



**Reply of Portugal to the OHCHR's  
request for information on the  
implementation of HRC Resolution  
27/32 on Human Rights, sexual  
orientation and gender identity**

7<sup>th</sup>. January, 2015



## **Examples of good practices in policies and measures to prevent, address and remedy human rights violations against lesbian, gay, bisexual, transgender and intersex persons in line with UN recommendations and international human rights standards by the executive, judiciary, legislative and NHRIs:**

### **General:**

Over the past years, Portugal has made considerable efforts to promote and protect the rights of LGBTI persons and to eliminate all forms of discrimination based on sexual orientation and gender identity.

#### General examples include:

- a) in January 2015 (Decree-Law 4/2015 of 7<sup>th</sup>. January), the Code of Administrative Procedure was revised and its article 6 (Principle of Equality) explicitly includes sexual orientation as one of the grounds on which discrimination is prohibited in the public administration;
- b) in July 2013, the first-ever governmental campaign against homophobic and transphobic bullying was launched by the Commission for Citizenship and Gender Equality (CIG);
- c) in February 2013, gender identity was included in the legal definitions of the crime of discrimination and bias-motivated crimes (qualified homicide and qualified offense to physical integrity) under the Criminal Code (CC);
- d) the Student Status and School Ethics Act (SSSEA), approved in September 2012, also tackles discrimination and abuse based on sexual orientation or gender identity;
- e) in 2011, legislation was enacted to allow the recognition of gender identity without prior surgery and to accelerate procedures for name and gender change. Transgender persons were allowed to have their new identity legally recognised, with the sole requirement of a diagnosis' report of gender identity disorder;
- f) the 4th National Plan for Equality (2011-2013) included a strategic area on sexual orientation and gender identity;
- g) the first Sector Plan on Gender Equality (2011-2013) adopted by the Ministry of Internal Administration defines as one of its main focus raising the awareness of staff (including police officers) to gender and sexual orientation issues. A working group on violence and hate crimes against LGBTI people was established by the security forces;
- h) since June 2010 marriage equality exists. Law 9/2010 allowed and recognised same-sex marriage;
- i) since 2004, article 13.<sup>o</sup> of the Constitution of the Portuguese Republic ("Principle of Equality") explicitly includes sexual orientation as one of the grounds on which discrimination is prohibited;
- j) since 2001, the law recognises and grants rights to *de facto* unions of same-sex couples;



Now we will mention, in more detail, and divided by thematic areas, the main policies and measures that could constitute a good practice in this regard:

### **Labour:**

The former labour code, approved by law No. 99/2003 of 27 August, instituted a unitary regime with regard to equality and non-discrimination, which was not restricted to the traditional prohibition of discrimination on grounds of sex. It includes explicitly the prohibition of discrimination on the ground of sexual orientation (articles 22 and 23). The current labour code, approved by law No 7/2009 of February 12, is based on the same principle (arts. 24 and 25).

Within the framework of the legal relationship of public employment, the regime of equality and non-discrimination is also applicable to the legal contract of public employment (arts. 13 and 14 of Law No. 59/2008, 11th September, which approves the Regime of employment contract in Public Functions).

According to Law 35/2014 of 20 June, the General Law on Work in Public Functions, which came into force on 1 August 2014, the rules namely on personality rights and equality and non-discrimination laid down in the Labour Code apply, with the necessary adaptations, to workers in public functions (Annex, Article 4 (1) b and c).

The disrespect of the Labour Code articles on equality in treatment, and on the prohibition of discrimination namely on grounds of sexual orientation, is punishable as a "very serious offences" which implies the payment of an administrative penalty of between 20 and 600 UC (unit of account), and it may also lead to additional punishment.

Law 3/2011 of 22<sup>nd</sup>. February, also forbids any discrimination on the access and exercise of independent work. Breaching this Law provisions', which ensure equality of treatment and forbids any discrimination namely on grounds of sexual orientation in gaining access to and exercising independent work, constitutes an administrative offence that is punishable with fines ranging from 1 to 5, or 2-10 times the value of the minimum national wage depending upon whether an individual person or a collective one is involved; further penalties may be applied. In both cases, the worker has the right to receive compensation for material and moral damages. The Authority on Working Conditions (Autoridade para as Condições de Trabalho, ACT) is responsible for investigating breaches of the law and establishing the penalties.

### **Freedom of movement and residence:**

Law 37/2006 guarantees the freedom of movement and residence to the spouse of a European Union's citizen and to the partner living in a *de facto* union with a citizen of the European Union, or with whom he/she maintains a permanent relationship, duly certified by the competent body of the Member State where he/she lives.



In 2001, Law 7/2001, 11<sup>th</sup>. May, was approved with the aim of recognising the rights of persons living in a *de facto* union. This law makes no distinction between opposite and same-sex unions and is applicable to unions lasting more than two years. Since June 2010, same-sex marriages, are also recognised under Law 9/2010, 31 May.

Law 37/2006 guarantees, thus, the freedoms of movement or residence in Portugal to the spouse or partner of an EU citizen from outside the EU irrespectively of being an opposite or same-sex couples/partners.

The same situation occurs in relation to a Portuguese citizen married abroad with a same-sex person. He/she may proceed with the transcription of marriage in the consulate of Portugal or in any civil registry office in Portugal, adding the foreign marriage certificate.

### **Asylum and subsidiary protection:**

Article 2<sup>o</sup> of Law n<sup>o</sup>27/2008, amended and republished by Law 26/2014 of 5 May - which lays down the conditions and procedures for the admissibility of an asylum request or of a subsidiary protection request - establishes explicitly the prohibition of any sort of discrimination on the grounds of belonging to a given social group, which includes sexual orientation or gender identity (alongside with the grounds of race, religion, gender, nationality, language, political or ideological beliefs) in the analysis of those requests.

### **Family reunification:**

The Law on the Entry, Stay, Departure and Expulsion of Foreigners (Law 29/2012 of 9th August), recognizes the right of family reunification to the spouse of an European Union citizen and to the partner living in a *de facto* union with a European Union citizen, or with whom he/she maintains a permanent relationship, duly certified by the competent body of the Member State where he/she lives.

Given the provisions of the laws 7/2001 and 7/2010, family reunification covers same-sex unions and same-sex marriages.

The beneficiaries of the status of refugee or of subsidiary protection are entitled to family reunification with the members of their family, according to the terms defined in the legal framework governing the entry, stay, departure and expulsion of foreigners to, in and from Portugal, therefore according to the terms mentioned in the previous paragraph.

### **Criminal law:**

The Portuguese Penal Code, dating from 1995, was amended several times. The 2007 and 2013 amendments deserve specific mention. Homosexuality was decriminalised in 1982 and Law n<sup>o</sup> 59/2007 repealed any references to same-sex sexual acts or



differences in the age of consent between opposite-sex and same-sex relationships from the Penal Code.

Following the 2007 amendment, the hate crimes namely on the grounds of the victim's sexual orientation were aggravated, e.g. in the case of murder or grievous bodily harm.

On the other hand, since 2013, the Penal Code (Article 152) specifies that the victim of the crime of domestic violence could be a person of the opposite or of the same-sex with whom the agent maintained or should have maintained a dating relationship or a relationship analogous to the spouses, even if without cohabitation.

The scope of the crime of racial, religious or sexual discrimination (article 240) was also enlarged in 2013. It comprises now the setting-up of organisations or the development of organised propaganda inciting to discrimination, hate or violence against people or group of people because of their race, colour, ethnic or national origin, religion, sex, sexual orientation, or the participation in these organisations and their funding; as well as defamation or menace to person or group of persons namely on the grounds of their sexual orientation.

Following the 2013 amendment, gender identity (article 132) was included among the aggravating factors and in the crime of discrimination above mentioned.

### **Education:**

Law n<sup>o</sup> 51/2012, 5 September, on the Student Statute, establishes under article 7 n<sup>o</sup> 1 (Rights of the Student) and article 10 d) (Student Duties) that all students must be treated with respect by all members of the educational community, and may not, under any circumstances, be discriminated against on grounds of ethnic origin, health, gender, sexual orientation, age, gender identity, economic, cultural or social status or political convictions, ideological, philosophical or religious believes.

Article 2 of Law 60/2009 of 6 August 2009, which establishes the rules for sexual education in schools, forbids any discriminatory behaviour on grounds of sexual orientation or any violence on grounds of gender or sexual orientation. This raises awareness among young people of non-discrimination on the basis of sexual orientation. This law was regulated by Ordinance 196-A/2010, which introduces sexual education in primary and secondary schools and defines the *curricula* for different educational levels.

### **Sports:**

Law n. 5/2007, of 16th January, Law on Physical Activity and Sports, states in its article 2 n<sup>o</sup> 1 that everyone, including regardless its sexual orientation, has the right to physical activity and sport.

### **Family:**



Law 7/2001, amended by Law 23/2010 of 30 August, recognises *de facto* unions of opposite and same-sex partners.

The Parliament approved on 11 February 2010 a law presented by the Government, Law 9/2010, allowing same-sex marriages.

Although single gays or lesbians may adopt, co and joint adoption of children is currently limited to opposite-sex couples. Nevertheless, there have been several court rulings which placed children under same-sex couple's foster care.

In March 2014, a proposal to grant adoption rights for same-sex couples, the so-called "co-adoption" rights, was rejected in Parliament by 111 votes against, 107 in favour and five abstentions.

### **Transgender issues:**

Law 7/2011 of 15 March established the procedures by which sex changes and first name changes are made at the civil registry offices. People who are legally apt to apply for a sex change at the Civil Registry Office should provide a "Report that backs up a diagnosis claiming gender identity dysphoria which is also known as transexuality". The diagnosis has to be made by a multidimensional medical team specialising in clinical sexology and operating in public or private health establishments in Portugal or abroad". Furthermore, the report has to be signed by at least one physician and a psychologist.

### **Policies and practices – National Action Plans:**

#### **a) National Plans for Equality**

The IV National Plan for Equality, gender, citizenship and non-discrimination (2011-2013), coordinated by the Commission for Citizenship and Gender Equality (CIG) included, for the first time, a strategic area dedicated to sexual orientation and gender identity. It is composed of a set of measures to consolidate public policies promoting equality and tackling discrimination of LGBT persons, to raise-awareness of the general population to non-discrimination and to empower civil society organisations representative of LGBT persons.

In this regard, the Commission for Citizenship and Gender Equality promoted a national campaign for non-discrimination on the basis of sexual orientation and gender identity. The main goal of the campaign was to promote the change of mentalities, sensitizing the population to the harmful effects that homophobic and transphobic bullying causes on its victims. This was the first public campaign against this phenomenon carried out by the Government. It was intended to eradicate homophobic and transphobic violence in the Portuguese society, decreasing social costs and eliminating the suffering of the victim(s) of this violence, as well as of their families and friends. The campaign was launched in July 2013 and consisted of a TV Spot, Radio Spot, Leaflets, t-shirts, postal



free (20.000) and a Website ([www.dislikebullyinghomofobico.pt](http://www.dislikebullyinghomofobico.pt)). The website gives information about homophobic and transphobic bullying and addresses of institutions that may help victims, parents, witnesses and teachers. The Campaign involved several stakeholders such as Ministry of Education, Security Forces, Teachers, NGO's and the media. <http://www.dislikebullyinghomofobico.pt/>

The Commission for Citizenship and Gender Equality was awarded by *ILGA Portugal* during the 11<sup>a</sup> edition of "Rainbow Awards" (Prémios Arco-Iris). <http://www.ilga-portugal.pt/premioarcoiris/2013/> <http://ilga-portugal.pt/noticias/512.php>

The V National Plan for Gender Equality, Citizenship and Non-discrimination (2014-2017) maintained a Strategic Area dedicated to the issue of Sexual Orientation and Gender Identity (Strategic Area n.º 4). It pays special attention to the initial and continuous training of professionals from sectors particularly involved in this phenomenon, namely health, education, social security, media, as well as the security forces, the Armed Forces and magistrates.

This strategic area comprises five measures and it has the following strategic goals:

- Preventing and combating all forms of discrimination based on sexual orientation and gender identity;
- Improving awareness on this problem in the Portuguese society as a whole;
- Ensuring the implementation and monitoring of the international commitments accepted by Portugal in matters of non-discrimination based on sexual orientation and gender identity.

See more in: [http://www.cig.gov.pt/wp-content/uploads/2014/06/CIG-VPNI\\_2014-2017\\_ENG.pdf](http://www.cig.gov.pt/wp-content/uploads/2014/06/CIG-VPNI_2014-2017_ENG.pdf) - pages 63 and 64

#### **b) National Plans against Domestic and Gender-based Violence:**

In the Fifth National Action Plan for the Prevention and Fight against Domestic and Gender-based Violence (2014-2017), there are 2 measures specifically addressed to LGBT persons:

- Measure 10 - To conduct awareness-raising programs on violence between LGBT people, within intimate relationships;
- Measure 48 - To raise awareness/train professionals to intervene in matters relating to LGBT persons.

See more in: [http://www.cig.gov.pt/wp-content/uploads/2014/06/CIG-VPNPCVDG\\_2014-2017\\_ENG.pdf](http://www.cig.gov.pt/wp-content/uploads/2014/06/CIG-VPNPCVDG_2014-2017_ENG.pdf) - Pages 131 and 141



**Examples at the local or other sub-national level, not just the national level:**

The Municipality of Lisbon approved the Social Rights Action Plan 2014-2017 which is a structured policy strategy on axes, goals, tasks and actions. It assumes a logical empowerment and capacity-building, for the recognition and safeguarding of Human Rights and social rights, policies and programs for the life cycle, with reflection in terms of organizational structure and of the various levels of activity of the Municipality, as well as involvement with the civil society.

In its area 10 – Sexual Orientation and Gender Identity – the Municipality will seek to implement a set of municipal public policies for the promotion and defense of human rights of LGBTI people. See more in (Portuguese): <http://lisboasolidaria.cm-lisboa.pt/documentos/1411746609Z1kXF6qh1Kx43EO2.pdf> - pages 19 and 20