

A short guide to the Committee of Ministers Recommendation and its Explanatory Memorandum

The Recommendation consists of a **preamble** and a short **operative part**, supported by a longer detailed **Appendix**.

The preamble

- **Recognizes the problem** to be addressed: "that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family - including criminalisation, marginalisation, social exclusion and violence....".
- **Points out two particularly relevant human rights principles:** that, as recognized by the European Court of Human Rights, sexual orientation is a "prohibited ground for discrimination"; that "neither cultural, traditional or religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination" on grounds of sexual orientation or gender identity.
- **Emphasises the role to be played by governments** in combating such discrimination:
"non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms".

The Operative Part is highly summarised, addressing the need for member states to:

- i. Examine **existing legislative and other measures**, and eliminate any discrimination in them (paragraph 1)
- ii. **Collect and analyse data** for use in combating discrimination (paragraph 1)
- iii. Adopt legislative and other measures to **combat discrimination**, to **ensure respect** for LGBT people, and **promote tolerance** towards them (paragraph 2)
- iv. Ensure that **victims** of sexual orientation and gender identity discrimination **can obtain justice** (paragraph 3)

Of these, iii. provides a basis for a wide range of detailed measures to combat discrimination.

It then continues with advice to member states to be guided by the principles and measures contained in the appendix, and gives instructions for the recommendation to be **disseminated as widely as possible**.

The Appendix lists the **detailed actions** needed to implement the broad recommendations set out in the Operative Part across the areas of life where sexual orientation and gender identity discrimination are a problem: **the right to life**,

security and protection from violence, freedom of association, expression and assembly, respect for private and family life, employment, education, health, sports, and asylum. It also addresses the role of **national human rights structures.**

The **Explanatory Memorandum** provides detailed explanations and background information to the Recommendation and its appendix. It addresses each of their paragraphs, providing definitions, setting out the applicable human rights principles and sources, and providing further examples of actions for member states to take. It is a very important resource, and is worth studying closely.

It can be accessed at:

<https://wcd.coe.int/ViewDoc.jsp?id=1570957&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>