

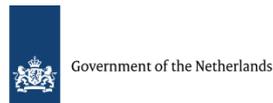
# Report

on implementation of Recommendation CM/Rec(2010)5  
of the Committee of Ministers of the Council of Europe  
on measures to combat discrimination on grounds  
of sexual orientation or gender identity by the Republic of Cyprus

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We hope that this study will serve justice to the LGBT community, by promoting visibility and awareness about their needs and contributing to the safeguarding of LGBT rights as human rights.

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## Foreword

All over Europe, homophobia and intolerance towards lesbian, gay, bisexual and trans (LGBT) people is still common place. People are discriminated, stigmatised and frequently become victims of verbal or physical violence because of their actual or perceived sexual orientation or gender identity preventing LGBT people from fully enjoying their universal human rights. This is the situation for LGBT people in Cyprus too, as highlighted by the recent study “Sexual Orientation in Cyprus: Mapping the Socio-political Climate, Experiences and Needs” conducted by accept – LGBT Cyprus and the Cyprus Family Planning Association.

The Council of Europe has long been committed to fight discrimination based on sexual orientation and has adopted a number of Recommendations to this effect ever since 1981. Amongst those is Recommendation CM/Rec(2010)5, adopted on 31 March 2010 by the Committee of Ministers with measures on how to combat discrimination based on sexual orientation or gender identity.

As one of the 47 members of the Council of Europe, Cyprus has agreed and is expected to take these Recommendations into account, a fact that pleased the local LGBT community, and especially us at accept – LGBT Cyprus. We were anticipating a shift in the State’s perception toward LGBT rights and after over two years, we were looking forward to some tangible results.

During a recent meeting with a high ranking politician here in Cyprus, while being presented with some preliminary findings highlighted by this report, he murmured the sentence “Cyprus signs far too many international agreements without properly reading them through”. At the time, I was not sure whether this was his way of trying to justify the lack of basic actions by the State as far as the rights of LGBT people are concerned, or simply his own disappointment in regards to the State actions in general. Whatever the case was, his response makes one wonder whether the authorities sign international agreements because they comprehend their importance in promoting universal human rights and equality amongst their people, or whether they see them as mere boxes they have to tick in order to prove that Cyprus is as European a state as any other.

In 1998, following a five year period of internal bickering, the authorities eventually bowed to the European Court of Justice ruling of the *Modinos v Cyprus* case and decriminalised sexual relations between men. The box was ticked and forgotten, while politicians congratulated themselves and sighed relief. In 2000, Cyprus bowed again, this time to the EU, lifting the recently placed discriminatory ban on the “promotion” of homosexuality. Another box ticked. Same situation two years later, when the age of consent for intercourse between men was equalised to that of intercourse between men and women.

The ticking of boxes described above, does little more than proving that LGBT rights in Cyprus are really not considered rights of equal importance. Such rights are not really appreciated while by and large their implementation is regarded as a foreign invention, accompanied by an attitude of “we don’t have any problems here in Cyprus with homosexuals”. This was the attitude the researchers of this report were coming upon far too often during their meetings with Departments and Ministries that “bothered” to sit down and discuss what they were doing about the implementation of the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe.

The report you hold in your hands is one of the few examples when someone from Cyprus, not abroad, actually checked whether we, as a country, are doing what we should be doing to combat discrimination on grounds of sexual orientation and/or gender identity. It highlights how the different areas of government and other competent authorities should be treating all people as equals following the Recommendation.

Yet, one of the most important findings identified by the researchers was that most government departments approached, were not even aware of the Recommendation and it was only through the work done in the context of this report that they got to know about it! Although it is true that the Recommendation is not legally binding to the State, the evident lack of actions by its authorities is astonishing. The reality is that politicians - once again - have failed to understand its importance to all its citizens, and specifically to the LGBT community of Cyprus.

This report looks at how the universal human rights of the LGBT community are infringed upon the different areas in Cyprus in relation to the Recommendation. It examines human rights in areas such as the Right to Life, Freedom of Association, Freedom of Expression, the Respect for Private

and Family Life, Employment, Education, Housing, Healthcare, Sports, Right to Seek Asylum and National Human Rights Structures. These are all areas of universal human rights.

I would like to congratulate Margarita Kapsou and Sylvie Mantis for their valuable work in producing this report. Their long hours have certainly been put to good use, as I believe it will prove essential for the work we do as part of accept – LGBT Cyprus' advocacy. I am also confident that it will be useful to researchers, both in Cyprus and abroad, when trying to depict what are the real actions of the Cyprus Government towards discrimination in regards to sexual orientation and/or gender identity.

We are hopeful that if a follow-up report for the implementation of the Recommendation is produced, it would show better results that will honour our country as a state whose citizens are all equal and treated with equal respect.

Costa Gavrielides

President, accept – LGBT Cyprus

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## I. Executive summary

The Recommendation under examination is, without doubt, one of the greatest achievements of the European regional system for human rights protection, in its encouragement of domestic reforms to comply with international standards for the protection of lesbian, gay, bisexual and transgender (LGBT) persons in the member states of the Council of Europe. Our research to date has revealed a fundamental lack of recognition of rights violations, as well as a lack of understanding of the necessity to take action to encourage legislative and policy reforms. In their written responses to our enquiries for information, it was common for agencies and authorities contacted to postulate that, since there is little to no indication of 'complaints' or issues raised, there is no issue of discrimination, or that no discrimination occurs.

To date, the government of the Republic of Cyprus, has neither interfered with, nor actively assisted LGBT activities. Freedom of peaceful assembly in Cyprus, while protected by Law, is in practice hard to evaluate for LGBT gatherings, since no large-scale events have taken place to date. Smaller scale events have not been met with any restrictions or attacks, and no appeal to the Law enforcement bodies has ever been made; therefore, it is not possible to evaluate the stance of Law enforcement bodies, should such a need appear. On the other hand, documentation from other sources, including from experiences of LGBT persons, indicates that homophobic harassment, including such harassment from law enforcement authorities does in fact occur, especially in public spaces.

Notably, for the few areas where Cyprus has implemented legislation or measures to prohibit discrimination because of sexual orientation (e.g. employment, since 2004), such legislation or measures consistently fail to be inclusive of gender identity. Transgender issues remain invariably outside discourse or protocol and receive no mention in legislation or action. Moreover, female (homo)sexuality remains invisible on all levels, including legislation (for instance, no age of consent is defined for intercourse among females), as well as discourse.

To date, State bodies have not collected data relating to discrimination and/or violations on the grounds of sexual orientation or gender identity. Corresponding information from non-governmental organisations (NGOs), while acknowledged as relevant, has not been thoroughly studied by the authorities, and is still not mainstreamed enough to be utilised and incorporated into State policy. The interests and needs of LGBT persons and the opinion of LGBT organisations are not taken into account in any way when developing legislative and the other measures.

Most State authorities maintain that there is no urgency or need to protect, through policy or legislation, the rights of LGBT persons from the implicit yet widespread homophobia and transphobia permeating Cypriot society through policy or legislation. This is justified by citing the lack of formal complaints on the issue, and the absence of any strongly visible homophobic or transphobic incidents. Nevertheless, some blatantly homophobic rhetoric by public figures in the past few years, which have also received attention and criticism by civil society and the media, have gone largely unnoticed and without comments by the State itself. Once more, the only exception was the National Human Rights Institution (NHRI), which is operated by the Commissioner of Administration (Ombudswoman) who, following complaints, has recently (June 2012) issued a report calling for legal measures to regulate hate speech. NGOs in Cyprus, while occasionally consulted, do not have an active role in the development of State policies, and little action stems directly from their recommendations. LGBT organisations have not, as of yet, been treated as serious stakeholders in shaping Human Rights issues in particular with regard to sexual orientation and gender identity, as they have not yet been invited in any formal consultations by State authorities. The first formal LGBT organisation in Cyprus, accept-LGBT Cyprus, was registered as an NGO in September 2011.

Furthermore, there is no effective guarantee of any rights for same sex couples. Different sex married couples have exclusive access to several privileges through legislation and policy not afforded to same sex couples (such as privileged housing subsidies and loans, credits for work placements etc.). Whereas there is no procedure to grant legal standing or rights to unmarried different sex couples either, unmarried (but engaged to marry) different sex couples do effectively receive access to some of the rights and benefits accessible to married different sex couples. The State has demonstrated little to no intention to rectify this discrimination, primarily because it fails to acknowledge that any discrepancy or discrimination actually exists.

Following repeated urges by the Commissioner of Administration, some consideration has been given to possible solutions to real-life problems that arise as a result of this discrimination, with special focus on the need to regulate same sex partnerships, and, more recently, hate speech and hate motivated crime. However, these discussions and consultation have not yet led to any tangible change.

Regulations for legal recognition of a person's gender reassignment and change of gender in formal documents do exist, but they seem to include abusive prior requirements, including a requirement for gender reassignment surgery and proof of single (or divorced) status, while other requirements remain unclear (such as mandatory sterilisation). The procedure also mandates that no original entries can be deleted from records. There is no legal framework to secure a requirement for gender reassignment recognition in non-state documents, such as school certificates.

The Ministry of Health has also refused to cover costs of gender reassignment on several occasions, insisting, contrary to prior ECtHR case law, that this is not a medically necessary procedure. In the health sector, discrimination and derogatory treatment of transgender persons is frequently reported, including refusal of treatment, moralistic criticism of their 'condition', and even urges to get help from the Church. The specific health needs of LGBT persons remain largely disregarded. Formal guidelines regarding how to treat LGBT issues during healthcare delivery appear lacking, while the Ministry of Health has provided no response to our queries about existing policies and practice in relation to LGBT issues.

The Equal Employment Law of 2004 prohibits discrimination in employment because of sexual orientation, but it doesn't make any reference to gender identity. Other than the legal protection, no other measures or policies are in place to raise awareness, or encourage, through Codes of Conduct, trainings, or positive action programs, equal access to employment for LGBT persons. Moreover, transgender persons do not enjoy any legal or other kind of protection. No such need appears to have been acknowledged by the competent authorities, despite empirical evidence indicating that discrimination because of sexual orientation in various aspects of employment is a reality.

The situation in the armed forces continues to be problematic; representatives of the Ministry of Defence maintain there is no issue of discrimination within the army that needs to be addressed, 'so long as LGBT persons respect the rules and regulations of the armed forces'. They also maintain that no harassment takes place, that there are no 'cruel initiation rites', or any form of mistreatment, even though no system was mentioned to be in place to record such incidents should they take place. There is no mention of sexual orientation or gender identity in Codes of Conduct or army procedures, and the need for such codes or procedures is denied by the representatives of the armed forces. Contrary to these claims, in our own documentation, some of the most severe instances of homophobic harassment and discrimination appear to have taken place in the army, and have included taunts, physical attacks, and rape.

In the field of education, some progress has been noted in the context of a recent curriculum reform, where indicators were introduced in health education, to cover issues that include sexual orientation. Still, while our own documentation and teachers' testimonies suggest that homophobic bullying in schools is commonplace, no formal documentation system exists within the public school system itself. Teachers consider themselves to be limited by the lack of any formal guidelines and training regarding handling incidents of homophobic bullying within schools.

Legislation relevant to housing does not provide any kind of protection against discrimination on the grounds of sexual orientation or gender identity, but the general anti-discrimination (Commissioner) Law does cover housing as well as other domains, and while specific aspects of housing (such as rent, sales, evictions, loans) are not defined, the Commissioner (NHRI) interprets the law as covering all aspects related to housing. In practice, Departments dealing with housing do not appear to be aware of the requirements to eliminate discrimination due to sexual orientation, as their reply maintained that no law exists to expressly prohibit such discrimination. They report no relevant policies or guidelines to be in place, and no intention to make any amendments to current practice to ensure equal access for LGBT persons, or to provide any housing rights to same sex partners, while heterosexual couples do enjoy access to certain housing rights.

Sports is perhaps the field where lack of documentation is most profound, as also verified through an interview we had with an academic expert in the field. The Cyprus Sports Organisation does not

include any explicit provisions for sexual orientation or gender identity in their Codes of Conduct, or through programs or policies under its Social Policy Department, although the Cyprus Sports Organisation seems to be interpreting the generic racism provision in Codes of Conduct to also apply to instances of homophobic expressions. Intention to address the situation, disseminate the recommendation among sports organisations, and collaborate with LGBT organisation was expressed, but remains to be realised in practice.

In Cyprus, a well-founded fear of persecution based on sexual orientation is valid grounds for the granting of refugee status. Gender identity is not included in the law, but cases have been examined and granted refugee status. In practice, the process of examination of asylum claims, based on grounds of sexual orientation or gender identity has been problematic, with several complaints having reached the NHRI, where human rights violations were identified. The Asylum Service and expert documents provide conflicting information regarding the application of the principle of non-refoulement. The former claim that no one is being returned to their country of origin if they are in danger; while the latter argue that discretion reasoning is regularly used in the process of examining asylum claims, citing examples where asylum applications were rejected and the person risked being returned to their country of origin had the NHRI not intervened, despite clear evidence that this would endanger their safety.

The Office of the Commissioner of Administration (Ombudswoman), and specifically the Anti-Discrimination Body (Authority against Racism and Discrimination, ADB) examines complaints concerning sexual orientation under its mandate; even though gender identity is not clearly defined in the mandate, the Anti Discrimination Body itself has examined complaints pertaining to gender identity as well, although these reports have not been publicized. The Anti Discrimination Body has been very active in raising awareness on the needs of the LGBT community in Cyprus by issuing numerous reports and calls for action, utilising the Committee of Ministers Recommendation CM/Rec(2010)5 in the process, and acts as a strong ally to LGBT and other human rights NGOs.

During the course of this investigation, the researchers found that that CM/Rec(2010)5 had not been translated into Greek by any State actors, and has not been disseminated by most authorities, even after the Greek translation was provided to the authorities by the authors. In fact, most competent authorities and other agencies received information regarding the Recommendation through our work in the context of this project. Even though there is no legal obligation to translate and disseminate the Recommendation, doing so would be an important step in acknowledging the need to improve compliance with the Recommendation and promote the rights of LGBT persons in Cyprus.

In conclusion, the Cypriot authorities have not appeared, for the most part, to implement CM/Rec(2010)5. From the time of its adoption up the completion of this report (November 2012) there has been little to no action – including enactments of laws or introduction of policies – aimed at implementing the Recommendation, although small mobility was noted in specific areas, such as the Media and Education. The only State body to have extensively and substantially dealt with LGBT issues, including CM/Rec(2010)5, is the NHRI.

## **II. Recommendations to the Cyprus government for priority actions towards implementation of the CMCE Recommendation by the Cyprus Family Planning Association and accept-LGBT Cyprus.**

1. Develop and adopt a medium/long term action plan of action to implement the Recommendation.
2. Disseminate the Recommendation among competent authorities so that they can implement the measures within their competencies.
3. Explicitly include gender identity in the list of anti-discrimination grounds in the law on combating discrimination in Cyprus, 2004 Law [N.42(I)/2004] for Combating Racism and Other Forms of Discrimination, article 5(a) and article 6(1).
4. Amend the Penal Code (Chapter 154, articles 152, 153, and 171) to clarify age of consent for sexual relations among females, and rectify the definition of rape (Chapter 154, article 144) to include acts of intercourse without consent or with forced consent perpetrated by either a man or a woman against a man or a woman (and not only by a man against a woman).
5. Allocate responsibility within the Ministry of Justice and Public Order for matters ensuring non-discrimination on the basis of sexual orientation or gender identity, either by creating a dedicated unit within the Ministry, or by allocating the responsibility to a competent department.
6. Amend the Law Combating certain types and displays of racism and xenophobia through Criminal Law [N.134(I)/2011], article 1 to also include homophobic and transphobic expressions of hatred in the definition of “hatred”, as well as in the list of offences, article 3(1)(b).
7. Implement legislative measures in criminal provisions that comprehensively define and combat hate crimes recognising homophobic or transphobic intent as an aggravating factor in common crimes.
8. Revise internal regulations and policies/practice granting privileges to different sex couples to housing (granting loans or subsidies) and provide equitable access for same sex couples.
9. Provide housing rights to LGBT persons, especially youth and trans persons, recognising them as a particularly vulnerable group.
10. Consider the possibility of providing, without discrimination, same sex couples with legal or other means, to address the practical problems related to the social reality in which they live, as per the recommendations of the NHRI, regarding regulating same sex partnerships.
11. Ensure the Ministry of Health aligns its procedures with international standards with regard to the necessity for access to any medical procedures relevant to the transition from the assigned gender to the gender transgender persons identify with, in conformity with the European Court of Human Rights evolving jurisprudence on the subject matter.
12. Introduce provisions for change of name and gender status for both official and non-state documents in relevant legislation.
13. Review and amend the requirements for recognition of new gender deemed abusive, such as mandatory sterilisation.
14. Introduce measures within the armed forces (Cyprus National Guard) that provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment. Additionally acknowledge the need to combat discrimination through Codes of Conduct and develop essential training that addresses the need to combat discrimination against LGBT persons and promote tolerance and respect.
15. Improve educational policies with regards to sexual orientation and gender identity in the school curriculum, and ensure initial and in-service training programmes are in place to address issues of sexual orientation and gender identity for educational staff. Ensure that such training programmes are inducted into continuous education training and are revisited at regular intervals. Additionally, rigid and stereotypical gender roles in the school curriculum and the school environment in general should be explicitly discouraged.
16. Conduct empirical research with regard to gender roles and stereotypes in Cypriot sports, and develop policies to promote diversity and tolerance in sports, including LGBT participation.

### III. Introduction

#### Background

On 31 March 2010, the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”. The adoption of this Recommendation represents a historic moment in the field of human rights protection for LGBT persons and has been welcomed by civil society institutions as an important step towards the realisation of the long-standing struggle for equality. The Recommendation is, as Council of Europe Secretary-General, Thorbjørn Jagland recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as “one of the most long-lasting and difficult forms of discrimination to combat”.<sup>1</sup>

In broad terms, the Recommendation entails three key elements:

- It endorses the key principle of the universality of human rights, namely that, human rights are universal and apply to all individuals, including LGBT persons;
- It acknowledges the long-standing and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required, to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which, as a result, have a clear duty to implement its main elements. It is also a significant sign of pan-European consensus and a gesture of political will to act proactively towards the improvement of the legal protection of LGBT individuals in the member states of the organisation.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, as well as the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to safeguard enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, the right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, as well as discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

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<sup>1</sup> Council of Europe Directorate of Communication, ‘*Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons*’ (press release), 1 March 2010, available at [wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE](http://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE) [accessed 17 November 2012].

## **The purpose of this report**

The purpose of this report is to assess what progress has been made by the Cyprus authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have been completed, and which have not, it provides a benchmark against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. Secondly, the Committee of Ministers of the Council of Europe, which agreed, upon adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

## **Methodology**

The report's assessment of progress conducted in the report is based on a checklist of specific and detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, as well as the data which the authors at the Cyprus Family Planning Association and accept-LGBT Cyprus have compiled in order to assess progress in implementing the individual measures of the Recommendation, are set out in [Appendix III](#), entitled "the Compliance Documentation Report".

The data used to assess progress in implementation has been obtained from a number of sources:

- Responses from individual ministries and departments to letters from the Cyprus Family Planning Association and accept-LGBT Cyprus, listing the relevant checklist questions and asking for comments on actions taken to implement the related measures.
- Information collected through meetings conducted by the researchers with representatives of relevant ministries and departments, in response to the relevant checklist questions.
- Information from published sources, such as the reports on Cyprus commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, "Discrimination on grounds of sexual orientation and gender identity in Europe", as well as ILGA-Europe's annual reports. Information from national reports, and case reports assessing complaints for discrimination on the basis of Sexual Orientation or Gender Identity filed to the Cyprus Anti Discrimination Body (Office of the Commissioner of Administration/Ombudswoman), were also used.
- Research and documentation assembled by the Cyprus Family Planning Association and accept-LGBT Cyprus in the course of their work, especially through projects conducted in the context of ILGA-Europe's Human Rights Violations Documentation Fund, and by other non-governmental organisations.
- Information available through the Cyprus mass media and online resources.
- For topics where documentation is insufficient, further interviews were conducted with independent experts or academics in the fields (e.g. as was the case for the sections on [Sports](#) and [Asylum](#)).

## **IV. Findings**

### **The Recommendation**

The operative text of the Recommendation includes four main steps: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, suggestions for the introduction of effective measures to combat such discrimination, in order to safeguard that victims have access to effective legal remedies, and to ensure that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

The evidence presented in the Compliance Documentation Report indicates that the State authorities do not have in place effective measures to combat discrimination on the grounds of sexual orientation or gender identity. Overall, State authorities in Cyprus do not appear to include sexual orientation or gender identity explicitly in measures for combating hate speech, discrimination or as a motive for violations of human rights. As such, access to legal protection and/or recourse therefore also remains limited to non-existent. The State authorities have not carried out the translation and dissemination of the Recommendation. Although the research team translated the Recommendation, few of the State bodies contacted, took up the suggestion that it could be distributed (none of them were followed through), but to date, neither a translation nor the original text of the Recommendation has been published officially through any medium. The Cyprus government has not assigned responsibility for coordinating implementation of the Recommendation to any State body.

While research indicates that certain areas such as the Ministry of Education and Culture and the Cyprus Radio and Television Authority have made some inroads in raising awareness and legal reform respectively, official documentation promoting acceptance of LGBT people, or documentation directed at eliminating homophobia and transphobia, were not identified anywhere. In addition, research was also unable to find examples of the creation of effective mechanisms for legal protection, including adequate reparation for survivors of discrimination or violations.

The Commissioner of Administration, and individuals holding State positions attending LGBT organised events are the main forms of support identified. Only the Commissioner of Administration has instigated research, made recommendations and reviewed violations based on sexual orientation or gender identity. There are no examples of State organised events, reviews, and/or actions that directly address LGBT issues.

## Appendix to Recommendation CM/Rec(2010)5

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

#### a. “Hate crimes” and other hate-motivated incidents

The key recommendations in Section I.A of the Appendix cover the training of police officers, judiciary and prison staff, the introduction of an independent mechanism for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of other legislative and other measures to combat hate crimes and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field. In total, some 17 measures are identified under this heading in the Compliance Documentation Report.

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The Department of Prisons did not respond to calls for information for the purposes of this research, while information provided by the Ministry of Justice and Public Order was minimal. Information provided was almost solely from correspondence with a representative of the Police Department. Along with the independent research conducted, this appendix remains overall unimplemented by the Cyprus Department of Prisons, and partially unimplemented by the Police authorities.

No legislative measures are in place to comprehensively define or combat hate crimes that recognise sexual orientation or gender identity as a possible motive, or as a bias or aggravating factor. Training programmes ensuring that police and judiciary have knowledge, skills and Codes of Conduct to identify such crimes, are also not in place.

Due to the lack of data from the Department of Prisons, it cannot be determined whether prison staff has any training, Codes of Conduct or protocols in place for dealing with discrimination related to sexual orientation or gender identity. Therefore, it follows that, in cases of transgender prisoners, no official procedures are in place to safeguard protection and respect. There is currently no effective way of recording incidents that may be motivated by hatred on the grounds of sexual orientation or gender identity or gender.

Although the Police has set up an Office for Combating Discrimination to deal with racism and xenophobia, it is not formally tasked with the investigation of incidents relating to hatred on the grounds of sexual orientation and gender identity that may have taken place. The Office for Combating Discrimination records and catalogues crimes that have discrimination as a basis, however until today no data regarding discrimination based on sexual orientation or gender identity has been noted. Furthermore, there is no secure anonymous system for reporting such incidents where safety and/or anonymity become an issue, as only named statements are accepted.

With regards to receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, and particularly where hatred on the grounds of sexual orientation or gender identity constitutes a motive, a statement provided by a representative of the Cyprus Police Force indicated that an Independent Authority handling Complaints against the Police has the power to investigate any allegation made against a Police Officer. With reference to the 2004 Law [N.42(I)/2004] for Combating Racism and Other Forms of Discrimination,<sup>2</sup> the Commissioner of Administration, as an independent body, is able to investigate allegations of discrimination or racism. Within the Police force, the Service for Control and Review as well as the Service for Professional Conduct are enforced as part of the self-regulation procedures. It should be noted however, that during a 2011 mapping study of the socio-political environment in Cyprus, focusing on the experiences and needs of the Cypriot LGBT community; out of the 136 participants, 15% reported having experienced physical violence and 57% reported having experienced psychological violence because of their sexual orientation. Of these, none reported these incidents to the police, citing mistrust of the police force, and lack of awareness of rights as the main reasons for not reporting the incidents. This clearly indicates that while the Cypriot LGBT community do experience victimisation (both physical and psychological) and while these incidents are directly related to homophobia or transphobia, they also make a

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<sup>2</sup> *Combating Racial and Certain Other Forms of Discrimination (Commissioner)* N. 42[I] of 2004, as published in the Official Gazette of the Republic N. 3822 on the 19<sup>th</sup> March 2004.

choice not to report them. Therefore, crimes committed based on homophobic or transphobic hatred are not reflected in the police statistics, and crimes against LGBT persons go unreported.<sup>3</sup>

An exception to the inconsequentiality given to LGBT issues within the Prison and Police agencies appears within the Police Force where the first training session on discrimination to include LGBT issues conducted in December 2010, addressed over 70 officers of varying ranks. Members of the steering committee of accept-LGBT Cyprus presented an overview of the LGBT community; statistics from recent Cyprus based studies and answered questions from the audience.

The only competent authority which appears to implement the Recommendation and its Appendix is the Commissioner of Administration, which has among other duties, the task to ensure good governance within the Police and Prison services. Moreover, the Commissioner's competence to conduct prison visits within her role as an Independent Authority For The Prevention of Torture is also secured by N.2(III/2009). Nevertheless, as illustrated by a recent incident that attracted public attention, (rape of a young prisoner by an older prisoner), the authorities do not always appear willing to collaborate with the Commissioner while performing her duties. Despite having a clear mandate to oversee the Prison system, the acting head of the Prison Department at the time refused to grant access to the Commissioner for checks and investigations.

*As a recent rape allegation made by a 19-year-old prisoner<sup>4</sup> has highlighted, there is no formal supervision in prisons for the protection of inmates. It is alleged that the 19 year old was raped by an older prisoner;<sup>5</sup> however it remains unclear as to the progress of the internal investigation, the role and/or responsibilities of the police officers on duty at the time, and whether or not any escalation and/or supervision protocols were in place. It is also unclear as to the sexual orientation of either the alleged victim or the alleged rapist and whether or not sexual orientation was a factor in this incident. The Ombudswoman (Commissioner) criticised the prison procedures and protocols during her investigation of the incident.<sup>6,7</sup> However, it remains a salient point in terms of the ramifications for lack of protection in the prison system.*

## **b. "Hate speech"**

Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promoting good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, and guidelines to government officials to refrain from such speech and indeed to promote respect for the human rights of LGBT people. In all, some nine measures are identified under this heading in the Compliance Documentation Report.

The Compliance Documentation report indicates that the Recommendation is partially implemented, however in a non-consistent manner. Legislative measures that penalise 'hate speech,' do not include sexual orientation or gender identity as grounds for expressions of hatred. No legal framework is in place to regulate the internet. A recent legal reform proposal by the Cyprus Radio and Television Authority (CRTA) which includes specific points safeguarding respect of sexual orientation and gender identity within the broadcasting framework, remains to be ratified by the House of Representatives.

The two main public agencies contacted - the Public Information Office (PIO) and the Cyprus Radio and Television Authority (CRTA) – both indicated that they have no jurisdiction over internet expression and therefore, they do not monitor or regulate hate content via that modality.

<sup>3</sup> Statistics from 2006 onwards shared by the Domestic Violence and child Abuse Department also reflect this point.

<sup>4</sup> Alleged rape occurred in December 2011 but the young man was too ashamed to come forward at the time and came forward some months later. available at [www.cyprus-mail.com/warden/warden-and-prisoner-be-charged-convict-rape-case/20120822](http://www.cyprus-mail.com/warden/warden-and-prisoner-be-charged-convict-rape-case/20120822) > [accessed 21 November 12]

<sup>5</sup> The alleged rapist is a 50 year old convicted sex offender who was placed in the young offenders section, against prison regulations.

<sup>6</sup> Ref. AYT 1/2012. *Self-initiated Research by the Commissioner of Administration and for the Protection of Human Rights with reference to the claims for rape of a young prisoner in the Young Offenders Wing of the Central Prisons.* Midterm Report (article 6(3) of the Commissioner Law 1991 to 2011). 29 February 2012.

<sup>7</sup> Ref. AYT 1/2012. *Self-initiated Research by the Commissioner of Administration and fore the Protection of Human Rights with reference to the claims for rape of a young prisoner in the Young Offenders Wing of the Central Prisons.* Midterm Report (article 6(3) of the Commissioner Law 1991 to 2011). 7 March 2012.

No legislation is currently in place specifically in regards to building a culture of respect for LGBT people in the media or print; complaints are currently handled on an ad hoc basis.

With the exception of responses and reporting by the Commissioner of Administration, certain incidents that are classified as hate speech in other countries have passed without consequence in Cyprus.

Legislation penalising 'hate speech' on certain grounds, does not cover homophobic and transphobic hate speech. Legislation addressing homophobia/transphobia, homophobic/transphobic hate speech or homophobic/transphobic motivation for a crime is absent in Cyprus, and there is no case law or any decision made by the equality body (ADB) regarding the above provisions.

No guidance has been issued to public officials and state representatives on hate speech and discrimination on the grounds of sexual orientation or gender identity, even though there are some examples of public figures espousing views that have been condemned by the European Parliament. Some agencies issue, on an ad hoc basis, circulars and/ or reminders to staff that discrimination is unacceptable; however, this is not done on a systematic or consistent basis across government agencies and Departments, and does not expressly or specifically address sexual orientation and gender identity.

The 1998 Law which governs the CRTA is under review, and refers to a general statement on combating discrimination toward various social groups (which are not specified). The new proposed legislation by the CRTA, which was reviewed in relevant parts with a member of accept-LGBT Cyprus and includes specific references to the LGBT community, is due to be reviewed by the competent committee at the House of Representatives. The proposed Law contains seven LGBT specific points.

Contrary to the Recommendation, there was no official consequence or response by the State or its representatives when a public figure elected to the House of Representatives likened homosexuality to bestiality and paedophilia during a live radio broadcast in 2010. Five citizens lodged a complaint about these expressions with the Commissioner of Administration's office (ADB), which followed up and reported on this and other complaints in her report on discrimination in relation to the handling and prevention of homophobic hate.<sup>8</sup>

*In early 2010, an elected political figure publicly likened homosexuality to bestiality and paedophilia during a live radio broadcast. Five citizens lodged the incident as a complaint with the Office of the Commissioner of Administration (ADB). The Commissioner examined the complaints and issued a report on discrimination in relation to the handling and prevention of homophobic hate in June 2012.*

*The European Parliament also condemned the politician for his remarks in a letter dated 31 May 2010, in an immediate and categorical response that his remarks were "seriously misjudged and wrong". The Democratic Rally (DH.SY) itself issued a statement condemning homophobic expression and hate speech towards LGBT people, without naming the politician who expressed them.<sup>9</sup>*

## **ii. Freedom of association**

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

For the most part it seems that the Cypriot government complies with Freedom of Association requirements.

<sup>8</sup> Ref. AKP 55/2010 AKP 56/2010 AKP 57/2010 AKP 58/2010 AKP 61/2010. *Report of the Authority Against Discrimination Regarding the Prevention and Handling of Homophobic Speech*. 29 June 2012.

<sup>9</sup> The Democratic Rally clarifies its position. 29 April 2010 <[www.disy.org.cy/default.asp?id=549](http://www.disy.org.cy/default.asp?id=549)> [accessed 17 November 2012].

Officially, sexual orientation is not a reason to disallow registration of organisations that publicly cater to LGBT rights and well-being. It should, however, be noted that during 2011, accept - LGBT Cyprus, the only officially registered LGBT organisation in Cyprus (since September 2011), experienced what it considers to be unacceptable delay when going through its registration process, with the procedure taking almost 12 months to be completed, a process that is known to have taken other organisations half the time. Additionally, during its registration, accept – LGBT Cyprus was alerted to the fact that the Greek Orthodox Church was consulted by the Ministry of Interior for its views to a possible registration of an LGBT group. In addition, there was an overzealous examination by the authorities of the registered premises of the organisation as well as the people associated with it which differed markedly from the handling other organisations' cases.

In general, although the State allows LGBT organisations to operate freely, it has to be noted that the government itself does not actively support LGBT organisations and does not recognise LGBT issues as an important social issue. Work is still needed in order for the government, semi-government and local government agencies to acknowledge and consult LGBT groups and the LGBT community as a key stakeholder when exploring social issues.

With regard to funding, no public funding has been specifically earmarked for NGOs dealing with LGBT issues and as accept – LGBT Cyprus is a young organisation, it has not yet applied for any State funding. It has, nevertheless received private and European funding unhindered by the State.

Additionally, it should be noted that LGBT organisations are free to work unhindered by the State with other national human rights institutions, the Ombudswoman, the media and other human rights institutions and NGOs. LGBT organisation's members have also been participating without any obstruction in a number of national and international conferences, training sessions and other human rights activities for some years now.

### **iii. Freedoms of expression and peaceful assembly (Section III of the Appendix)**

This section of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

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#### **a. Freedom of expression**

Freedom of expression in Cyprus is adequately secured. The Constitution of Cyprus ratifies freedom of expression for all,<sup>10</sup> except for instances where it is “necessary for the interests of the Republic, or of constitutional order, or public security, public health, or public morals, or for the protection of one’s reputation”. Measures to safeguard freedom of expression are included in the Press Law.<sup>11</sup>

For the most part, in recent years, the Cyprus authorities have not intervened to stop information or ideas pertaining to sexual orientation or gender identity from being broadcast (see exception concerning the public broadcasting corporation below). Similarly though, authorities have also never intervened to restore the same right in cases where certain bodies or agencies have refused to do so themselves. Overall, coverage of LGBT related events is left to media representatives to decide on level and/or extent of coverage, if at all. Homophobic and transphobic expressions and views can also be identified in coverage of related issues.

Media coverage has increased dramatically as far as LGBT issues are concerned in the last three years, since the formation of accept - LGBT Cyprus. Understandably, coverage is denser around election times, demonstrating that politicians are now more than ever ready to appear supportive of LGBT events and willing for their position to be shown publicly.

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<sup>10</sup> Constitution of the Republic of Cyprus, adopted on 16 August 1960, article 19.

<sup>11</sup> Press Law N. 145 of 1989, as published in the Official Gazette of the Republic of Cyprus N. 2433[II] on the 11<sup>th</sup> August 1989.

Nevertheless, there have been incidents where media outlets, both public and private, refused, or were reluctant to transmit information relating specifically to sexual orientation. Unfortunately, no mechanism seems to be in place by the authorities to ensure that freedom to transmit information and ideas relating to sexual orientation is protected, and not arbitrarily censored.

A recent positive development is the proposal made by the Cyprus Radio Television Authority (CRTA) following consultation with accept-LGBT Cyprus and other NGOs, for legal reform to ensure the protection and safeguard the integrity of LGBT persons in depictions, as well as expressions and debate, which remains to be examined by the House of Representatives.

*In June 2010, in the context of a wider anti-discrimination campaign launched by the Anti-Discrimination Body (Authority against Racism and Discrimination of the Office of the Commissioner of Administration), Public Service Announcement (PSA) radio spots were produced, targeting discrimination based on grounds such as age, ethnicity, and sexual orientation). The public radio and television network authorities, Cyprus Broadcasting Corporation (CyBC) deemed the PSA spots addressing other forms of discrimination, such as age or ethnicity, as acceptable, but refused to air the radio spot aiming to raise awareness regarding discrimination based specifically on sexual orientation (the spot featured a woman talking about her same sex relationship). The CyBC representative claimed that this specific spot was “too advanced” for Cypriot society. Later in the same year, the CyBC refused to air promotion spots for a theatrical play by the National Theatre Association of Cyprus (ΘΟΚ), because the play included a same sex couple in its storyline. While not officially documented or noted as protocol, the State television broadcaster – CyBC – appears to adhere to an implicit policy whereby transmission, expression and/or news reporting on events, issues or incidents relating to LGBT are being suppressed.*

#### **b. Freedom of assembly**

Freedom of assembly in Cyprus has so far been secured, but this is primarily attributed to the fact that no large public cultural or Pride events have ever been organised. accept – LGBT Cyprus has organised a number of smaller scale events, which have received support on a community and municipality level, and were peaceful. No signs of aggression were ever noted, and there was no hustling from homophobic elements or even members of the police. The organisation itself considers that the first major test of State support will occur during the organisation of the first Cyprus Gay Pride, currently planned to take place on May 25th, 2013.

Additionally, while there are no examples of initiatives taken on behalf of the government to ensure that LGBT organisations have been defended in their interests, it has to be noted that there are examples where other bodies, such as the Commissioner of Administration, Mayors of various municipalities (including three major cities of Nicosia, Limassol, and Paphos) and members of the House of Representatives, have attended, supported and participated in activities hosted and/or produced by the organisation.

Authorities have never taken initiatives to run activities or organise conferences geared towards promoting and supporting LGBT Human Rights activities. Other than accept – LGBT Cyprus and some supportive NGOs, there is no evidence of any official targeted dissemination of information to the LGBT community regarding safer sex.

#### **iv. Respect for private and family life (excluding specific transgender issues) (Section IV, paras. 18, 19, and 23-27 of the Appendix)**

These paragraphs of section IV of the Appendix address criminalisation of same sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

Apart from the question of criminalisation, Cyprus largely fails to comply with the requirements of these paragraphs, and the authorities have taken no steps to implement them. The Ministry of Justice and Public Order provided no response to most of the questions, and in their reply, they indicated that apart from the question of decriminalisation, they do not consider any of the other issues to fall within the Ministry's competence. There is no designated Department dealing with specific LGBT-discrimination or a general anti-discrimination unit under the Ministry of Justice and Public Order; the only relevant department, the Equality Unit (National Machinery for

Women's Rights) clarified that they are only competent in dealing with issues pertaining to equality between men and women.<sup>12</sup>

After much pressure from the ECtHR and other human rights agencies such as Amnesty International, the Republic of Cyprus eventually abolished criminal prosecution for consensual homosexual relations between men (in 1998). Regarding personal data, the Personal Data Law includes sexual orientation in the definition of 'sensitive data'.<sup>13</sup> Compliance with the Personal Data Law is overseen by the Commissioner for the Protection of Personal Data.

The NHRI (Commissioner of Administration) has issued several reports highlighting the urgency for the need for regulating same sex partnership as well as different sex partnerships outside marriage, pointing out the pragmatic social needs for regulation that arise. Despite these repeated urges, no formal steps have been taken towards this direction yet. No measures, steps, or intentions to introduce them were identified to ensure that decisions regarding parental responsibility or guardianship of a child are taken without discrimination based on sexual orientation. Adoption is normatively available to (different sex) couples only, and only available to single individuals in cases that are considered exceptional, with no specific protection from discrimination on the grounds of sexual orientation or gender identity. Legal framework for assisted reproductive treatment is still absent, but a draft law<sup>14</sup> being currently considered, provides for access to assisted reproduction only for married, different sex couples.

Although age of consent is apparently equal, relevant legislation<sup>15</sup> may be perceived to contain subtle inequalities. Age of consent is set at 17 years of age for other sex couples and for same sex relations among men (there is no mention with respect of same sex relations among women). However, the legal age for consent to marry, which is only possible for different sex couples,<sup>16</sup> is set at 16 years old,<sup>17</sup> creating a paradox whereby, different sex sexual relationships can be considered legal at 16 through the option of marriage, whereas this is not possible for same sex relationships.<sup>18</sup>

Moreover, the Penal Code contains no provisions for intercourse or attempted intercourse toward a minor, either male or female, where the perpetrator is a woman. As it stands, rape is defined as perpetrated by a man toward another woman or man.<sup>19</sup> No intention or proposal for any amendments to the above discrepancies, or to improve compliance with the Recommendation regarding respect to private and family life were identified.

Although, formally, no rights or obligations are conferred to unmarried couples, different sex or same sex, in practice, unmarried but engaged-to-marry, different sex couples, do receive access to some benefits conferred to married different sex couples (such as housing subsidies or loans) upon presenting a newspaper announcement of their intention to marry, as proof of their engagement status.

#### **v. Respect for private and family life and access to health care – specific transgender issues (Section IV of the Appendix, paras. 20, 21 and 22, and Section VII, paras. 35 and 36)**

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition (including any of a physical nature) that are abusive, and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any

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<sup>12</sup>Information obtained by the author (MK), provided by the National Machinery for Women's Rights (Maro Varnavidou) in personal communication, 28 March 2012 [correspondence in file with the author].

<sup>13</sup>*Handling of Personal Data (Protection of the Individual) Law*, N. 138(I) of 2001 to 2012, as amended, inter alia, by Law N. 51(I) of 2012.

<sup>14</sup> *Draft Law on the Implementation of Medically Assisted Reproduction of 2012*. Listed as a pending draft bill by the Health Committee of the Cyprus Parliament (Outstanding Legal statues: Health committee, n.11).

<[www.parliament.cy/parliamentqr/003\\_04\\_12\\_02\\_p\\_law.htm](http://www.parliament.cy/parliamentqr/003_04_12_02_p_law.htm)> [accessed 17 November 2012].

<sup>15</sup> *The Penal Code Law* (Chapter 154), 1962 to 2012, articles 153, 154, 171.

<sup>16</sup> *Marriage Law*, N. 104(I) of 2003, as published in the Official Gazette of the Republic N. 3742 of the 25<sup>th</sup> July 2003, as amended, inter alia, by Law N. 66(I) of 2009, Part II, article 3, para. (1).

<sup>17</sup> *Ibid*, article 15, para. (1).

<sup>18</sup> *The Penal Code Law* (Chapter 154), 1962 to 2012, articles 153, 154, 171.

<sup>19</sup> *The Penal Code Law* (Chapter 154), 1962 to 2012, article 144.

decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

Cyprus for the most part does not comply with the requirements for protection of discrimination and protection of the rights of transgender persons. The Ministry of Justice and Public Order did not provide information regarding procedures for gender recognition, or regarding any measures being in place to protect transgender persons from adverse discrimination. Cypriot legislation contains no provisions explicitly prohibiting discrimination based on gender identity for any domain. Gender identity is not mentioned in the general anti-discrimination legislation (Commissioner Law)<sup>20</sup> either, although the NHRI has examined cases and identified violations in its reports, through a more inclusive application of its sexual orientation mandate.

A procedure is in place for change of gender in official documents, although this procedure has no legal framework, and following genitalia reassignment, transgender persons are able to marry a person of different sex. However, the requirements for a change of gender in official documents are for the most part unclear, while some requirements that could be considered abusive are included, such as the requirement for sterilisation and genitalia reassignment surgery and an unclear provision for single status. The procedure also defines that no original entries can be deleted from records,<sup>21</sup> which means that name and gender are not changed in birth certificates. This, along with the fact that non-state actors are not legally obliged to make alterations in documents they have issued, which can lead to undesirable disclosure of the transgender person's gender history even after legal recognition has taken place.

Contrary to recommendations, such as the ECtHR case law which suggests that gender reassignment should be considered a 'medically necessary procedure',<sup>22</sup> the Ministry of Health has been notoriously unwilling to cover costs of gender reassignment surgery, insisting that the procedure is not medically necessary. A two year 'trial period' requirement that is in place, also forces transgender people seeking legal recognition to spend a long period when their physical appearance does not conform with their legal documents, resulting in difficulties in any situation where they are required to show these documents.

Although transgender persons suffer serious discrimination in many spheres of life, there are no plans by the authorities to address these in any way. No review has recently been conducted nor is planned by the State in order to identify and consider amending such abusive requirements regarding the process of transitioning from assigned gender to the transgender person's identified gender. Moreover, there is no consideration of any measures to improve procedures to ensure the full legal recognition of gender identity, when this does not match with the assigned gender, or to ensure its recognition by non-state actors.

The lack of any explicit protection of discrimination based on gender identity for any field leaves transgender persons exposed to several human rights violations. Transgender persons are considered 'minimally accepted' by Cypriot society,<sup>23</sup> and report experiencing often severe violations of their human rights, including by State services.

The requirement for patient's informed consent prior to any medical treatment or procedure is regulated through the Patients Rights Law of 2004,<sup>24</sup> but there is no explicit mention of its application to procedures of transitioning from assigned gender to the transgender person's identified gender. This Law contains a provision for exceptions, where the health provider is granted the authority to evaluate that disclosure of such information would damage the patient's physical or mental health, and inform family members that they personally deem appropriate

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<sup>20</sup>SupraNote2, p.13.

<sup>21</sup>*Law abolishing Laws regulating issues regarding the registration of births and deaths, the registration of residents, the registration of voters and the compilations of the voter's catalogue, and the registration of citizens of the Republic, and simultaneously introducing special provisions for the issuing of passports/travel documents and refugee identities for refugees.* N. 141(I) of 2002, as published in the Official Gazette of the Republic N. 3626[I] on the 26th July 2002, Chapter 2, Part IV, article 43.

<sup>22</sup>*Van Kück v. Germany*, Appno. 35968/97, (ECtHR, judgment of 12 June 2003), paras 47, 73 and 82 and *L. v. Lithuania*, App no. 27527/03, (ECtHR, judgment of 11 September 2007), paras 59 and 74.

<sup>23</sup>M. Kapsou and A. Christophi, 'Study 2: Mapping the Experiences and needs of the LGBT community in Cyprus'.in M. Kapsou, A. Christophi and M. Epaminonda (eds), *A report on Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experience and Needs*.Nicosia: Cyprus Family Planning Association.

<sup>24</sup>*Law on Safeguarding and Protecting Patients' Rights*, N.1(I) of 2005, published in the Official Gazette of the Republic N. 3943[I] on the 7<sup>th</sup> January 2005.

(whereby same sex partners are not included). However, no specific framework is provided for defining or evaluating cases as 'exceptional', other than the health provider's personal judgment. At the same time, no protocols appear to be in place to ensure adequate qualifications among medical staff, or to provide directions regarding respectful treatment of transgender persons by health care providers.

*In 2009, A., a transgender man, was at the initial stages of his transition. A physician in a State outpatient facility refused to prescribe him hormonal tests when he explained the reason he was asking for the tests. Moreover, the doctor insisted that "this is not right", and urged A. to turn to the church and 'find God', or 'at least just be gay'. (Interview with A., 23-year-old transgender man, on 28 July 2012).*

## **vi. Employment**

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

Evidence presented in the Compliance Documentation Report, including responses from the Ministry of Labour and Social Insurance, and the Ministry of Defence, suggests that Cyprus has taken few steps to meet the above requirements. Most steps taken consist of legal protections from discrimination in employment because of sexual orientation (none for gender identity) granted as a minimum step to transpose European Directives (2000/78/EC). Beyond the legal protection, little else has been done in terms of internal measures, policies or regulations, positive actions, or awareness of employers, employees, and thus, most of the steps mentioned in the checklist of the Recommendation remain unimplemented. On the contrary, some regulations that are contrary to equality, as they elicit indirect discrimination based on sexual orientation though discriminatory provisions based on marital status, remain in place. The relevant Departments at the Ministries of Labour and Social Insurance or at the Ministry of Defence, do not appear to acknowledge any need for undertaking any additional measures, apart from the legal protection, although a positive stance in collaborating with LGBT organisations was expressed by the former.

In Cyprus, discrimination in the workplace is regulated under the Equal Treatment in Employment and Occupation Law of 2004 [N. 58(I)/2004],<sup>25</sup> which transposed EU Directive 2000/78/EC.<sup>26</sup> Since its implementation in 2004, it protects against discrimination on the basis of sexual orientation, but not on the basis of gender identity. This law covers employment, provision of services, and other employment or apprenticeship relations (which covers training). The Law prohibits both direct and indirect forms of discrimination and harassment, and following an amendment in 2007, reverses burden of proof, such that, in cases of discrimination, the employer and not the plaintiff bears burden of proof.<sup>27</sup>

Non-legal policy measures aiming specifically at combating sexual orientation/gender identity discrimination, appear to be lacking. No Codes of Conduct or policies by employers or unions have yet been issued or published on discrimination based on sexual orientation, and no active steps seem to have been taken to prevent such incidents. Sexual orientation is included as a subsection in general training and awareness programs, and informational material distributed by the Ministry of Labour and Social Insurance and the Commissioner of Administration regarding the Employment Law, but has not received attention as a stand-alone subject. There are no protections from discrimination in employment on the basis of gender identity, nor recruitment efforts directed at LGBT persons, or programs focusing on employment opportunities for transgender persons. Workers unions or organised employee groupings do not include any specific sections for LGBT persons. In the armed forces, no measures have been taken to provide

<sup>25</sup> *Equal Treatment in Employment and Occupation Law*, N. 58(I) of 2004, as published in the Official Gazette of the Republic N.3828[I] on the 31<sup>st</sup> March.2004.

<sup>26</sup> European Council Directive 2000/78/EC of 27 November 2000, *Establishing a general framework for equal treatment in employment and occupation* [2000] Official Journal L 303, p.16.

<sup>27</sup> *Employment Law*, 2004, article 11.

protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation or other forms of ill-treatment, and there are no Codes of Conduct or training to combat discrimination against LGBT persons.

According to the Council of Europe (Hammamberg) report on Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe, Cyprus is one of the countries where complaints of discrimination based on sexual orientation in the workplace have reached the court,<sup>28</sup> whereas documentation of LGBT person's experiences in the workplace,<sup>29</sup> and empirical studies<sup>30</sup> suggest that discrimination because of sexual orientation in the workplace is still strong.

Despite evidence suggesting often severe discrimination on the basis of sexual orientation in the field of employment, there is no evidence of any recent actions by the government, parliament, or other authorities, toward compliance with the recommendations, such as amending legislation to cover gender identity, or taking steps to encourage the inclusion of LGBT persons in the workplace. Proposals explicitly contrary to the recommendations are not identified either. Overall, there appears to be little motivation to address the issue, and little relevant discourse among decision makers and competent authorities.

Actions and internal regulations that grant special privileges to individuals based on their marital status (and thus, indirectly, based on their sexual orientation) do exist, and do not appear to be acknowledged by the competent State bodies as such. One notable such example appears through a policy of the Ministry of Education and Culture which concerns Educational Officers, and which was pointed out, following complaints, by the Anti-Discrimination Body. Specifically, educational officers who are married and/or have dependent children are granted additional points, which confer privileges regarding professional placement closer to home. In its decision in 2005, the Anti Discrimination Body acknowledged that this can constitute discrimination based on sexual orientation, as partners in same sex relationships do not have the option to marry, and recommended to the Ministry of Education and Culture to amend this regulation.<sup>31</sup> Despite this, the regulation is still in place, and (heterosexually) married teachers maintain an advantage over their unmarried counterparts regarding transfers.

No explicit laws or regulations, which discriminate on grounds of sexual orientation or gender identity, were identified through the Ministry of Labour and Social Insurance or the Ministry of Defence. Even though evidence exists of discriminatory practice, including intimidation and harassment toward LGBT persons in the army, these do not appear to be acknowledged by the Ministry of Defence, and thus are not addressed. It is revealing that, the Ministry of Defence responded that when LGBT persons who are about to join the army (which is mandatory in Cyprus) express concerns regarding possible discrimination based on their sexual orientation, this is treated by looking for other grounds which would justify an exemption, rather than by undertaking explicit measures to prohibit, prevent, and redress such discrimination. Moreover, the Ministry of Defence's response appears to imply that LGBT persons are themselves likely to present behaviours that are non-compatible with the rules and regulations of the National Guard as it states that:

"There is respect and sensitivity on behalf of the hierarchy on the issue of sexual orientation, considering that the behaviour of these persons is compatible with the rules and regulations of the National Guard".<sup>32</sup>

Despite available legal provisions, data collected in the context of our documentation study, funded by the ILGA Human Rights Violations Documentation Fund, indicates that LGB persons are generally 'cautious' about being 'out' in their workplace, whereas seven out of 109 participants who were currently working or had worked in Cyprus, reported that their career was negatively affected because of how others (employers, co-workers) perceived their sexual orientation.<sup>33</sup> Such

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<sup>28</sup> *Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, (Council of Europe Publishing, 2011), p. 118.

<sup>29</sup> M. Kapsou and A. Christophi, *SupraNote23*.

<sup>30</sup> N. Drydakis (2012). *Sexual Orientation Discrimination in the Cyprus Labour Market: Distastes or Uncertainty?* Discussion paper series, IZADP No. 6684. <[ftp.iza.org/dp6684.pdf](http://ftp.iza.org/dp6684.pdf)>, [accessed 17 November 2012].

<sup>31</sup> Ref. No. A.K.I. 11/2004. *Report of the Equality Body regarding discriminatory treatment of teachers regarding transfers depending on their family status*. 14 June 2005.

<sup>32</sup> *The National Guard Law*. N. 19(I) of 2011, as published in the Official Gazette of the Republic No. 4271[I] on the 25<sup>th</sup> February 2011.

<sup>33</sup> M. Kapsou and A. Christophi (2011), *SupraNote23*.

discrimination concerned refusal of employment, refusal of promotion, dismissal when their employer became aware of their sexual orientation, and higher expectations from employers compared to heterosexual colleagues, refusal by their employer or manager to assign specific tasks during their work, and inappropriate/discriminatory behaviour from employers and from colleagues. Demetriou (2009) in a report on the legal situation regarding discrimination in Cyprus, also remarks that sexual orientation “continues to be the reason for many persons’ exclusion from the labour market”.<sup>34</sup> Reports (e.g. Trimikliniotis & Karayanni, 2008) also suggest that discrimination on the basis of sexual orientation in the army remains strong, and no active measures have been taken to tackle this.

Personal experiences of discrimination and harassment documented in the context of our above-mentioned study (7<sup>th</sup> HRVDF) indicate that the army is one of the settings where homophobic harassment and violence are especially likely to take place and warrants further study and action.

*In April of 2009, K, a gay primary school teacher had an argument with a colleague, who disagreed with his idea of conducting a Living Library event<sup>35</sup> at their school, which would involve inviting a lesbian woman. The colleague likened homosexual persons to ‘killers’. A similar, but less intense argument had taken place between K and his headmistress. Despite having asked not to be transferred, K was notified, in August of 2009 that he was going to be transferred to another school. K considers that his transfer was directly related to the incident, and indirectly, to his sexual orientation, even though he never openly discussed his sexual orientation with the headmistress. K investigated the incident through the teachers union, and was informed that the reason for his transfer was that his headmistress had requested that he would not return to the school. K had a meeting with a Senior Educational Office, who was supportive, but he was informed that nothing else could be done about his case, since there is no legal provision for ‘hate speech’ that could be the basis of a complaint. (Interview with K., 31 year old gay man, on 30 July 2012).*

*During his military service in 1996, P “fell into” a sexual embrace with a male peer. The other man mentioned it to others by claiming that P is gay. Since then, his peers started to call him names (e.g. “ḑáëéíḑíýóḑò” – ‘faggot’), gossiping about his sexual orientation and making sexual comments (e.g. by asking him to touch their genitals). Such behaviours continued for several months and occurred mostly at the military camp. P. did not report the incidents because he did not want to come out. He was afraid that if his sexual orientation became known, he would be treated less favourably within the military, and could even be kicked out of the army. Generally, he did not believe there was anyone who could help him with this incident. So, he became more cautious on expressing his sexuality (e.g. he denied disclosing sexual relations with other gay soldiers). (Interview with P., 35 year old gay man, on 26 June 2012)*

## **vii. Education**

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, Codes of Conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

<sup>34</sup>C. Demetriou (2009). *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC Country Report 2009: Cyprus, State of affairs up to 31 December 2009*. Report drafted for the European Network of Legal Experts in the Non-discrimination Field (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by Human European Consultancy and the Migration Policy Group, p. 13.

<sup>35</sup> The Human Library is an innovative method designed to promote dialogue, reduce prejudices and encourage understanding. Visitors to a Human Library are given the opportunity to speak informally with “people on loan”; this latter group being extremely varied in age, sex and cultural background. <[humanlibrary.org](http://humanlibrary.org)>

Review of information provided by the Ministry of Education and Culture in both written correspondence and interviews with relevant representatives of the Ministry, as well as an independent data review and findings from our recent socio-mapping project, indicates that the Recommendation remains, for the most part, unimplemented.

There are no Ministry of Education and Culture safety policies, Codes of Conduct, or handbooks for educational staff in place, specifically dealing with, or containing references to sexual orientation or gender identity.<sup>36</sup> Although it was stated that “specialised teacher training with regard to sexuality health education takes place”,<sup>37</sup> this was not specified to include LGBT specific content. A sole exception to this was an in-service training for primary school teachers (series of four workshops), organised by NGOs (the Pool of Trainers of the Cyprus Youth Council and the Cyprus Family Planning Association) and funded by a European project dealing with homophobia (May 2012).<sup>38</sup> Although it was funded and conducted externally to the Ministry of Education and Culture, the Ministry supported the training by placing it under its auspices and urging teachers to participate through circulars, and the response from teachers was unexpectedly positive.

Current documentation regarding the precise incidence and nature of homophobic or transphobically motivated bullying, harassment, or violence in schools, is lacking. There is no process in place for students to raise and/or escalate issues of bullying, harassment or violence based on real or perceived sexual orientation or gender identity. Current procedures do not accommodate incident data collection that would indicate sexual orientation or gender identity issues as a motive for bullying, harassment or violence in schools. There is no procedure in place for students to complain about treatment from teachers through the system. However, retrospective findings from a recent study conducted by the Cyprus Family Planning Association and accept-LGBT Cyprus in the context of ILGA-Europe’s 7<sup>th</sup> Call of the Human Rights Violations Documentation Fund,<sup>39</sup> raise serious concerns. Participants reported having experienced severe instances of homophobically motivated bullying and harassment in school, and give no recount of school staff or teachers intervening to stop these incidents. Recent findings of focus groups conducted with teachers in the context of the abovementioned Youth in Action training Project, also document testimonials of frequent and serious incidents of homophobic bullying and harassment, which include name calling and mocking by other students as well as teachers or staff, taking place in schools. As the teachers report, such incidents often remain unreported and are often ignored, since there are no protocols or guidelines in place for dealing with them.<sup>40</sup>

Recent curriculum reforms (2010) have included a wider view of family, sexual health and sexuality. However, “indicators” defined for primary schools which include accepting diversity, contain limited reference to sexual orientation and no mention to gender identity. Indicators in first and second grade of middle school include being able to “critically analyze diversity regarding sexual orientation”,<sup>41</sup> thus leaving it open to the competency and discretion of each educator as to the depth and width of critical discussion. Again, there is no mention of gender identity. At this time, there is insufficient data available to be able to evaluate the content and competency of the implementation of the curriculum reform. Rollout of the reformed curriculum only began partially during the academic year 2011-2012 and fully during the academic year 2012-2013. Training of staff implementing the social science aspect of the curriculum that includes sexual health is still under way.

School campaigns and cultural events against homophobia, although not noted by the Ministry of Education and Culture as having taken place, have been noted to have occurred via

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<sup>36</sup> Two Handbooks dealing with Human Rights Issue per se are available for educational staff use. Neither is specific to Sexual orientation or gender Identity issues.

<sup>37</sup> Information obtained by the author (MK), provided by the Ministry of Education and Culture (Elpidoforos Neocleous), in personal communication, 16 May 2012. [correspondence in file with the author].

<sup>38</sup> *Shield against Homophobia in Education*. Training organised by the Pool of Trainers of the Youth Board Cyprus together with Cyprus Family Planning Association (CFPA), funded by the “Youth. in Action” program from the European Committee, and conducted under the auspices of the Ministry of Education and Culture, May 2012.

<sup>39</sup> Kapsou, M, Christophi A and Epaminonda M. (Eds., 2011). *A report on Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experience and Needs*. Nicosia: Cyprus Family Planning Association.

<sup>40</sup> *Outlining the phenomenon of homophobia in Education: Shield against Homophobia in Education*. Preliminary report published by the Pool of Trainers of the Youth Board Cyprus together with Cyprus Family Planning Association (CFPA), in the context of a study conducted for the project “Shield against Homophobia in Education”, funded by the “Youth. in Action” program from the European Committee, and conducted under the auspices of the Ministry of Education and Culture, May 2012.

<sup>41</sup> Health Education Curriculum (2010), p. 287.

independent research, at least once, in conjunction with representatives from the Office of the Commissioner of Administration. With no events or campaigns having taken place on the issue of transphobia, and no transgender students having ever been recognised within the school system, this aspect of the recommendation remains untouched.

*During an interview with a representative of the Educational Psychology Services, the Senior Educational Psychologist expressed an awareness of the 'disconnect between what is reported and how', and what is noticed in the schools in terms of LGBT students', citing specific examples from her own experience. When attending schools to investigate cases of bullying, or of disruptive behaviour either towards or by a specific student, she would discover that the probable cause (either directly or indirectly) was a particular student's sexual orientation (either real or perceived by other students or people, in the school). The psychologist noted that there is currently no way of recording such incidents on this level – not just for LGBT but also for other forms of discrimination. (Interview with Senior Educational Psychologist, on 11 April 2012).*

#### **viii. Health – other than transgender specific health issues<sup>42</sup> (Section VII of the Appendix paras. 33, 34)**

These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures proposed include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

Parts of the Recommendation pertaining to Health care for the most part, not implemented.

Legal protection from discrimination in the health services, on the grounds of sexual orientation or gender identity, is secured through the Anti-Discrimination (Ombudsman) Law of 2004. Article 7 of the Law on Safeguarding and Protecting Patients' Rights of 2004,<sup>43</sup> states that "health care is offered to everyone, without adverse discrimination", where article 2 defines "adverse discrimination" as violation of the principle of equal treatment on several grounds, which includes gender and sexual orientation. Other than the above legal protections, no other measures are in place to ensure high standard of access to health services without discrimination on the grounds of sexual orientation or gender identity. The Ministry of Health replied to our request for information only after a second formal letter was sent, and provided very limited information, without responding to most of the checklist questions regarding the Recommendation's implementation.

In their reply, the Ministry of Health states that, other than article 7 of the Patients Rights Law, no other provisions or measures are taken to ensure that the specific needs of LGBT people are taken into account in the process of health care services delivery.<sup>44</sup> Thus, the State takes no other measures to prevent discrimination on the grounds of sexual orientation, and to ensure a high standard of health care for LGBT persons. The issue of sexual orientation is not taken into account in the design of national health plans, surveys, or other programs, nor in the monitoring and assessment of health care services. There are no information campaigns to encourage health professionals and social workers to foster a reassuring environment for LGBT persons, and there is no procedure for patients to be free to identify their "next of kin".<sup>45</sup> No national standards seem to be in place regarding disease classification, and the situation regarding medical training appears

<sup>42</sup>See Section v above.

<sup>43</sup>Law on Safeguarding and Protecting Patients' Rights, N.1(I) of 2005, published in the Official Gazette of the Republic N. 3943[I] on the 7th January 2005.

<sup>44</sup>Information obtained by the author (MK), provided by the Ministry of Health (Iacovina Panteli), in personal communication, 23 July 2007, para. 2. [correspondence in file with the author].

<sup>45</sup>Patient Rights Law, 2005.

unclear. Whereas the Patients Rights Law<sup>46</sup> provides for the requirement of the patients' informed consent before any health service provision, no explicit mention is included for sexual orientation. The exemption clause (for providing services without the patient's informed consent) is unclear, leaving the decision of whether to proceed and with which members of kin to consult, largely upon the health care provider's judgement, without providing specific guidelines for doing so.

Regarding sexual and reproductive health programmes for LGBT people, free HIV testing is available through general hospitals, and free HIV treatment, including antiretroviral therapy, is available in a specialised clinic (Gregorios Clinic) in the town of Larnaca. Some sexual and reproductive health services are also provided by NGOs, such as the Cyprus Family Planning Association, and receive some State funding. However, the above services are not available throughout the entire island, and most are not systematic.

No actions or proposals for clarifying regulations and procedures to improve compliance with the Recommendation were identified by the Ministry of Health, and no evidence of any intention to do so was identified.

Moreover, no specific policy guidelines exist regarding providing health care for LGBT persons. Our own documentation work identifies cases where health care providers were hostile or critical to patients because of their sexual orientation.

The Ministry of Health pointed out in their response that they have received no complaints regarding discrimination on the grounds of of sexual orientation,<sup>47</sup> even though Trimikliniotis & Karayanni<sup>48</sup>, note that "lack of information and fear of coming out in the open often prevent people from launching complaints about medical mistreatment and patient privileges."

Despite the Ministry of Health's claim, our documentation indicates that LGBT persons do experience discrimination due to sexual orientation in the health care sector. Specifically, in our 2011 mapping study, 7% of participants reported having experienced discrimination in health, which included malicious gossip by medical or nursing staff, request for additional examinations, use of additional health protection by staff, denial of medical care, and rejection or discouragement as a blood donor.<sup>49</sup> Similar cases were also documented through interviews with LGBT persons conducted in the context of this evaluation.

*K, a gay man, participated in a blood donation drive in 2004. Before donating blood, he had to complete a form. The form included a question asking "Have you had a sexual relationship with persons of your own sex?" K had to lie because he did not want to be excluded as a blood donor. He considers this question to be institutionalised discrimination, he considered it unfair, and he experienced great discomfort, as he believes that this question implied that a gay person could have AIDS. (Interview with K, 31 year old gay man, on 30 July 2012).*

*In June 2011, P, a gay man, suffered a physical attack by a young man outside a gay club in his town. P. reported the incident to the police, who directed him to the hospital for a check up. P. reports that, at the hospital, the medical staff and the police officer who accompanied him were mocking him. He also felt that the presence of police officers outside the examination room violated his confidentiality, something he did not consider necessary, since he was not under arrest himself. Following a brief interview, the physician told P. that his injury was minor and that it 'will pass'. The next day, P. was informed that he needs to provide a medical report regarding his condition. When he returned to the hospital, it was not possible to locate the physician who had examined him, neither on that day, nor during the days that followed. (Interview with P, 43 year old gay man, on 13 August 2012)*

<sup>46</sup> Ibid, article 11.

<sup>47</sup> Information obtained by the author (MK), provided by the Ministry of Health (Iacovina Panteli), in personal communication, 23 July 2007, para. 4. [correspondence in file with the author].

<sup>48</sup> N.Trimikliniotis and S.S. Karayanni (2008). *The Situation Concerning Homophobia and Discrimination on the Grounds of Sexual Orientation*. Policy document for SIMFILIOSI (March 2008), p. 7.

<sup>49</sup> M. Kapsou and A. Christophi (2011), SupraNote23.

*In 2010, E., a bisexual woman, visited the Emergency Department (ED) of a public hospital with a lesbian friend who had attempted suicide. E. observed that as soon as they entered the ED, nurses felt uncomfortable and she attributed this to the fact that her friend 'looked gay'. As E. reported, the nurses were extremely rude to them and overly strict. E. reports that they avoided touching her friend, and instead of taking care of her, they just sat and started making inappropriate comments about the incident. E. was very disappointed with the nurses' indifference, because she believes that nurses are people that are supposed to care. (Interview with E., 31 year old bisexual woman, on 27 September 2012)*

## **ix. Housing**

Section VIII of the Appendix requires that adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in the provision of loans for purchase of housing, in the recognition of the rights of a tenant's partner, and evictions; also, the provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

Most aspects of the Recommendation pertaining to Housing have not been implemented.

Anti-discrimination provisions in Cypriot legislation regulating various aspects of housing specifically are absent.<sup>50 51 52 53 54</sup> The general anti-discrimination (Commissioner) Law<sup>55</sup> covers housing in its provisions, prohibiting discrimination on the grounds of sexual orientation (but not gender identity). Other measures to ensure equal access to housing remain absent, and some policies and practices that are in place grant privileges to different sex couples exclusively. There are no actions or plans to improve compliance with the Recommendation on the subject of housing, despite the Anti Discrimination Body's repeated urges for regulating civil partnerships in order to regulate, among other issues, tenancy issues of same sex partners.

The general anti-discrimination Law (Ombudsman) does not define specific areas that are covered under the housing provision, such as sale or rent of housing, provision of loans for housing, recognition of the rights of a tenant's partner, and evictions. The Commissioner of Administration Office (ADB), clarified that they interpret the general provision to cover all of the above through the general provision for housing.<sup>56</sup> However, housing departments contacted did not appear to be aware of legal anti-discrimination provisions on the basis of sexual orientation in the field of housing.

Other than the general anti-discrimination Law, no other measures are in place to ensure that all persons effectively and equally enjoy access to adequate housing. No relevant information is made available to property owners and tenants, and there are no campaigns to raise awareness among housing agencies in regards to anti-discrimination provisions. The Social Welfare Services do not implement any support programmes to address vulnerability of LGBT persons to homelessness, and there are no mechanisms in place to ensure that discrimination on the grounds of sexual orientation or gender identity does not occur during the provision of their services.

No intention or plan was mentioned by any of the responsible public organisations in the field of housing for measures to prevent discrimination on the grounds of sexual orientation or gender identity in access to housing.

<sup>50</sup> *On sales of land (Special Execution) Law*, Chapter 232, 50 of 1970, 96 of 1972.

<sup>51</sup> *Rent Control Law*, N. 23 of 1983 (includes provisions on evictions).

<sup>52</sup> *Wills and Succession Law* N. 75 of 1970 and Law N. 100 of 1989, Ch. 195.

<sup>53</sup> *Special Subsidy (Purchase or Construction of Residence) Law*, N. 91(I) of 2006, as published in the Official Gazette of the Republic N. 4085 of the 28th April 2006.

<sup>54</sup> *Provision of Housing Assistance to Displaced, Victimized, and Other Persons Law*.N.46(I) of 2005, published in the Official Gazette of the Republic N. 3989(I) on the 6th May 2005.

<sup>55</sup> *Commissioner Law*, 2004.

<sup>56</sup> *Ibid*, article 6(1)(ζ).

The Town Planning and Housing Department informed the researchers, in their written response,<sup>57</sup> of their intention to propose to the Service for the Care and Rehabilitation of Displaced Persons, to incorporate a provision such that, for each approval granted by the Competent Committee, with its participation, a note will be included that no discrimination was made, according to the Recommendation. Moreover, the NHRI, (ADB), after receiving complaints regarding the absence of legal framework for same sex partnerships, published two reports calling for the need to provide legal regulation, including regulating property rights.<sup>5859</sup>

Indirect forms of discrimination result from various regulations and practices that grant privileges to different sex couples that are married, or that are engaged with the purpose of getting married. For instance, special provisions are warranted for loans to low income couples, such as waiver of interest for the first two years of the loan. Several programmes that are in place in Cyprus to provide special subsidies and allowances for internally displaced persons,<sup>60</sup> as well as for individuals or couples with low income, also provide for privileges for couples or families. For instance, some programs, such as self-housing in State land, and granting of State land as compensation, are only available for families, defined as married (different sex) couples. Other programs, such as granting of subsidies to low income persons or families for the purchase of homes or rent, provide for higher subsidies for families compared to single persons, whereby families exclude same sex couples, who have no legal standing.

*Upon returning to Cyprus from Greece in 2009, P., a gay man, was looking to rent a house. During an interview he had with a prospective landlord, he was asked several questions, such as where he works, if he has a girlfriend, if he lives alone, etc. At some point, P. grew tired of the questions, and asked the landlord to call him when he decides. When they talked again, the landlord asked for a guarantee (not for financial reasons) from an acquaintance. When P. asked for the reason, the landlord's reply was that "you seem a little naughty". (Interview with P, 43 year old gay man, on 13 August 2012)*

## x. Sports

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, Codes of Conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

The information presented in the Compliance Documentation Report indicates that the Cyprus Sports Organisation has not specifically implemented any measures to prevent insults on the grounds of sexual orientation or gender identity, nor have they specifically combated issues transphobia or homophobia in sports. While the Cyprus Sports Organisation has the view that "every person has the right to access sports",<sup>61</sup> there is no evidence of the Cyprus Sports Organisation dealing directly with issues of combating discrimination and/or insults on the grounds of sexual orientation or gender identity.

Codes of Conduct, measures preventing exclusion, awareness raising activities or anti-discrimination campaigns have not taken place in Cyprus to date. While the European Convention

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<sup>57</sup> Information obtained by the author (MK), provided by the Department of Town Planning and Housing (Constantinos Alkides), in personal communication, 25 May 2012. The reply stated: "The draft law concerning the inclusion of maternal refugees in the housing plans for granting housing in government settlements of government land for self-housing was put into law on 2.12.2011. Its provisions have been put into effect in 2.1.2012, and the first applications have already been submitted for review".

<sup>58</sup> Ref. AKP 142/2009, AKP 16/2010, *Report of the Anti Discrimination Body regarding the legal regulation of same sex couples*, para. 34

<sup>59</sup> Ref. AKPTOΠ 1/2011, *Position of the Anti Discrimination Body regarding the need to implement civil partnership between heterosexual and homosexual couples*. 22 December 2011. para. 20.

<sup>60</sup> The term here refers to persons who were internally displaced following the invasion of Turkey in Cyprus in 1974, which forced a significant portion of the population to be displaced from the now occupied north to the area now under the effective control and administration of the Republic of Cyprus.

<sup>61</sup> Information obtained by the author (MK), provided by the Cyprus Sports Organisation (CSO, Philippos Sofokleous), in personal communication, 30 March 2012. [correspondence in file with the author].

on Spectator Violence and Misbehaviour at Sport<sup>62</sup> is in force, the form and extent of implementation remains undefined, since from the data supplied there is no specific reference to sexual orientation or gender identity.

The Cyprus Sports Organisation has committed to circulate the part of the Recommendation that refers to Sports to all its members, in an attempt to educate and stimulate further debate on the issue.

#### **xi. Right to seek asylum**

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or where they face the risk of torture, inhumane or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

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With respect to the right to seek asylum, the Recommendation has been partly implemented. In practice, several problems are identified in the process of granting asylum on the grounds of sexual orientation and gender identity.

National legislation<sup>63</sup> explicitly recognises sexual orientation, but not gender identity, in the notion of “membership of a particular social group”<sup>64</sup> and therefore, persecution on the grounds of sexual orientation may serve as legal ground for granting asylum. However, no information was identified regarding measures to ensure that LGBT asylum seekers are protected from being deported to countries known for their cruel attitude and regular persecutions towards open homosexual and transgender persons. In addition, no measures are in place to protect LGBT asylum seekers from possible harassment in places of their temporary stay/detention, although it was made clear to us that asylum officers are provided with training in the specific problems encountered by LGBT refugees or asylum seekers.

To ensure that asylum seekers are not deported to a country where their life or freedom would be threatened or they face the risk of torture, inhumane or degrading treatment or punishment, on grounds of sexual orientation or gender identity, the principle of non-refoulement is warranted in domestic law,<sup>65</sup> in accordance with article 33 of the Geneva Convention.<sup>66</sup> However, this principle appears to have been violated at least twice in the process of examining asylum applications, where the authorities failed to take into consideration the severity of the threat the applicants would face by being deported to their countries of origin.

Information and awareness raising programs for the general public are being promoted through the European Refugee Fund. No other specific measures are reported for the protection of asylum seekers from risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment, as mentioned in the Recommendation. Police Academy students received training on asylum issues, including the reasons provided for, in the Geneva Convention, and the relevant law regarding the granting of international protection in 2012, but there is no mention of providing, or intending to provide, any further training specifically on sexual orientation or gender identity for detention centre staff, police, medical staff, or voluntary organisations with access to such cases.

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<sup>62</sup> European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches CETS No.: 120, Strasbourg, 19.VIII.1985.

<sup>63</sup> *Refugee Law*, N. 6(l) of 2000, as published in the Official Gazette of the Republic N. 3383[I] on the 28<sup>th</sup> January 2000, as amended by, inter alia, Law N.12(l) of 2009.

<sup>64</sup> *Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe* (2011). Council of Europe Publishing, p.65.

<sup>65</sup> *Refugee Law*, 2000.

<sup>66</sup> UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, paras. 25-26.

Expert reports<sup>67</sup> suggest that discretion ‘reasoning’, whereby asylum requests may be turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret, is being regularly practiced in cases, and has been a factor in the Asylum Service’s application rejections.

*In 2005 an Iranian gay man with a history of ill-treatment in his country of origin due to his sexual orientation, who was faced with the prospect of death sentence upon his return, was rejected asylum status in Cyprus on 5 August 2005, and again, upon resubmission of his claim on 30th April 2007. [F06-05723.R]. The applicant was, at the time, in a relationship with a Cypriot man. The application was rejected on the basis that the applicant had not demonstrated having experienced persecution explicitly due to his sexual orientation (the applicant was arrested four times in Iran, while in the presence of other homosexual persons, but other charges were given for the arrest). The applicant appealed the decision and filed a complaint to the Anti Discrimination Body, who found in his favour, citing information supplied by ILGA, Amnesty International and other NGOs that homosexuality in Iran is punishable either by hanging or stoning and that since the 1980s execution of homosexuals take place covertly, invariably using other charges as an excuse.*

*An Iranian lesbian woman who sought asylum on the grounds of her sexual orientation, received a rejection of her claim by the Asylum Service on June 24th 2008, on the basis that her claims about her sexual orientation were not well founded, because she had previously been married twice in Iran. The applicant filed a complaint to the Cyprus Anti Discrimination Body. In the process of its investigation, the Anti Discrimination Body identified that the Asylum Service failed to take into consideration the fact that the marriages were conducted under pressure and against the applicant’s will, as well as the fact that the applicant was in a steady relationship with another woman since 2009. Several violations of directives were also identified in the process of the examination of the applicant’s asylum request, and the authorities failed to take into consideration the severity of human rights violations that the applicant could face in her country of origin. Specifically, in the process of examining her case, the Asylum Service officer told her that “in Cyprus there are no lesbian women, so coming here was a mistake”.*

## **xii. National human rights structures**

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

The parts of the Recommendation regarding NHRI are, for the most part, implemented by the Office of the Commissioner of Administration (Ombudswoman) and specifically the Anti-Discrimination Body.

The Office of the Commissioner of Administration has the responsibility to promote equal opportunities irrespective of sexual orientation in Cyprus. The Commissioner of Administration does in practice conduct awareness-raising opportunities and examines individual complaints pertaining to sexual orientation or gender identity. The Anti-discrimination Body (ADB) also examines cases of discrimination, and produces reports and recommendations on issues that have a sexual orientation or gender identity nature. This includes raising awareness and providing recommendations.

The Anti-Discrimination Body has several reports suggesting specific amendments to current legislation and policy to ensure equal treatment of all persons irrespective of sexual orientation. Reports have suggested provisions for equal treatment of third-country nationals who are same sex partners of European nationals concerning their residence in Cyprus, as well as the

<sup>67</sup> S. Jansen, and T. Spijkerboer. *Fleeing Homophobia: Asylum claims related to sexual orientation and gender identity in Europe*. (2011). COC Nederland, Vrije Universiteit Amsterdam, p. 25. The National expert for Cyprus for this report was Corina Drousiotou.

introduction of legal regulation of same sex partnerships (through civil partnerships).<sup>68</sup> Concerning discrimination on the grounds of gender identity, the Anti Discrimination Body recently provided guidelines on the granting of financial aid to a transgender refugee in order to have access to genitalia reassignment surgery.<sup>69</sup>

Moreover, in 2010 the Anti-Discrimination Body conducted (under the PROGRESS EU program) a media campaign, raising awareness on the issues of discrimination, including on the grounds of sexual orientation. The campaign included printed, radio and TV messages against discrimination (for a discussion of controversies that arose during the campaign, see Section [III.13 ii](#) of the Compliance Documentation Report in Appendix). The Anti Discrimination Body has repeatedly spoken out in support of the rights of LGBT people. It has facilitated the registration of accept-LGBT Cyprus as an NGO, and on many occasions has supported their events.

A complaint is pending, concerning the residence permit of a European transgender person who lives in Cyprus for the past twenty years.<sup>70</sup> The most recent report pertaining to LGBT issues by the Anti Discrimination Body concerned hate speech, following complaints received concerning homophobic expressions from a public figure.<sup>71</sup> Further complaints on the grounds of sexual orientation and gender identity are examined as they arise, and the Anti Discrimination Body issues relevant reports which contain recommendations to the competent State authorities.<sup>72 73</sup> However, so far the Anti Discrimination Body has not participated in any court proceedings relevant to these issues.

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<sup>68</sup>Supra Note 58.

<sup>69</sup> Information obtained by the author (MK), provided by the Commissioner of Administration, Eliza Savvidou, in personal communication, 24 August 2012. [correspondence in file with the author].

<sup>70</sup> Information obtained by the author (MK), provided by the Anti Discrimination Body of the Office of the Commissioner of Administration (Zinaida Onoufriou), in personal communication, 6 March 2012. [correspondence in file with the author].

<sup>71</sup>Supra Note 8.

<sup>72</sup> Ref. AKP 103/2008. *Report of the Authority against Racism and Discrimination regarding Granting Political Asylum on the grounds of Sexual Orientation for an Asylum Seeker from Iran*. 18 July 2008.

<sup>73</sup> Ref. AKP 68/2001, 70/2001. *Report of the Authority against Racism and Discrimination regarding granting refugee status to a homosexual asylum seeker from Iran*. 19 July 2011.

## V. Appendices

### Appendix I

#### **Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity**

(Adopted by the Committee of Ministers on 31 March 2010  
at the 1081st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that 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;

Recognising 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 – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

## **Appendix to Recommendation CM/Rec(2010)5**

### **I. Right to life, security and protection from violence**

#### **A. “Hate crimes” and other hate-motivated incidents**

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

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

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

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

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

## **B. “Hate speech”**

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

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

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

## **II. Freedom of association**

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

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

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

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

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

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

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

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

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

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

### **IV. Right to respect for private and family life**

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

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

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

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

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the

right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

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

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

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

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

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

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

## **V. Employment**

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

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

## **VI. Education**

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

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational

materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

## **VII. Health**

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

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

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

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

## **VIII. Housing**

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

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

## **IX. Sports**

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

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

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

## **X. Right to seek asylum**

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

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

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

## **XI. National human rights structures**

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

## **XII. Discrimination on multiple grounds**

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

## Appendix II

### Glossary

**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. 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.

**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. 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. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

**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.

**Hate speech** against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility 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.

**Homophobia** is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

**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.

**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.

**NGO** is the abbreviation for "non-governmental organisation".

**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).

**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. 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.

**Transphobia** refers to a phenomenon similar to homophobia, 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.

## Appendix III

### Monitoring Implementation of the Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (the “CMCE Recommendation”)

## Compliance Documentation Report

© Margarita Kapsou & Sylvie Mantis, Cyprus Family Planning Association & accept-LGBT Cyprus,  
Nicosia, Cyprus, 2012

### CYPRUS REPORT

#### Recommendation

1. **examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;**

- i. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

No.

No response received by the Ministry of Justice and Public Order regarding this matter.

- ii. Are processes in place to ensure that the discrimination thus identified is redressed?*

Partially, only by some selected departments.

The Ministry of Justice and Public Order provided no response regarding this matter. Within the Ministry itself, no department seems to deal specifically with forms of discrimination other than discrimination based on gender. In response to our request, the Equality Unit of the Ministry of Justice and Public Order (National Machinery for Women’s Rights) replied that they only deal with issues pertaining to equality between men and women and state that no information is available regarding the implementation of the Recommendation.<sup>1</sup> However,

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<sup>1</sup>Information obtained by the author (MK), provided by the National Machinery for Women’s Rights (Maro Varnavidou) in personal communication, 28 March 2012 [correspondence in file with the author].

the police department [Office for Combating Discrimination] includes a specific section for identifying discrimination on the basis of sexual orientation.<sup>2</sup>

**2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;**

*i. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?*

Partially.

Legislation protects against discrimination on the grounds of sexual orientation (not gender identity) only in the area of employment, in line with EU Directive 2000/78/EC of 27 November 2000.<sup>3</sup>

Discrimination on other grounds of sexual orientation and gender identity in other areas (employment, social security, health care, education, goods and service etc.) is only mentioned in the Commissioner Law [N. 42(1)/2004].<sup>4</sup>

*ii. Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?*

No.

**3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;**

*i. Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?*

*ii. Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*

*iii. Are the remedies effective, proportionate and dissuasive?*

*iv. Do the remedies include, where appropriate, adequate reparation for victims?*

No.

No response was received by the Ministry of Justice and Public Order regarding this matter. No effective legal remedies for survivors appear to be in place, and thus no

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<sup>2</sup> Information obtained by the author (MK), provided by the Police Office for Combating Discrimination in personal communication, 14 June 2012 [correspondence in file with the author].

<sup>3</sup> European Council Directive 2000.78/EC of 27 November 2000. *Establishing a general framework for equal treatment in employment and occupation* [2000] OJ L 303 p.16.

<sup>4</sup> *Combating Racial and Certain Other Forms of Discrimination (Commissioner) Law*, N. 42[I] of 2004, as published in the Official Gazette of the Republic N. 3822 on the 19th March 2004.

procedure to make survivors aware, or have access to suitable support mechanisms are in place either.

**4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;**

Partially.

There was no evidence of any authority being guided by the Recommendation in their legislation, policy and practice, prior to our communication with them for the purposes of this project. The only exception identified is the Commissioner of Administration (Ombudswoman). In the past few years, the Commissioner has examined several complaints of discrimination on the basis of sexual orientation and gender identity and has issued position reports which include references to the Recommendation.<sup>5678</sup>

Resulting from our inquiries for the purposes of this report, the Cyprus Radio and Television Authority (CRTA) demonstrated motivation and proceeded with steps to incorporate the parts of the Recommendation relevant to their competence, into their legislation and practice reform process.

Other agencies, (e.g. Cyprus Sports Authority, Department of Labour), expressed an interest in extending dialogue with LGBT rights NGOs, without moving on with specific changes toward the Recommendation's requirements.

**5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible**

*i. What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*

None by the State.

*ii. Have the Recommendation and its appendix been translated?*

No. Not by the State.

A Greek language translation of the Recommendation was made available by Mr Vasilis Sotiropoulos (a lawyer in Greece and currently Athens Ombudsperson), and, upon his permission,<sup>9</sup> adapted by the research team in the context of this project.

*iii. Have they been disseminated:*

- *within the lesbian, gay, bisexual and transgender communities?*

<sup>5</sup> Ref.AKP 103/2008. *Report of the Authority against Racism and Discrimination regarding Granting Political Asylum on the grounds of Sexual Orientation for an Asylum Seeker from Iran.* 18 July 2008.

<sup>6</sup> Ref.AKP68/2001, 70/2001. *Report of the Authority against Racism and Discrimination regarding granting refugee status to a homosexual asylum seeker from Iran.* 19 July 2011.

<sup>7</sup> Ref.AKP 142/2009, AKP 16/2010. *Report of the Authority against Racism and Discrimination regarding the legal safeguarding of relationships of same sex couples.* 31 March 2010.

<sup>8</sup> Ref. AKP 55/2010 AKP 56/2010 AKP 57/2010 AKP 58/2010 AKP 61/2010. *Report of the Authority Against Discrimination Regarding the Prevention and Handling of Homophobic Speech.* 29 June 2012.

<sup>9</sup> Permission obtained by the author (MK), provided by Vasilis Sotiropoulos in personal communication, 10 January 2012, [correspondence in file with the author].

- *throughout public administration?*
- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*
- *to the media?*
- *to relevant non-governmental organisations?*

No.

Not by the authorities. The research team and accept-LGBT Cyprus disseminated the Recommendation in the context of the present project.

## **I. Right to life, security and protection from violence**

### **A. “Hate crimes” and other hate-motivated incidents<sup>10</sup>**

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

- i. Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

Partially.

On 10 December 2010, a first training session directed towards police officers took place, facilitated by LGBT community members. No regular or standardised training is currently in place to address issues pertaining to sexual orientation and gender identity, as these are encountered both among the police force members and in the course of conducting their duty.

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<sup>10</sup>See Explanatory Memorandum for explanation of hate crimes and hate-motivated incidents.

The Cyprus Police Force was formed in 1960, when the Republic of Cyprus was established. After almost 100 years under British rule, law enforcement principles were based, for the most part, on previous colonial law. The amended Police Law<sup>11</sup> sets out clear direction for the police, which includes the maintenance of law and order, as well as the prevention and detection of crimes and, together with the Police Code of Conduct,<sup>12</sup> actions and reactions of the Police are clearly set out. With regard to training of police officers, Article 22 of this Code of Conduct, states:

“Police training is based on the fundamental values of democracy, on the Constitution, the rule of law as well as the protection of human rights.”<sup>13</sup>

This sets the fundamental premise upon which police actions are set, although there is no reference within the constitution or the rule of law specific to LGBT issues. A general pointer refers to the protection of Human Rights. The same holds true for article 25 of the same Code of Conduct, which states:

“Police training at all levels includes, in-service practical training on the use of force with regard to the limits, which are established in the European Convention on Human Rights and its case law. Police training also takes full account of the need to challenge and combat racism and xenophobia.”<sup>14</sup>

Of the various departments and sub-departments of the Cyprus Police Force, the Criminal Investigations Office deals with LGBT issues, as far as they concern the Cyprus Police, under the supervision of the Domestic Violence and Child Abuse Office, or under the Office for Combating Discrimination. Information was provided by a Senior Police Officer during an interview with one of the researchers (SM).<sup>15</sup> The Department states that, current Police activities are in line with the Recommendation of the Council of Europe, in so far as implementation of immediate, effective, impartial measures for identifying, investigating and handling crimes and/or incidents of whatever form of discrimination, including hate crimes/incidents with hatred on the grounds of sexual orientation as its motive.

In 2010, as part of the project “Cyprus Police against Discrimination, for Diversity” (a project co-funded by the Cypriot government and the European Commission Program “Progress”) members of the then yet informal organised group accept-LGBT Cyprus Temporary Steering Committee were invited to take part in a two day ‘Training of Trainers’ program. With an audience of over 70 officers of various levels, including ranking up to Police Lieutenant, accept-LGBT Cyprus representatives for the first time took part in a training focused specifically on LGBT issues. This was considered to be a ground-breaking session, which touched on issues of homophobia and transphobia within the police force, explored protocols for recording LGBT survivor statements with cultural sensitivity, and understanding the diverse reasons an LGBT person may be fearful of reporting a crime committed against them on the grounds of their sexual orientation or gender identity. The session also engaged participants in dialogue and provided a first opportunity to come face to face with members of the LGBT community and ask questions. The concept of the two-day training was to combat all forms of hate crimes and with the specific

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<sup>11</sup> *Police Law*, N. 83(i) of 2004, as published in the Official Gazette of the Republic N. 3834 on the 8<sup>th</sup> April 2004.

<sup>12</sup> The Cyprus Police Code of Ethics is based on the European Code of Police Ethics was adopted 19 September 2001, and approved by Decision of the Council of Ministers N. 58. 578, 17 September 2003.

<sup>13</sup> *Ibid*, article 22.

<sup>14</sup> *Ibid*, article 25.

<sup>15</sup> Sylvie Mantis. *Interview with Police Officer at the Office for Combating Discrimination*. (Nicosia, 8 May 2012).

inclusion of LGBT representatives, the police force addressed this issue for the first time.

Following the positive reception of this training, accept-LGBT Cyprus has continued to have periodic connections with the specific Police Department<sup>16</sup> (Domestic Violence and Child Abuse Office). The Police Department mentioned that members of the Department for Domestic Violence and Child Abuse participated in a training that took place in Ireland on various aspects of discrimination including LGBT issues, and have kept in contact with those international participants.<sup>17</sup>

- ii. *Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

Partially.

In a statement provided by a representative of the Cyprus Police Force, the Independent Authority handling Complaints against the Police, has the power to investigate any allegation made against a Police Officer. With reference to the 2004 Law [N.42(I)/2004] for Combating Racism and Other Forms of Discrimination,<sup>18</sup> the Commissioner of Administration, as an independent body, investigates allegations of discrimination or racism. However, within the Police force, the Service for control and review, as well as the Service for professional conduct, are enforced as part of the self-regulation procedures.

During our 2011 mapping study of the socio-political climate in Cyprus, focusing on experiences and needs of the Cypriot LGBT community, of the 136 participants who completed a structured questionnaire containing open and closed questions, 15% reported having experienced physical violence and 57% reported having experienced psychological violence on the grounds of their sexual orientation. Of these, none reported these incidents to the police, citing mistrust of the police force, and lack of awareness of rights as the reasons for not reporting the incidents.<sup>19</sup> This clearly indicates that, while the Cypriot LGBT community do experience victimisation – physical and psychological- and it is clear that the incidents are directly related to hatred on the grounds of their sexual orientation or gender identity, they also make a choice – however so – not to report them. Therefore, crimes committed on grounds of sexual orientation or gender identity, are not reflected in the police statistics, with the consequence that LGBT related crimes go unreported.<sup>20</sup> The police officer in the

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<sup>16</sup>Ibid.

In contact accept-LGBT Cyprus had with authorities in the context of the project "Raising awareness on the needs of LGBT people in Cyprus: Targeting evidence-based change in the sociopolitical context", funded by the 8th Call for Proposals for Human Rights Violations Documentation Fund, the Domestic Violence and Child Abuse unit contributed positively to exploring next steps in supporting closer links between the LGBT community and the police force. A further intention to extend diversity in its training program, as part of their strategy plan 2012-2015, the Cyprus Police Academy (AAK) has indicated a will to include specific annual training on combating discrimination and to include LGBT as part of that process.

<sup>17</sup>Supra Note 16.

<sup>18</sup>Commissioner Law, 2004.

<sup>19</sup>M. Kapsou and A. Christophi. Study 2: Mapping the Experiences and needs of the LGBT community in Cyprus. In M. Kapsou, A. Christophi and M. Epaminonda (2011), *A report on Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experience and Needs*. ISBN 978 – 9963 -9414 -2 -1.

<sup>20</sup>Statistics from 2006 onwards shared by the Domestic Violence and child Abuse Department also reflect this point.

interview acknowledged the researcher's (SM) concern that mistrust and fear by the community regarding treatment of such reports by the police is a possible factor,<sup>21</sup> and that the police force needs to re-examine strengthening its ties with the LGBT community in order to open lines of support and trust.

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

- i. Do legislative measures to combat "hate crimes" and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*

No.

Both the written reply<sup>22</sup> provided by the police representative and the interview conducted (SM),<sup>23</sup> verify that, in the Cypriot penal code, "hate crime" is not coded. Thus, it is not used as terminology within police coding either.<sup>24</sup> Moreover, the Law against Racism and Other Forms of Discrimination of 2004<sup>25</sup> includes no provision for recognising hatred on the grounds of sexual orientation as a motive for violence or discrimination. According to a Fundamental Human Rights Report (2009), homophobic intent is neither a criminal offence nor an aggravating factor in Cypriot legislation.

- ii. Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

No.

The Ministry of Justice and Public Order provided no reply. The response received by the Police force representative<sup>26</sup> stated that the Department that deals with discrimination records data on crimes/incidents that are racist or have a racist motive. Data collection/recording procedures include provisions for recording sexual orientation related incidents. However, no mention was made with regard to any statistics in relation to crimes/incidents reported that may have had as homophobic/transphobic motives.

**3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to**

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<sup>21</sup> N.Trimikliniotis and S.S. Karayanni (2008). *The Situation Concerning Homophobia and Discrimination on the Grounds of Sexual Orientation*. Policy document for SIMFILIOSI (March 2008).

<sup>22</sup> SupraNote2, 14 June 2012.

<sup>23</sup> Supra Note 16.

<sup>24</sup> *Law Combating certain types and displays of racism and xenophobia through Criminal Law* N. 134(I) of 2011, as published in the Official Gazette of the Republic N. 4299[I] on the 21st October 2011.

<sup>25</sup> *Commissioner Law*, 2004.

<sup>26</sup> SupraNote2, 14 June 2012.

**report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.**

- i. Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?<sup>27</sup>*

No.

Hate speech is understood to refer to the incitement and encouragement of hatred, discrimination or hostility towards an individual that is motivated by prejudice against that person because of a particular characteristic, for example, their sexual orientation or gender identity. In addition, ‘Hate crime refers to a physical or a verbal attack on an individual that is motivated by prejudice against that person because of a particular characteristic, for example, their sexual orientation or gender identity.<sup>28</sup>

According to the written reply provided by a police representative<sup>29</sup> and information obtained from the interview conducted by the researcher (SM),<sup>30</sup> within the Cypriot penal code, “hate crime” is not coded and therefore follows that it is not used as terminology within police coding either. Therefore, no legal framework is provided for government entities to act as sources of information with regard to protection and prevention of hate speech and hate speech with incitement to violence.

Moreover, according to a recent FRA report, Cyprus does include hate statements as a criminal offence when directed at certain groups of people; LGBT persons are not included in these categories. It is also noted that the recent Law 134 (I) 2011 on Combating Specific Types of Racism and Xenophobia<sup>31</sup> does not refer to homophobic or transphobic expressions.<sup>32</sup>

- ii. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*

No.

There is no evidence of any training programmes or procedures to ensure that the police or judiciary possess the knowledge and skills to identify such crimes and incidents. This question was not answered by the Police Department or the Ministry of Justice and Public Order.

Research demonstrates that the first inclusion of LGBT issues in Police training was conducted in December 2010 during the ‘Police against Discrimination’ training.

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<sup>27</sup> e.g. through police websites or leaflets distributed in the community.

<sup>28</sup> <[fra.europa.eu/fraWebsite/attachments/Factsheet-homophobia-hate-speech-crime\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/Factsheet-homophobia-hate-speech-crime_EN.pdf)> [accessed 18 November 2012].

<sup>29</sup> Supra Note 2, 14 June 2012.

<sup>30</sup> Supra Note 16, 8 May 2012.

<sup>31</sup> *Commissioner Law*, 2004.

<sup>32</sup> Supra Note 8.

Information provided from the various sources, Ministry of Justice and Public Order as well as from the Police, suggests that LGBT issues have not to date been highlighted as a key issue in its own right. Indeed, police statistics on crime and incidents which include homophobic/ transphobic motive are not so recorded.

No protocols or procedures have been identified as being specifically in place to provide support and assistance for survivors of homophobia/ transphobia.

- iii. *Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*

No/Partially.

Despite some attempts of training police officers and Codes of Conduct, our documentation indicates that LGBT persons do not feel safe to report crimes.

With reference to the Police Code of Ethics,<sup>33</sup> article 8 states that “members of the Police do not have the right to interfere in a person’s private life, except for when executing legal duties” and that “the fundamental rights of a person must always be taken into consideration during the execution of police duties by police officers” (article 9 of the Code).

In addition, certain circulars by the Police headquarters include the following (without specific reference to sexual orientation or gender identity):

1. Form No: TAE/432/I (III) dated 29/01/2008, which draws the attention of all members of the police, states that “...they are committed to demonstrate all due respect to every citizen... and are duty bound to investigate with utmost care accusations of racist crimes or crimes with a racist motive....”
2. Form No: TAE/432/I (IV) dated. 05/01/2009, which draws particular attention to a) when accusations are made or incidents occur which have a racist tone or motive, the investigation to be escalated to a ranking officer (sergeant or above) and b) over and above the monitoring conducted by a higher ranking officer, a known Police Chief (E) must supervise and coordinate conducting investigation.

It should also be noted that, with reference to police regulations No: 3/38, the term ‘discrimination’ and precise meanings for ‘racism, xenophobia’ include, among other things, any action or inaction or behaviour with regard to sexual orientation.

Despite above noted Codes and circulars in which the Police Force support and espouse principles of non discrimination, there are to date no training programs in place that address LGBT related issues, including supporting survivors or witnesses of homophobic/transphobic crimes.

Research conducted by the Cyprus Family Planning Association in collaboration with accept-LGBT Cyprus<sup>34</sup> indicates that members of the LGBT community do not report

<sup>33</sup> The Cyprus Police Code of Ethics is based on the European Code of Police Ethics was adopted 19 September 2001, and approved by Decision of the Council of Ministers N. 58. 578, 17 September 2003.

<sup>34</sup>M. Kapsou and A. Christophi (2011), SupraNote19.

crimes of homophobic/transphobic motives to the police. The study demonstrated that reasons for non reporting included fear of being 'outed', fear of being ridiculed, of not being taken seriously, and fear of further discrimination, amongst others. Hence, despite the Code of Conduct being in place there is not yet enough trust by the Cypriot LGBT community, in the ability of the Police to exercise discretion, provide support or indeed be able to handle the complexities that surround the reporting and handling of an homophobic/transphobic incident.

- iv. *Are units within the police tasked specifically with investigating crimes and incidents linked to sexual orientation and (b) gender identity?*

No.

The Police reported, in their written and verbal responses, that no unit is tasked specifically with the investigation of crime incidents related to homophobia/transphobia.

It was indicated that, if any such incidents come to the attention of the Police, they are dealt either by the station to which they have been reported to, or, in the case of serious crimes, by the regional Crime Investigation Department (TAE).<sup>35</sup> This protocol is based on a directive from Police headquarters, which includes specialised handling as well as the involvement of the Office for Combating Discrimination.

The Office for Combating Discrimination, which operates under Department C (serious crimes section) of the Police, states that it has as its main mission the continuation of prevention measures as well as the successful combating of discrimination, racism, and xenophobia, including any forms of discrimination related to sexual orientation (but not gender identity). Such issues of discrimination are dealt with at Police headquarters level. This Office also conducts research and gathers data on crimes and/or incidents which are related in any way to discrimination, as well as advises and collaborates with other governmental bodies and NGOs to enable further research and information exchange.

- v. *Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

No.

According to information provided by the Police Department, the Office for Combating Discrimination, which began its operation in 2010, has been tasked by the headquarters with working on issues of racism and xenophobia. While some contact has been made with the LGBT community and some collaboration has taken place, these had been an initiative of accept-LGBT Cyprus and not a mandate.

- vi. *Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow*

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<sup>35</sup>Supra Note 16, 8 May 2012.

*reporting by third parties in order to gather information on the incidence and nature of these incidents?*

No.

The Police Department state that, for reasons of source integrity, they do not accept anonymous reports of incidents and alleged crimes. Hence, there is no formal way of reporting an incident or crime anonymously or via the use of the internet or for third parties to report incidents that would allow data gathering with regard to the nature of incidents related to sexual orientation that do not include the identification of the person lodging the complaint.

However, despite the Police preference, anonymous reports have been known to be accepted, as stated by the Police Officer interviewed.<sup>36</sup> The police representative indicated that, where this need arises, there are clear instructions to ensure security and protection for citizens.

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

*i. Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*

No.

The Ministry of Justice and Public Order forwarded these questions to the Department of Prisons, but no response was provided by either agency.<sup>37</sup>

No training programmes and no specific Codes of Conduct for prison staff which relate to handling, supporting or dealing with prisoners without discrimination on the grounds of their sexual orientation or gender identity seem to be in place. There is no evidence of any manuals relating to LGBT issues or any training programs which advocate for the respect and appropriate handling of prisoners with regard to their sexual orientation or gender identity.

*ii. Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*

No.

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<sup>36</sup>Ibid.

<sup>37</sup> Correspondence attempts began in March 2012 with repeated and systematic follow-up and requests for either a written statement or an interview were ignored.

As noted, no response was provided by the Department of Prisons. Even after a recent rape allegation made by a 19 year old prisoner,<sup>38</sup> there is no indication of any formal supervision process in place. It is alleged that the 19 year old was raped by an older prisoner<sup>39</sup> who was housed in the young offenders section. After the incident, prisoners were sectioned off as protocol dictates; however it remains unclear as to the progress of the internal investigation, the role or responsibilities of the police officers on duty at the time, and whether or not any escalation and/or supervision protocols were in place. The Ombudswoman criticised the prison procedures and protocols during her investigation of the incident.<sup>40,41</sup>

The sexual orientation of either the alleged victim or the alleged rapist are also unclear, as well as whether or not sexual orientation was a factor in this incidence. Still concern arises regarding the ramifications for lack of protection in the prison system highlighted by this case.

*iii. Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?*

Partially.

No information was provided by the Department of Prisons. Recent events mentioned above and covered by the media indicate that no procedure within the prison system itself is in place to oversee, adjudicate or investigate any escalation made by prison staff. However, the Commissioner of Administration has among other duties, the task to ensure good governance within the Police and Prison services.<sup>42</sup> Moreover, the Commissioner's competence to conduct prison visits within her role as an Independent Authority for the Prevention of Torture is also secured by Law [N.2(III)/2009].

*iv. In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?*

No.

No clear policy or protocol appear to be in place. No response was received from the Department of Prisons or from the Ministry of Justice and Public Order on this issue.

According to information provided by a representative of the Police Department in an interview with one of the researchers (SM),<sup>43</sup> prisons are governed by different

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<sup>38</sup> Alleged rape occurred in December 2011 but the young man was too ashamed to come forward at the time and came forward some months later. Cited in the Cyprus Mail, 22 August 2012.

<sup>39</sup> The alleged rapist was 50 year old convicted sex offender who was found to have been placed in young offenders section, against prison regulations.

<sup>40</sup> Ref. AYT 1/2012. *Self-initiated Research by the Commissioner of Administration and for the Protection of Human Rights with reference to the claims for rape of a young prisoner in the Young Offenders Wing of the Central Prisons. Midterm Report* (article 6(3) of the Commissioner Law 1991 to 2011). 29 February 2012.

<sup>41</sup> Ref. AYT 1/2012. *Self-initiated Research by the Commissioner of Administration and fore the Protection of Human Rights with reference to the claims for rape of a young prisoner in the Young Offenders Wing of the Central Prisons. Midterm Report* (article 6(3) of the Commissioner Law 1991 to 2011). 7 March 2012.

<sup>42</sup> Ibid para 3.

<sup>43</sup> Sylvie Mantis. *Interview with Senior Police Officer, Office for Combating Discrimination*. (Nicosia, 8 May 2012).

codes of conduct and regulations than the Police force. No internal prison protocols for handling transgender prisoners seem to be in place. The representative from the Police Department also reported that, to his knowledge, no specific protocol is in place for transgender prisoners. The representative informed us that it remains at the discretion of the arresting police officer as to safe and effective handling of each situation as it arises. The Officer interviewed referred to one specific incident that he was aware of when a transgender suspect was remanded in custody and needed to be searched. The suspect was bodily searched by an officer of the same biological gender as that stated on the national identity card of the individual which indicated the birth gender. The transgender suspect was then placed in a single occupancy cell in a police station for the duration of his temporary detention, as a way of dealing with the issue of incarceration. This however, is not standard procedure and was discussed and agreed as action by the duty officers at the time of the incident.

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

- i. Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*

No. Not by the competent authorities.

No such study conducted by authorities was identified. The Ministry of Justice and Public Order, which was specifically asked about this, did not respond. For the time being, some research into this area is primarily undertaken by NGOs, such as accept-LGBT and Cyprus Family Planning Association, encouraged by the support of the LGBT community in Cyprus.

In September 2011 accept-LGBT Cyprus became the first legally registered organisation in Cyprus dealing with LGBT issues specifically. Research and lobbying form a fundamental part of the work they do towards challenging attitudes which are principally homophobic. Prior to this, AKOK (Gay Liberation Movement of Cyprus), an informal organisation led by Mr Alec Modinos, advocated for change, when Mr Modinos successfully challenged the Republic of Cyprus to the European Courts for a law (article 171 of the Penal Code) which outlawed male homosexual activity.<sup>44</sup> Mr Modinos, a fore-runner to current events for many decades, has been publicly interviewed not only in Cyprus but also abroad and has been a prominent figure in many debates.

Findings of a first study conducted by the Cyprus Family Planning Association and accept-LGBT Cyprus and funded by ILGA-Europe demonstrate the need for change in social and political attitudes towards LGBT persons in Cyprus.<sup>45</sup> Results of these studies have been disseminated through meetings with key stakeholders and

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<sup>44</sup> *Modinos vCyprus*, App. no 15070/89 (EctHR, judgment of 22 April 1993), Series A no 259.

<sup>45</sup> M. Kapsou, and A. Christophi (2011), *Supra*Note19.

political figures to promote the need for change.<sup>46</sup> Of the findings, the lobbying team focused on the following key topics:

- Bullying. This issue was described by participants as frequently occurring at school and sometimes extending at home and in the work place.
- Hate speech (with intention to incite hate crimes).
- The right to civil partnerships. This was entwined with equal access to services as individuals and as couples (e.g. health care, inheritance, tax rebates etc.).

ii. *Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*

No.

Currently there are no regular surveys undertaken by either formal agencies and government authorities or NGOs. The last such survey commissioned by a State Authority was a public opinion survey commissioned by the Office of the Commissioner of Administration in 2006.<sup>47</sup> Some independent studies occasionally include a question relating to social acceptance with regard to sexual orientation. These are not part of any systematic process or part of a survey specifically designed to tap attitudes toward LGBT people.

iii. *Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

No.

The Office for Combating Discrimination maintains a statistical archive on crimes/incidents which have a racist nature or motive. Its coding protocols contain codes for indicating crimes motivated by homophobia. Hence, any case investigated is logged in the crime statistics held by the Police.

Yet, as noted above, due to mistrust towards the police (among other factors), most incidents remain unreported.<sup>48</sup> As described by LGBT persons who participated in our recent study,<sup>49</sup> incidents were frequent, varied in form and magnitude, yet among our participants, none reported them to the authorities.

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<sup>46</sup>The Cyprus Family Planning Association and accept-LGBT Cyprus (2011-2012). *Raising awareness on the needs of LGBT people in Cyprus: Targeting evidence-based change in the sociopolitical context*. Project funded by the 8<sup>th</sup> call of ILGA-Europe's Human Rights Violations Documentation Fund.

<sup>47</sup> Cyprus College Research Centre, *Public Perceptions on Homosexuality Issues*. (2006).

<sup>48</sup>N. Trimikliniotis and S.S. Karayanni (2008), *SupraNote21*.

<sup>49</sup>M. Kapsou, and A. Christophi (2011), *SupraNote19*.

## B. “Hate speech”<sup>5051</sup>

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

*i. Do legislative measures penalising “hate speech” on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic “hate speech”?*

No.

Legislation penalising “hate speech” [N. 134(I)/2011] does not penalise homophobic and transphobic hate speech.<sup>52</sup>

Since there is no legislation addressing homophobia/transphobia, homophobic/transphobic hate speech or homophobic/transphobic motivation for a crime in Cyprus, such incidents are handled as indistinguishable from other crimes and remain undocumented. There is no case law on the matter, but a recent investigation by the Anti Discrimination Body resulted in a report that highlights the need to penalise homophobic and transphobic hate speech.<sup>53</sup>

*ii. Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*

- *a culture of respect, tolerance and diversity, and to avoid negative and stereotyped representations of LGBT people?*

Partially.

In its response, the State Press and Information Office (PIO), which is responsible for official announcements and promoting and distributing government policy and actions, states that “no hate speech is included in the statements of ministers and other government representatives”.<sup>54</sup> With regard to freedom of speech, the PIO

<sup>50</sup> See Explanatory Memorandum for definition of “hate speech”.

<sup>51</sup> Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, since September 2012 now also includes specific assistance and protection to people who suffered crime because of their sexual orientation, gender identity or gender expression (COM(2011)0275 – C7-0127/2011 – 2011/0129(COD)).

<sup>52</sup> *Law Combating certain types and displays of racism and xenophobia through Criminal Law* N. 134(I) of 2011, as published in the Official Gazette of the Republic N. 4299[I] on the 21st October 2011.

<sup>53</sup> Ref. AKP 55/2010 AKP 56/2010 AKP 57/2010 AKP 58/2010 AKP 61/2010. *Report of the Authority Against Discrimination Regarding the Prevention and Handling of Homophobic Speech*. 29 June 2012.

<sup>54</sup> Information obtained by the author (MK), provided by the Press and Information Office of the State (Giorgos Papakyriakou), in personal communication, 23 March 2012, [correspondence in file with the author]; translation by the authors.

reaffirmed that this notion is safeguarded by the Constitution of the Republic of Cyprus<sup>55</sup> as well as in the Press Law.<sup>56</sup>

The Cyprus Radio Television Authority (CRTA) is the regulatory body for broadcasters, established under the Radio and Television Stations Law [N.7 (I)/1998] under article 52 of the Constitution of the Republic of Cyprus.<sup>57</sup> This Law regulates the establishment, installation and operation of private radio and television organisations in Cyprus.

No body based in Cyprus was identified as having the competence to regulate or monitor internet forms of expression. Both the CRTA, and the Press and Information Office clarified that they have no jurisdiction on internet forms of expression.

At the time of drafting this report, the CRTA was in the process of revising their legal framework. Through contacts with the research team for obtaining information, the CRTA invited accept-LGBT Cyprus to contribute to the legal report, by proposing specific articles, and LGBT specific references, for inclusion. At the time of writing, this reform process is still underway and the legal framework has yet to be reviewed by the relevant committee in the House of Representatives.<sup>58</sup>

According to the CRTA Director, radio and television stations operating in Cyprus are encouraged to have some form of self-regulation in place. This was not standardised or reviewed in the past and was very much an agreement based on good faith, but is being further reviewed under the legal reform process.

No legislation is currently in place specifically with regard to building a culture of respect for LGBT people. The 1998 Law which currently governs the CRTA contains a general statement on combating discrimination toward various social groups (although these groups are not specified).<sup>59</sup> As part of the prevention and deterrent process within the scope of over-viewing and evaluating complaints and escalations, if satirical and/or offensive material is deemed to be contravening the article, various sanctions are in place, that can be implemented, such as, in extreme cases, suspension of a station's operation or licence to broadcast.

Since no specific protections are currently in place for expressions of homophobia and transphobia, complaints are handled on an ad hoc basis. In essence, this allows an LGBT person and/or supporter to express their view, as long as someone with an opposing view is given the opportunity to also express their view. There is no specific agenda currently in place to cultivate support and promote respect; however both the CRTA Executive Chairman and the Director expressed a desire to collaborate with Cyprus Family Planning Association and accept-LGBT Cyprus on possible specific suggestions on respect on LGBT rights could be better incorporated.

The CRTA stated that, its transparent complaints procedure follows a zero tolerance threshold, whereby one complaint (anonymous or named) is sufficient to instigate the

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<sup>55</sup> Constitution of the Republic of Cyprus, adopted on 16 August 1960, article 19.

<sup>56</sup> *Press Law* N. 145 of 1989, as published in the Official Gazette of the Republic N. 2433[I] on the 11<sup>th</sup> August 1989.

<sup>57</sup> *Supra* Note 55, article 19.

<sup>58</sup> CyprusRadioTelevisionAuthority, PressRelease, Subject: *Legal Provisions Proposed by the Cyprus Radio Television Authority for the Respect and Legal Safeguarding of Homosexual, Bi-sexual and Transgender Persons*. 24 May 2012, available at:

[www.crta.org.cy/default.asp?id=257&ItemID=648&rcid=73&pcid=72&cid=73](http://www.crta.org.cy/default.asp?id=257&ItemID=648&rcid=73&pcid=72&cid=73)

<sup>59</sup> *Law Integrating and Revising the Laws Regulating the Founding, Establishment and Operation of Radio and Television Stations 1998 to 2011*, N. 7(I) of 1998, as published in the Official Gazette of the Republic N. 3279[I] on the 13<sup>th</sup> November 1998, as amended by, inter alia, Law N. 73(1) of 2011.

complaints investigation procedure. The CRTA currently share their complaints procedures through NGO (non-governmental organisations) websites for wider citizen access. While there is no legal framework in place, a broader protocol is currently being used which addresses incidents on a case by case basis. The new legal reform proposal includes suggestions to formalise a process for complaints escalation since it is currently self-regulating and headed by the board.

Prior to accept-LGBT Cyprus' first activities in 2009, visible LGBT activity in the Cyprus media was very limited, and any form of regulation in protection of LGBT rights was therefore not addressed. With the recent LGBT related activity that Cyprus Family Planning Association and accept-LGBT Cyprus have led, LGBT issues became more visible in the Cypriot media. The CRTA have thus included specific points that relate to the protection and safeguarding of the integrity of LGBT characterisations and depictions, as well as expressions and debate, within their recent legal reform process.

It remains to be seen where or not these sections of the reform will be passed. At the time of writing, the amended law is awaiting ratification by the competent parliamentary committee. Since, as part of this process, civil society members are often called to share their views, CRTA asked for accept-LGBT Cyprus and Cyprus Family Planning Association to have an active role in this process, in order to ensure that articles which refer directly to LGBT issues are passed into legislation.

- iii. *Has legislation for criminalising “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?*

No.

The Press and Information Office, in their written reply, clarify that they have no jurisdiction on the internet. The CRTA also stated that they have no jurisdiction over the internet.<sup>60</sup> Currently, there seems to be a legal gap concerning the regulation of the internet. The CRTA Director and legal team also stated that they are not aware of any body based in Cyprus which regulates and/or encourages and/or monitors codes of practices and ethics over the internet. The Office for Combating Cyber Crime under the Crime Investigation Office (TAE) of the Cyprus Police Department<sup>61</sup> does not appear hate speech, and the Law regarding Cyber Crime covers topics such as unauthorised access, intervention, or impersonation, but not hate expressions<sup>62</sup>. It thus appears that regulation of the internet is hindered by a legal gap regarding jurisdiction to a competent body.

- iv. *Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?*

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<sup>60</sup>Sylvie Mantis. *Interview with representatives of the Cyprus Radio-Television Authority*. (Nicosia, 27<sup>th</sup> March 2012).

<sup>61</sup> Office for Combating Cyber Crime, website of the Cyprus Police Department, <[www.police.gov.cy/police/police.nsf/All/42956AEC03E8025DC22578A900271F4A?OpenDocument](http://www.police.gov.cy/police/police.nsf/All/42956AEC03E8025DC22578A900271F4A?OpenDocument)>

<sup>62</sup> Law ratifying the Convention on Cybercrime of 2004, N. 22(III) of 2004 as published in the Official Gazette of the Republic N. 3850 of 30 April 2005.

No.

As stated above, no State body is tasked with jurisdiction over the internet.

- v. *If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?*

Partially.

Although incidents that could be classified as “hate speech” in legal definitions of many European countries have taken place in Cyprus, they were not publicly disavowed by anyone in formal capacity, apart from the Commissioner of Administration.

In early 2010, an elected political figure publicly likened homosexuality to bestiality and paedophilia during a live radio broadcast. Five citizens lodged the incident as a complaint with the Office of the Commissioner of Administration (ADB). The Commissioner examined the complaints and issued a report on discrimination in relation to the handling and prevention of homophobic hate in June 2012.<sup>63</sup>

The European Parliament also condemned the politician for his remarks in a letter dated 31 May 2010, noting that his remarks were “seriously misjudged and wrong”.<sup>64</sup>The Democratic Rally (DH.SY) came forward with a statement condemning homophobic expression and hate speech towards LGBT people, without naming the politician who expressed them.<sup>65</sup>He was neither disbarred, nor removed from office, nor received any sanctions.

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

- i. *Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

No.

Guidelines do not appear to have been issued to ensure that there is an across the board approach to public figures/institutions responsibility to refrain from statements which may constitute and/or legitimise hatred or discrimination. Some agencies issue circulars and/ or reminders to staff that discrimination per se is unacceptable an ad hoc basis (see Section [V. Employment](#) and Section [I.A](#) on Hate Crimes, referring to Police circulars on combating discrimination). There is no specific mention with

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<sup>63</sup>Supra Note 53.

<sup>64</sup>The European Parliament's Intergroup on LGBT rights. *Intergroup writes to Member of the Cyprus Parliament on homophobic remarks, 31 May 2010.*

[www.lgbt-ep.eu/intergroup-documents/intergroup-writes-to-member-of-the-cyprus-parliament-on-homophobic-remarks](http://www.lgbt-ep.eu/intergroup-documents/intergroup-writes-to-member-of-the-cyprus-parliament-on-homophobic-remarks)>[accessed 17 November 2012].

<sup>65</sup>*The Democratic Rally clarifies its position*, 29 April 2010. [www.disy.org.cy/default.asp?id=549](http://www.disy.org.cy/default.asp?id=549)>[accessed 17 November 2012].

regard to sexual orientation or gender identity and no evidence of policy in place for defining discrimination across ministries and/or departments.

In her report on this issue<sup>66</sup> the Commissioner of Administration notes with regret the absence of legal statutes that protect against homophobic actions and stereotyping, including in the recent law (of 2011) that addresses the combating of certain forms of racist and xenophobic actions.<sup>67</sup> There is also reference to necessity for political to include reference to the protection of LGBT rights in law. The report also suggests that combating homophobic speech requires more than a legal framework. The report highlights the need to sensitise and inform society towards tolerance and respect of LGBT rights in order to dissolve the current climate of fear and preconceptions.

- ii. *Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

Yes.

Prior to 2009, there was little public debate or discussion with regard to LGBT rights or issues. The Gay Liberation Movement of Cyprus (AKOK),<sup>68</sup> led by Mr Alecos Modinos was the sole LGBT voice at the time. While he was not accepted openly, he was tolerated and as the main figure in a predominately conservative and restrained society. With the emergence of accept-LGBT Cyprus and the understanding that there is an LGBT community on the island,<sup>69</sup> the debate began to gather momentum.

During often heated live televised debates, members of accept- LGBT Cyprus were faced with members from conservative political arenas, representatives from the Greek Orthodox Church and individuals in professional capacities challenged the rights of LGBT individuals, including, in some cases their right to be LGBT, but most commonly, the right to civil partnerships, and the right to express one's gender identity.

Many notable instances of discrimination come from the Greek Orthodox Church, which consistently mobilises its supporters against tolerance and the movement towards the adoption of LGBT rights. The very public denunciation of LGBT community by an elected Member of Parliament mentioned above appears to contradict the Public Information Office (PIO)'s claims that "statements by ministers and other government representatives do not include hate speech".<sup>70</sup>

## **8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay,**

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<sup>66</sup>Supra Note 8.

<sup>67</sup>*Law for Combating Specific Depictions and Expressions of Racism and Xenophobia Through Criminal Law*, 2011.

<sup>68</sup> The Cyprus Gay Liberation Movement (AKOK) was the first organised entity promoting LGBT rights in Cyprus. AKOK was never formally registered as an organisation and only had one openly gay member, Mr Modinos. The group numbered in the tens rather than in the hundreds at its most active. However, it is still active as an informal group today.

<sup>69</sup> Within six months of the emergence of the informal LGBT group in 2009 and the setting up of a 'temporary' website, accept had more than 100 followers. By the time of registration in 2011, accept LGBT Cyprus has more than 800 members.

<sup>70</sup>Supra Note 54.

**bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.**

*i. Has guidance been issued to public officials and state representatives in this respect?*

No.

In their written response, the Press and Information Office stated that “they do not disseminate any other information”.<sup>71</sup>

While there is no evidence of any government policy<sup>72</sup> in place to ensure tolerance and respect of LGBT issues, some government and semi-government agencies and departments (such as the Police Force, and some municipalities) may choose to be inclusive of their own accord.

For instance, in its response to our questions (see Section [IX.Sports](#)), the Cyprus Sports Organisation stated its intention to circulate the specific sections of the Appendix that refer to combating homophobia, transphobia and discrimination in sports as well as the opportunity to re-iterate to all its members that sport activities and facilities should be open to all. They also expressed willingness to engage in dialogue on sports and discrimination, including LGBT issues, even though to date there is no sport organisation that is specifically for LGBT members.

Political organisations include no specific mention in their manifestos as to tolerance and respect for LGBT communities. During the May 2011 parliamentary election campaigns, accept-LGBT Cyprus’ temporary Steering Committee sent out a list of questions to all prospective parliamentarians, asking their views on LGBT rights including civil partnerships, equality and access to services. Of those who provided responses, many clarified that these were individual stances as opposed to party lines. These individual stances expressed, whether LGBT-supportive or not, would appear difficult to implement without explicit party backing. The Democratic Rally (DH.SY) is currently the only party to have issued a position with regard to LGBT issues.<sup>73</sup>

At the same time, the mainstream Greek Christian Orthodox Church, which has strong political influence and controls some media channels, remains firm against LGBT rights through its actions and representations in televised debates, and their responses to LGBT members who have spoken to them and reported their experiences,<sup>74</sup> and via material published by the Diocese. None of the other (non-Orthodox) religious communities active in Cyprus, has come forward in support of LGBT community on the island.

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<sup>71</sup> Ibid.

<sup>72</sup> The research team were unable to secure data in this respect as many of the ministries and departments appeared to be unable to indicate where accountability lay. This may well be due to the complex and draconian nature of the government machinery as set up in the 1960’s after British Colonial rule to include a bi-communal hue, which was then altered in haste as a result of the events of 1974 which divided the island.

<sup>73</sup> *On the Subject of Homosexuality*, 4 June 2010. availableat: <[www.disy.org.cy/default.asp?id=549](http://www.disy.org.cy/default.asp?id=549)>. [accessed 21 September 2012].

<sup>74</sup> M. Kapsou and A. Christophi (2011), *SupraNote19*.

- ii. *If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?*

No, there is no such evidence.

There are instances where public figures, State representatives and other key stakeholders have encouraged the use of responsible and non-violent speech independently. Most notable is the Commissioner of Administration Office, particularly the Anti-Discrimination Body who recently issued a report calling for measures to combat hate speech in line with the Recommendation.<sup>75</sup> The Commissioner of Administration's Office has publicly and consistently supported LGBT rights, and stood by accept-LGBT Cyprus representatives during often-heated debates.

## II. Freedom of association

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

- i. *Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?*

No.

- ii. *If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?*

No.

Officially, sexual orientation is not a reason to disallow registration of organisations that publicly cater to LGBT rights and well-being. However, accept - LGBT Cyprus, the only officially registered LGBT organisation in Cyprus (since September 8<sup>th</sup> 2011), experienced what it considers to be unacceptable delay when undergoing the registration process, as the procedure took almost 12 months to be completed. After

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<sup>75</sup>Supra Note 8.

discussion with the Commissioner of Administration where the complaint for the delay was lodged, it appeared that this was longer than what other organisations awaiting registration experience.

The Societies and Institutions Law [N. 57/1972]<sup>76</sup> provides the framework for the examining body to consult up to two external bodies for opinions and feedback, should it be deemed necessary. There is no prior consultation with the applicant and it is considered common practice for the Ministry of Interior officials to consult other Ministries or agencies that might have an interest in the setup of a particular association. In the case of accept-LGBT Cyprus, it is understood that the Cyprus Greek Orthodox Church was approached for its feedback, something that delayed but did not halt the registration process. Due to this involvement, the registration process also received negative media attention in one newspaper, in particular.<sup>77</sup>

During the process of reviewing this application by authorities, individuals who had signed up as members were randomly selected and contacted by the examining body (or their representatives) and questioned as to whether or not they knew their name and contact details were included on an application for a 'gay organisation'.<sup>78</sup> This is not standard procedure as documented in the law for application, and as far as research suggests, has not occurred with other organisations that have registered recently.

Also, during the registration process, police officers visited the listed registered address for accept-LGBT Cyprus wanting to 'examine what goes on there'. A member of the steering committee, who was employed at that address at the time<sup>79</sup> (a registered Non-Governmental Organisation) was available answer their questions and address their concerns regarding whether 'wild parties' that might take place there. Again, this does not appear to be usual practice, as also confirmed during a meeting with Ms Eliza Savvidou, Commissioner of Administration.<sup>80</sup>

We understand that the registration moved forward from a stalemate following interventions by the Office of the Commissioner of Administration, as well as by a Member of Parliament.<sup>81</sup> Following amendments to the organisation's Constitution as requested by the State, accept-LGBT Cyprus was officially registered on September 8<sup>th</sup> 2011.

The Associations and Institutions Laws<sup>82</sup> (article 6) does not define any timelines regarding the evaluation and approval or rejection of registration applications for new organisations. Hence, it cannot be evaluated whether the noted delay was due to discriminatory treatment toward accept-LGBT Cyprus as an LGBT organisation, since it has been observed in other situations as well. It has been known for

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<sup>76</sup> *The Societies and Institutions Law*, N. 57 of 1972 as published in the Official Gazette of the Republic N. 949 of 14 July 1972, as amended by, inter alia, Law N. 85(I) of 1997, article 3(1).

<sup>77</sup> M. Hadjistylianou. *They want marriage and adoption: At four ministries the application for a homosexual organisation* Phileleftheros Newspaper, 17 February 2011. p. 36.

<sup>78</sup> accept-LGBT Cyprus is aware of at least three such incidents, one of which was a phone call to a member of the temporary Steering Committee (treasurer at the time)

<sup>79</sup> NGO support Centre, 27 Ezekia Papaioannou Street, 1621, Nicosia, Cyprus.

<sup>80</sup> Meeting held with members of the accept LGBT Steering Committee and Ms Eliza Savvidou and Mr Aristos Tsartas, May 2011.

<sup>81</sup> Ms Stella Kyriakidou MP (Democratic Rally Party).

<sup>82</sup> *Law on Associations and Institutions 1972 and 1997*, and the *Law on Codes for Associations and Institutions 1973 and 1998*. Currently, a consultation process is under way regarding the legal provisions for the registration and function of Non-Profit Organisations, and it is expected that a new Law, with more specific provisions regarding the registration process for NGOs will be enacted soon.

associations to be registered in fewer than six months while others have taken more than a year, as was the case with accept-LGBT Cyprus.

Article 3(1) of the same Law states that:

“A society or institution the object of operation of which tends to undermine the security of the Republic or the public order or the public safety or the public health or the public morals or the fundamental rights and freedoms of the individual, shall have no legal existence, it shall not be capable of being registered, or if already registered, it may be dissolved by order of the Court.”<sup>83</sup>

In this case, there is no evidence that the Ministry considered accept-LGBT Cyprus to undermine in any way the “public morals”, although it is not clear whether the consultation with the Greek Orthodox Church, or the visits to accept-LGBT’s premises, was intended to evaluate this provision.

*iii. Are there examples of measures taken to:*

- *ensure that LGBT organisations can operate freely,*
- *defend their interests when necessary,*
- *facilitate and encourage their work?*

Partially.

accept– LGBT Cyprus considers that there were no examples the government has officially provided any assistance/facilitation or encouragement for its work.

There are no examples of initiatives taken on behalf of the government to ensure that AKOK (Gay Liberation Movement of Cyprus) and accept-LGBT Cyprus have been defended in their interests. Yet, there are examples where the Commissioner of Administration, Mayors of various municipalities (including three major cities of Nicosia, Limassol, and Paphos) and members of the House of Representatives have attended, supported and participated in the organisation’s events. These actions that could be considered as support, have included, press conferences, marking of the International Day Against Homophobia in May each year, debates on civil partnerships, research results from the first socio-mapping exercise involving the LGBT community in Cyprus as well as the first elections of accept-LGBT Cyprus.

accept – LGBT Cyprus considers that it has been better received by local government bodies, such as municipalities, who offered monetary or in kind support when organising public events (e.g. venue space, inauguration of events, donations).<sup>84</sup> It should be noted however, that the offer of support and/or collaboration would invariably be initiated by accept – LGBT Cyprus and not by the other parties.

The Commissioner of Administration, Ms Eliza Savvidou, as well as her predecessor, Ms Iliana Nikolaou, and staff at the Office of the Commissioner of Administration and particularly at the Authority against Racism and Discrimination (ADB), have

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<sup>83</sup>Ibid, article 3(1).

<sup>84</sup>Prior to accept-LGBT Cyprus’ formal registration as an NGO, and thus with limited funding opportunities, the Mayor of Nicosia at the time (Ms Eleni Mavrou) frequently offered municipal venue space; similar support was followed by the next Mayor, Mr Constantinos Yorkadjis. The Mayor of Paphos (Mr Savvas Vergas) has supported accept – LGBT Cyprus by inaugurating the ‘Same Love, Different Families’ photo exhibition when it visited his municipality and the Mayor of Limassol (Mr Andreas Christou) has openly supported with donations the cause of the organisation.

frequently spoken, contributed to and supported many of the accept- LGBT Cyprus initiatives. By lending her support, they helped to ensure the organisation's ability to function while it awaited registration.

- iv. *Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?*

No.

accept – LGBT Cyprus have not been involved on a partnership basis when framing and implementing public policies which affect LGBT people. Its involvement in consultation processes has been very limited, and always upon the initiative of NGOs, not official government bodies and only as external advisors.

accept-LGBT Cyprus maintain that the State still does not recognise and treat LGBT issues as an important social issue and that work is still needed in order for government, semi-government and local government agencies to acknowledge and consult accept- LGBT Cyprus and the LGBT community as a key stakeholder when addressing social issues.

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

- i. *Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?*

No.

Limited public funding is available to NGOs for operational purposes.<sup>85</sup> Such funding is only available to specific organisations (e.g. Cyprus Red Cross, Boy Scouts and EOKA<sup>86</sup> Fighter's Medical Centre). Some funding is also made available by the Ministry of Health to NGOs specifically dealing with certain health issues.

Limited funding is also available from the Ministry of Education and Culture budget, through the Youth Board of Cyprus, for organisations conducting youth-initiated activities, and through the Ministry of Justice and Public Order (National Machinery for Women's Rights) for projects related to gender issues. accept-LGBT Cyprus has received some funding for small projects through these schemes.

The Gender Equality Department/National Machinery for Women's Rights (NMWR) at the Ministry of Justice and Public Order provides some funding to organisations working with gender issues, but this is not considered inclusive of issues dealing with sexual orientation or gender identity. In response to our request for information, the Gender Equality Department/ NMWR indicated that "only issues of equality between men and women fall within its competence".<sup>87</sup> The NMWR have funded a small part of this project that may pertain to gender equality, such as interviews with LGBT women.

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<sup>85</sup> Ministry of Health and Ministry of Labour and Social Insurance offer some limited funding to registered bodies.

<sup>86</sup> EOKA was the guerilla group active against British rule between 1955-1959.

<sup>87</sup> SupraNote1.

The Ministry of Justice and Public Order provided no information as to whether any measures are in place to ensure that access to public funding is accessible fairly, and without any discrimination because of sexual orientation or gender identity.

*ii. Has such funding been made available to LGBT organisations?*

No sufficient information.

Neither accept-LGBT Cyprus, nor AKOK were registered organisations prior to 2011 and therefore were not eligible to receive funding for many calls. Since its registration in September 2011, accept-LGBT Cyprus has begun the process of researching and applying for funds from both national and European sources. AKOK remains an informal working group and therefore receives no direct funding.

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

*i. Does the State provide effective protection from hostility and aggression for LGBT human rights organisations?*

No sufficient information.

No such protection has been requested so far for accept - LGBT Cyprus. A first official request for such protection is anticipated for May 2013, when the first Cyprus Pride event is expected to take place.

*ii. Are there examples of measures taken by the State to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?*

No.

No examples of measures taken by the State to foster an environment conducive to the work of LGBT rights organisations were identified.

Discussions with regard to civil partnerships for addressing the needs of same sex couples as well as different sex couples, an activity initiated by accept-LGBT Cyprus and supported by the Office of the Commissioner of Administration, are underway.

On a municipality and government agency level, support and respect is unofficial rather than based on protocols or directives. Therefore, support and interaction has been inconsistent, and has ranged from very supportive to non-responsive or even discouraging.

Promotion of accept-LGBT Cyprus' activities has taken place indirectly in most cases, for example, through supporting gestures towards events as opposed to

participation in events,<sup>88</sup> where state actors may include their logo on accept-LGBT Cyprus events as a notion of implicit support and backing.

*iii. Are LGBT human rights organisations able to work with*

- *national human rights institutions and ombudsmen,*
- *the media,*
- *other human rights organisations?*

Yes.

accept-LGBT Cyprus maintains close collaboration with the Office of the Commissioner of Administration (Ombudswoman, particularly the Anti Discrimination Body). Contact with the Cyprus Radio Television Authority (has also appeared promising. accept-LGBT Cyprus is free to work with other human rights organisations.

As far as the media is concerned, accept-LGBT Cyprus receives invitations to a number of TV panel discussions to discuss issues relating to LGBT people and their rights in general. On occasions, the organisation's representative perceived TV panels to be intentionally hostile with callers or panel members challenging what the organisation identifies as unconditional Human Rights. Nevertheless the organisation believes that most of the time these are guided by the media's own drive to raise controversial issues to increase their own ratings.

In the printed press, articles that both support or oppose LGBT rights occasionally surface, normally guided by the publications themselves and not based on official government lines. accept – LGBT Cyprus also collaborates with some of the country's most widely circulated periodicals, such as Cyprus TimeOut and free City Press portraying the LGBT side of things.

*iv. Are they able to take part in training sessions, international conferences and other human rights activities?*

Yes, both AKOK and accept-LGBT Cyprus, are active on an international level.

However, none of these organisations has yet represented Cyprus in a formal capacity (representing the State, or in collaboration with the State), in formal European or International bodies (e.g. the Fundamental Rights Agency).

Participation so far has included collaboration with other NGOs and the civil society in Europe and Internationally. accept-LGBT Cyprus is a member of the International Lesbian and Gay, Bisexual, Trans and Intersex Association in Europe (ILGA-Europe) and the International Lesbian, Gay, Bisexual, Transgender, Queer Youth and Student Organisation (IGLYO). It collaborates unobstructed with both organisations and attends European conferences and training sessions. Apart from these two organisations, accept – LGBT Cyprus collaborates, both nationally and

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<sup>88</sup>International Day Against Homophobia (IDAHO) 2012 events in Cyprus, organised by accept LGBT Cyprus were supported by state actors such as: The European Parliament office in Cyprus, Office of the Ombudswoman, Municipality of Nicosia, Cyprus University of technology (Department of multimedia and Graphic Arts), Mayor of Limassol Mr Andreas Christou, Paphos Municipality, European Commission Representation in Cyprus, University of Nicosia, Cyprus Radio and Television Authority, Cyprus Police.

internationally with other partners on joint projects, without being officially scrutinised by the government.

The Cyprus Gay Liberation Movement (AKOK), even though not registered remains active internationally and its representative, Mr Modinos, frequently and freely attends and participates in Human Rights events at home and internationally.

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

- i. Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

No.

As noted above, accept-LGBT Cyprus' involvement in consultation processes has been very limited, and only upon the initiative of other NGOs, not official government bodies. accept-LGBT Cyprus does not consider that the State sufficiently acknowledges the need to consult with the LGBT community regarding measures affecting the rights of LGBT persons.

- ii. Have there been such consultations regarding the implementation of this Recommendation?*

Partially.

In the course of this project (evaluation of the Implementation of CM/Rec(2010)5), meetings were held to discuss the situation and obtain information regarding the steps toward its implementation, upon request by the research team. However, State actors did not themselves initiate consultations at any level, with the exception of the Office of the Commissioner of Administration.

For the process of this project, the research team conducted meetings Ministries and bodies to collect data and clarify information for this project. In some cases the meetings/correspondences have resulted in suggested changes to policy (for example, see Section [I.B.6ii](#)), but there was no evidence of intention or direct agenda to do so prior.

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

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

- i. *Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*
- *activities that support the human rights of LGBT persons*
  - *publication of material*
  - *media coverage*
  - *organisation of/participation in conferences*
  - *dissemination/access to information on safe sexual practices?*

Partially.

The formal response by the Ministry of Interior's Press and Information Office (PIO)<sup>89</sup> is that freedom of expression is ratified by the Constitution of Cyprus, and the Press Law [N.145(I)/1989].<sup>90</sup> Article 19 of the Constitution of the Republic of Cyprus, ratifies freedom of expression for all, except for instances where it is "necessary for the interests of the Republic, or of constitutional order, or public security, public health, or public morals, or for the protection of one's reputation".<sup>91</sup> The Press Law includes measures for safeguarding freedom of expression (article 7), except for cases that concern the security of the Republic, public order, constitutional order, public security, or the protection of a third party's reputation or rights.<sup>92</sup>

There have been no examples of instances where the authorities have intervened to restore the right to receive and transmit information or ideas pertaining to sexual orientation or gender identity, in cases where certain bodies or authorities refused to do so (see next section).

Representatives of the Law Office, staff at the Office of the Commissioner of Administration, and political figures from various political parties have contributed to accept-LGBT Cyprus' organised events for International Day Against Homophobia, debates on civil partnership reform and exhibitions, by being present and speaking out publicly in support of the rights of LGBT persons. In Cyprus, the debate has particularly focused on civil partnerships,<sup>93</sup> and while it has been heated and has generated a great deal of negative commentary, it has also brought out some political, social and celebrity support.

Overall, authorities have never taken initiatives to run activities or organise conferences geared towards promoting and supporting LGBT Rights. The Office of the Commissioner of Administration (Ombudswoman), have not, as of yet, initiated, or organised events or conferences specifically on LGBT issues, but are almost invariably present in such events or activities, and express strong support for LGBT rights. The Commissioner's Office has consistently supported the rights of LGBT persons with regard to complaints lodged against several violations, including hate

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<sup>89</sup>SupraNote54, 23 March 2012.

<sup>90</sup>Press Law, N. 145 of 1989, as published in the Official Gazette of the Republic N. 2433[[]] on the 11<sup>th</sup> August 1989.

<sup>91</sup>Supra Note 55, article 19; translation by the authors.

<sup>92</sup>Ibid, article 7(1).

<sup>93</sup>M. Kapsou (2011). Study 1: Mapping the Sociopolitical Climate. In M. Kapsou, A. Christophi and M. Epaminonda (2011), *A report on Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experience and Needs*. Nicosia, Cyprus: The Cyprus Family Planning Association.

speech by an elected Member of Parliament, the right to civil partnerships and the protection of the rights of LGBT asylum seekers in Cyprus.

During accept-LGBT Cyprus' organised events for the promotion of LGBT rights, public support has varied, while the local authorities have been supportive for the most part (see Section [II.9.ii](#)). As indicated by previous research, media coverage of LGBT issues prior to 2009 – when accept-LGBT Cyprus started becoming active – was infrequent, and mostly not framed or discussed as relevant to the local or national context.<sup>94</sup> Recently, media coverage has been increasing, and members of accept-LGBT Cyprus are being more frequently invited to contribute and take part in informational programs, discussions, debates and interviews on national television. In most cases, production teams have approached the organisation in the interest of ensuring representation from the LGBT community when discussing sexuality or relationship issues.

Press coverage of accept-LGBT Cyprus' events has varied. The 1st Mediterranean Conference “Solidarity and Networking” in December 2010, which focused on LGBT issues received little to no media coverage, while International Day Against Homophobia 2010, which coincided with parliamentary elections week and was attended by several candidate Members of Parliament, was covered by most TV channels and most tabloids.

It appears that the mandate for providing supportive and accurate information with regard to safer sexual practices has been taken up primarily by NGOs, particularly the Cyprus Family Planning. There is no evidence that other targeted dissemination of safer sex information to the LGBT community takes place.

More recently, a training session was independently organised by the Pool of Trainers of the Youth Council of Cyprus and the Cyprus Family Planning Association, targeted towards teachers, aiming to sensitise and develop skills for identifying and handling instances of homophobia in education. The Ministry of Education and Culture placed this event under its auspices, and issued circulars to encourage teacher participation. The event was very successful and oversubscribed (over 70 Participants from the field of education).<sup>95</sup> The Ministry of Education and Culture) has also included, in its curriculum reform, indices for health education which allows pupils to explore sexual identity and the self as well as challenging issues of bullying which could include sexual orientation.

- ii. Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

Partially.

Since accept-LGBT Cyprus was originally formed in October 2009, there have been no formal restrictions placed on freedom of expression, and no refusal of the freedom to conduct and LGBT rights activities, publications, or conferences. However, there have been incidents where media outlets, both public and private, refused, or were reluctant, to transmit information relating specifically to sexual

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<sup>94</sup>Ibid.

<sup>95</sup>*Shield against Homophobia in Education*. Training organised by the Pool of Trainers of the Youth Board Cyprus together with Cyprus Family Planning Association (CFPA), funded by the “Youth in Action” programme from the European Committee, and conducted under the auspices of the Ministry of Education and Culture, May 2012.

orientation. No mechanism appears to be in place by the authorities to ensure that freedom to transmit information and ideas relating to sexual orientation is protected and not censored arbitrarily.

One such incident took place in June 2010, in the context of a wider anti-discrimination campaign launched by the Anti Discrimination Body (Authority against Racism and Discrimination of the Office of the Commissioner of Administration). Public service announcement (PSA) radio spots were produced in the context of a wider anti-discrimination campaign launched by the Anti Discrimination Body in Cyprus (targeting discrimination based on grounds such as age, ethnicity, and sexual orientation). The public radio and television network's authorities, the Cyprus Broadcasting Corporation (CyBC) deemed PSA spots addressing other forms of discrimination, such as age or ethnicity, as acceptable, but refused to air the radio spot aiming to raise awareness regarding discrimination based on sexual orientation specifically (the spot featured a woman talking about her same sex relationship). The CyBC representative claimed that this specific spot was "too advanced" for Cypriot society. Later in the same year, the CyBC refused to air promotion spots for a theatrical play by the National Theatre Association of Cyprus (ΘOK), because the play included a same sex couple in its storyline. While not officially documented or noted as protocol, the CyBC appears to be adhering to a latent policy whereby transmission, expression and/or news reporting on events, issues or incidents relating to LGBT are being suppressed.

More recently, in 2012, the Cyprus Community Media Centre (CCMC), in collaboration with the NGO-Support Centre and accept-LGBT Cyprus, produced a series of nine spots<sup>96</sup> in the context of International Day Against Homophobia, promoting acceptance of LGBT people. The spots were sponsored by the Representation of the European Commission in Cyprus, who featured the spots on

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<sup>96</sup>IDAHOBIT Countdown Day 9: meet Doğukan and Yiorgos  
<[www.cypruscommunitymedia.org/index.php?option=com\\_content&view=article&id=378%3Aidahobit-countdown-day-9-meet-doukan-and-yiorgos&catid=44%3Alatest-news&Itemid=1&lang=en](http://www.cypruscommunitymedia.org/index.php?option=com_content&view=article&id=378%3Aidahobit-countdown-day-9-meet-doukan-and-yiorgos&catid=44%3Alatest-news&Itemid=1&lang=en)> [accessed 2 October 2012].  
IDAHOBIT Countdown Day 8: meet Magda  
<[www.cypruscommunitymedia.org/index.php?option=com\\_content&view=article&id=377%3Aidahobit-countdown-day-8-meet-magda&catid=44%3Alatest-news&Itemid=76&lang=en](http://www.cypruscommunitymedia.org/index.php?option=com_content&view=article&id=377%3Aidahobit-countdown-day-8-meet-magda&catid=44%3Alatest-news&Itemid=76&lang=en)> ; [accessed 2 October 2012].  
IDAHOBIT Countdown Day 7:  
meet Phaedon <[www.cypruscommunitymedia.org/index.php?option=com\\_content&view=article&id=376%3Aidahobit-countdown-day-7-meet-phaedon&catid=44%3Alatest-news&Itemid=76&lang=en](http://www.cypruscommunitymedia.org/index.php?option=com_content&view=article&id=376%3Aidahobit-countdown-day-7-meet-phaedon&catid=44%3Alatest-news&Itemid=76&lang=en)> ; [accessed 2 October 2012].  
2012 IDAHOBIT Countdown Day 6: meet Nadia and Michalis  
<[www.cypruscommunitymedia.org/index.php?option=com\\_content&view=article&id=375%3Aidahobit-countdown-day-6-meet-nadia-and-michalis&catid=44%3Alatest-news&Itemid=76&lang=en](http://www.cypruscommunitymedia.org/index.php?option=com_content&view=article&id=375%3Aidahobit-countdown-day-6-meet-nadia-and-michalis&catid=44%3Alatest-news&Itemid=76&lang=en)> ; [accessed 2 October 2012].  
IDAHOBIT Countdown Day 5:  
meet Ziliha and Öncel <[www.cypruscommunitymedia.org/index.php?option=com\\_content&view=article&id=374%3Aidahobit-countdown-day-5-meet-ziliha-and-oencel&catid=44%3Alatest-news&Itemid=76&lang=en](http://www.cypruscommunitymedia.org/index.php?option=com_content&view=article&id=374%3Aidahobit-countdown-day-5-meet-ziliha-and-oencel&catid=44%3Alatest-news&Itemid=76&lang=en)> ; [accessed 2 October 2012].  
IDAHOBIT Countdown Day 4:  
meet Ellada <[www.cypruscommunitymedia.org/index.php?option=com\\_content&view=article&id=373%3Aidahobit-countdown-day-4-meet-ellada&catid=44%3Alatest-news&Itemid=76&lang=en](http://www.cypruscommunitymedia.org/index.php?option=com_content&view=article&id=373%3Aidahobit-countdown-day-4-meet-ellada&catid=44%3Alatest-news&Itemid=76&lang=en)> ; [accessed 2 October 2012].  
IDAHOBIT Countdown Day 3: meet Al  
<[www.cypruscommunitymedia.org/index.php?option=com\\_content&view=article&id=372%3Aidahobit-countdown-day-3-meet-al&catid=44%3Alatest-news&Itemid=76&lang=en](http://www.cypruscommunitymedia.org/index.php?option=com_content&view=article&id=372%3Aidahobit-countdown-day-3-meet-al&catid=44%3Alatest-news&Itemid=76&lang=en)> ; [accessed 2 October 2012].  
IDAHOBIT video countdown - day 2 of 9 - meet Oya, Gürgeç, Düşlem, Edim  
<[www.cypruscommunitymedia.org/index.php?option=com\\_content&view=article&id=371%3Aidahobit-video-countdown-day-2-of-9&catid=44%3Alatest-news&Itemid=76&lang=en](http://www.cypruscommunitymedia.org/index.php?option=com_content&view=article&id=371%3Aidahobit-video-countdown-day-2-of-9&catid=44%3Alatest-news&Itemid=76&lang=en)> ; [accessed 2 October 2012].  
IDAHOBIT Video Countdown begins - 1 of 9: Christos  
<[www.cypruscommunitymedia.org/index.php?option=com\\_content&view=article&id=370%3Aidahobit-video-countdown-begins-1-of-9-christos&catid=44%3Alatest-news&Itemid=76&lang=en](http://www.cypruscommunitymedia.org/index.php?option=com_content&view=article&id=370%3Aidahobit-video-countdown-begins-1-of-9-christos&catid=44%3Alatest-news&Itemid=76&lang=en)> [accessed 2 October 2012]

their YouTube account,<sup>97</sup> and the viral campaign was well received. Both accept-LGBT Cyprus, and the CCMC, also approached mainstream media outlets (television stations broadcasting in the Republic of Cyprus), requesting them to air the spots during the free airtime usually allocated for NGOs and other public service purposes. For all TV stations contacted, either no final response was provided (the stations' contact persons responded that they would 'look into it' and never got back), or was negative, usually citing that they were unable to find a convenient time.

According to accept-LGBT Cyprus' representative and spokesperson Mr. Yoryis Regginos,<sup>98</sup> these responses were taken as excuses not to air the spots because of their content. During the same time, on 15 May 2012, accept-LGBT Cyprus received an invitation from the production team of a private TV channel (MEGA), which is largely administered by the Greek Orthodox Church of Cyprus, to participate in a morning program on 17 May 2012, on the occasion of International Day Against Homophobia. After a coordination meeting, the production team contacted accept-LGBT Cyprus' representative the next day, informing them that their participation was cancelled, because the topic was considered to be too 'unusual', 'weird', and 'provocative'.<sup>99</sup>

*iii. Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

No.

Authorities have not demonstrated any overt encouragement on pluralism and non-discrimination with respect to sexual orientation and gender identity in the media.

The Ministry of Interior's Press and Information Office (PIO) mentions that it does not disseminate any announcements.<sup>100</sup> However, regarding television and radio, the body in charge (CRTA) following consultation with our research team and accept-LGBT Cyprus has issued a Press Release<sup>101</sup> announcing its proposal for legal measures to ensure respect for and safeguard LGBT rights (see Section on [Hate Speech I.B](#)).

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

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<sup>97</sup> <[www.youtube.com/playlist?list=PL5E0315DE3D990A0B](http://www.youtube.com/playlist?list=PL5E0315DE3D990A0B). >

[accessed 2 October 2012]

<sup>98</sup> Information obtained by the author (MK), provided by Mr. Yoryis Regginos, in personal oral communication, 20 September 2012 [notes in file with the author].

<sup>99</sup> Ibid.

<sup>100</sup> SupraNote54, 23 March 2012.

<sup>101</sup> CyprusRadioTelevisionAuthority, PressRelease, *Subject: Legal Provisions Proposed by the Cyprus Radio Television Authority for the Respect and Legal Safeguarding of Homosexual, Bi-sexual and Transgender Persons*. 24 May 2012.

- i. *Have the authorities ensured freedom of peaceful assembly for LGBT people?*

No sufficient information.

Although large public cultural or Pride events have not yet been organised in Cyprus, smaller scale events have received support on a community and municipality level, and were peaceful. There has been no need to call on the law enforcement authorities up to date in any of accept-LGBT Cyprus' events. As previously noted we anticipate the first official request to be in May 2013 for the first Cyprus LGBT Pride. Based on prior experience and work with the police authorities, a positive response is anticipated.

On a community level, members of other NGOs, such as AKOK (Gay Liberation Movement of Cyprus), accept-LGBT Cyprus, the Cyprus Family Planning Association, the Association for the Prevention and Handling of Violence in the Family, and civil society at large, have support, attended and participated in LGBT events. accept – LGBT Cyprus has also received some support and assistance from local administration authorities (see Section [II.9.iii](#)), after they were contacted by accept – LGBT Cyprus. Since no large-scale national events have been organised yet, accept – LGBT Cyprus has not yet requested public endorsement or specific protection.

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

- i. *If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

Not applicable. No major LGBT events have taken place, hence no evidence of hostility in such events.

The largest events organised by accept-LGBT Cyprus were beach parties, hosting up to 200-300 people. No hostility or disruptions were noted at these events. However, there is research, documenting some evidence of homophobic hostility taking place near LGBT gathering places (parks and gay clubs).

- ii. *In particular, have the police protected participants in peaceful LGBT demonstrations effectively?*

Not applicable. (See above).

- iii. *Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?*

Not applicable.

As stated above, accept-LGBT Cyprus, has not yet called upon law enforcement authorities for protection.

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

- i. Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?*

No/Not applicable.

Since accept-LGBT Cyprus was formed in October 2009, there have not been any official restrictions placed on freedom of assembly due to LGBT reasons. However, to date, accept-LGBT Cyprus has not made a formal request for such an activity. AKOK (Gay Liberation Movement of Cyprus) has not organised any large public assemblies.

- ii. Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*

No/Not applicable.

accept – LGBT Cyprus made no official requests for demonstrations to date. The organisation discussed the possibility of a Cyprus Gay Pride event with Mayors who expressed support for this prospect, and made no mention of any restrictions.

- iii. If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

N/A.

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

- i. If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*
- a. Has there been encouragement to public authorities to condemn such interferences?

Not applicable/no information available.

b. Have public authorities actually condemned such interferences?

ii. *Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?*

Not applicable.

Since accept-LGBT Cyprus originally formed, in October 2009, no public hostility has been recorded in any LGBT-related assemblies where. Since no such occurrences were noted, there has been no opportunity for authorities to express their views for expressed hostility during such events. Again, it should be noted that it is difficult to derive any conclusions about the authorities' stance should any such hostilities be expressed, since no large scale LGBT events have been yet held in Cyprus.

iii. *Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?*

Not applicable (as above).

#### **IV. Right to respect for private and family life**

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

i. *Does legislation criminalise same sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*

No, current legislation does not criminalise same sex sexual acts for individuals above the legal age of consent.

The situation regarding age of consent is rather complex, and although apparently equal, relevant legislation may be perceived to contain subtle inequalities in age of consent. Age of consent is set at 17 years of age for other sex couples and for same sex relations among men (no mention is made about same sex relations among women). However, the legal age for consent to marry, which is only possible for

other sex couples,<sup>102</sup> is set at 16 years,<sup>103</sup> creating a paradox whereby, heterosexual relationships can be considered legal at 16 through the option of marriage, whereas this is not possible for same sex relationships.<sup>104</sup> No age of consent is specified for same sex relations between women.

There are no steps or plans to repeal or amend these Laws.<sup>105</sup>

- ii. *Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding*
  - (a) *sexual orientation or*
  - (b) *gender identity?*

Partially.

Following the criminal law amendments after the *Modinos v Cyprus* case,<sup>106</sup> criminal provisions whose wording or scope was liable to be applied in a discriminatory manner regarding sexual orientation by criminalising sexual acts between men were removed. The current Penal Code (article 171),<sup>107</sup> as amended following *Modinos v Cyprus*,<sup>108</sup> states that intercourse or attempted intercourse among men is a misdemeanour if either person is under the age of 17, and the offender can be imprisoned for up to three years.

However, several provisions in the current Penal Code are either gender specific in their definition, or can be construed as discriminating the severity of the act and/or the penalties incurred, based on the implicated person's gender, or sexual orientation. Specifically, as mentioned, no specific law provision exists for age of consent for sex between women. Article 153 defines intercourse or attempted intercourse with a woman under 13 as a crime, incurring life imprisonment or 14 years imprisonment respectively, while article 154 defines intercourse or attempted intercourse with a woman between 13 and 16 years of age as a felony, incurring imprisonment of up to 3 years. This article clarifies an exception for cases where the intercourse or attempted intercourse with a woman under 16, "in case where, at the time of committing the act, the young woman is married to the man who has or attempts to have intercourse with her". There is no clear provision for intercourse or attempted intercourse toward a minor, either male or female, where the perpetrator is a woman. This discrepancy may be construed as leading to lack of protection for female minors, in the case of sexual intercourse with an adult female, as opposed to intercourse or attempted intercourse with an adult man. It could also imply a discrepancy where male minors are only protected in case of intercourse or attempted intercourse with an adult man, and not with a woman.

Moreover, according to the Cyprus Penal Code, article 144, rape is only defined as non-consensual intercourse toward a woman.<sup>109</sup> Regarding acts of non-consensual

<sup>102</sup> *Marriage Law*, N. 104(I) of 2003, as published in the Official Gazette of the Republic N. 3742 of the 25<sup>th</sup> July 2003, as amended, inter alia, by Law N. 66(I) of 2009, Part II, article 3, para. (1).

<sup>103</sup> *Ibid*, article 15, para. (1),

<sup>104</sup> *The Penal Code Law* (Chapter 154), 1962 to 2012, articles 153, 154, 171.

<sup>105</sup> A thorough review of the recent legal situation in European Union Agency for Fundamental Rights (2008). *Thematic Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation, Cyprus*.

<sup>106</sup> ECtHR *Modinos v. Cyprus*, app. no. 15070/89, Series A no 259, judgment of 22 April 1993.

<sup>107</sup> *The Penal Code Law* (Chapter 154).1962 to 2012, article 171.

<sup>108</sup> *Ibid*, amendment N.40(I)/1998, and amendment N.145(I)/2002.

<sup>109</sup> *Ibid*, article 144. The precise wording states that "Anyone who has illegal intercourse with a woman, with the victim's consent, or with her consent if provided under a state of violence or fear of physical harm, or for a married woman, by criminal impersonation of her husband, is guilty of a crime called rape". The use of the male

intercourse, article 159 of the Penal Code on “promoting corruption” defines as a felony any attempt to promote a woman to have illegal intercourse with a man, or a man to have illegal intercourse with another man, through threatening or taunting,<sup>110</sup> or through false pretences,<sup>111</sup> or through substances or other means of benumbing.<sup>112</sup> A similar gender difference is found in the article for incest (article 147), where only a woman can be defined as a victim of incest.<sup>113</sup> No corresponding provisions exist for such attempts or acts by women toward men or toward other women, resulting in another asymmetry based on stakeholder’s gender for unwarranted sexual acts.

There is no mention of gender identity in the Cyprus Penal Code.

*iii. If so, what steps are the authorities taking to remedy this situation?*

None.

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

*i. What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?*

Partly.

The Ministry of Justice and Public Order provided no response, as it considers that, other than question 18, other questions do not fall within its own competence.<sup>114</sup>

Some information regarding procedures in handling personal data referring to a person’s sexual orientation or gender identity was provided by the Police Department.<sup>115</sup> The Personal Data Law provides the framework for records held by

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form for “Anyone” in reference to the perpetrator, could imply that rape, as defined in the Penal Code, can only be perpetrated by a man toward a woman.

<sup>110</sup> Ibid, article 159, para (a).

<sup>111</sup> Ibid, article 159, para (b).

<sup>112</sup> Ibid, article 159, para (c) and (d).

<sup>113</sup> Ibid, article 147.

<sup>114</sup> Information obtained by the author (MK), provided by the Ministry of Justice and Public Order (Alexia Frangou), in personal communication, 4 April 2012, [correspondence in file with the author]. In a response to our queries, the Ministry of Justice and Public Order stated that “most of the questions you have sent us concern the Ministry of Labour, the Ministry of Interior, the Ministry of Health, and the Commissioner of Administration” (para. 2). The same questions were also forwarded to the suggested Ministries, where no response was received, except for the Office of the Commissioner of Administration, (personal communication, 27 April 2012). Moreover, the issue was raised by the researchers (MK and SM) during a meeting held with the Minister of Interior (9 June 2012), where the Minister herself went through the questions, and clarified that they do not fall within the competence of the Ministry of Interior, but rather appear to concern the Ministry of Justice and Public Order.

<sup>115</sup> Information obtained by the author (MK), provided by the Police Department, in personal communication, 14 June 2012, [correspondence in file with the author].

law enforcement authorities.<sup>116</sup> The definition of “sensitive data” for the purposes of this Law, includes data pertaining to an individual’s “erotic life” and “erotic orientation”, but does not mention gender identity or gender history.<sup>117</sup>

According to information provided by the Police Department, police records do not contain fields for recording sexual orientation, except for records of racist incidents, provided that “the basis for discrimination (colour, sexual orientation, etc.), comprises a substantial element of the offense as its motive”.<sup>118</sup> In those cases, the field refers to the incident rather than to the individual.

The Police Department also stated that personal data are only kept for the period required for the realisation of their collection and handling, and/or in line with the discretion of the competent Commissioner (Commissioner for the Protection of Personal Data), who can allow such records to be maintained in exceptional circumstances. Such data is destroyed by the person in charge of their handling, and following the Commissioner’s guidelines, in case it is determined that that these data should cease to be collected and handled.<sup>119</sup>

*ii. What steps have the authorities taken to ensure that existing records are destroyed?*

Partly.

The Ministry of Justice and Public Order provided no response.

Compliance with the Personal Data Law is overseen by the Commissioner for the Protection of Personal Data. A complaints procedure is in place through the Office of the Commissioner, who has the authority and competence to issue directives and recommendations, aid professional unions in their development of Codes of Ethics, report violations, and launch investigations following complaints or on their own initiative.<sup>120</sup>

*iii. Have these steps been effective?*

*Is there any evidence of:*

- *the continued existence of such records*
- *the continuing collection of such data?*

No information is available.

We are not aware of any media reports, or personal experiences pertaining to this issue.

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

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<sup>116</sup> *Handling of Personal Data (Protection of the Individual)*, 2001 to 2012.

<sup>117</sup> *Ibid*, article 2(a) of N. 105(l)/2012.

<sup>118</sup> *Supra* Note 2, 14 June 2012.

<sup>119</sup> *Ibid*.

<sup>120</sup> *Personal Data Law* of 2001 to 2012 article 23.

i. *Has a review of such prior requirements been conducted?*

No.

No information was provided by the Ministry of Justice and Public Order.

ii. *Are there still requirements which might be considered disproportionate or even abusive,* <sup>121</sup>

*such as:*

- *irreversible sterilisation,*
- *hormonal treatment,*
- *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

Yes.

The Ministry of Justice and Public Order provided no response with regards to this matter, but according to data available from reviews and European reports, some disproportionate requirements for gender reassignment appear to remain in Cyprus. Specifically, legislation on the legal recognition of the preferred gender maintains the following provisions:

In the Council of Europe's report on Discrimination on the Basis of Sexual Orientation and Gender Identity in Europe in 2011, as well as ILGA-Europe's 2011 Annual Review, Cyprus is listed among the countries where surgery leading to sterilisation is required before legal recognition of the new gender. The Council of Europe stresses that this requirement would also apply in the absence of a medical necessity or the applicant's wish for such surgery.<sup>122</sup> According to the same report, information regarding the divorce requirement in Cyprus appears unclear.<sup>123</sup> ILGA-Europe's Annual Review for 2011 also states that, in addition to the requirement for compulsory divorce (or single status), requirements for Gender Identity Disorder diagnosis or medical/psychological opinion needed also remains unclear.<sup>124</sup>

These provisions seem to be maintained, despite Parliamentary Assembly Resolution 1728 (2010), which calls upon member states to ensure that "official documents reflect an individual's preferred gender identity, without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy".<sup>125</sup>

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<sup>121</sup> The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, which affirms that "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

<sup>122</sup> *Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, 2<sup>nd</sup> Edition, Council of Europe publishing(2011), p. 86.

<sup>123</sup> *Ibid*, p. 88.

<sup>124</sup> ILGA-Europe Annual Review (2011), p. 57.

<sup>125</sup> Council of Europe, Parliamentary Assembly resolution 1728 (2010) on *Discrimination on the Basis of Sexual Orientation and Gender Identity*, adopted 29 April 2010, para. 16.11.2.

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

*i. Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*

Yes.

According to ILGA-Europe's 2011 Annual Review, in Cyprus, legal/administrative procedures do exist for changing of name and legal gender, for changing one's name to match their gender identity, and for changing one's gender on official documents to match the gender identity.<sup>126</sup> These procedures are regulated under the Registration of Residents Law [N. 141(I)/2002].<sup>127</sup> However, at least one case came to the attention of the Commissioner of Administration, where a transgender individual complained about the lack of cooperation of the authorities for this procedure. The complaint was filed by a Greek citizen living in Cyprus who underwent an operation resulting in gender reassignment, concerning refusal of the Cyprus Immigration authorities to re-register the complainant with her new "female" name and issue her a new identity.<sup>128</sup>

No response was provided by the Ministry of Justice and Public Order to this question, therefore no additional information is available.

*ii. Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

Partially.

The Registration of Residents Law [N. 141(I)/2002] provides procedures for the change of name and gender in official documents. According to the procedure for corrections, original entries are not deleted from any records.<sup>129</sup> No information was identified regarding the precise requirements for such procedures. No response was provided by the Ministry of Justice and Public Order to this question, therefore no additional information is available.

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<sup>126</sup>ILGA-Europe Annual Review (2011), p. 57.

<sup>127</sup>Law abolishing Laws regulating issues regarding the registration of births and deaths, the registration of residents, the registration of voters and the compilations of the voter's catalogue, and the registration of citizens of the Republic, and simultaneously introducing special provisions for the issuing of passports/travel documents and refugee identities for refugees. N. 141(I) of 2002, as published in the Official Gazette of the Republic N. 3626[I] on the 26th July 2002, Chapter 2, Part IV, article 43.

<sup>128</sup> Replies to ILGA-Europe's questionnaire on the coverage of Gender Identity and Gender Expression by National Legislation and National Equality Bodies, June 2012. available at:

[www.tgeu.org/EU\\_NEB\\_survey\\_2011#Questionnaires](http://www.tgeu.org/EU_NEB_survey_2011#Questionnaires) [accessed 2 October 2012].

<sup>129</sup>Registration of Residents Law of 2002.

iii. *Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*

- *diplomas,*
- *certificates of employment, and*
- *insurance or banking documents?*

No sufficient information.

The Ministry of Justice and Public Order provided no response to this question. Relevant legislation identified only refers to official state documents.<sup>130</sup>

iv. *If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

Not applicable.

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

i. *Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

Yes.

According to ILGA-Europe's 2011 Annual Review, in Cyprus transgender people can legally marry a person of the other gender.<sup>131</sup> The Ministry of Justice and Public Order provided no response, and hence no additional information is available for this question.

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

i. *Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same sex couples?*

Rights and obligations on (different sex) unmarried couples are partially conferred informally.

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<sup>130</sup> Ibid.

<sup>131</sup> ILGA-Europe Annual Review, (2011), p. 57.

No steps have been taken to ensure that these rights also apply to same sex couples.

In Cyprus, unmarried couples have no formal legal rights. There is no formal policy for regulating the rights of unmarried couples (different sex or same sex), such as civil partnership or common-law-marriage. In practice however, some rights and concessions equivalent to those granted to different sex married couples, are also granted to different sex couples engaged to marry, upon presentation of proof of engagement (publication of their engagement in a newspaper). For instance, through presentation of this proof of engagement status, different sex couples not yet married, have access to benefits such as housing stipends or loans (see Section [VIII.Housing](#)). Such rights do not effectively apply to same sex couples. This discrepancy has not received any scrutiny, and has not been addressed as differential treatment of different and same sex couples of the same status. This occurs even though, as stated by the Fundamental Rights Agency in 2010,<sup>132</sup> previous case law of the ECtHR makes it clear that same sex partners must be treated on an equal footing with respect to different sex partners of the same status.

No response was provided by the Ministry of Justice and Public Order to this question, hence no additional information is available.

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

- i. Does legislation recognise registered same sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

No.

Currently there is no provision for any form of same sex partnerships, despite repeated reports and direct urges by the National Human Rights Institution (Commissioner of Administration).<sup>133</sup>

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

- i. If same sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing*

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<sup>132</sup> European Union Agency for Fundamental Rights. *Homophobia, Transphobia and Discrimination on grounds of Sexual Orientation and Gender Identity, 2010 Update, Comparative Legal Analysis*. (FRA, 2010).

<sup>133</sup>Supra note 7.

*legal or other means to address the practical problems arising from this lack of recognition?*

No.

Cyprus currently offers no form of legal recognition of same sex partnerships, and consequently no safeguarding of the rights of same sex partners. On some occasions, this legal gap resulted in denial of asylum or residence status to same sex partners of Cypriots. The Commissioner of Administration has examined several complaints of discrimination based on sexual orientation and has repeatedly pointed out the need for legal recognition of same sex relationships by the State. Although in 2009 the Commissioner of Administration reported that the Director General of the Ministry Interior assured that the recommendations would be taken into account,<sup>134</sup> additional complaints whereby residency was denied to the same sex partners of Cypriot citizens because the partnership is not recognised by the State followed. In March 2010, the Authority against Racism and Discrimination published a report on the legal rights of same sex couples in relationships. The report specifically states that “the legal recognition of same sex partnerships, is, under present circumstances warranted under the principle of equal treatment, since the current legal vacuum creates unavoidable disparities at the expense of those persons, that are not open to any convincing justification”.<sup>135</sup> Despite the direct urges by the Commissioner of Administration, the prospect of legalising same sex partnerships has received little attention. So far, only one political party, the Democratic Rally, issued an official opinion on the subject (in 2010), which expressed opposition to same sex marriage, but also some willingness to consider alternatives.<sup>136</sup> Despite occasional public debates, the matter has not yet seriously been debated among decision makers, nor are any specific legal propositions currently being discussed.

The Ministry of Justice and Public Order provided no response.

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

- i. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*

No sufficient information.

No information was provided by the Ministry of Justice and Public Order, and no relevant references were identified in relevant legislation.

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<sup>134</sup>Ref. AKP 40/2009, AKP 76/2009. *Report of the Authority against Racism and Discrimination regarding respecting the principle of equal treatment of same sex couples in relation to registered partnership, in the context of the implementation of EC Directive 2004/38/EC regarding the rights of citizens of the European Union and their families to free movement and residence in member state territory.* 31 July 2009.

<sup>135</sup>Supra note 7, para. 31; translation by the authors.

<sup>136</sup>Democratic Rally’s Statement “On the issue of homosexuality”, issued on 07 June 2010, available at: <[www.disy.org.cy/default.asp?id=549](http://www.disy.org.cy/default.asp?id=549)> [accessed 2 October 2012].

ii. *In practice, are such decisions taken on a non-discriminatory basis?*

No sufficient information.

No information was provided by the Ministry of Justice and Public Order, and no information is available from external sources or through our own empirical data.

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

i. *What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*

None.

The Law regulating adoptions [N. 19(1)/1995], states that adoption by single persons in Cyprus is only permitted in “extraordinary circumstances”,<sup>137</sup> and only through court decisions. In practice, adoption in Cyprus is usually available only for married different sex couples. No plans appear to be under consideration for safeguarding adoption rights, for single persons, and for ensuring that this is done without discrimination based on (a) sexual orientation or (b) gender identity.

It should be noted that attitudes toward same sex parent adoption in Cyprus are among the most unfavourable in Europe, as, according to the Council of Europe’s 2011 report, only 10% surveyed agree that “Adoption of children should be authorised for homosexual couples throughout Europe”.<sup>138</sup>

No relevant information was provided by the Ministry of Justice and Public Order, hence no further information is available.

ii. *In practice, are such decisions taken on a non-discriminatory basis?*

No sufficient information. No information was provided by the Ministry of Justice and Public Order, and no information is available from external sources or through our own documentation.

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<sup>137</sup> *Adoption Law*, No.19(I) of 1995, article 7(1). According to this article “An adoption decree may be issued at the request of a single, unmarried, if the court is content that there are special reasons”; translation by the authors.

<sup>138</sup> *Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, 2<sup>nd</sup> Edition, Council of Europe publishing(2011), p.100.

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

- i. *What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*

None.

At the time of writing this report, there is still no legislation to regulate Medically Assisted Reproduction. A draft bill was submitted to the House of Representatives in 2005, and again in 2012, and was discussed in a meeting of the Interparliamentary Health Committee on 24 May 2012. The ongoing legal vacuum for this issue in Cyprus has received scrutiny from sources such as the Commissioner for the Protection of the Rights of the Child,<sup>139</sup> and some politicians.<sup>140</sup>

The draft bill, as submitted, would not permit assisted reproductive treatment for single persons, but only for married (different sex) couples. There is actually evidence of homophobic motivation behind the lack of a policy of enabling legislation to permit the use of reproductive technology by single persons. An experts committee (the National Bioethics Committee of Cyprus, NBCC)<sup>141</sup> who compiled a report with recommendation on Medically Assisted Reproduction in 2007, explicitly stated that they do not recommend access to reproductive technologies for homosexual persons, and neither to single persons because this would allow 'homosexual' persons to 'take advantage' of this possibility, posing as single; the NBCC calls this possibility an "abusive use of biotechnology".

Specifically, the NBCC report stated:

"However, legal acceptance of the use of MAR (medically assisted reproduction) by single individuals (men or women) could be exploited by homosexual persons, who would pose as single individuals. In this case, it will not be possible, through legislation, to control and protect the child from the possibility or/and the increased danger of becoming a victim of the abusive use of biotechnology. In other words, the child will be a victim of MAR. As a result of the above, it is considered that single individuals should not be allowed to have children through the MAR process."<sup>142</sup>

Even though the above blatantly homophobic worded position was not shared unanimously by the Bioethics Committee at the time, but only a section of the Committee, the Committee's position that MAR should not be accessible to same sex couples was unanimous, and stressed the position that homosexuality is a matter of the 'person's choice'.<sup>143</sup>

It should also be noted that, even though a meeting to discuss the draft bill was held in by the Interparliamentary Health Committee on 24 May 2012, neither the Cyprus

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<sup>139</sup>Ref. 21.01.03. *Opinions and Positions of the Commissioner for the Protection of the Rights of the Child for the draft Law titled "Law on the Application of Medically Assisted Human Reproduction of 2012"* submitted in the meeting of the Interparliamentary Health Committee. 24 May 2012.

<sup>140</sup>Statement of Member of Parliament Stella Kyriakidou (Democratic Rally Party) for the unacceptable delay for the bill of medically assisted reproduction. 15 February 2011, available at: [disyblog.org.cy/index.php/sxoliastemas/4397.html](http://disyblog.org.cy/index.php/sxoliastemas/4397.html)

<sup>141</sup><[www.bioethics.gov.cy](http://www.bioethics.gov.cy)>[accessed 2 October 2012].

<sup>142</sup>Ref. NBCC 21.1.04.03. *Opinion of the National Bioethics Committee of Cyprus (NBCC) in relation to Medically Assisted Human Reproduction (MAHR)*. 5 March 2007, p. 60; translation by the authors.

<sup>143</sup> Ibid, p. 61.

Family Planning Association, as an expert body on issues pertaining to reproductive rights, nor accept-LGBT Cyprus were invited to participate or provide feedback.

The Council of Europe stresses that “States, however, need very weighty reasons for denying assisted reproduction facilities on the ground of the sexual orientation of a single lesbian woman, where such facilities are provided to single heterosexual women”,<sup>144</sup> and points out that “this follows from the Court’s argumentation in *E. B. v. France*, in which it concluded that the refusal of adoption to a single lesbian woman – which would not have applied had she been heterosexual – led to a distinction drawn from her sexual orientation that violated the principle of non-discrimination.”<sup>145</sup>

*ii. In practice, is such access granted on a non-discriminatory basis?*

Not applicable.

## V. Employment

**29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.**

*i. Does legislation<sup>146</sup> exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?*

Partially.

As an EU member state, Cyprus is bound by the Employment Directive 2000/78/EC<sup>147</sup> of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. This was transposed into legislation in 2004. Thus, nationally, discrimination in the workplace is regulated under the Equal

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<sup>144</sup> *Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, 2<sup>nd</sup> Edition, Council of Europe publishing (2011), p. 99

<sup>145</sup> *E.B. v. France*, 22 January 2008, ECtHR application no. 43546/02, paras. 91 and 93.

<sup>146</sup> Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights -- Interpretation of the Different Provisions -- Article 1 -- right to work -- [www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf)). The EU Employment Directive provides the following definition of indirect discrimination: "where an apparently neutral provision, criterion or practice would put persons having a ..... particular sexual orientation at a particular disadvantage compared with other persons .....". [accessed 18 November 2012].

<sup>147</sup> Employment Directive, *supra* note 3.

Treatment in Employment and Occupation Law of 2004 [N. 58(I)/2004].<sup>148</sup> This law covers employment, provision of services, and other employment or apprenticeship relations (which covers training), and protects against discrimination on the basis of sexual orientation, but not on the basis of gender identity. Prior to 2004, there were no protections against discrimination on the basis of sexual orientation.

The Department of Labour also states that:

“First of all the human right to equality before the law and the protection against any form of discrimination constitutes a universal right, which is recognised by the Universal Declaration of Human Rights and other international human rights treaties by which Cyprus is bound. Moreover, article 28 of the Cyprus Constitution provides for the principle of equality.”<sup>149</sup>

The Department of Labour does not, however, clarify which are these binding treaties with express reference to sexual orientation/or gender identity; the Universal Declaration of Human Rights that is mentioned, does not contain such express reference to sexual orientation or gender identity, and is not legally binding. It should also be noted that, as mentioned in a paper by Trimikliniotis & Demetriou critically evaluating the anti-discrimination law in the Republic of Cyprus “age, disability and sexual orientation are not covered by the Constitution”.<sup>150</sup>

Both direct and indirect forms of discrimination and harassment are prohibited under the Employment Law, [N. 58(I)/2004], article 2. “Indirect Discrimination” is defined as any “prima facie neutral provision, criterion, or practice, which may cause disadvantage in treatment for a person. Exceptions to this provision are allowed when “that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”. No other forms of victimisation are mentioned under this Law.

In order to become fully aligned with the 2000/78/EC Directive, as described by Demetriou,<sup>151</sup> article 11 of this Law [N. 58(I)/2004] was amended in 2007 to introduce the following changes:

“(a) the burden of proof is reversed in “all judicial proceedings except criminal ones”; (b) the claimant no longer has to prove facts from which a violation can be inferred, but merely to introduce such facts, upon which the burden of proof is automatically reversed; (c) the accused is no longer absolved from liability if he proves that his violation had no negative impact on the claimant; and (d) the aforesaid right is extended also to trade unions or other organisations with a legal standing who are, with the victim’s permission, either suing the perpetrator in court or submitting a complaint to the equality body.”<sup>152</sup>

The initial inadequacy of the Law in meeting minimum requirements, which had to be later amended, could be either indicative of inadequate deliberation on behalf of the legislator and care in adjusting non-discrimination law, or an inadvertent error. It should therefore be examined alongside other indicators of the extent to which

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<sup>148</sup> *Equal Treatment in Employment and Occupation Law*, N. 58(I) of 2004, as published in the Official Gazette of the Republic N.3828[I] on the 31<sup>st</sup> March 2004.

<sup>149</sup> Information obtained by the author (MK), provided by the Department of Labour (Alexia Hadjikoumi), in personal communication, 24 April 2012, [correspondence in file with the author]; translation by the authors.

<sup>150</sup> N. Trimikliniotis, and C. Demetriou (2008). Evaluating the Anti-Discrimination Law in the Republic Of Cyprus: A Critical Reflection. *The Cyprus Review*, p. 86.

<sup>151</sup> C. Demetriou (2009). *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC COUNTRY REPORT 2009: Cyprus, State of affairs up to 31 December 2009*. Report drafted for the European Network of Legal Experts in the Non-discrimination Field (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by Human European Consultancy and the Migration Policy Group.

<sup>152</sup> *Ibid*, p. 172.

lawmakers, decision makers, and competent bodies show receptivity and sensitivity to averting discrimination on the basis of sexual orientation and gender identity.

Moreover, according to commentators for the Fundamental Rights Agency (FRA)<sup>153</sup> the amendment is still inadequate in aligning national legislation with the Directive, as:

“The amendment to Article 11 also fails to extend the principle of reversal of the burden of proof in order to cover proceedings before the Equality body. Strangely enough, however, the amendment to Article 14 of Law 58(I)/2004 expressly extends the reversal of the burden of proof to organisations engaged in judicial proceedings as well as in proceedings before the Ombudsman, presumably meaning the Ombudsman in her capacity as the Equality body. In effect therefore, the burden of proof is impliedly reversed in the procedure before the specialised body but only if the complainant is an organisation with a legal standing and not where the claimant is the victim himself/herself. Therefore, this amendment did not bring the national legislation entirely in line with Directive 2000/78/EC.”<sup>154</sup>

No legislation exists to prohibit discrimination in employment in the public and private sector on grounds of gender identity. Yet, as an EU member state, Cyprus is also bound by European Council’s Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). In Recital (3) of the Preamble, this Directive states that the principle of equal treatment “also applies to discrimination arising from the gender reassignment of a person”. As explained by commentators Fabeni & Agius,<sup>155</sup> its material scope of application includes, among others:

“access to employment, self-employment and occupation, including promotion; vocational training and retraining; employment, including promotion and dismissal; membership of, and involvement in an organisation of workers or employers, or other professional organisations; working conditions, including pay; occupational social security schemes, including pensions, sickness, invalidity, industrial accidents and professional diseases, and unemployment benefits.”<sup>156</sup>

Not yet transposing this provision of the aforementioned Directive into legislation could be considered to constitute another shortcoming for Cyprus in that it has not yet met one of its obligations as an EU member state. At the same time, on the basis of both prior European case law and the Directive, the courts in Cyprus would essentially be obliged to interpret discrimination based on gender identity (“gender reassignment”) under the legal provisions of discrimination based on sex.<sup>157</sup>

The Department of Labour mentioned no intention to amend current legislation or propose new legislation to address these gaps, as they claim that: “Current progress in the implementation of this legislation by the Department of Labour did not show any data based on which any changes to existing laws or the introduction of new legislation in this area exclusively [referring to sexual orientation/gender identity]

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<sup>153</sup> European Union Agency for Fundamental Rights (2008). *Supra* Note 105.

<sup>154</sup> *Ibid*, p. 7

<sup>155</sup> S. Fabeni, and S. Agius. *Transgender People and the Gender Recast Directive: Implementation Guidelines* (ILGA-Europe, 2009).

<sup>156</sup> *Ibid*, p. 11.

<sup>157</sup> European Union Agency for Fundamental Rights. *Homophobia, Transphobia, and Discrimination on Grounds of Sexual Orientation and Gender Identity in EU Member States: Summary of findings, trends, and promising practices*(2010), p. 21.

would be required".<sup>158</sup> Hence, no amendment proposals or intentions to do so have been identified.

ii. *Does it cover:*

- *access to employment (including recruitment); promotion,*
- *dismissals,*
- *pay,*
- *harassment and other forms of victimisation?*

Yes.

The Employment Law of 2004<sup>159</sup> covers all of the above grounds of discrimination: conditions for access to employment and promotion, dismissals, and pay (article 4).

Harassment and Sexual Harassment are also addressed in the Equal Treatment for Men and Women in Employment and Vocational Training Law [N. 205(I)/2002].<sup>160</sup> The burden of proof is reversed in cases of harassment as well, following a 2009 amendment (article 14). In this Law, sexual harassment is considered a type of sex discrimination (article 12).

In a 2006 review, Waaldijk & Bonini-Baraldi<sup>161</sup> deem provisions regarding harassment and instruction to discriminate as problematic in the Cypriot legislation at the time- because the above activities were not explicitly considered as forms of discrimination (pp.160-162). These also appear to have been rectified with the 2006 and 2009 amendments, 2(a) of 40(I) of 2006, 2(b) of 39(I) of 2009.

iii. *Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:*

- *adoption of codes of conduct for both employers and employees;*

No.

According to information provided by an Officer at the Department of Labour during a meeting with one of the researchers (SM),<sup>162</sup> both of the above are dealt with via 'circulars'. Periodically, circulars are sent by the Central Office of the Department of Labour to all staff in all Department of Labour throughout Cyprus, reminding or highlighting Codes of Conduct, expectations and raising awareness on certain issues, including issues of discrimination, harassment and victimisation. However, according to the information provided, no circulars were sent to address LGBT issues specifically. It was mentioned that a designated person within the Department of Labour is specifically responsible to ensure that circulars are sent out, followed up on, and implemented by the district offices of the Department of Labour along with

<sup>158</sup> Supra Note 149, 24 April 2012; translation by the authors.

<sup>159</sup> Employment Law of 2004, Supra Note 148.

<sup>160</sup> *Equal Treatment for Men and Women in Employment and Vocational Training Law* of 2002.N. 205(I) of 2002) as published in the Official Gazette of the Republic N. 3658[I] on the 6th December 2002, as amended by, inter alia, Law N. 58(I) of 2004.

<sup>161</sup> K. Waaldijk & M. Bonini-Baraldi (2006). 'Implementation of the Directive in the ten new Member States and in the two acceding countries'. in K. Waaldijk & M. Bonini-Baraldi, *Sexual Orientation Discrimination in the European Union: National Laws and the Employment Equality Directive*. (The Hague: T.M.C. Asser Press).

<sup>162</sup> Sylvie Mantis. *Interview with Labour Officer, Department of Labour, Ministry of Justice* (Nicosia, 8 May 2012).

upgrades and relevant new laws. There was no specific mention of any process of monitoring that these circulars are followed and what procedures would be in place in any cases identified where the circulars are not followed.

A code of practice to combat sexual harassment and harassment in the workplace has been issued and disseminated by the Equality Authority of the Commissioner of Administration.

However, no codes of practice have yet been issued for discrimination based on sexual orientation by either the Ministry of Labour or the Commissioner of Administration.

To date, we are not aware of any specific policies adopted by private employers that specifically mention sexual orientation and gender identity, nor recruitment efforts directed at, by or for LGBT persons. Worker's unions or organised employee groupings do not include any specific sectors for LGBT persons.

- *training and awareness raising programmes for both employers and employees;*

The national Report on the implementation of European Directives 76/207/EEC, 2002/73/EC and 2006/54/EC (relating to the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions) by the Republic of Cyprus, mentions having conducted seminars and trainings for its staff and employers, such as trainings for Equality Inspectors, for HR Departments of companies, and participation in a Diversity festival in 2009. No information regarding training that specifically covers sexual orientation (and/or gender identity) was identified. The approach to informing, training, and sensitizing, seems to be predominantly a general one around the issue of "discrimination". This observation is consistent with Demetriou, who notes the following:

"Discrimination on the ground of sexual orientation is one of the topics covered in seminars dealing with discrimination in general, although no particular support is offered to organisations working in this field nor have there been any activities targeting sexual orientation on its own. according to the president of AKOK, the national gay liberation movement, activities related to all grounds of discrimination without specifically targeting homosexuality do not bring results towards combating sexual orientation discrimination".<sup>163</sup>

- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*

Partially.

The Ministry of Labour and Social Insurance has issued informational leaflets and material, including a guide (issued in 2009) and a manual (issued in 2010) on the above mentioned Laws and an informational leaflet on sexual harassment. These informational material contain information for employers regarding the rights, and complaint mechanisms (the Commissioner of Administration- Equality Authority), though less so for remedies.

Specifically, the Department of Labour have issued informational leaflets, which inform citizens and employees about the relevant legislation (Equal Treatment in Employment and Occupation Law of 2004 [N.58(I)/2004], [N.39(I)/2009], and the Equal Treatment for Men and Women in Employment and Vocational Training Law [N. 205(I)/2002]. Some information leaflets are available from the Department of

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<sup>163</sup>C. Demetriou (2008) Supra Note 151, p.188.

Labour, and also accessible through the DL's website, two in Greek and one English Language. Of these, one leaflet (in GR) contains references to protections against discrimination based on sexual orientation,<sup>164</sup> one contains information about gender based discrimination as well as harassment and sexual harassment, but no direct references to sexual orientation or gender identity,<sup>165</sup> and another one contains information about the law regarding sexual harassment as a type of sex discrimination, protection afforded by the law, and employer responsibility.<sup>166</sup>

The Department of Labour does not mention any specific measures to combat discrimination, harassment and victimisation on the basis of sexual orientation and gender identity, apart from the informational material mentioned. Sexual Orientation is mentioned in one, and gender identity is mentioned in none of these publications.

Apart from the Department of Labour, the Office of the Commissioner of Administration also issues informational material about non-discrimination. Some examples of these are:

- An informational leaflet about the competence of the Equality Authority to examine complaints for discrimination (issued by the Equality Authority, Office of the Commissioner of Administration).<sup>167</sup>
- An informational leaflet about the competence of the Authority Against Discrimination to examine complaints for discrimination also, issued by the Authority Against Discrimination, Office of the Commissioner of Administration contains information about the competences of the Authority Against Discrimination, which includes examining cases of discrimination on the basis of sexual orientation, and complaints mechanisms and procedures).<sup>168</sup>
- A code of practice for handling sexual harassment and harassment in the workplace, which contains information about what constitutes harassment and sexual harassment, the law, rights, complaints mechanisms, and remedies, is also available by the Equality Authority.<sup>169</sup>
  - *recruitment efforts directed at LGBT persons;*

No.

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<sup>164</sup>Department of Labour (2009). Be informed Now! The Equal Treatment in Employment and Occupation Law (N.58(I)/2004), available at:

[www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/62597C312D599F55C225762D003EB930/\\$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CF%86%CF%85%CE%BB%CE%BB%CE%AC%CE%B4%CE%B9%CE%BF%20%CE%9D.58-%CE%99-2004.pdf](http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/62597C312D599F55C225762D003EB930/$file/%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CF%86%CF%85%CE%BB%CE%BB%CE%AC%CE%B4%CE%B9%CE%BF%20%CE%9D.58-%CE%99-2004.pdf) [accessed 18 November 2012].

<sup>165</sup>Department of Labour (2010). *Manual for issues of discrimination because of gender in employment and professional training*, available at:

[www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/9DF1BB757FF59F44C225762E002AFDDE/\\$file/Manual%20for%20gender%20issues%202010.pdf](http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/9DF1BB757FF59F44C225762E002AFDDE/$file/Manual%20for%20gender%20issues%202010.pdf) accessed 18 November 2012].

<sup>166</sup>Department of Labour. Sexual Harassment in the Workplace, available at:

[www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/65349D95AFC7D80EC22575FB0033730A/\\$file/Sexual%20harassment.pdf](http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/65349D95AFC7D80EC22575FB0033730A/$file/Sexual%20harassment.pdf)

<sup>167</sup>Available at: [www.no-discrimination.ombudsman.gov.cy/sites/default/files/triptyho\\_AKI.pdf](http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/triptyho_AKI.pdf)

(Contains information about what the competences of the Equality Authority and complaints mechanisms and procedures). [accessed 18 November 2012].

<sup>168</sup>Available at: [www.no-discrimination.ombudsman.gov.cy/sites/default/files/triptyho\\_AKP.pdf](http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/triptyho_AKP.pdf) [accessed 18 November 2012].

<sup>169</sup>Equality Authority, Office of the Commissioner of Administration (2007). *A*

*code of practice for handling sexual harassment and harassment in the workplace*, available at: [www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas\\_gia\\_katapolemisi\\_sexualikis\\_parenohlisis\\_ergasia.PDF](http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/kodikas_gia_katapolemisi_sexualikis_parenohlisis_ergasia.PDF). [accessed 18 November 2012].

The Department of Labour states that this is “neither directly targeted nor directly avoided.” During a meeting with one of our researchers (SM) the Officer asserted that in targeting such a group it could in itself constitute a form of discrimination against other groups not receiving this treatment.<sup>170</sup>

- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*

No.

The Department of Labour states that this is not done explicitly, but “in general for all high risk or vulnerable groups”.

- *co-operation with and support for employee groupings of LGBT persons?*

In our written and oral communication, and a meeting that followed, the Department of Labour has expressed willingness to participate in “dialogue and cooperation with groups for support of LGBT persons”.<sup>171</sup> They have also stated that they would have no objection to working with an organisation such as accept-LGBT Cyprus for specific training. However, no specialised LGBT worker’s unions or employee’s groups exist that are active in Cyprus, so this would essentially involve cooperation with the officially registered LGBT rights body in Cyprus, accept-LGBT Cyprus, or other organisations or bodies that work with LGBT rights issues.

- iv. *Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?*

No.

The Cyprus Equality Body (Anti-Discrimination Body, ADB) has pointed out cases of discrimination in the workplace on the basis of sexual orientation/gender based on complaints that it received.<sup>172</sup> This concerned complaints about discrimination on the basis of marital status for Educational Officers, which, according to the Anti Discrimination Body, has ramifications extending to discrimination on the basis of sexual orientation. As discussed in the 2010 Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity- Cyprus:

“The complaint concerned Regulation 12 of the Educational Officers (Placements, Transfers and Movements) regulations of 1987 to 1994 which set the family status of the employee (i.e. whether he/she is married and has dependent children) as one of the criteria in determining whether such employee will be transferred to a teaching post away from his/her base. The decision of the equality body found that the differential treatment of unmarried employees vis-à-vis married ones amounts to indirect discrimination against persons who remain single out of personal conviction, or who choose to co-habit with their partners outside marriage or who do not marry due to their sexual orientation, in other words it amounts to discrimination on the ground of belief and/or sexual orientation. The Equality Body recommended the revision of this regulation.”<sup>173</sup>

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<sup>170</sup>SupraNote162, 8 May 2012.

<sup>171</sup>Supra Note 149, 24 April 2012; translation by the authors.

<sup>172</sup> Ref. A.K.I 11/2004. *Report of the Equality Body regarding discriminatory treatment of teachers regarding transfers depending on their family status.* 14 June 2005.

<sup>173</sup>C. Demetriou, 2008, Supra Note 151, p.135.

This regulation has not yet been amended, and (heterosexually) married teachers still maintain an advantage regarding transfers.

In their communications, the Department of Labour mentioned that, based on their experience so far, they have not identified any legal or other gaps that need to be rectified, and thus mentioned no specific intention or action plan to proceed with any changes to improve the implementation of CM/Rec(2010)5.

Regarding the armed forces, in their written response to the above question, by the Permanent Secretary of the Ministry of Defence,<sup>174</sup> the Ministry states that “there are no legal provisions that eliminate service in the armed forces because of sexual orientation or gender identity”. According to the Ministry of Defence, “homosexuals” are not exempt from mandatory military service, while “lesbians, gay, bisexual, and transgender persons are not excluded from permanent service in the armed forces. During a meeting one of our researchers (SM) had with the Minister for the armed Forces, Mr Demetris Eliades and chiefs of staff, including the Chief psychiatric officer to the Army (Dr Kyprianou), it was pointed out that article 23 of the legal statute for the armed forces<sup>175</sup> which outlines restrictions to joining the National Guard, which is compulsory for Cypriot males from the age of 18 (voluntary at 17) for a period of 24 consecutive months, does not exclude LGBT persons from executing their national duty.

Trimikliniotis & Karayanni<sup>176</sup> note that it was accepted practice in the recent past to discharge gay men from the army as “mentally unstable” or “unsuitable”. Polycarpou reminds us that, until 2003, it was standard practice that “when the sexual orientation of new recruits was revealed, they were released from their army obligations and they were given a certificate that specified “personality disorders” as the cause.”<sup>177</sup> The Fundamental Rights Agency also notes that “such references can deny people classed in this way other basic rights, such as a driving licence”.<sup>178</sup> This practice was terminated in 2003, following a complaint to the Commissioner of Administration, and recommendations by the Commissioner that followed.

Although it is no longer the case that non heterosexual orientation is considered acceptable grounds for dismissal from army service, available documentation regarding existing practice, as well as the reply provided to this question by the Ministry of Defence, suggest that this may persist through indirect means. Specifically, in their written reply, the Ministry of Defence mentioned that, during recruitment, many homosexual persons express concerns that they will face “special difficulties”, which are dealt with as follows:

“In these cases, the Three Member Recruitment Committee conducts a comprehensive psychological evaluation, and examines the data for each situation. When any person has any psychological problems, other than sexual orientation, then they are exempt from their obligation to military service”.<sup>179</sup>

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<sup>174</sup> Information obtained by the author (MK), provided by the Permanent Secretary of the Ministry of Defence Mr. Christos Malikkidis, in personal communication, 10 April 2012 [correspondence in file with the author].

<sup>175</sup> *The National Guard Law*, N. 19(I) of 2011) as published in the Official Gazette of the Republic N. 4271[I] on the 25<sup>th</sup> February 2011.

<sup>176</sup> N. Trimiklionits and S.S Karayanni (2008), *supra* note 21.

<sup>177</sup> D. Polycarpou (2010). *Country Report on the Situation of LGBT people*. Report drafted for the Network of socio-economic experts in the Antidiscrimination Field established and managed by human european consultancy and ÖSB Consulting GmbH, p. 13.

<sup>178</sup> European Union Agency for Fundamental Rights (2008). *Supra* Note 153, para. 48.

<sup>179</sup> *Supra* Note 174; translation by the authors.

In their written response, the Ministry of Defence also asserts that “all measures are taken for no discrimination to exist on the basis of sexual orientation or gender identity in employment or career advancement”.<sup>180</sup> However, in the meeting our researcher conducted with the Minister and Chiefs of Staff, no specific measures were mentioned to be in place for LGBT persons serving in the National Guard; the Ministry’s representatives asserted that, as the army is based on “an ethos of discipline and duty”, all forms of discrimination are dealt with by the rule of Code of Conduct, and are dealt with internally in line with the specific statute in Law (N. 19(I)/2011) referred to above. With regard to discipline, the army handbook states that “every soldier is duty bound to follow the orders of his superiors and to willing execute orders which relate to armed forces law, Codes of Conduct and commands”.<sup>181</sup>

The Ministry of Defence provided no information as to how the concerns of homosexual recruits whose psychological assessments show no psychological problems “other than sexual orientation” concerning potential difficulties because of their sexual orientation, are addressed.

The above response seems to imply that, in such cases, efforts may be made to identify other potential grounds for exemption for these recruits, which can be considered permissible for exemption, as a way to respond to concerns that were initially raised in relation to their sexual orientation. If this is indeed the case, in effect, the result for the ability of LGBT persons to serve in the military, is not substantially improved compared to the past. A similar view is apparently also shared by other experts. For instance, Polycarpou, based partly on information collected from personal experiences through interviews with LGBT persons, argues that LGBT persons in the army:

“are put under such enormous pressure, discriminated against and bullied while in the army that LGBT recruits are essentially forced to ask, of their own accord, to be released from the army for “psychological reasons”, in which case they end up with the same release certificate. In effect, therefore, the release paper will have the same effects and consequences on their employment opportunities as that used before the change of practice.”<sup>182</sup>

The Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity by the Fundamental Rights Agency, based on an interview with the Permanent Secretary of the Ministry of Defence at that time, states the following:

“The Permanent Secretary of the Ministry of Defence, Mr. Kareklas, whilst admitting that there may well be homosexuals within the category of persons with psychological problems, suggests that there are no records kept due to the protection of privacy and personal data. He reiterated that there is no discrimination in the army, but suggested that in practice many homosexuals may be released after they appear before a Doctors’ Council. Gay liberation activists dispute the allegation that there is no discrimination against homosexuals in the Cypriot army.”<sup>183</sup>

In any case, what appears to be lacking both from examining the Ministry’s response, as well as by consulting the views expressed by other experts,<sup>184</sup><sup>185</sup> is the provision of any measures and information to prevent potential harassment,

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<sup>180</sup> *ibid.*

<sup>181</sup> General Headquarters of the National Guard, *Serving your country.* (2012).

<sup>182</sup> D. Polycarpou (2010). *Supra* Note 177, p. 13

<sup>183</sup> European Union Agency for Fundamental Rights (2008). *Supra* Note 153, para. 49.

<sup>184</sup> D. Polycarpou (2010). *Supra* Note 177.

<sup>185</sup> European Union Agency for Fundamental Rights. *Homophobia* (2010). *Supra* Note 132.

victimisation, or other form of ill-treatment of gay recruits. Whereas the Ministry itself reports that gay recruits do appear to express concerns about their potential victimisation over the course of their military service, the Ministry does not mention addressing these concerns by taking or boosting any specific preventive measures, and by informing the gay recruits that such measures are in place for their protection. This discrepancy appears to arise from the Ministry's firm position that there is "no discrimination" on the basis of sexual orientation in the army, which is expressed by both the previous and the current Permanent Secretaries of the Ministry; this position leads the Ministry to also assert that there is no need for any measures to be taken.

v. *Specifically in relation to the armed forces:*

- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
- *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

No.

None of the above specific measures appear to be in place. The Ministry of Defence cites no specific measures to provide protection against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment. The Ministry does not mention any Codes of Conduct and training addressing the need to combat discrimination against LGBT persons and promote tolerance and respect. When asked specifically with regard to initiation rites, humiliation and other forms of ill treatment based on actual or presumed sexual orientation, including degrading sexual acts, during a meeting with one of the researchers (SM), the representatives of the armed forces asserted repeatedly that there are no "initiation rites" taking place within the Cyprus National Guard in Cyprus on any level or any stage of the 24 month mandatory service.<sup>186</sup>

In response to the question posed by the researcher on how the army ascertains that such practices do not occur through the various ranks at varying degrees, it was outlined that specific teams visit the army bases in an attempt to project an environment of respect for each other during the difficult process of cohabitation and enforcement of discipline. It was also stated that this is not specific to sexual orientation or gender identity, but a general perspective for combating all forms of discrimination. The army officials stated that no cases of discrimination have been identified with respect to LGBT content.

Interestingly, the Ministry of Defence considers that, for respect and sensitivity to be in place on behalf of the Ministry's hierarchy on the issue of sexual orientation, a prerequisite is that "these persons" (LGBT persons) should respect the National Guard's rules and regulations. Specifically, in his written reply, the Permanent Secretary of the Ministry of Defence states:

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<sup>186</sup>Sylvie Mantis. *Interview with representatives of the National Guard.* (Nicosia, 19 June 2012).

“There is respect and sensitivity on behalf of the hierarchy on the issue of sexual orientation, considering that the behaviour of these persons is compatible with the rules and regulations of the National Guard”.<sup>187</sup>

However, the above statement does not clarify in what way the Ministry considers that LGBT persons would be likely to present any behaviours that are in any way non-compatible with the rules and regulations of the National Guard, any more so than any non LGBT persons (which seems to be insinuated).

Similarly, regarding transgender recruits, in the interview with our researcher (SM) the Chief Military Officer responded that they are not discriminated against, and are expected to wear the same uniforms as other recruits, since this is the “fundamental expression of discipline”, and the “basis for equality”. The position expressed was that, as long as one wears the uniform and abides by the rules and regulations in the army handbook, the army does not discriminate, and thus discrimination is not an issue that needs to be addressed. It was further pointed out that should a transgender person be serving in the National Guard, their duty is to their country and the maintenance of discipline which is embodied by the uniform, implying that dress code eliminates transgender differences.

The Ministry of Defence mentions no intention or action plan to improve the above situation or to improve compliance with the Council of Europe Recommendation. Codes of Conduct and training do not address the need to combat discrimination against LGBT persons and promote tolerance and respect.

Once more, available evidence from studies, reports, and the little empirical data available appear to contradict the Ministry’s claims, and raise serious concerns about the problem of homophobic harassment and bullying in the army. In our documentation,<sup>188</sup> as well as during monthly LGBT support groups by accept-LGBT Cyprus, several members of accept-LGBT Cyprus have related experiences where humiliation, outings and exclusions based on sexual orientation took place during their service in the army. In fact, personal experiences of discrimination and harassment documented in the context of our 2011 study indicate that the army is one of the settings where homophobic harassment and violence are common, and warrants further study and action.<sup>189</sup> Many of the men who participated in this study reported incidents of homophobic bullying, harassment, and violence while in the army, some of which appeared to be severe, including rape, and all of which remained undocumented and unreported and therefore not addressed. The actual magnitude of the issue of discrimination and harassment in the army appears to be a serious issue which warrants further study.

Regarding providing support for soldiers for personal concerns, armed forces representatives informed the researcher, during the interview, that in 2008 a free 24 hour crisis intervention line service (1404) was set up to provide anonymous support to soldiers on various personal issues. Although not explicitly set up to deal with sexual orientation and gender identity, the Chief Psychiatrist expressed the openness of the army to support young men who may choose to discuss these issues. The Ministry’s representatives also expressed a willingness to work with

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<sup>187</sup>SupraNote174, 10 April 2012; translation by the authors.

<sup>188</sup>M. Kapsou and A. Christophi, 2011. Supra Note 19.

<sup>189</sup>Ibid.

accept-LGBT Cyprus on specific workshops or training for staff on LGBT issues, although no further contact has been made since.<sup>190</sup>

- vi. *Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?*

No, transgender persons receive no protection.

None of the legal provisions or measures to prevent and combat discrimination or employment make any explicit mentions of gender identity. This legal gap is also noted in the Fundamental Rights Agency's comparative analysis, according to which, in Cyprus, "discrimination on grounds of gender reassignment was not explicitly dealt with in legislation or in case law, resulting in a situation of legal uncertainty as to the precise protection of transsexuals and transgender persons from discrimination".<sup>191</sup>

Despite this legal gap in protecting from discrimination on the basis of gender identity, the Department of Labour in its response does not consider that there is any data to warrant amendment of the legislation, and has therefore neither promoted, nor considers promoting any proposals for amendment. Specifically, in its response, the Department of Labour states: "In the implementation of the law so far by the Department of Labour, no data were presented based on which any amendments to the current legislation or introducing any new legislation in this area specifically, are required".<sup>192</sup>

In a meeting held with an Officer at the Department of Labour, our researcher (SM) was informed that instances of discrimination are dealt with on a "case by case basis", and each department is responsible for choosing which vulnerable groups are to be targeted. According to the Department of Labour, there is no central protocol, and departments are trusted to deal with their groups always with a best practice in mind. Our research did not indicate any department of policy that specifically or explicitly covers transgender persons.

- vii. *Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?*

No.

The Department of Labour has not developed, nor has mentioned intention to develop employment programs targeted specifically toward transgender persons. No such programs have been developed by any other agency either.

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

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<sup>190</sup>Supra Note 186.

<sup>191</sup> European Union Agency for Fundamental Rights (2010). Supra Note 132, p. 21.

<sup>192</sup>Supra Note 149; translation by the authors.

- i. *Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?*

No such measures have been taken. The Department of Labour states that transgender persons receive the same protections in regard to disclosure of personal information that apply to all persons, and takes no specific measures to prevent disclosure of gender history of former name in the context of employment.

During an interview by one of the researches (SM) with an Officer at the Department of Labour,<sup>193</sup> a circumstance protocol was described for any information that could be deemed as "sensitive" (examples given were such as with HIV status of a person, or if there is a history of having served a prison term): one case worker is assigned to that persons' file, and this is then not shared. If the file needs to move between departments for any reason, it is sealed, and when the file is closed it is also archive sealed. Case notes are only shared with the person's consent. Internal trainings take place to ensure that staff are aware of how to handle such sensitive information, and this is in turn backed up by a protocol procedure and a handbook which staff have and which is upgraded on a periodic basis. This handbook was not shared.

Special case files are compiled for individuals considered as "vulnerable persons" who, as the Officer stated, would include LGBT persons, at this time, though they mentioned that they envisage this changing as tolerance changes. Currently open-drop in and appointment sessions are held with one case worker for special case files in an attempt to protect the identity and issue of the person involved. Data is not kept on computer systems since this is accessed Cyprus-wide, and only a sealed paper file is kept. The file is then labelled as a 'closed' file, and while it may be recognised as a sensitive information file, its content remains protected.

The case file worker may only assign a contact point person in his/her absence if this is expressly needed, and only information which is needed to deal with an issue at hand is shared.

## **VI. Education**

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

- i. *Have*
- *equality and safety policies,*

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<sup>193</sup>Supra Note 162, 8 May 2012.

- codes of conduct and
- handbooks

*for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?*

No.

No Ministry of Education and Culture (Ministry of Education and Culture) safety policies, Codes of Conduct, and handbooks for educational staff specifically dealing with, or containing references to sexual orientation or gender identity were identified.

We are aware of two handbooks for educational staff which deal with human rights issues in general that were provided to the Ministry of Education and Culture by NGOs dealing with human rights, use of which is optional but strongly encouraged by the Ministry. One is a handbook developed by the Cyprus Family Planning Association (CFPA), which includes training exercises and lesson activities, and covers various issues surrounding the self, the body and sexual development.<sup>194</sup> Some exercises also address sexual orientation. This issue is not mandatory, and its use is left to teacher discretion. The other handbook is a Council of Europe tool, *Compasito*,<sup>195</sup> which focuses on the Children's Human Rights Charter. A Greek translation of *Compasito* has been commissioned by NGOs in Cyprus and was disseminated to all state primary schools across Cyprus with an accompanying teacher training sessions.<sup>196</sup> Use of this manual is required and the Charter includes age specific exercises and amongst issues such as peace and discrimination, also explores issues of gender, gender equality and gender stereotypes.

Various Departments contacted within the Ministry of Education and Culture (the Educational Psychology Services, the Health Education Committee, and the administration of the Ministry of Education and Culture) cited the Pedagogical Institute (PI) as the 'most likely source' for any Codes of Conduct, safety policies or protocols. During an interview with the research team,<sup>197</sup> the representative of the Educational Psychology Services, explained that her Department was not responsible for setting protocol or Codes of Conduct, but to execute existing ones, and that no such codes or protocols were in place as far as she was aware, to execute. The Pedagogical Institute did not provide any material containing written references to issues of sexual orientation or gender identity; an action plan forwarded on gender equality contained no references to sexual orientation or gender identity.<sup>198</sup>

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<sup>194</sup> E. Epaminonda, M. Tiggiridou, and E. Neocleous (2010). *First Steps*. Manual for primary education teachers for sexuality education. Cyprus Family Planning Association.

<sup>195</sup> N. Flowers (Ed. 2009). *Compasito: Manual on Human Rights Education for Children*. Council of Europe.

<sup>196</sup> All schools must apply to be trained in the use of *Compasito* and each school is required to acquire at least one copy of the manual for use as part of curriculum enhancement. The training and translation has been undertaken by a Non-governmental organisation on behalf of MoEC as experts in the field.

<sup>197</sup> Sylvie Mantis. *Interview with a Senior Educational Psychologist*, Nicosia, 11 April 2012.

<sup>198</sup> Information obtained by the author (MK), provided by the Pedagogical Institute of the Ministry of Education and Culture (Athina Michaelidou Evripidou), in personal communication, 2 August 2012. The Ministry of Education and Culture's Action Plan for gender equality in education was attached to this communication. (Action Plan not dated)

While there is no evidence of any apparent written protocol in place, incidents of bullying and discrimination remain prevalent. During a previous study,<sup>199</sup> participants reported frequent incidents of bullying from classmates, as well as from teachers or school staff, and incidents of exclusion based on their perceived sexual orientation. Such bullying can contribute to discouraging and/or inhibiting the coming out process of an individual. Participants reported not complaining about the bullying at the time, due to the perception it could force them into coming out unwillingly. A more recent study conducted in the context of a campaign against homophobia in schools included focus groups with teachers from primary and secondary education. Preliminary results from this study identified incidents of homophobic bullying in schools between classmates but also from teachers to students, which is often associated with verbal abuse and, in some cases with other forms of abuse.<sup>200</sup>

In a written response to our request for information, a representative of the Ministry of Education and Culture stated that members of a social science/sexual health team offer support to school staff by periodically visiting schools during the academic year, responding to queries with regard to the implementation of lesson plans and activities the school curriculum which deals with sexual health issue.<sup>201</sup> No reference is made as to whether the staff implementing the programme have themselves been specifically trained.

- ii. *Do initial and in-service training programmes for teachers and other educational staff address the need for them to*
  - a. *treat their LGBT pupils and students with respect*
  - b. *be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

No.

We are not aware of such content having been available in initial teacher training programmes in the past, or planned to be available in the near future.<sup>202</sup>

The Ministry of Education and Culture's response with regard to training, stated that "specialised teacher training with regard to sexuality health education takes place".<sup>203</sup> The Ministry of Education and Culture provides no clarification as to whether such training specifically addresses issues of sexual orientation or gender identity, nor whether the content of the aforementioned sexual health training – including training materials and literature - have a dedicated section that addresses openly and exclusively sexual orientation and gender identity.

In the process of public consultation for a recent curriculum review (in 2010), the Cyprus Family Planning Association (CFPA), along with the Mediterranean Institute of Gender Studies, provided feedback to the proposed curricula on health education

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<sup>199</sup> M. Kapsou and A. Christophi (2011).SupraNote19.

<sup>200</sup> Preliminary results of focus groups conducted for the project "Shield Against Homophobia in Education".Project coordinated by the Pool of Trainers of the Youth Board Cyprus together with Cyprus Family Planning Association (CFPA), funded by the "Youth. in Action" program from the European Committee, and conducted under the auspices of the Ministry of Education and Culture, May 2012.

<sup>201</sup> Information obtained by the author (MK), provided by the Ministry of Education and Culture (Elpidoforos Neocleous), in personal communication, 16 May 2012. [correspondence in file with the author].

<sup>202</sup>SupraNote198, 2 August 2012.

<sup>203</sup>SupraNote201, 16 May 2012; translation by the authors.

with regard to sexual health education, which included the suggestion to address different forms of families in the coursework (including same sex families).<sup>204</sup> During the first year of the implementation of the new curriculum (2011/12), the CFPA was invited to provide teacher trainings, and help develop teaching material for the new indicators on family planning and sexual health. The teaching material developed include topics such as different types of families (e.g. single parent, same sex, extended, adopted, divorced, widowed etc.) as well as topics that explore individual sexuality and growth through puberty. In both these subject areas, sexual orientation is approached as part of broader contexts rather than with specific focus, and there is no direct reference to gender identity, although it seems that if such discussion arises, it is left upon the teachers' discretion. Thus, gender identity is not addressed directly, nor consistently, and remains at the discretion of the specific teachers. The subject areas have yet to be rolled out fully in state schools across Cyprus.<sup>205</sup> Some initial indicative lesson plans and lesson sets have been piloted in various schools and assessed. In preparation for roll-out across the current academic year (2012-2013), an initial teacher training and review session took place at the Pedagogical Institute by two of the three experts involved in drafting the curriculum content.<sup>206</sup>

At the same time, with regard to in-service training for primary school teachers, an interactive series of workshops dealing with homophobia took place in May 2012, organised and executed by Non-Governmental Organisations.<sup>207</sup> The Ministry of Education and Culture promoted the workshops and encouraged teachers to attend through circulars. Participation in the workshop by far exceeded initial estimates (over 70 participants), demonstrating a great need on behalf of teaching staff to gain more information and knowledge on LGBT issues and dealing with homophobia in the classroom.

Our 2011 mapping study<sup>208</sup> documents widespread homophobic harassment, discrimination and violence in schools at alarming levels, and in all of these cases, participants suggested that these instances were not addressed by teachers and staff, while some mentioned that such reports were "discouraged".

There is currently no formal mechanism in place, within the Ministry of Education and Culture, to detect or analyse issues that arise with respect to sexual orientation or gender identity either in the classroom by fellow students, or by teachers or within the school at large. In the instance that an incident is brought to the attention of the educational psychologists, usually via other forms of reporting such as disruptive behaviour; an escalation may occur, however, no formal process is in place.

With regard to combating discrimination, the representative of the Ministry of Education and Culture's Educational Psychology Services described an escalation procedure which is in place for dealing with issues of discrimination per se and which she suggested would also include LGBT issues.<sup>209</sup> Thus, no distinction is made

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<sup>204</sup> Letter by the Cyprus Family Planning Association, the Cyprus Youth Council, and the Mediterranean Institute of Gender Studies to the Ministry of Education and Culture Scientific Committee for the Development of new curricula, 30 April 2010. *Subject: Suggestions for Health Education in the Context of the New Educational Curriculum*, p.3.

<sup>205</sup> As of the end of the academic year 2011-2012, only some rollouts had taken place. As a mandatory indicator in the curriculum, rollout will continue in 2012-2013.

<sup>206</sup> M. Popovic, S. Lesta, S. Mantis (2011). *Lesson plans for Health Education, Indicator 3.1. in primary school, grades 1, 3, and 6*. Nicosia: Cyprus Family Planning Association.

<sup>207</sup> Supra Note 95.

<sup>208</sup> M. Kapsou and A. Christophi (2011). Supra Note 19.

<sup>209</sup> Supra Note 197, 11 April 2012.

between the various forms or levels of discrimination that may occur. With no formalised reporting procedure in place, most homophobically motivated incidents remain unreported, or are reported as incidents of bullying, with no specific mention of the motivation.

- iii. *Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

Partially.

The latest annual reports of the Ministry of Education (2010 and 2011)<sup>210211</sup> mention no such campaigns or events having taken place. The Action National Action Plan on equality between men and women, provided by the Pedagogical Institute<sup>212</sup> makes no reference to activities or events, or planned activities or events that address issues of homophobia and transphobia. However, at least one example was noted where a representative of the Office of the Commissioner of Administration (Ms Zinaida Onoufriou) presented a paper entitled “Homophobia, sexual freedom and the right to be different”,<sup>213</sup> at the Technical School Makarios III as part of the school event “Respect, Responsibility and Reciprocity” in February 2011. This example indicates that some sporadic events are probably taking place, without being necessarily centrally organised or noted.

During the first Pan-European LGBT conference held in Cyprus (November 2010) accept-LGBT Cyprus’ had meetings with key stakeholders within the Ministry of Education and Culture to offer support and expert advice on LGBT issues during the education curriculum reform. This offer of support has yet to be acted on.

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

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<sup>210</sup>Ministry of Education and Culture of the Republic of Cyprus (2011). *Annual Report 2010*. Nicosia. available at <[www.moec.gov.cy/etisia-ekthesi/pdf/Annual\\_report\\_2010\\_EN.pdf](http://www.moec.gov.cy/etisia-ekthesi/pdf/Annual_report_2010_EN.pdf)>. [accessed 27 November 2012].

<sup>211</sup>Ministry of Education and Culture of the Republic of Cyprus (2012). *Annual Report 2011*. Nicosia. available at <[www.moec.gov.cy/etisia-ekthesi/pdf/annual\\_report\\_2011\\_en.pdf](http://www.moec.gov.cy/etisia-ekthesi/pdf/annual_report_2011_en.pdf)>. [accessed 27 November 2012].

<sup>212</sup>Supra Note 198.

<sup>213</sup>Z. Onoufriou, Office of the Commissioner of Administration. *Homophobia, sexual freedom and the right to be different*. Speech at Technical School Makarios III for the school event “Respect, Responsibility and Reciprocity”, 23 February 2011.

- i. *Is information on*
    - a. *sexual orientation*
    - b. *gender identity*
- provided in school curricula and sex and health education classes?*

Partially.

Following the recent educational curriculum reform (2010), the provision of sexual health education in schools has been incorporated and/or upgraded in the context of the health education lesson. “Indicators” defined for primary schools include accepting diversity, but contain no explicit mention of sexual orientation. Sexual orientation (but not gender identity), is included as an indicator in the first years of middle school. The Cyprus Family Planning Association (CFPA) was invited to provide expertise and training to primary school teachers on the indicators concerning sexuality and family planning (Indicator 3.1 of the Health Education Curriculum)<sup>214</sup>. For secondary education, the health education programme has no committed hours yet, but the reformed curricula contain indicators on sexual orientation and gender (but not gender identity). Specifically in first and second grade of middle school, an indicator is included for being able to “critically analyse diversity regarding sexual orientation”.<sup>215</sup> Since the new curricula are now only early in their second year of implementation, and health education in secondary schools has not received committed hours, it is unclear whether sexual orientation has yet been incorporated in the coursework.

- ii. *Is it provided in a respectful and objective manner?*

No sufficient information.

Implementation of the new curricula has not been evaluated yet since it has yet to be fully rolled out in schools.

One notable controversy about the approach to teaching sexuality education (with ramifications about messages delivered for same sex relations among other forms of relations outside heterosexual marriage) arose in the Spring of 2012. New material developed for biology following the 2010 reform (the chapter on human reproduction, first grade of middle school), referred to human reproduction contextualised only within a loving consensual heterosexual marriage, and juxtaposed it with sexual relations outside marriage (referred to as ‘special relations’) as ‘selfish’ and ‘momentary’. The goal of the unit was defined as “to grant the sexual act, as part of [heterosexual] marriage, its lost sacredness and importance”.<sup>216</sup> When this material was published on the Ministry of Education and Culture website in Spring 2012, it

<sup>214</sup> S. Ioannou, C. Kouta, and N. Charalambous (2010). *Health Education Curriculum, Pedagogical Institute of Cyprus, Ministry of Education*. ISBN: 978-9963-0-9117-1, available at:

[www.paideia.org.cy/upload/analytika\\_programmata\\_2010/20.agogygeias.pdf](http://www.paideia.org.cy/upload/analytika_programmata_2010/20.agogygeias.pdf)

<sup>215</sup> Ibid, p. 287; translation by the authors.

<sup>216</sup> Clarifications on the 4th session of Human Reproduction: To teachers and parents. (March 2012). This material was posted on the website of the Ministry of Education and Culture, and was available at [www.schools.ac.cy/eyliko/mesi/themata/viologia/ekpaideftiko\\_yliko/a\\_gymnasiou/enotita\\_4/enotita\\_4\\_dieukrinis\\_eis\\_pros\\_kathigites\\_goneis\\_4o\\_dioro.pdf](http://www.schools.ac.cy/eyliko/mesi/themata/viologia/ekpaideftiko_yliko/a_gymnasiou/enotita_4/enotita_4_dieukrinis_eis_pros_kathigites_goneis_4o_dioro.pdf) [accessed 29 March 2012]; this guideline was removed following the reactions, but the exercises referring to “special relations” among teenagers as ‘harmful’ and have been incorporated into a workbook for Junior High School grade 1; available at [www.schools.ac.cy/eyliko/mesi/themata/viologia/ekpaideftiko\\_yliko/a\\_gymnasiou/2012\\_2013/viologia\\_a\\_gymnasiou\\_book.pdf](http://www.schools.ac.cy/eyliko/mesi/themata/viologia/ekpaideftiko_yliko/a_gymnasiou/2012_2013/viologia_a_gymnasiou_book.pdf) [accessed 17 November 2012].

attracted the attention of civil society, and led to strong reactions by several Non-Governmental Organisations, including the Cyprus Family Planning Association, accept-LGBT Cyprus, the Cyprus Youth Council, the Mediterranean Institute of Gender Studies,<sup>217,218</sup> and the Commissioner for the Protection of the Rights of the child, Ms Leda Koursoumba,<sup>219</sup> as well as by members of the public. The stir resulted to some amendments in the teaching material, but not a full revision or removal. The organised reactions criticised the material as being inconsistent with the Curriculum's approach to Comprehensive Sexuality Education as free from ideological bias, and from an approach of empowering young people to form their own values and make their own informed decisions regarding sexuality. From this experience, it was apparent that, despite the positive developments in the curricula, the implementation appeared to follow conservative heterosexist norms, which risk presenting information on sexual orientation in a derogatory and disrespectful manner.

Moreover, experiences shared by LGB participants, based on their experiences (prior to 2010), do not seem to suggest that any information on sexual orientation is provided in a respectful and objective manner, but rather that there were instances where teachers were unsupportive or discriminatory in their treatment, and references to LGBT persons, especially in the context of religious studies, were derogatory. Findings from the more recent study conducted in 2012 with primary and secondary school teachers, suggested that in most instances teachers do not act upon homophobic behaviour, whereas many instances are often not identified as such. Moreover, information provided by participants indicated that teachers who hold homophobic attitudes are free to express them in an educational system, as no formal policy regarding sexuality and expressions related to sexuality seem to be in place.<sup>220</sup>

Prior to the recent educational reform, the study of sexual health was limited in focus and content and was being delivered by biology and home economics teachers. Biology, specifically human reproduction, was the only other reference to sexual health and was referred to previously in a narrowly biological context.

Religious Education in Cypriot State schools also addresses issues of sexuality and 'ethics'. Religious Education, as taught in the State schools primarily propounds the Greek Orthodox Religion and concentrates on its teachings and perspectives of human nature from within that framework. The Greek Orthodox religion in line with mainstream Christianity considers homosexuality to be a 'sin'.

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<sup>217</sup>CFPA and partners express their concerns regarding the Educational Material for Biology at 1st grade of middle school – Subject Unit 4, Reproduction in Humans.30 March 2012. Press release available at: <[www.cyfamplan.org/FamPlan/page-Singlemodule.php?pageID=1andinstance\\_ID=102andnewsid=102](http://www.cyfamplan.org/FamPlan/page-Singlemodule.php?pageID=1andinstance_ID=102andnewsid=102)>

<sup>218</sup>Subject: Request for meeting to clarify the Educational Material for Biology at 1st grade of middle school Subject Unit 4, Reproduction in Humans.29 March 2012. [accessed 18 November 2012].

<[www.cyfamplan.org/FamPlan/userfiles/CFPA%20and%20partners%20Final%20Letter%20reaction%20to%20viologia.pdf](http://www.cyfamplan.org/FamPlan/userfiles/CFPA%20and%20partners%20Final%20Letter%20reaction%20to%20viologia.pdf)> [accessed 18 November 2012].

<sup>219</sup>Statement of the Commissioner for the Protection of the Rights of the Child in relation to the Educational Material for the Subject of Biology.29 March 2012, available at:<[www.childcom.org.cy/ccr/ccr.nsf/All/C8605F7BFB72C6B5C22579D000336E35](http://www.childcom.org.cy/ccr/ccr.nsf/All/C8605F7BFB72C6B5C22579D000336E35)> [accessed 18 November 2012].

<sup>220</sup> Preliminary results of focus groups conducted for the project "Shield Against Homophobia in Education". Project coordinated by the Pool of Trainers of the Youth Board Cyprus together with Cyprus Family Planning Association (CFPA), funded by the "Youth. in Action" program from the European Committee, and conducted under the auspices of the Ministry of Education and Culture, May 2012.

- iii. *Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*

No/Partially.

No data has yet been gathered or analysed regarding implementation of the reformed school curricula, since they are now early in their early second year of implementation.<sup>221</sup>

The limited evidence available regarding the prevalence of homophobic incidents, attitudes, and behaviours in schools is disconcerting, with little protection or systems in place to handle them. Consequently, many LGBT students in schools may be deprived of the necessary protection and support to enable them to live in accordance with their sexual orientation and gender identity.

Apart from our own documentation,<sup>222</sup> some information on bullying in schools is available from the Observatory for Violence in Schools, which was recently initiated by the Ministry of Education and Culture, and which is considered the centralised Department for collating and analysing data with regard to types of violence in school.<sup>223</sup> As confirmed during an interview with a representative of the Educational Psychology Services the Ministry of Education and Culture, the Observatory conducted a nationally representative study on victimisation within the school environment, using a structured questionnaire both among students and among teachers. First results became available in early 2012. The questionnaire included a few questions about sexuality, addressed to students and to teachers, and after our communication, the Observatory expressed that our research team's suggestion for more precise investigation of homophobic incidents will be taken into account in subsequent studies.<sup>224</sup> According to preliminary data provided by the head of the Educational Psychology Services, as many as 9.6% of students in the sample had experienced 'mocking remarks about their sexuality'.<sup>225</sup>

During an interview with a representative of the Educational Psychology Services, the Senior Educational Psychologist interviewed expressed an awareness of the 'disconnect between what is reported and how and what is noticed in the schools in term of LGB students' became apparent. The psychologist cited a number of examples from her own experience of attending schools for investigating cases of bullying, or of disruptive behaviour either towards or by a specific student, only to discover that the probable cause (either directly or indirectly) was a particular students sexual orientation (either real or perceived, either by other students or people in the school) and she noted that there is currently no way of recording such incidents on this level – not just for LGB but also for other forms of discrimination.

The Youth Board of Cyprus is funded through the Ministry of Education and Culture budget, but runs as an autonomous entity governed by a Board of Director consisting of the heads and Youth sectors of political parties. The Youth Board's Department for Prevention and Counselling Services runs a free helpline that provides

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<sup>221</sup> The first year of implementation was academic year 2011-2012.

<sup>222</sup> M. Kapsou and A. Christophi (2011). *Supra* Note 19.

<sup>223</sup> Information obtained by the author (MK), provided by the Educational Psychology Services (Dr. Michalis Papadopoulos), in personal communication, 14 March 2012. [correspondence in file with the author].

<sup>224</sup> *Ibid*, para. 2iii.

<sup>225</sup> *Ibid*, para. 2ii.

information and support for callers, “regardless of gender, origin, ethnicity, age or sexual preference”.<sup>226</sup>

- iv. *Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

No.

No such measures were identified. According to information provided by the Senior Educational Psychologist during our interview, there is a protocol for escalation of cases of discrimination, but there are no recorded incidents to date of transgender students in schools.<sup>227</sup> The assertion was that, if a case come to the attention of the Educational Psychology Services, a process would be put into place using existing protocol procedures to ensure sensitive handling.

## VII. Health

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

- i. *Do*
- a. *the design of national health plans,*
  - b. *health surveys,*
  - c. *suicide prevention programmes,*
  - d. *medical training programmes,*
  - e. *training courses and materials*
  - f. *the monitoring and quality assessment of health-care services*
- take into account specific needs in relation to (a) sexual orientation and (b) gender identity?*

No.

The Ministry of Health provided no feedback regarding the above. None of these measures appear to be in place.

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<sup>226</sup>Youth Board of Cyprus <[www.youthboard.org.cy/default.asp?id=282](http://www.youthboard.org.cy/default.asp?id=282)> [accessed 26 November 2012]

<sup>227</sup>Supra Note 197, 11 April 2012.

In its response,<sup>228</sup> the Ministry of Health cites the Law on Safeguarding and Protecting Patients' Rights of 2004 [N. 1(I)/2005],<sup>229</sup> article 7 of which states that "health care is offered to everyone, without adverse discrimination", and where article 2 defines "adverse discrimination" as violation of the principle of equal treatment on several grounds, which include sex and sexual orientation, but not gender identity.

The Ministry of Health response reports that it has no further statutory measures in place to combat discrimination based on sexual orientation or gender identity.<sup>230</sup>

The Council of Europe (2011) report emphasises that "in Council of Europe member states, LGBT persons have higher incidence of poor health than heterosexual persons" and that "an alarmingly high percentage of LGBT persons who had attempted or considered committing suicide" was found by studies in Council of Europe member states.<sup>231</sup> Depression and suicidal thoughts were also quite commonly reported in our 2011 study, as a consequence of discrimination and harassment experienced.<sup>232</sup> Despite this evidence, as well as considerable evidence in the international literature regarding the urgency of addressing specific health needs of the LGBT population, the Ministry of Health in Cyprus does not take the specific needs of LGBT persons into account in any of the fields mentioned in the Recommendation.

- ii. *Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

No. The Ministry of Health provided no response.

The Council of Europe 2011 report raises a concern which further indicates the need to provide training programs for health professionals, as it is noted that:

"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."<sup>233</sup>

Unfortunately, no such training programmes appear to be in place in Cyprus.

- iii. *Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?*

Partially.

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<sup>228</sup> Information obtained by the author (MK), provided by the Ministry of Health (Iacovina Panteli), in personal communication, 23 July 2007, para. 1. [correspondence in file with the author].

<sup>229</sup> *Law on Safeguarding and Protecting Patients' Rights*, N.1(I) of 2005, published in the Official Gazette of the Republic N. 3943[I] on the 7<sup>th</sup> January 2005.

<sup>230</sup> *Supra* Note 1, para. 2.

<sup>231</sup> *Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, 2<sup>nd</sup> Edition, Council of Europe publishing(2011), p.106

<sup>232</sup> M. Kapsou and A. Christophi (2011), *Supra* Note 19.

<sup>233</sup> *Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, 2<sup>nd</sup> Edition, Council of Europe publishing(2011), p. 108.

Education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people do not appear to be systematically available. The Ministry of Health provided no response.

Gregorios Clinic in Larnaca offers free services for people living with HIV, including antiretroviral therapy. Free HIV testing is also available. Regarding LGBT persons living with HIV/AIDS, Trimiklioniotis and Karayanni note that “lack of information and fear of coming out in the open often prevent people from launching complaints about medical mistreatment and patient privileges.”<sup>234</sup>

Other than HIV services, sexual and reproductive health services in Cyprus are limited, and none are available specifically for LGBT persons.

The Cyprus Family Planning Association provides some mostly educational services, which are LGBT inclusive. The CFPA receives some funding for this purpose from the Ministry of Health. However, these services are not systematic, and for the most part, not island-wide.

- iv. *Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?*

No.

The Cypriot Ministry of Health provided to response. No such information campaigns exist.

The Council of Europe 2011 report stresses that “a significant level of mistrust between LGBT patients and their health care providers [...] may lead to LGBT persons not seeking medical care if they need it or withholding information about their sexual orientation or gender identity”.<sup>235</sup>

This mistrust seems to be prevalent among the LGBT community in Cyprus as well, and is not unfounded: information provided from collected data of personal experiences suggests that delivery of health services to LGBT persons is not always conducted in a respectful manner. In our study conducted in the context of ILGA-Europe’s HRVDF 7<sup>th</sup> call, several participants reported experiencing discrimination during delivery of health services, which have included nurses and doctors criticising their way of life, being asked for additional medical examinations, being denied assistance by medical personnel, and being rejected as a blood donor.<sup>236</sup> A 31 year old gay man we interviewed reported that, before donating blood, he was asked to complete a form which included asking if he ever had same sex sexual encounter.<sup>237</sup> The incident described took place in 2004, and while there have been later reports of this procedure persisting, it is not clear whether this practice persists to date. Moreover an in-depth interview with a 23 year old trans man undergoing gender correction therapy revealed experiencing disrespectful and unsupportive treatment from medical staff in the process of obtaining his transition therapy (see question 28 in this section for further details).

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<sup>234</sup> N. Trimiklioniotis and S.S Karayanni (2008).SupraNote21, p. 7.

<sup>235</sup> *Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, 2<sup>nd</sup> Edition, Council of Europe publishing(2011), p. 107.

<sup>236</sup> M. Kapsou and A. Christophi (2011).SupraNote19.

<sup>237</sup> Haroula Matthaïou. *Interview with K.*,(Limassol, 30 July 2012).

- v. *Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?*

No sufficient information.

The Ministry of Health provided no response.

The Patients Rights Law is not specific in defining "next of kin". Article 10(5) states that the patient has a right to select the extent to which another person can be informed on their behalf,<sup>238</sup> whereas article 13(1) states that, unless previously expressed otherwise, the patient's consent is considered to be granted by default in case they are unable, due to their condition, to express their will.

No information is available as to how such cases are handled by the Health Services in practice, and whether life partners of LGBT persons are included in the decision making process regarding treatment, or are allowed at their bedside, as pointed out in the 2011 Council of Europe report.<sup>239</sup>

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

- i. *Has homosexuality been removed from the national classification of diseases?*

The Ministry of Health provided no response, other than that "the policy for service of citizens by the Ministry is conducted with purely scientific and professional ethical criteria, on the basis of equal treatment, independent of sexual orientation."<sup>240</sup>

This statement apparently refers to the reliance on internationally accepted classification systems, such as the World Health Organisation's International Classification of Diseases (ICD),<sup>241</sup> and the American Psychiatric Association's Diagnostic and Statistical Manual on Mental Disorders (DSM-IV-TR).<sup>242</sup> Both these manuals classify gender identity as a disorder ("gender identity disorder"), and have received criticism by LGBT activists, asking for these diagnoses to be removed in the forthcoming revisions.

This may also imply that, by having no national standards in place, behaviour of medical staff may depend largely on the type of training they received (e.g. country of their study), and is not regulated concerning the issue of sexual orientation and gender identity. In case medical staff behave in a biased manner, no protection seems to be in place.

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<sup>238</sup> *Patients Rights Law* of 2004, article 10(5).

<sup>239</sup> *Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, (Council of Europe publishing, 2011), p. 108.

<sup>240</sup> *Supra* Note 228, 23 July 2012, para. 3.

<sup>241</sup> World Health Organization. (2008). ICD-10: International statistical classification of diseases and related health problems (10th Rev. ed.). New York, NY: Author.

<sup>242</sup> American Psychiatric Association (2000). *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition – Text Revision (DSM-IV-TR)*. Washington, DC: American Psychiatric Publishing, Inc.

- ii. *Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?*

No sufficient information.

The Ministry of Health provided no response.

We are not aware of any documents or training materials where homosexuality is still treated as a disease. It should be noted that, currently, there is no medical school in operation in Cyprus, so all doctors receive their training in other countries, which may have various approaches to this.

- iii. *Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?*

Partially.

The Patients Rights Law of 2004<sup>243</sup> protects patients from forcibly receiving medical treatment without their consent. This is included through a generic provision in article 11, which states that a patient's consent is required before providing health care services, following comprehensive information to the patient. Exemptions to the consent requirement are noted for 'exceptional' cases, where the health provider is granted the authority to evaluate that providing such information would damage the patient's physical or mental health; in that case, the Law requires that the health provider informs the family members<sup>244</sup> they consider reasonable to do so under the circumstances, who then get to decide. No framework is provided for defining which circumstances could be deemed 'exceptional'. Moreover, no formal procedures seem to be in place for evaluating circumstances as exceptional. Therefore, the evaluation of whether a case is 'exceptional' remains at the discretion of each individual health provider, which can vary greatly.

No additional measures seem to be in place at an institutional level to explicitly prevent patients from undergoing any forced treatment because of their sexual orientation or gender identity, or to provide any guidelines regarding working with LGBT patients. There is no specific mention in the Law or in institutional regulations regarding treatments, protocols, tests, or institutionalisation because of sexual orientation or gender identity. The generic provision requiring consent would be expected to also cover such health services, although its application would be limited by the provision granting the health provider the right to use their judgement for 'exceptional' circumstances.

The Ministry of Health provided no response to this question, but stated that, other than the legal protection for equal provision of health they cited (Law on Patients' Rights, 2004, article 7),<sup>245</sup> no other measures are secured to combat discrimination on the basis of sexual orientation or gender identity. We are not aware of any cases

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<sup>243</sup> *Patients Rights Law, 2004, article 11.*

<sup>244</sup> Family members are defined as 'spouse', 'father', 'mother', or 'descendants'; per this definition, same sex partners or other unmarried partners would be excluded.

<sup>245</sup> *Patients Rights Law, 2004, article 7.*

where patients were forced to undergo treatment, testing, or medical confinement against their will because of their sexual orientation or gender identity. However, cases where patients were not adequately debriefed and where surgical procedures pertaining to their sexual and reproductive health were administered without the patients' informed consent have reached the Office of the Commissioner of Administration through complaints submitted,<sup>246</sup> suggesting that the implementation of the legal provisions for the consent requirement is not without problems.

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

- i. Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

No.

The Ministry of Health provided no response.

As noted by Polycarpou,<sup>247</sup> sex reassignment treatment costs are not covered by the public health scheme in Cyprus, while the Council of Europe considers it is unclear.<sup>248</sup> Available information from reports as well as anecdotal information is mixed, implying that there is probably no official line.

The State's refusal to cover the expenses of an Iranian transsexual woman who is a recognised refugee, and who wishes to undergo sex reassignment therapy received some scrutiny from the Anti Discrimination Body, and the European LGBT community. The Anti Discrimination Body is currently in the process of reviewing the complaint, but no further information regarding the status of the request is available.

According to ECtHR case law, gender reassignment should be considered a "medically necessary procedure", and should therefore be covered.<sup>249</sup> The Fundamental Rights Agency stresses that "Accessing health services is important not only when a person needs medical attention, but also in order to prevent health problems occurring in future.",<sup>250</sup> while the widely accepted definition of "health" by the World Health Organisation, states that "health is a state of complete physical,

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<sup>246</sup>Specifically, one such case pertained to failure to inform a woman that an Intra Uterine Device was not successfully removed from her uterus, which impeded subsequent treatment (Ref. ΑΠ 64/200. Report of the Commissioner of Administration against the General Hospital Gynecology Clinic for violation the patient's right to information. 27 April 2010) and another case (Ref. ΑΠ 1332/2008) pertained to removing a woman's ovaries without her explicit consent, in the context of treatment where she was to have her fallopian tubes removed, even though she had intended to undergo treatment for assisted reproduction.

<sup>247</sup> D. Polycarpou (2010), Supra Note 175, para. 29.

<sup>248</sup>*Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, 2<sup>nd</sup> Edition, Council of Europe publishing(2011), p. 111.

<sup>249</sup> 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.

<sup>250</sup> European Union Agency for Fundamental Rights (2010). Supra Note 157, p. 24.

mental, and emotional well-being, and not merely the absence of disease or infirmity”.<sup>251</sup>

Nevertheless, the Ministry of Health does not seem to share this view. During examination of the complaint by the Anti Discrimination Body, the Ministry maintained that, there is no ‘disease’ to be treated, and therefore no medical need. This apparently fails to acknowledge the importance of prevention of problems and promotion of well-being in the context of health, as stressed by the Fundamental Rights Agency, the World Health Organisation, and ECtHR case law.

The Council of Europe also raises several concerns regarding the process of gender reassignment, various prerequisites, and the large decision making powers of medical professionals over transgender persons’ access to treatment.<sup>252</sup> The Fundamental Rights Agency<sup>253</sup> states that LGBT persons experience several difficulties in relation to health services, with transgender persons in particular experiencing more difficulties than LGB persons also because of the specific needs related to gender reassignment treatment, including discrimination when accessing healthcare (e.g. insults, ‘conversion therapy’, refusal of treatment, inappropriate treatment because of heterosexist assumption).

Indeed, one trans man interviewed (‘A’),<sup>254</sup> mentioned at least three incidents when he experienced discrimination, unwelcome criticism, and even denied treatment, while receiving health services. He reported that, at the initial stages of his transition (in 2009), a physician in a State outpatient facility refused to prescribe hormonal tests for him when he explained the reason he was asking for the test. Moreover, the doctor insisted that this is not right, and she urged him to turn to the church and ‘find God’, or ‘at least just be gay’. On another occasion, upon commencing hormonal treatment in 2010, an endocrinologist refused to prescribe his treatment, and urged him to ‘think about it’, and ‘take his time’, despite having been presented with the necessary approval by a psychiatrist. The endocrinologist stated that she was ‘afraid’ to take up his case. The above resulted in ‘A’, feeling deadlocked, since he felt unable to proceed with his treatment without prescription. With help from a family member, he managed to proceed with another state endocrinologist. On a third occasion, a state psychiatrist was reluctant to approve his papers for gender reassignment surgery, claiming she was not sure if she should, and urged him to continue visiting a psychiatrist for another 2 years, even though data in his file verified that he had met the requirements. ‘A’ stated that this was eventually settled through other means.

- ii. *If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?*

The Ministry of Health provided no response.

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<sup>251</sup>Preamble to the Constitution of the World Health Organisation as adopted by the International Health Conference, New York, 19 June - 22 July 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organisation, no. 2, p. 100) and entered into force on 7 April 1948.

<sup>252</sup>*Discrimination on the Grounds of Sexual Orientation and Gender Identity in Europe*, 2<sup>nd</sup> Edition, Council of Europe publishing(2011), p. 110.

<sup>253</sup>European Union Agency for Fundamental Rights (2010)Supra Note 157, p. 24.

<sup>254</sup>Haroula Matthaïou. *Interview with ‘A’*, (Limassol, 28 July 2012).

- iii. *Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?*

No.

The Ministry of Health provided no response. No such measures seem to be in place. We have no information regarding policies or protocols in place about the treatment of children born intersex.

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

- i. *Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

No.

The Ministry of Health provided no response.

In fact, coverage for gender reassignment treatment costs is not ensured. As mentioned in the Trans Eurostudy, “Cyprus is the only EU State that does not provide a universal healthcare system”,<sup>255</sup> and as a result, services provided or covered remain unclear. The Plan for Financial Subsidies for Health Services provides a framework for covering healthcare costs upon request. Claims submitted are examined by a special Committee of specialised medical practitioners set up for this purpose.

So far, two cases of transsexual women who have applied for subsidy under this scheme are known to have been rejected, again on the claim that gender reassignment surgery would not qualify as ‘required treatment’, and that the person’s life is not under threat. Even though the guidelines of the scheme do not mention that threat to a person’s life is a criterion for providing the subsidy. Article 2, paragraph 1 of the Scheme,<sup>256</sup> mentions that a patient can be eligible for external services (outside the public health system), including diagnosis and therapy, if the diagnosis or treatment is not provided through the public health services, or cannot be provided in due time given the patient’s condition. The Fundamental Rights Agency emphasizes that, contrary to the Committee’s claim, “accessing health services is important not only when a person needs medical attention, but also in order to prevent health problems occurring in future. LGBT persons experience

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<sup>255</sup>S. Whittle, Lewis Turner, R. Combs, and S. Rhodes (2008). *Transgender Eurostudy: Legal Survey and Focus on the Transgender Experience of Healthcare*. International Lesbian and Gay Association-Europe & Transgender Europe, p. 31.

<sup>256</sup>Appendix I: *Scheme for the provision of financial subsidies for health services not offered in the public sector*, available at:

[http://www.moh.gov.cy/MOH/MOH.nsf/0/0EBEB2C390440DD34225798800332685/\\$file/%CE%9D%CE%AD%CE%BF%20%CE%A3%CF%87%CE%B5%CE%B4%CE%B9%CE%BF%20%CE%9F%CE%B9%CE%BA%CE%BF%CE%BD%CE%BF%CE%BC%CE%B9%CE%BA%CE%AE%CF%82%20%CE%91%CF%81%CF%89%CE%B3%CE%AE%CF%82.pdf](http://www.moh.gov.cy/MOH/MOH.nsf/0/0EBEB2C390440DD34225798800332685/$file/%CE%9D%CE%AD%CE%BF%20%CE%A3%CF%87%CE%B5%CE%B4%CE%B9%CE%BF%20%CE%9F%CE%B9%CE%BA%CE%BF%CE%BD%CE%BF%CE%BC%CE%B9%CE%BA%CE%AE%CF%82%20%CE%91%CF%81%CF%89%CE%B3%CE%AE%CF%82.pdf) [accessed 18 November 2012].

several difficulties in relation to health services, with transgender persons in particular experiencing more difficulties than LGB persons also because of the specific needs related to gender reassignment treatment.”<sup>257</sup>

The first case concerned the State’s refusal to cover the expenses of an Iranian transsexual woman who was a recognised refugee wishing to undergo sex reassignment therapy. This applicant appealed to the Commissioner of Administration, and her case received some scrutiny from the Anti Discrimination Body under the Commissioner, and the European LGBT community. The Commissioner recommended to the Ministry of Health to avoid the exclusion of transgender individuals on the application of the Subsidies Scheme, and advised that, until the necessary legal regulation for the matter, the Ministry should conform to the requirements of EU Directives and European Court of Justice Case Law on the Matter.<sup>258</sup> According to the Fundamental Rights Agency,<sup>259</sup> “case law of the European Court of Human Rights (ECtHR) the European Convention on Human Rights (ECHR) obliges all State parties to provide for the possibility, in principle, within their jurisdiction, to undergo surgery leading to full gender reassignment”.<sup>260</sup> The case is still being monitored by the Commissioner, and has not been resolved.

More recently, a Cypriot transgender woman was also declined coverage of gender reassignment processes. This case also received negative attention from conservative media and sites.<sup>261</sup>

ii. *If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

No.

The Ministry of Health provided no response.

## VIII. Housing

### **37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without**

<sup>257</sup> European Union Agency for Fundamental Rights (2010). Supra Note 157, p. 24.

<sup>258</sup> Information obtained by the author (MK), provided by Commissioner of Administration, Eliza Savvidou, in personal communication, 24 August 2012.

<sup>259</sup> European Union Agency for Fundamental Rights (2010). Supra Note 157, p. 1.

<sup>260</sup> *L. v. Lithuania*, app. no. 27527/03. (ECtHR, 11 September 2007).

<sup>261</sup> ‘Cypriot man asked for money to change sex – The Ministry refused.’ *Alithia online*, 17 September 2012, available at:

[www.alithia.com.cy/el/news/12/26550/%CE%9A%CF%8D%CF%80%CF%81%CE%B9%CE%BF%CF%82-%CE%B6%CE%AE%CF%84%CE%B7%CF%83%CE%B5-%CF%87%CF%81%CE%AE%CE%BC%CE%B1%CF%84%CE%B1-%CE%B3%CE%B9%CE%B1-%CE%BD%CE%B1-%CE%B1%CE%BB%CE%BB%CE%AC%CE%BE%CE%B5%CE%B9-%CF%86%CF%8D%CE%BB%CE%BF---%CE%91%CF%81%CE%BD%CE%AE%CE%B8%CE%B7%CE%BA%CE%B5-%CF%84%CE%BF-%CE%A5%CF%80%CE%BF%CF%85%CF%81%CE%B3%CE%B5%CE%AF%CE%BF-%CE%A5%CE%B3%CE%B5%CE%AF%CE%B1%CF%82.htm?fb\\_comment\\_id=fbcomment229741217152107\\_813755\\_229765183816377#ff144c36](http://www.alithia.com.cy/el/news/12/26550/%CE%9A%CF%8D%CF%80%CF%81%CE%B9%CE%BF%CF%82-%CE%B6%CE%AE%CF%84%CE%B7%CF%83%CE%B5-%CF%87%CF%81%CE%AE%CE%BC%CE%B1%CF%84%CE%B1-%CE%B3%CE%B9%CE%B1-%CE%BD%CE%B1-%CE%B1%CE%BB%CE%BB%CE%AC%CE%BE%CE%B5%CE%B9-%CF%86%CF%8D%CE%BB%CE%BF---%CE%91%CF%81%CE%BD%CE%AE%CE%B8%CE%B7%CE%BA%CE%B5-%CF%84%CE%BF-%CE%A5%CF%80%CE%BF%CF%85%CF%81%CE%B3%CE%B5%CE%AF%CE%BF-%CE%A5%CE%B3%CE%B5%CE%AF%CE%B1%CF%82.htm?fb_comment_id=fbcomment229741217152107_813755_229765183816377#ff144c36)>[accessed 18 November 2012].

**discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.**

*i. Does legislation prohibit discrimination in such areas as:*

- *the sale or rent of housing;*
- *the provision of loans for purchase of housing;*
- *the recognition of the rights of a tenant's partner;*
- *evictions*

*on the grounds of (a) sexual orientation and (b) gender identity?*

Partially.

Various responses received provide different interpretations of the legislation regarding the above points.

Initially, legislation relevant to housing was identified and scrutinised, including those with reference and relevance to sale of property; rent; inheritance wills; and housing subsidies (including housing subsidies for displaced persons).<sup>262263264265266</sup> None of these Laws confers any explicit protection from discrimination on the grounds of sexual orientation or gender identity (or discrimination on any other grounds) regarding the sale or rent of housing, provision of laws for purchase of housing, the recognition of the rights of a tenant's partner, or evictions. The Racial and other forms of Discrimination (Ombudsman) Law of 2004 [N.42(I)/2004], prohibits discrimination on grounds that include sexual orientation (but not gender identity) in several areas, including "access to goods and services, provision to such, and housing".<sup>267</sup> Since it is not clarified whether all of the above listed areas are covered through this legislation, we requested clarifications from the Anti Discrimination Body at the Office of the Commissioner of Administration, regarding the areas covered by the provision in the Ombudsman's Law. Their response is that they consider that all of the above areas, including housing loans and subsidies are covered through the Commissioner Law.<sup>268</sup>

In an effort to investigate whether any prohibitions of discrimination regarding housing were in place in practice, or through any regulations, we contacted various Departments that deal with issues related to housing in Cyprus. These included the Town Planning and Housing Department, the Department of Lands and Surveys, the Cyprus Organisation for Land Development, and the independent Housing Finance Corporation (HFC). We only received written responses from the first and the latter.

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<sup>262</sup> *On sales of land (Special Execution) Law*, Chapter 232, 50 of 1970, 96 of 1972.

<sup>263</sup> *Rent Control Law of 1983-2007*, N. 23 of 1983 (includes provisions on evictions).

<sup>264</sup> *Wills and Succession Law*, N. 75 of 1970 and Law N. 100 of 1989, Ch. 195.

<sup>265</sup> *Special Subsidy (Purchase or Construction of Residence) Law*. N. 91(I) of 2006, as published in the Official Gazette of the Republic N. 4085 of the 28<sup>th</sup> April 2006.

<sup>266</sup> *Provision of Housing Assistance to Displaced, Victimized, and Other Persons Law*. N. 46(I) of 2005, published in the Official Gazette of the Republic N. 3989[1] on the 6<sup>th</sup> May 2005.

<sup>267</sup> *Commissioner Law*, 2004, article 6(2)(ζ).

<sup>268</sup> Information obtained by the author (MK), provided by the Anti Discrimination Body (Zinaida Onoufriou) in personal communication 18 October 2012. [correspondence in file with the author].

The response from the Town Housing and Planning Department regarding the prohibition of discrimination in the above areas pertaining to housing states that there is no such provision in the Law:

“While there is no legislation that precludes direct discrimination based on sex, age or sexual orientation in housing programs in government refugee settlements and Self-Housing settlements, no exclusion has been observed up to date”.<sup>269</sup>

Access to goods and services is also protected on the grounds of gender (between men and women only), through the Goods and Services Law of 2008 [N.18(1) 2008],<sup>270</sup> which transposed EC Directive 2004/113/EC of 13<sup>th</sup> December 2004.<sup>271</sup><sup>272</sup> As noted in ILGA-Europe’s Annual Review (2011), discrimination on the basis of sexual orientation and gender identity is not expressly prohibited,<sup>273</sup> and these grounds are not mentioned in this Law. However, as pointed out by Fabeni & Agius,<sup>274</sup> even though not explicitly stated in the above mentioned Directive, the Council of the European Union and the Commission referred to the ECJ case-law<sup>275</sup> indicated that trans people are to be protected under the scope this Directive (minutes of the 2606th meeting of the Council of the European Union, the Joint Council and Commission). Thus, it could be argued that Law N.18(1)/2008 could be interpreted to partly protect discrimination on the basis of gender identity for access to housing, even though the Law has not been amended in line with the ECJ case law.

#### *Sales/Rent*

The Town Planning and Housing Department stated that the regulation of procedures regarding the sale or rent of housing to third parties is not within its competence, whereas the HFC is responsible for granting loans. Thus, no relevant information was received from any competent authority responsible for the regulation of sale and rent of housing.<sup>276</sup>

#### *Loans*

The Housing Finance Corporation (HFC) is a specialised bank institution, which functions under the supervision of the Central Bank of Cyprus and the Auditor General, and grants long term loans to first time home owners. The HFC responded

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<sup>269</sup> Information obtained by the author (MK), provided by the Department of Town Planning and Housing (Anthi Loizou) in personal communication 27 April 2012, Para 4.0(a). [correspondence in file with the author]; translation by the authors.

<sup>270</sup> *Equal Treatment of Men and Women (Access to and Provision of Goods and Services) Law*. N.18(1) of 2008, as published in the Official Gazette of the Republic N. 4162(I) on 2<sup>nd</sup> May 2008.

<sup>271</sup> Council Directive 2004/113/EC of 13th December 2004 Implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L 373.

<sup>272</sup> However, the interpretation of legislation does not seem to consistently include ‘housing’ under the heading of ‘goods and services. For example, the Cyprus Supreme Court has ruled that access to ownership was outside the scope of the Directive (Goods and Services), in *Perihan Mustafa Korkut or EyiamPerihan v Apostolos Georgiou* through his attorney Charalambos Zappos (17.12.2007), Case No. 303/2006.

<sup>273</sup> *ILGA-Europe Annual Review* (2011), p. 57.

<sup>274</sup> S. Fabeni, and S. Agius (2009). *Supra* Note 155, p.7.

<sup>275</sup> C-13/94, *P v S and CornwallCounty Council* (1994).

<sup>276</sup> In a phone conversation one of our research assistants had with the Personal Assistant of the Director of the Department of Lands and Surveys on 13<sup>th</sup> June 2012, she was informed that there is “no discrimination”, as the Department is not in a position to obtain any personal records in the process of sales or rent of housing. Despite requests, the PA refused to provide any response in writing, as it is “up to the Director himself which letters he should respond to”. On this basis, we assume that no procedures are in place to ensure that no discrimination on the basis of sexual orientation or gender identity takes place.

that there is no discrimination on the basis of sexual orientation or gender identity.<sup>277</sup> However, information provided stated that special provisions are warranted for low-income couples (waiver of interest for the first two years of the loan), which only apply to couples, either married, or engaged to marry.<sup>278</sup> In the latter case, (for couples intending to marry), a newspaper announcement of the couples' intention to marry is considered proof of relationship status, something that cannot be done by same sex couples.

Thus, in practice, unmarried (but engaged to marry) different sex couples, are in a privileged position compared to their same sex counterparts, as they are eligible for these low interest loans. As mentioned by the Fundamental Rights Agency, previous case law of the ECtHR makes it clear that same sex couples must be treated on an equal footing with respect to different sex couples of the same status.<sup>279</sup> It is unclear whether the practice of granting yet unmarried, but engaged to marry, different sex couples concessions equivalent to married (thus essentially different sex) couples, could potentially constitute unequal treatment of same sex and different sex couples of the same status (unmarried, but intending to marry).

No relevant information was identified with regards to housing loans from third parties (e.g. banks).

### *Housing Subsidies*

Apart from loans, there are several programmes in place in Cyprus to provide special subsidies and allowances for displaced persons,<sup>280</sup> as well as for individuals or different sex couples with low income. The Service for the Rehabilitation of Displaced Persons is responsible for approving such subsidies to holders of a "refugee identity". Until recently, persons eligible for a refugee identity were either persons who were displaced during the events of 1974 (had lost access and use of their permanent residence), or the children whose fathers (not mothers) were displaced in 1974. Following repeated complaints, much public debate, and scrutiny, this serious discrepancy based on paternity vs. maternity, was only partly rectified recently (2011), with an amendment rendering children whose mothers are holders of a refugee identity eligible for only some of the schemes for which children of displaced fathers are eligible (Plans (1) and (2) below only).<sup>281</sup> <sup>282</sup> Children of

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<sup>277</sup> Information obtained by the author (MK), provided by the Housing Finance Corporation (Agis Metaxas), in personal communication, 27 July 2012. [correspondence in file with the author].

<sup>278</sup> Marriage certificate, or engagement announcement in a newspaper is required as proof of marital relationship for couples; thereby intrinsically this loan only applies to different sex couples.

<sup>279</sup> European Union Agency for Fundamental Rights (2010). *Supra* Note 132.

<sup>280</sup> The term here refers to persons who were displaced following the invasion of Turkey in Cyprus in 1974, which forced a significant portion of the population to be displaced from the now occupied north to the area now under the effective administration of the Republic of Cyprus.

<sup>281</sup> *Law Amending the Laws for Provision of Housing Subsidies to Displaced, Victims, and Other Persons*, N.155(I) of 2011, as published in the published in the Official Gazette of the Republic N. 4306, on the 2<sup>nd</sup> December 2011.

<sup>282</sup> Information obtained by the author (MK), provided by the Department of Town Planning and Housing (Constantinos Alkides), in personal communication, 25 May 2012. The reply stated: "The draft law concerning the inclusion of maternal refugees in the housing plans for granting housing in government settlements of government land for self-housing was put into law on 2.12.2011. Its provisions have been put into effect in 2.1.2012, and the first applications have already been submitted for review"; translation by the authors.

displaced mothers, as opposed to children of displaced fathers, are still not eligible for the last three plans mentioned below, which provide considerable financial subsidies for housing.

The Town Planning and Housing Department provided information regarding five programmes for housing subsidy or assistance for holders of refugee identities, some of which fall under the Department's competence:<sup>283</sup>

- (1) Housing in a government settlement: The Town Planning and Housing Department states that these are provided without regards to "sex, sexual specificity, or age", and that the only criterion is income.<sup>284</sup>
- (2) Self-Housing in State land: This is only available for families, or for elderly single individuals, and is based on income. Therefore, this would not be accessible to same sex couples, as they could neither apply as "family", neither as single individuals.  
and  
Granting of State land as compensation: According to the Town Planning and Housing Department, these are provided to "displaced persons, who reside in Turkish Cypriot houses which cannot be granted residence titles, and beneficiaries are organic families and elderly individuals only, without any other discrimination".<sup>285</sup> Again, this plan would not be accessible to same sex couples, as they could neither apply as "family", neither as single individuals.
- (3) Granting of financial assistance for the purchase of a house or apartment for self-housing in owned land: This is addressed to "organic families" and single individuals, based on income criteria, who are not homeowners. This is not accessible to children of displaced mothers (only children of displaced fathers).
- (4) Rent subsidy plan for displaced and victimised persons. This is addressed to displaced persons and "victims", who rent a house or apartment as their permanent residence in Cyprus, and are applied on the basis of income. The Town Planning and Housing Department States that "there is no discrimination regarding family composition, sex, age, or sexual specificity".<sup>286</sup>
- (5) Granting Financial Assistance for the repair or maintenance of low cost housing in State land for old self-housing settlements: this applies for all beneficiaries, past recipients of financial support, and according to the Town Planning and Housing Department "does not entail any exclusion".

The Town Planning and Housing Department defines beneficiaries as permanent residents of Cyprus, who do not own real property of substantial value, and who are "families, where at least one spouse, regardless of sex, is a refugee identity holder, as well as single individuals who are holders of a refugee identity".<sup>287</sup> The programmes' provisions differ in relation to the amount of subsidy granted, depending on whether the beneficiary is a single applicant or a family. Upon subsequent communication, it was clarified that family is defined as "heterosexual married couples, with, or without children". It was also clarified that beneficiaries are

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<sup>283</sup>SupraNote269, 27 April 2012, para. 2.0.

<sup>284</sup>Ibid, para.2.0 (a).

<sup>285</sup> Ibid, para. 2.0(b).

<sup>286</sup>Ibid; translation by the authors.

<sup>287</sup> Ibid, para. 2.0; translation by the authors.

also “divorcees, widows/ers, and single parents of children under 18”.<sup>288</sup> Since the level of subsidy is contingent upon family status and size, married heterosexual couples have access to more opportunities regarding housing subsidies and loans, compared to same sex couples (who can only apply as single individuals). The Town Planning and Housing Department clarifies that this is because the Displaced Persons’ Housing policy is consistent with “the provisions of the Republic’s broader Law, which, as is known, does not recognise same sex marriage”.<sup>289</sup>

The Town Planning and Housing Department stated that “while there is no legislation to expressly prohibit discrimination based on sex, age, or sexual orientation for the refugee housing plans in state and self-housing settlements, up to date, no such exclusion has been noted.”<sup>290</sup> The Town Planning and Housing Department also states that no cases of exclusion based on sex or sexual orientation have been noted with regards to the issuing of property titles for the ownership of refugee realty. However, the Department did not report having any mechanisms in place to ensure that the above housing plans are provided with “no discrimination”, for the cases where this claim was made in its reply.

Regarding housing subsidies for individuals or families with low income (non-displaced persons), again, of the six plans mentioned, two cater only to ‘families’ (defined as different sex married coupled with or without children).<sup>291</sup>

#### *Evictions and tenant’s partner’s rights*

No relevant information was provided from any of the authorities contacted regarding evictions, or regarding tenant’s rights. The Town Planning and Housing Department clarified that it only conducts evictions in cases of “unlawful seizure of refugee homes, of which the beneficiaries have died”.<sup>292</sup> No further clarification was made regarding the potential status of a cohabiting same sex partner (or different sex unmarried partner) of a beneficiary of refugee housing in case of the latter’s death. Since no legal status is granted for such a relationship, and considering that the deceased’s partner would not be considered “family”, it is therefore assumed that the partner’s continued residence in the refugee housing would be considered “unlawful” and would result in eviction.

The Fundamental Rights Agency cites ECtHR case law on this matter, and specifically the 2003 *Karner v Austria* judgment, where, in 2010 the Court reiterated that a partner should be able to succeed to a tenancy held by his/her deceased partner. The Court unanimously held that the blanket exclusion of persons living in same sex relationships from succession to a tenancy was in breach of article 14 of

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<sup>288</sup>SupraNote282, 25 May 2012, para. 4(b).

<sup>289</sup> Ibid, para. 3.

<sup>290</sup>SupraNote269, 27 April 2012, para. 4.0(a) and (b); translation by the authors.

<sup>291</sup>These include the following plans: (1) The Integrated Housing Plan, which included social policy for the housing of families with many children (four or more children), and for housing in a specific area or community, located in close proximity to the Green Line (The “Green Line” or the “United Nations Buffer Zone” was established in 1974 following the Turkish invasion of Cyprus, as a demilitarised zone which separates the island in southern and northern sections. Selected State land in these areas is disposed for this plan); (2) Plan for disposal of land to low income families; (3) Sponsorship Plan for the Improvement of Housing Conditions of Social Welfare Recipients; (4) Sponsorship Plan to improve housing for the care and accommodation of guests and disabled persons who are Social Welfare Recipients; (5) Rent Subsidy Scheme for Repatriated persons; (6) Public Housing Projects implemented by the Cyprus Land Development Organisation (housing plan for low and Ministry of Defenceerate income individuals).

<sup>292</sup>SupraNote269, 27 April 2012, para. 4(d); translation by the authors.

the ECHR, taken in conjunction with article 8 (the right to respect for private and family life).<sup>293</sup>

Neither any of the Departments contacted, nor the Ministry of Interior itself, as the Ministry responsible for housing, mentioned any plans to introduce or amend legislation to expressly prohibit discrimination regarding access to housing on the basis of sexual orientation or gender identity.

The Town Planning and Housing Department informed the researchers, in their written response,<sup>294</sup> that they intend to propose to the Service for the Care and Rehabilitation of Displaced Persons, to incorporate a provision such that, for each approval granted by the Competent Committee, with its participation, a note will be made that no discrimination was made according to the Recommendation. The Town Planning and Housing Department also stated that, based on information received by the Committee examining the applications, no relevant complaints were received to date.

After receiving complaints regarding the absence of legal framework for same sex partnerships, the NHRI (Anti Discrimination Body, under the Commissioner of Administration), published two reports calling for the need to provide legal regulation, including regulating property rights.<sup>295</sup><sup>296</sup> No official information is available regarding the intention to proceed with this suggestion. Unofficially, several Members of Parliament have informed accept-LGBT Cyprus that offline discussions about a civil partnership law are under way, and that they and their parties would be likely to support a bill if it were proposed by someone else. The Fundamental Rights Agency in 2010 reported that “The Minister of the Interior is currently holding consultations on this issue”.<sup>297</sup> This is also acknowledged in the second report by the Anti Discrimination Body on this matter, where the Ombudswoman mentions that “the Ministry of Interior has stated its willingness to explore the possibility of regulating cohabiting partnerships, calling other ministries and services to communicate their positions. Similar positive willingness was also displayed by MPs, as apparent from the recent meeting of the parliamentary committee on Labour.”<sup>298</sup> No update has been received since, although in a meeting held by our research team with the Minister of Interior repeated her intention to follow through this matter.<sup>299</sup>

- ii. *Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?*

No sufficient information.

No information was provided regarding access to shelter and other emergency accommodation.

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<sup>293</sup> *Karner v Austria*, App no. 40016/98, (ECtHR, 24 July 2003).

<sup>294</sup> Supra Note 282, 24 May 2012, para. 3.

<sup>295</sup> Supra Note 7.

<sup>296</sup> Ref. AKPTOP 1/2011, *Position of the Anti Discrimination Body regarding the need to implement civil partnership between heterosexual and homosexual couples*, para. 20. 22 December 2011.

<sup>297</sup> European Union Agency for Fundamental Rights (2010) Supra Note 132, p. 25.

<sup>298</sup> Ibid, para. 7.

<sup>299</sup> Meeting with Minister of Interior Ms Eleni Mavrou, on 9<sup>th</sup> June 2012.

- iii. *Is information available to landlords and tenants aimed at preventing such discrimination?*

No.

- iv. *Are adequate and effective legal or other remedies available to victims of such discrimination?*

No.

Where penalties do exist they are minimal, and are only accessible after a victim of discrimination submits a complaint to the Commissioner of Administration.

As defined in the Antidiscrimination (Ombudsman) Law, the Ombudsman (Commissioner of Administration) has the authority to issue decrees for the elimination of discrimination, following examination of a complaint by a victim of discrimination, and impose fines up to CYP350 (equivalent of EURO 598), and up to CYP450 (equivalent of EURO769) and/or up to six month imprisonment, for criminal offenses related to the examination of a complaint of discrimination (articles 50, 51), including offenses against the complainants or persons providing information for the case.<sup>300</sup>

No other remedy or compensation is available for survivors of such discrimination.

- v. *Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

No.

The Town Planning and Housing Department clarified that it has no competence in ensuring the public is informed regarding such matters, especially as far as programmes of the Integrated Housing Plan and the Cyprus Land Development Corporation are concerned, although they stated that it does share the opinion that no discrimination should be made.<sup>301</sup> Other Departments provided no relevant response.

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

- i. *Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?*

No.

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<sup>300</sup>SupraNote4, articles 30, 50, 51.

<sup>301</sup>Supra Note 282, para. 3.

- ii. *Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?*

No.

According to the response received by the Social Welfare Services of the Ministry of Labour and Social Insurance, no support programmes are implemented to address factors which increase the vulnerability to homelessness of LGBT people' and no specialised training and awareness-raising programmes are being provided to the relevant agencies.<sup>302</sup>

The Social Welfare Services stated that its practice is to offer individualised services for each person, and that they do not note any discrimination on the basis of sexual orientation or gender identity. They mention no specific information regarding any mechanisms in place to ensure that discrimination on the grounds of sexual orientation or gender identity does not occur during the provision of individualised services, and to ensure that should any instances be observed, that they would be identified and rectified.

The Social Welfare Services do not report any intention or action plan for addressing the gaps identified regarding the Implementation of the Recommendation.

## **IX. Sports**

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

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

The Cyprus Sports Organisation (CSO) is a semi-governmental organisation established in 1969, in line with the specific Cyprus Sports Organisation Law [N.

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<sup>302</sup> Information obtained by the author (MK), provided by the Social Welfare Services of the Ministry of Labour and Social Insurance (Marina Efthimiadou), in personal communication, 10 April 2012. [correspondence in file with the author].

41/1969] <sup>303</sup> and acts as an umbrella organisation governing sporting clubs, organisations and fan clubs setting protocols and regulations. The Cyprus Sports Organisation is considered the supreme authority in setting norms and fostering a culture of equality in participation in the arena of sports in Cyprus.

In its written response, the CSO repeatedly stressed that it views sports as an activity that “every person has the right to”. <sup>304</sup> The Cyprus Sports Organisation stated that to date no particular issues have been raised within the sporting community at large with regard to sexual orientation and gender identity and sporting activities.

Following our communication, they also state their intention to circulate amongst their members the relevant sections of the Council of Europe’s Recommendation with regard to sexual orientation and gender identity and sport and have stressed their desire to continue an open dialogue on the issue.

- i. *What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*

No measures have been taken.

In their written response, the Cyprus Sports Organisation includes no reference to any measures in place to specifically prevent risk of exclusion from participation based on sexual orientation and/or gender identity.

The international literature on this topic highlights the vulnerability of LGBT persons in experiencing indirect forms of exclusion, often resulting in their discouragement from participation in sports, especially where popular sports are dominated by strict and hegemonic gender roles. However, available empirical evidence regarding this phenomenon in Cyprus is scarce to non-existent. Considering the high prevalence of strict gender restrictions in sports in Cyprus (e.g. popular sports like football highly value the ‘macho’ male role), this phenomenon needs to be researched and documented, and measures need to be taken to prevent the risk of exclusion, direct or indirect, on the basis of sexual orientation or gender identity. <sup>305</sup>

- ii. *By encouraging, for example:*
  - *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*

No.

To date, Codes of Conduct relating to sport do not address sexual orientation or gender identity formally or explicitly, other than through the general fundamental Cyprus Sports Organisation tagline that ‘sport is for all’.

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<sup>303</sup> *The Cyprus Sports Organisation Law of 1969*, as published in the Official Gazette of the Republic N. 731 on the 13<sup>th</sup> June 1969, as amended by, inter alia, Law N. 87(I) of 1996.

<sup>304</sup> Information obtained by the author (MK), provided by the Cyprus Sports Organisation (Philippos Sofocleous) in personal communication 30 March 2012, Para 4.0(a). [correspondence in file with the author]; translation by the authors.

<sup>305</sup> Margarita Kapsou, *Interview with Dr. Antonis Alexopoulos*, Sports Sociologist, University of Nicosia (Nicosia, 6 September 2012).

The Cyprus Sports Organisation states that it views any insults that include homophobic and/or transphobic content as punishable by Criminal Law.<sup>306</sup> The cited article refers to chanting that “offends and/or belittles the dignity of an individual” without any specific reference to sexual orientation or gender identity.

By considering such general provisions about racism in sports as adequate for covering homophobic and transphobic expression in sports, the Cyprus Sports Organisation sees no need to explicitly include provisions about homophobic and transphobic insults or chanting in its own Code of Conduct or the Code of Conduct of its members. Such a stance may have several implications: Firstly, it may be, in itself, an indication of the Cyprus Sports Organisation’s own reluctance to explicitly address homophobia and transphobia as serious issues in their own right, in line with the widespread social taboo that wants any explicit discussions about matters of ‘sexuality’ silenced. Secondly, it contributes to retaining the invisibility of homophobia and transphobia in sports. Despite the lack of empirical evidence on the actual magnitude of homophobic/transphobic insults (linked with patriarchal gender norms) in sports in Cyprus, such phenomena are considered to be not only widely prevalent, but also normalised, as most popular sports mandate manifestations of a ‘macho’ male culture.<sup>307</sup> Addressing this phenomenon explicitly and directly is necessary in order to render it visible and to frame it as a problem of discrimination and hurtful conduct in its own right. So long as they remain hidden under more generic provisions about discrimination and racism, efforts to tackle its prevalence will be hindered, while interpretation of the generic Codes of Conduct may vary, and not necessarily foster awareness among persons in charge of sports event, clubs, or association, as to the problematic nature of homophobic and transphobic language, resulting in many such expressions continuing unnoticed, and going unregistered.

As it stands, the code carries a fine starting from EUR 5000, should any sporting club, fans and/or members of said club, staff, management or others representing that club use discriminatory language, insults or behaviours, prior, during and after the sporting event, with an escalation process that includes club events taking place spectator-less. While the current code of conduct does not specify homophobic and transphobic chants specifically, in their response to the research team, the Cyprus Sports Organisation indicated the intention to proceed with including this clarification.<sup>308</sup>

- *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*

No.

- *anti-discrimination campaigns in the sports world,*

No.

The Cyprus Sports Organisation runs a Social Sports Programme, coordinated by an Officer in charge,<sup>309</sup> which conducts or funds a limited set of programs for drug prevention, and for inclusion of minorities such as migrants and repatriates, but does not deal with the issue of sexual orientation and gender identity. In line with the

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<sup>306</sup> Article 11.1 of the Cyprus Football Associations Code of Conduct.

<sup>307</sup> Supra Note 305, 6 September 2012.

<sup>308</sup> SupraNote304, 30 March 2012.

<sup>309</sup> [www.cyprussports.org/koa/activities/special-programs/social-sports.html](http://www.cyprussports.org/koa/activities/special-programs/social-sports.html) [accessed 2 October 2012].

Brighton Declaration on Women and Sports,<sup>310</sup> since 1994, the Cyprus Sports Organisation also includes a subcommittee on "Sports and Women".<sup>311</sup> No programs or committees appear to be in place specifically on gender issues (other than exclusively for women) that would also include gender identity, or sexual orientation.

This observation may reflect a wider lack of awareness about gender issues as relevant to all (not just an issue for women). It highlights the need for experts on the field, who can contribute to an updated conceptualisation of gender issues, and tailor programs in line with the specific nature of phenomena of homophobia, transphobia, and direct or indirect exclusion based on sexuality or gender identity in sports.

- *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

No sufficient information/Not applicable.

The Cyprus Sports Organisation is not aware of any organised sporting groups on the island that have been set up by and/or for the LGBT community, and therefore were unable to provide information pertaining to partnerships of this nature. It should be noted that neither accept-LGBT Cyprus nor the researchers are aware of any sports associations set up specifically by LGBT persons.

*iii. Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*

*In particular:*

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*

No.

Homophobic and transphobic chanting are not explicitly categorised as a criminal offence in the Law.

- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events,<sup>312</sup> the European Sports Charter<sup>313</sup>*

Yes/Partially.

According to the Cyprus Sports Organisation, the European Convention on Spectator Violence and Misbehaviour at Sport events has been implemented.<sup>314</sup> No

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<sup>310</sup>Brighton Declaration on Women and Sports, issued at the 1st World Conference on Women and Sport, Brighton, UK 1994, available at: <[www.iwg-gti.org/@Bin/22427/Brighton\\_Declaration\\_e.pdf](http://www.iwg-gti.org/@Bin/22427/Brighton_Declaration_e.pdf)> [accessed 2 October 2012].

<sup>311</sup><[www.cyprussports.org/committees/cso-committees/sport-and-women.html](http://www.cyprussports.org/committees/cso-committees/sport-and-women.html)>; the Board of this Committee currently only includes women. [accessed 2 October 2012].

<sup>312</sup><[conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120andCL=ENG](http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120andCL=ENG)> – see particularly Articles 2 ("Domestic coordination"), 3 ("Measures"), 5 ("Identification and treatment of offenders"). [accessed 2 October 2012].

<sup>313</sup><[wcd.coe.int/ViewDoc.jsp?Ref=Rec\(92\)13andSector=secCMandLanguage=lanEnglishandVer=revandBackColorInternet=9999CCandBackColorIntranet=FFBB55andBackColorLogged=FFAC75](http://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13andSector=secCMandLanguage=lanEnglishandVer=revandBackColorInternet=9999CCandBackColorIntranet=FFBB55andBackColorLogged=FFAC75)>;

See particularly: Article 1.1 (to enable every individual to participate in sport, in a safe environment); Article 3 (close co-operation with the non-governmental sports organisations); Article 4.1 (non-discrimination); Article 4.2 and 4.4 (accessed by disadvantaged persons). [accessed 18 November 2012]

<sup>314</sup>Supra Note 304, 30 March 2012.

further information was provided regarding how the relevant provisions have been implemented.

- *and ECRI's General Policy Recommendation No.12<sup>315</sup> been implemented in respect of (a) sexual orientation and (b) gender identity?*

No.

With regard to ECRI's General Policy Recommendation No.12, the Cyprus Sports Organisation states that it has not been implemented and provides no evidence of any consideration for future implementation.

- iv. Have specific appropriate measures been taken to:*
- *put an end to the exclusion of transgender persons from sports activity or competitions,*
  - *remove the obstacles encountered by them in participating in sport (dressing room access),*
  - *recognize their preferred gender?*

No.

None of the above measures seem to have been taken.

With regards to ending the exclusion of transgender persons from sports activities/competitions, the Cyprus Sports Organisation cites its generic stance that it is 'unethical to exclude any person from sporting activities' and that this fundamental principle has been circulated to all its members. Apart from this general stance regarding all forms of exclusion and discrimination there are no specific references to protocols and/or actions in place that are there to safeguard the inclusion of transgender persons, to remove possible obstacles or to recognise their preferred gender prior, during and after sporting events.

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

- i. Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*
- *developing awareness-raising activities*
  - *condemning homophobic and transphobic behaviour during and in connection with sports events?*

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<sup>315</sup> <[www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N12/e-RPG%2012%20-%20A4.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/e-RPG%2012%20-%20A4.pdf)>: Although this document relates specifically to racism and racial discrimination in the field of sport, the detailed measures set out in it are just as relevant to combating sexual orientation and gender identity discrimination in sport. Of the three documents listed above, this is the most useful in practical terms. [accessed 18 November 2012].

No.

No such steps not have been taken.

In its written response to our request for information, the Cyprus Sports Organisation stated that it is open to dialogue on LGBT issues in sports. They indicated a commitment to embark on a process of information sharing amongst its members with regard to the need to implement the relevant recommendations within the sports community.<sup>316</sup>

Despite the Cyprus Sports Organisation's stated willingness in their letter, in practice they have appeared reluctant to participate in, or support events dealing with homophobia in sports. When recently (Spring 2012), the Cyprus Sports Organisation was approached by academic departments at the University of Nicosia, in collaboration with NGOs, for sponsoring or placing under their auspices an event about sexual orientation in sports, they failed to respond.<sup>317</sup>

It is also not clear if the Cyprus Sports Organisation plans any initiatives aiming to raise awareness on discrimination based on sexual orientation or gender identity in sports, in the context of its social sports program, or otherwise. No information on such an intention has been communicated so far, and considering that the Cyprus Sports Organisation does not include a branch dealing with research on social issues on sports, it seems unlikely that such needs would be identified and steps taken without external intervention (from NGOs, researchers, and advocates).

## X. Right to seek asylum

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

- i. Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?*

Partially.

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<sup>316</sup>SupraNote304, 30 March 2012.

<sup>317</sup> Supra Note 305, 6 September 2012. Dr. Alexopoulos mentioned that the Cyprus Sports Organisation never responded to the request to place the event under their auspices. The Cyprus Sports Organisation did state its willingness to participate in a panel of experts during this event, but cancelled their participation shortly before the event, citing personal reasons of their representative. The event, titled "Sports and Sexuality" took place on 12 June 2012 at the University of Nicosia, and was coorganised by Department of Sports Management, the Cyprus Freethinkers Association, accept-LGBT Cyprus, and the Cyprus Family Planning Association.

National legislation<sup>318</sup> explicitly recognises sexual orientation, but not gender identity, in the notion of “membership of a particular social group”.<sup>319</sup> This is specified in paragraph 3D(d)(ii) of the Law as amended in 2009:

“Depending on the conditions prevalent in the country of origin, a specific social group may include a group based on the characteristic of sexual orientation. Sexual orientation cannot be understood to include acts that are criminalised under Cypriot law.<sup>320</sup> Aspects related to sex can be taken into account, but are not in themselves, evidence of the implementation of the present article”.<sup>321</sup>

According to information from the Cyprus Anti Discrimination Body, the national legislative framework embodies:

“the 1951 Geneva Convention, the European Convention on Human Rights, the European Charter of Fundamental Rights, Council Directive 2004/83/EC, the UN International Covenant on the Prevention of Torture and other international and European instruments, in combination with case law from the European Court of Human Rights, which establish the right of homosexuals to equal treatment and forbid the deportation of persons to countries where they are likely to be subjected to torture.”<sup>322</sup>

In its written response to the above question, the Asylum Service responded that protection to asylum seekers on the basis of sexual orientation or gender identity is possible, based on evidence concerning the country of origin and the applicant’s “general reliability for documentation of the alleged persecution”.<sup>323</sup> The Asylum Service also responded that asylum has actually been granted to an applicant<sup>324</sup> with a well-founded claim of persecution on the basis of their sexual orientation if returning to their Country of Origin.<sup>325</sup> Jansen & Spijkerboer<sup>326</sup> note that, at this point, there is no established practice regarding LGBTI asylum cases in Cyprus, although there were cases where refugee status was granted to LGBT applicants.

As an EU Member State, Cyprus should also comply with the Gender Recast Directive of 2011.<sup>327</sup> This Directive has not yet been transposed into national

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<sup>318</sup> *Refugee Law*, N. 6(I) of 2000, as published in the Official Gazette of the Republic N.3383[I] on the 28<sup>th</sup> January 2000, as amended by, inter alia, Law N.112(I) of 2009.

<sup>319</sup> *Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe*, 2011. Council of Europe Publishing, p.65.

<sup>320</sup> This qualification is in line with European Council Directive, article 10.1D, 2004/83/EC OJ 04, 30/09/2004 p. 0012 – 0023, although it has been criticised by experts (e.g. Jansen, 2008, Workshop held at the ILGA Europe Annual Conference, Vienna).

<sup>321</sup> *Refugee Law*, 2000, article 3D(d)(ii),

<sup>322</sup> Commissioner of Administration, Authority against Racism and Discrimination. Speech at the Training seminar organised by UNHCR Fleeing homophobia, *Seeking Safety in Europe: Asylum on the basis of sexual orientation and gender identity*, 16-17 November 2011, available at: <[www.no-discrimination.ombudsman.gov.cy/sites/default/files/017\\_-fleeing\\_homophobia\\_seeking\\_safety\\_in\\_europe\\_-\\_asylum\\_on\\_the\\_basis\\_of\\_sexual\\_orientation\\_and\\_gender\\_identity.doc](http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/017_-fleeing_homophobia_seeking_safety_in_europe_-_asylum_on_the_basis_of_sexual_orientation_and_gender_identity.doc)> [accessed 2 October 2012].

<sup>323</sup> Information obtained by the author (MK), provided by the Asylum Service (Natasa Andreou), in personal communication, 27 March 2012. [correspondence in file with the author].

<sup>324</sup> *Ibid.* The Asylum Service reply does not state the date for granting the asylum, nor the length of time required for the process between receiving and accepting the application.

<sup>325</sup> The Asylum Service has annual statistics available on its website regarding the number of applications received, and status granted, but not specifically on the grounds for each application, available at: <[www.moi.gov.cy/moi/asylum/Asylum.nsf/DMLstatistics\\_en/DMLstatistics\\_en](http://www.moi.gov.cy/moi/asylum/Asylum.nsf/DMLstatistics_en/DMLstatistics_en)>. Since the Asylum Service provided no further details in their reply, it is not possible to determine the status of any other applications that were received on the grounds of sexual orientation or gender identity. [accessed 18 November 2012].

<sup>326</sup> S. Jansen, and T. Spijkerboer. *Fleeing Homophobia: Asylum claims related to sexual orientation and gender identity in Europe*. (COC Nederland, Vrije Universiteit Amsterdam. 2011), p. 25. The National expert for Cyprus for this report was Corina Drousiotou.

<sup>327</sup> European Parliament legislative resolution of 27 October 2011 on the proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast) ([COM\(2009\)0551](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:COM(2009)0551) – C7-0250/2009 – [2009/0164\(COD\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:2009/0164(COD))).

legislation, thus gender identity is not yet explicitly recognised as grounds for granting refugee status and asylum. It is reported, however, that there have been cases where transgender persons have been granted asylum, in 2007.<sup>328</sup>

In practice, the process of examining applications for asylum on the grounds of sexual orientation has encountered problems. NGO sources we contacted clarified that, for the specific case cited by the AS, where asylum was granted, the applicant's asylum application was originally rejected, and the asylum was only granted following repeated appeals, interventions by human rights NGOs, and petitions, through a painstaking process through which the applicant faced detention and serious risk of deportation.<sup>329</sup>

At least two cases received some scrutiny by civil society and the Anti Discrimination Body, both concerning Iranian asylum seekers, where the authorities rejected applications for asylum on the basis of the applicants' sexual orientation. Subsequent review, following complaints by the applicants to the Anti-Discrimination Body, found these rejections to be unjustified, and called for further investigation.<sup>330331</sup>

The first case concerned an Iranian gay man whose asylum application had been rejected despite fear of prosecution in his country of origin because of his sexual orientation. The applicant had a history of ill-treatment in his country of origin due to his sexual orientation, and faced the prospect of death sentence upon his return; he was rejected asylum status in Cyprus on 5 August 2005, and again, upon resubmission of his claim on 30<sup>th</sup> April 2007 [F06-05723.R]. The applicant was, at the time, in a relationship with a Cypriot man. The application was rejected on the basis that the applicant had not demonstrated having experienced persecution explicitly due to his sexual orientation (the applicant was arrested four times in Iran, while in the presence of other homosexual persons, but other charges were given for the arrest). The Anti Discrimination Body found in his favour, citing information supplied by ILGA, Amnesty International and other NGOs that homosexuality in Iran is punishable either by hanging or stoning and that since the 1980s execution of homosexuals take place covertly, invariably using other charges as an excuse.

More recently (2011), a similar complaint, this time by an Iranian lesbian asylum seeker, led to the issuing of another similar report by the Anti Discrimination Body, calling for the asylum application to be re-examined. The Asylum Service rejected her claim on June 24<sup>th</sup> 2008, on the basis that her claims about her sexual

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Position of the European Parliament adopted at first reading on 27 October 2011 with a view to the adoption of Directive 2011/.../EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, *for a uniform status for refugees or for persons eligible for subsidiary protection*, and for the content of the protection granted (recast)

<sup>328</sup>European Union Agency for Fundamental Rights (2008). *Supra* Note 153, para. 35.

<sup>329</sup>Information obtained by the author (MK), provided by NGO expert and activist Ms Andriana Kossiva, in personal communication, on 30 August 2012, as follows:

"This asylum application was originally rejected by the AS. Then, he filed an administrative recourse at the Refugee Reviewing Authority, against the decision of the AS. His appeal was also rejected and after that, he was arrested and detained for the purposes of deportation as an "illegal migrant." During his detention, he contacted KISA and KISA, after fruitless efforts with the national authorities, informed European NGOs and organisations working on human rights and LGBTQI rights in particular. A petition was prepared and all these organisations let the asylum authorities in Cyprus know their strong opposition regarding the handling of the case and asked for asylum to be granted to the person into question. It was only after that that the Refugee Reviewing Authority decided to reconsider the case and finally, granted asylum to him" [correspondence in file with the author].

<sup>330</sup> *Supra* Note 5.

<sup>331</sup>Ref.AKP 68/2011, 70/2011. *Report of the Authority against Racism and Discrimination regarding granting refugee status to a homosexual asylum seeker from Iran*, 19 July 2011.

orientation were not well-founded, as she had previously been married twice in Iran. The Cyprus Anti Discrimination Body<sup>332</sup> points out that the Asylum Service failed to take into consideration the fact that the marriages were conducted under pressure and against the applicant's will, as well as the fact that the applicant was in a steady relationship with another woman since 2009. Several violations of directives were also identified in the process of the examination of the applicant's asylum request, and the authorities failed to take into consideration the severity of human rights violations that the applicant could face in her country of origin (also see question 43i in this section).

- ii. *Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?*

According to information provided by the Asylum Service in its written reply, asylum officers recently received training on LGBT issues. Such training programs have included training by the United Nations Refugee Agency (UNHCR) in 2011, the EAC/EASO (European Asylum Curriculum/European Asylum Support Office), as well as EURASIL working group seminars, and other seminars.<sup>333</sup> The Asylum service did not specify the precise dates for all the trainings mentioned. From the ones where dates were available, it appears that they took place after the cases where rejections of asylum applications from LGBT persons had already received the attention of civil society and the Anti Discrimination Body, events that may have highlighted the need to train staff on LGBT issues specifically.

- iii. *Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?*

Jansen & Spijkerboer define 'discretion reasoning' as the non-official practice applied in many European States, where "the applicant herself or himself is expected to ward off persecution by being 'discreet' about her or his sexual orientation or gender identity. In other words: the applicant should remain in, or return to 'the closet'".<sup>334</sup> In such cases:

"The asylum authorities of these States often rule that concealment of the applicant's sexual orientation or gender identity can be reasonably expected in order to prevent persecution. LGBTI people who leave their country in order to seek refuge and apply for international protection elsewhere, are often rejected with the reasoning that they have nothing to fear in their country of origin as long as they remain 'discreet'."<sup>335</sup>

Jansen & Spijkerboer report that Cyprus is among the countries where examples of discretion reasoning was identified through reports by national experts.<sup>336</sup> For the two cases where the Asylum Service rejected applications for asylum on the basis of sexual orientation and which reached the Anti Discrimination Body, reports by the Anti Discrimination Body, and information provided by NGOs, indicate that this assumption for discretion may have been a factor in the Asylum Service's application

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<sup>332</sup>Ibid.

<sup>333</sup>Supra Note 323, 27 March 2012.

<sup>334</sup> S. Jansen, and T. Spijkerboer, 2011, Supra Note 326, p. 8.

<sup>335</sup>Ibid, p. 33; translation by the authors.

<sup>336</sup>Ibid, p. 34.

rejection. Moreover, reports from NGO sources document the discretion argument as being regularly practiced in cases they have encountered through their work.<sup>337</sup>

Jansen & Spijkerboer<sup>338</sup> also emphasize that the discretion requirement is inconsistent with the Qualification Directive provision, and, according to UNHCR's 2008 Guidance Note on Sexual Orientation and Gender Identity (para. 25-26), should be abandoned:

"There is no duty to be "discreet" or to take certain steps to avoid persecution, such as living a life of isolation, or refraining from having intimate relationships. A requirement for discretion would furthermore imply that a person's sexual orientation is confined to a mere sexual act, thereby overlooking a range of behaviours and everyday activities otherwise affected by that person's sexual orientation and gender identity".<sup>339</sup>

The Asylum Service provided no relevant information, and did not report any intention of explicitly abandoning discretion reasoning.

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

*i. What procedures are in place to ensure compliance with this obligation?*

Relevant national legislation (article 4)<sup>340</sup> which implements the well-established principle of non-refoulement in domestic law in accordance with article 33 of the Geneva Convention, warrants that:

"no refugee or applicant is deported to a foreign country, or sent to the borders of a country, where, on account of sex, race, religion, nationality, membership of a particular social group or political opinion, their life or freedom would be threatened, or would be subjected to torture or inhuman or degrading treatment or persecution".<sup>341</sup>

This important principle, that has acquired the status of customary international law, is also in line with article 33 of the UN Refugee Convention 1951 by which State Parties are prohibited from returning a refugee to their country of origin if their life would be under threat.

The Asylum Service responded that "No asylum seeker, refugee, or person with additional protection status, is deported to their country of origin, based on the principle of non-refoulement".<sup>342</sup> The Asylum Service further clarified that any person claiming that they will be subject to persecution on the basis of their sexual orientation or gender identity upon returning to their Country of Origin is considered reliable, and if confirmed by the Country of Origin Information (COI), then

<sup>337</sup>Information obtained by the author (MK), provided by NGO expert and activist Ms Andriana Kossiva, in personal communication, 30 August 2012, as follows: "Moreover, I am very sure that there have been and there are a lot more asylum seekers, whose asylum claims are based on fear of persecution because of their sexual orientation. However, the usual reply of both the Asylum Service and the RRA is that if they keep their sexual orientation secret, they will not fear any persecution". [correspondence in file with the author].

<sup>338</sup> S. Jansen, and T. Spijkerboer, 2011, *Supra* Note 326, p. 33.

<sup>339</sup> UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, paras. 25-26.

<sup>340</sup> *Refugee Law*, 2000, article 4.

<sup>341</sup> UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, paras. 25-26.

<sup>342</sup> *Supra* Note 323, 27 March 2012, p. 2; translation by the authors.

international protection status is granted.<sup>343</sup> No other specific measures or procedures are mentioned to be in place to ensure that asylum seekers on grounds of sexual orientation or gender identity are not deported back to a country of origin where their life or freedom may be endangered, or where there are substantial grounds for believing that the individual will be exposed to inhuman or degrading treatment if removed.

Extradition of the applicant to a country where there is the likelihood of facing a risk of persecution (particularly torture or ill-treatment) is also in violation of the State's obligation under article 3 ECHR.<sup>344</sup>

However, as the two cases cited above illustrate, and contrary to the Asylum Service's claim, this principle appears to have been violated at least twice in the process of examining asylum applications, where the authorities failed to take into consideration the severity of the threat the applicants would face by being returned to their country. The case of the Iranian gay man is also discussed in the Fundamental Rights Agency's (FRA) report of 2010, where it is noted that:

"the Equality Body cited information supplied by ILGA, Amnesty International and other NGOs according to which homosexuality in Iran is punishable either by hanging or stoning and which indicated that, since the 1980s, executions of homosexuals take place secretly and using other charges as a pretext"<sup>345</sup>

Regarding the case of the Iranian woman, ILGA-Europe sent a letter in support for the applicant, stressing that her deportation could violate the principle of non-refoulement, as well as the right to life.<sup>346</sup> In both cases, it was apparent that, despite the legal provision regarding the principle of non-refoulement, the Asylum Service failed to take into account strong evidence regarding the severity of the threat the applicants would face in their country of origin. The severity of evidence provided by the COI was not only undermined, but also used against the applicants. Jansen & Spijkerboer note that:

"In cases of gay Iranians often the Iranian Penal Code is cited, for instance in a negative decision from Cyprus in 2009: "according to Iranian law, a sexual offence can only be proven if there were four witnesses present during the sexual act, if it occurred in a public space and offended the public sense of decency." This decision ignored that according to Iranian law evidence might also be obtained through the personal knowledge of a Sharia judge."<sup>347</sup>

In a subsequent communication, the Asylum Service clarified that "international protection cannot be afforded to all asylum seekers who claim fear of persecution for the above reasons in case the person is evaluated as unreliable in their claim, and in case their claims are not confirmed by the COI".<sup>348</sup> No further clarifications were provided regarding the criteria for establishing the reliability of applicants' claims, and the COI, and whether both or either need to be verified prior to granting or rejecting asylum.

*ii. Are there documented cases where asylum seekers have been returned to such a country?*

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<sup>343</sup> Ibid.

<sup>344</sup> *Soering v United Kingdom*, App. No 14038/88, (ECtHR, 7 July 1989) Series A No.161, reprinted in 11 E.H.R.R. 439.

<sup>345</sup> European Union Agency for Fundamental Rights (2010). *Supra* Note 132, pp. 60-61.

<sup>346</sup> ILGA-Europe letter to the Cyprus Asylum Service, 27 May 2011.

<sup>347</sup> S. Jansen, and T. Spijkerboer (2011), *Supra* Note 326, p. 74.

<sup>348</sup> *Supra* Note 323, 27 April 2012; translation by the authors.

Although the rejection of asylum claims by two applicants as cited above could have resulted in their deportation and jeopardised their safety, since the rejection was deemed unjustifiable by the Anti Discrimination Body, their applications have undergone re-examination, and neither of these applicants were returned to their country of origin. Information regarding other cases, which may have not been examined by the Anti Discrimination Body, is not available.

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

*i. What measures have been taken to comply with this requirement?*

The Asylum Service has stated that information and sensitisation programs for the general public are being promoted through the European Refugee Fund, especially on issues of asylum, refugees, and persons with supplementary protection status, aiming to promote tolerance of diversity and better social integration. These have included a funded program which commenced in 2010 for providing administrative, social, and psychological services for asylum seekers in detention centres.<sup>349</sup>

A guide for Asylum seekers and beneficiaries of International Protection in Cyprus was issued by the Asylum Service in 2011, and is available, in English, on the Asylum Service's website.<sup>350</sup> However, this document provides no information about protection specifically on the basis of sexual orientation or gender identity.

Regarding ensuring that asylum seekers receive adequate information relevant to their particular situation, the Asylum Service stated that support from a social worker was provided in some cases, in particular in situations where "asylum seekers did not understand their particular situation due, e.g. to the taboos prevalent in their country of origin where homosexuality could be considered a disease, or due to lack of education".<sup>351</sup> The Asylum Service mentioned no other specific measures for the protection of asylum seekers from risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment, as mentioned in the Recommendation.

*ii. In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases,*

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<sup>349</sup> *Solidarity, Progress, Prosperity: Support services (administrative, social and psychological) in Asylum Seekers Reception Centre Kofinou*, available at

[www.moi.gov.cy/moi/asylum/Asylum.nsf/DMLPress\\_gr/DMLPress\\_gr](http://www.moi.gov.cy/moi/asylum/Asylum.nsf/DMLPress_gr/DMLPress_gr) [accessed 18 November 2012].

<sup>350</sup> *Guide for Asylum seekers and beneficiaries of International Protection in Cyprus*, available at [www.moi.gov.cy/moi/asylum/Asylum.nsf/All/E3C438ECC1B2210BC22578400052F169/\\$file/Guide%20for%20asylum%20seekers%20and%20beneficiaries%20of%20international%20protection%20in%20Cyprus.pdf](http://www.moi.gov.cy/moi/asylum/Asylum.nsf/All/E3C438ECC1B2210BC22578400052F169/$file/Guide%20for%20asylum%20seekers%20and%20beneficiaries%20of%20international%20protection%20in%20Cyprus.pdf) [accessed 18 November 2012].

<sup>351</sup> *Supra* Note 323, 24 March 2012; translation by the authors.

*received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?*

The Asylum Service mentioned that, in 2012, Police Academy students received training on asylum issues, including the reasons provided for, in the Geneva Convention, and the relevant law regarding the granting of international protection.<sup>352</sup> The Asylum Service did not, however, specify, whether this training applied for all police academy students and whether this training is regular part of the curriculum. Regarding torture specifically, the following was mentioned: a number of medical staff have been informed about the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment);<sup>353</sup> a Medical Council – in possession of the manual - has been formed; and efforts to organise training sessions for medical staff by experts on this topic are under way.<sup>354</sup>

None of the above-mentioned training and information actions focus specifically on sexual orientation and gender identity. The Asylum Service does not mention providing, or intending to provide, any further training specifically on sexual orientation or gender identity for detention centre staff, police, medical staff, or voluntary organisations with access to such cases.

In practice, reports by the Anti Discrimination Body, as well as by Jansen & Spijkerboer (2011), identify examples where applicants seeking asylum on the basis of sexual orientation have faced treatment by the Asylum Service Staff that violated the relevant Directives, were overly intrusive, and did not indicate acknowledging the severity of COI data (as for example in the cases from Iran), but rather questioned or minimised the situation.

As an example of mistreatment and violations by staff at the Asylum Service, intrusive personal questions, including being requested to give his personal password for a gay social network site were requested from one asylum seeker in the case referred to earlier. Moreover, the fact that the applicant had served in the national guard - mandatory in his country - was considered by the Asylum Service to be contradictory with stereotypical gay conduct, and was used as one of the grounds to reject his claim.<sup>355</sup> <sup>356</sup> The Iranian lesbian applicant reported to the Anti Discrimination Body that both the officer, and the translator handling her claim, adopted a 'mocking attitude' toward her.<sup>357</sup> Specifically, in her complaint, the asylum applicant claimed that the Asylum Service officer told her that "in Cyprus there are no lesbian women, so coming here was a mistake".<sup>358</sup> The veracity of her claim with regard to her sexual orientation was also questioned, based on the fact that she had two previous marriages which the authorities had failed to take into account with regard to the applicant's claim that she was forced into these marriages and that now

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<sup>352</sup> Information obtained by the author (MK), provided by the Asylum Service (Natasa Andreou), in personal communication, 27 April 2012. [correspondence in file with the author].

<sup>353</sup> UN Office of the High for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("Istanbul Protocol"), 2004, HR/P/PT/8/Rev.1, <[www.unhcr.org/refworld/docid/4638aca62.html](http://www.unhcr.org/refworld/docid/4638aca62.html)> [accessed 10 August 2012].

<sup>354</sup> Supra Note 352 **Error! Bookmark not defined.**, 27 April 2012.

<sup>355</sup> Supra Note 5, para. 9.

<sup>356</sup> S. Jansen, and T. Spijkerboer, Supra Note 326, p. 61.

<sup>357</sup> Supra Note 331, para. 3.

<sup>358</sup> Information obtained by the author (MK), provided by NGO expert and activist Ms Andriana Kossiva, in personal communication, 30 August 2012. [correspondence in file with the author].

they had ended. Also not taken into account was that there is documented evidence from COI regarding this practice.<sup>359</sup>

The fact that, despite the Anti Discrimination Body's strong criticism for human rights violations following the rejection of the first Iranian applicant, the Asylum Service repeated many of the same violations and proceeded with another rejection in the second case, which, in the opinion of human rights NGOs active in Cyprus, may indicate a continued bias and predisposition for persisting discriminatory treatment among the authorities.

## XI. National human rights structures

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

*i. Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?*

According to article 3(1)(c) of the Commissioner Law [N. 42(I)/2004],<sup>360</sup> it falls within the Commissioner of Administration (Ombudsman)'s responsibilities to promote equal opportunities on every matter irrespectively of one's sexual orientation. Discrimination on grounds of gender Discrimination Body has dealt with complaints concerning discrimination of transsexual persons.

*ii. In practice do they*

- *make recommendations on legislation and policies,*
- *conduct awareness-raising among the general public*
- *examine individual complaints*
- *participate in court proceedings*
- *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed, in relation to (a) sexual orientation or (b) gender identity?*

Yes.

The Anti-Discrimination Body has issued several reports suggesting amendments to current legislation and adaptation of policies in a way that treats equally persons with

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<sup>359</sup> C. C.E. Mackenzie, E. Paradis, S. Agius, and J. Lavrikovs. *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe* (ILGA-Europe, 2011), p. 5.

<sup>360</sup> *Commissioner Law*, 2004.

different sexual orientation. Examples are the reports suggesting for equal treatment of third-country nationals who are same sex partners of European nationals concerning their residence in Cyprus and the two reports suggesting the introduction of civil partnership or marriage between same sex couples.<sup>361</sup>

Concerning discrimination on the grounds of gender identity, the Anti Discrimination Body recently provided guidelines on the granting of financial aid to a transsexual refugee in order to undergo gender reassignment surgery<sup>362</sup>. Also a complaint is pending concerning the residence permit of a European transsexual who lives in Cyprus for the past twenty years.<sup>363</sup> The most recent report pertaining to LGBT issues by the Anti Discrimination Body concerned hate speech, following complaints received concerning homophobic expressions from a public figure.<sup>364</sup>

Moreover, the Anti-Discrimination Body conducted in 2010 (under the PROGRESS EU program) a campaign in the media, raising awareness on the issues of discrimination, including on the ground of sexual orientation. The campaign included printed, radio and TV messages against discrimination (see Section [III.13\*i\*](#) of this report, for discussion of controversies that arose during the campaign).

As mentioned above, a number of complaints on the grounds of sexual orientation and gender identity are examined and have led to the issuing of relevant reports.<sup>365</sup><sup>366</sup> However, so far the Anti Discrimination Body has not participated in any court proceedings relevant to these issues.

The Anti Discrimination Body has repeatedly spoken out in support of the rights of LGBT people. It has facilitated the registration of the LGBT organisation accept-LGBT Cyprus as an NGO and in many occasions has supported their freedom of assembly events.

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<sup>361</sup>Supra Note 7.

<sup>362</sup> Information obtained by the author (MK), provided by the Commissioner of Administration, Eliza Savvidou, in personal communication, 24 August 2012. [correspondence in file with the author].

<sup>363</sup> Information obtained by the author (MK), provided by the Anti Discrimination Body of the Office of the Commissioner of Administration (Zinaida Onoufriou), in personal communication, 6 March 2012. [correspondence in file with the author].

<sup>364</sup>Supra Note 8.

<sup>365</sup>Supra Note 5.

<sup>366</sup>Supra Note 6.

## **About the Cyprus Family Planning Association**

The Cyprus Family Planning Association (CFPA) is one of the oldest and most firmly-established Non-profit, Non-Governmental Organisations (NGOs) in Cyprus, with a rich and ongoing contribution to society, health, education, and Human Rights since its inception in 1971. The CFPA is a fully accredited member of the European Network of the International Planned Parenthood Federation- European Network (IPPF-EN), with active involvement in several European networks and bodies. The CFPA works towards promoting and advocating for the Sexual and Reproductive Health and Rights of all people in Cyprus.

CFPA's vision is a world where sexuality is expressed and enjoyed in freedom, equality, respect and love. Respect and protection of sexual reproductive rights as basic human rights is a prerequisite for ensuring sexual health and wellbeing of all people.

Our mission is to promote the development of a society where all people can enjoy the basic human right to make free and informed choices in their sexual, emotional and reproductive lives. We work to defend, protect and advocate for the sexual and reproductive rights of all women, men and young people, and we exercise a leading role in sexual and reproductive health through the work of our committed, competent and skilled volunteers and staff. We firmly believe that evidence-based, Comprehensive Sexuality Education (CSE), free of prejudice, dogma or ideologies, is necessary to equip young people with the tools - knowledge and skills- needed to make informed and free choices regarding their sexual life. Thus, the CFPA plans, implements and evaluates information and education programs for youth by youth and specialists, educates parents, teachers and other professionals, and publishes accurate information and educational materials on issues of sexuality. Moreover, in the context of its efforts to ensure access by all to health services, for several years the CFPA offered low cost clinical services by volunteer gynaecologists. The CFPA also carries out research programs to record and document the needs in Cyprus and conduct programs to promote and defend Sexual Reproductive Rights.

In relation to sexual orientation, the CFPA believes that it can take many forms and be expressed in a number of different ways, including gay, lesbian, bisexual and heterosexual relationships, and that all people should be able to express their sexuality freely. The CFPA is concerned about discrimination on the grounds of sexual orientation, as a serious violation of basic human rights. Its actions have included leading an awareness raising campaign on sexual orientation in the context of the year for "Equal Opportunities for All – 2007" in cooperation with the Cyprus Gay Liberation Movement (AKOK). In order to provide accurate information and raise awareness among the general public on the issue of sexual orientation from a human rights perspective and discrimination due to sexual orientation, the CFPA has issued an informational booklet titled "Sexual Orientation - Myths and Truths". The CFPA also provides information and support on sexuality issues, including issues pertaining to sexual orientation, through a free helpline (1455).

[www.cyfamplan.org](http://www.cyfamplan.org), [info@cfpa.org.cy](mailto:info@cfpa.org.cy), (357-22 751093).

## **About accept-LGBT Cyprus**

### **Who we are**

A group of people regardless of age, gender, sex, sexual orientation, ethnicity, socioeconomic status, class, religion, language, mental or physical disability or other characteristics, and steadily and push for the acceptance, emancipation and support in full by the Cypriot society on issues concerning the LGBT community.

### **Our focus**

- On advocacy, assertion and promotion of the rights and interests of LGBT people, as well as fighting against preconceived stereotypes, stigmas and social outcasting.
- Sensitizing and informing the LGBT community as well as public opinion, the family, social institutions, organised, or otherwise, agencies, and society in general, on issues of sexual identity, gender, sexual orientation and sexual health.

### **Our Vision**

To create a society which is based on respect for the individual and their diversity without discrimination and preconceived notions, in particular on issues of sexual identity.

### **Our Aims**

- Information and support for the Cypriot education system on issues of sexual identity and gender.
- Preventing the insurgence of homophobic tendencies, the protection and embedding of a pluralistic environment in the wider social circle.
- Social sensitisation of society on issues of sexual orientation with emphasis on the youth and gender.
- Support, empower and advocate for LGBT persons, as well as create dialogue and disseminate information.
- To fight for basic rights against prejudice and discrimination.
- Collaborations with regional and international organisations who are also working with issues of sexual identity and gender.
- The promotion of research and studies related to our issues
- To take part in conferences and other organised events in relation to the development and promotion of ideals in the area of human rights, with emphasis on sexual orientation.
- To organise lectures, speeches etc, which will inform society along with other agencies regarding the association's agenda.
- To promote the implementation of European Law in relation to sexual orientation
- To promote and implement political, legal programme and case-law from the EU and the EU commission in relation to the fight against discrimination and the promotion of equality, in particular with regard to sexual orientation and gender.
- To promote the right to legalised same sex marriage, adoption, inheritance rights, insurance, health and other issues, for all Cypriot citizens without discrimination.