

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Cyprus

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Executive Summary

Implementation of Employment Directive 2000/78/EC

Directive 78/2000/EC was transposed into Cypriot law on the eve of Cyprus' accession to the EU, copying almost verbatim the wording of the Directive. Despite this, the transposition suffers from some limited deviations from the Directive, namely regarding the reversal of the burden of proof. Its implementation also suffers from policies and practices, such as the failure to ensure that discriminatory laws and provisions are repealed; dialogue and consultation with NGOs; dissemination of information targeting the vulnerable groups; and the limited resources afforded to the equality body to enable it to adequately perform its tasks.

At the same time, a separate law was enacted purporting to comply with article 13 of Directive 43/2000/EC, appointing the Ombudsman as the national equality body with powers extending well beyond the scope of the two anti-discrimination directives. Thus, the mandate of the equality body not only includes sexual orientation discrimination in employment and occupation, but covers also the fields of medical care, education and access to goods and services including housing. The aforesaid wide provisions, however, apply only vis-à-vis the mandate of the equality body and do not give rise to any rights for the victim to apply directly to the Court, as recourse to the Court is possible by virtue of the law transposing Directive 78/2000/EC which does not extend beyond the scope of the said Directive. However, prejudices amongst society have so far prevented most Cypriot LGBT persons from using the equality body procedure. One example is a poll conducted by Prime Consulting on behalf of the TV program "Europyxida" of Sigma TV, entitled 'Stigma and Racism' (2011), measured attitudes of the public toward homosexuality. Results indicate low acceptance of homosexual persons, although a clean division was observed between younger and older age groups. The opinions in general appear predominantly conservative.

In a recent classification of the legal situation for LGBT persons in Europe, Cyprus ranked the lowest among EU countries; in fact, as of 2011, Cyprus is the only EU Member State classified in ILGA-Europe's "red zone", indicating "gross violations of human rights and discrimination".¹ In the 2013 classification of the legal and policy human rights situation for LGBT persons in Europe, Cyprus ranked once more among the lowest EU countries, at 20% and remaining at the "red zone" which indicates "gross violation of human rights and discrimination".²

Freedom of movement

The scope of the Cypriot law that transposed Council Directive 2004/38/EC (29.04.2004) does not include same sex marriages or registered partnerships. Although the regulation of this matter is left to each member state, the failure of Cyprus to regulate at all results in various forms of discrimination against LGBT persons when compared with heterosexual couples. This is contrary to the equality and non-discrimination principle as well as the law that mandates the Equality Body to investigate discrimination on the ground of sexual orientation in all the fields provided by Directive

¹ Rainbow Europe, Map and Index, May 2011, ILGA-Europe, Available at: http://ilga-europe.org/home/news/for_media/media_releases/rainbow_europe_map_index_2011_legal_situation_of_lesbian_gay_bisexual_trans_people_in_europe.

² Rainbow Europe, Map and Index, May 2013, ILGA-Europe, Available at http://www.ilga-europe.org/home/publications/reports_and_other_materials/rainbow_europe. All hyperlinks were accessed on 10/07/2014 unless otherwise stated in the footnote

43/2000/EC.. According to the report³ of the Anti-discrimination Body, the Attorney General's Office ruled that the decision of the Migration Department to reject the EU citizen's partner his right to free movement in the Republic (the applicant was asked to follow the procedure for third-country nationals and was refused his right as a spouse of EU citizen) was respectful of the rules of the Republic, as civil partnership between homosexuals is not recognized in the country, thus the person was treated according the Aliens and Migration Law. Further, the Anti-discrimination Body report calls for harmonization with EU standards and especially in regards to the freedom of movement and the non-discrimination principle.

Also there is discrimination against Cypriot nationals, including LGBT persons, who cannot benefit from the freedom of movement available to all other Union citizens with regard to the right to bring over to Cyprus their partner who is a third country national; instead, as they are obliged to go via the more stringent procedure of the Migration and Aliens Law the outcome of which is entirely discretionary upon the Chief Immigration Officer⁴. The Ministry of Interior was planning to consult the interested parties in order to propose reforms in the law. A new bill has been drafted by the Civil Registry and Migration Department of the Ministry of Interior, in an effort to harmonise the Aliens and Immigration Law with the EU Directive 2011/98/EU. Instead of holding a public consultation, the Migration Department posted the Bill on their website for a period of 10 days, so that interested parties can view and comment on it. This procedure was concluded on 05/04/2014.⁵

As of 2010 onwards several efforts were noted towards the legal recognition of registered partnerships by the interventions of the Anti-Discrimination Body and the NGO LGBT ACCEPT Cyprus, leading to the Minister of Interior to take initiative to submit a legislative framework in February 2013 for the establishment of the cohabitation pact. The Anti-Discrimination Body and LGBT ACCEPT submitted their comments and feedback to the draft law, and which was subsequently approved by the Ministerial Council on 14/02/2013. It was further forwarded to the Attorney General's office for legal overview and to the Parliament for voting. ⁶The only legislation making reference to a continuous relationship is the Right of union citizens and their family members to move and reside freely within the territory of the Republic of Cyprus Law which transposed the Directive 2004/38/EC into the national legislation in 2007.

Asylum and subsidiary protection

The state of transposition of Council Directive 2004/83/EC into Cypriot law accepts that fear of persecution on the ground of sexual orientation is a ground for obtaining asylum and/or subsidiary protection; however the law's definition of family members fails to include unmarried partners in a stable relationship, to the effect that homosexual partners are excluded from the right to family reunification. Under the current state of recording, it is not possible to determine the number of persons who applied for asylum, because the asylum service of the Ministry of Interior does not classify cases according to the ground for persecution. However, one such case was detected, where an applicant was granted international protection following an equality body recommendation.

³Cyprus, Anti-discrimination Body, Office of the Commissioner for Administration (Ombudsman), 2012, [Αρχή κατά των Διακρίσεων, Επίτροπος Διοίκησης], Report regarding the respect of the non-discrimination principle on the grounds of sexual orientation in regards to the right to freedom of movement of EU citizens and their family members, AKP40/2009, AKP76/2009, available at http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/akr_40.2009-76.2009.pdf

⁴ Cyprus/ Aliens and Immigration Law, as amended by Law 8(I)/2007 (14.02.2007).

⁵ Cyprus, Information available at

<http://www.moi.gov.cy/moi/moi.nsf/All/4E4A1FE83A88C8ACC2257CA900204E2A?OpenDocument>

⁶ Cyprus, Speech of Mrs. Zinaida Onoufriou, Officer, Ombudsman on 26/03/2013

Family reunification

Council Directive 2003/86/EC was transposed into Cypriot law in 2007 without making use of the provision found in Article 4/3 of the Directive. The effect is that the right to family reunification is not extended to the unmarried partner of the sponsor with whom the sponsor is in a duly attested stable long-term relationship, or to a person who is bound to the sponsor by a registered partnership. The current legal framework essentially excludes homosexual partners of the sponsor, although the question remains whether the right to family reunification may cover the homosexual spouse of the sponsor, lawfully married in accordance with the laws of another jurisdiction remains open. The Ministry of Interior is currently consulting the interested parties for the purpose of reforming in the marital law.

The Ombudsman has examined complaints of discrimination based on sexual orientation (most recent case AKP 16/2010)⁷ and has repeatedly pointed out the need for legal recognition of same-sex relationships by the state.⁸

Freedom of assembly

Freedom of assembly is guaranteed by Article 21 of the Cypriot Constitution, which is equivalent to article 11 of the ECHR. However, in order to organise a procession or an assembly, the conditions laid down under the colonial Cyprus/Assemblies and Processions Law CAP. 32 must be observed which require prior application in the prescribed form to the police commissioner. There have never been any gay parades or homophobic demonstrations in Cyprus; and there is general societal stigma against homosexual in the small and reclusive Cypriot society which is however slowly changing.

The NGO named Accept LGBT Cyprus was legally registered during 2012 which aims at the promotion and protection of LGBT rights in the Cypriot context, thus freedom of assembly can be significant for the purpose of protecting future gay activism. In the summer of 2014 the first ever Gay Pride Parade took place in Nicosia with the support of the Municipality of Nicosia with great success and also attended by politicians, stakeholders and policy makers on LGBT issues in Cyprus.

Hate speech and Criminal law

There is no legislation in Cyprus addressing hate speech against homosexuals or with a homophobic motivation, although some of the more general provisions of the penal code may safely be interpreted as applying to these cases as well. There is also no case law on the subject either. Even though there are various recorded statements in the media which are homophobic, no action was ever taken against these persons, since most homosexuals in Cyprus are “closeted” and will not pursue their rights if that involves revealing their sexual orientation. However, a report of the Ombudpersons⁹ stresses the existence of the problem and indicates that several complaints are submitted in relation to the above.

⁷ Cyprus, Anti-Discrimination Body (2010) “Report of the Anti-Discrimination Body regarding the legal recognition of homosexual couples” (Εκθεση της αρχής κατά των διακρίσεων αναφορικά με τη νομική κατοχύρωση των σχέσεων ομόφυλων ζευγαριών), AKP 142/2009, AKP 16/2010. March 2010. Available at: www.no-discrimination.ombudsman.gov.cy/sites/default/files/akr_142.2009-16.2010.pdf

⁸Cyprus, Anti Discrimination Body Annual Report 2010,, available at http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/annualrpt_gr/annualrpt_gr?OpenDocument

⁹ Cyprus, Anti-discrimination Body, Office of the Commissioner for Administration (Ombudsman), 2012, [Αρχή κατά των Διακρίσεων, Επιτροπος Διοίκησης], Report of the Anti-discrimination Body regarding the prevention and handling of homophobic hate speech [Εκθεση της Αρχής κατά των Διακρίσεων αναφορικά με την πρόληψη και αντιμετώπιση της ομοφοβικής ρητορικής] AKP 55/2010, AKP 56/2010, AKP 57/2010, AKP 58/2010, AKP 61/2010, [Nicosia [pp15], available at www.no-discrimination.ombudsman.gov.cy/ektheseis-akr

The Equality Body issued results of a survey in 2006 where it showed that Cypriots still have homophobic behavior as well as other reports (in 2008) on the right of LGBT persons to equality, one concerning freedom of movement and the other concerning asylum. The first is set out in Section 2 below and the second one in Section 3 below. Both reports as well as all other reports issued by the equality body do not create binding obligations or carry sanctions; they form part of a mediation process through which the equality body tried to extract compliance.

In 2012 the Anti-Discrimination Body, issued a report titled “Report of the Anti-Discrimination Body on Preventing and Tackling Homophobic Rhetoric”. The report observes that while there was some progress, “members of the LGBT community continue to suffer from discrimination. This is attributed to a large degree to negative perceptions which are manifested either through the implementation of a covert or latent homophobic speech, or through open and evident homophobic rhetoric.” The report stresses that the absence of specific legislation to address holistically the rights of LGBT persons undermines the efforts to combat prejudices, homophobic attitudes and stereotypes, expressing regret over the fact that the law transposing the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law contains no reference to homophobic behaviour.¹⁰

Transgender issues

Information in this area is particularly scant, even though it is reported that in one case a transgender person was granted the refugee status. Although transgender persons are not explicitly covered by any laws, the authors assume that the issue would be treated as discrimination on the ground of sexual orientation rather than gender. This section also describes the procedure for changing sex and name which, although simple and straightforward, does provide that the new documentation following the change of name/gender shall not replace the previous one and that both old and new certificates shall thereafter be valid at the same time.

Intersex

The legal framework in Cyprus does not cover intersex issue. Intersex people are not specified in national non-discrimination legislation/ legal cases or non-discrimination policies¹¹. The non-discrimination law does not cover intersex people specifically, neither discrimination on grounds of intersex. Furthermore, it is not allowed that children remain without a gender market/ identification on their birth certificates.¹² Such surgeries/interventions are not performed in Cyprus due to the lack

¹⁰ Cyprus, Law on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal (Ο περί της καταπολέμησης ορισμένων μορφών και εκδηλώσεων Ρατσισμού και ξενοφοβίας μέσω του ποινικού δικαίου νόμος) N.134(I)/2011. Available at: www.cylaw.org/nomoi/enop/non-ind/2011_1_134/full.html

¹¹ Cyprus, The Combating of Racial and Some Other Forms of Discrimination Law No. 42(I)/ 2004 (Ο περί καταπολέμησης των Φυλετικών και Ορισμένων άλλων διακρίσεων (Επίτροπος Νόμος 42(I)/2004, available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/341F06F0809843A6C22575B200444BBB/\\$file/%CE%9A%CE%B1%CF%84%CE%B1%CF%80%CE%BF%CE%BB%CE%AD%CE%BC%CE%B7%CF%83%CE%B7%CF%82%20%CF%84%CF%89%CE%BD%20%CE%A6%CF%85%CE%BB%CE%B5%CF%84%CE%B9%CE%BA%CF%8E%CE%BD%20%CE%BA%CE%B1%CE%B9%20%CE%9F%CF%81%CE%B9%CF%83%CE%BC%CE%AD%CE%BD%CF%89%CE%BD%20%CE%86%CE%BB%CE%BB%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%28%CE%95%CF%80%CE%AF%CF%84%CF%81%CE%BF%CF%80%CE%BF%CF%82%29%20%CE%9D%CF%8C%CE%BC%CE%BF%CF%82%20%CF%84%CE%BF%CF%85%202004.pdf?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/341F06F0809843A6C22575B200444BBB/$file/%CE%9A%CE%B1%CF%84%CE%B1%CF%80%CE%BF%CE%BB%CE%AD%CE%BC%CE%B7%CF%83%CE%B7%CF%82%20%CF%84%CF%89%CE%BD%20%CE%A6%CF%85%CE%BB%CE%B5%CF%84%CE%B9%CE%BA%CF%8E%CE%BD%20%CE%BA%CE%B1%CE%B9%20%CE%9F%CF%81%CE%B9%CF%83%CE%BC%CE%AD%CE%BD%CF%89%CE%BD%20%CE%86%CE%BB%CE%BB%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%28%CE%95%CF%80%CE%AF%CF%84%CF%81%CE%BF%CF%80%CE%BF%CF%82%29%20%CE%9D%CF%8C%CE%BC%CE%BF%CF%82%20%CF%84%CE%BF%CF%85%202004.pdf?OpenElement)

¹² Cyprus, Registration of Residents Law [N. 141(I)/2002 (Νόμος που καταργεί τους νόμους που ρυθμίζουν τα θέματα αναφορικά με την καταχώρηση γεννήσεων και θανάτων, την εγγραφή των κατοίκων, την εγγραφή των εκλογέων και την ετοιμασία του εκλογικού καταλόγου, την εγγραφή των πολιτών της δημοκρατίας και ταυτόχρονα εισάγει ειδικές διατάξεις για την έκδοση διαβατηρίων/ ταξιδιωτικών εγγράφων και προσφυγικών ταυτοτήτων για τους πρόσφυγες

of infrastructure and respective legislation.

Miscellaneous

This section lists the research available on homosexuality in Cyprus and describes the opinion survey commissioned by the equality body, as well as other surveys and research work into the general public's attitudes towards homosexuality. It also records proxy data obtained through interviews conducted by the authors regarding instances of homophobic behaviour.

No similar opinion survey has been commissioned since the 2006 large scale opinion survey commissioned by the Equality Body. Some other relevant surveys and research has been conducted by civil society organisations as follows:

- **'Proper masculinities' and the fear of feminisation in modern Cyprus: university students talk about homosexuality and gendered subjectivities.**¹³ This small scale survey, through a university research aimed at examining how young Cypriot students engage in the construction of conventional notions of masculinities through the negation and the fear of homosexual desire.
- **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.**¹⁴ This research examines the progress of the Republic of Cyprus authorities in the implementation of the above mentioned recommendation which aims at protecting the rights of LGBT persons in the Council of Europe member states.
- **Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experiences and Needs.**¹⁵ This report includes two studies (1. Mapping the Socio-political Climate and 2. Mapping the experiences and needs of LGB community in Cyprus), which consist one of the first systematic attempts to document the situation of LGBT issues in Cyprus. In the first study articles pertaining to LGBT issues published in major newspapers in Cyprus in the past three years (2008-2010) were collected, coded, and analyzed, in an effort to document the prevailing socio-political climate. The second study provides insight into the experiences of LGB persons in Cyprus, obtained through questionnaires completed by LGB people throughout the island. The study documented experiences of violence or psychological harassment, acceptance or discrimination in relation to work, housing, health and other services, faith, school and university, family, relationships, and social attitudes.

N141(I)/2002, available at <http://www.army.gov.cy/wp-content/uploads/O-peri-arxeiou-plithismou-nomos-tou-2002-N.-141I-20021.pdf>

13 Cyprus, Andreas Onoufriou, Department of Social Sciences, University of Cyprus, Nicosia, Cyprus (2009), 'Proper masculinities' and the fear of feminisation in modern Cyprus: university students talk about homosexuality and gendered subjectivities, *Gender and Education* Vol. 22, Issue 3, 2010, available at:

www.tandfonline.com/doi/abs/10.1080/09540250903283413#.U6qu6U-KC70

14 Cyprus, Margarita Kapsou, Sylvie Mantis (2012), 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, Cyprus Family Planning Association – Accept LGBT Cyprus, available at:

http://www.cyfamplan.org/famplan/userfiles/documents/Cyprus_Monitoring_implementation_of_the_CoE_Recommendation_20_12.pdf

15 Cyprus, Margarita Kapsou, Anna Christophi, & Maria Epaminonda, Cyprus Family Planning Association & accept-LGBT Cyprus (2011), Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experiences and Needs, ILGA-Europe's 7th Call for Proposals for Human Rights Violations Documentation Fund, available at:

www.cyfamplan.org/famplan/userfiles/documents/a_report_on_sexual_orientation_in_cyprus.pdf

Good practice

A number of good practice measures are recorded, starting from the extensive mandate of the equality body to investigate complaints for sexual orientation discrimination in all fields, and then listing a number of awareness raising activities and the first ever Gay Pride Parade organized in the summer of 2014 with great success.

A. Implementation of Employment Directive 2000/78/EC

Out of the four laws came into force on 01.05.2004 in an effort to transpose Directives 43/2000/EC and 78/2000/EC, two are relevant to the present study:

- The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law¹⁶ which, purporting to transpose article 13 of Directive 43/2000/EC, appoints the Commissioner of Administration (or Ombudsman) as the specialised body. The scope of the law is extensive, going well beyond the requirements of article 13, and covering inter alia the grounds of both Directives 2000/43/EC and 2000/78/EC, including sexual orientation.
- The Equal Treatment in Employment and Occupation Law¹⁷ which purports to transpose Directive 78/2000/EC and all the matters that refer to employment in Directive 43/2000/EC in a single legislation that deals with employment and work. As is the case with Directive 78/2000/EC, the law applies to all natural and legal persons in the private and public sphere¹⁸ but its scope is restricted to employment and occupation, covering expressly conditions of access to employment, to self-employment or occupation including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; access to vocational guidance and training, advanced vocational training and retraining including practical work experience; employment and working conditions including dismissals and pay; and membership of and involvement in trade unions or professional associations¹⁹. The exceptions of the Directive regarding the differential treatment of third country nationals and stateless persons in the conditions of entry into and residence in Cyprus have been adopted in Cypriot law. Also, the Cypriot law excludes from its scope payments by state schemes including state social security and social protection schemes, with the exception of occupational social security²⁰. Finally, the law “does not affect any measures provided by national legislation which are, in a democratic society, necessary for security, the keeping of order and the prevention of criminal offences, the protection of health and the rights and freedoms of others”²¹.

The Equal Treatment in Employment and Occupation Law²² was amended in 2007²³ following a request from the European Commission, which indicated that its burden of proof provision was not in line with the Directive. Prior to its amendment, Article 11 of this law provided that: (a) the burden of proof was reversed only in civil proceedings; (b) the claimant had to *prove* facts from which a violation can be inferred and (c) the accused was absolved from liability if s/he proves that her/his violation had no negative impact on the claimant. The amendment introduced the following changes to Article 11: (a) the burden of proof is reversed in “all judicial proceedings except criminal ones”;

¹⁶ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004). available at: www.cylaw.org/nomoi/enop/non-ind/2004_1_42/full.html

¹⁷ Cyprus / The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004). Last amended with L. 86(I) of 2009. available at: www.cylaw.org/nomoi/enop/non-ind/2004_1_58/full.html

¹⁸ Cyprus / The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Section 2.

¹⁹ Cyprus / The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Section 4.

²⁰ Cyprus / The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Section 5(3)(a).

²¹ Cyprus / The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Section 5(3)(b).

²² Cyprus / The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

²³ Cyprus/ Law Amending the Equal Treatment in Employment and Occupation Law N. 50(I)/2007 (18.5.2007).

(b) the claimant no longer has to *prove* facts from which a violation can be inferred, but merely to *introduce* them (c) the accused is no longer absolved from liability if s/he proves that her/his violation had no negative impact on the claimant. The amending law also amends Article 14 of the law by extending the aforesaid right also to trade unions or other organisations with a legal standing which are, with the victim's permission, either suing the perpetrator in court or submitting a complaint to the Ombudsman. 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.

The equality body set up by the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law has the power to investigate complaints of discrimination on the ground of, inter alia, sexual orientation (please see paragraph 6 above). The equality body's mandate extends beyond the scope of Directive 2000/78/EC and covers social insurance, medical care, education and access to goods and services including housing²⁴. The equality body does not deal exclusively with sexual orientation but covers all grounds of both anti-discrimination directives; The equality body has no mandate or capacity to offer victim-support or to assist victims in court or tribunal procedures, its mandate being limited to:

- receiving and investigating complaints of discriminatory treatment, behaviour, regulation, condition, criterion or practice prohibited by law;
- issuing reports of findings;
- issuing orders (through publication in the Official Gazette) for the elimination, within a specified time limit²⁵ and in a specified way, of the situation which directly produced discrimination, although such right is somewhat limited by a number of exceptions;²⁶
- imposing small fines (which however are too low to act as a deterrent)²⁷, to issue recommendations to the person found guilty of discrimination and to supervise compliance

²⁴ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), article 6.

²⁵ Cyprus, Which time limit shall not exceed 90 days from publication in the Official gazette (Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 28).

²⁶ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), section 14(2) and section 14(3), Part III, list the limitations to the Commissioner's power to issue orders as follows: where the act complained of is pursuant to another law or regulation, in which case the Commissioner advises the Attorney General accordingly, who will advise the competent Ministry and/or the Council of Ministers about measures to be taken to remedy the situation [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 39(3) and 39(4)]; and where discrimination did not occur exclusively as a result of violation of the relevant law; where there is no practical direct way of eradicating the situation or where such eradication would adversely affect third parties; where the eradication cannot take place without violating contractual obligations of persons of private or public law; where the complainant does not wish for an order to be issued; or where the situation complained of no longer subsists.

²⁷ The fine to be imposed cannot exceed CYP350 (Euros 603) for discriminatory behaviour, treatment or practice [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(a)], CYP250 (Euros 427) for racial discrimination in the enjoyment of a right or freedom [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(b)], CYP350 (Euros 603) for non-compliance with the equality body's recommendation within the specified time limit [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (a)] and CYP50 daily for continuing non-compliance after the deadline set by the equality body [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (b)].

with orders issued²⁸. However, all orders, fines and recommendations issued or imposed by the Commissioner under this Law are subject to annulment²⁹ by the Supreme Court of Cyprus upon an appeal lodged by a person with a ‘vested interest.’³⁰

The equality body has also investigated a complaint of discrimination on the ground of marital status; the complainant did not allege discrimination on the ground of sexual orientation. The report issued, however, found that discrimination on the ground of marital status may also amount to indirect discrimination against homosexuals, since the latter group cannot marry in 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 regulation³¹.

Another weakness of the anti-discrimination framework, which affects its overall effectiveness, is the fact that the government has not afforded sufficient funds to the Ombudsman’s office to enable it to make adequate staffing arrangements so as to cope with the additional duties bestowed upon it by its new function as equality body. In his 2006 report, the Commissioner for Human Rights of the Council of Europe Mr. Alvaro Gil-Robles expresses his regrets over the fact that the necessary increase in funding to deal with the extra work-load has not been provided and recommends that greater resources be devoted to this office to enable the Ombudswoman to deal effectively with her new competencies³². In its third report on Cyprus, ECRI also stresses the need for resources to be made available to the Ombudswoman to enable her to respond to her new tasks³³. The lack of resources is also the reason why little or no measures have been taken in order to bring to the attention of vulnerable groups the new legal developments and the new complaint procedures open to them. The lack of resources may also be accounted for the fact that the equality body has only used once³⁴ its power to issue Codes of Good Practice regarding the activities of any persons in both the private and public sector³⁵.

AKOK (Gay Liberation Movement of Cyprus) has informed the authors that the small number of complaints for sexual orientation discrimination is accounted by the fact that most homosexuals in Cyprus are “closeted” and prefer anonymity to pursuing their rights publicly; any problems of discrimination faced at the workplace are either not addressed or are mediated by AKOK, often resulting to amicable settlements. Little information is being disseminated to homosexuals regarding

²⁸ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 24(1).

²⁹ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 23.

³⁰ Cyprus, Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for appeal to the Supreme Court of Cyprus.

³¹ Cyprus, Report of the Equality Body No. A.K.I 11/2004.

³² Office of the Commissioner for Human Rights, Council of Europe (2006), Follow-up Report on Cyprus (2003-2005): Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, Strasbourg, 29 March 2006, page 11.

³³ Third ECRI Report on Cyprus, adopted on 16.12.2005, Strasbourg 16.05.2006, Council of Europe.

³⁴ Cyprus, Code of good practice regarding sexual harassment in the workplace.

³⁵ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 40, 41 and 42, Part VI.

the rights and procedures created by the transposition of the anti-discrimination acquis, with the helpline run by AKOK (without funding) being the only source of information for LGBT persons. A public campaign has already taken place within the framework of Progress 1 which, however, did not target LGBT persons in particular, a fact which according to AKOK minimises the impact on gay rights. Another public awareness campaign was funded by PROGRESS later on in regards to discrimination including discrimination against sexual orientation. The findings of the opinion survey conducted on behalf of the equality body in 2006³⁶ were presented at a public seminar; however, no other action or debate followed this event.

Cypriot law has transposed the right of organizations to file action in Court or to the equality body on behalf of and with the consent of the complainant³⁷, as required by Article 9/2 of Directive 2000/78/EC. It affords this right to either workers' unions or to "organizations with vested interest" and there is no requirement that their objects must include the fight against discrimination (as is the case with the equivalent provision in the law transposing the Racial Equality Directive). No organisation has yet made use of this right on the ground of sexual orientation; the organisations in Cyprus fighting for the rights of homosexuals are AKOK and LGBT ACCEPT Cyprus. A public campaign was carried out within the framework of the Progress program which however was of limited impact (please see comment in paragraph 8 above).

Recently, a poll conducted by Prime Consulting on behalf of the TV program "Europyxida" of Sigma TV, entitled 'Stigma and Racism' (2011), measured attitudes of the public toward homosexuality. Results indicate low acceptance of homosexual persons, although a clear division was observed between younger and older age groups. The opinions in general appear predominantly conservative. The most popular topic used by the media was marriage or partnership equality (legal recognition of same-sex relationships).³⁸

In a recent classification of the legal situation for LGBT persons in Europe, Cyprus ranked the lowest among EU countries; in fact, as of 2011, Cyprus is the only EU Member State classified in ILGA-Europe's "red zone", indicating "gross violations of human rights and discrimination".³⁹ In the 2013 classification of the legal and policy human rights situation for LGBT persons in Europe, Cyprus ranked once more among the lowest EU countries, at 20% and remaining at the "red zone" which indicates "gross violation of human rights and discrimination".⁴⁰

There is no case law in Cyprus yet invoking the law transposing Directive 2000/78/EC on any ground⁴¹.

There are no data or statistics regarding complaints on national legislation transposing the employment directive on sexual orientation.⁴²

There have been no new cases since the last reporting period⁴³.

³⁶ Please see details later in this report under the section 'Miscellaneous'.

³⁷ Cyprus / The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004), Section 14.

³⁸ Cyprus, Study "Mapping the Socio-political Climate" in the "A report on Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experiences and Needs", June 2011, Margarita Kapsou, Anna Christophi, & Maria Epaminonda, Cyprus Family Planning Association and accept-LGBT Cyprus.

³⁹ Rainbow Europe, Map and Index, May 2011, ILGA-Europe, Available at: http://ilga-europe.org/home/news/for_media/media_releases/rainbow_europe_map_index_2011_legal_situation_of_lesbian_gay_bisexual_trans_people_in_europe.

⁴⁰ Rainbow Europe, Map and Index, May 2013, ILGA-Europe, Available at http://www.ilga-europe.org/home/publications/reports_and_other_materials/rainbow_europe

⁴¹ Cyprus, CYLAW portal available at <http://www.cylaw.org>, accessed on July 7, 2014

⁴² Cyprus, Ministry of Labour and Social Insurance Annual Report 2012, accessed on July 7 2014, available at [http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/22B31A2F4190919FC2257C9E003052CA/\\$file/YEKA_2012_updated.pdf](http://www.mlsi.gov.cy/mlsi/mlsi.nsf/All/22B31A2F4190919FC2257C9E003052CA/$file/YEKA_2012_updated.pdf)

⁴³ Cyprus, CYLAW portal available at <http://www.cylaw.org>, accessed on July 7, 2014

B. Freedom of movement

In 2007 Cyprus introduced a law⁴⁴ purporting to bring Cypriot legislation in line with Art 45 of the Charter of Fundamental Rights⁴⁵ and Council Directive 2004/38/EC (29.04.2004). Under article 8 of the aforesaid Cypriot law, EU citizens are entitled to enter and reside in Cyprus and the same right is extended to their family members, defined in Art. 2 of the law as (a) the spouse who is a Union citizen; (b) “the direct descendants of a Union citizen who are under the age of 21 or are dependants and those of the spouse”; (c) “the dependent direct relatives in the ascending line and those of the spouse of a Union citizen”. The wording of the Cypriot law repeats verbatim the text of the Art. 2.2(a), (c), (d) of Directive 2004/38/EC save for repeating the term “Union citizen”. However, the option to transpose the provisions of Directive Art. 2.2(b) was not taken up, to the effect that the right to entry and residence is not extended to the partner with whom the Union citizen has contracted a registered partnership.

At the time of drafting the aforesaid legislation, the chairman of AKOK notified the authorities of the particular importance of this legislation for gay and lesbian couples⁴⁶. Mr. Modinos enquired into how Cypriot law makers intended to regulate this issue given that Cyprus as a “host country” has no provision for recognizing either homosexual marriages or registered partnerships. The response of the Authorities was that the plan is to leave this matter unregulated until a complaint arises, upon which the authorities would examine how such issues are regulated in other EU countries which, like Cyprus, do not recognise same sex marriage or registered partnerships (such as Greece and others) and decide accordingly⁴⁷.

Under Art. 2.2(b) of Directive 2004/38/EC the regulation as to how to deal with LGBTs in wedlock or registered partnership is left at the discretion of member states. However, it would be contrary to the principles of equality and non-discrimination to regulate this in a manner that may result in discrimination on any of the prohibited grounds in the fields specified by the anti-discrimination acquis. An examination of the jurisprudence from the European Court of Justice, the European Union member states, the European Court of Human Rights and other international case law reveals quite diverse approaches that when it comes to the right to family life, property rights, inheritance, adoption and matrimonial issues, residence and social Benefits⁴⁸. However, it would run contrary to the principle of equal treatment to allow for the discretion afforded to each member state on how to regulate same sex weddings and registered partnerships in a manner that may result in prohibited direct or indirect discrimination. This is the case of Cyprus: the current legal situation as regard freedom of movement not only may result in differential treatment in the exercise of the rights of LGBTs but may also have discriminatory consequences against LGTBs in a series of civil law matters such as property rights, inheritance, adoption and matrimonial issues, residence and social benefits. This is contrary the law on Combating of Racial and Some Other Forms of Discrimination (Commissioner) which provides the mandate of the equality body in Cyprus that extends beyond the minimum requirements of Directive 2000/78/EC and includes in its scope social insurance, medical care, education and access to goods and services including housing⁴⁹.

⁴⁴ Cyprus, Law on the Rights of Citizens of the Union and their Family Members to Move and Reside Freely in the Territory of the Republic N. 7(1)/2007 (09.02.2007).

⁴⁵ This provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States.

⁴⁶ Cyprus, Interview with Mr. Alecos Modinos 25.2.2008. Mr Modinos had spoken to the official of the Ministry of Interior responsible for the drafting of this law in March 2006.

⁴⁷ Cyprus, Interview with Mr. Alecos Modinos 25.2.2008.

⁴⁸ See David M. Beatty (2004) *The Ultimate Rule of Law*, Oxford: Oxford University Press, pp. 98-113.

⁴⁹ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004).

Article 4(2)(b) of the Law 7(1)/2007 allows for a Union citizen to apply for the exercise of freedom of movement for “his/her partner with whom a Union citizen has a continuous relationship properly proven”, which according to Article 4(2) of the Law 7(1)/2007 is subject to the Migration and Aliens Law⁵⁰. Given that same sex marriages and registered partnerships of LGTB Union citizens are not recognised in Cyprus the above provision is the only route available to homosexual partners of EU citizens in order to claim the right of entry and residence in Cyprus. Third country nationals who are family members of EU citizens have a right of residence and permanent residence, irrespective of their nationality, under Article 4(1). It thus follows that third country national LGBT partners of EU citizens are not treated equally and do not enjoy the same rights as heterosexual partners regarding freedom of movement. Similarly the children and other family members of the LGBT partners are also not treated Equally⁵¹.

Art. 4(1) of Law 7(1)/2007, which provides for the scope of application of the law, stipulates that “the present law applies to all Union citizens, who arrive or resides in the Republic as well as members of their family, irrespective of their nationality who accompany him in their passage to the Republic or who arrive to the Republic to join him.” Even though this appears to include citizens of the Republic of Cyprus, this is not the case: the wording of article 3.1 of Council Directive 2004/38/EC (29.04.2004) stipulates that beneficiaries are “all Union citizens who move to or reside in a Member State other than that of which they are a national,”⁵² which in practice is interpreted as excluding Cypriot citizens. It follows that third country national or EU citizen LGBT partners of citizens of Cyprus are not entitled to benefit from the freedom of movement and residence of their partners according to Directive 2004/38/EC. Similarly, the children and other family members of the LGBT partners of citizens of Cyprus may be discriminated against as they are not treated equally with children and other family members of heterosexual partners. Cypriot citizens, including LGBTs, have to apply to the immigration authorities for entry and residence of their partners via the Migration and Aliens Law⁵³, which has more stringent rules than the freedom of movement rules under Law 7(1)/2007 and which leaves the matter entirely on the discretion of the chief immigration officer.

The current legal situation in Cyprus may amount to indirect discrimination against LGBTs on the grounds of sexual orientation, as emerging from an equality body report discussed below.

On 23.04.2008, the Cypriot equality body issued its report on the first ever complaint submitted to it regarding sexual orientation discrimination. The complaint was directed against the immigration authorities and was submitted by a third country national who had registered a civil partnership in U.K. with a U.K. national. The complainant had applied to the immigration authorities for the rights of movement and residence afforded to partners of EU citizens under Directive 2004/38/EC; the application was rejected on the grounds that national legislation does not recognise same sex marriages. The equality body’s report found that an obligation exists to secure enjoyment of legally guaranteed rights without discrimination, in accordance with article 14 of the ECHR and article 28 of the Cypriot Constitution. According to ECtHR case law, the principle of equality is violated when there is differential treatment of similar cases, which is not justified objectively and logically, or where the means used are disproportionate to the aim pursued. Based on this reasoning, the

⁵⁰ Cyprus/ Aliens and Immigration Law, as amended by Law 8(I)/2007 (14.02.2007).

⁵¹ Cyprus, For more on the question of free movement of workers in Cyprus see Trimikliniotis, N. (2010) *Free Movement of Workers in Cyprus and the EU*, volume 1 of *Studies on Fundamental Rights in Cyprus*, Vol. 1, Centre for the Study of Migration, Inter-ethnic & Labour Rights, University of Nicosia and PRIO Cyprus Centre, Nicosia.

⁵² Article 3.1 of the Directive reads: “This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.”

⁵³ Cyprus/ Aliens and Immigration Law, as amended by Law 8(I)/2007 (14.02.2007).

immigration authority's decision to exclude homosexual partners of EU citizens from the rights afforded to heterosexual partners was found to amount to unjustified discrimination on the ground of sexual orientation. The report acknowledges that Directive 2004/38/EC allows discretion to member states to decide whether to recognise same sex marriages and registered partnerships. It nevertheless contends that Cyprus is bound by the anti-discrimination Acquis and international conventions requiring that any discretion be exercised in line with the anti-discrimination principle⁵⁴. The equality body referred the law transposing Directive 2004/38/EC to the Attorney General for revision. The immigration authorities have granted a permit on an ad hoc basis allowing the third country national partner to stay in Cyprus as an exception but the legislation governing free movement has not been revised.

On 29.07.2008 another complaint was submitted to the equality body complaining of sexual orientation discrimination, this time by a Cypriot national. The complaint was against the decision of the immigration authorities to deny his Canadian homosexual spouse the right to stay in Cyprus, on the ground that national legislation does not recognise same sex marriages. Subsequently, the immigration authorities granted the complainant's spouse a visitor's visa for one year, following which the complainant applied to the equality body again on 21.10.2008 regarding the status of the visa granted, since this does not allow him to work or to open a bank account. The equality body's report⁵⁵ referred to the proposal for a new Council Directive purporting to extend the principle of non-discrimination beyond the employment field, thus recognising the need for protection of homosexuals outside employment. It cites a number of ECtHR cases which established that the term 'family life' is not restricted to relationships within a marriage but includes also de facto family relations where the parties live together outside marriage. The report recognised a trend in ECtHR decisions towards the increasing recognition of the rights of gay couples, even in the absence of recognition of gay marriages per se. The report recommends that residence visas and work permits be disconnected from the legal recognition of marriages, adding that the denial of the right to work in this case amounts to unjustified discrimination on the grounds of sexual orientation.

In July 2010 the Supreme Court ruled against the complainant, finding their complaint against the Civil Registry and Migration Department unlawful. Even though the judges cited numerous cases from the ECtHR, they based their decision on the fact that the ECtHR allows the member states to handle cases pertaining marriage according to their domestic legislation, which legitimizes the Migration Department's decision to reject the application of complainant's spouse to stay stay in Cyprus.⁵⁶ Some further analysis on the case is also provided under the section on Family Reunification.

The Cyprus Equality Body is currently examining a number of complaints from LGBTs who are EU or Cypriot citizens and seek to exercise their right to family reunification. The claim by authorities that that same sex partners and partners that are of different sex are treated in the same way in case where neither marriage, nor a registered relationship exist is one of the issues under investigation.

The equality body has received two complaints regarding the absence of any legal framework in Cyprus enabling gay couples to marry or to register a partnership. On 31.03.2010, it issued its report

⁵⁴ Cyprus, Case Ref. No. A.K.R. 68/2008, dated 23/04/2008

⁵⁵ Cyprus, Ref. no. A.K.R. 213/2008, dated 10/12/2008.

⁵⁶ Cyprus, Supreme Court of the Republic of Cyprus – Revisional Jurisdiction, [Ανώτατο Δικαστήριο Κύπρου – Αναθεωρητική Δικαιοδοσία], Thadd Correia, Savvas Savva vs The Republic of Cyprus through the Director of the Civil Registry and Migration Department *Decision No 1582/2008*, Thadd Correia, Σάββας Σάββα vs Κυπριακή Δημοκρατία μέσω Διευθυντή Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης, Αρ. *Απόφασης 1582/2008* (2010), available at: www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2010/4-201007-1582-08.htm&qstring=1582 w/1 2008

recommending the legal recognition of homosexuals cohabiting as couples.

On 22/12/2011 the Cyprus Equality Body published a comprehensive report with recommendations on the need for establishment of the civil partnership act for heterosexual and homosexual couples.⁵⁷ The report analyses the current legal framework in Cyprus, the European and international standards, the ECtHR decisions on relevant cases and makes concrete recommendations to the authorities to set the institutional framework for legal vesting of the civil partnership.

Further steps towards recognizing registered partnerships were made during 2012, where a bill legalizing registered partnerships was approved by ministerial council and forwarded to the Law Office for legal vetting. However, following the changing of the government on the 24 February 2013, the mentioned bill without having the legal vetting finalized, was returned to the Ministry of Interior, requesting the consultation with all involved stakeholders and public consultation before the ministerial council approves it. As confirmed by the President of Accept LGBT Cyprus, these processes have not yet been completed even though the timeframe given by the Ministry has passed.⁵⁸

There are no further developments on the recognition of the right to freedom of movement for homosexual couples because of the lack of formal recognition of registered partnerships by the Republic of Cyprus. However, following the public mobilization with the opportunity of the first Pride Parade in Cyprus (31/05/2014) and the wide support this received by policy and decision makers, independent authorities (especially the Cypriot Ombudsperson) and other stakeholders, DISY – Democratic Rally (Δημοκρατικός Συναγερμός), the political party leading the government, has announced their willingness to continue the dialogue regarding the Bill on registered partnerships, which was pending for amendments and approval at the Ministry of Interior and has recognized the need to institutionalize this right for LGBT persons.⁵⁹ The finalization of the Bill is expected to also give rise to the right to freedom of movement of registered partners of EU citizens.

No relevant case law exists on freedom of movement⁶⁰.

There is no legislation regarding third country national LGBT partners of EU citizens regarding freedom of movement⁶¹. The legislation does not cover LGBT partners of Cypriot citizens' freedom of movement as it does not recognize same-sex family situations.

⁵⁷ Cyprus, Equality Body, Report Reference AKP 1/2011 available at: www.no-discrimination.ombudsman.gov.cy/ektheseis-akr

⁵⁸ Cyprus, Information provided from the NGO “Accept – LGBT Cyprus” upon request. Phone interview with Costas Gavrielides, President, on 11/11/13 and 24/02/14

⁵⁹ Cyprus, DISY (Democratic Rally) [Δημοκρατικός Συναγερμός] (04/06/2014), Written Statement of the Spokesperson of the Democratic Rally Mr Prodromos Prodromou on the civil partnership act [Γραπτή δήλωση του Εκπροσώπου Τύπου του Δημοκρατικού Συναγερμού κ. Πρόδρομου Προδρόμου για το σύμφωνο συμβίωσης], available at: <http://disy.org.cy/index.php?id=2844>

⁶⁰ Cyprus, CYLAW, accessed 7 July 2014, available at <http://www.cylaw.org/cgi-bin/sinocgi.pl?&searchoption=1&query=freedom%20of%20movement&hitsnom=20&nexthit=1&view=relevance&mask=s=apofaseised>

⁶¹ Cyprus, the 2007 law on the right of Union Citizens and their family members to move and reside freely in the territory of the Republic, available at <http://www.cyprus-property-buyers.com/files/Free%20Movement%20Law%20-%20English.pdf>

C. Asylum and subsidiary protection

Council Directive 2004/83/EC of 29.04.2004 was transposed into Cypriot law in 2007, by amending the existing refugee law⁶². Article 10/1/d of the Directive was transposed in article 3D(1)(d)(ii) of the Refugee Law, as amended⁶³, verbatim. Given that the Cypriot law retained the reservation of the Directive regarding “acts considered to be criminal in accordance with national law”, it should be noted that according to the Cypriot criminal code sexual intercourse between two men where one of them is under 17 years of age is a criminal offence punishable with three years of imprisonment⁶⁴. Prior to the 2007 amendment of the refugee law, there was no provision in Cypriot legislation accepting sexual orientation as a ground for obtaining asylum.

The enactment of the aforesaid law still does not protect LGBT refugees and asylum seekers as Cyprus legislation does not recognize family status or family marriage between LGBT⁶⁵. The task of assessing the situation is aggravated by the fact that the asylum authorities in Cyprus do not classify the cases they deal with according to the ground of persecution and they are therefore unable to provide any figures regarding asylum applications where the applicant invoked the fear of persecution due to his/her sexual orientation. The only information which was supplied by the Asylum Service of the Ministry of Interior was that since 2003, when this authority started accepting asylum applications⁶⁶ some asylum applications were submitted invoking fear of persecution due to sexual orientation, which were all rejected with the exception of one such application in 2007 from a transsexual person, who was granted refugee status⁶⁷. No such case has reached the courts in Cyprus; it should be noted however that according to Cypriot legislation, an asylum seeker whose application is rejected by the Asylum Service may submit an appeal to the Reviewing Authority and if the response is still negative then s/he may appeal to the Supreme Court. However, from the point of rejection by the Reviewing Authority, the asylum seeker loses his/her protection against deportation and may well be deported before s/he has the chance to apply to the Supreme Court.

Article 2/h of Council Directive 2004/83/EC was transposed into article 25(4)(a) of the Refugee law as amended, inter alia, in 2007⁶⁸ without incorporating the part of the Directive definition referring to “unmarried couples in a stable relationship”. In effect, the definition of “family members” includes only: the spouse of the refugee; the minor children of the refugee provided they are unmarried and dependent on the refugee; and the parents of the refugee provided they are his/her dependents. As a result, unmarried couples, whether homosexual or heterosexual, do not fall within this definition. The argument forwarded by the authorities in this respect is that there is no discrimination because heterosexual and homosexual couples are treated equally by the law⁶⁹; this position however ignores several factors, like the fact that heterosexuals have the chance to marry and thus meet the law’s preconditions whilst homosexuals don’t, the fact that positive action is often necessary in order to achieve the equality principle, etc.

⁶² Cyprus/ Refugee Law N.6(I)/2000 (28.01.2000), as amended by, inter alia, Law N.112(I) of 2007.

⁶³ Cyprus, The relevant article in the amending law N. 112(I) of 2007 is article 4.

⁶⁴ Cyprus, Criminal Code article 171; Law amending the Criminal Code N.145(I)/2002. This amendment is an improvement on the criminal code as it was up until 1998, according to which intercourse between two men irrespective of age was a criminal offence punishable with up to five years of imprisonment. The change in the law came after an ECtHR decision against Cyprus in the case of *Modinos v Republic of Cyprus*, judgement 22.04.1993, 16 EHRR 485 (26.02.2008)

⁶⁵ Cyprus, Ombudsman report NR. AKP40/2009, available at

http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/ownmotionrpt_archive_gr?OpenForm

⁶⁶ Cyprus, Prior to that, Cyprus did not have an asylum regime and asylum applications were examined by the Cyprus office of UNHCR.

⁶⁷ Cyprus, E-mail from Kakia Demetriou, Administrative Officer at the Asylum Service, Ministry of Interior, dated 29.02.2008.

⁶⁸ Cyprus, The relevant article in the amending law N. 112(I) of 2007 is article 18(b).

⁶⁹ Cyprus, Expressed by officials of the Interior Ministry in an interview to the authors dated 29.02.2008.

On 05.06.2008, a complaint was submitted the Equality Body by an Iranian national whose asylum whose application had been rejected despite the fact that he had a well founded fear of prosecution in his country of origin because of his sexual orientation. The equality body found in his favour⁷⁰ invoking information supplied by ILGA, Amnesty International and other NGOs that homosexuality in Iran is punishable either with hanging or with stoning and that since 1980s executions of homosexuals take place secretly and using other charges as an excuse. Reference was also made to the UN and European conventions ratified by Cyprus and to ECtHR case law, which establishes the right of homosexuals to equal treatment and forbid the deportation of persons to countries where they are likely to be subjected to torture. Special attention was drawn to article 10(1)(d) of Directive 2004/83/EC which expressly includes sexual orientation into the meaning ascribed to the term ‘social group’, membership to which may create a well-founded fear of persecution. The Equality Body found that the Asylum Service’s rejection of the application was not adequately justified and that the complainant’s allegations must be examined. The Asylum Service finally granted him the refugee status by letter dated 18/5/2009 to the Equality Body, claiming that new information was added to the case due to the intervening of international organisation and 13 MEPs for the reevaluation of the case as a deportation to his country would possibly mean his prosecution due to his homosexuality⁷¹.

A similar complaint was launched at the Equality Body on 30.05.2011 by a woman asylum seeker from Iran regarding the rejection of her asylum claim and her deportation to her country of origin. The complainant left her country in 2008 because her sexual orientation was revealed in her working place and her employer threatened that he was going to report her at the police and inform her family as well. Following the rejection of the asylum claim from the Asylum Service, the claimant filed an appeal at the Reviewing Authority. In the meantime the asylum seeker reported that she was in a stable relationship with a Belgian citizen residing and working in Cyprus. Withing the report the Ombudsperson calls for the re-examination of all her claims and the information available for the specific case since the possibility of the return of the claimant to her country may put in danger her physical integrity or even her life.⁷² . No further information exists on the development of the case⁷³

Even though the fear of persecution due to sexual orientation is included in the Refugee Law as described above, the complaints presented indicate the weaknesses of the Asylum Service to properly examine such cases. Such weaknesses were also noted within the report produced by Future Worlds Center which refers to the not sufficiently fair or efficient status determination procedures of the Asylum Service.⁷⁴

No relevant case law was found in this reporting period⁷⁵.

⁷⁰ Cyprus, Ref. A.K.R. 103/2008, dated 18.07.2008.

⁷¹ Cyprus, Ombudsman (Equality Body) report nr. AKP40/2009 available at http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument

⁷² Cyprus, Anti-Discrimination Authority (2011) “Report of the Anti-Discrimination Authority regarding the granting of refugee status to a homosexual asylum seeker from Iran” (Εκθεση της αρχής κατά των διακρίσεων σχετικά με την παραχώρηση προσφυγικού καθεστώτος σε ομοφυλόφιλη αιτήτρια ασύλου από το Ιράν). AKP 68/2011. 19/07/2011. Available at: www.no-discrimination.ombudsman.gov.cy/ektheseis-akr

⁷³ Cyprus, Ombudsman Annual Report 2012, available at http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/annualrpt_gr/annualrpt_gr?OpenDocument. Also phone interview with Katerina Charitou, Officer, Ombudsman, on 10/07/2014

⁷⁴ Cyprus, UNHCR funded project: “Strengthening Asylum in Cyprus” (2012) “Report on the Asylum Procedure in Cyprus”, Nicosia: Future Worlds Center

⁷⁵ Cyprus, CYLAW, accessed on 08/07/2014, available at www.cylaw.org

D. Family reunification

On 14.02.2007 Council Directive 2003/86/EC (22.09.2003) was purportedly transposed into Cypriot law, after approximately a delay of two years, by amending the existing Aliens and Immigration Law Cap. 105. The scope of the amending law⁷⁶ covers third country nationals staying lawfully in the areas controlled by the Republic of Cyprus for at least one year, who have reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status⁷⁷. The provisions of the law do not apply where the sponsor is an asylum seeker; has applied for or enjoys temporary protection; has applied for or enjoys subsidiary protection on humanitarian grounds; or is a recognised refugee under the refugee laws⁷⁸. The law also excludes from its scope the family members of a European Union citizen⁷⁹ and applies without prejudice to more favourable provisions of bilateral and multilateral agreements⁸⁰. The matter is currently under review by the Ministry of Interior, which is consulting the relevant stakeholders with a view to reform.

Subject to a number of preconditions⁸¹ the entry and residence for family reunification purposes is allowed for the following family members:

- The sponsor's spouse provided that that the marriage took place at least one year before the submission of the application for family reunification. To this effect, a marriage certificate must be produced⁸².
- the minor children (i.e. unmarried and under 18 years of age) of the sponsor and of his/her spouse, including the sponsor's or the spouse's adopted children, as well as adopted children of the sponsor who are exclusively dependent on him or her;
- The minor children including adopted children of the sponsor and the children of the spouse, where the spouse has custody and the children are exclusively dependent on him or her⁸³.

In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the Republic of Cyprus, the family reunification of a further spouse and his/her children that s/he has with the sponsor is not allowed⁸⁴.

The Director of Immigration Department may revoke a permit or reject the application of family members for entry and residence for the purpose of family reunification for reasons of public security, public order or public health⁸⁵. The Director may also revoke a permit or reject the application where the sponsor and his/her family members no longer live in a real marital or family relationship or where it is found that that the sponsor is married or is in a stable long-term relationship with another

⁷⁶ Cyprus/ Aliens and Immigration Law, as amended by Law 8(I)/2007 (14.02.2007).

⁷⁷ Cyprus/Aliens and Immigration Law, as amended by Law 8(I)/2007 (14.02.2007), article 18KI (1).

⁷⁸ Cyprus/ Refugee Law No. 6(I)/2002 (28.01.2000).

⁷⁹ Cyprus/Aliens and Immigration Law, as amended by Law 8(I)/2007, article 18KI (3).

⁸⁰ Between the Community or the Community and its Member States on the one hand, and third countries on the other or the European Social Charter of 18.10.1961, the amended European Social Charter of 03.05.1987 and the European Convention on the legal status of migrant workers of 24.11.1977.

⁸¹ Cyprus, The preconditions are that the sponsor must be lawfully residing in the areas controlled by the Republic of Cyprus for at least two years; must have accommodation sufficient for a comparable family in the same region, which must meet the general health and safety standards and secure a decent life; must have health insurance for himself/herself and the members of his/her family; must have steady and regular financial means to support himself/herself and the members of his/her family without resort to the state social security system: Cyprus/Aliens and Immigration Law, as amended by Law 8(I)/2007, article 18LB.

⁸² Cyprus/Aliens and Immigration Law, as amended by Law 8(I)/2007(14.02.2007), article 18LA(2)(c).

⁸³ Cyprus/Aliens and Immigration Law, as amended by Law 8(I)/2007(14.02.2007), article 18L(1).

⁸⁴ Cyprus/Aliens and Immigration Law, as amended by Law 8(I)/2007, article 18L(4).

⁸⁵ Cyprus/Aliens and Immigration Law, as amended by Law 8(I)/2007, article 18LZ(1).

person⁸⁶.

The amending law (Law 8(I)/2007) did not transpose Article 4/3 of Council Directive 2003/86/EC and does not authorise the entry and residence either of the unmarried third country national partner of the sponsor with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Directive Article 5/2. Consequently, where the sponsor is a homosexual having a duly attested stable long-term relationship or a registered partnership with a third country national, s/he will not be entitled to family reunification.

The Ombudsman has examined complaints of discrimination based on sexual orientation (most recent case AKP 16/2010)⁸⁷ and has repeatedly pointed out the need for legal recognition of same-sex relationships by the state.⁸⁸ An example is the case of a homosexual couple (Canadian and Cypriot) who got married in Canada, but when they came to Cyprus to live, their marriage was not recognised by the state. In light of the possibility the Canadian man being deported, the couple applied at the Supreme Court but their claim was rejected. As a result, the Canadian man has found a job and he followed the necessary procedures to be granted an employment visa so that he can remain legally in the Republic of Cyprus with his partner.^{89,90}

During 2013, the Ombudsman, as the Anti-Discrimination Body, has examined four similar complaints in relation to the lack of residence status of third country nationals who are in long-term relationships with Cypriot citizens (AKP 103/2013, AKP 103/2012, AKP 35/2013 and AKP 74/2013). The reports of the Ombudsman regarding the examination of the complaints were not yet published. From the information given by the president of Accept LGBT Cyprus, it is evident that the Ombudsman is stressing on the violation of The right of union citizens and their family members to move and reside freely within the territory of the Republic of Cyprus Law.⁹¹ The mentioned Law has transposed the Directive 2004/38/EC into the national legislation, and in article 4(2)(b) specifies that the entry and residence in the Republic according to the Aliens and Immigration Law should be facilitated for the partner with whom an EU citizen has a continuous relationship, duly attested.⁹²

The question remains whether a homosexual marriage lawfully conducted in a country where homosexual marriages are recognised gives rise to the right of family reunification in Cyprus. It may be argued that since Cypriot law recognises marriages lawfully conducted in other jurisdictions and considers a polygamous marriage valid, (albeit granting the right to family reunification to only one of the spouses of the sponsor), a homosexual marriage which lawfully took place in another country where homosexual marriages are recognised could potentially also give rise to the right for family

⁸⁶ Cyprus/Aliens and Immigration Law, as amended by Law 8(I)/2007, article 18LST(1).

⁸⁷ Cyprus, Anti-Discrimination Body (2010) "Report of the Anti-Discrimination Body regarding the legal recognition of homosexual couples" (Εκθεση της αρχής κατά των διακρίσεων αναφορικά με τη νομική κατοχύρωση των σχέσεων ομόφυλων ζευγαριών), AKP 142/2009, AKP 16/2010. March 2010. Available at: www.no-discrimination.ombudsman.gov.cy/sites/default/files/akr_142.2009-16.2010.pdf

⁸⁸ Cyprus, Annual Report 2010, Anti-Discrimination Body. Available at http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/annualrpt_gr/annualrpt_gr?OpenDocument

⁸⁹ Cyprus, Interview with the Acting President accept-LGBT Cyprus, Mrs Sylvie Mantis. 2011

⁹⁰ Cyprus, Case available at http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2010/4-201007-1582-08.htm&qstring=%F3%E5%EE%EF%F5%E1%EB*%20and%20%F0%F1%EF%F3%E1%ED%E1%F4%EF%EB%E9%F3%EC*

⁹¹ Cyprus, Information provided from the NGO "Accept – LGBT Cyprus" upon request. Phone interview with Costas Gavrielides, President, on 11/11/13

⁹² Cyprus, The right of union citizens and their family members to move and reside freely within the territory of the Republic of Cyprus Law, (Ο περί του δικαιώματος πολιτών της ένωσης και μελών των οικογενειών του να κυκλοφορούν και να διαμένουν ελεύθερα στη Δημοκρατία Νόμος) Ν. 7(I) of 2007 last amended with 67(I)2013. Article 4(2)(b). Available at: www.cylaw.org/nomoi/enop/non-ind/2007_1_7/full.html

reunification. This assumption however, has not been tested in practice yet and the Cypriot authorities dispute the fact that the current legal framework forces them to recognise homosexual marriages conducted outside Cyprus⁹³.

At the time of revision of this report (June 2014) there is still no solid evidence on the assumption that the Republic of Cyprus would recognize a homosexual marriage which lawfully took place in another country and this would give rise to the right for family reunification. However, when re-examining the case *Thadd Correia, Savvas Savva vs The Republic of Cyprus through the Director of the Civil Registry and Migration Department*⁹⁴, in this case the couple had lawfully contracted their marriage, yet this contract was not recognised by the Civil Registry and Migration Department. According to a legal study conducted by Antonis Paschalides & Co LLC in January 2013, a same-sex couple cannot contract a marriage in the Republic of Cyprus nor can a marriage of a same-sex couple that has been contracted in another State be recognised under the Cypriot legislation. Additionally, Cypriot legislation does not include any provisions for the recognition of registered partnerships and accordingly a registered partnership of a same-sex couple cannot be accepted as a recognised union in order to be regulated under the Marriage Law 2003 (104(I)/ 2003) of the Republic of Cyprus.⁹⁵

⁹³ Cyprus, Interview to the authors by Interior Ministry officials dated 29.02.2008.

⁹⁴ Cyprus, Supreme Court of the Republic of Cyprus – Revisional Jurisdiction, [Ανώτατο Δικαστήριο Κύπρου – Αναθεωρητική Δικαιοδοσία], *Thadd Correia, Savvas Savva vs The Republic of Cyprus through the Director of the Civil Registry and Migration Department Decision No 1582/2008*, Thadd Correia, Σάββας Σάββα vs Κυπριακή Δημοκρατία μέσω Διευθυντή Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης, Αρ. Απόφασης 1582/2008 (2010), available at: www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2010/4-201007-1582-08.htm&qstring=1582 w/1 2008

⁹⁵ Cyprus, Antonis Paschalides & Co LLC (2013), *New Families? The case of Schalk and Kopf v Austria on same-sex unions and the current legal situation of Cyprus*, available at: www.paschalides.com/en/articles/family-articles/124-new-families-the-case-of-schalk-and-kopf-v-austria-on-same-sex-unions-and-the-current-legal-situation-of-cyprus.html#_ftn1

E. Freedom of assembly

The regulation of freedom of assembly in the context of homophobia and/or discrimination on the ground of sexual orientation can be crucial for the purpose of LGBT activism such as gay pride parades or concerning the curtailing of homophobic demonstrations. In 2012, the non governmental organization Accept LBGT Cyprus was officially registered under the Ministry of Interior in Cyprus. The aims of this organization are: • to inform and educate the Cyprus society on sexual orientation issues, • to prevent and eliminate the development of homophobic tendencies, the safeguarding of a pluralist environment and its incorporation in the wider society, • to sensitize the society on LGBT issues, with emphasis on youth, • to support and encourage LGBT people as well as communicate and inform, • to claim basic rights for the elimination of prejudice and discrimination and to strengthen the principle of equality, • to cooperate with local, regional and international organizations that are involved with the elimination of discrimination and to promote the principle of equality, particularly as regards sexual orientation, • to promote research and studies regarding issues that deal with the aims of the organization, • to participate in conferences and other events regarding the selection, development and advancement of ideas and measures in the field of human rights, particularly in regard to sexual orientation, • to organize speeches, seminars and other events towards the information and education of society and organized bodies for the aims of the organization, • to promote the application of policies, legislation, programmes and initiatives of the EU and the Council of Europe regarding the elimination of discrimination, particularly in regard to sexual orientation, • to promote the recognition of same-sex relationships, of adoption by same-sex couples and all the rights and privileges that same-sex couples should enjoy.⁹⁶⁹⁷⁹⁸

The essential elements of Article 21⁹⁹ of the Republic of Cyprus Constitution are equivalent to article 11 of the ECHR¹⁰⁰. However, to organise a procession or an assembly certain procedures need to be complied with under the Assemblies and Processions Law (Cap 32)¹⁰¹, which stipulates that prior

⁹⁶ Cyprus, Accept LGBT Cyprus, www.acceptcy.org Accessed on 26/02/14

⁹⁷ <http://greece.greekreporter.com/2013/10/07/cyprus-protects-gay-rights-with-new-penal-code/>

⁹⁸ http://www.ilga-europe.org/home/guide_europe/country_by_country/cyprus/lgbt_history_being_made_in_cyprus

⁹⁹ Cyprus, Article 21 of the Constitution provides:

1. Every person has the right to freedom of peaceful assembly.
2. Every person has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. Notwithstanding any restriction under paragraph 3 of this Article, no person shall be compelled to join any association or to continue to be a member thereof.
3. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are absolutely necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person, whether or not such person participates in such assembly or is a member of such association.
4. Any association the object or activities of which are contrary to the constitutional order is prohibited.
5. A law may provide for the imposition of restrictions on the exercise of these rights by members of the armed forces, the police or gendarmerie.
6. Subject to the provisions of any law regulating the establishment or incorporation, membership (including rights and obligations of members), management and administration, and winding up and dissolution, the provisions of this Article shall also apply to the formation of companies, societies and other associations functioning for profit.

¹⁰⁰ Cyprus, See A. Loizou (2000) *Σύνταγμα Κυπριακής Δημοκρατίας*, Nicosia, pp. 132-136. Also, K. Tornaritis (1982) *To Πολιτειακόν Δίκαιον της Κυπριακής Δημοκρατίας*, Nicosia, pp. 163-167. According to P. Evangelides (1996) *The Republic of Cyprus and its Constitution with special regard to the constitutional rights*, PhD Dissertation, Bamerg: Difo-Druck GmH., p. 398, in general “the Constitution of the Republic is more liberal than the Convention” in that any restrictions or limitations have to be “absolutely necessary” as opposed to merely “necessary” in the interest of security or the constitutional order, or public safety or for the protection of the rights of guaranteed by the constitution. However, this ‘liberal’ constitution is working in parallel with a strict post-colonial legacy of laws, which are hardly liberal.

¹⁰¹ Cyprus/ Assemblies and Processions Law CAP. 32 (17.04.1958).

application to the (police) commissioner¹⁰² in the prescribed form is required¹⁰³. The commissioner “may issue orders in general or specific terms for the purposes of directing the conduct of any assembly or procession.”¹⁰⁴ Permission is granted “if the commissioner is satisfied that such assembly or procession is not likely to prejudice the maintenance of good order”¹⁰⁵ and subject to the following: in the case of a procession, the conditions such as the purpose and times for such a parade, under art. 4(1)(a); in case of an assembly, the purpose, the place and time(s) as stated under art. 4(1)(b). The name of the person to whom such a permit is issued is responsible for the due observance of the conditions specified in the permit under art. 4(1)(c). Moreover, the commissioner may prohibit, cancel or stop the procession if “it appears to him to be in the interest of good order or public safety,”¹⁰⁶ or may stop the parade or assembly when some of the conditions have contravened under art. 6(1). A gay parade can therefore be organised; and so can, in theory, an anti-gay demonstration, but both are subject to the conditions referred to above. The purpose or results of the demonstration cannot be contrary to criminal code; for instance the demonstrations may not amount to sedition or incitement of ill feeling or hatred against any calls of persons in Cyprus. As such, it may be argued that that if the anti-gay demonstration is a homophobic assembly it is likely to be prevented, but this is a matter left to the discretion of the police commissioner.

According to the government, the socio-economic developments of the past twenty years have challenged traditional values, norms and stereotypes as a result of which homo- and bisexuality are today discussed more openly and the younger generation is more accepting of such issues¹⁰⁷. This contention, which is not supported by evidence, runs contrary to the findings of the survey conducted on behalf of the equality body in 2006, which found that attitudes have worsened since the previous survey conducted, as well as the results of the Eurobarometer survey of the same year and a number of other surveys referred to under the section “Miscellaneous” below.

The organization Accept LGBT prus organised the first gay parade to take place in Cyprus in summer 2014. Therefore Cyprus hosted their first ever Pride Parade¹⁰⁸, organized by the NGO Accept-LGBT Cyprus on the 31st of May 2014 under the title ‘Same Love – Equal Rights’, with the support of multiple stakeholders, including the European Parliament Representation Office in Cyprus, the European Commission Representation, ILGA Europe, a number of foreign embassies in Cyprus, massive support from the local civil society, as well as local decision and policy makers and political parties.

The parade, which was the highlight of a series of events for the promotion of the rights of the LGBT community, gave the opportunity to really assess whether freedom of assembly is actually exercised by the LGBT community in the country. The event was unanimously perceived as a great success as the organizers expected some three or four hundred people, but the attendance exceeded the four thousand people. The event attracted the attention of local and international media as it really revealed some of human rights violations faced by the LGBT community.

It is interesting to note that at the time of the Pride Parade, an anti-gay parade also took place organized by the ‘Pan Cyprian Christian Orthodox Movement’, which was attended by approximately fifty people, among them many clerics, who were demonstrating against the parade and expressing homophobic behavior. At one or two occasions the police, clashed with the demonstrators as they tried to attack the Pride parade attendants at the beginning of the event. Apart

¹⁰² Cyprus, This is the district police officer, under Art. 2, Cyprus/ Assemblies and Processions Law CAP. 32 (17.04.1958).

¹⁰³ Cyprus, Art. 4, Cyprus/ Assemblies and Processions Law CAP. 32 (17.04.1958).

¹⁰⁴ Cyprus, Art. 3, Cyprus/ Assemblies and Processions Law CAP. 32 (17.04.1958).

¹⁰⁵ Cyprus, Art. 4, Cyprus/ Assemblies and Processions Law CAP. 32 (17.04.1958).

¹⁰⁶ Cyprus, Article 5, Cyprus/ Assemblies and Processions Law CAP. 32 (17.04.1958).

¹⁰⁷ Comments on the Report “Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation - Cyprus - February 2008”, undated, communicated to FRA.

¹⁰⁸ Cyprus, http://www.acceptcy.org/pride/pridecy_en.html (accessed 16/06/2014)

from this incident, the Pride event was not harassed by other demonstrations or extreme homophobic expressions. This excludes the homophobic statements by the Archbishop of Cyprus and some metropolitan bishops, which seem to be the ones that triggered the anti-parade demonstration. The church of Cyprus has been expressing strong anti-gay speech from time to time, even though covered behind the orthodox preaching. The statements are presented by the media and also feature on the official website of the church of Cyprus¹⁰⁹.

There is no case law on the freedom of assembly.

¹⁰⁹ Cyprus, The website of the Church of Cyprus shows some of the homophobic statements made by clerics over the past months http://www.churchofcyprus.org.cy/search_results.php (accessed 13/06/2014)

F. Hate speech and Criminal law

Under the Cypriot Criminal Code (Cap.154) a number of discriminatory acts are punishable offences. None of these offences refer either explicitly to homophobic motivation or generally to sexual orientation in any way. In fact, having in mind the political setting that formed the background at the time when the criminal code was being drafted, most of these provisions were clearly drafted having in mind ethnic discrimination, but some have been drafted widely enough so as to enable an interpretation that covers any type of discrimination. These are the following:

(c) Articles 51A provides that whoever publicly and in any way “procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance is guilty of a misdemeanour and is liable to imprisonment of up to twelve months or to a fine¹¹⁰.

(d) Article 47(1)(b) of the Criminal Code prohibits incitement to hatred amongst communities or religious groups due to race, religion, colour or gender.¹¹¹

The Criminal Code contains two more provisions which may, in the opinion of the Cyprus Expert of the Legal Network of Independent Experts on Fundamental Rights in 2006¹¹², indirectly lead to a conviction for discriminatory acts:

(g) Article 105 provides that civil servants (i.e. government employees) may be held guilty for “abuse of power” and may be sentenced to imprisonment of up to two years and/or a fine of up to CYP£1,500 (€2,563). Abuse of power may well include using one’s position of power to discriminate against persons in the course of their duties, although this is not stated explicitly in the law.

(h) Article 136 provides that any person who violates the law on purpose, in relation to an act involving the public or part of the public, is guilty of an offence and is liable to up to two years imprisonment and/or a fine not exceeding £1,500 CYP (approximately €2,563). It can therefore be inferred that an act violating the anti-discrimination provision of the Cypriot Constitution (article 28) or of the law transposing the Employment Directive (Law N.58(I)/2004) or any other law, may constitute a criminal offence under Section 136 of the Criminal Code if committed deliberately with a homophobic motive.

There is no case law or equality body decision regarding any of the above provisions No case law was found relevant to this section. A comprehensive search was conducted through the online database of the Court decisions (www.cylaw.org). Even though in at least one case from the Supreme Court for cause of severe physical damage, there seemed to be homophobic motivation, the judges did not address it as such. This is due to the lack of legislation covering homophobic hate crimes..

There are no provisions dealing expressly with hate speech related to homophobia and/or discrimination on the ground of sexual orientation.

However, the Ministry of Justice and Public Order submitted to the Parliament in 2013 a Bill amending the Criminal Code so as to penalize public incitement of acts that may be discriminatory

¹¹⁰ Cyprus, The fines are up to 1,000 Cyprus Pounds for individuals and 3,000 pounds for legal persons [1,000 Cyprus Pounds amounts to 1,708 Euros; 3,000 Cyprus Pounds amount approximately to 5,126 Euros].

¹¹¹ Cyprus, Criminal Code Law, Chapter 154, (Ο περί Ποινικού Κώδικα Νόμος (ΚΕΦ. 154)), available at: www.cylaw.org/nomoi/enop/non-ind/0_154/index.html

¹¹² Cyprus, See Opinion on Racial Profiling, submitted to the EU Network of Independent Experts on Fundamental Rights by the Cyprus Expert Achilles Demetriades, 31.08.2006, pp. 4-5.

or of hatred or violence against persons because of their sexual orientation or their gender identity titled as “the Criminal Code (amendment) Law of 2013.”¹¹³ No further progress was noted at the moment in relation to this issue.

In 2012 the Anti-Discrimination Body, which is subject to the Ombudsperson, issued a report titled “Report of the Anti-Discrimination Body on Preventing and Tackling Homophobic Rhetoric”. This report was the outcome of a series of complaints received due to a statement with homophobic content made by an MP in 2010. The report observes that while there was some progress, “members of the LGBT [Lesbian, Gay, Bisexual, Transgender] community continue to suffer from discrimination. This is attributed to a large degree to negative perceptions which are manifested either through the implementation of a covert or latent homophobic speech, or through open and evident homophobic rhetoric.” The report stresses that the absence of specific legislation to address holistically the rights of LGBT persons undermines the efforts to combat prejudices, homophobic attitudes and stereotypes, expressing regret over the fact that the law transposing the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law contains no reference to homophobic behaviour.¹¹⁴ It further points out that nevertheless many EU Member states have introduced policies to combat discrimination on the grounds of sexual orientation in the workplace and in schools, alongside the legislative prohibition of hate speech against LGBT people, adding that the extension of anti-racist legislation to cover LGBT people must be accompanied by policy measures for its implementation.¹¹⁵

There is no provision in the Cypriot legal system regarding crimes committed with a homophobic motivation nor is such motivation recognised as an aggravating factor.

¹¹³ Cyprus, Written information provided from the Ministry of Justice and Social Order (Υπουργείο Δικαιοσύνης και Δημόσιας Τάξης) upon request on 25/11/13

¹¹⁴ Cyprus, Law on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal (Ο περί της καταπολέμησης ορισμένων μορφών και εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του ποινικού δικαίου νόμος) N.134(I)/2011. Available at: www.cylaw.org/nomoi/enop/non-ind/2011_1_134/full.html

¹¹⁵ Cyprus, Anti-Discrimination Body (2012) “Report of the Anti-Discrimination Body on Preventing and Tackling Homophobic Rhetoric” (Εκθεση της Αρχής κατά των Διακρίσεων αναφορικά με την πρόληψη και αντιμετώπιση της ομοφοβικής ρητορικής), 29 June 2012. available at: www.no-discrimination.ombudsman.gov.cy/ektheseis-akr

G. Transgender issues

In 2007, following the transposition of Council Directive 2004/83/EC of 29.04.2004 on minimum standards for the qualification and status of persons as refugees, the status of refugee was granted to one transgender person. This implies that at least the asylum authorities in Cyprus are prepared to view transgender people as a member of a particular social group persecuted on the ground of the common characteristic of sexual orientation, as per Directive article 10/1/d and article 3D(1)(d)(ii) of the Cypriot Refugee Law of 2000, as amended. There is no evidence on how transgender people would be treated under the other laws (law transposing the employment directive, freedom of assembly, criminal law and hate speech) Regarding family reunification since the law grants this right only to “married spouses”, then it may be assumed that a person who has changed his/her gender and subsequently married a member of the opposite sex ought to qualify for this right, since this is no longer a homosexual marriage but a heterosexual one; however this has not been tested in practice. The statement is still valid at the time of revision as the assumption has not been tested by an actual case.

A person who undergoes an operation for the change of sex must submit a medical certificate about this operation, together with a sworn affidavit regarding the change of name, to the District Administration authorities. The District Administration will forward the medical certificate to the Ministry of Health for approval and once this is approved, a new passport, identity card and electoral identity booklet is issued to the applicant. The population archives department of the Interior Ministry issues a new birth certificate with the new name and the new sex but the old certificate is neither cancelled or repealed and is retained on file¹¹⁶.

There is no legal recognition of gender identity of transgender people and the regulatory framework does not foresee for transgender people. Any changes to the Civil Registry are subject to the discretion of the Head of the Civil Registry and Migration Department¹¹⁷ Regulations for legal recognition of a person’s gender reassignment and change of gender in formal documents do exist as mentioned above, but they 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.¹¹⁸

The Interior Ministry maintains a record of those transsexual persons who applied for new documents to be issued, in accordance with the aforesaid procedure. It has no record of those persons who changed sex without applying to the Interior Ministry for change of their documents.

Following the submission of a complaint by the organization Accept LGBT Cyprus, the Ombudsperson as the Anti-discrimination Authority has published a report regarding the detention of a transsexual person at the police detention center. The case concerned the arrest of a woman on charges of running a prostitution business. When arrested, the woman was transferred to a particular police unit (in the area of Lakatamia) which is designated solely for the detention of males, because the name on her identity card was still her male name. In the absence of specific instructions, the

¹¹⁶ Cyprus, Population-data Archives Law No. 141(I)/2002 (26.07.2002), article 40.

¹¹⁷¹¹⁷ Ombudsman Report in regards the legal recognition of gender identity of transgender people (Εκθεση αρχής κατά των διακρίσεων σχετικά με τη νομική αναγνώριση της ταυτότητας φύλου των διεμφυλικών ατόμων) , 02/04/2014 available at http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_Archive_gr?OpenForm

¹¹⁸ Cyprus, Margarita Kapsou, Sylvie Mantis (2012), “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”, Cyprus Family Planning Association – Accept LGBT Cyprus.

woman was detained in the children's ward which was empty at the time. The report stressed the need for securing the rights of transgender persons in detention, because the absence of any guidelines on how to handle these persons in detention may not only lead to putting their dignity at risk but it may also jeopardize their personal safety and even their lives. The Authority calls for a directive to be issued by the police regarding the handling of transgender persons in detention and the respect of their rights. The directive should include a procedure for determining whether a person should be treated as a man or a woman as regards bodily and other types of search and as regards their placement in special detention wards.¹¹⁹

During 2013, a report was released by the Office of the Commissioner for Administration in relation to a complaint submitted in 2009 by a trans woman who is a recognised refugee. The complaint addressed the anomaly whereby in spite of the fact that the woman was granted political refugee status on the grounds of gender identity, the state denied her request for coverage of the expenses related to the gender reassignment process. Such surgeries are not performed in Cyprus due to the lack of infrastructure and respective legislation. The report clearly found that the current framework is discriminatory and has negative impacts on the health of trans people. The Ministry of Health was therefore asked to re-examine the existing framework in order to adequately include trans people.¹²⁰ The Ministry of Health never replied to the Ombudsman's report and urge to cover for the expenses and her case remained on a standstill¹²¹

Another case involved a Greek citizen who filed a complaint on 08/02/2011 in regards to her maltreatment by the Limassol Regional Migration Department for the issuance of an EU citizen certificate for which she filed an application on 26/11/2010 after the gender change operation that she had in 2007. She lives in Cyprus for the last 25 years and was married with a Cypriot citizen with whom they had three children, and who divorced in 1998. Her residence permit in Cyprus ends in 2014 which was issued on her previous male name. Her birth certificate and passport were changed by the Hellenic Republic after he gender change operation. She further complained against the Social Welfare Services for not providing for social benefit due to her incompetence to work, as a result of psychological reasons as they did not have a certificate of registration as an EU citizen in Cyprus. The case is still pending a reply from the Migration Department in regards to a final decision¹²²

Another case involved the complaint of a female who wished to change her gender after obtaining all medical certifications for mental fitness and who had already undergone a breast removal surgery. Since there is a legal gap in the registration of citizens, the head of the Civil Registry and Migration Department in a reply letter answered that a change in the official records of the complainant could not be made due to lack of relevant legislation (Law on Civil Registry and Migration Department), but only in cases where an error in the registration occurred on the part of public authorities.¹²³

¹¹⁹ Cyprus, Ombudsperson (2013), "Position of the Anti-Discrimination Authority regarding the detention of a transgender person" (Τοποθέτηση της Αρχής κατά των διακρίσεων σχετικά με τη κράτηση τρανσέξουαλ σε αστυνομικά κρατητήρια), AKP 3/2013, 31 January 2013.

¹²⁰ Cyprus, ILGA Europe (2013) "Annual Review 2013", Available at: www.ilga-europe.org/home/guide_europe/country_by_country/cyprus/review_2013

¹²¹ Cyprus, Phone interview with Mrs. Katerina Charitou, Officer, Ombudsman on 10/07/2014.

¹²² Cyprus, Report of the Anti Discrimination Authority in regards to the legal recognition of gender identity of transgender people (Εκθεση Αρχής κατά των διακρίσεων σχετικά με τη νομική αναγνώριση της ταυτότητας φύλου των διεμφυλικών ατόμων), 02/04/2014, available at

http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_Archive_gr?OpenForm

¹²³ Cyprus, Report of the Anti Discrimination Authority in regards to the legal recognition of gender identity of transgender people (Εκθεση Αρχής κατά των διακρίσεων σχετικά με τη νομική αναγνώριση της ταυτότητας φύλου των διεμφυλικών ατόμων), 02/04/2014, available at

http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_Archive_gr?OpenForm

No case law was found in regards to transgender issues¹²⁴. No information exists in regards to statistics or trends¹²⁵ except for the urobarometer survey of 2012 where Cypriots scored 3.0 on a scale from 1 (totally uncomfortable) to 10 (totally comfortable) when asked how comfortable they would feel with a transgender/transsexual individual in the highest elected political position in their country. This is significantly below the EU 27 average of 5.7¹²⁶

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 measures¹²⁷

¹²⁴ Cyprus, CYLAW available at www.cylaw.org

¹²⁵ Directorate General for internal policies, Policy Department, Citizens' Rights and Constitutional Affairs, Transgender persons' rights in the Member states, 2010, available at <http://www.lgbt-ep.eu/wp-content/uploads/2010/07/NOTE-20100601-PE425.621-Transgender-Persons-Rights-in-the-EU-Member-States.pdf>

¹²⁶ ILGA Annual Review 2013 on Cyprus, available at http://www.ilga-europe.org/home/guide_europe/country_by_country/cyprus/review_2013

¹²⁷ Cyprus Family Planning Association and Accept – LGBT Cyprus, Report on the 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, available at http://www.cyfamplan.org/famplan/userfiles/documents/Cyprus_Monitoring_implementation_of_the_CoE_Recommendation_20_12.pdf

H. Miscellaneous

No developments of the type experienced recently in Lithuania have taken place in Cyprus. The institutional and legal framework regarding sexual orientation discrimination remains by and large the same as it was in 2004 when Directive 2000/78/EC was transposed.

In 2002, only two years before its EU accession, Cyprus enacted a change in the law that has decriminalised homosexuality following the ECHR decision in the case of *Modinos v Cyprus*,¹²⁸ where the ECHR ruled that the criminalisation of homosexuality, under the antiquated Cyprus Criminal code dating back to 1885, was a violation of Article 8 of the European Convention of Human Rights. The law, which outlawed homosexuality between consenting male adults, was only amended on 21.05.1998 after five years of stalling, however, the age of consent was set at 18 for homosexuals and 16 for lesbians and heterosexuals. Up until 2002 the criminal law contained discriminatory provisions against homosexual men, which were repealed only after significant pressure from the EU¹²⁹. There was significant delay in responding to the recommendations of the European Court of Human Rights¹³⁰, as there was strong opposition from some Christian organisations and church leaders¹³¹, who threatened unrepentant homosexuals with excommunication. Under pressure from the EU to equalise legislation regarding homosexuals and heterosexuals, the House of Representatives had initially planned to reduce the age of consent for homosexual males from 18 to 16, to bring it in line with legislation on heterosexuals. But the House Legal Affairs Committee decided instead to raise the age of consent for heterosexuals to 17, to avoid having to reduce the age for homosexuals to 16, therefore the age of consent for all is now 17.

Earlier research such as the conference proceedings of the Pancyprian Company for Mental Health¹³², a comparative study¹³³, reports on anti-discrimination on all grounds¹³⁴ and on sexual orientation in particular¹³⁵, recent books and studies¹³⁶ all show that the issue of homosexuality is a taboo subject in Cyprus and that there is widespread homophobia and discrimination against LGTBs.

¹²⁸ Judgement 22.04.1993, 16 EHRR 485 available at

http://ius.info/EUII/EUCHR/dokumenti/1993/04/CASE_OF_MODINOS_v_CYPRUS_22_04_1993.html (26.02.2008)

¹²⁹ Cyprus, The report in the daily newspaper *Cyprus Mail* (24.11.2001) is indicative: “Cyprus has come under pressure from the European parliament to bring its human rights provisions up to scratch. Several Euro MPs warned they would oppose the island's accession until the changes were made”.

¹³⁰ Cyprus, Even after passing the law decriminalising homosexuality the parliament managed to further insult gays by retaining in the text a reference to “unnatural licentiousness”, which the gay community strongly objected to. It took two years for the House to change the offending phrase to “intercourse between men”: G. Psyllides (2002) in *the Cyprus Mail* (06.07.2002).

¹³¹ Cyprus, The late archbishop Chrysostomos, the veteran primate of Cyprus' Orthodox church, made an appeal to his womenfolk to “revolt against homosexuals”, whom he called “depraved sinners”. He also pledged to “personally excommunicate the perverts” if they refuse to repent their “unnatural acts ... You must stop them.” (*The Guardian*, 16.10.2001).

¹³² Cyprus, Παγκύπρια Εταιρία Ψυχικής Υγείας [Pancyprian Company for Mental Health τ] (1982) Ομοφυλοφιλία [Ημοσεχθαλιτυ].

¹³³ J. Kelley (2001) ‘Attitudes towards homosexuality in 29 nations’, *Australian Social Monitor*, Vol. 4, No. 1, June 2001., at http://www.international-survey.org/A_Soc_M/Homosex_ASM_v4_n1.pdf

¹³⁴ Cyprus, N. Trimikliniotis, N. 2003; 2005; 2007 “Report on Measures to Combat Discrimination in the EU Countries: A Comparison between council Directives and national legislation on the grounds of racial or ethnic origin, gender, sexual orientation, disabilities, age, religion or belief – Report on Cyprus”, for EU Commission report on behalf of Human European Consultancy and the Migration Policy Group, at http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cyrep07_en.pdf

¹³⁵ H. Kountouros (2006) “Summary of legislation implementing Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation with respect to sexual orientation in Cyprus”, published on the website of the E.M. Meijers Institute of Legal Studies of the Universiteit Leiden; available at www.emmeijers.nl/experts

¹³⁶ Cyprus, A. G. Philaretou, C. N. Phellas, S. S. Karayiannis (2006) *Sexual Interactions, The Social Construction of Atypical Sexual Behaviors*, Florida: Universal Publishers.

Some surveys do illustrate that Cypriot society is less tolerant of homosexuals and homosexuality than the average European society and marginally better than some eastern European societies¹³⁷, and that the practice of homosexuality is not tolerated in Cyprus by a large number of people¹³⁸.

In 2008, the equality body issued two reports on the right of LGBT persons to equality, one concerning freedom of movement and the other concerning asylum. The first is set out in Section 2 below and the second one in Section 3 below. Both reports as well as all other reports issued by the equality body do not create binding obligations or carry sanctions; they form part of a mediation process through which the equality body tried to extract compliance.

Discriminatory attitudes of the public towards homosexuality were expressed during an reactions published in the media in November 2013 about the appearance of a gay couple in a Cypriot production TV series broadcasted at one of the national TV channels. The Cyprus Radiotelevision Authority received more than 10 complaints from the public against the appearance of the gay couple in the specific series, claiming that this series promote the homosexual relationships as a normal phenomenon since the two actors were acting as a normal couple. The position of the Authority was that there is no violation or discrimination so no measures could be taken on its behalf. However, the representative of the authority explained that the script writer of the TV series decided to remove these scenes and the two characters due to the reactions of the public. During 2013, the CRTA has examined 11 cases which concerned violations of human rights, private life and human dignity.¹³⁹

An important measure that has located the current state of affairs as regards attitudes of the public towards homosexuality is the opinion survey on homosexuality commissioned by the Equality Body. This took place between 5-22 January 2006 and was carried out by a private firm upon instructions from the Equality Body, on attitudes towards homosexuality. The sample was 500 persons over 18 years of age, half men half women, 70 per cent residing in urban centres and 30 per cent residing in rural areas. Twenty five per cent of the sample were single, 62 per cent were married, four per cent were divorced and five per cent were widowers. The majority of the interviewees stated that they consider relationships between same-sex partners as wrong: fifty four per cent said they were 'always wrong' and 26 per cent 'usually wrong'; only three per cent said they are 'rarely wrong' and another three per cent 'never wrong'. Amongst the 54 per cent who replied that same-sex relationships are always wrong, men and persons over 45 years of age, as well as person of low education, with children, or residing in rural areas were more critical than the rest. Comparing with another survey carried out in 2001, this survey concluded that attitudes towards homosexuality have become worse during the last two years. The percentage of persons who consider homosexual relationships 'always wrong' was 49 per cent in 2001, 50 per cent in 2003 and 57 per cent in 2005. The percentage of persons who consider homosexual relations 'usually wrong' was 18 per cent in 2001, 17 per cent in 2003 and 18 per cent in 2005. The worsening of attitudes was attributed by the researchers of the

¹³⁷ A study conducted by the University of Melbourne (Melbourne Institute of Applied Economic and Social Research) with regards to the attitudes towards homosexuality in 29 countries, using data from the 1999/2000 International Social Science Survey/Australia, finds that the level of tolerance of homosexuality in Cyprus is significantly less than that of the majority of the European countries in the survey. Cyprus scores a 26/100 compared to 77/100 of the Netherlands, but it is slightly better than Northern Ireland with 25/100, Hungary 23/100, Bulgaria and Portugal 21/100 (*Australian Social Monitor*, vol.4, no.1, 2001).

¹³⁸ This is confirmed by opinion polls, for what they are worth: seventy-four percent of Cypriots say homosexuality is wrong, according to a Cyprus College poll released April 7th 1998. The poll has exposed a yawning generation gap, revealing that 92 percent of Cypriots over the age of 60 oppose decriminalizing homosexuality, while 75 percent of 18- to 24-year-olds hold the opposite view. For the record, the survey also found that 45 percent of Cypriots believe women should be virgins when they marry but only 20 percent said men should avoid pre-marital sex.

¹³⁹ Cyprus, Information obtained from the Cyprus Radiotelevision Authority (Αρχή Ραδιοτηλεόρασης Κύπρου) upon request. Phone interview with Marina Yiannikouri on 18/11/13

survey to the de-criminalisation of homosexuality¹⁴⁰ and to the fact that homosexuals have recently become more demonstrative in public. When asked how their attitudes changed towards homosexuality in recent years, 58 per cent of the interviewees replied that their attitudes have not changed at all, 15 per cent stated that they accept homosexuals less and 27 per cent that they accept them more. The last category of 27 per cent were younger persons of higher educational standard and of higher social class, whilst the 58 per cent who stated that their attitudes had not changed and had negative approach towards homosexuality were mostly older persons of lower educational standard and of lower social class. Seventy-eight per cent of interviewees disapproved of same-sex marriages and 78 per cent disapproved of homosexual couples bringing up children. Gay liberation activists such as Alecos Modinos claimed that the survey did not illuminate on something not already known and regretted the fact that that despite the high levels of homophobia illustrated by the survey and AKOK's repeated requests, the equality body failed to issue any policy recommendations or a code of conduct or launch an awareness raising campaign to address the phenomenon. In fact, Mr. Modinos claims that he was repeatedly promised that such guidelines would be issued by the Equality Body¹⁴¹.

The Anti-Discrimination authority published in September 2010 an information booklet on the role and responsibilities of the Equality Body , including the protection from discrimination based on sexual orientation¹⁴²

Also in 2010 with EU funds through the PROGRESS programme the Equality Authority implemented a public sensitization campaign in June and July 2010 on discrimination and homosexuality and sexual orientation. The campaign included television¹⁴³, radio¹⁴⁴ and printed material¹⁴⁵.

Also the Equality Authority developed an information booklet on the rights of homosexuals at the workplace among other groups facing discrimination and the role of the Equality Authority¹⁴⁶ The Ombudsman also organized during the school years 2011/2012 titled and 2012/2013 school competitions on issues of racism and xenophobia, where the winning schools received prizes in dedicated ceremonies with the cooperation with the Ministry of Education and Culture¹⁴⁷. The 2011/2012 school year competition was titled "Even 1 victim of xenophobia and racism is 1 too many". The 2012/2013 school year competition was titled "talk about racism and xenophobia: silence is not a solution".

On March 26 2013 the Anti-Discrimination Body in cooperation with the European University of Cyprus organized an event on "The cohabitation pact/civil union: Cypriot and European Perspective

¹⁴⁰ Cyprus, In 1998, the homosexual act between consenting adults in a private space was decriminalized. In 2000 the public expression of homosexuality was decriminalized, but the 'age of consent' was fixed at 18 for men and 16 for women. In 2001, the 'age of consent' was fixed at 17 years for both homosexual men and women.

¹⁴¹ Interview with Mr. Alecos Modinos 25.2.2008.

¹⁴² Cyprus, Booklet available at http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/triptyho_AKP.pdf

¹⁴³ Cyprus, <http://www.no-discrimination.ombudsman.gov.cy/diafimistiki-ekstratia-tileoptika>

¹⁴⁴ Cyprus, <http://www.no-discrimination.ombudsman.gov.cy/diafimistiki-ekstratia-radiofono>

¹⁴⁵ Cyprus, <http://www.no-discrimination.ombudsman.gov.cy/diafimistiki-ekstratia-entipa>

¹⁴⁶ Cyprus, Booklet available at http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/triptyho_AKI.pdf

¹⁴⁷ Cyprus, <http://www.no-discrimination.ombudsman.gov.cy/content/%CF%83%CF%87%CE%BF%CE%BB%CE%B9%CE%BA%CF%8C%CF%82-%CE%B4%CE%B9%CE%B1%CE%B3%CF%89%CE%BD%CE%B9%CF%83%CE%BC%CF%8C%CF%82-%CE%BC%CE%AF%CE%BB%CE%B1-%CE%B3%CE%B9%CE%B1-%CF%84%CE%BF%CE%BD-%CF%81%CE%B1%CF%84%CF%83%CE%B9%CF%83%CE%BC%CF%8C-%CE%BA%CE%B1%CE%B9-%CF%84%CE%B7%CE%BD-%CE%BE%CE%B5%CE%BD%CE%BF%CF%86%CE%BF%CE%B2%CE%AF%CE%B1-%CE%B7-%CF%83%CE%B9%CF%89%CF%80%CE%AE-%CE%B4%CE%B5%CE%BD-%CE%B5%CE%AF%CE%BD%CE%B1%CE%B9-%CE%BB%CF%8D%CF%83%CE%B7>

which was attended by the Minister of Interior, the Head of the Office of the European Parliament in Cyprus, a representative of ACCEPT Cyprus as well as other officials¹⁴⁸.

The Social Welfare Services implemented the programme “Dialogues” in the year 2008, in which activities were undertaken within the context of the two EU Anti-discrimination Directives 2000/43 and 2000/78. Furthermore, the Department of Labour participated in the Diversity Day street festival that took place in October 2009, during which the Law on Equality in Employment and Occupation, which deals with discrimination on the grounds of age, sexual orientation, race and ethnic origin, and religion and belief, was presented at workshops and informative material distributed¹⁴⁹.

In the Eurobarometer survey of 2006¹⁵⁰, Cyprus scored second in Europe in the view that discrimination on the ground of sexual orientation is widespread (72 per cent), Cyprus also scored well above the European average (48 per cent) in the question whether the wide majority feels that homosexuality is a taboo: it scored 86 per cent, the highest in the EU. Similarly, in the Angus Reid Global Monitor of 2006¹⁵¹, only 14 per cent of Cypriots agreed that homosexual marriages should be allowed throughout Europe and 10 percent agreed with authorizing the adoption of children for homosexual couples, again scoring one of the last in the EU.

According to Eurobarometer 2012, 77% of Cypriots believe sexual orientation discrimination is widespread. This is significantly above the EU27 average (46%). 76% believe gender identity discrimination is widespread. This is significantly above the EU27 average (45%). Cypriots scored 4.1 on a scale from 1 (‘totally uncomfortable’) to 10 (‘totally comfortable’) when asked how comfortable they would feel with an LGB individual in the highest elected political position in their country. This is significantly below the EU27 average (6.6). Cypriots scored 3.0 on a similar scale when asked about a transgender/transsexual person in the highest elected political position in their country. This is significantly below the EU27 average (5.7).¹⁵²

An opinion survey was carried out in schools¹⁵³, focusing on the pupil’s attitudes on sex education: the vast majority of pupils believe that the subject must be introduced at secondary school, whilst one quarter believed it should be introduced at primary school. Sexual relations appear to start very early: 73.3 per cent of boys and 68.2 per cent girls believe that most persons start before they are 16, whilst 11.1 per cent believe that most start at the age of 13. About 10 per cent of all pupils have had at least one homosexual relationship, which according to the survey exposes them to particular “sexually transmitted diseases and mental anomalies”. Also pupils with no sexual relations need to be properly educated about sex and sex health. About one fifth of all children never use condoms and about half always do so. About seven per cent have contracted sexually transmitted diseases. It was suggested by pupils that teachers engage in a dialogue on sexuality issues and that parents must also be trained. Also it was stressed that Cypriot society must deal with various taboos and prejudices that characterise a small and conservative society, which result in rebellion by children and exposure to undue sexual dangers. The survey found that pupils believed that NGOs offering support and counselling on sexuality and gender relations must be supported; that modernisation and respect for

¹⁴⁸ Cyprusm <http://www.no-discrimination.ombudsman.gov.cy/en/node/264>

¹⁴⁹¹⁴⁹ ECRI Report on Cyprus published on 31/05/2011 available at <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/cyprus/CYP-CbC-IV-2011-020-ENG.pdf>

¹⁵⁰ Eurobarometer, Discrimination in the EU, Summary, Field work June-July 2006, Publication January 2007, available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_sum_en.pdf (26.02.2008).

¹⁵¹ Angus Reid Global Monitor- Polls & Research “Eight EU Countries Back Same-Sex Marriage” (24.12.2006) available at http://www.angus-reid.com/polls/view/eight_eu_countries_back_same_sex_marriage/ (26.02.2008).

¹⁵² Eurobarometer, (2012) “Discrimination in the EU in 2012” European Commission, Fieldwork June 2012, Publication November 2012, (p.40). Available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf

¹⁵³ Cyprus, The survey, published in November 2006 and carried out by the Cyprus Youth Board and the Cyprus Institute of Reproductive Medicine, was titled “Research into health in heterosexual relationships and sexuality”.

diversity and open-mindedness must be promoted, whilst special care must be taken for high risk groups.

In 2012, the Anti-Discrimination Authority published a report regarding homophobia in education and the handling of homophobic incidents at schools. The authority has received several complaints indicating that the handling of these incidents was insufficient. In the report several recommendations are presented including the following: Educational tools and curricula should promote in their entirety respect for diversity and a culture of acceptance of sexual orientation and gender identity; The reluctance or embarrassment of teachers to discuss issues relating to LGBT people needs to be addressed with systematic and continuous training to render them comfortable with issues of sexuality and enable them to approach young people suffering from homophobic bullying; A policy against bullying must be adopted which would expressly include issues of sexual orientation and gender identity as a particular form of bullying requiring special treatment; The recording of homophobic incidents is key to the combating of this phenomenon and demonstrates a commitment to make the problem visible; Support structures and advisory services should be set up for both victims and perpetrators.¹⁵⁴

The chair of the Gay Liberation Movement of Cyprus (AKOK) is adamant that there are very few complaints submitted to the equality body for discrimination on the grounds of sexual orientation¹⁵⁵.

In spite of the absence of case law on homophobia, there are a number of homophobic events and instances reported to the authority by NGOs and trade unions. In the field of education, which employs several thousands of teachers, some instances of homophobia were reported. One of such cases was reported by the General Secretary of the secondary school teachers' union (OELMEK)¹⁵⁶, the "committee of selection" of the Pedagogical Institute, which is responsible for the monitoring and approval of the on-the-job training of secondary education teachers recommended in its assessment report that a certain trainee teacher be failed on the ground that "he moves/ shakes in an odd manner"¹⁵⁷, which is an indirect way of saying that he is gay¹⁵⁸. The second case reported, which is indicative of the teachers' reaction towards homosexuals, occurred in 2001, when OELMEK issued a statement stating that it will endeavour to combat discrimination of all discriminated groups and referred to, inter alia, homosexuals: the union received more than 300 phone calls from teachers complaining about the inclusion of homosexuals in the list. The General Secretary of OELMEK is of the view that little has changed in terms of attitudes since then in spite of the introduction of the anti-discrimination legislation in 2004: there has not been any campaign to inform teachers, students or any other organised groups on homophobia and the rights of persons to freely choose and exercise their sexual orientation¹⁵⁹. The third instance of discrimination concerns the regulations (currently under review) regarding the provision of assistance to family members of teachers who are members of OELMEK. Regulation 10 of the relevant draft defines the beneficiaries of such assistance as the "legal children born out of wedlock", the "financially dependant children", the parents and

¹⁵⁴ Cyprus, Anti-Discrimination Authority "Report of the Anti-discrimination Authority regarding homophobia in education and the handling of homophobic incidents at schools (Εκθεση αρχής κατά των διακρίσεων για την ομοφοβία στην εκπαίδευση και το χειρισμό ομοφοβικών περιστατικών)", AKP 63/2011, AKP 131/2011 www.no-discrimination.ombudsman.gov.cy/ektheseis-akrv

¹⁵⁵ Cyprus, Interview with Mr. Alecos Modinos 25.2.2008.

¹⁵⁶ Cyprus, Association of Greek Secondary Education Teachers [Οργάνωση Ελλήνων Λειτουργών Μέσης Παιδείας] (OELMEK) [(OELMEK)].

¹⁵⁷ The term often used for gay men is «κουνιστός» and the verb used in the Cypriot dialect is «κλώθεται», which can be translated as indulging in "excessive, disagreeable performance" of femininity and has even worse pejorative connotations for men, as indicated in S. Karayannis (2004) *Dancing Fear and Desire: Race, Sexuality, and Imperial Politics in Middle Eastern Dance*, Waterloo, Canada: Wilfred Laurier University Press, p.136.

¹⁵⁸ The case took place 1.6.2006, i.e. two years after the enactment of the anti-discrimination legislation.

¹⁵⁹ Cyprus, Interview with Yiorgos Zissimos 15.2.2008.

“financially dependant siblings”. No mention is made of long-term or same sex partners.

In 2003 (i.e. prior to the setting up of the equality body) there was a complaint to the Ombudsman regarding the treatment of homosexuals in the army. The Ombudsman asked the Defence Ministry to change the content of discharge papers after a homosexual was denied a driving licence based on a military assessment that he had psychological problems. Although homosexuals are - like all other men - obliged to do military service in Cyprus, they have been allowed to seek an exemption, though not on the grounds of their homosexuality. Instead, it has been standard practice in the army to grant exemptions on various psychiatric grounds, such as personality disorder or neurosis. However, such references can deny people classed in this way other basic rights, such as a driving licence. The case investigated by Ombudsman was filed by a 28-year old homosexual, who was discharged from the army after being deemed “unsuitable” for health reasons. He had been examined by a military committee and classed as being “neurotic”. He was later unable to obtain a driving licence. An official at the Road Transport Department told the media that as far as he knew when it came to issuing licences, there was no discrimination against homosexuals exempted from the army on psychological grounds¹⁶⁰. The Ombudsman’s report suggested that the Defence Ministry change the discharge papers of people exempted from military service for medical reasons to avoid their personal rights being violated. She also said that the issue of homosexuals and the military needed particular attention. “Specifically, during the handling of these matters it must be taken into consideration that the sexual choices of these people attract social and moral scepticism, and consequently the voluntary or involuntary lack of action on the part of the authorities to regulate matters concerning homosexuals while at the same time they are subjected most of the time to daily discrimination,” the report said.

The issue of gay rights in the context of the army has been a bone of contention for years. In the ECHR decision in the case of *Modinos v. The Republic of Cyprus*, counsel for the Republic of Cyprus claimed that the penal sanctions against homosexuals had been long in abeyance. In response, counsel for Mr. Modinos cited the case of *Costa v. The Republic*¹⁶¹, where in 1983 the accused, a 19 year-old soldier had been convicted of the offence of permitting another male person to have carnal knowledge of him contrary to section 171(b) of the Criminal Code.

Homosexuals have in the past objected to being classed as psychologically disturbed on army discharge papers and the issue was raised before the European Court of Human Rights. In August 1994, the International Association for the Protection of Human Rights in Cyprus asked the Ministry of Defence not to use the sexual orientation of an applicant as a ground for declaring him psychiatrically unsuitable for military service, as this would violate the Constitution and the country's international obligations. Six months later, the Ministry of Defence replied to the Human Rights Association that, although homosexuality was not considered a disease, the competent committee examined the presence of personality disorders. In June 1995 the newspaper *Cyprus Mail* obtained a copy of a certificate of military exemption given to a gay man, which said that “Mr. S is unsuitable for military service because he suffers from a sexual perversion, being a passive homosexual”¹⁶². Today the situation is not as explicitly discriminatory against gays as it was before; apparently the certificate of military exemption is longer as specific. In November 2006 the Minister of Defence attempted, but, like his predecessors, failed to push through parliament legislation that allowed the issuing of certificates that contained the reasons for release of the army and to allow for “administrative” measures against those who refuse to serve such as deprivation of driving licence

¹⁶⁰ The official is quoted saying: “We never refuse in such as case,” he said, adding that applicants in such cases were usually sent for a second opinion “to clear the case” and that “there is no discrimination”, *The Cyprus Mail*, 03.07.2003.

¹⁶¹ 2 Cyprus Law Reports, pp. 120-133 [1982]

¹⁶² Cyprus, J. Christou (2003) “Defence Ministry under fire after gay man denied driving licence on grounds of army discharge papers” in *The Cyprus Mail* (03.07.2003).

and to make it difficult to obtain jobs in public service¹⁶³. The House of Representatives rejected this effort because of the decision of the Ombudsman in 2003, which found that the explicit reference to “psychological problems” on the certificate would have serious repercussions on the employment opportunities of persons with mental health¹⁶⁴.

Nevertheless, the stigma against homosexuals in the army remains largely unchanged: the landmark ECHR case of *Smith & Grady v. UK* 1999¹⁶⁵, which recognised that people’s sexual orientation was one of the most intimate aspects of their lives and found no evidence that gay soldiers would somehow prejudice the morale, fighting power or operational effectiveness of the armed forces and accession to the EU has led to a more discrete approach towards gays by the Greek-Cypriot army command. It is widely believed that amongst the thousands of persons released for psychological reasons are gay men. According to figures released by the Ministry of Defence between 1992 to 2006 one in nine new army recruits was released due to psychological reasons: out of 79,376 national guards, 4,279 were released whilst another 4,693 army service were suspended due to psychological reasons¹⁶⁶. Apparently this was causing concern in the army leadership and Government¹⁶⁷. 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 data¹⁶⁸. 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’ Council¹⁶⁹. Gay liberation activists dispute the allegation that there is no discrimination against homosexuals in the Cypriot army.

Two parallel studies were conducted between April 2010 and April 2011 aiming to map the socio-political climate and the experiences of the LGBT-community in Cyprus, respectively. In the first study, articles pertaining to LGBT issues published in major newspapers in Cyprus in the past three years (January 2008 – December 2010) were collected, coded and analysed in an effort to document the prevailing socio-political climate. The second study provides insight into the experiences of LGBT persons in Cyprus, obtained through questionnaires completed by LGBT people throughout the island. The study documented experiences of violence or psychological harassment, acceptance or discrimination in relation to work, housing, health and other services, faith, school and university, family, relationships, and social attitudes.¹⁷⁰ Victims of abuse on the grounds of sexual orientation are usually not reporting the incidents to the police. This was observed in the study mentioned above, in which not one among the 136 victims of abuse interviewed thought of going to the police. In the past, on the police’s questionnaire for reporting an incident, there was a separate category for crimes on the ground of sexual orientation. But since this category was not used by the victims, it was eventually removed. The trend is to consider the incidents of abuse in the family because of sexual orientation as domestic violence, without categorising them according to the situation.¹⁷¹

¹⁶³ Cyprus, C. Hadjikosta (2006) “Διχάζει ο «τρελο-νόμος»”, Η Σημερινή, 01.11.2006.

¹⁶⁴ Cyprus, C. Hadjikosta (2006) “Διχάζει ο «τρελο-νόμος»”, Η Σημερινή, 01.11.2006.

¹⁶⁵ VI Eur. Ct. HR45, 29 EHRR 493; 31 EHRR 620.

¹⁶⁶ Cyprus, Michalis Hajistylianou (2007) “Απολύθηκαν από την Ε.Φ. 4279 ως ψυχοσθενείς”, Η Σημερινή, 23.07.2007.

¹⁶⁷ Cyprus, Michalis Hajistylianou (2007) “Απολύθηκαν από την Ε.Φ. 4279 ως ψυχοσθενείς”, Η Σημερινή, 23.07.2007.

¹⁶⁸ Cyprus, Interview with Mr. Kareklas, Permanent Secretary of the Ministry of Defence 13.02.2008.

¹⁶⁹ Cyprus, Interview with Mr. Kareklas, Permanent Secretary of the Ministry of Defence 13.02.2008.

¹⁷⁰ Cyprus, Margarita Kapsou, Anna Christophi, & Maria Epaminonda (2011) “A report on Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experiences and Needs”, June 2011, Cyprus Family Planning Association and Accept-LGBT Cyprus. Available at:

www.cyfamplan.org/famplan/userfiles/documents/ILGA%20FULL%20REPORT%20FINAL%20EN.pdf

¹⁷¹ Cyprus, Interview with the Acting President accept-LGBT Cyprus, Mrs Sylvie Mantis, 2011

I. Good practices

A significant step forward is the legal provision in the Cypriot law that empowers the equality body to combat discrimination on all grounds and in all fields, which extends the scope for combating discrimination beyond the sphere of employment and occupation (please see paragraph 3 above) and can serve as a useful precedent for the extension of the scope throughout the EU which the Equality Body has made use of for a number of cases of LGBT people treated unfairly by the authorities in the last couple of years..

There have been some general information campaigns to inform the public about the EU anti-discrimination acquis as implemented in Cyprus between 2004-2008 as well as others on homosexuality during the years 2011-2014.. However, according to gay activists and anti-discrimination experts the issue of discrimination on the grounds of sexual orientation has been subsumed into the other issues and has not received any specific attention, given that it remains a taboo subject and there is no significant gay rights activism¹⁷². The Ombudsman has been cooperating closely with LGBT organisations in Cyprus in recent years, such as with AKOK and ACCEPT Cyprus in the organization of joint events, and the research into cases of complainants treated by the Ombudsman's office. One example is the speech of the Ombudsman in an even organized by ACCEPT on 14/09/2011 in cooperation with the European Commission Representation Office in Cyprus on the issue of "Equality for LGBT – Why in the future and not today? The legal regulation of homosexual relationships"¹⁷³ Furthermore, the Anti-Discrimination Authority intervened to the Ministry of Interior on behalf of the NGO LGBT ACCEPT, in regards to the delay of the Ministry in the registration of the NGO as a legal vehicle. The result of the Ombudsman's intervention was the speeding of the registration process of the NGO¹⁷⁴.

A number of general seminars on the implementation of the acquis on non- discrimination on all grounds can be reported as good practices:

Awareness campaign

In 2007 the Cyprus Family Planning Association in cooperation with the Gay Liberation Movement of Cyprus and NGO Astarti organized an awareness campaign in relation to the issue of sexual orientation, which was co-financed by the European Commission and the Ministry of Justice and Public Order. The campaign aimed at sensitising the general public on sexual orientation issues as a human right and discrimination due to sexual orientation. The booklet, aimed at organised groups such as teachers, police and others, is still to be disseminated¹⁷⁵.

The Equality Authority organized a public awareness campaign in 2010 with EU funds through the PROGRESS programme on discrimination and homosexuality and sexual orientation. The campaign

¹⁷² Cyprus, Interview with Dr. Constantinos Phellas 11.1.2008; also interview with Mr. Alecos Modinos 25.2.2008.

Moreover, the same conclusion can be drawn from the researchers' own experience, who was present in the majority of the events, either as a speakers, trainers, coordinator or participants.

¹⁷³ Cyprus, Anti-Discrimination Body Annual Report 2011, available at http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/book_diakriseon_2011_gr_1_fin1.pdf

¹⁷⁴ Cyprus, Anti-Discrimination Body Annual Report 2011, available at http://www.no-discrimination.ombudsman.gov.cy/sites/default/files/book_diakriseon_2011_gr_1_fin1.pdf

¹⁷⁵ Cyprus, Interview with Mr. Alecos Modinos, president of AKOK, 25.2.2008. On 08.03.2010 Mr Modinos confirmed that the leaflet has not yet been disseminated.

included television¹⁷⁶, radio¹⁷⁷ and printed material¹⁷⁸.

Seminar on anti-discrimination Directives

On 14.12.2007 the Brussels-based Assistance Information Exchange Office – TAIEX, in cooperation with the Cypriot Ministry of Justice, the Attorney General’s office, the Supreme Court and the Pancyprian Bar Association held a one-day seminar on developments in the anti-discrimination field and particularly on the transposition of Directives 2000/43/EC and 2000/78/EC. The language of the seminar, which targeted lawyers, judges, civil servants and NGOs, was Greek and English. The seminar was attended by 101 persons, out of whom seven judges, 19 lawyers, 21 policemen, 31 civil servants, 20 NGO representatives and three college students who are third country nationals. Focusing on EU level rather than national laws and practices, the program included presentations on: Anti-discrimination and diversity in EU law and policy, presented by a former official of the Permanent Representation of the Netherlands at the European Commission; best practices in procedural issues and enforcement, presented by an official of the Greek Court of Appeal and the Greek Police Academy; the role of the European Court of Justice in interpreting and applying anti-discrimination legislation, presented by a lecturer at the Catholic University Louvain of Belgium, etc.

Expression of Diversity / Equality

On 12.12.2007, the European Institute of Cyprus organized an event to mark the closing of the European Year of Equal Opportunities in Cyprus – 2007. The event, which was funded by the European Commission, the Cypriot Ministry of Justice and from the organizers themselves, aimed at raising public awareness on the benefits of multiculturalism and diversity. The event included exhibition stands from social partners, NGOs, governmental departments etc; an evaluation / round table discussion; an official closing ceremony; events and competitions for children; special awards given to individuals who have contributed to the combating of discrimination; presentation of activities from high schools; screening of films/documentaries; photographic exhibition; exhibition of posters etc. The organisers stated that the event was participated by thousands of persons.

Good Practice Guide is issued by employers’ association

During 2007, the Cyprus Employers & Industrialists Federation¹⁷⁹ (OEV) has published a “Guide to employers for the promotion of equality and diversity at the workplace” setting out the legal obligations of employers according to the anti-discrimination legislation, listing examples of good practice and highlighting the promotion of equality and respect for diversity as factors for a healthier, more competitive and productive work environment.

Anti-discrimination training for NGOs and trade unions

On 22-23.09.2007 a two-day training seminar was held in Nicosia, as part of a Europe-wide programme to develop knowledge of EU and national anti-discrimination legislation, civil society

¹⁷⁶ Cyprus, <http://www.no-discrimination.ombudsman.gov.cy/diafimistiki-ekstratia-tileoptika>

¹⁷⁷ Cyprus, <http://www.no-discrimination.ombudsman.gov.cy/diafimistiki-ekstratia-radiofono>

¹⁷⁸ Cyprus, <http://www.no-discrimination.ombudsman.gov.cy/diafimistiki-ekstratia-entipa>

¹⁷⁹ Cyprus, Cyprus Employers and Industrialists Federation [Ομοσπονδία Εργοδοτών και Βιομηχάνων] (OEB)

dialogue and NGO capacity building. The trainers were Greek Cypriot and Turkish Cypriot legal and non-legal persons who had undergone a “train the trainers” training. One of the trainers was the president of AKOK and well known gay activist and specific attention was placed on ensuring the participation of LGBT persons. Funded by the European Commission and designed and coordinated by the Migration Policy Group and Human European Consultancies, this seminar comes as a continuation of a similar seminar held in 2005 (reported below) in Cyprus and contained an in-built evaluation component performed by the seminar participants. This seminar targeted NGO activists and trade unionists across Cyprus’ ethnic divide, it was conducted in Greek and Turkish and was attended by approximately 25 Greek Cypriot and 15 Turkish Cypriot NGO activists and trade unionists, most of them members of vulnerable groups. This seminar forms part of a series of training seminars which will also include a follow-up session for participants who were trained in 2005 and at the September 2007 seminar, and a diversity management seminar which will take place in February 2008. The national organiser of the seminar was the NGO Symfiliosi (Reconciliation)¹⁸⁰.

Anti-discrimination training for NGOs

On 11-12.06.2005 the Cyprus Labour Institute INEK-PEO organised a two days seminar on the role of NGOs in Cyprus in combating discrimination on the grounds of Racial or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation. The seminar was part of a European Commission funded project: Mapping capacity of civil society dealing with anti-discrimination (VT/2004/45)¹⁸¹. As in the 2007 training seminar, one of the trainers was the president of AKOK and well known gay activist and specific attention was placed on ensuring the participation of LGBT persons.

Conference on the Benefits of Diversity

On 29-30.09.2006 the ‘Stop Discrimination Campaign’ organised a pan-European conference on “The Benefits of Diversity and Inclusion for Small and Medium-Sized Enterprises”. This conference brought together about 130 representatives of European SMEs and those working with the SME community, offering a platform for exchanging experiences in diversity management and implementing anti-discrimination policies in small and medium sized businesses. Speakers from a business or academic background explained the challenges and benefits of diversity for smaller companies using practical examples and case studies. More case studies were presented in an exhibition during the conference¹⁸².

Equality body seminar in 2005

On 18.01.2005 a major conference titled “The implementation of the principle of equality in employment and occupation” was organised in Nicosia the equality Body, focusing on employment discrimination (Directive 2000/78/EC). The activity was funded by the Community Action Program for national awareness raising activities on issues of discrimination (VF/2005/0154). The main speakers were Yiota Kravitou, Law Professor at the University of Thessaloniki, who spoke on the principle of non-discrimination in the two EU Directives 43/2000 and 78/200 and Alvaro Oliveira

¹⁸⁰ Available at: http://ec.europa.eu/employment_social/fundamental_rights/spot/july07_en.htm#trainac (accessed on 22.10.2007).

¹⁸¹ The project was managed by human european consultancy (www.humanconsultancy.com) in partnership with the Migration Policy Group (www.migpolgroup.com) and was carried out in the 10 new EU member states and Bulgaria, Romania and Turkey.

¹⁸² See www.stop-discrimination.info/?RDCT=fd6dc498e983758e3227

from DG Employment and Social Affairs of the EU, who spoke on the content of Directive 2000/78/EC and its implementation. There were additional speakers from Cyprus equality body, the Ministry of Labour and the Ministry of Justice. The event was attended by Government officials and civil servants, trade unionists and employers association representatives and a number of NGOs. This was one of the largest conferences on the subject where all social partners and many stakeholders were involved (a total of 300 persons). It was the only awareness raising event organised by the specialised body on anti-discrimination laws.

Ministry of Justice Seminar in 2003

A seminar titled “E.U. legislation and policies to combat discrimination” was organised by the Ministry of Justice and Public Order in June 2003, targeting NGOs, government officials and the public at large, within the framework of the Community Action Programme Against Discrimination, funded by the European Commission. Speakers included three European experts, from the Commission and from other EU member states and there was simultaneous translation from Greek to English and vice versa. It examined the concepts, content and field of implementation of the EU anti-discrimination directives. The participants were mainly stakeholders from the governmental and non-governmental sector but there was little if any representation from vulnerable groups. During the proceedings, the Ministry circulated to participants two short publications listing out the legislative framework for the combating of racism and discrimination. There was no follow up on the subject; nor was there any impact assessment on the activity or the legislation since it was implemented.

From the perspective of the NGOs¹⁸³ and experts¹⁸⁴ the problem with the above general training is that they fail to properly target the LGBT population and as such, it does not impact LGBT persons. No Hate Speech Cyprus 2012The Youth Board of Cyprus participates in a campaign launched by the Council of Europe titled “No Hate”,¹⁸⁵ aiming at tackling online hate speech. In this context the Office of the Commissioner for Administration undertook the creation of a glossary which will facilitate training on, and identification of, hate speech discourse and expressions. As soon as the glossary is ready (probably in the next few weeks) it will be forwarded to the Youth Board of Cyprus, which will convert it into a youth-friendly form and disseminate it accordingly by the end of 2013.¹⁸⁶ The glossary was presented on the 21 March 2014 in an open event coorganised by the Cyprus Youth Board and the Anti-discrimination Body, with the support and participation of the Cypriot Ombudsperson herself. Part of the campaign is also a video with statements of Cypriot youth against hate speech. The dissemination has recently been launched through the Cyprus Youth Board and other relevant NGOs and public authorities.

The No Hate Speech Movement was relaunched on 21 March 2013 in Cyprus with an opening speech of Torbjørn Jagland, Secretary General Council of Europe¹⁸⁷. The EEA Grants also support the No Hate Speech movement in Cyprus through the Fund for Non-Governmental Organisations in Cyprus for the programming period 2009-2014¹⁸⁸.

¹⁸³ Cyprus, This is based on the views expressed by the Chair of the Gay Liberation Movement of Cyprus -AKOK (interview with Mr. Alecos Modinos 25.2.2008) as well as the knowledge research and training organisations such as SYMFILIOSI, INEK-PEO etc.

¹⁸⁴ Interview with Director of RUBSI, Dr. Constantinos Phellas 11.1.2008.

¹⁸⁵ Council of Europe, “No Hate Speech Movement” www.nohatespeechmovement.org/ accessed on 27/2/14

¹⁸⁶ Cyprus, Data derive from the Office of the Commissioner for Administration, 2011

¹⁸⁷ <https://www.youtube.com/watch?v=feRb0n4WUa4>

¹⁸⁸ Cyprus, <http://www.eeangofund.org.cy/>

Colorful Meetings

The “Colorful meetings” is an initiative implemented by Accept LGBT Cyprus since 2010 and take place every first Wednesday of the month. During these meetings LGBT persons or their friends are gathered in a safe and friendly environment and discuss about issues they are facing in relation to sexual orientation such as “coming out” or discriminations, they share experiences and support each other.¹⁸⁹

“Shield against Homophobia in Education” in 2012

The campaign “Shield against Homophobia in Education” was implemented by the Cyprus Family Planning Association and Cyprus Youth Council and was supported by the Ministry of Education and Culture. It intended to fill a research gap in homophobia in education. The findings of the research demonstrated a rather high frequency and intensity of homophobic bullying at schools. More specifically, the campaign involved the training of 90 educationalists in matters of gender and sexual orientation and qualitative research on homophobia in education recording the perceptions of educationalists, who confirmed the finding that homophobia is widespread in schools expressed in the conduct of both pupils and teachers, whilst the fear is often expressed that toleration of a ‘different’ sexual orientation will increase the number of persons with diverse sexuality. The stigmatization is such that educationalists prefer not to utter these words. Educationalists prefer to hide their sexual orientation at school, adopting ‘masculine’ characteristics so as not to expose themselves to homophobic reactions. In October 2012 a conference was organized where the findings of the qualitative research were presented to the public.¹⁹⁰

There is no available information on transgender people in terms of good practice.

¹⁸⁹ Cyprus, Accept LGBT Cyprus, “Colourful Meetings” (Πολύχρωμες Συναντήσεις), www.facebook.com/events/656771167715702/ accessed on 27/2/14

¹⁹⁰ Cyprus, “Mapping of the phenomenon of homophobia in education - Shield against Homophobia in Education” (Σκιαγράφηση του φαινομένου της ομοφοβίας στην εκπαίδευση – Ασπίδα κατά της ομοφοβίας στην εκπαίδευση), Cyprus Family Planning Association and Cyprus Youth Council. 2012. Available at: www.cyfamplan.org/famplan/userfiles/documents/Report_Shield%20against%20Homophobia%20in%20education%281%29.pdf

J. Intersex

Intersex people are not specified in national non-discrimination legislation/ legal cases or non-discrimination policies¹⁹¹ Discrimination on groups of “intersex” are not covered by the law. This applies to discrimination of intersex persons as well..

No policies or any other material was found in relation to intersex discrimination. No, discrimination of intersex persons is not covered under national non-discrimination policies or legislation. It is not allowed that children remain without a gender marker/ identification on their birth certificates.¹⁹² The time limit to register a new-born is fifteen days¹⁹³

Such surgeries/interventions are not performed in Cyprus due to the lack of infrastructure and respective legislation.

¹⁹¹ Cyprus, The Combating of Racial and Some Other Forms of Discrimination Law No. 42(I)/ 2004 (Ο περί καταπολέμησης των Φυλετικών και Ορισμένων άλλων διακρίσεων (Επίτροπος Νόμος 42(I)/2004, available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/341F06F0809843A6C22575B200444BBB/\\$file/%CE%9A%CE%B1%CF%84%CE%B1%CF%80%CE%BF%CE%BB%CE%AD%CE%BC%CE%B7%CF%83%CE%B7%CF%82%20%CF%84%CF%89%CE%BD%20%CE%A6%CF%85%CE%BB%CE%B5%CF%84%CE%B9%CE%BA%CF%8E%CE%BD%20%CE%BA%CE%B1%CE%B9%20%CE%9F%CF%81%CE%B9%CF%83%CE%BC%CE%AD%CE%BD%CF%89%CE%BD%20%CE%86%CE%BB%CE%BB%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%28%CE%95%CF%80%CE%AF%CF%84%CF%81%CE%BF%CF%80%CE%BF%CF%82%29%20%CE%9D%CF%8C%CE%BC%CE%BF%CF%82%20%CF%84%CE%BF%CF%85%202004.pdf?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/341F06F0809843A6C22575B200444BBB/$file/%CE%9A%CE%B1%CF%84%CE%B1%CF%80%CE%BF%CE%BB%CE%AD%CE%BC%CE%B7%CF%83%CE%B7%CF%82%20%CF%84%CF%89%CE%BD%20%CE%A6%CF%85%CE%BB%CE%B5%CF%84%CE%B9%CE%BA%CF%8E%CE%BD%20%CE%BA%CE%B1%CE%B9%20%CE%9F%CF%81%CE%B9%CF%83%CE%BC%CE%AD%CE%BD%CF%89%CE%BD%20%CE%86%CE%BB%CE%BB%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%28%CE%95%CF%80%CE%AF%CF%84%CF%81%CE%BF%CF%80%CE%BF%CF%82%29%20%CE%9D%CF%8C%CE%BC%CE%BF%CF%82%20%CF%84%CE%BF%CF%85%202004.pdf?OpenElement)

¹⁹² Cyprus, Registration of Residents Law [N. 141(I)/2002 (Νόμος που καταργεί τους νόμους που ρυθμίζουν τα θέματα αναφορικά με την καταχώρηση γεννήσεων και θανάτων, την εγγραφή των κατοίκων, την εγγραφή των εκλογέων και την ετοιμασία του εκλογικού καταλόγου, την εγγραφή των πολιτών της δημοκρατίας και ταυτόχρονα εισάγει ειδικές διατάξεις για την έκδοση διαβατηρίων/ ταξιδιωτικών εγγράφων και προσφυγικών ταυτοτήτων για τους πρόσφυγες N141(I)/2002, available at <http://www.army.gov.cy/wp-content/uploads/O-peri-arxeiou-plithismou-nomos-tou-2002-N.-141I-20021.pdf>

¹⁹³ Cyprus, Cyprus, The Combating of Racial and Some Other Forms of Discrimination Law No. 42(I)/ 2004 (Ο περί καταπολέμησης των Φυλετικών και Ορισμένων άλλων διακρίσεων (Επίτροπος Νόμος 42(I)/2004, art. 8, available at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/341F06F0809843A6C22575B200444BBB/\\$file/%CE%9A%CE%B1%CF%84%CE%B1%CF%80%CE%BF%CE%BB%CE%AD%CE%BC%CE%B7%CF%83%CE%B7%CF%82%20%CF%84%CF%89%CE%BD%20%CE%A6%CF%85%CE%BB%CE%B5%CF%84%CE%B9%CE%BA%CF%8E%CE%BD%20%CE%BA%CE%B1%CE%B9%20%CE%9F%CF%81%CE%B9%CF%83%CE%BC%CE%AD%CE%BD%CF%89%CE%BD%20%CE%86%CE%BB%CE%BB%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%28%CE%95%CF%80%CE%AF%CF%84%CF%81%CE%BF%CF%80%CE%BF%CF%82%29%20%CE%9D%CF%8C%CE%BC%CE%BF%CF%82%20%CF%84%CE%BF%CF%85%202004.pdf?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/341F06F0809843A6C22575B200444BBB/$file/%CE%9A%CE%B1%CF%84%CE%B1%CF%80%CE%BF%CE%BB%CE%AD%CE%BC%CE%B7%CF%83%CE%B7%CF%82%20%CF%84%CF%89%CE%BD%20%CE%A6%CF%85%CE%BB%CE%B5%CF%84%CE%B9%CE%BA%CF%8E%CE%BD%20%CE%BA%CE%B1%CE%B9%20%CE%9F%CF%81%CE%B9%CF%83%CE%BC%CE%AD%CE%BD%CF%89%CE%BD%20%CE%86%CE%BB%CE%BB%CF%89%CE%BD%20%CE%94%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD%20%28%CE%95%CF%80%CE%AF%CF%84%CF%81%CE%BF%CF%80%CE%BF%CF%82%29%20%CE%9D%CF%8C%CE%BC%CE%BF%CF%82%20%CF%84%CE%BF%CF%85%202004.pdf?OpenElement)

Annexes

The cases presented in this section are the only ones found in regards to the issues of homophobia. The Cypriot legislation and court decisions are all found in www.cylaw.org which is the only updated source of legal and legislative information in Cyprus. It was researched extensively for new cases, but no new cases were found.

Annex 1 – Case law

Case title	Stavros Marangou v. The Republic of Cyprus through the Public Service Commission
Decision date	17.07.2002
Reference details (type and title of court/body; in original language and English [official translation, if available])	Ανώτατο Δικαστήριο Κύπρου Αναθεωρητική Δικαιοδοσία Υπόθεση αρ. 311/2001 Supreme Court of Cyprus Revisional Jurisdiction Case no. 311/2001
Key facts of the case (max. 500 chars)	The Applicant applied to the Public Service Commission for a post at the Ministry of Interior. On the 25.01.2001, he was notified that his application was rejected because of his failure to serve in the army, pursuant to article 31(b) of the Public Service Law ¹⁹⁴ . The Applicant applied to the Court seeking the annulment of this decision, arguing that article 31(b) of the Public Service Law violated the non-discrimination principle of Article 28 of the Constitution on the grounds of belief, given his particularities and personal convictions deriving from the fact that he is a homosexual. The Republic argued, by way of a preliminary objection, that the Applicant lacked legitimate interest that would enable him to file the present recourse, as his failure to discharge his military obligations meant that he did not possess the required qualifications for the post. The Court sustained the Republic's preliminary objection and rejected the applicant's recourse.
Main reasoning/argumentation (max. 500 chars)	The Judge stated that his judgement would be different if section 31(b) of the Public Service Law was held to be unconstitutional but that issue was not raised by the Applicant, whose argument for unequal treatment was not related directly to the constitutionality of section 31(b) of the Public Service laws, but to the constitutionality of the National Guard laws. In this case, the decision of the Public Service Commission relied on section 31(b) of the Public Service law and not on the National Guard law.

¹⁹⁴ Cyprus/ Public Service Law 1990 as amended until 2000.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Court did not examine the issue of constitutionality of either the Public Service Law or the Public Guard Law. As a result, the argument of the Applicant that the obligation imposed by the Public Service Law amounts to unequal treatment on the ground of belief and/or sexual orientation was left undetermined. Council Directive 2000/78/EC had not been transposed at the time and the concept of indirect discrimination on the ground of sexual orientation was not</p>
	<p>expressly provided in any other law. Neither the applicant nor the court made use of the anti-discrimination provision of the Constitution (which does not expressly cover sexual orientation but covers “any other ground whatsoever”), in spite of the fact that there is case law¹⁹⁵ establishing that constitutional rights are directly enforceable.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The appellant did not claim discrimination on the ground of sexual orientation, presumably since the law transposing 2000/78/EC had not been transposed by then. The ground of discrimination invoked was “belief as a result of the particularities and convictions of the applicant who was a homosexual”. The question of the constitutionality of the obligation of homosexuals to perform military service was not addressed.</p>

¹⁹⁵ Cyprus Yiallourou v. Evgenios Nicolaou, Supreme court case, Appeal No. 9331 (08.05.2001).

Original text of the decision:

ΑΝΩΤΑΤΟ ΔΙΚΑΣΤΗΡΙΟ ΚΥΠΡΟΥ
ΑΝΑΘΕΩΡΗΤΙΚΗ ΔΙΚΑΙΟΔΟΣΙΑ

Όδϋεάος Άñ. 311/2001

ΆΆΆÑÉÇÉÉΔÇ, Δ.

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ΆΔĩÓÁÓÇ

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Case title	Stavros Marangou v. The Republic of Cyprus through the Public Service Commission
Decision date	03.11.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Ανώτατο Δικαστήριο Κύπρου Δευτεροβάθμια Δικαιοδοσία Αναθεωρητική Έφεση αρ. 3729 Supreme Court of Cyprus Revisional Jurisdiction Appeal no. 3729
Key facts of the case (max. 500 chars)	This is an appeal against the previous decision of the Supreme Court which had dismissed the Appellant's recourse to set aside the Public Service Commission's decision not to offer the Applicant a post at the Department of Road Transport. The decision was based on article 31(b) of the Public Service Law 1990 N. 1/90, which requires applicants for public posts to have lawfully discharged all military obligations. The Applicant also challenged the validity of the interim judgement of the trial Judge by which an application by the Applicant to amend the legal grounds of his recourse was rejected. The application for amendment aimed at introducing to the recourse the legal grounds that sections 4, 7 and 8 of the National Guards Laws (which set out the procedure for discharge from the army) are unconstitutional because they infringe articles 6, 8, 15, 18 and 25 of the Constitution ¹⁹⁶ on the grounds that they establish unequal treatment between citizens belonging to different social groups, because the procedure prescribed in the National Guard laws for establishing his identity as a homosexual was degrading and humiliating.
Main reasoning/argumentation (max. 500 chars)	The Court reiterated that questions of unconstitutionality must be raised with sufficient clarity and in quite unequivocal terms. The motion of relief of the recourse did not contain the required specialisation that would enable the judicial review of the laws under question; the general invocation of a legal provision as unconstitutional is not sufficient. In any case the Court stated that the vague allegations contended by the Applicant were actually related to the military service in the National Guard and not to the object of the recourse at hand, which was the appointment at a public post. The Court agreed with the findings of the trial Judge.

¹⁹⁶ Cyprus, Article 6 prohibits discrimination by any laws or any bodies against any person; article 8 provides that no person shall be subjected to torture or to inhuman or degrading punishment or treatment; article 15 guarantees the right to respect for private and family life; article 18 guarantees the right to freedom of thought and conscience; and article 25 right to practice any profession or to carry on any occupation, trade or business.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Appeal Court invoked procedural reasons and did not address the issue of constitutionality of either the Public Service Law or the National Guard Law. As a result, the argument of the Applicant that the obligation imposed by the Public Service Law amounts to unequal treatment as regards his beliefs and particularities as a homosexual was not examined. The appeal failed and was dismissed by the Court. The question of the constitutionality of the obligation to perform the military service in cases of homosexuals was left undetermined.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Court's decision to disallow the application to change the legal basis of the appeal inevitably results in the applicant altogether losing his right to challenge the decision by which his employment application was turned down, because the Constitution (article 146) sets a 75 days' limitation for challenging administrative decisions. However, given that the application to change the legal basis was sought in order to introduce constitutional articles which had been in force since 1960, then the court's decision to disallow this application deprives the appellant of a line of argumentation which he could have brought forwarded in the first instance. Strangely enough, the appellant did not invoke Law 58(I)/2004 which had meanwhile been enacted and which transposes Directive 2000/78/EC. Had the appellant tried to introduce in his legal arguments a new law which had meanwhile come into force, then the court's decision to disallow the change of legal argumentation would have led to an injustice.</p>

Original text of the above decision:

ΑΙΩΟΑΟΙ ΔΕΕΑΟΟΧΝΕΙ ΕΘΝΙΟ
ΔΑΟΟΑΝΙΑΑΕΙΕΑ ΔΕΕΑΕΙΙΟΕΑ

(Αναθεωρητική Έφεση Αρ. 3729)

3 Ιανουαρίου, 2006

[ΕΝΙΟΟΑΙΟΕΙΕΔΧΟ, ΙΕΕΙΕΑΕΔΧΟ, ΧΕΕΑΔΧΟ, ΕΝΑΙΑΧΟ, ΧΑΟΑΕΧΧΑΙΘΧΟ, Δ/όδΥο]

ΟΟΑΟΝΙΟ ΙΑΝΑΑΕΙΟ,

Αοοοαβυι

v.

ΕΘΝΕΑΕΧΟ ΔΧΙΙΕΝΑΟΕΑΟ, ΙΑΟΩ
ΑΘΕΟΝΙΘΧΟ ΔΧΙΙΟΕΑΟ ΘΧΝΑΟΕΑΟ,

Αοοοαβεχδο. Ο.

Δηύειο, αέα οίι Αοοοαβυιόα.

ι. Οδχεέυοιόιγέιο, αέα οχι Αοοοαβεχδο.

ΕΝΙΟΟΑΙΟΕΙΕΔΧΟ, Δ.: Οχι ιμυοις αδυοαοχ οίο Δεεαοοχνηιό εα αροαε ι Δεεαοοπο Εηαμαπο.

ΕΝΑΙΑΧΟ, Δ.: Ο αοοοαβυι οδΥααεα ÷υηεοδΥο αεοποαεο αεα αειηεομυ οοεο εΥοαεο Αιχεϊγ Έαεοιτναϊγ Ααηιόιηεεπι Εειποαυι, Ομπα Διεεοδεεπο Ααηιόιηηαο εαε Αεααεοπο Ιαοαοιηπι, Ομπα Ιαεεπι Ιαοαοιηπι. Χ Αδεοηιθ Δχμυοεαο Οδχηαοηαο (ΑΔΟ) μα αδεοοιεΥο οχο χμαηιμχιηαο 10.7.2001 εαε 11.9.2001 αίοηοοιε÷α, δεχηιόυηηχοα οίι αεοχοπο δυο ααί ποαί αοίαου ία οίο θηιόαηεαβ αειηεομυο αδαεαααβ ααί αβ÷α αεδεχηποαε οεο οοηαοευοεεΥο οίο οδι÷ηαποαεο ιγδα εαε αβ÷α ιιμβμυο αδαεαααβ αδυ αδοΥο, αεα ία αεεαεϊγδαε αειηεομυ οοχ Δχμυοεα Οδχηαοηα, ογμοια μα οί Υηηηι 31(α) οίο θαηβ Δχμυοεαο Οδχηαοηαο Ιυμιο οίο 1990, Ι. 1/90. Αίαιοβιι ουι δει θυιυ αδιτοοαυι οχο ΑΔΟ ι αοοοαβυι Υοεχοα αίαδεοο÷πο θηιόοοαπο. Χ οδυ εηβςοχ Υοαοχ, Υ÷αε υο αίοεεαβμαηι οχι αδυοαοχ μα οχι ιθιηα αδιηηβοεχεα χ θηιόοοαπο. Ια αδοπο, αμοεοαχοαβδαε αδβχοο χ ηηευοχοα αίαεΥμαοχο αδυοαοχο μα οχι ιθιηα αδιηηβοεχεα αβχοοχ αεα οηιόιθιηχοοχ ουι ιιμεεπι ευαυι οχο θηιόοοαπο.

Χ αβχοοχ αεα οηιόιθιηχοοχ, οδυ÷αδα οοχι αεοααυαα αεοπαχοοχο υδε ιε θηυιηεαο ουι Υηηηυι 4, 7 εαε 8 ουι θαηβ Αειεεπο ΟηιόηΥο Ιυμυι αβιαε αίοεοοιδααμαοεεΥο εαευδε θαηαεΥαηιόι οα Υηηηα 6, 8, 15, 18 εαε 25 οίο ΟοιόΥαμαοιό αχμειοηαβιόαο Υιέοχ μαδα÷αβηεοχ μαδαϊγ ουι θιεεοπι ιε ιθιηε αίπειόι οα αεαοιηαοεεΥο ειειυιεεΥο ιμΥααο. Ι αοοοαβυι, ι ιθιηιθ αβιαε ιμιοδευοεειθ, εο÷οηβσοοχεα θηιθ οδιόοποηειχ οχο αβχοοχο υδε χ θηιαεαδυμαιχ αδυ οί ιυμυι αεααεεαοβα θηιθ αεαδβσοδυοοχ οχο οδαεαηεμΥιχο εαευοχοαο, αϊΥ÷αε οί οοιε÷αβι οχο οαδαεϊυδεεπο μαδα÷αβηεοχο οίο οδιεαβμαηιθ, εαοΥ θαηΥααοχο ουι Υηηηυι 3, 8 εαε 9 οχο Αοηυθαυεπο Ογμααοχο Αίηηυθβιυι ΔεεαεμΥουι. Δπευοα δυο ααί οδΥ÷αε οδι÷ηΥοοχ οοηαοευοεεεπο εχοαβαο αεεΥ ιγδα εαε αβιαε αεαδαεαμΥιθ, αεα οίθο ευαυιθ οίο αδεεαεΥοοχεα, ία οδιαΥεαε αβχομα αδαεεααπο, υδυο θηιαεΥδαοαε οοιι θαηβ οχο Αειεεπο ΟηιόηΥο Ιυμυι.

Χ αβχοοχ αεα οηιόιθιηχοοχ αδιηηβοεχεα αοιγ εηβςεα υδε αδοπο οδυ÷αδα οοχι αεοααυαα ιΥυι αδβαεευι εαμΥουι θιθ αοιηιγοαί οοχι αεδεποηοοχ ουι οοηαοευοεεεπι οδι÷ηαποαυι οίο αοοοαβυιόα εαε οοι αεεαβμυα αδαεεααπο οίο αδυ οχι Αειεεπο ΟηιόηΥο, αχοπομαοα Υο÷αοα μα οί αίοεεαβμαηι εαε

^[1] Καν. 7 του Διαδικαστικού Κανονισμού του Ανωτάτου Συνταγματικού Δικαστηρίου.

^[2] Δημοκρατία ν. Πογιατζή (1992) 3 ΑΑΔ 196
Παφίτη ν. Δημοκρατίας κα (1996) 3 ΑΑΔ 522
Latomia Estate Ltd κα ν. Δημοκρατίας (2001) 3(B) 672
Κλεάνθους ν. Δημοκρατίας (2003) 3 ΑΑΔ 256.

Case title	Panicos Koutsoudis v. The Police
Decision date	01.11.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Ανώτατο Δικαστήριο Κύπρου Ποινική Έφεση Αρ. 10/2005 Supreme Court of Cyprus Criminal Appeal No. 10/2005
Key facts of the case (max. 500 chars)	The Appellant owned a night club with all necessary licenses for its lawful operation, including licenses for the sale of alcohol and the use of loud-speakers. The Appellant applied for the renewal of these licenses before their expiration but the competent authority (the Municipality of Larnaca) failed to renew or to issue new licenses. The Police prosecuted the Appellant for offences related to the use of loud-speakers and the sale of alcohol without a license. In the meantime, the Municipality of Larnaca issued the said licenses. The Appellant admitted the offences but was still sentenced to a fine of 1,500 Cyprus Pounds (Euros 2,563) for the use of loud-speakers and 350 Cyprus Pounds (Euros 598) for the sale of intoxicating liquor without a license. The Appellant then applied to the Appeal Court, seeking to set aside the judgement of the trial Court. The Appellant argued that the fines imposed on him were manifestly excessive having regard to the circumstances of the case. He also complained that the behaviour of the Municipality of Larnaca and the Police towards him was negative and hostile due to the fact that he was homosexual and that his club was frequented by homosexuals.
Main reasoning/argumentation (max. 500 chars)	The Court reiterated the principles justifying the interference of the Court of Appeal in an appeal against sentence, according which the Court of Appeal will only interfere with a sentence if it is apparent that the trial Court misdirected itself either on the facts or the law; or, that the Court, in considering a sentence, allowed itself to be influenced by external factors which should not affect the sentence; or, if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case. In the case at hand, the Court of Appeal acknowledged that the mitigating factors of the case (i.e. the fact that the licenses had not been promptly renewed through no fault of the applicant) were not taken into account by the trial Court, pointing out that the Prosecution knew these circumstances but chose to deal with the case in an unfavourable manner. There was an erroneous judgement of facts that led to the imposition of a manifestly excessive sentence.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court touched upon the issue of the negative and hostile approach of the authorities towards homosexuals, although it could not under the circumstances produce a ruling of discrimination on the ground of sexual orientation, since the case was an appeal against a trial court decision. Nevertheless, the Appeal Court refrained from commenting on the general issue of state's attitude towards homosexuality and remains confined to the circumstance of the case.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	For the reasons stated above, the appeal was successful. The fines were replaced by a 1000 Cyprus Pounds' guarantee of the Appellant that he will abide by the legislation regulating the operation of entertainment clubs

Original text of the above decision:

1 Ινιμανησιω, 2005

[ΙΕΕΙΕΑΥΔΧΟ, ΕΝΑΙΛΑΧΟ, ΟΩΟΕΙΩ,

Δ/οδΥο]

ΘΑΙΕΕΙΟ ΕΙΩΟΟΙΩΔΧΟ,

Αοαοαβι,

v.

ΑΟΟΩΙΙΕΑΟ

Εφεσιβλητη

ς. (Ποινική Έφεση Αρ.

10/2005)

Θιειπ - κηρος μααοριυι εαε δρεχος ιειιδιαομαουαρι διορι -υηβδ Uaaea - Αοαοαβι, εαειεοδρσο εΥιδηιω αιαοδ-πο αβδχοα αιαιΥυος / Υεαιος ΙΥυι αααεβι δηει ος εβις ουι οοεοδαμΥιυι, ιε ανμυαειε δανΥεαεοαι ια δηιαιγι οδα αΥιιδα δανU δεο αδαιαεεζμμΥιαο ι-εβραεο οιο εαε οαεεU ι αοαοαβι αιαοοUεεοα αδυ οιι ανμυαει Δβμι δεο Uaaeaδ οιο αεδοιγσα ι ιε εαοαααεβιαδ αιαιδβιι οιο αοαοαβιιοιο αοιηιγσαι ος -ηιιεεβ δανβιαι διο μαοιεUαχοα μΥ-ηε ος Υεαιος / αιαιΥυος ουι αααεβι - Αδεαιεβ θιειπο δηιοδβμιω £1.500 οοχι εαοχαηβια αεα κηρος μααοριυι -υηβδ Uaaea εαε θιειβι δηιοδβμιω £350 οοχι εαοχαηβια αεα δρεχος ιειιδιαομαουαρι διορι -υηβδ Uaaea - Εηβεχεαι Υεαεα οδαναιεεεΥο, ευαυ αοοαεμΥιςο αεδβμςοο αααιυουι εαε αιδεεαδαοδUεχεαι εαο' Υοαος μα αΥομαοος οιο αοαοαβιιοιο μα αααγςος £1000 για δυο χρονια.

Θιειπ - ΑδεμΥοηςος - Ι δηιοαειηεομυο οςο θιειπο εαε ς αδεμΥοηςος οιο γοιοο οςο θιειπο αδιδαειγι δηυοαν-εεβ αοεγις οιο δηυοαεεειο Δεεαοδχηβιο - ΔηιυοιεΥοαεο αδΥμααοο οιο Αοαοαβιο.

Ι αοαοαβι, οδιεαειεοδρσο εαε οοιαεα-αεηεοδπο οιο εΥιδηιω αιαοδ-πο "SECRETS" οοχ ΕUηιαεα, εηβεχεα Υιι-ιδ μαδU αδυ δανααι-β οα αγι εαοχαηβιαδ οιο αοιηιγσαι οοχ κηρος μααοριυι εαε οοχι δρεχος ιειιδιαομαουαρι διορι -υηβδ Uaaea εαδU δανUααος ουι ο-αδεεβι ιιμιεαοεεβι εαε εαηιιεοοεεβι αεαδUαυι. Οοχι αδεμΥοηςος οςο θιειπο εβοεχεαι οδυος αευμα 19 οδιεΥοαεο διο αοιηιγσαι δανμυιεα ααεεβμαδα εαε αεαδηU-εχεαι εαδU αεUοιηαδ ςμαηιμςιβαδ μαδαιγ ΙαΑιω 2004 εαε Οαδδαμνηβιο 2004 οδι βαει εΥιδηι. Οοχι εαοχαηβια αεα κηρος μααοριυι -υηβδ Uaaea, οι Δεεαοδρηει αδΥααεα οοιι αοαοαβιιοδα θιειπ δηιοδβμιω £1500 εαε οοχι εαοχαηβια αεα δρεχος ιειιδιαομαουαρι διορι -υηβδ Uaaea, δηυοδεμι £350.

Ια οςι δανιγσα Υοαος αδεεβεαοαε ι δαναμαηεομυο οςο δηυοαεεεο αδυοαοοο μα ος αεεαειειβα υοε ιε κημαοεεΥο θιειΥο αβιαε Υεαεα οδαναιεεεΥο. Ι αοαοαβι οδιοδρηεια υοε ς εαεοοοΥηςος οοχι Υεαεης Υεαιος ουι αααεβι ιοαεευοαι οοχ οδUος ααιεεU διο οβηχοαι Υιαιδβ οιο ι Δβμιω ΕUηιαεαδ εαε ς Αοοοιιμβα διο ααι βοαι μυιηι ανιςοεεβ αεεU εαε α-εηεεβ αδαεαβ ι βαειο αβιαε ιμιοδευοεεειο εαε οδι εΥιδηι διο ογ-ιαααι ιμιοδευοεεα Uοιμα.

Άδικοαποζημίωση
υπό:

1. Η αποζημίωση Υπόθεση για την απόδοση των δικαιωμάτων της ελευθερίας του ατόμου από την κρατική εξουσία είναι ο σκοπός της εν λόγω σύμβασης. Ο σκοπός της σύμβασης είναι να προστατευθεί ο άνθρωπος από την αυθαίρετη επέμβαση της κρατικής εξουσίας. Η αποζημίωση είναι ένα μέσο για να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας. Η αποζημίωση είναι ένα μέσο για να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας.

2. Η περίπτωση της αποζημίωσης είναι η περίπτωση της αυθαίρετης επέμβασης της κρατικής εξουσίας. Η αποζημίωση είναι ένα μέσο για να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας.

Η Σύμβαση προβλέπει ότι η αποζημίωση είναι υποχρεωτική για την περίπτωση της αυθαίρετης επέμβασης της κρατικής εξουσίας. Η αποζημίωση είναι ένα μέσο για να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας.

Αποζημίωση για την περίπτωση της αυθαίρετης επέμβασης της κρατικής εξουσίας:

Philippou v. Republic (1983) 2 C.L.R. 245,

Γεωργίου v. Αστυνομίας (1991) 2 Α.Α.Δ. 525,

Μιχαήλ κ.ά. v. Αστυνομίας (1997) 2 Α.Α.Δ. 362.

... ο σκοπός είναι να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας.

... ο σκοπός είναι να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας. Η αποζημίωση είναι ένα μέσο για να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας. Η αποζημίωση είναι ένα μέσο για να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας.

1. Διεύρυνση της έννοιας της αυθαίρετης επέμβασης της κρατικής εξουσίας.

Α. Περί της έννοιας της αυθαίρετης επέμβασης της κρατικής εξουσίας.

Cur. adv. vult.

ΠΡΟΣΩΠΙΚΟ, Δ.: Ο σκοπός της αποζημίωσης είναι να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας.

ΕΝΔΙΑΦΕΡΟΝΤΑ, Δ.: Η αποζημίωση είναι υποχρεωτική για την περίπτωση της αυθαίρετης επέμβασης της κρατικής εξουσίας. Η αποζημίωση είναι ένα μέσο για να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας. Η αποζημίωση είναι ένα μέσο για να αποδοθεί στον πολίτη η βλάβη που έχει υποστεί λόγω της αυθαίρετης επέμβασης της κρατικής εξουσίας.

άόόοίμβά δñίΥάç òά άέέάδÜέεçέάò έάóçáññßάò áíáíòßíí òíò άòάòáßííòά άέά δάñάáÜòάέò
 άδññγíòάò άδñ òç μç Υέáíòç/άíáíΥúòç òñí δέí δÜíù áääέρí. ΔÜάέά èΥόç òíò άòάòáßííòά
 Þóáí ùòέ òí èΥíòñí òíò δεçñíγòά ùέά òά èñέòÞñέά έάέ δñíðñíèΥóάέò áέά òçí Υέáíòç
 òñí áääέρí έάέ òç òóíΥ-έóç òçò íùμέμçò έάέòíòñάßάò òíò. ΔάñÜ òάγòά, í ΔÞμíò
 ÈÜñíáέάò, άñíÞεçέά òçí Υέáíòç Üάάέάò άέάòÞñçóçò òíò òðíòóάóέéíγ έάέ άñíÞεçέά άδßóçò
 íά òóòòÞóάέ òòí Άδάñ-έάέü Õðμáíγέéí òçí Υέáíòç Üάάέάò δÞεçóçò íéííðíáðμáðùäÞí
 òíòÞí. Áíáíòßíí òñí δέí δÜíù áðíòÜóáùí òíò ΔÞμíò, í άòάòáßíí Üóεçóά δñíòóòáΥò òòí ÁíÞóáðí
 ΔέέάóòÞñέí. Õòç òóíΥ-άέά, δάñß òí ÕάðòΥμáñέí 2004, í ΔÞμíò ÈÜñíáέάò, áíáέάέρíðáò
 íòóέάóóέéÜ òέò δñíçáíγμáíáò áðíòÜóáέò òíò, áðíòÜóέóά òçí Υέáíòç òñí áääέρí òíò
 æçòíγòά í άòάòáßíí. ΈάòÜ òç -ñííέéÞ δάñßíáí òíò μáóíèÜάçóά μΥ-ñέ òçí
 Υέáíòç/άíáíΥúòç òñí áääέρí Υάέíáí íέ έáòάääáέßáò òíò δñíáíáòΥñάμá έάέ áíáíòßíí òíò
 άòάòáßííòά áóέÞεçέά òíέíέéÞ áßííç. Õí έáòçáññçòÞñέí δάñέéÜμááíá áγí έáòçáññßáò
 áέά ááééÞμáðά òíò áέάðñÜ-εçέáí òóέò 7.5.2004 έάέ áóíñíγòáí òòç -ñÞóç μáääóÞíúí έάέ
 òòçí δÞεçóç íéííðíáðμáðùäÞí òíòÞí -ùñßò Üάάέά έáòÜ δάñÜάáóç òñí ó-άóέéÞí ííμíèáóέéÞí
 έάέ έáíííέóóέéÞí áέάðÜíáùí. Í άòάòáßíí δάñάáΥ-εçέá òέò έáòçáññßáò έάέ έáòÜ òçí
 άðέμΥðñçóç òçò òíέíÞò èÞòεçέáí òðùøç áέüμá 19 òðíèΥóάέò òíò áóíñíγòáí δάññμíέá
 ááééÞμáðά òíò áέάðñÜ-εçέáí έáòÜ áέÜòíñάò çμáñíμçíßáò μáðáíγ íáÁíò 2004 έάέ
 Õáðòáμáññíò 2004 òòí Òáέí èΥíòñí. Õòçí έáòçáññßá áέά -ñÞóç μáääóÞíúí -ùñßò Üάάέá,
 òí
 ΔέέάóòÞñέí áðΥάάέá òòíí άòάòáßííòά òíέíÞ δñíòòßμíò £1500 έάέ òòçí έáòçáññßá áέá
 δÞεçóç íéííðíáðμáðùäÞí òíòÞí -ùñßò Üάάέá, δñíòóέμí £350.

Íá òçí δάññíγòά Υóάóç, áðέάέρèááðάέ í δάñάμáñέóμüò òçò δñíðñíèééçò áðñóáóçò μá òç
 áέέάέíèíáßá ùòέ íέ -ñçμáðέéΥò òíέíΥò áßíáέ Υέάçέá òðάñáíèέééΥò. Õðíòòçñß-εçέá
 òðíáðòò ùòέ ç μç Υέáíòç/άíáíΥúòç òñí áääέρí ááí íòάέéüòáí òά òðάέóéüòçòά òíò
 άòάòáßííòά í íòíßíò Υðñáíá ù,òé íùμέμá μðíñíγòά íά δñÜíáέ áέá òçí Υάέάέñç áíáóóÜέέóç
 òñí áääέρí έάέ ùòέ ç έáέòóðΥñçóç íòάέéüòáí áðíèéáέóóέéÜ òòçí ááñÜíáέá òñí áñμüáέúí
 íά δñíùèÞóíòí òέò δñíáέáðùμáíáò áέάáέéáóóßáò áέá òç áέáíááüáÞ òñí áðáñáßòçòñí
 áéΥá-ùí έάέ áðέéáùñÞóáùí. Í άòάòáßíí έáùñάß ùòέ ç òóÜóç òíò ááíέéÜ òÞñçóáí Υíáíòé
 òíò í ΔÞμíò ÈÜñíáέάò έάέ ç áóòóíμβά Þóáí ù-έ μñíí áñíçòέéÞ áέéÜ έάέ á-èñέéÞ
 áðάέáÞ í Òáέíò áßíáέ íμíòðéüòééíò έάέ òòí èΥíòñí òíò óγ-íáæáí íμíòðéüòééá Üòíμá.
 ÁíáóΥñεçέá áíááέéðééÜ ùòέ áéèñáμíγòάò òçò áíΥóáóçò òíò èΥμáðíò òçò Υέáíòçò òñí
 áääέρí, í άòάòáßíí òðíáèÞòεçέá òΥóóáñέò òíñΥò áέá δάññμíέáò δάñέðòÞóáέò έάέ
 ááééáέíèüäçóά èñάòÞεçέá áέá òíèéΥò Þñάò òòíí áóòóíμέéü òóάέμü δάññòέ òά èÜèá
 δάññðòòòç, δάñάáá-ùòáí áí áñ-Þò òç áέÜðñáíç òñí ááέéçμÜòñí.

Õά δέí δÜíù áááííüòά, òíò áò òçμáέüèáß áßíáέ áíáíòßéáέòά, áðíòΥέáóáí δάñÜáííòάò
 μáðñέáóóέéíγò òçò òíέíÞò. Õòçí áέéáέíγμáíç áðñóáóç áíáóΥñάðάέ ùòέ δñíòíγ í άòάòáßíí
 òðíá-ßóáέ òç έáέòíòñάßá òíò èΥíòñíò ùòάέéá íá áíáóóáέßóáέ òέò Üάάέáò «... ..»
 έάέ òά δάññðòòòç òíò íέ áñμüáέáò áñ-Υò έáðά-ñÞíòí òçí áñòóßá òíòò, íá δñíòóγááέ áμΥóùò
 òòí ÁíÞóáðí ΔέέάóòÞñέí, δñÜάμá òí íòíßí, ùðùò Υ-ù áíáóΥñάέ δέí δÜíù, Υ-άέ δñÜíáέ áέéÜ
 μáðÜ áðñ δÜñíáí èÜðíéíò -ññííò.» ΔάñάíεáðóέéÜ òçμáέρííòμá ùòέ òí áέéáóòÞñέí, áéΥóáíá
 òçí áðέóðñíòÞ òñí òíòÞí òíò áß-áí έáðάó-άέáß έάέ èñáðíγíðáí ùò òáέμÞñέá áíüðáέ òíò
 áááííüòíò ùòέ òí èΥíòñí έáέòíòñáíγòά òèΥíí έáíííέéÜ.

Í òñíòáέíñέóμüò òçò òíέíÞò έάέ ç áðέμΥðñçóç òíò γøíòò òçò áðíðáέíγí δñíðáñ-έéÞ áðèγíç
 òíò δñíðñíèééíò áέέáóçñßíò. Õí Áòάòáßíí áðάμááßíáέ áέá íá áíðέéáóóóòÞóáέ òçí
 δñíðñíèééç èñßóç μá òç áέéÞ òíò òóέò δάñέðòÞóáέò ùðíò áέáðέóðÞíáðάέ,

(á) áóòáέμΥίç έáέíáÞáçóç òíò δñíðñíèééíò áέέáóçñßíò áíáóíñέéÜ μá òά áááííüòά Þ òí
 íμíí Þ έάέ òά áγí, Þ

(á) δñíòáíòç òçμáóßáò òά áíùááíáßò δάñÜáííòάò òòíí έáέíñέóμü òçò òíέíÞò, Þ

(γ) η ποινή εμφανίζεται έκδηλα υπερβολική ή έκδηλα ανεπαρκής εφόσον η έκδηλη
 υπερβολή αναδύεται εξ αντικειμένου με τη διαστολή μεταξύ αδικήματος και τιμωρίας. Βλ.

Annex 2 – Statistics

Note: Data for 2010, 2011, 2012, and 2013 were searched through the Ombudsman’s Annual Reports as well as through phone interviews with Mr. Aristos Tsiartas and Mrs. Elisavet Christou, Ombudsman’s office, on 09/07/2014. No statistics on the issues of tables 1-7 are maintained. Such statistics are not kept by any other authority in Cyprus. Any data provided are through reports on cases of interventions of the Ombudsman’s office after filing of complaints. The same information was researched in the annual reports of the Ministry of Interior and Ministry of Labour and Social Insurance where no such statistics are maintained or reported.

Table 1: Implementation of Employment Directive 2000/78/EC

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	0	0	0	0	0	0	0	1	3	3		2	0	3
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	0	0	0	0	0	0	0	0 examined in 2008 and made recommendations	3 Found discrimination but	Decision pending	0	0	0	3

National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	0	0	0	0	0		0	0	0	0	Not known	Not known	Not known	Not known
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	0	0	0	0	0	0	0	0	0	0	Not known	Not known	Not known	Not known

Table 2: Freedom of Movement

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or	0	0	0	0	0	0	0	No information available	2	At least 2 (no other information is available for these cases)	0	0	0	No data could be obtained
Number of LGBT partners who claimed their right to residence but were denied this right	0	0	0	0	0	0	0	At least 1	1	Decision pending	0	0	0	1

Table 3: Asylum and subsidiary protection

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	20	2013
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation	0	0	0	0	0	0	0	1	0	0	0	0	0	0 but expecting new information on the re-examination of one case
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation	Not known	Not known	Not known	Not known	Not known	at least 1	Not known	Not known	Not known	Not known	0	One case of Iranian national who filed a complaint in 2011 but no information exists on the progress of he case		Not known

Table 4: Family reunification

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification	0	0	0	0	0	0	0	0	No data	1				

Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	0	0	0	0	0	0	0	1	No data	1					Not known
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Table 5: Freedom of Assembly

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	0	0	0	0	0	0	0	0	0	0	0	0	0	0 (1 in 2014)
Number of demonstrations against tolerance of LGBT people.	0	0	0	0	0	0	0	0	0	0	0	0	0	0 (1 in 2014)

Table 6: Hate Speech and Criminal Law

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	0	0	0	0	0	0	0				0	0	0	0
Range of sanctions issued for homophobic hate speech	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a			0	0	0	0
Number of non-criminal court cases initiated for homophobic statements	0	0	0	0	0	0	0	0			0	0	0	0
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	0	0	0	0	0	0	0	0			0	0	0	0

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
--	------	------	------	------	------	------	------	------	------	------	------	------	------	------

Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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Table 7: Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of name changes effected due to change of gender	1	1	0	0	0	1	1	0			No available data	No available data	No available data	no available data
Number of persons who changed their gender/sex in your country under the applicable legislation	Not known	Not known	Not known	Not known	Not known	Not known	Not known	Not known			No available data	No available data	No available data	1 ¹⁹⁷

¹⁹⁷ Cyprus, Information found during search of case law, case Head of Police vs Giorgos Kolokasidis, Decision Nr. 11529/2011 of the Larnaca District Court, where the defendant (who exercised violence against a woman) was in the process of gender change, including medical treatment. Case available at http://cyllaw.org/cgi-bin/open.pl?file=apofaseised/poin/2013/3220130175.htm&qstring=%F3%E5%EE%EF%F5%E1%EB%*%20and%20%F0%F1%EF%F3%E1%ED%E1%F4%EF%EB%E9%F3%EC*

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	✓		Automatic divorce is issued after 4 years of separate living
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case <i>Lydia Foy</i> (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis

NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓				✓	✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ✕=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ¹⁹⁸	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓	✓		✓	The mandate of the Equality Body, which operates under the Ombudsman's Office was extended to include more grounds of discrimination than racial or ethnic origins as provided for in the Racial Equality Directive. However, this mandate does not include various important functions, such as the provision of independent assistance to the victims of discrimination in pursuing their claims, as provided for in Article 13 of the Directive, and the mechanisms to effectively enforce its decisions, opinions or recommendations. In addition, the Equality Body does not automatically suspend the implementation of legislation, agreements and practices found to be discriminatory. ¹⁹⁹ The Anti-Discrimination Body rarely uses its powers to impose sanctions. The full independence of the equality body is questionable since it does not enjoy the freedom to appoint its own staff, as recommended by ECRI in its General Policy Recommendations No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level (principle 5) and No. 7 on national legislation to combat racism and racial discrimination ²⁰⁰ .
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		

¹⁹⁸ Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

¹⁹⁹ Cyprus, The impact of the Racial Equality Directive: a survey of trade unions and employers in the Member States of the European Union, Anthoula Papadopoulou 200 Third and fourth ECRI report on Cyprus.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ¹⁹⁸	All areas of RED*		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	9	7	11	20	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or <i>travaux préparatoires</i>
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to ‘gender identification’.
DE			✓	Constitutional amendment proposal by opposition (‘sexual identity’)
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to ‘other issues related to gender’.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	
RO			✓	

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered ‘sex’ discrimination. The new ground ‘transgender identity or expression’ now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the ‘gender reassignment’ protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under “medical supervision” and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	10	3	15	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY	✓		General provisions could extend to LGBT people. Criminal Code (Cap.154)
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category ‘comparable group’. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category ‘groups of society’. Penal Code was amended to include hate motivated crimes against ‘certain groups of society’. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service’s Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification

Country Codes	Free movement ²⁰¹		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of ‘family member’ includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of ‘family member’ includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY	✓	✓	✓		✓		Law on the Rights of Citizens of the Union and their Family Members to Move and Reside Freely in the Territory of the Republic N. 7(1)/2007 Aliens and Immigration Law Cap. 105,8(I)/2007 Refugee Law No. 6(I)/2002
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the ‘affective relationship’ be ‘duly attested’ remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU acquis, confirms the notion that a family member includes the de facto partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities’ discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried <i>de facto</i> partner, subject to conditions.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							

²⁰¹ In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement ²⁰¹		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	8	15	8	13	8	12	

Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.