular diagnosis of the person. In Switzerland private health insurance companies have in the past refused transgender people. In the judgment *Schlumpf v. Switzerland* the European Court of Human Rights found that the refusal of the insurance company to cover the costs of the applicant's gender reassignment surgery due to non-compliance with the requirement to complete two years of observation in order to ascertain the existence of "true transsexualism" was in violation of Article 8.³⁹⁴ In the UK around 86% of transgender respondents claimed that they were refused state funding for surgery and more than 80% claimed they were refused funding for hormone treatment. Over half of transgender respondents said they had funded their own treatment.³⁹⁵ Coverage of public health insurance is unclear in the countries not mentioned above.

6.3. Education

The right to education includes the right to receive information about sexual orientation and gender identity that is objective and knowledge-based. International standards take the view that impartial information can overcome prejudice and save people from inflicting or suffering violence. The UN Special Rapporteur on the Right to Education³⁹⁶ views sex education as an important way of counteracting discrimination. The UN Committee on the Rights of the Child has recommended that states include sexual education in the curricula of primary and secondary schools,³⁹⁷ which may

393. For a full overview, see the (FRA) national contributions (sociological and legal reports) on the mentioned countries.

394. European Court of Human Rights, *Schlumpf v. Switzerland*, Application No. 29002/06, judgment of 8 January 2009, paragraphs 115-16.

395. Whittle S., Turner L., Combs R., Rhodes S., "Transgender EuroStudy: Legal Survey and Focus on the Transgender Experience of Health Care", Brussels, 2008, p. 57.

396. Report of the United Nations Special Rapporteur on the Right to Education, A/65/162. 23 July 2010, paragraph 60.

397. Committee on the Rights of the Child, Concluding Observations: Antigua and Barbuda CRC/C/15/Add.247, paragraph 54; Committee on the Rights of the Child, Concluding Observations: Trinidad and Tobago, CRC/C/TTO/CO, paragraph 54.

also imply that laws that prevent young people educating themselves about their sexual orientation conflict with the Convention.³⁹⁸

The European Committee of Social Rights set an important standard in 2009 when it found that Croatia had breached the non-discrimination provisions of the European Social Charter by issuing teaching materials that were “biased, discriminatory and degrading, especially in the way they describe people whose sexual orientation is different from heterosexual”.³⁹⁹ The Croatian Ministry of Education later withdrew the biology textbook in question.

A 2010 resolution and recommendation of the Parliamentary Assembly as well as a Committee of Ministers recommendation include references to the right to education.⁴⁰⁰ The Committee of Ministers pointed out that the right to education should be enjoyed without discrimination on grounds of sexual orientation or gender identity. This includes, among others, “safeguarding the right of children and young people 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”. The Committee of Ministers also stresses that “objective information with respect to sexual orientation and gender identity” must be provided, “for instance in school curricula and educational materials”.⁴⁰¹

Heteronormativity in education and teaching materials

There is a range of educational systems in Council of Europe member states. Some are determined centrally by government and others more autonomously by schools. Overall there seems to be little teaching material of good quality on LGBT issues.

In a significant number of member states, including Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Hungary, Ireland, Italy, Lithuania, Malta, Moldova, Montenegro, Poland, the Russian Federation, Serbia, Slovakia, Slovenia, “the former Yugoslav Republic of Macedonia” and Turkey, NGOs report that schools do not provide any information about homosexuality or if so only biased, incorrect information. Such schoolbooks and teaching materials tend to present incorrect information not reflecting the WHO de-classification of homosexuality. In Moldova, for instance, according to NGO reports, at the Medical University

398. Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, 9 October 2002, Adolescent health, paragraph 43.

399. *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia* – Collective Complaint No. 45/2007, decision of 30 March 2009, paragraphs 60-61.

400. Recommendation 1915 (2010) of the Parliamentary Assembly on discrimination on the basis of sexual orientation and gender identity; Resolution 1728 (2010) of the Parliamentary Assembly on discrimination on the basis of sexual orientation and gender identity; Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010, paragraphs 31-32.

401. Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010, paragraphs 31 and 32.

homosexuality is taught as a disease from text books written when it was still criminalised.⁴⁰² In “the former Yugoslav Republic of Macedonia” a book on “Pedagogy” intended for use in secondary schools includes a chapter on “Negative Aspects of Sexual Life” that describes gay and lesbian persons as “psychotic and highly neurotic” people participating in a “degenerated sexual life”.⁴⁰³ In Croatia the textbook *With Christ to Life* refers to religious dogmas describing homosexuality as “intrinsically disordered” and “contrary to the natural law”.⁴⁰⁴ In an academic thesis in 2004, a sociologist from the Russian Federation argued that academic discourse often presents homosexuality as a curable disease and a pathology.⁴⁰⁵

Even though in 2006 Spain introduced a law on “Education for Citizenship and Human Rights” with a view to recognising “emotional-sexual diversity”,⁴⁰⁶ an analysis of textbooks by NGOs⁴⁰⁷ shows that only some publishing houses comply with the law’s minimum standards. Surveys in Malta,⁴⁰⁸ Slovenia⁴⁰⁹ and Sweden⁴¹⁰ also point to heteronormative approaches in schools. Norway is one of the few member states to provide objective information about transgenderism in the state school curriculum. Research in Norway, however, suggests that, despite the good intentions, teachers commonly depict gay men and lesbians as “the other”, something different and problematic, while heterosexuality is “normal” and “natural”.⁴¹¹ In the Netherlands, research shows that 50% of school textbooks pay attention to homosexuality and bisexuality, but they are silent on transgenderism.⁴¹² The Equality and Human Rights Commission (EHRC) in the United Kingdom has studied the ways educational materials and schools ignore people who are transgender.⁴¹³

402. National contribution (sociological report) on Moldova, p. 15.

403. Coalition for Protection and Promotion of Sexual and Health Rights, “Annual Report on sexual and health rights of marginalised communities”, Skopje, 2009, p. 54.

404. Peri J., Vuica M. and Vuleti D., *With Christ to Life*, Kršćanska Sadašnjost, Zagreb, 2008, p. 16.

405. National contribution (sociological report) on the Russian Federation, p. 30.

406. FRA national contribution (legal report) on Spain, p. 54.

407. Federación Estatal de Lesbianas, Gays, Transexuales y Bisexuales, *La diversidad afectivo-sexual y familiar en los manuales de “Educación para la Ciudadanía y los Derechos Humanos”, Un estudio de los manuales de Educación para la Ciudadanía*, 2008.

408. FRA national contribution (sociological report) on Malta, p. 10.

409. FRA national contribution (sociological report) on Slovenia, p. 7; Kuhar R. and Švab A., “Homophobia and Violence against Gays and Lesbians in Slovenia”, *Revija za Sociologiju*, Vol. XXXIX, No. 4, 2008, pp. 267-81.

410. Reimers E., “Always somewhere else: heteronormativity in Swedish teacher training”, in Martinsson L., Reimers E., Reingarde J. and Lundgren A. S. (eds), *Norms at Work. Challenging Homophobia and Heteronormativity*. TRACE: The Transnational Cooperation for Equality, 2006, pp. 59-61.

411. Røthing Å., “Gode intensjoner, problematiske konsekvenser. Undervisning om homofili på ungdomsskolen”, *Norsk Pædagogisk Tidsskrift*, vol. 91: 485-97, 2007; Røthing, Å., “Homonegativisme og homofobi i klasserommet: marginaliserte maskuliniteter, disiplinerte jenter og rådvile lærere”, *Tidsskrift for ungdomsforskning*, vol. 7(1): 27-51, 2007.

412. Korte B., Leurink A., Lodeweges J. and Ridderink M., *Homoseksualiteit in leermiddelen*, Nationaal InformatieCentrum Leermiddelen, SLO, Enschede, November 2001.

413. EHRC, “Provision of Goods, Facilities and Services to Trans People: Guidance for Public Authorities in Meeting Your Equality Duties and Human Rights Obligations”, 2010, p. 39.

Absence of information at all stages of the curriculum helps maintain the invisibility of LGBT persons and it helps to maintain the absence of discussing sexual orientation and gender identity issues according to studies carried out in Hungary and Slovenia.⁴¹⁴ It should be stressed that this is often at an age that many may find out that they are LGB or T.

In some member states some good initiatives have been taken to counterbalance this trend. A national action plan in Norway targeted schools at both primary and secondary level and provided guidance for teachers and new teaching materials. These added an LGBT dimension to subjects in the mainstream curriculum.⁴¹⁵ The national study curriculum set by the Estonian Ministry of Education and Science provides a basis for discussions on LGB issues.⁴¹⁶ In Belgium, in 2007, public authorities subsidised a website and brochure on “gender diversity and transgender” for pupils of 14-18 years.⁴¹⁷ With older school students in mind, the Slovenia Peace Institute issued a CD-ROM in 2003 to help teachers discuss sexual orientation during classes.⁴¹⁸

Homophobic and transphobic bullying and discrimination in educational settings

According to studies carried out across member states⁴¹⁹ and supported by some government research, LGBT students suffer from bullying from both peers and teachers. In a United Kingdom study among transgender persons it was found that some 64% of transgender men and 44% of transgender women reported experiencing harassment or bullying by their peers and sometimes by their teachers.⁴²⁰ In Serbia, 21% of students surveyed admitted they had verbally attacked or threatened someone they thought was gay or “feminised”, while 13% said they had actually helped beat them up. Some 60% of respondents held that violence against homosexual persons was always justified.⁴²¹ Research conducted by an NGO in the United Kingdom⁴²² found that homophobic language is widespread in schools. Some 90% of secondary schoolteachers said that pupils in their schools are bullied, harassed or called

414. Takács J., Mocsonaki L., Tóth T. P., “Social Exclusion of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Hungary”, Institute of Sociology, Hungarian Academy of Sciences, 2008; Kuhar R. and Švab A, “Homophobia and Violence against Gays and Lesbians in Slovenia”, *Revija za Sociologiju*, Vol. XXXIX, No. 4, 2008, p. 271.

415. Norwegian Ministry of Children and Equality, “The Norwegian Government’s action plan: Improving quality of life among lesbians, gays, bisexuals and trans persons, 2009-2012”, 2008, pp. 19-20.

416. FRA national contribution (legal report) on Estonia. p. 33.

417. FRA national contribution (sociological report) on Belgium, p. 7.

418. European Union Agency for Fundamental Rights, “Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the European Union Member States: Part II – The Social Situation”, 2009, p. 78.

419. Takács J., “Social Exclusion of young lesbian, gay, bisexual and transgender (LGBT) people in Europe”, ILGA-Europe and IGLYO, 2006. Also research in Albania, Bosnia and Herzegovina, Belgium, Germany, Hungary, Malta, Montenegro, the Netherlands, Norway, Ireland, Serbia, Slovenia, Turkey, Ukraine and the United Kingdom, and by ILGA-Europe.

420. Whittle S., Turner L., Al-Alami M., “Engendered Penalties: Transgender and Transsexual People’s Experiences of Inequality and Discrimination”, Wetherby: The Equalities Review, 2007, p. 17.

421. CARE International and International Center for Research on Women, Young Men Initiative for Prevention of Gender-Based Violence in Western Balkans, “Baseline Research Technical Brief – Country Report. Serbia”, 2009, p. 8.

422. Stonewall UK, “Homophobic Bullying in Britain’s Schools – The Teachers’ Report”, 2009.

names for being – or for being perceived to be – homosexual. Half of the teachers who indicated that they are aware of homophobic bullying in school pointed out that the overwhelming majority of incidents are never officially reported or dealt with.

Some national human rights structures and NGOs have found that the management and staff of schools do too little to address bullying. In some other member states, such as in Ireland, a joint campaign of NGOs and the equality body have been set up, resulting in posters to all secondary schools with the message “Homophobic bullying is not acceptable in our schools”.⁴²³ However, even when anti-bullying policies are in place, they may provide inadequate protection or be insufficiently implemented. A United Kingdom study found that out of 300 schools observed, 82% were aware of verbal homophobia and 26% of physical homophobic bullying, even though almost all of these schools had anti-bullying policies in place.⁴²⁴ Research in 2009 from the United Kingdom reported that a higher percentage of transgender persons experience bullying at school (75%) than lesbian, gay and bisexual persons (25%).⁴²⁵

Teachers who are gay, lesbian, bisexual or transgender can also suffer discrimination and harassment from their colleagues, students or their employer as such. In Romania the Ministries of Education and Health jointly introduced psychological testing for teachers in 2003 and forbade gay and lesbian persons to teach. Although the regulation was repealed, it was replaced in 2006 by another joint order, listing homosexuality among grounds for exclusion.⁴²⁶ In some member states, including in the Netherlands and Lithuania, discussions have taken place regarding the equal treatment laws in these countries and the extent to which schools based on religion or belief may or may not be able to lawfully refuse to employ a gay or lesbian teacher (Netherlands) or limit educational awareness-raising activities on LGBT issues (Lithuania).⁴²⁷ Cases against discrimination in education on grounds of sexual orientation or gender identity have been brought to national courts or equality bodies in Bulgaria, Croatia, Romania, Russia,⁴²⁸ Turkey, Greece,⁴²⁹ Italy⁴³⁰ and Sweden.⁴³¹

423. European Union Agency for Fundamental Human Rights, “Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the European Union Member States: Part II – The Social Situation”, 2009, p. 71.

424. Averill, S., “How can young people be empowered to achieve justice when they experience homophobic crime?”, 2004, p. 20.

425. ECHR, “Provision of Goods, Facilities and Services to Trans People: Guidance for Public Authorities in Meeting Your Equality Duties and Human Rights Obligations”, 2010, p. 40.

426. Romanian Ministry of Education and Research, Ministry of Health and the National Health Insurance Authority, Order No. 4840/IR 38342/2796/2005 on mandatory health check of school personnel.

427. European Union Agency for Fundamental Rights, “Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: 2010 Update – Comparative Legal Analysis”, 2010, pp. 25-26.

428. National contribution (legal report) on the Russian Federation. pp. 45-46.

429. FRA national contribution (sociological report) on Greece, p. 8.

430. FRA national contribution (legal report) on Italy, p. 20.

431. HomO, Dossier No. 620-2006. Decision, 3 August 2007.

The negative consequences of bullying may be enormous. NGOs and studies in several member states point to the negative impact that bullying has on the school performance and well-being of LGBT students generally. Lesbian, gay, bisexual or transgender adolescents may not seek support from their families and/or community because they have not yet “come out” with their sexual orientation or gender identity, or because they had previously been rejected for doing so. Several studies show that a homophobic or transphobic environment at school may lead to higher drop-out rates of LGBT young persons from secondary school. These young people are also more likely to contemplate self-harm and engage in high-risk behaviour.⁴³² A study in the Russian Federation made similar findings.⁴³³ Stress and social isolation are most acute for young people who become aware of their homosexuality during their years at school. Homophobia and bullying in school may damage the academic work of LGBT pupils and destroy their self-image and confidence. Studies moreover suggest that bullying has a negative impact on the health of LGBT persons⁴³⁴ but the social stigma surrounding LGBT issues has delayed concerted public health research in member states.

School boards have a duty to provide a safe setting in which LGBT students and teachers are protected from bullying. Some good practice can be reported from the Netherlands, where an NGO coalition has developed a practical standard for managing a school that is safer for LGBT persons;⁴³⁵ in the same country a handbook on student counselling includes a chapter on the needs of LGBT students.⁴³⁶

6.4. Employment

Work is essential both for personal development and for social and economic independence.⁴³⁷ In financial terms, it implies the right to be able to ensure an adequate standard of living for oneself and one’s dependants. The right to work is enshrined in Article 6 of the ICESCR⁴³⁸ and Article 8 of the ICCPR.⁴³⁹ There is an obligation for states to guarantee that the right to work can be exercised without discrimination of any kind.⁴⁴⁰ In its General Comment No. 20, the UN

432. Jenett, M., “Stand up for us: Challenging homophobia in schools”, Yorkshire, Crown Copyright, 2004, p. 10; IGLYO and ILGA-Europe, Written contribution to Schools for the 21st Century Commission Staff Working Paper (SEC (2007) 1009), December 2007.

433. Moscow Helsinki Group, “Situation of Lesbians, Gays, Bisexuals and Transgenders in the Russian Federation”, Moscow, 2009, pp. 29-30.

434. For example, National Institute for Working Life. “Arbetsvillkor och utsatthet”, Sweden, 2003; Jenett M., “Stand up for us – Challenging homophobia in schools”, Department for Education and Skills, London, 2004, p. 8.

435. Schouten M. and Dankmeijer P., “Een roze draad in veiligheid op school”, February 2008.

436. Dankmeijer P., “Homo- en transseksuele aandachtspunten in de leerlingenbegeleiding”, in Toolkit Leerlingenbegeleiding, Kluwer, 2006.

437. UN Committee on Economic, Social and Cultural Rights, General Comment No. 18, 24 November 2005, Article 6, paragraph 4. See also General Comments Nos. 14, 15 and 20.

438. International Covenant on Economic, Social and Cultural Rights.

439. International Covenant on Civil and Political Rights.

440. Cf. UN Committee of Economic, Social and Cultural Rights, General Comment No. 18 of 24 November 2005, Article 6, paragraph 19.

Committee on Economic, Social and Cultural Rights lists sexual orientation and gender identity among prohibited grounds for discrimination. It recognises that “persons who are transgender, transsexual or intersex often face serious human rights violations such as harassment in schools or in the work place”.⁴⁴¹

The revised European Social Charter guarantees social and economic rights including the right to work⁴⁴² and the principle of non-discrimination applies to all rights set out in it. The Committee of Ministers Recommendation CM/Rec(2010)5 explicitly puts sexual orientation and gender identity among prohibited grounds for discrimination in the employment sphere. A specific provision covers effective protection of the privacy of transgender persons in relation to employment applications and disclosure of their gender identity history.⁴⁴³

The European Union Employment Equality Directive prohibits discrimination on grounds of sexual orientation in the private and the public sectors, not only in the place of employment, but also in procedures governing access to work, and in labour-related organisations. In 2009, the European Commission reviewed the Directive’s⁴⁴⁴ application in European Union member states to find that three member states had infringed the Employment Equality Directive’s provisions against discrimination on the ground of sexual orientation (Poland,⁴⁴⁵ the United Kingdom⁴⁴⁶ and the Netherlands⁴⁴⁷). “Sex” discrimination in employment is currently the legal basis of European Union legislation to combat employment discrimination on the ground of gender reassignment. One of the employment cases before the Court of Justice of the European Union on discrimination on the grounds of gender identity produced a landmark judgment. In 1996 it found that dismissal of a transsexual person for reasons related to gender reassignment was precluded under the 1976 Equal Treatment Directive on prohibition of discrimination on the ground of “sex”.⁴⁴⁸

In total, 38 member states regard sexual orientation as a prohibited ground for discrimination either in comprehensive non-discrimination

441. UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 on non-discrimination, paragraph 32.

442. The European Social Charter, adopted in 1961 (ETS No. 35) and revised in 1996 (ETS No. 163).

443. Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010, paragraphs 29-30.

444. European Union Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Articles 7 and 10.

445. Reasoned Opinion sent on 29 January 2010 concerning the prohibition of discrimination on all grounds set out in the Directive (including sexual orientation) which is not provided for in regulations on access to certain professions according to the European Commission.

446. Reasoned Opinion sent on 23 November 2009 concerning the possibility of justifying discrimination on grounds of sexual orientation in case of employment by religious institutions which is considered too wide by the European Commission.

447. Reasoned Opinion sent on 1 February 2008 concerning the exceptions provided for legal relations within religious communities and employment by religious institutions which are considered to be too wide, also making it possible to discriminate unduly for example on grounds of sexual orientation.

448. Court of Justice of the European Union, C-13/94, *P. v. S. and Cornwall County Council*, judgment of 30 April 1996, paragraph 20.

legislation, or in employment-specific (sectoral) legislation. Even though this is an overwhelming majority of Council of Europe member states, the 2007 Eurobarometer survey showed that only 30% of European Union citizens were aware of laws prohibiting discrimination on grounds of sexual orientation in the labour market.⁴⁴⁹

Regarding gender identity, the situation is more complex. Nine member states have included gender identity explicitly in comprehensive non-discrimination legislation. At least 11 member states treat discrimination on grounds of gender identity or gender reassignment as a form of sex or gender discrimination in comprehensive non-discrimination legislation. In the remaining 27 member states the situation regarding coverage of transgender persons under non-discrimination legislation is unclear. These 27 member states include European Union member states which should as a minimum recognise, in the field of employment, discrimination of a person who intends to undergo or has undergone gender reassignment as a form of sex or gender discrimination.⁴⁵⁰

Discrimination and harassment against LGBT persons in the work place

LGB employees may experience the denial of benefits provided to heterosexual staff and their spouses such as parental leave; health care insurance for employees and their families; educational and leisure facilities for employees and their families; bereavement leave, or leave to care for a sick partner and survivor's benefit in occupational pension schemes. Discrimination against transgender persons may occur when they are not addressed by the correct name and/or pronoun or when they are denied time off work for gender reassignment therapy. In states where men and women retire at different ages, transgender women may be forced to wait for a state pension until they reach male retirement age.

Employees who are "out" at work, or suspected of being lesbian, gay, bisexual, or transgender, can experience indirect discrimination by employers, colleagues or clients which can include sexually explicit remarks intended to embarrass or ridicule. For example, according to the National Institute for Working Life⁴⁵¹ some 30% of lesbian and bisexual women in Sweden say that demeaning comments at work are the norm.

The scale of discrimination against LGBT persons in the work place is hard to estimate. Very few member states compile statistics on discrimination in the employment sector, and statistics that exist are generally not disaggregated in a meaningful way. Research for this report revealed that between 2005 and 2010 a handful of employment discrimination cases came to court or equality bodies in at least 21 Council of Europe member states (Austria,

449. European Commission, Special Eurobarometer 263, "Discrimination in the European Union", 2007, p. 30.

450. See chapter 2.3 for a full overview of national non-discrimination legislation.

451. National Institute for Working Life. Arbetsvillkor och utsatthet, Sweden, 2003, p. 73, also quoted in European Union Agency for Fundamental Rights, "Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the European Union Member States: Part II – The Social Situation", 2009, p. 68.

Belgium, Cyprus, the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Latvia, Lithuania, Italy, the Netherlands, Norway, Poland, Romania, the Russian Federation, Spain, Sweden, Turkey and the United Kingdom).⁴⁵² In addition to these data, surveys reveal that significant numbers of LGBT persons claim to have been discriminated against at work; however, those incidents are not formally reported. These surveys include 52% of LGBT workers in the United Kingdom surveyed by a trade union; 39% of lesbian and gay workers surveyed in Denmark;⁴⁵³ over a third of respondents in Hungary;⁴⁵⁴ 56% of transgender employees surveyed in Spain.⁴⁵⁵

Examples of claims of discrimination and harassment cases identified for this report include a Croatian civil servant who was given an office in the basement and told that a “faggot should die in the basement with rats”. Supervisors reportedly did not respond to his memo, and he was reluctant to bring a charge against the ministry.⁴⁵⁶ A transgender woman in Moldova claimed to have been dismissed from her post as a high-school teacher during her hormone therapy, despite requests from her students’ parents to let her stay.⁴⁵⁷

Under-reporting may be endemic. Some equality bodies and NGOs think this is because LGBT persons risk more than most other people if they complain.⁴⁵⁸ By irrevocably “coming out” with a complaint in the workplace, they fear, like other complainants, being victimised and dismissed. Unlike other complainants, however, they fear they will never be able to conceal their sexual orientation or gender identity in the future and so become permanently unemployed, especially if they live in a small town where the social control is strong. It is fear of dismissal and long-term unemployment that prompts many LGBT persons to adopt a protective silence.⁴⁵⁹

A report by ILGA-Europe suggests that homophobic and transphobic attitudes often prevail in the workplace because employers hesitate to tackle what is often considered a difficult subject to address. The report says that “many people are simply not aware that their colleagues may experience their daily

452. (FRA) national contributions (legal reports) contain annexes with descriptions on such cases identified in the member states. See also European Union Agency for Fundamental Rights, “Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the European Union Member States: Part II – The Social Situation”, 2009, p. 64.

453. European Union Agency for Fundamental Rights, “Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the European Union Member States: Part II – The Social Situation”, 2009, p. 68.

454. Takács J., Mocsonaki L. and Tóth T. P., *A leszbikus, meleg, biszexuális és transznem (LMBT) emberek társadalmi kirekesztettség Magyarországon* (Social Exclusion of LGBT People in Hungary), MTA SZKI, Budapest, 2007.

455. Esteva, I. et al. “Social Inequalities: Demographic Characteristics of Patients Treated at the First Gender Identity Disorder Unit in Spain”, 2001.

456. National contribution (legal report) on Croatia, p. 30.

457. National contribution (sociological report) on Moldova, p.16.

458. For example Walsh J., Conlon C., Fitzpatrick B. and Hansson U., *Enabling Gay, Lesbian and Bisexual Individuals to Access their Rights under Equality Law*, Equality Authority and Equality Commission for Northern Ireland, 2007, p. 47.

459. Moscow Helsinki Group, “Situation of Lesbians, Gays, Bisexuals and Transgenders in the Russian Federation”, 2009, p. 45.

work lives in a fundamentally different manner. ... Some argue that sexual orientation is a private matter, best confined to the bedroom and that it has no relevance to the workplace”.⁴⁶⁰ In employment sectors where traditional notions of masculinity and femininity prevail, it may be a serious problem for people who challenge gender norms to find employment.

The impact on victims and strategies to end discrimination

LGB persons tend to conceal their sexual orientation in the workplace. The Eurobarometer survey found that 68% of European Union citizens think that it is difficult for a homosexual person to state his/her sexual orientation in the workplace.⁴⁶¹ An investigation in Sweden found that 50% of LGB respondents were not “out” at work and 40% avoided socialising with colleagues for fear of having to share such private details with colleagues.⁴⁶² This pattern was also identified in empirical studies in Albania,⁴⁶³ Croatia,⁴⁶⁴ Finland,⁴⁶⁵ Germany,⁴⁶⁶ Norway,⁴⁶⁷ Poland,⁴⁶⁸ the Russian Federation⁴⁶⁹, Slovakia,⁴⁷⁰ and in an ILGA-Europe report.⁴⁷¹

Transgender persons who decide to undergo gender reassignment treatment could face the opposite problem, especially during the period of gender reassignment treatment. Surveys suggest that up to 77% of transgender employees do not tell their employers about their gender identity and 50% of them find this stressful. They may find themselves pushed to the margins of the job market and out of formal employment, which in some Council of Europe member states results in transgender women working in the sex industry.

LGB persons may be more productive at work if they do not need to conceal their sexual orientation. Some firms in member states have used this

460. Quinn S. and Paradis E., “Going beyond the law: promoting equality in employment”, ILGA-Europe, Brussels, 2007, pp. 10-11.

461. European Commission, Special Eurobarometer 263, “Discrimination in the European Union”, 2007, p. 13.

462. National Institute for Working Life. Arbetsvillkor och utsatthet, Sweden, 2003, pp. 123-24.

463. GISH, “Survey Research with the LGBT community in Albania”, Tirana, 2006.

464. Lesbian Group Kontra, “Violence Against Lesbians, Gays and Bisexuals in Croatia: research report”, Zagreb, 2006, p. 39.

465. Lehtonen J. and Mustola K. (eds), “*Straight People Don't Tell, Do They?": Negotiating the Boundaries of Sexuality and Gender at Work*, Ministry of Labour, Helsinki, 2004, pp. 4-5.

466. Frohn D. (ed.), ““Out im Office?! Sexuelle Identität, (Anti-)Diskriminierung und Diversity am Arbeitsplatz”, Schwules Netzwerk NRWe.V., Cologne, 2007, p. 7.

467. Moseng B. U., “Lesbiske og homofile arbeidstakere – en pilotundersøkelse”, NOVA, Oslo, 2005.

468. Abramowicz M. (ed.), “The Situation of Bisexual and Homosexual Persons in Poland: 2005 and 2006 Report”, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw, 2007.

469. Moscow Helsinki Group, “Discrimination based on Sexual Orientation and Gender Identity in the Russian Federation”, Moscow, 2007.

470. Daucikova A., Jójárt P. and Sipošova M., “Report on Discrimination of Lesbians, Gay Men and Bisexuals in Slovakia”, Documentation and Information Centre, Bratislava, 2002.

471. Quinn S. and Paradis E., “Going Beyond the Law: Promoting Equality in Employment”, ILGA-Europe, Brussels, 2007, p. 24.

argument and argued for the “business-case for diversity”, which resulted in LGBT employee networks being established and partner benefits to both LGB and heterosexual workers given.⁴⁷² In France, 150 large employers have agreed to check their employment practices for compliance with a diversity charter devised by the High Authority for Equality and the Elimination of Discrimination (HALDE).⁴⁷³ The NGO Stonewall in the United Kingdom has developed a 25-question online survey to help employers assess how well they perform on equality issues. An International Gay and Lesbian Chamber of Commerce has been set up, and has developed an International Business Equality Index based on Stonewall’s survey.

Some good practice can be reported from member states. A lesbian NGO, ŠKUC, in Slovenia has tried to change public attitudes to LGBT persons through TV adverts that show LGBT Slovenian celebrities at their work places. The same organisation, in co-operation with the Slovenian Ministry of Labour, Family and Social Affairs, published two manuals on “Measures against employment discrimination” to be used by trade unions and employers.⁴⁷⁴

Some 55% of European Union citizens thought in a Eurobarometer survey in 2009 that not enough efforts were made to combat employment discrimination based on grounds of sexual orientation.⁴⁷⁵ Trade unions play in this regard a crucial role in preventing discrimination on grounds of sexual orientation and gender identity. Some national unions in Poland and Italy have appointed staff to focus on LGBT issues. In 2006, a Polish trade union defended gay and lesbian teachers against homophobic comments by Polish officials.⁴⁷⁶ In 2007 the European Trade Union Confederation (ETUC) adopted targets for raising LGBT awareness and tackling prejudice among its members⁴⁷⁷ and in 2008 it held the first Europe-wide trade union conference on LGBT rights.

Non-discrimination legislation is the first step towards combating discrimination in the workplace against LGBT persons, but it needs to be effectively implemented. Public sector employers can give a strong lead in this area and tools exist for them to facilitate the process. The United Kingdom introduced a public sector gender equality duty, which requires all public authorities and their contractors to include transgenderism among eight prohibited grounds of discrimination and to promote equality of transgender women and men.

472. Quinn S. and Paradis E., “Going Beyond the Law: Promoting Equality in Employment”, ILGA-Europe, Brussels, 2007, p. 26.

473. FRA national contribution (legal report) on France, p. 15.

474. Greif T., “Ukrepi proti diskriminaciji v zaposlovanju za sindikat”, ŠKUC, Ljubljana 2006; Greif T., “Ukrepi proti diskriminaciji v zaposlovanju za delodajalce”, ŠKUC, Ljubljana, 2006.

475. European Commission, Special Eurobarometer 317, “Discrimination in the EU”, 2009, p. 33.

476. European Commission, “Trade Union Practices on Anti-Discrimination and Diversity”, pp. 34-36.

477. European Trade Union Confederation, “The Seville Manifesto”, adopted by the Xlth ETUC Congress, Seville, 21-24 May 2007.

Conclusions

This report provides a socio-legal overview of the human rights situation of LGBT persons in the 47 Council of Europe member states. It identifies serious flaws as well as positive developments in the protection from discrimination on grounds of sexual orientation and gender identity in several thematic fields. The report also looks beyond the legislative frameworks and clearly demonstrates that LGBT persons continue to be subjected to homophobia and transphobia in their everyday lives. Further efforts by member states are needed to pursue legislative reforms and social change to enable LGBT persons to fully enjoy universally recognised human rights.

Attitudes and perceptions

Despite the fact that criminalisation and medicalisation of homosexuality belong to the past in Europe, attitudes towards gay, lesbian and bisexual persons are often still characterised by outdated and incorrect information on what constitutes someone's sexual orientation. Transgender persons continue to face a particularly medicalised and prejudiced environment. Homophobic and transphobic attitudes have been identified in all member states, though attitudes vary significantly among and within the 47 member states of the Council of Europe. There is an urgent need to counterbalance such attitudes and deeply rooted prejudices by disseminating unbiased and factual information on sexual orientation and gender identity in the media, in schools and society at large.

Invisibility of LGBT persons and the absence of sexual orientation and gender identity in relevant human rights debates have turned out to be recurring themes during the data collection for this report. At the most basic level, many LGBT persons remain invisible in everyday life out of fear of negative reactions at school, at work, in their neighbourhood or in their family. They fear that being "out" will lead to harassment, rejection, physical violence and discrimination. Many LGBT individuals conceal their sexual orientation or gender identity and adjust to the heteronormativity present in society. Several member states have introduced programmes promoting education and dialogue with a view to challenging negative attitudes towards LGBT persons. Such initiatives need to be consistently followed across Europe to counterbalance negative stereotypes.

Legal standards and their implementation

A large majority of member states have adopted legislation to prohibit and eliminate discrimination against persons because of their sexual orientation. Transgender persons, however, receive less clear protection in existing non-discrimination legislation in most member states. When they are included in the scope of protection, it is often not explicit or the protection does not go beyond a limited concept of gender identity, which seriously diminishes its

impact. There is an urgent need for member states to remedy this situation by introducing “gender identity” as an explicit ground of discrimination in non-discrimination legislation.

The extent of discrimination against LGBT persons on grounds of their sexual orientation and gender identity is hard to determine with precision due to the non-availability of official data in most member states. This sharply contrasts with data on discrimination provided by NGOs. There is a need for member states to review the accessibility to and effective implementation of non-discrimination legislation in view of this incongruence between officially available data and the information provided by civil society. National structures for promoting equality have a key role to play in combating discrimination based on sexual orientation and gender identity and making their complaint mechanisms accessible to LGBT persons. However, many of them lack an explicit mandate to address discrimination on grounds of sexual orientation and the situation is even worse regarding the ground of gender identity.

Comprehensive equal treatment legislation should be accompanied with appropriate policy measures for its implementation. A handful of member states of the Council of Europe have initiated national policies to address discrimination of LGBT persons in the employment sector and bullying of young LGBT persons at school or in other sectors. Other member states could draw inspiration from such initiatives.

Protection: violence and asylum

LGBT persons run a serious risk of becoming victims of hate crimes or hate-motivated incidents. Such violence, inspired by the perpetrators’ deeply felt hatred and rejection of the real or perceived sexual orientation or gender identity of the victim, is rarely specifically addressed in member states’ legislation. Under-reporting of such violence is a problem as victims do not trust law-enforcement agencies, which may lack proper training to investigate effectively hate-motivated crimes, speech and incidents. Even if incidents or crimes are reported, there is ample evidence that the bias motivation is not usually reflected in official statistics as homophobic and transphobic motives are not recognised by most member states in relevant legislation. Discriminatory and inflammatory language against LGBT persons, including by politicians and religious figures, compounds the problem and paves the way for a climate where hate-motivated incidents occur without a strong public condemnation, but are rather condoned. Member states should step up efforts to combat hatred against LGBT persons.

In the area of asylum claims, a majority of member states recognise that sexual orientation can be a ground of persecution in asylum claims under the notion of “membership of a particular social group”. However, the recognition that gender identity can also be a ground for people to flee their countries is only recognised in a handful of states. Member states should draw inspiration

from relevant UNHCR guidelines concerning the international protection of LGBT asylum seekers.

Participation: freedoms of assembly, expression and association

Too often, violent and discriminatory reactions occur when LGBT persons join together to form associations, express their views or demonstrate in public. While in most member states the freedoms of association, expression, and assembly of LGBT persons are respected, in a few countries bans or administrative impediments have been imposed on peaceful LGBT demonstrations in recent years. In some instances, the police have failed to protect peaceful demonstrators from violent assaults. When such bans and impediments happen, LGBT organisations often have to apply to courts in order to overturn decisions by authorities. The same phenomena can be seen when LGBT associations try to register their organisations: some bans have again been overturned by courts. There is no justification for member states to impose bans on LGBT organisations and peaceful assemblies as the European Court of Human Rights has set up clear standards in this regard. The same goes for attempts to criminalise “propaganda of homosexuality” as it violates the freedom of expression.

Privacy: gender recognition and family life

Transgender persons face significant problems in their efforts to have their preferred gender legally recognised. The absence of relevant legislation as well as cumbersome and unclear procedures in most member states contribute to a failure by many member states to recognise the preferred gender of transgender persons. Twenty-nine member states require gender reassignment surgery whereas 15 member states require the transgender person to be unmarried, which entails mandatory divorce if the person is already married. There is an urgent need for member states to review and adapt their legislation in light of the Recommendation of the Committee of Ministers as well as recent legislative reform in a few member states.

Same-sex couples who wish to legally seal their relationships face significant challenges in most Council of Europe member states. Even though family law is to a great extent a matter of national competence, under European human rights law it is becoming increasingly difficult to justify differential treatment between same-sex couples and different-sex couples when accessing rights and benefits if the only difference is the sexual orientation of the partners involved. The European Court of Human Rights has recognised that same-sex partners enjoy “family life” with reference to the European Convention and come under its protection in this area as well.

Access to health care, education and employment

LGBT persons encounter a wide range of problems in accessing health care. Limited knowledge and awareness among health professionals of the health

problems of LGBT persons and the denial of treatment are only some of the identified obstacles. Moreover, contrary to international medical classifications, medical professionals in some member states may still be taught that homosexuality is an illness. Transgender persons face particular problems in accessing health care. In 13 member states the infrastructure suitable for gender reassignment treatment is non-existent or insufficient. Transgender persons have no other choice than to go abroad to receive treatment. Furthermore, a person wanting to access gender reassignment treatment must usually meet a strict “one size fits all” list of requirements, which include the diagnosis of gender dysphoria. A fundamental shift towards a human rights approach for transgender persons is necessary to address the excessively medicalised practices of today.

Bullying at schools is present in the lives of LGBT persons from a very early stage in practically all member states. Only in very few member states are policies in place to combat bullying and harassment of LGBT students, teachers, and staff. Consequently, schools are not experienced as a safe environment for LGBT persons. Textbooks may transmit information that homosexuality is an illness; these do not contribute to a healthy development of young LGBT persons. Member states should do more to prevent bullying and provide objective information in schools.

LGBT persons are affected by discrimination in the employment sector. Even though the majority of national non-discrimination legislations include sexual orientation as one of the discrimination grounds in the employment sphere, gender identity is usually not included even if it may be partially covered by the ground of gender or sex. Not only do transgender persons face particular problems when accessing the labour market, they also encounter issues concerning privacy and the disclosure of personally sensitive data related to their gender identity history. The concept of reasonable accommodation should be further developed in this context to improve the access of transgender persons to employment. Some trade unions and employers have set up policies and practices in order to foster diversity in the workplace encouraging the full inclusion of LGBT staff. Such initiatives need to be supported by member states.

Data collection, research and monitoring

The general lack of official data on discrimination on grounds of sexual orientation and gender identity as well as homophobia and transphobia is a significant obstacle to remedial measures. There is a need for member states to collect data on these issues. Without such data there can be no solid basis for informed decision making and monitoring, which is crucial for addressing the many human rights challenges identified in this report. When privacy concerns are properly addressed, setting up data-collection mechanisms can be the start of developing and implementing policies combating discrimination and intolerance on grounds of sexual orientation and gender identity. This can of course only be successful when there is the political will

to recognise that problems exist and that discrimination, transphobia and homophobia need to be combated – and that progress has to be monitored. Some member states have experience in this field and could share their good practices, which could form the basis for a development establishing a set of clear and reliable indicators and benchmarks.

Wider outlook

An important premise for drafting this report has been to offer a tool for dialogue with the authorities of the 47 member states of the Council of Europe. In this regard it can be considered a baseline study for further action in both legislative and policy fields. The Committee of Ministers Recommendation from 2010 has already provided the political impetus to take concrete steps to develop and implement effective policies for preventing sexual orientation and gender identity discrimination in all member states of the Council of Europe.

National and international monitoring is needed to measure progress in all fields covered by this report. Within member states, national structures for promoting equality have an important role to play in monitoring. Civil society organisations representing LGBT persons should be able to participate in this process. The Council of Europe and its monitoring mechanisms have added value to offer. The Council of Europe should also provide assistance to member states in implementing the European and international standards in this field.

Moreover, as this report has demonstrated, the standards set by the 47 member states of the Council of Europe bear a direct influence on the protection afforded to LGBT persons from countries where they face persecution, repression or even the death penalty for being LGBT. There is a need to take stock of this fact and bring it to the attention of other fora for the wider promotion of human rights. Converging efforts by the Council of Europe, the European Union, the OSCE and the UN to implement human rights without discrimination are essential for ensuring the full enjoyment of universal rights by LGBT persons everywhere.

Appendix: Terms and concepts

This report uses a number of terms and concepts which are defined and clarified below in order to facilitate the full understanding of the report. The definitions are not considered exhaustive. While referring to the list, one should bear in mind that some of the terms may have slightly different meanings in various contexts and in different languages.

Discrimination is legally defined as unjustified, unequal treatment:

- **Direct discrimination** occurs when for a reason related to one or more prohibited grounds (for example, sexual orientation and gender identity) a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when, for a reason related to one or more prohibited grounds, a person or group of persons is subjected to a detriment.⁴⁷⁸
- **Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds (including sexual orientation and gender identity) at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.⁴⁷⁹
- **Experienced discrimination**, also called subjective discrimination, is the experience of being discriminated against. Experienced discrimination does not necessarily entail discrimination in the legal sense.⁴⁸⁰

Gender identity refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, "gender expression") such as dress, speech and mannerisms.⁴⁸¹ The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as "transgender" persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.⁴⁸²

478. The Equal Rights Trust, *Declaration of Principles on Equality*, London, 2008, pp. 6-7.

479. *Ibid.*

480. Olli E. and Olsen B. K. (eds), "Towards Common Measures for Discrimination: Exploring possibilities for combining existing data for measuring ethnic discrimination", Danish Institute for Human Rights, 2005.

481. Definition based on the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2006.

482. Commissioner for Human Rights, "Human Rights and Gender Identity", Issue Paper, Strasbourg, 2009, pp. 5-6.

Gender marker is a gendered designator on, for example, an identity document (passports). The most obvious gender markers are designations such as male/female or Mr/Mrs/Ms/Miss. They can also be professional titles or personal pronouns, or coded numbers, such as social security numbers and tax numbers which may use certain combinations for men and for women (for example, even/uneven numbers). Gender markers are often embedded in ID cards or personal certificates such as passports, birth certificates, school diplomas, and employers' reference letters.

Gender reassignment treatment refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one's preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment.⁴⁸³ Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

Hate crime towards LGBT persons refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group.⁴⁸⁴ There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.⁴⁸⁵

Hate-motivated incident are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.⁴⁸⁶

483. The Equal Rights Trust, *Declaration of Principles on Equality*, London, 2008, p. 7.

484. OSCE/ODIHR, "Hate Crimes in the OSCE Region – Incidents and Responses. Annual Report for 2009", Warsaw, 2010, p. 13.

485. See Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010.

486. OSCE/ODIHR, "Hate Crimes in the OSCE Region – Incidents and Responses. Annual Report for 2009", Warsaw, 2010, p. 13; Committee of Ministers Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity, CM/Rec(2010)5, adopted on 31 March 2010.

Hate speech against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility⁴⁸⁷ towards LGBT people – for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

Heteronormativity can be defined as the institutions, structures of understanding and practical orientations that make heterosexuality seem coherent, natural and privileged. It involves the assumption that everyone is heterosexual, and that heterosexuality is the ideal and superior to homosexuality or bisexuality. Heteronormativity also includes the privileging of normative expressions of gender – what is required or imposed on individuals in order for them to be perceived or accepted as “a real man” or “a real woman” as the only available categories.⁴⁸⁸

Homophobia is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.⁴⁸⁹ **Transphobia** refers to a similar phenomenon, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.⁴⁹⁰

Intersex people are persons who are born with chromosomal, hormonal levels or genital characteristics which do not correspond to the given standard of “male” or “female” categories as for sexual or reproductive anatomy. This word has replaced the term “hermaphrodite”, which was extensively used by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.⁴⁹¹

LGBT people or **LGBT persons** is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

Multiple discrimination describes discrimination that takes place on the basis of several grounds operating separately.⁴⁹² Another term often used in

487. Based on the definition in Committee of Ministers Recommendation No. R(97)20 on “hate speech”, adopted on 30 October 1997.

488. Based on Warner M., “Introduction: Fear of a Queer Planet”, *Social Text*, 9 (4 [29]), 1991, pp. 3–17; Rosenberg T., *Queerfeministisk Agenda*, Arena, Stockholm, 2002; RFSL, *Open Up Your Workplace: Challenging Homophobia and Heteronormativity*, 2007.

489. European Parliament resolution on homophobia in Europe (P6_TA(2006)0018 (PE 368.248)).

490. Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted 31 March 2010.

491. World Health Organization, “Genetic components of Sex and Gender”. See also Federal Anti-Discrimination Agency, *Benachteiligung von Trans Personen, insbesondere im Arbeitsleben*, Berlin, 2010, p. 11.

492. European Commission, *Tackling Multiple Discrimination. Practices, Policies and Laws*, 2007.

this regard is **intersectional discrimination**, which refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable.⁴⁹³

Queer is a term laden with various meanings and a long history, but currently often denotes persons who do not wish to be identified with reference to traditional notions of gender and sexual orientation and eschew heterosexual, heteronormative and gender-binary categorisations. It is also a theory, which offers a critical perspective into heteronormativity.

Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).⁴⁹⁴

Transgender persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels "male" or "female", transsexuals, transvestites and cross-dressers.⁴⁹⁵ A transgender man is a person who was assigned "female" at birth but has a gender identity which is "male" or within a masculine gender identity spectrum. A transgender woman is a person who was assigned "male" at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners. The word **transgenderism** refers to the fact of possessing a transgender identity or expression.

Transsexual refers to a person who has a gender identity which does not correspond to the sex assigned at birth and consequently feels a profound need to permanently correct that sex and to modify bodily appearance or function by undergoing gender reassignment treatment.

Transvestite (cross-dresser) describes a person who regularly, although part-time, wears clothes mostly associated with the opposite gender to her or his birth gender.

493. Ibid.

494. Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2008.

495. Definition based on Commissioner for Human Rights, "Human Rights and Gender Identity". Issue Paper, Strasbourg, 2009.

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