Report on implementation of the 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

Portugal

ILGA Portugal

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I Executive summary

Of the 13 letters sent by ILGA Portugal to the competent national Ministries and Public entities, six replies were received. The Ministries of Agriculture, Sea, Environment and Spatial Planning, of Economy and Employment, of Education and Science, of Health, of Internal Administration, of Solidarity and Social Security and the Secretary of State of Sports and Youth did not respond. Hence, information involving the issues for which they are responsible is based on public knowledge and the experience of LGBT groups.

As regards sexual orientation, the Portuguese Constitution specifically includes it as a prohibited ground of discrimination (Article 13º). Separate legislation includes references to sexual orientation, namely in the Criminal Code, with increased penalties for hate-motivated crimes and hate speech, and some legal provisions in the areas of education and employment also specifically address issues related to sexual orientation issues. However, there is no legal protection in regards to goods and services.

LGBT organisations are free to be registered and to operate, and to apply for public funding. Some, as ILGA Portugal, are members of official consultation groups and, therefore, might be included in policy making and implementation processes.

Same-sex marriage is possible in Portugal since 2010 and Family law provisions are largely neutral as regards sexual orientation. The exception encompasses assisted reproduction, that is only available to different-sex couples, and adoption, which is only possible for single homosexual persons but not to same-sex couples.

Regarding gender identity issues, apart from the recently enacted Law n.º 7/2011, the Portuguese legal framework makes no mention of them.

Though generally the content of the Recommendation is broadly applied in Portugal, there is still work to do in order to ensure its full implementation. Much of its content is supposed to be in force if the legal framework is broadly interpreted, which allows for situations of legal uncertainty. Moreover, regarding public officials and service providers there is a transversal lack of awareness and specific training in issues of sexual orientation and gender identity. Comprehensive codes of conduct and internal
policies need to be adopted in order to sustain daily practice when dealing with such issues so as to take account of the particular circumstances and needs of LGBT people. For especially vulnerable groups, like young people, both regarding their sexual orientation and gender identity, there is a need to tailor programmes to help them live a fulfilling and happy life.
II Recommendations to the Portuguese Government for priority actions towards the implementation of CM Recommendation (2010)5

1. Effectively disseminate this Recommendation and its Explanatory Memorandum;

2. Adopt a comprehensive anti-discrimination law including the grounds of sexual orientation and gender identity;

3. Include gender identity as a prohibited ground for discrimination under Article 13º of the Constitution;

4. Include references to sexual orientation and gender identity in specific scattered legislation (such as in education, health, etc);

5. Amend the criminal complaints registration system in order to reflect the nature of the crime’s motivation.

6. Develop and adopt specific policies for combating discrimination on the grounds of sexual orientation and gender identity;

7. Collect appropriate and relevant data in order to effectively combat discrimination on grounds of sexual orientation and gender identity;

8. Create specific public services clearly mandated to address and redress situations of discrimination on grounds of sexual orientation and gender identity;

9. Effectively mainstream sexual orientation and gender identity issues through public administration;

10. Encourage public and private institutions and schools to adopt comprehensive and inclusive codes of conduct;

11. Provide specific and appropriate training on human rights and sexual orientation and gender identity-related rights to public officials.
III Introduction

Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to Member States “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorbjørn Jagland recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as "one of the most long-lasting and difficult forms of discrimination to combat". 1

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of Member States’ governments.

The Recommendation was agreed unanimously by the 47 Council of Europe Member States. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the Member States, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts:

1. a preamble, which sets out the background to its adoption, and the key principles guiding it;

1 “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons”, available at: https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE (last consulted on 7 September 2012).
2. the operative section of the Recommendation, which is very brief, listing broad measures to be taken;

3. an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

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

The purpose of this report

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

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

Methodology

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

This checklist, and the data which ILGA Portugal has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix II to this report, entitled “the Compliance Documentation Report”.

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

- Responses from individual ministries to letters from ILGA Portugal listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on Portugal commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, "Discrimination on grounds of sexual orientation and gender identity in Europe".
- Research and documentation assembled by ILGA Portugal and other non-governmental organisations.
IV Findings

A. Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)5

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

Though in general terms there are no discriminatory legal provisions in Portugal (with the exception of provisions outside the scope of the Recommendation), the reality is that there is very little national legislation mentioning sexual orientation and none mentioning gender identity. Article 13º of the Constitution (general principle of discrimination) includes as of 2004 sexual orientation as a prohibited ground for discrimination but it does not include gender identity, despite the fact that in March 2011 the gender identity law entered into force. In addition, there is no protection for access to goods and services, education, health and social protection and the criminal law only mentions sexual orientation either as an aggravating factor for certain crimes, or under Article 240º (racial, religious and sexual discrimination). On this matter, it is important to note that it is possible to present complaints but not to record data on the motivation of the crime, thus there is no available data on crimes committed against the LGBT community, which of course affects policies' decisions on the issue.

Another issue arising from this report, and enhanced given the low ministerial response rate, is the transversal lack of appropriate training and public policies specifically addressing sexual orientation and gender identity issues. This gravely affects the appropriateness of professional responses to the needs of LGBT people. Moreover, this contributes to the social invisibility of the LGBT community, given that there are no clear messages or awareness-raising actions promoted by public officials.
Regarding redress mechanisms, it is crucial to highlight the inconsistency of the legal system. According to the existing legislation, everyone has a right to seek legal protection from situations of discrimination, but the existing mechanisms are generic and their effectiveness is arguable. Furthermore, there are no mechanisms for discrimination on the grounds of sexual orientation and gender identity in goods and services, health, education or social protection.

Finally, the Recommendation and its Appendix were translated but so far have not been disseminated to the general public or in the official public channels.
B. Appendix to Recommendation CM/Rec(2010)5

i. Right to life, security and protection from violence

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

The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat “hate crimes” and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

As stated before, hate crime is not an autonomous criminal offence in Portugal, but it is recognised as an aggravating penalty for sexual orientation-based crimes, though not applicable for gender identity. Even so, there is no available information on the content of training given to members of security forces, of the judiciary or of prison staff. Hence, it is not possible to infer if it includes sexual orientation and gender identity issues.

Furthermore, there are no formal units or liaison officers tasked to address these issues or to maintain contact with the community and none of the existing complaints mechanisms are anonymous, which of course hardens the complaints rate and trust levels with the security forces.

Regarding persons deprived of their liberty, though there is a generic prohibition of discrimination, there is no mention of sexual orientation or gender identity issues, or of violence prevention mechanisms.

Finally, in relation to data collection, there are no surveys or any kind of statistical data reflecting the reality of LGBT people.

b. “Hate speech”

Section I.B. of the Appendix requires measures to combat “hate speech” on grounds of sexual orientation or gender identity, including laws penalising such “hate speech”, promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to
government officials to refrain from such speech and to promote respect for the human rights of LGBT people.

Though Article 240º of the Criminal Code, foresees sexual discrimination (which includes sexual orientation), and other Criminal Code’s articles establish that specific crimes committed with an hate motivation are to be sentenced with aggravated penalties, the registration of such incidents does not allow to record the specific motivation’s nature. Naturally, this implies that homophobic and transphobic incidents are not recorded as such, hence there is no collection of crimes against LGBT persons. Furthermore, it has become common to find homophobic and transphobic online comments and to date no appropriate measures (guidelines or public statements) to combat it have been adopted by public entities.

**ii. Freedom of association**

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

There is no record of any difficulties encountered by LGBT organisations to operate or to access public funding.

**iii Freedom of expression and peaceful assembly**

Section IV of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.
Though the Constitution safeguards freedom of expression, there have been some cases of restrictions to this freedom. One relates to an art exhibition and the other to an advertisement campaign. On both occasions there was no public disavowal by leading public officials.

There is no record of restrictions to freedom of assembly.

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

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

The existing legislation makes no distinction on age of consent and it is possible for same-sex couples to be in a de facto union (as of 2001) and to marry (as of 2010). Furthermore, it is not possible to collect data revealing the person’s sexual orientation or gender identity.

However, regarding parenting rights, the law restricts adoption to single individuals, hence a same-sex couple or a de facto couple cannot adopt, nor is it possible to adopt the partner’s children. Moreover, assisted reproductive treatment is not available to single women or to lesbian couples.

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

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person’s gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.
Legal gender recognition is possible in Portugal as of March 2011 and the only legal requirement is the diagnosis report of a gender identity disorder. Despite the fact that this law does not mention who is competent or not to diagnose this disorder, a list of competent clinical professionals to authorise this report has been developed and disseminated through civil registries. This clearly counters Law n.º 7/2012, as it limits the patient’s free choice of medical practitioners and imposes greater distress on transgender people, given that the legal recognition of their gender might be refused because they choose the wrong professional and hence their diagnosis report is not valid. In addition, there are also records of difficulties encountered in Portuguese external representation offices to apply this new gender identity law.

Regarding the available gender reassignment services, it is not clear if the therein professionals have received appropriate training (especially on international standards) or if they possess the necessary expertise (in particular, surgical). Gender identity related services are only available in Lisbon, Oporto and Coimbra, both public and private. There is none south of Lisbon, which might create additional distress for transgender persons in Alentejo and Algarve. There is no evidence of persisting therapies to accept the gender assigned at birth.

vi. Employment

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

Current employment legislation only refers to discrimination on the grounds of sexual orientation, thus transgender persons are not protected. In addition, there are no specific policies to address and integrate LGBT persons in employment.
vii. Education

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

As of September 2012, the new Student’s Statute entered into force, prohibiting discrimination of any member of the school community on the grounds of their actual or perceived sexual orientation or gender identity. However, there are no specific public programmes or guidelines on these issues, not even to combat homophobic and transphobic bullying (and, according to the latest available information, four out of every ten students have been victims of bullying in schools).

Furthermore, it is not mandatory to include sexual orientation or gender identity issues in school curricula.

viii. Health - other than transgender specific health issues² (Section VII of the Appendix paragraphs 33, 34.)

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

² See Section v above.
Sexual orientation and gender identity issues are not contemplated in health plans or policies, nor is there available information suggesting their inclusion in curricula and professional training courses. Accordingly, discrimination of LGBT persons in the health sector is still a reality in Portugal.

ix. Housing

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

There is no reference to discrimination on the grounds of sexual orientation and gender identity in the existing housing legislation. In addition, there is no record of programme or policies developed for LGBT youth (nor does specific emergency accommodation exists).

x. Sports

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

There is no specific sports legislation referring to gender identity. No programmes, guidelines, campaigns or any public policies have been developed to address and combat discrimination on the grounds of sexual orientation or gender identity.
xi. Right to seek asylum

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

As of 2008, sexual orientation and gender identity are eligible and recognised grounds for granting asylum. However, until today there is no record of any requests granted under these grounds.

xii. National human rights structures

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

The Ombudsman’s Office is not clearly mandated to address discrimination on grounds of sexual orientation or gender identity nor can it initiate or intervene in judicial proceedings. However, it has received and addressed various complaints on these grounds, in particular relating to blood donation criteria and to discriminatory online comments.
Appendix I. Glossary

The terms and concepts used throughout this report are to be understood as clarified below.³

**Discrimination** is legally defined as unjustified, unequal treatment:

- **Direct discrimination** occurs when for a reason related to one or more prohibited grounds (for example, sexual orientation and gender identity) a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when, for a reason related to one or more prohibited grounds, a person or group of persons is subjected to a detriment.

- **Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds (including sexual orientation and gender identity) at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

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

**Gender reassignment treatment** refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one’s preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as

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³ These definitions were taken from the report “Discrimination on the grounds of sexual orientation and gender identity in Europe”, 2011, Office of the Commissioner for Human Rights of the Council of Europe. © Council of Europe.
facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

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

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

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

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

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

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

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

**Multiple discrimination** describes discrimination that takes place on the basis of several grounds operating separately.

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

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

**Transphobia** refers to a phenomenon similar to homophobia, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.
Appendix II. Compliance Documentation Report

Monitoring Implementation of
the Council of Europe Recommendation to member states
on measures to combat discrimination on grounds of sexual orientation or
gender identity

DOCUMENTATION REPORT PORTUGAL

In order to, effectively, collect correct and updated information on the implementation of the Council of Europe’s Recommendation, ILGA Portugal sent 13 letters:

1. to the Ministry of Agriculture, Sea, Environment and Spatial Planning;
2. to the Ministry of Economy and Employment;
3. to the Ministry of Education and Science;
4. to the Ministry of Health;
5. to the Ministry of Internal Administration;
6. to the Ministry of Justice;
7. to the Ministry of National Defence;
8. to the Ministry of Solidarity and Social Security;
9. to the Ombudsman;
10. to the Regulatory Authority for the Media;
11. to the Secretary of State Assistant to the Minister Assistant and of Parliamentary Affairs;
12. to the Secretary of State of Parliamentary Affairs and Equality; and,
13. to the Secretary of State of Sports and Youth.

The above-mentioned letters were addressed to the person in charge of the issue in question and the letter’s content only contained questions that would fall directly under each person’s mandate. In order to obtain official replies, ILGA Portugal called every fifteen days to each office to see where the reply process was standing. Of the 13 letters sent, ILGA Portugal got 6 replies, from the: Ministry of Justice; the Ministry of National Defence; the Ombudsman; the Regulatory Authority for the Media; the Secretary of State Assistant to the Minister Assistant and for Parliamentary Affairs; and, the Secretary of State of Parliamentary Affairs and Equality.
Recommendation

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

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

According to the answers of the Secretary of State of Parliamentary Affairs and Equality⁴ and of the Minister of Justice,⁵ over the past years efforts were conducted in order to eliminate any remnants of discrimination from the Portuguese legislation.

Article 13º nº2 of the Portuguese Constitution⁶ establishes the prohibition of discrimination, among other, on the grounds of sexual orientation. The introduction of this category is the result of the 6th Constitutional Review, which entered into force by the Constitutional Law nº 1/2004 of 24 July. As the Commission for Citizenship and Gender Equality (CIG) notes, Article 13º list of prohibited grounds of discrimination is not exhaustive. Therefore, it implicitly applies to any other difference in treatment contrary to human dignity, incompatible with the principle of a democratic state or arbitrary, thus being arguable that it also encompasses gender identity.

As a result of Article 18º nº1 of the Constitution, any rights that influence the Constitution’s chapter on rights, freedoms and guarantees are applicable to both public and private entities which are, naturally, also bound by Article 13º of the Constitution.

Furthermore, Law nº 7/2001 of 11 May⁷ establishes protection measures for de facto unions and regulates the legal situation between two persons, regardless of their sex and sexual orientation, who have been living together for at least two years. Namely, it

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⁴ The Commission for Citizenship and Gender Equality (CIG) prepared the Secretary of State of Parliamentary Affairs and Equality’s answer. CIG is a public agency created to implement public policies in the area of citizenship and to promote and defend gender equality. Its mandate also encompasses discrimination on grounds of sexual orientation and gender identity. For more information, please visit: [http://www.cig.gov.pt/](http://www.cig.gov.pt/) (last consulted on 10 July 2012).

⁵ The Ministry of Justice’s answer was prepared by the Directorate-General for Justice Policy (DGPJ), which is a public entity created, among other, to give technical support within the scope of legislative production and legal assessment. For more information, please visit: [http://www.dgpj.mj.pt/sections/english-version](http://www.dgpj.mj.pt/sections/english-version) (last consulted on 10 July 2012).


provides for the protection of the family household, of financial benefits and tax schemes.

Regarding employment legislation, since 2003, and by result of Law nº 99/2003, of 27 August\(^8\), the equality and non-discrimination regime explicitly lists sexual orientation as a prohibited ground for discrimination. This piece of legislation also transposed Council Directive 2000/78/EC of 27 November into the Portuguese legal system. The equality and non-discrimination regime is also applicable to public employment (see Articles 13\(^o\) and 14\(^o\) of Law nº 59/2008, of 11 September).

Pertaining to criminal law, Articles 132\(^o\) e 145\(^o\) of the Criminal Code imposes aggravating circumstances for, respectively, murder and offences to physical integrity if motivated by the victim’s sexual orientation. Article 240\(^o\) foresees racial, religious or sexual discrimination and prohibits the organisation or promotion of violence, defamation or threats. Domestic violence between same-sex couples is also a crime under Article 152\(^o\).

Same-sex marriage is possible in Portugal since the entry into force of Law nº 9/2010, of 31 May,\(^9\) and in 2011 a gender identity law was adopted in Portugal (Law nº 7/2011, of 15 March)\(^10\) which is considered one of the most advanced in Europe.

Both letters of the Secretary of State and the Minister of Justice stated not knowing of any legal provision or other that might result in a discriminatory situation on the grounds of sexual orientation or gender identity.

Finally, in conformity with Article 7\(^o\) of Law nº 67/1998, of 26 October, it is not possible to collect data related to a person’s private and sexual life as it amounts to sensitive data.\(^11\)

\(\textbf{ii. Are processes in place to ensure that the discrimination thus identified is redressed?}\)


The Portuguese Constitution safeguards one’s right of access to justice and of an effective judicial protection of legally established rights and interests, hence judicial proceedings must be swift and priority (Article 20º).

Additionally, the unlawful infringement of one’s rights or of any statutory provision to protect the interests of others incurs in the obligation to redress the victim for any damage caused.\textsuperscript{12}

However, there are no redress mechanisms in place for discrimination in goods and services, health and social protection. It is arguable that transgender persons are also protected inasmuch as European legislation and jurisprudence have recognised that persons who intend to undergo, are undergoing and have undergone gender reassignment are covered under sex discrimination.\textsuperscript{13} Furthermore, Article 20.º of Law n.º 14/2008, which transposed Directive n.º 2004/113/EC, establishes that the Commission for Citizenship and Gender Equality is mandated to supervise its implementation and to produce an annual report on discriminatory acts and penalties in access to and supply of goods and services, but to date no report has been published.\textsuperscript{14}

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

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

As stated in the Council of Europe’s report \textit{Discrimination on grounds of sexual orientation and gender identity in Europe}, Portugal has legislation covering

\textsuperscript{12} See Article 483º nº1 of the Civil Code.
\textsuperscript{13} The Court of Justice of the European Union has held it in three cases: P. v. S. and Cornwall County Council (Case C-13/94); K.B. v. National Health Services Pensions Agency and Secretary of State for Health (Case C-117/01); and, Sarah Margaret Richards v. Secretary of State for Work and Pensions (Case C-423/04). See also page 7 of the Minutes of the 2606th meeting of the Council of the European Union (EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS), held in Luxembourg on 4 October, 2004, available at: \url{http://register.consilium.eu.int/pdf/en/04/st13/st13369.en04.pdf} (last consulted on 16 October 2012).
\textsuperscript{14} The complete text of Law n.º 14/2008, of 12 March, is available, in Portuguese, at: \url{http://dre.pt/pdf1s/2008/03/05100/0156101563.pdf} (last consulted on 16 October 2012).
discrimination on grounds of sexual orientation in employment but not on goods and services.\textsuperscript{15}

There is no explicit mention either to sexual orientation or to gender identity in any other sector, but as argued by both the Ministry of Justice and CIG, the Constitution foresees and protects people from discrimination, namely, on the grounds of sexual orientation. This means that the prohibition of discrimination is transversal and hence, though, not specifically, it applies to social security (article 63º nº1), health care (Article 64º nº1), education (Article 73º nº1) and access to goods and services (see Article 65º nº1 for adequate housing).

Furthermore, in 2011 the IV National Plan for Equality – Gender, Citizenship and Non-Discrimination (2011-2013)\textsuperscript{16} was adopted. For the first time it includes a strategic area entitled Sexual Orientation and Gender Identity which comprises a number of measures to be adopted in order to consolidate the existing public policies on these matters.

\begin{itemize}
  \item \textit{Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?}
\end{itemize}

The only national public policy that can qualify as strategic, for the purposes of this report, is the IV National Plan for Equality – Gender, Citizenship and Non-Discrimination (2011-2013).

Out of its 14 strategic areas one, strategic area nº11, aims at promoting specific measures for the integration of a gender and non-discrimination perspective in respect to sexual orientation and gender identity.

More precisely, it includes four measures:

\begin{itemize}
  \item Promote a campaign on non-discrimination on the grounds of sexual orientation and gender identity;
  \item Awareness-raising of strategic professionals for sexual orientation and gender identity issues;
\end{itemize}

\textsuperscript{15} Commissioner for Human Rights, \textit{Discrimination on grounds of sexual orientation and gender identity in Europe}, June 2011, Council of Europe, p. 43.

\textsuperscript{16} The text of the National Plan is available, in Portuguese, at: http://195.23.38.178/cig/portalcig/bo/documentos/IV_PNI.pdf (last consulted on 7 July 2012).
• Promote initiatives of awareness-raising of young people for sexual orientation and gender identity issues;
• Promote the diversification of available sexual orientation and gender identity materials and publications in the municipality’s libraries network.

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

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

As stated by the Ministry of Justice, the appropriate mechanisms to tackle any type of discrimination (and in accordance with Article 13º of the Constitution) are in place and their application must be a priority and the process swift (Article 20º nº5). Furthermore, Article 26º enshrines every person’s right to seek legal protection against any form of discrimination. However, despite being appropriate the existing mechanisms are generic, thus they not specifically address sexual orientation and gender identity issues and, thus it is not clear how they are applicable to these discrimination situations and where to present complaints.

Besides the general protection from discrimination, the Criminal Code foresees that the crime of racial, religious or sexual discrimination encompasses the founding, constitution or development of activities that might disseminate discriminatory propaganda against someone or a group of persons based on that person or group’s, among other grounds, sexual orientation. Anyone who commits this crime incurs 1 to 8 years of imprisonment. The same occurs if someone is found guilty of having participated in the activities’ preparation and help (including by funding them). Those who, in a public gathering and by written statement that might be disseminated through any type of media, provokes acts of violence, defame and/or insults, and threatens a person or a group of persons on reasons of that person or group’s sexual orientation incurs into a 6 months up to 5 years of criminal sanction. It is also possible to seek redress for any damages caused through the criminal justice system.
As mentioned before, there are no specific redress mechanisms for discrimination on grounds of sexual orientation and gender identity in relation to goods and services, health, education or social protection. Moreover, concerning discrimination in employment, there is no clear public body, specifically mandated to deal with sexual orientation and gender identity discrimination claims.

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

Constitutional provisions are directly applicable and to both public and private entities. Hence, as argued by the Ministry, anyone can present a complaint based on a violation of the non-discrimination principle and seek redress for it, regardless if the perpetrator is/was acting in an official capacity or not.\(^\text{17}\)

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

As mentioned above, the available remedies are supposed to be put into practice as soon as possible, but the Portuguese judicial system can be quite slow, hence all the negative judgements against the country on the European Court of Human Rights for excessive length of proceedings.\(^\text{18}\) For this reason, it might be said that the existing mechanisms are neither effective nor dissuasive.

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

In principle, the existing remedies are adequate but, and according to DGPJ, the number of reported cases of discrimination in the criminal justice system or that of discriminatory practices committed by members of security forces is insufficient, thus it is not possible to draw conclusions about such remedies. Hence, there is no information available on the suitability of available remedies and no disaggregated data on hate crimes or discrimination.

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

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\(^{17}\) See Articles 22\(^\circ\) and 271\(^\circ\) nº1 of the Constitution.

According to Article 8º of Portuguese Constitution, international public law is directly applicable in Portugal upon the Portuguese State’s ratification. Hence, given that Portugal agreed to this Recommendation and Appendix’s content, it can be said that at least all legislation, policies and practices are supposed to be guided by, namely, the principles and measures of the documents currently under examination.

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

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

According to answers received by both CIG and by DGPJ, the Recommendation and its appendix are not being disseminated. CIG revised Council of Europe’s Portuguese version of the texts but states that given that its translations are quite recent (April 2012) it has not be possible to date to establish a dissemination strategy.

Furthermore, DGPJ mentions that on the 2011 International Day against Homophobia (IDAHO) the Recommendation's adoption was referred to on the webpage of the Documentation and Comparative Law Office. However, it hardly constitutes dissemination given that it is only mentioned on an article about Thorbjørn Jagland’s declaration about IDAHO. Hence, the complete Portuguese version of the Recommendation and Appendix’s text is nowhere to be found in any of the Portuguese public authorities’ websites. In order to find it, one has to know of its existence and can only access it through the Council of Europe’s website.

   ii. Have the Recommendation and its appendix been translated?

Yes, both the Recommendation and its Appendix were translated into Portuguese by the Council of Europe, revised by CIG and made available as of April 2012.

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19 The Documentation and Comparative Law Office (GDDC) assists the Attorney General’s Office, the Public Prosecution Office and the judiciary on matters such as international cooperation and legal information. For more information, please visit: [http://www.gddc.pt/apresentacao/quem-somos-english.html](http://www.gddc.pt/apresentacao/quem-somos-english.html) (last consulted on 10 July 2012).


21 The Portuguese version is available at: [http://www.coe.int/t/dg4/lgbt/default_EN.asp](http://www.coe.int/t/dg4/lgbt/default_EN.asp) (last consulted on 7 July 2012).
iii. **Have they been disseminated:**

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

As previously mentioned, the Recommendation and Appendix’s texts are not being disseminated.

Note worthy is the fact that the Secretary of State of Parliamentary Affairs and Equality explicitly referred and read parts of the Recommendation during her speech on homophobic bullying as part of a public event organised by the Commission for Citizenship and Gender Equality and the Directorate-General for Education in order to mark 2012 IDAHO. This speech was read in a public school where students, teachers, members of security forces and other stakeholders were present.22

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Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

Security forces issues are under the mandate of the Ministry of Internal Administration. This Ministry did not reply to the request for information.

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

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

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

There is no official information available.

However, in November 2010, ILGA Portugal organised an 11 hour training at the Criminal Police (PJ) School for all members of security forces, and an 3h30m specific training for the Criminal Police which were part of the international project entitled “Tracing and Tackling Hate Crimes against LGBT Persons”. This project was carried out by the Danish Institute for Human Rights, with the support of the European Union, and was implemented in Portugal by ILGA Portugal.23

23 Information about the project is available at: http://www.humanrights.dk/focus+areas/equal+treatment/the+horizontal+approach/projects/action+against+hatecrimes (last consulted on 10 July 2012). Information of the Portuguese version of the project can also be found at: http://violencia.ilga-portugal.pt/ (last consulted on 10 July 2012).
ii. Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?

There is no official information available and no known initiatives.

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

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

   The Portuguese Criminal Code does not have a specific article addressing hate crimes. However, sexual orientation is an aggravating circumstance, according to articles 132.º (Qualified Homicide) 145.º (Qualified Offense to Physical integrity) and 240.º (Racial, Religious and Sexual Discrimination), this last article including violence, defamation and injury, and threat. These articles, were amended by Law n.º 59/2007, of 4 September, which is available, in Portuguese, at: http://www.dgpu.mj.pt/sections/leis-da-justica/pdf-ult/sections/leis-da-justica/pdf-ult/leis-da-justica/pdf-ult/lei-n-59-2007-de-4-de/downloadFile/file/lei%2059.2007.pdf?nocache=1188893854.82 (last consulted on 18 March 2012).

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

As stated on the Portuguese thematic study for the Fundamental Rights Agency’s report on homophobia and discrimination, the 2007 revision of the Criminal Code
aimed at putting heterosexual and homosexual persons on the same footing, criminal law wise.\textsuperscript{25}

In accordance with the Criminal Code and Constitution, the punishment resulting on the perpetration of the crime of murder and/or of physical assault\textsuperscript{26} are to be aggravated if committed on grounds of the victim’s sexual orientation (among other forbidden grounds).

On the other hand, Article 240\textsuperscript{g} of the Criminal Code foresees the crime of racial, religious or sexual discrimination and, as previously explained, the applicable criminal sanction is to be aggravated if the crime was committed on grounds of the victim’s sexual orientation.

Despite the recently enacted gender identity law, there is no mention to gender identity neither on the Criminal Code nor on the Constitution or in any other specific legislative compilation. It will be necessary to await judicial interpretation of the Constitution before a full picture emerges.

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

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

As of February 2011 a leaflet on LGBT hate crimes, produced by ILGA Portugal, can be found on the website of the PJ.\textsuperscript{27}

This leaflet was produced with the support of the European Union and of the Danish Institute for Human Rights and it is part of the above-mentioned international project.


\textsuperscript{26} Respectively, Articles 132\textsuperscript{g} and 145\textsuperscript{g} of the Criminal Code.

\textsuperscript{27} Available at: http://www.policiajudiciaria.pt/PortalWeb/content?id=%7B1C69109C-8722-47E5-8CC6-3C0E5CF71217%7D (last consulted on 10 July 2012).
ii. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

According to the Ministry of Justice, the training strategy to prevent and combat discrimination is nowadays focused on human rights and related issues, and this concern is present throughout the entire training of professionals. In the Ministry’s view, it is of particular importance to train magistrates and members of security forces.

However, there is no available information on official training modules on sexual orientation or gender identity issues, or of continuous training addressing these themes.

The Ministry gave the example of an 11 hours training session conducted by ILGA Portugal in the PJ School, which was part of the above-mentioned international project and which took place on the 25-26 November 2010. This training session focused on issues such as interviews with victims, police body language and identification of hate crimes and/or hate motivated incidents. It provided the trainees with relevant information and international best practices.

Furthermore, the Ministry also highlighted the protocol signed between ILGA Portugal and the Alternative Dispute Resolution Office (GRAL), which goal was to enable ILGA Portugal to forward cases to the Office with a guarantee of confidentiality, to improve the services’ collaboration and to raise awareness between the services provided by ILGA Portugal (namely, legal support) and those provided by GRAL.

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

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28 GRAL is a Public Administration agency, within the Ministry of Justice, that plans and implements policies and services of alternative dispute resolution.
Besides the training session conducted by ILGA Portugal, there is no knowledge of other training programmes focusing on sexual orientation or gender identity issues.

In 2002 the Council of Ministers adopted a Code of Ethics for Police Service, which is applicable to the PJ, to the National Republican Guard (GNR) and to the Public Security Police (PSP). According to this Code of Ethics, the security forces are bound to values such as integrity, dignity justice and impartiality (Article 2º nº2) and its members must perform their duties with respect to the Portuguese Constitution, the Universal Declaration of Human Rights, the European Convention on Human Rights and any other international treaty (Article 2º nº3). In addition, Article 3 of the Code states that:

1. In fulfilling its duty, members of security forces promote, respect and protect human dignity, the right to life, liberty, security and other fundamental rights of every person, regardless of their nationality, origin, social status and political, religious or philosophical beliefs.

2. In particular, members of security forces have a duty to not, under any circumstances, inflict, instigate or tolerate acts of cruel, inhuman or degrading treatment.

So, despite the fact that it can be argued that sexual orientation and gender identity are protected grounds in the Constitution (though only sexual orientation is specifically mentioned), neither is explicitly mentioned on this Code of Ethics.

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

The GNR has a project entitled “Research and Support for Specific Victims” (IAVE) which aims to qualify professionals to deal with matters related to violence against women, children and other specific groups of victims. Its purpose includes awareness-raising and behavioural change of members of the security forces in order to qualify their operational response, both in prevention and regarding criminal investigation. According to information available GNR’s website, this project currently has 210 teams covering the entire national territory.


30 More information on this project is available, in Portuguese, at: http://gnr.pt/default.asp?do=Oz7zr/avn8r (last consulted on 10 July 2012).
As part of the Integrated Programme of Police Proximity (PIPP) the PSP has also created Proximity and Victim’s Support Teams (EPAV). These teams are supposed to prevent, intervene, protect and safeguard, accompany, provide support and forward victims of violence to appropriate services. This programme also includes specific rooms in police stations to ensure appropriate and specialised support to victims. According to information available on PSP’s website, currently 621 police officers have received the correspondent training and are distributed into 22 sub-units throughout the country. These EPAV’s are still a pilot-project.

Though both initiatives mainly focus on domestic violence, they can also include other forms of violence. Moreover, in Portugal, violence between same-sex partners is a form of domestic violence. However, there is no definition of the term “specific victim” available.

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

After the training with ILGA Portugal a working group was created in order to maintain a close connection with sexual orientation and gender identity issues. Members of this working group include representatives from the Directorate-General of Internal Administration (DGAI) and representatives of the security forces. This working group is listed on the latest DGAI’s report on gender equality but, to date, the working group has only met for its initial meeting and has never developed any strategy or activity.

vi. Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?

The Ministry of Internal Administration created an on-line portal for electronic complaints. It also comprehends an accessible version, for people with disabilities and an option to hide the visit to the gateway.

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Among other crimes, it enables anyone to present charges for offenses to physical integrity, domestic violence, maltreatment and damages. Prior to the actual complaint form, upon the choice of the specific crime, the user is guided through the applicable legislation.

The Criminal Police website also allows for on-line complaints,\textsuperscript{34} and though the PJ is solely competent on certain crimes (see Articles 7º and 8º of Law nº 49/2008, of 27 August)\textsuperscript{35} if any other complaint is filed via this on-line service, the PJ will redirect the complaint either to the Public Attorney’s Office or to the competent security force.

Though both on-line complaints mechanisms exist, none is anonymous. It is only possible to file a complaint if the plaintiff provides his/her identification.

In October 2011, ILGA Portugal received a request for help of an alien who stated being, together with his boyfriend, being victims of verbal assault, of homophobic and xenophobic nature by a well-known individual of their neighbourhood. The victim went to the local police station and filled a complaint. The officers asked the victim to indentify the perpetrator and so they drove him, in a police vehicle, to where the latest verbal assault had occurred and where the perpetrator still was. According to the information provided by the victim, the police officer filed his complaint as insult (Article 181º of the Criminal Code). The victim states that the police officer told him that the situation did not qualify as sexual discrimination (Article 240º).

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

\textsuperscript{33} The gateway is only available in Portuguese. For more information, please visit: https://queixaselectronicas.mai.gov.pt/ (last consulted on 10 July 2012).
\textsuperscript{34} More information available, in Portuguese, at: https://www.policiajudiciaria.pt/PortalWeb/page?%7B5BFC28DE-D200-4BCC-9422-F495EE8EE82A%7D (last consulted on 10 July 2012).
\textsuperscript{35} Full text available, in Portuguese, at: http://www.policiajudiciaria.pt/PortalWeb/content?id=%7BCBD3F401-5D03-492E-9FCF-9996ED545D27%7D (last consulted on 10 July 2012).
i. Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?

According to the DGPJ, Article 4º of the Regulation on Conditions of Detention Facilities in the Criminal Police and in Detention Facilities on Courts and on the Public Prosecutor’s Offices\(^\text{36}\) states that it is mandatory to, publicly and visibly, display a panel with information on rights and duties of the detained person. This panel must include the direct transcript of Articles 27º to 33º of the Constitution (which are directly applicable to situations of deprivation of liberty) and of Articles 61º (procedural rights and obligations), 192º nº2 (application conditions of coercive measures), 194º nº8 (hearing of the accused) and 250º (suspect’s identification and information request) of the Criminal Procedure Code.\(^\text{37}\)

However, this direct transcript of constitutional provisions excludes basic human rights, such as the right to life (Article 24º), the right to personal integrity (Article 25º) or the right to private and family life and the right to have legal protection from any form of discrimination (Article 26º), not to mention the essential Article 13º of the Constitution.

Conversely, Order nº 12786/2009 establishes on its Article 24º nº2 that: “any person in custody is to be treated with humanity and with respect for human dignity, without any form of discrimination”. Though it mentions several grounds, it does not include sexual orientation or gender identity as one of the prohibited grounds.

On the other hand, Article 3º nº3 of the Annex to Law nº 115/2009, of 12 October,\(^\text{38}\) states that the execution of sentences is an impartial process which cannot favour, benefit, harm, deprive from any right or exempt from any duty anyone deprived of his/her liberty, namely, for reasons of sexual orientation.

ii. Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective

\(^{36}\) This Regulation was approved by Order nº 12786/2009, of 29 May. The full text of the regulation is available, in Portuguese, at: [http://dre.pt/pdf2sdip/2009/05/104000000/2147521478.pdf](http://dre.pt/pdf2sdip/2009/05/104000000/2147521478.pdf) (last consulted on 10 July 2012).


procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?

There is no available information.

Law nº 115/2009, of 12 October, establishes that the execution of sentences is guided by the principle of individual prison treatment, i.e., each execution is based on the assessment of needs and risks specific to each person deprived of liberty (Article 5º nº1 of the Annex).

Furthermore, the general rule is a private cell for each person, only if recommended otherwise should that persons stay with others (Article 27º of Order nº 12786/2009).

However, there is no record of the existence of effective violence prevention mechanisms.

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

According to the available information, it seems that an independent mechanism for investigating crimes committed by prison staff does not exist. Articles 5º and 8º of Decree-Law nº 174/93, of 12 May,\(^{39}\) establish that the prison staff is supervised by a professional of equal or superior category to that of the head of prison guard.

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

The gender identity law does not establish any specific provisions for prison procedures, nor does the existing prison legislation refer to transgender prisoners.

However, according to Article 89º of the Annex to Law nº 115/2009, body searches are to be made by individuals of the same sex as that of the person deprived of liberty and with respect to the person’s dignity, integrity and sense of decency.

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

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

CIG funded and published a study on discrimination on grounds of sexual orientation and gender identity in Portugal, which was conducted by the University of Minho.40 This study, released in 2010, focused on the following:

a) Analysis of the change in institutional and scientific discourse towards sexual orientation and gender identity issues and its consequent social visibility and problematic;

b) Definition and delimitation of concepts such as homosexuality, transsexuality and others which might be theoretically articulated with sexual orientation and gender identity;

c) Collection of social representations of LGBT people and an inquiry on the possible existence of a hierarchy in the perceptions of discrimination of different target-groups, in accordance with Article 13º of the Constitution;

d) Identification of LGBT people’s parental pathways, of ancestry and descent, and their impact on the exercise of full citizenship;

e) Probation of the domestic violence phenomena among LGBT couples;

f) Comprehension of the social contexts that promote and facilitate the emergence of phenomena such as homophobia, transphobia, hate speech and crimes related to sexual orientation and gender identity;

g) Profiling the real situation of LGBT people in Portugal;

h) Outlining the national, and international, legislative process in regard to sexual orientation and gender identity and detection of potential legal gaps in the Portuguese system;

i) Portrayal of the LGBT movement’s history in Portugal;

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j) Recording the number of studies on sexual orientation and gender identity issues conducted in Portugal;
k) Listing the number of organisations that work in this field in Portugal.

Given that this study was released in December 2010 and was published by a public entity, one can assume that the study's findings were taken into account when drafting and approving the IV National Plan for Equality.

Moreover, in March 2012, CIG released its report on the implementation of the IV National Plan for Equality in relation to the year 2011. This report states that in relation to strategic area nº11, hence to sexual orientation and gender identity, 3 measures have been implemented whereas one is still to be implemented. Accordingly, CIG declares that execution of measure nº 65 was accomplished by the event hosting on 17 May 2011 that mark IDAHO and where the above-mentioned study on discrimination on grounds of sexual orientation and gender identity was presented to the general audience. The referred measure is to create a campaign on non-discrimination, which can arguably be achieved with a public presentation on a study in one city of the country.

Measure 67 (awareness-raising among young people) was fulfilled by CIG’s participation in the “E-Tolerance Project” (a “Youth in action” transnational programme of the European Commission). Measure 68 (promotion of diversified literature on sexual orientation and gender identity among municipal and school libraries) was achieved by the distribution of 594 copies of the Commission's study on discrimination on grounds of sexual orientation and gender identity.

Thus, the only measure of strategic area nº 11 to be implemented, is measure 66 which refers to awareness-raising sessions for relevant stakeholders on issues related to sexual orientation and gender identity.

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

The Commission for Citizenship does not conduct surveys. However, and given its mandate, regularly promotes surveys conducted by other entities, national or
international, as it was the case with the first European LGBT Survey, conducted by the European Union Agency for Fundamental Rights.\textsuperscript{43} This survey was available from April until early July 2012, the results are expected to be released in 2013.

Both the Criminal Police and the DGPJ conduct surveys, however none to date has focused on LGBT issues.

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

According to the information available, there are no statistics on hate crimes and hate motivated incidents.

B. “Hate speech”

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

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

There is no specific legal provision for hate speech.

However, Article 240\textsuperscript{o} of the Portuguese Criminal Code foresees the applicable sanctions namely to sexual discrimination. It states that anyone who conducts or

encourages activities of organised propaganda that incite discrimination, hatred or violence against anyone or a group of people on grounds of sexual orientation violates this crime and might be sentenced to imprisonment between one or eight years. The same occurs if someone, in public, by writing destined for dissemination or through any media or online system destined for dissemination: provokes acts of violence, defames or insults or threatens anyone or a group of persons on grounds of sexual orientation. Moreover, Article 297º criminalises public incitement to commit a crime.

Law nº 8/2011, of 11 April\textsuperscript{44} regulates television and establishes that the programming of television and audiovisual programme services (the latter upon request), must respect human dignity and the fundamental rights, freedoms and guarantees. In addition, audiovisual programmes upon request must not disseminate or incite hatred, namely, on grounds of sexual orientation.

Finally, Article 7\textsuperscript{a} of Decree-Law nº 330/90, of 23 October,\textsuperscript{45} prohibits advertising that offends values, principles and institutions enshrined in the Constitution.

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

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

The Regulatory Authority for the Media stated that, according to its mandate, it can only regulate and supervise the media sector. Hence, it is not competent to approve legislative measures adequate to prevent discriminatory practices on grounds of sexual orientation and gender identity. Nor is it competent to monitor the activity of internet services providers.

In addition, the Regulatory Authority considers that the existing legislation suffices the prevention and punishment of discriminatory practices on grounds of sexual orientation.

\textsuperscript{44} Full text, in Portuguese, available at: \url{http://dre.pt/pdf1s/2011/04/07100/0213902175.pdf} (last consulted on 15 July 2012).

According to information provided by the Secretary of State Assistant to the Minister Assistant to the Minister and for Parliamentary Affairs, the Office for the Media (GMCS) actively participates in the implementation of the IV National Plan for Equality and of the IV National Plan against Domestic Violence (2011-2013) through the Protocol Training Centre for Journalists (CENJOR). In CENJOR, the GMCS is involved in awareness-raising activities for media professionals which aim at eliminating gender stereotypes in journalistic messages.

Since 2005 and on an yearly basis, the GMCS and UNESCO’s National Committee assign the “Human Rights & Integration” journalistic award. Since 2009 that sexual orientation and gender identity pieces of work have been awarded this prize:

- 2009: Teresa Botalheiro with “Dois pais, duas mães” and Ana Cristina Pereira with “Ya, um dia fomos bater na Gisberta”;
- 2010: São José Almeida with “Homossexuais, o Estado Novo dizia que não havia, mas perseguia-os”;
- 2011: Sara Sá and José Carlos Carvalho with “O meu corpo não é o meu sexo”.

Moreover, the GMCS’ website has a subtitle on “Media and Diversity” where relevant national and international contents are regularly published to instigate media to adopt tolerance and respect practices towards diversity and human rights. Despite this positive aspect, none of the documents available under the heading “Media and Diversity” are on sexual orientation and gender identity issues.

Finally, though not specifically mentioning sexual orientation or gender identity, the GMCS’ code of conduct states, on Article 2.2, that its work is governed by principles such as the respect and protection of human rights, the respect for the rights of its employees, the elimination of all forms of discrimination and the respect for the private life of its employees.

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

There is no specific legislation for hate speech, but Article 240º of the Criminal Code also encompasses internet media for the purposes of sexual discrimination. This article refers to “computer system” though not explaining what this expression means.

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

On 11 May 2011, the Regulatory Authority for the Media deliberated that the electronic versions of some national newspapers had allowed posting of defamatory and offensive comments, with insulting language and inciting hatred and violence on grounds of sexual orientation.³３ This deliberation was triggered by two communications filed by individuals on readers’ online comments after the murder of a known gay journalist.

Four national newspapers were found guilty for having exceeded limits to be respected by media in all content they convey, whether or not of their own and immediate responsibility. Newspaper Público, changed immediately its rules on on-line publishing comments and now each comment is validated before being made available.

On April 2012, the Regulatory Authority urged the daily newspaper Diário de Noticias to adopt a validation system, which can effectively control online comments and thus prevent the publication of insulting and offensive language that promotes xenophe and homophobic hatred and violence.⁴⁴ Despite this, the editorial direction of the newspaper decided not apply the Regulatory Authority’s recommendation given that it considers that such validation system imposes prior censorship on the reader. Instead, the newspaper created an automatic system of comment deletion, which is exclusively activated by the reader.⁵⁵

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v. If there are incidents of "hate speech", are they publicly disavowed by leading public officials?

There is no available information suggesting any public officials standing against hate speech.

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

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

According to the information available, no guidelines or any other measures were adopted on this issue. However, Article 240º of the Criminal Code is also applicable to public authorities given that they are subject to the legality principle.

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

There is no available information suggesting such situations.

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

i. Has guidance been issued to public officials and state representatives in this respect?
There is no available information that suggests the adoption of such guidance.

As the Commission for Citizenship and Gender Equality stresses, public officials are bounded by the principle of legality, hence any discriminatory act might be punishable under the applicable Articles of the Criminal Code.

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

On 17 May 2012, the Parliament welcomed the celebration of IDAHOT and the determination of everyone and of civil society movements working, in Portugal and in other countries, to eradicate discrimination. The welcome vote was submitted by the Socialist Party and approved by unanimity of members of Parliament.\(^{56}\)

II. Freedom of association

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

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

There is no record of any difficulties encountered by LGBT organisations to exercise their freedom of association.

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

There is no record of any restrictions.

iii. Are there examples of measures taken to:
- ensure that LGBT organisations can operate freely,
- defend their interests when necessary,
- facilitate and encourage their work?

There are no restrictions to the type of activities or scope of the work developed by LGBT associations, hence there are more than 50 organisations working on LGBT issues in the country and various public spaces LGBT and LGBT-friendly in the majority of Portuguese cities.

CIG has an Advisory Council composed of 40 representatives of NGOs. Of these, two are LGBT organisations: ILGA Portugal and Opus Gay; but there are many others working on LGBT issues, though not exclusively (for instance, UMAR and APF). This council has to have, by Regulation, representatives of organisations working on sexual orientation issues. The NGOs’ Section is competent to contribute to the definition of public policies regarding gender equality issues; to collaborate in the implementation of such public policies; to comment on CIG’s annual activities plan; and, to provide advice on their areas of expertise.

Finally, the fact that the National Plan for Equality has, for the first time, a strategic area devoted for sexual orientation and gender identity issues clearly portrays the public commitment. However, CIG’s Organic Law does not mention explicitly its competence on sexual orientation and gender identity issues.

59 Idem, Article 11º.
60 Decree nº 1/2012, of 6 January. Available, in Portuguese, at: http://dre.pt/cgi/dr1s.exe?!id&cap=211-212&doc=4&v2=30=comiss%E3o+para+a+cidadania+a+igualdade+de+g%99nero&sort=0&submit=Pesquisar (last consulted on 8 August 2012).
iv. Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?

Besides being able to be represented on CIG’s Advisory Council, the National Committee for Human Rights was created in 2010 and regularly meets with members of the civil society in order to promote a culture of citizenship, founded in the respect for human rights.

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

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

Public funding is available for LGBT organisations, namely through project financing.

CIG has been the management authority of such funds, mostly international, of which are highlighted the EEA GRANTS and Axis 7 of the Human Potential Operational Programme of the National Strategic Reference Framework (POPH/QREN).

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

Among others, here are some examples of LGBT projects financed by/through the Portuguese State:

**EEA Grants (2009-2011) has funded:**
- ILGA Portugal’s project “Centro LGBT”;
- rede ex-aequo “Projeto Inclusão”.

**POPH/QREN (2011-2013) funds:**
- ILGA Portugal’s “Centro LGBT” and “Porto Arco-Íris” projects; and,

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62 For more information on POPH/QREN, please visit: [http://www.poph.qren.pt/content.asp?startAt=2&categoryID=438](http://www.poph.qren.pt/content.asp?startAt=2&categoryID=438) (last consulted on 20 July 2012).
• Opus Gay “Alentejo de Diversidades” project.\textsuperscript{66}

In addition, ILGA Portugal’s “Famílias no Plural” project was funded by the Social Security Institute.\textsuperscript{67}

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

\begin{enumerate}
\item \textit{Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?}

There is no record of events of hostility and aggression against LGBT organisations.

When and if such events occur, the before mentioned articles of the Criminal Code are applicable both to private or public entities and individuals.

\item \textit{Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?}

The mandatory integration of LGBT associations on CIG’s Advisory Council portrays public respect towards these organisations and their work.

\item \textit{Are LGBT human rights organisations able to work with}
\begin{itemize}
\item national human rights institutions and ombudsmen,
\item the media,
\item other human rights organisations?
\end{itemize}

\begin{footnotesize}
\textsuperscript{66} More information on Porto Arco-Íris is available, in Portuguese, at: \url{http://porto.ilga-portugal.pt} (last consulted on 20 July 2012).
\textsuperscript{67} More information on Alentejo de Diversidades is available, in Portuguese, at: \url{http://www.opusgay.org/index.php/projetos/alentejo-de-diversidades.html} (last consulted on 20 July 2012).
\end{footnotesize}
There is no information available suggesting the contrary.

As stated before, LGBT associations are represented on CIG’s Advisory Council and can participate on the National Committee for Human Rights public sessions with civil society representatives.

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

There is no record of information in contrary.

LGBT associations can freely participate and organise activities in Portugal.

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

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

As previously mentioned, LGBT organisations present in CIG’s advisory council can, among other, collaborate in the implementation of public policies and provide advice on their areas of expertise. Furthermore, prior to each Plan’s approval, its content is usually subject to public consultation and open to each and every organisation’s participation.

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

There is no information available on the issue.

III. Freedom of expression and peaceful assembly

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

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

There is no record of information suggesting the contrary.

Article 37º of the Constitution enshrines freedom of expression and freedom of information, which includes the right to inform and to be informed without hindrance or discrimination.

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

In August 2011, and with just a few days of notice, an art exhibition of the Portuguese artist João Pedro Vale was cancelled by Tranquilidade (a private insurance company) on grounds that the project, as a whole, could raise controversy and was not compatible with company values. The exhibition, entitled “P-Town”, had a ‘fanzine’ piece with a cover showing a monument transformed into a phallic symbol; a set of beach towels with stencil inscriptions such as “Legalize butt sex” or “AIDS is killing artists, now homophobia is killing art”.

And, in January 2012, the company Metropolitano Lisboa (a public enterprise) refused to have publicity of the gay social network Manhunt. Manhunt had agreed on 15 outdoors throughout Lisbon’s metro stations with the advertising company Multimedia Outdoors Portugal, which manages publicity in the subway, but the Metropolitano

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Lisboa refused arguing (by email) that themes of sexual nature are not allowed on the advertising panels’ network. These outdoors were part of a worldwide campaign and figured two bare-chested men almost kissing or, in another version, wearing t-shirts and hugging. The political party, Bloco de Esquerda questioned the Government on this case. Note worthy is that there are no known cases of other similar restrictions imposed to any other sector/company. Very recently, a “Triumph” campaign was displayed for several months depicting women in sensual lingerie, which can also be considered to be of sexual nature.

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

As mentioned before, the most recent work of GMCS (even through the award Human Rights & Integration) is promoting a respectful, tolerant and diverse media environment, which is moving on to a stereotype free portray of sexual orientation and gender identity issues. Nevertheless, there is still a strong need of appropriate training for media professionals.

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

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

There is no available information suggesting the contrary.

Articles 45º and 46º of the Constitution enshrine the right of assembly, manifestation and freedom of association open to everyone (except if promotes violence or violates the criminal code) and without prior authorization.

69 More information on the case and an example of one of the outdoors is available, in Portuguese, at: http://p3.publico.pt/actualidade/sociedade/2130/imagens-da-campanha-rejeitada-pela-metro-de-lisboa-sao-inocuas (last consulted on 1 August 2012).
70 Question available, in Portuguese, at: http://www.beparlamento.net/sites/default/files/perg_homofobia_metro.pdf (last consulted on 1 August 2012).
Accordingly, in 2012 the Lisbon Pride Parade had its 13th edition, organised with the support of the Lisbon Municipality; the Oporto Pride Parade had its 7th edition; and Coimbra had its 3rd Pride Parade.

In addition, Lisbon had, last June, its 16th edition of Arraial Pride, an open-air, free-entry event in Lisbon most important and central square, and which is included in the official programme of Lisbon’s festivities and it is organised in partnership with Lisbon Municipality. As in previous editions, there was also a space with activities for kids (Arraialito) and Lisbon’s Mayor was present and opened Arraial Pride.

Finally, since 2003 and on a yearly basis, ILGA Portugal organises the “Rainbow Award” ceremony in recognition and encouragement to individuals and institutions, which, through their work, have distinguished themselves in the fight against homophobia and transphobia. rede ex aequo also organises, since 2005 and on a yearly basis as well, the “Media Award” ceremony to honour media, arts and spectacle figures, who, through their work, give visibility to some of the issues experienced by young gay, lesbian, bisexual and transgender persons.

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

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

More information on Lisbon Pride Parade is available, in Portuguese, at: http://marchaorgulholgbtlx2012.blogspot.pt/ (last consulted on 1 August 2012).

More information on Oporto Pride Parade is available, in Portuguese, at: http://www.orgulhoporto.org/ (last consulted on 1 August 2012).

More information on Coimbra Pride Parade is available, in Portuguese, at: http://www.pathcoimbra.org/ (last consulted on 1 August 2012).

More information on Arraial Pride, please visit: http://arraialpride.ilga-portugal.pt/2012/ (last consulted on 1 August 2012).


More information on Prémios Media is available, in Portuguese, at: http://rea.pt/premios-media/ (last consulted on 1 August 2012).
There is no available information suggesting use of excessive force or of any attempt to disrupt LGBT-related events.

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

There is no record of information on the contrary.

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

There is no record of information suggesting the contrary.

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

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

There is no record of restrictions to freedom of assembly events.

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

There is no information available suggesting different route, timing or any other condition for LGBT demonstrations.

iii. If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?
There is no record of restrictions, however if such an event was to happen, Article 20º of the Constitution states that everyone is entitled to access to justice and courts for the protection of rights and legally protected interests.

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

   i. If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,

   a. Has there been encouragement to public authorities to condemn such interferences?

CIG stated not having knowledge of any unlawful interference with the right to freedom of expression and peaceful assembly.

   b. Have public authorities actually condemned such interferences?

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

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

There is no record of hostile interferences on LGBT people’s exercise of freedom of expression.

IV. Right to respect for private and family life

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

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

In Portugal, consensual sexual acts between adults, whether same-sex acts or not, are not criminalised. Homosexuality was decriminalised with the entry into force of the 1982 Criminal Code. In 2005, the Constitutional Court decided against Article 175º of the 1995 Criminal Code, which established differences between same-sex acts with minors from other sexual acts with minors. Hence, Law n° 59/2007, of 4 September, repealed any reference to same-sex acts in the criminal Code and accordingly, there are no differences whether on applicable sanctions or age of consent between same-sex or heterosexual acts.

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

There is no record of subsisting criminal provisions liable to be applied in a discriminatory manner.

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

There is no available information on the issue.

19. Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.
i. What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?

Law nº 34/2009, of 14 July,77 establishes the legal regime of data collected for the purposes of the judicial system, including data related to means of alternative dispute resolution. This law establishes which data can be collected and for what purposes and accordingly, it is possible to collect data of procedural actors, namely sex and civil status. However, there is no reference to sexual orientation or gender identity, and according to DGPJ's answer, it is not possible to collect this type of information.

As mentioned before, Law nº 67/98, of 26 October, establishes that data on a person’s private life, health or sexual life constitutes sensitive data and therefore, its treatment is prohibited (Article 7º).

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

In 1994, the National Committee for Data Protection (CNPD) was created and it is an independent administrative entity, with authority power, that works closely with the Parliament. Article 22º nº3 b) of Law nº 67/98, of 26 October, states that the CNPD enjoys authority powers to order the blocking, erasure or destruction of data as well as, to prohibit, temporarily or permanently, the processing of personal data. Furthermore, Article 27º establishes that the processing of personal data must be notified to the CNPD prior to treatment, which includes data collection.

According to Law nº 34/2009, of 14 July, judicial personal data should only be available for as long as necessary and Chapter IX establishes criminal sanctions for unlawful access and misuse of data and for result’s falsification or destruction.

iii. Have these steps been effective?

Is there any evidence of:

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

The law does not authorise data collection of a person’s sexual orientation or gender identity.

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

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

Law nº 7/2011, of 15 March, establishes that gender reassignment’s legal recognition is subject to the submission of a gender identity disorder diagnostic report. This report must be prepared by a multidisciplinary team of clinical sexology, in a national or international public or private health facility and must be signed by, at least, a physician and a psychologist.

According to the Ministry of Justice, it is not in its mandate the possibility to review any prior requirements, given their medical nature.

ii. Are there still requirements which might be considered disproportionate or even abusive, such as:

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

As of 15 March 2011 such legal requirements are no longer mandatory.

However, there are documented cases of distress caused by the Institute of Registries and Notaries (IRN), which has published a list of competent clinical professionals, authorised to sign the diagnosis report. This list clearly runs counter Law nº 7/2011’s spirit, which was to facilitate the legal recognition of gender reassignment and where

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there is no mention of different types of professional, ones authorised to sign reports and others not.\textsuperscript{79}

In addition, very recently, in July 2012, ILGA Portugal received a request for information on the procedure applicable in Portuguese external representation offices. According to internal records, a Portuguese national citizen who lives in France went to the Portuguese Consulate in Paris to change her legal documents, where an officer in the Consulate asked her for: a report of each doctor accompanying her case (psychologist, dermatologist, endocrinologist and general practitioner); and a report of close friends attesting her real identity (real life test). The Consulate told her that after the submittal of these documents they would send her case to Lisbon and access her criminal record in order to decide on the possibility of legal gender recognition. Again, this clearly runs counter the gender identity law’s purpose, as in Portugal such requirements are not needed.

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

\textit{i. Are there procedures in operation which ensure the full legal recognition of a person’s gender reassignment?}

According to Law nº 7/2011, of 15 March, a Portuguese national, of legal age and who is not prohibited by mental disorder or disability can have her/his legal gender identity recognised if she/he is diagnosed with gender identity disorder (Article 2º).

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

\textsuperscript{79} More information on this issue is available, in Portuguese, at: http://expresso.sapo.pt/transexuais-queixam-se-da-burocracia-do-im-f712231 (last consulted 1 August 2012).
According to the gender identity law, the IRN has eight days to decide whether to allow that person to change her/his name and sex in the civil registry. The civil registrar can approve the request, ask for further information or reject the request for alteration of official documents (Article 4º).

If approved, the birth certificate is amended or it a new one can be issued. Consequently, all official documents must be altered in order to correspond the person’s preferred name and sex.

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

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

Though there is no reference to non official documents in the gender identity law, once the official documents are changed it is up to the transgender person to request the alteration of such documents. While evidence is missing, there are no reasons for these changes to be denied as the person’s new birth certificate only discloses her/his new name and sex.

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

Article 214º of the Civil Registry Code was altered by Law nº 7/2011, of 15 March, and now reads that only the person, her/his heirs or upon request of the judicial or police authorities may the civil registrar provide an integral copy of the transgender person’s birth certificate, thus disclosing her/his gender.

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

i. Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?
Transgender persons’ right to marry is guaranteed by the Portuguese Constitution, as it is for any other citizen. Law nº 7/2011, of 15 March, does not refer any restraint to the exercise of the right to marry, regardless if with a same-sex partner or not. Furthermore, since 2010 same-sex marriage is legal in Portugal.

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

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

Law nº 7/2001, of 11 May,\(^8\) establishes the legal regime for de facto unions without differences between same-sex or heterosexual couples.

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

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

As mentioned before, as of 2001 same-sex couples and heterosexual couples living in de-facto unions are equally treated.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-

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\(^8\) Full text is available, in Portuguese, at: [http://www.cga.pt/Legislacao/Lei_200105117.pdf](http://www.cga.pt/Legislacao/Lei_200105117.pdf) (last consulted on 1 August 2012).
sex couples with legal or other means to address the practical problems related to the social reality in which they live.

i. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?

That is not the case in Portugal since 2001 for de-facto unions and since 2010 for marriage.

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

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

In 1999 Portugal was found guilty by the European Court of Human Rights in Salgueiro da Silva Mouta v. Portugal, where a violation of Articles 8º and 14º of the European Convention on Human Rights occurred after the judges held that the applicant had been discriminated on grounds of his sexual orientation.

According to DGPJ the child’s best interest must be taken into account when regulating parental responsibilities, but there is no legal causal relation between the principle of the child’s best interest and the parents’ sexual orientation or gender identity. Hence, the constitutional legality and non-discrimination principles are to be implemented in regard to parental responsibility.

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

There is no information available suggesting the existence of discriminatory decisions.

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

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

It is possible to, singularly, adopt a child in Portugal if the adopter is over 30 years of age (Article 1979º of the Civil Code) and the eligibility of the adopted shall focus on the person’s personality, health, parental suitability and family and economic situation (Article 6º of Decree-Law nº 185/93, of 22 May).

Hence, there is no legal reference to the adopter’s sexual orientation or gender identity, which is to say that LGBT individuals are on a legal equal footing with heterosexual single adopters.

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

There is no information available suggesting the contrary.

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

i. What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?
In accordance with Article 6º nº1 of Law nº 32/2006, of 26 July, assisted reproductive treatment is only possible to heterosexual married couples or to heterosexual couples that have lived for two years in an analogous situation to that of a married couple.

\[ ii. \] *In practice, is such access granted on a non-discriminatory basis?*

In Portugal it is not possible for single women, regardless of their sexual orientation or gender identity, to resort to assisted reproductive treatment.

In early 2012 several draft laws were submitted to Parliament suggesting alterations to Law nº 32/2006, of 26 July. Of those, two proposed the extension to all women, married or single, but only those that did not preview any alteration to Article 6º were approved by parliamentary resolution.

As the result of this approval, the National Ethics Council for the Life Sciences (CNECV) was asked to issue an opinion on the matter of assisted reproductive treatment.\[ 84 \]

Given that in 2010 the same-sex marriage law entered into force, CNECV stated that the exclusion of access to same-sex couples or to persons living in a same-sex de facto union constitute a very serious limitation of the person’s autonomy, which should only not be ethically censored if the justification presented was equally powerful. The CNECV consider that none of the analysed draft laws presented such a justification capable of excluding, prohibiting and sanctioning same-sex couples of accessing assisted reproductive treatment.

**V. Employment**

Employment issues are under the mandate of the Ministry of Economy and Employment. This Ministry did not reply to the request for information.

\[ 29. \] Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in

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employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

i. Does legislation exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?

Besides Article 13º of the Constitution, Article 24º of the Employment Code states the right to equal access to employment and labour, specifically mentioning sexual orientation as a prohibited ground for discrimination.

In addition, Articles 13º and 14º of Law nº 58/2008, of 11 September, establish the prohibition of discrimination on grounds of sexual orientation in public employment. As previously explained, though it does not specifically state gender identity, if read in conjunction with a broad interpretation of Article 13º of the Constitution, the grounds of gender identity might also be protected.

ii. Does it cover:

- access to employment (including recruitment); promotion,
- dismissals,
- pay,
- harassment and other forms of victimisation?

Yes, the prohibition of discrimination in employment covers all these areas.

Article 24º nº2 of the Employment Code states that the equal right to access employment and labour covers: selection criteria; employment conditions; access to any professional training, guidance and retraining; and, membership or participation in structures of collective representation. In addition, Article 28º enshrines the right to compensation for discriminatory act. Article 29º prohibits harassment and sexual harassment. Finally, Article 31º refers to equal pay and Article 381º to dismissals.

Regarding Public Administration, as mentioned above, Articles 13º and 14º of Law nº 58/2008, of 11 September, establish the equality and free from discrimination access to employment and labour. Moreover, Article 15º applies to harassment and Article 17º
the obligation to redress. Also applicable are Articles 6º and 7º of Law nº 59/2008, of 11 September, which establish, respectively, the definition of direct and indirect discrimination and the right to equality in access and work.

### iii. Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:

- adoption of codes of conduct for both employers and employees;
- training and awareness raising programmes for both employers and employees;
- distribution to employees of materials explaining their rights, complaints mechanisms and remedies;
- recruitment efforts directed at LGBT persons;
- the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;
- co-operation with and support for employee groupings of LGBT persons?

Given that the Ministry of Economy and Employment did not reply to the request for information, there is no sufficient information on these areas.

Regarding complaints mechanisms remedies’ mechanisms, the Ministry of Justice’s GRAL is also competent for a limited range of employment matters and integrates sexual orientation policies.

### iv. Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?

Article 26º of Law nº 31-A/2009, of 7 July, states that members of the armed forces have the same rights, freedoms and guarantees has established in the Constitution. Thus, Article 13º of the Constitution is applicable.

According to the Ministry of National Defence, there are no discriminatory legal provisions, which might differentiate members of the armed forces for reasons of their sexual orientation or gender identity.

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v. **Specifically in relation to the armed forces:**

- Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?
- Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?

The Ministry of National Defence stated not knowing of any case or complaint of discriminatory practices within the armed forces.

Moreover, if such events are to take place the responsible person or group of persons might suffer a disciplinary penalty and might be subject to criminal investigations.

In addition, in entrance exams of civilian personnel, reference is made to the prohibition of discrimination as established by the Constitution.

vi. **Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?**

There is no available information on the topic.

vii. **Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?**

There is no available information on employment programmes for transgender persons.

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

i. **Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?**
There is no available information on the issue.

However, Article 214º of the Civil Registry Code, as amended by Law nº 7/2011, of 15 March, states that only the transgender person, her/his legal heirs or judicial and police authorities may access the integral copy of the transgender person's birth certificate.

VI. Education

Education issues are under the mandate of the Ministry of Education and Science. This Ministry did not reply to the request for information.

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

i. Have
- equality and safety policies,
- codes of conduct and
- handbooks

for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?

Law nº 60/2009, of 6 August, establishes the regime of sexual education in schools. Article 2º states that the goals of this course are, namely, the respect for pluralism, the promotion of a culture of respect for diversity among people and for different sexual orientations, and the elimination of behaviours based on sexual discrimination or violence on grounds of sex or sexual orientation. According to this law, sexual education is mandatory in public schools (Article 6º) but the contents to be lectured are
up for the teacher coordinator of the health education to decide, in articulation with class' directors (Article 3º of Ordinance n° 196-A/2010, of 9 April).

Ordinance n° 196-A/2010, of 9 April, regulates the curricula guidance for sexual education in schools and establishes the need to address gender identity issues on the 3rd and 4th grades and diversity on the 5th and 6th grades.

In 2010, CIG published a set of three education handbooks entitled “Gender and Citizenship”, one destined for pre-school, other for the 1st cycle (1st to 4th grades) and, the third for the 3rd cycle (7th to 9th grades). These handbooks are support instruments for teachers and other educational staff and though they do not have a specific chapter on sexual orientation or gender identity, they do refer diversity, discrimination and gender roles.

According to data taken from an academic study, 42% of young LGBT persons claim to have been a victim of homophobic bullying; 67% of young people claim to have seen peers being victims of homophobic bullying; and, 87% of young people claim to have heard homophobic comments in school facilities. Hence, four out of every 10 LGBT student are victims of homophobic bullying in Portuguese schools.

In addition, rede ex aequo coordinates information on homophobic and transphobic bullying, through the LGBT Education Observatory, which publishes a report every two years (and since 2006) releasing data collected over that period. Through an online form, specially created for this purpose, rede ex aequo reports cases of discrimination on grounds of sexual orientation and gender identity, including dissemination of false, incorrect, biased and offensive information that violates human rights and the dignity of LGBT persons in school. The 2010 report refers to 103 forms, submitted between November 2008 and December 2010, of persons between the age of 13 and 30, some were students, others teachers and educational staff. Of these, 65 claim to have been victim of homophobic incidents, 48 claim to have witness homophobic situations, 17 claim to have been victim of transphobic incidents and 52 claim to have witness transphobic situations.

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85 Only the pre-school and 3rd cycle handbooks are available online, and in Portuguese, at: http://www.cig.gov.pt/guiaoeducacao/ (last consulted on 5 August 2012).
86 Estudo sobre Bullying Homofóbico nas Escolas em Portugal, 2010, ISCTE-University of Lisbon. The numbers presented are from a sample of 210 students, of those 30% are heterosexual and 70% LGBT.
87 More information on the LGBT Education Observatory is available, in Portuguese, at: http://www.rea.pt/observatorio-de-educacao/ (last consulted on 5 August 2012).
As of September 2012, Law nº 51/2012, of 5 September, entered into force establishing that a student cannot be discriminated by school community for reasons on the grounds of his/her sexual orientation and gender identity [Art. 7º nº1 a)]. Nor can the student discriminate anyone in the school community [Art. 10º d)].

ii. Do initial and in-service training programmes for teachers and other educational staff address the need for them to
   a. treat their LGBT pupils and students with respect
   b. be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?

There is no available information.

However, currently in Portugal, ILGA Portugal is implementing an initiative of the Danish Institute for Human Rights entitled “it takes all kinds”. This project aims at eliminating homophobia, biphobia and transphobia in schools through education initiatives. As part of this project two tool-kits are being developed, one for students and other for teachers, both are to be adjusted according to the feedback received from the pilot-groups.

iii. Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?

There is no available information on the issue.

rede ex-aequo has two projects taking place in schools. The “LGBT Education Project” aims at an educational intervention through debates on topics related to homosexuality, bisexuality and transgenderism between teachers and students from the 7th to the 12th grades, and other educational staff.

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90 For more information on “it takes all kinds”, please visit: http://www.ittakesallkinds.eu/info/ (last consulted on 5 August 2012).
In 2010, “Inclusion Project” held a poster campaign against homophobic bullying in 3rd Cycle (7th to 9th grades) and secondary schools (10th to 12th grades) and in universities.\(^2\)

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

\(\text{i. Is information on}\
\hspace{2cm} \text{a. sexual orientation}\
\hspace{2cm} \text{b. gender identity}\
\text{provided in school curricula and sex and health education classes?}\)

As previously mentioned, Ordinance nº 196-A/2010, of 9 April, regulates the curricula guidance for sexual education in schools and establishes the need to address gender identity issues on the 3rd and 4th grades and diversity on the 5th and 6th grades. However, though sexual education is mandatory in public schools, it is not in private schools and contents to be lectured are up for school’s discretion to decide.

\(\text{ii. Is it provided in a respectful and objective manner?}\)

There is no available information on the issue.

\(^2\) More information on Projeto Inclusão is available, in Portuguese, at: http://www.rea.pt/projeto-inclusao/ (last consulted on 5 August 2012).
iii. Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?

There is no available information on this topic.

iv. Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?

Law nº 7/2011, of 15 March, established that it is only possible to change sex and name in the civil registry for people of legal age (+18).

VII. Health

Health issues are under the mandate of the Ministry of Health. This Ministry did not reply to the request for information.

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

i. Do
   a. the design of national health plans,
   b. health surveys,
   c. suicide prevention programmes,
   d. medical training programmes,
   e. training courses and materials
   f. the monitoring and quality assessment of health-care services take into account specific needs in relation to (a) sexual orientation and (b) gender identity?
There is no available information on the topic.

Nonetheless, under the heading of teenager health and sexuality, the online Youth Portal has a section on sexual orientation and redirects teenagers to a helpline entitled “Online Sexuality” where a team of psychologists with specific training in sexual and reproductive health provide clear, accurate and impartial support.\(^3\)

On the other hand, the Prevention and Infectious Control of HIV/AIDS Programme (2011-2015) identifies men who have sex with men among the population with particular vulnerable behaviours.\(^4\)

\[ ii. \textit{Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?} \]

There is no information available on training programmes for health professionals.

However, the Charter of Rights of the Hospitalised Patient states that health care facilities and respective staff must respect the sexual orientation of the hospitalised patient.\(^5\)

In September 2011, a lesbian woman contacted ILGA Portugal because she was discriminated at Lisbon’s maternity hospital by a doctor. According to the victim, she was being followed there since late 2010 as she discovered she suffers from endometriosis. In June she had a consult to discuss a possible surgery’s effects, she decided then to ask if her uterus would sustain pregnancy, if she could become infertile or not. The doctor replied that infertility would not be a problem, as lesbians could not bear children. ILGA Portugal wrote to the administration board of the hospital and forwarded the letter, namely, to the Secretary of State of Parliamentary Affairs and Equality and the Minister of Health.\(^6\)

\(^3\) More information available, in Portuguese, at: [http://www.juventude.gov.pt/saudesexualidadejuvenil/sexualidade/expressoessexualidade/paginas/orienta%C3%A7%C3%A3osexual.aspx](http://www.juventude.gov.pt/saudesexualidadejuvenil/sexualidade/expressoessexualidade/paginas/orienta%C3%A7%C3%A3osexual.aspx) (last consulted on 2012).


\(^6\) The letter sent to the Administration Board of Maternidade Alfredo da Costa is available, in Portuguese, at: [http://www.ilga-portugal.pt/noticias/Noticias/cartaMAC.pdf](http://www.ilga-portugal.pt/noticias/Noticias/cartaMAC.pdf) (last consulted on 5 August 2012).
iii. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?

There is no available information on health programmes developed for LGBT people.

iv. Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?

There is no available information on the issue.

v. Are patients in hospital or otherwise the subject of medical emergencies, free to identify their “next of kin”, and are rules on issues regarding “next of kin” applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?

According to Law nº 106/2009, of 14 September, hospitalised children have the right to permanently accompanied by their parents, or someone substituting them; if over 16 years of age, the child might identify someone else to accompany her/him (Article 2). Hospitalised persons who have disabilities, are dependant, have an incurable disease at an advance stage or who are at the final stage of life are entitled to permanent monitoring of their ascendant, descendent, spouse or partner or, in absence or incapacity of any of these or by her/his own free will, someone else appointed by her/him (Article 3º).

Moreover, Article 2º of Law nº 33/2009, of 14 July, states that anyone admitted in an emergency service has the right to be accompanied by someone identified. Emergency services may request a proof of kinship or type of relation with the patient, but cannot prevent her/his companion.

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

i. Has homosexuality been removed from the national classification of diseases?
Portugal does not have a national classification of diseases, rather following international classifications such as the WHO’s International Statistical Classification of Diseases and Related Health Problems and the American Psychological Association’s Diagnostic and Statistical Manual of Mental Disorders. Homosexuality is no longer listed as a disease.

ii. Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?

There is no available information.

iii. Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?

According to Law nº 48/90, of 24 August, amended by Law nº 27/2002, of 8 November, every patient has the right to accept or refuse health care treatment (Chapter II, Base XIV).

In addition, the Charter of Patient’s Rights and Obligations also establishes that the patient has the right to give or withhold consent before any medical procedure (Point 8). This Charter states that in order to ensure and promote the right to self-determination, patients’ informed consent is essential for performing any medical act. Consent can only be presumed in emergencies and, in case of incapacity, the right to consent or refuse medical treatment must be exercised by the patient’s legal representative.

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

The right of everyone to health is enshrined in Article 64º of the Constitution. Assuming that Article 13º of the Constitution also covers gender identity, than no one can be discriminated on grounds of gender identity when accessing health services.

Currently, gender reassignment services are available in Lisbon (at Centro Hospitalar Psiquiátrico de Lisboa and Centro Hospitalar Lisboa Norte), Oporto (at Hospital de Magalhães Lemos, Centro Hospitalar do Porto and Centro Hospitalar de São João), and in Coimbra (at Centro Hospitalar e Universitário de Coimbra). However, there is no available information on expertise and specific training (especially surgical) despite letters sent by ILGA Portugal to the Ministry of Health.

Furthermore, two helplines, available 24h, can provide transgender persons with appropriate information: the National Social Emergency Helpline (LNES) and the Health 24 Helpline (Linha Saúde 24). The Ministry of Health provides the latter but it is not free of charge, while the former is a Ministry of Solidarity and Social Security’s free service. However, there is no official information on the contents of the training received by staff members of these helplines, nonetheless ILGA Portugal has trained some of the staff of both helplines, who have acknowledged their need for comprehensive information on sexual orientation and gender identity.

ii. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?

There is no available information suggesting that such therapies occur.

iii. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?

There is no available information on intersex people in Portugal.
36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

i. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?

As stated on the 2010 national background report for the European Union Agency for Fundamental Rights, gender reassignment procedures are completely reimbursed by the State.\textsuperscript{97}

ii. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?

There is no available information on the topic.

VIII. Housing

Housing issues are under the mandate of Ministry of Agriculture, Sea, Environment and Spatial Planning. This Ministry did not reply to the request for information. Social exclusion and Homelessness issues are under the mandate of the Ministry of Solidarity and Social Security. This Ministry did not reply to the request for information.

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

i. Does legislation prohibit discrimination in such areas as:

- the sale or rent of housing;
- the provision of loans for purchase of housing;

\textsuperscript{97} Freitas, Martinho e Sousa Pinheiro, \textit{Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity}, February 2010, European Union Agency for Fundamental Rights, p. 25.
• the recognition of the rights of a tenant's partner;
• evictions
  on the grounds of (a) sexual orientation and (b) gender identity?

Article 65º of the Constitution read in conjunction with Article 13º provides that the right to adequate housing cannot be restricted to anyone on grounds of sexual orientation and, implicitly, gender identity. Specific legislation on housing does not list grounds for discrimination, always referring to constitutional provisions.

In December 2010, ILGA Portugal was contacted by a Brazilian citizen who is married to a Portuguese man and who, when trying to rent a house over the phone, was discriminated after stating that he was married to another man. The real estate agent repeated the victim’s words (‘my husband’) and hung up. According to the victim’s statement he wrote an email to the real estate company explaining what had happened with one of their employees and referring to Article 13º of the Constitution and mentioning that nowhere on their website was any reference to client target-groups (or to the fact that they do not work with LGBT persons). The company apologised to the victim by email and asked him to identify the employee so that they could start an internal investigation.

ii. Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?

According to the available information, the existing emergency accommodation is design for women victims of domestic violence (see Law nº 107/99, of 3 August and Decree-Law nº 323/2000, of 19 December).

iii. Is information available to landlords and tenants aimed at preventing such discrimination?

There is no information on the topic.

iv. Are adequate and effective legal or other remedies available to victims of such discrimination?
Access to justice is a constitutional right (Article 20°), hence anyone can present charges for reasons of discrimination on grounds of sexual orientation or gender identity. GRAL is also competent to settle such legal disputes.

v. Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?

There is no information available on the topic.

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

i. Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?

There is no record of programmes or policies developed for LGBT youth.

ii. Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?

There is no information available on the topic.

IX. Sports

Sports issues are under the mandate of the Secretary of State of Sports and Youth. The Secretary of State did not reply to the request for information.
39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

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

i. What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?

Article 2º of Law nº 5/2007, of 16 January, states that everyone is entitled to physical activity and sport regardless of their sexual orientation. Moreover, Article 3º regulates the principle of ethics in sports and establishes that it is up for the State to adopt measures to prevent and punish unsportsmanlike demonstrations, including all forms of discrimination.

A National Plan for Ethics in Sports⁹⁸ was adopted by the current Government, which creates the Ombudsman for Ethics in Sports. According to the information available, the Ombudsman is supposed to hear the Portuguese population on issues related to ethics in sport and can recommend measures to the Government and to various sports agents. Regrettably, neither the National Plan nor the Ombudsman’s mission mention sexual orientation or gender identity issues.

ii. By encouraging, for example:

- the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,
- partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,
- anti-discrimination campaigns in the sports world,

- support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.

There is no sufficient information on the issue.

**iii. Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?**

Law nº 39/2009, of 30 July, establishes the legal regime for combating violence, xenophobia and intolerance in sports events but it does not mention sexual orientation or gender identity. However, there is no definition for intolerance or of what it encompasses, hence if read in conjunction with a broad interpretation of Article 13º of the Constitution, it might include homophobic and transphobic insults.

*iv. In particular:*
- Has homophobic and transphobic chanting at or around sports events been made a criminal offence?
- Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events, the European Sports Charter and ECRI’s General Policy Recommendation No.12 been implemented in respect of (a) sexual orientation and (b) gender identity?

Article 39º nº1 d) of Law nº 39/2009, of 30 July, acts or incitement to violence, racism, xenophobia and intolerance in sports events are punishable as an offense, subject to payment of fine.

There is no available information on the implementation of the mentioned international documents.

**v. Have specific appropriate measures been taken to:**
- put an end to the exclusion of transgender persons from sports activity or competitions,
- remove the obstacles encountered by them in participating in sport (dressing room access),
- recognize their preferred gender?

There is no information available on the topic.
41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

   i. Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in
      • developing awareness-raising activities
      • condemning homophobic and transphobic behaviour during and in connection with sports events?

There is no information available.

X. Right to seek asylum

Asylum issues are under the mandate of the Ministry of Internal Administration. This Ministry did not reply to the request for information.

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

   i. Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?

Under Article 2 nº 2 of Law nº 27/2008, of 30 June, gender identity and sexual orientation are recognised as motives for persecution of members of a particular social group.

   ii. Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?

There is no information available.
iii. Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?

According to the international report *Fleeing Homophobia*\(^9^9\) no asylum request was granted to people alleging persecution on grounds of sexual orientation or gender identity. But, there is no record of authorities ever suggesting the claimant to hide her/his sexual orientation or gender identity.

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

i. What procedures are in place to ensure compliance with this obligation?

There is no information available.

However, according to Article 7\(^9\) of Law n\(^9\) 27/2008, of 30 June, if the claimant is not granted asylum but if she/he cannot return or does not wish to return to her/his country of origin for reasons of fear of severe offenses or constant human rights violations, she/he may be granted authorisation to reside in Portugal.

ii. Are there documented cases where asylum seekers have been returned to such a country?

Between 2000 and 2010, 11 asylum claims on grounds of sexual orientation were filled in Portugal.\(^1^0^0\) Three claimants were from Macedonia, three from Senegal, one from Angola, one from Guinea-Conakry and, one from Moldova.

Of these, two asylum claims were re-directed to other European Union’s countries (Dublin Regulation framework) and the rest was not granted for lack of persecution and lack of contact with authorities in the country of origin.

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\(^{1^0^0}\) Information collected from Fleeing Homophobia questionnaire about the situation in Portugal. Available at: [http://www.rechten.vu.nl/nl/Images/Portugal%20questionnaire_tcm22-236623.pdf](http://www.rechten.vu.nl/nl/Images/Portugal%20questionnaire_tcm22-236623.pdf) (last consulted on 6 August 2012).
Apparently, asylum seekers are supposed to contact national authorities even where sexual orientation and gender identity issues are punishable.

However, one case of 2008 was denied asylum statute but was granted two years of subsidiary protection as the claimant was from Senegal, where homosexuality is criminally punished. Another case, of 2009, was granted two years of subsidiary protection given the documented human rights violations in Guinea Conakry.

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

i. What measures have been taken to comply with this requirement?

ii. In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?

There is no information available.

XI. National human rights structures

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

i. Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?
The Portuguese Ombudsman is not clearly mandated to address discrimination on grounds of sexual orientation or gender identity. However, Article 1º of Ombudsman Statute states that he is mandated to protect and promote citizens’ rights, freedoms, guarantees and legitimate interests. Hence, the Ombudsman’s Office considers that its mandate is quite broad, also encompassing issues of discrimination on grounds of sexual orientation and gender identity.

ii. In practice do they
- make recommendations on legislation and policies,
- conduct awareness-raising among the general public
- examine individual complaints
- participate in court proceedings
- speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed, in relation to (a) sexual orientation or (b) gender identity?

The Ombudsman regularly formulates recommendations, either by own initiative or upon formal complaint filled to his/her Office. These recommendations are not mandatory and focus on corrections arising from unlawful or unfair acts committed by public authorities or on services’ improvement, thus these are administrative recommendations (Article 20º of the Statute). However, to date, no recommendations on issues related to sexual orientation or gender identity were issued.

Despite the fact that Article 20º nº1 d) of the Ombudsman Statute states that the Ombudsman’s Office is competent to conduct awareness-raising activities in respect to fundamental rights and freedoms, to date no activity on issues of sexual orientation or gender identity was conducted.

According to information provided by the Ombudsman’s Office, the number of complaints filled for reasons of discrimination on grounds of sexual orientation and gender identity is decreasing.

One of the complaints filed to the Ombudsman’s Office relates to discrimination on the definition/enforcement of blood donation criteria. In 2006, after a complaint on the issue, the Ombudsman suggested the Portuguese Blood Institute to replace, on its website, the “men who have sex with men” reference
under the heading of risk factors of infection transmission for men or women who have
sexual contact with multiple partners. In 2007, another complaint was filed for the same
reasons. The Ombudsman’s Office contacted the Portuguese Blood Institute for
clarification on the issue, the Institute answered that this was not a consensual issue
and that the available statistics validated this distinction for homosexual persons. The
Institute further stated that it had resorted to an independent organisation working in
this field to conduct a study, which was still under preparation. Hence, the
Ombudsman’s Office decided to wait for the study’s findings.
Moreover, this year, another complain on blood donation criteria was filed, however it
was considered to be premature as the competent authorities had not yet replied to the
plaintiff’s complaint. Thus, the Ombudsman’s Office explained to the plaintiff the results
obtained from previous complaints on the subject and advised the plaintiff to resort
once more to the Office in case he/she got no response within a reasonable time. The
Ombudsman’s Office, so far, has not been contacted again.
The Ombudsman’s Office has also mentioned cases of homophobic online comments
on media websites. In these cases, the Ombudsman has redirected the plaintiffs to the
Regulatory Authority for the Media explaining that if they do not receive an appropriate
response they can always resort again to his Office.
Finally, some complaints were filed on police failure to act against homophobic
behaviour, the latest dates of 2012 and it is still under examination. Whenever these
cases are brought to the Ombudsman’s attention, he/she signals them to the
competent security force in order to promote the appropriate intervention.

The Ombudsman is not competent to initiate or intervene in judicial proceedings
(Article 22º of the Statute).

Besides having analysed and resolved complaints as the previously mentioned, in
2003 after having inspected, on his own initiative, Portuguese prisons, the Ombudsman
recommended the amendment of the, then existing, visitors regime in order to include
same-sex visits on the same terms as applicable to heterosexual persons. In addition,
he recommended the same regime for detention centres for aliens in deportation
proceedings. Furthermore, the Ombudsman suggested the Immigration Authority (SEF)
to establish appropriate processes for gender identity cases, which were to be
applicable to all areas under its mandate.

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

As mentioned before, the majority of the existing legislation covers discrimination on the grounds of sexual orientation, however, there is no mention of or protection from discrimination on the grounds of gender identity.

The Ombudsman, the acknowledged national human rights structure, has a broad mandate, yet it does not specifically mentions its competence to address issues of sexual orientation or gender identity.
Appendix III. “Hate Crimes targeted at LGBT persons and/or organisations in Portugal during 2011”

Hate crimes targeted at LGBT persons and/or organisations in Portugal during 2011

Report compiled by ILGA Portugal, for ILGA Europe’s comprehensive submission to OSCE/ODHIR “Hate Crime Report 2011”.

The OSCE report: Hate Crime Laws – A Practical Guide,\(^{101}\) describes hate crimes as “crimes motivated by intolerance towards certain groups in society” and on its 2006 annual report, the OSCE/ODIHR has further explained that “Hate crimes involve violent expressions of bias; they may take the form of assault, murder, threats, or property damage, such as arson, desecration, or vandalism.”\(^{102}\)

The Portuguese Criminal Code does not have a specific article addressing hate crimes. However, sexual orientation is an aggravating circumstance, according to articles 132.\(^9\) (Qualified Homicide) 145.\(^9\) (Qualified Offense to Physical integrity) and 240.\(^9\) (Racial, Religious and Sexual Discrimination), this last article including violence, defamation and injury, and threat\(^{103}\).

This report includes media clipping and incidents reported to ILGA Portugal’s support services. In 2010 ILGA Portugal provided security forces with appropriate training, as part of the a joint programme with the Danish Institute for Human Rights,\(^{104}\) in order to monitor LGBT hate crimes and it was announced that a working group was in the process of making, in order to collect relevant data, inform and raise awareness of


police personnel to facilitate and encourage LGBT hate crime reporting. So far, the referred working group has not been created.

Some of the crimes here included qualify as domestic violence, hence not falling under the definition of hate crimes or hate motivated incidents. Nevertheless, even if domestic violence in same-sex relationships falls under the domestic violence definition in the Portuguese law, ILGA Portugal believes that underreporting is high and this is an issue that needs to be addressed. In fact, most cases are only known in its more extreme form – when they involve homicide and are related by the press.

1) Murder, in New York, of Portuguese Social Columnist

Date: 7 January, late afternoon.

Location: Intercontinental Hotel, New York, USA.

Source of information: various media reports.

Victim: Carlos Castro, a famous Portuguese Journalist and Social Columnist, 65 years of age.

Perpetrator: Renato Seabra, his alleged boyfriend, a Portuguese aspiring male model, 21 years of age, who confessed the crime.

Type of crime: murder with malice.

Brief description of the case: the couple was in New York vacationing, had a fight and the model beat up the journalist and threw a laptop to his head and then tortured him for an hour with a corkscrew, hitting an eye and the journalist’s genitalia. After this the model left the hotel and told some friends that the journalist “would not be leaving the room tonight”. Four hours later the model was admitted in a hospital with self-inflicted injuries to his face and wrists.


Status of the case: the model confessed the crime and the NYPD charged him with second-degree murder two days after the crime was committed. The model is in custody, in the US, and the trial is expected to begin in June 2012.

Impact on the community: though the crime did not occur in Portugal, it raised quite a commotion not only because the victim was a celebrity but also because of the nature of the crime itself. The crime was condemned by every public figure that was interviewed but not all the media knew how to address the case’s contours and some media reports did not use the correct, anti-discriminatory and non-stereotypical, language and general public’s comments on newspapers websites were extremely homophobic.107

2) Murder trial

Date: the crime occurred in June 2010, the trial in 22 February 2011.

Location: Guimarães.

Source of information: media report.108

Victim: José Carlos Silva, 41 years of age.

Perpetrator: Fábio Lopes, boyfriend, 20 years old, cross-dresser known as Felisbela.

Type of crime: murder by stabbing with malice.

Brief description of the case: the case occurred in 2010 in the couple’s apartment in Guimarães. The perpetrator stated that the victim was extremely jealous and possessive and grabbed a knife to kill him but the perpetrator managed to throw him on the floor, stabbed him to death and ripped out the victim’s nose, eyes and heart. At first the perpetrator told the authorities that the victim had been killed by robbers but then admitted having murdered him after he (perpetrator) had consumed cocaine and had an argument with the victim.

107 See, for example (in Portuguese): http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content_id=13254 (last consulted on 17 March 2012). This crime and the public debate surrounding it, led the Media Regulator, an independent public body, to publish a decision in May 2011 regarding readers’ comments on national newspapers. The decision is available, in Portuguese, at: http://www.erc.pt/download/ytovonzio6t6imzrY8haXy2UWGRoY5kZWNpc29cy9vymPy3RvX29mZmxpbmUvMTY1NC5wZGYiOiIjdGljZ2xvijZOil (last consulted on: 18 March 2011).

Status of the case: the perpetrator was sentenced to 16 years of imprisonment given that the crime, according to the judge, had occurred within a framework of “unprecedented and obsessive violence”.109

3) Beating in a Club

Date: March, evening.
Location: Nightclub “Porto Pipas”, in Angra do Heroísmo, Azores.
Source of information: email sent to ILGA Portugal, on 31 March.
Victim: Unknown, a 20 year-old male.
Perpetrator: Unknown, 10 young guys.
Type of crime: physical assault.

Brief description of the case: the email sent described the situation as a violent beating that occurred inside a known discotheque in Azores. The victim was openly gay and he was surrounded by the group of perpetrators who usually harass him with homophobic comments. According to the witness’ email several police officers were present the evening but did not interfere, instead it was a victim’s friend who put an end to the beating. After the crime had occurred, the victim went to the police station and filed a complaint. In reply, the perpetrators also filed a complaint against the victim, on the grounds of sexual harassment.

Status of the crime: Unknown. The email referred that the perpetrators were awaiting the Lisbon court’s hearing.

4) Attempted murder by stabbing

Date: 1 April, evening (around 23.00).
Location: own apartment, Oporto.

**Source of information:** Correio da Manhã, newspaper.\(^{110}\)

**Victim:** Alexandre Teixeira, 36 years-old, hairdresser.

**Perpetrator:** Ismael Sousa, 25 years of age, boyfriend of the victim.

**Type of crime:** attempted murder.

**Brief description of the case:** The victim and perpetrator, two Brazilian migrants, were in a relationship and lived together in Oporto. According to neighbors’ descriptions, arguments between the couple were frequent. The perpetrator grabbed a kitchen knife and stabbed the victim on his back, neck and arms. The victim managed to get out of the apartment and asked for help in the street. A random man called the 112 emergency-line and the police. The perpetrator went to the police station and was arrested.

**Status of the crime:** Unknown. He was present to Court the next day and charged for attempted murder. At the time the victim was in the Intensive Care Unit.

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5) **Vandalism of the LGBT Centre in Lisbon**

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Date: 3 June.

Location: Centro LGBT, Martim Moniz, Lisbon.

Source of information: ILGA Portugal.

Victim: Association ILGA Portugal.

Perpetrator: Unknown.

Type of crime: vandalism, destruction of property.

Brief description of the case: The Centre was vandalized, with writings on the outside walls, such as "death" on top of the pride flag or with symbols such as a target symbol or a Nazi swastika.

Status of the case: ILGA Portugal decided not to report given that it could have been counterproductive.

6) Physical Violence

Date: 13 June.

Location: Unknown.

Source of information: email sent to ILGA Portugal.

Victim: Unknown.

Perpetrator: Unknown.

Type of crime: physical violence.

Brief description of the case: A friend sent the email, reporting a case of a friend who was allegedly being constantly abused and the police could not help for lack of evidence. The friend asked for help, as she was afraid that something even more serious could happen.

Status of the case: Unknown.
7) Physical Violence

Date: 27 August, 4.00 am.

Location: Outdoors, Principe Real, Lisbon.

Source of information: dezanove, electronic LGBT newspaper.111

Victim: João Galrão, artist.

Perpetrator: Unknown.

Type of crime: physical violence.

Brief description of the case: The victim was kissing someone outside in the street and told the newspaper that he had been a victim of homophobic physical violence.

Status of the case: Unknown.

Impact on the community: According to the media report and the Facebook event created112, friends of the victim pushed for a public rally to happen, entitled “Manifesto do Beijo” (Kiss Manifest), which took place on September 24, at 1.45 am in Lisbon, to publicly display people’s disfavor against violence in that area of Lisbon, regardless of their sexual orientation.

8) Racist and Homophobic Violence

Date: 2 October.

111Related news, in Portuguese: http://dezanove.pt/230101.html (last consulted on 17 March 2012). The original media report could not be found.
112For more information, in Portuguese, please see: http://www.facebook.com/events/264301540260506/ (last consulted on 17 March 2012).
Location: Carnaxide, Lisbon.

Source of information: email sent to ILGA Portugal.

Victims: Unknown (male couple).

Perpetrator: Gonçalo Maldonado, resides nearby the victims.

Brief description of the case: the victims have been verbally harassed by the perpetrator, with homophobic and xenophobic comments, nearby their domicile in Carnaxide. The perpetrator usually screams in a feminine way whenever any of the victims pass by him and once, when the email author tried to talk to him, the perpetrator realized he was a foreigner and insulted him asking him if he “was in Portugal to steal jobs from the Portuguese?”. After several encounters one of the victims pressed charges against him and the police drove with him to identify the suspect and the charge was registered as defamation as, according to the police officer, it did not qualify as racial, religious or sexual discrimination given that the perpetrator had not tried to make a publication or any similar type of document. The victim had to hire a lawyer to be able to continue the lawsuit because it was considered to be a particular type of crime instead of a hate crime. The victim and author of email asked for ILGA Portugal’s help.

Status of the case: Unknown.

9) Air Gun shots and physical assault

Date: 21 October, around 18:15.

Location: Outdoors, Carcavelos, Lisbon.

Source of information: phone-call to ILGA Portugal’s helpline and media report.

Victim: Unknown, male 30 years of age.

Perpetrator: 6 unknown male individuals, aged around 20-25 years of old.

Type of crime: attempted murder, physical assault.

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113 Article 240.º of the Portuguese Penal Code.
114 In March 2012, a new case in this same location has been reported.
Brief description of the case: the victim was attacked in a municipal garden area known for providing homosexual encounters. He was shot twice by a air gun (one in the back the other on his elbow) by two male individuals, tried to stop them but four more appeared and he was injured in his face, threatened of death by metal rods and harassed with homophobic comments. He managed to escape into a store nearby, called the police and 112 (police officers refused to call 112 and told him he would have to do it himself) and took pictures of his injuries. The police, once in place, stopped a car with two individuals matching the victim’s description but asked the victim to do a face-to-face identification, which the victim refused to do. Hence, the police allegedly told the victim that presenting charges would imply transmit victim’s personal data to the perpetrators. The victim did not file a complaint, the individuals were not arrested and the victim later called ILGA Portugal’s helpline to be informed of his rights and asked for lawyer support to accompany him the next day to the police station in order to formally present charges (this was not possible to be provided the next day, but the victim was encouraged to fight for his rights and to keep ILGA Portugal informed of the case status).

Status of the case: Unknown.
Appendix IV. About ILGA Portugal

Founded in 1995, ILGA Portugal is the largest and the oldest NGO in Portugal striving for equality and against discrimination based on sexual orientation and gender identity.

Our mission is the social integration of the lesbian, gay, bisexual and transgender population in Portugal through a program of social support that improves the quality of life of LGBT people; through the fight against discrimination based on sexual orientation and gender identity; and through the promotion of full citizenship, Human Rights and gender equality.

We are a national organization and although we are based in Lisbon, we also have a project and an office in Porto. We also have a strong diversity policy and very active groups devoted to Lesbian issues and to Trans issues, as well as a group devoted to Rainbow Families. We represent Portugal in ILGA Europe’s EU Network and we are also members of NELFA and correspondents for IDAHO.

Activities organised by ILGA Portugal:

- Arraial Pride – the largest annual LGBT Pride event in Portugal. Integrated in the Festas de Lisboa (Lisbon festivities), the party takes place in Terreiro do Paço, Lisbon’s most significant historical square. Stands from many NGOs and LGBT bars and restaurants also contribute towards attracting around thirty thousand people to the event.

- LGBT Centre – where we offer a helpline (Linha LGBT), psychological and legal counseling (Serviço de Aconselhamento Psicológico and Departamento Jurídico), HIV and STI prevention and a documentation center on LGBT issues (Centro de Documentação Gonçalo Diniz), as well as many cultural and political events and many opportunities for volunteer work (with proper training and supervision).

- Rainbow Awards (Prémios Arco-Íris) – Our annual awards recognize and honour personalities or institutions whose work throughout the year promoted the fight against discrimination based on sexual orientation and gender identity.

- publications on access to rights and resources; multimedia campaigns against discrimination of LGBT people; education and training of professionals to ensure access of LGBT people to key public sectors;
- political intervention involving, among other activities, lobbying the Portuguese parties and the Government, building alliances with private and public institutions, organizing conferences or promoting petitions.