Response to Call for Inputs[[1]](#footnote-1)

Responder: *Berfu Yalcin, Ph.D. Candidate at Europa-Institut of University of Saarland*

1. What different practices fall under the scope of so-called “conversion therapy” and what is the common denominators that allow their grouping under this denomination?

* In practice, sexual reorientation efforts can be conducted by therapists or by religious ministries. However, no matter by whom these efforts were conducted, religious motivation is always part of the reasoning behind the reorientation efforts. Sexual reorientation efforts have been both biological and psychological. These efforts have included behavioral therapy[[2]](#footnote-2), psychodynamic interventions, drug and hormone therapy, and even surgery.[[3]](#footnote-3) As for the sexual reorientation based on religious beliefs, the methods have shaped to create religious pressure by relying on the power of God, prayer, doctrinal prohibitions, and threats of damnation.[[4]](#footnote-4) While some of the SOCE practices directly aim to change the sexual orientation, some of the SOCE practices are not targeting the conversion into heterosexuality but rather aiming not to act on their same-sex desires.[[5]](#footnote-5) Nonetheless, the fundamental rationale behind SOCE is the perception of homosexuality as a preference of the individual not as an orientation.[[6]](#footnote-6)

1. Are there definitions adopted and used by States on practices of so-called “conversion therapy”? If so, what are those definitions and what was the process through which they were created or adopted?

* Malta’s Ban on Conversion Therapy (ACT No. LV of 2016, 9th December 2016, An Act to affirm that all persons have a sexual orientation, a gender identity and a gender expression, and that no particular combination of these three characteristics constitutes a disorder, disease, illness, deficiency, disability and, or shortcoming; and to prohibit conversion practices as a deceptive and harmful act or interventions against a person’s sexual orientation, gender identity and, or gender expression.) defines conversion therapy as ”conversion practices refers to any treatment, practice or sustained effort that aims to change, repress and, or eliminate a person’s sexual orientation, gender identity and, or gender expression…(art.2)”
* Germany’s newly introduced draft law (Entwurf eines Gesetzes zum Schutz vor Behandlungen zur Veränderung oder Unterdrückung der sexuellen Orientierung oder der selbstempfundenen geschlechtlichen Identität) defines Conversion Therapy as “all measures that are performed on humans to achieve certain physical or psychological effects, without to be medically recognized and SOCE are described as treatments that seek to change or oppress the sexual orientation or self-directed sexual identity (art.1).”

UK’s Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill 2017-19 defines Conversion Therapy as “In this Act, “conversion therapy” is any form of therapy which demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other and attempts to—

(a) change a person’s sexual orientation or gender identity, or

(b) suppress a person’s expression of sexual orientation or gender identity. (art.2/2)”

1. What are the current efforts by States to increase their knowledge of practices of so-called “conversion therapy”?  Are there efforts to produce information and data on these practices? /
2. What kinds of information and data are collected by States to understand the nature and extent of so-called “conversion therapies” (e.g. through inspections, inquiries, surveys)?

* During the preparation of draft law on conversion therapy, the Health Ministry of Germany published several reports on the different aspects of conversion therapy. Chapter C of the final report focuses on health and psychotherapy.[[7]](#footnote-7)
* In the UK, the Government Equalities Office conducted a National LGBTI Survey[[8]](#footnote-8) that focuses on the experiences of LGBT people. According to the Survey, %2 of the respondents had undergone SOCE and %5 of the respondents had been offered SOCE. While %19 of SOCE conducted by healthcare Professional, %51 of them conducted by faith organization or group.[[9]](#footnote-9)

1. Has there been an identification of risks associated with practices of so-called “conversion therapy”?

* Various associations had condemned SOCE and pointed out these efforts’ dangers for the participants. According to the Pan American Health Organization (PAHO)[[10]](#footnote-10), homosexuality cannot be considered as a pathological condition; thus, efforts to change someone’s sexual orientation lack medical justification.[[11]](#footnote-11) In accordance with the professional consensus, homosexuality is a natural variation of human sexuality and it does not have any harmful effect on health.[[12]](#footnote-12) According to the PAHO, SOCE are not only ineffective but also consisted of very harmful practices.[[13]](#footnote-13) Consequently, these efforts violate the *“primum non nocere”[[14]](#footnote-14)* principle which is the first principle of medical ethics. The World Psychiatric Association acknowledged the “lack of scientific efficacy” of SOCE and “harm and adverse effect” of those efforts with its position statement.[[15]](#footnote-15) The Royal College of Psychiatrists also highlighted that there is no sound scientific evidence that shows sexual orientation can be changed and there is evidence that SOCE are potentially harmful.[[16]](#footnote-16) According to the APA, SOCE *“…represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated…”*. [[17]](#footnote-17) In accordance with the mentioned policy statements, many SOCE participants have expressed the negative effects of the therapy. The common effects of SOCE for the participants are not different from the ones expressed in the afore-mentioned policy statements, which are mostly suicidal thoughts and depression.[[18]](#footnote-18)
* German Health Ministry’s report also identifies the risks of conversion therapy as depression, anxiety, suicidality, sexual and relationship problems.[[19]](#footnote-19)

1. Is there a State position on what safeguards are needed, and what safeguards are in place to protect the human rights of individuals in relation to practices of so-called “conversion therapy”?  This question includes the following:
   * 1. Safeguards to protect individuals from being subjected to “conversion therapies”.
     2. Broader statutory rules or administrative policies to ensure accountability of health care and other providers.

* While there is no nationwide legislation banning SOCE in the USA until this date 18 states and the District of Columbia have introduced legislative bans on the issue.[[20]](#footnote-20) The common ground between the state bans in the USA is that all of the legislations are only prohibiting “mental health providers” to perform SOCE on “minors”.
* Malta is the first EU member state to prohibit sexual reorientation efforts.[[21]](#footnote-21) Compared to the USA legislation, Malta’s ban on SOCE[[22]](#footnote-22) is much more comprehensive. As a matter of fact, the act is not only prohibiting professionals[[23]](#footnote-23) from performing SOCE, but it also prohibits any person to perform these kinds of efforts. In addition, the act distinguishes between professional and non-professional unlawful practices. Moreover, for any person, it is unlawful to perform SOCE on a vulnerable person[[24]](#footnote-24); or perform involuntary or forced SOCE; or advertise SOCE.[[25]](#footnote-25) As for the professionals, it is unlawful to offer and, or perform SOCE on any person irrespective of whether compensation is received in exchange; or make a referral to any other person to perform SOCE on any person.[[26]](#footnote-26)
* The second EU member state to have SOCE ban legislation is Spain. Although Spain does not have nation-wide ban legislation, autonomous communities[[27]](#footnote-27) of Spain have enacted SOCE bans.[[28]](#footnote-28) However, recently arguments for banning SOCE nation-wide gained momentum. Despite the Madrid ban on SOCE, an undercover journalist had attended a SOCE session provided by a diocese of the Catholic Church.[[29]](#footnote-29) After the news coverage, the health minister of Spain emphasized the practice was illegal in Madrid and called for the complete abolishment of SOCE practices.[[30]](#footnote-30)
* A SOCE ban has been a contemporary topic in Germany too. Although SOCE is not commonly practiced in Germany, it is still practiced in religious communities.[[31]](#footnote-31) Recently, the German health minister called for a nationwide ban, considering the scientific reports on the harms of sexual reorientation efforts.[[32]](#footnote-32) Following the reports and findings, a draft law[[33]](#footnote-33) on the prohibition of the treatmentsfor the alteration or suppression of sexual orientation or sexual identity has been published on 04.11.2019. The draft law prohibits the conduct of SOCE*[[34]](#footnote-34)* on minors and non-consenting adults.*[[35]](#footnote-35)* However, for consenting minors over 16 who have the ability to understand the scope and meaning of SOCE, the prohibition would not apply.*[[36]](#footnote-36)* Furthermore, the draft law also prohibits to advertise, offer, and broker the prohibited treatment. According to the draft law, it is prohibited to advertise, offer, and broker SOCE to persons under 18.[[37]](#footnote-37) However, in line with art.2/ (2), if the person is over 16 and can understand the scope and meaning of SOCE, the prohibition would not apply.[[38]](#footnote-38) Nevertheless, the public advertisement, offering, or brokering of SOCE is prohibited for the persons who are 18 years old or older.[[39]](#footnote-39) Finally, the draft law sets up penal provisions and administrative offences. According to article 5, imprisonment up to 1 year or a fine will be imposed on those who perform SOCE contrary to article 2/ (1). And according to article 6, in violation of the rules regarding the advertising, offering, and brokering of SOCE, the violation is punishable as an administrative offence by a fine up to 30.000 €. Lastly, the draft law establishes a counseling service for the people who are affected or might be affected by SOCE.[[40]](#footnote-40)
* In the UK, the Government Equalities Office published an LGBT Action Plan[[41]](#footnote-41) and one of the key actions was bringing forward proposals to end the practice of conversion therapy.[[42]](#footnote-42) The Action Plan states SOCE are wrong and the Government Equalities Office will fully consider all legislative and non-legislative options to prohibit promoting, offering and conducting SOCE.[[43]](#footnote-43) In accordance with the Action Plan on 18 July 2018, the Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill 2017-19[[44]](#footnote-44) was presented to the Parliament and passed the 1st reading on the same day.[[45]](#footnote-45) The current version of the Bill prohibits any person from practicing or offering to practice SOCE.[[46]](#footnote-46) At the moment, the legislation process of the Bill continues.
* . In 2018, the Taiwanese government banned SOCE under both the Criminal Code and the Protection of Children and Youths Welfare and Rights Act.[[47]](#footnote-47) The Taiwanese ban covers both medical and non-medical SOCE practitioners.[[48]](#footnote-48)
* The Brazilian Federal Council of Psychology issued a resolution in 1999 that prohibited all licensed psychologist to participate in events and services offering “ex-gay conversion treatments”.[[49]](#footnote-49) Later, in 2013, the Commission for Human Rights of Brazil’s lower house of congress approved a bill[[50]](#footnote-50) to repeal the resolution on the basis of the right of the person to receive professional guidance and division of powers.[[51]](#footnote-51) Although the bill was later abandoned[[52]](#footnote-52) the resolution was challenged before Brazilian courts. In 2017, an Evangelical Christian psychiatrist claimed that the resolution was discriminatory against her as a professional.[[53]](#footnote-53) The applicant’s license was revoked in 2016 after she offered SOCE.[[54]](#footnote-54) The federal judge of the case ruled in favour of the applicant and overruled the resolution. However, later in January 2018, the same judge reinstated the ban.
* Ecuador has enacted a SOCE ban on professionals with the Ministerial Order No.767[[55]](#footnote-55) and the Penal Code was changed to prohibit SOCE.[[56]](#footnote-56) However, the ban was not effective enough to stop common SOCE practices in the country. According to the reports, 200 unlicensed clinics are still operating across the country.[[57]](#footnote-57) Since most of these clinics usually exist in remote towns in Ecuador, it has been more difficult for the Ministry of Health to regulate them.[[58]](#footnote-58)

1. Are there any State institutions, organizations or entities involved in the execution of practices of so-called conversion therapy? If so, what criteria have been followed to consider these as a form of valid State action?

* In 2016 the Indonesian Psychiatrists Association classified homosexuality as a mental disorder that can be cured through proper treatment.[[59]](#footnote-59) Likewise, Islamic Development Department in Malaysia started promoting SOCE in 2017 and it was reported that state officials were organizing SOCE courses aimed at transgender women.[[60]](#footnote-60)

1. Have any State institutions taken a position in relation to practices of so-called “conversion therapy”, in particular:
   1. Entities or State branches in charge of public policy;
   2. Parliamentary bodies;
   3. The Judiciary;
   4. National Human Rights Institutions or other State institutions;
   5. Any other entities or organizations.

* Besides the ones mentioned in the scope of the above questions;

\*SOCE have been successfully challenged before the Chinese courts. In 2014, a Beijing court ruled on the electroshock therapy used during SOCE and found it unnecessary since homosexuality required no treatment.[[61]](#footnote-61) Consequently, the Court ordered the clinic to pay compensation and post an apology on its website.[[62]](#footnote-62) Following the Beijing court’s ruling, in 2017 a court in Henan province also ruled on the issue. The plaintiff of the case was admitted to the hospital by his wife and relatives and he was forced to take medicine and have injections for 19 days.[[63]](#footnote-63) Akin to the Beijing court ruling, the court rules in favor of the plaintiff and ordered the hospital to pay compensation and publish an apology. Despite the court rulings in favor of the plaintiffs, neither of the courts ruled on SOCE’s legality in general. Consequently, medical facilities in China are still promoting SOCE commonly.[[64]](#footnote-64)

\* In 2014 and 2015 in South Korea, two pro-SOCE seminars by conservative Christian groups were held in public institutions premises.[[65]](#footnote-65) Furthermore, certain organizations continue to offer “cure” for homosexuality and according to a 2016 survey, 40% of the respondents were subject to a homophobic statement by counselors.[[66]](#footnote-66) While religious groups and organizations continue claiming homosexuality is a curable condition and promoting SOCE, the Korean Ministry of Health or expert medical organizations have not expressed any opinions on the issue.[[67]](#footnote-67)

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22. SOCE or as written in the act conversion practices, “refers to any treatment, practice or sustained effort that aims to change, repress and, or eliminate a person’s sexual orientation, gender identity and, or gender expression…”, art.2. [↑](#footnote-ref-22)
23. “…"professional" refers to a person who is in possession of an official qualification and, or a warrant to practise as a counsellor, educator, family therapist, medical practitioner, nurse, pathologist, psychiatrist, psychologist, psychotherapist, social worker, and, or youth worker…”, art.2. [↑](#footnote-ref-23)
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25. Art.3(a). [↑](#footnote-ref-25)
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34. In the scope of the draft law, treatment (conversion therapy) is defined as all measures that are performed on humans to achieve certain physical or psychological effects, without to be medically recognized and SOCE are described as treatments that seek to change or oppress the sexual orientation or self-directed sexual identity (art.1); and most importantly the prohibition of SOCE is aimed at everyone. See: Ibid. p.12. [↑](#footnote-ref-34)
35. Art.2/ (1); Es ist untersagt, Behandlungen im Sinne von § 1 Absatz 1

    1. an einer Person unter 18 Jahren durchzuführen oder

    2. an einer Person durchzuführen, deren Einwilligung zur Durchführung der Behandlung unter einem Willensmangel leidet. [↑](#footnote-ref-35)
36. Art.2/ (2). [↑](#footnote-ref-36)
37. Art.3/ (1). [↑](#footnote-ref-37)
38. Ibid. [↑](#footnote-ref-38)
39. Art.3/ (2). [↑](#footnote-ref-39)
40. Art.4. [↑](#footnote-ref-40)
41. *Government Equalities Office*, LGBT Action Plan: Improving the Lives of Lesbian, Gay, Bisexual, and Transgender People, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721367/GEO-LGBT-Action-Plan.pdf>, (last accessed on 15/10/2019). [↑](#footnote-ref-41)
42. Ibid., p.2. [↑](#footnote-ref-42)
43. Ibid., p.14. The Action Plan also indicates the prohibition of SOCE will cover medical, commercial, and faith-based context., Ibid. p.14. [↑](#footnote-ref-43)
44. A Bill to provide that the Health and Care Professions Council by the regulatory body for counsellors and psychotherapists; to prohibit conversion therapy; to make consequential provision for the protection of children and adults; and for connected purposes. [↑](#footnote-ref-44)
45. Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill 2017-19. [↑](#footnote-ref-45)
46. Ibid.,

    Art.2 Conversion therapy: prohibition

    (1) It shall be an offence for any person to practice, or to offer to practice conversion therapy.

    (2) In this Act, “conversion therapy” is any form of therapy which demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other and attempts to—

    (a) change a person’s sexual orientation or gender identity, or

    (b) suppress a person’s expression of sexual orientation or gender identity. [↑](#footnote-ref-46)
47. *Outright Action International*, p.26. [↑](#footnote-ref-47)
48. Ibid. Taiwan finalizes conversion therapy ban Furthering the island’s reputation as a progressive champion of LGBTQ-inclusive policies, <https://medium.com/shanghaiist/taiwan-finalizes-conversion-therapy-ban-adb417e5ff44>. [↑](#footnote-ref-48)
49. *Outright Action International*, p.30. [↑](#footnote-ref-49)
50. Projeto De Decreto Legislativo Nº De2011. [↑](#footnote-ref-50)
51. *International Lesbian, Gay, Bisexual, Trans and Intersex Association: Mendos*, p.270. [↑](#footnote-ref-51)
52. Ibid. [↑](#footnote-ref-52)
53. *Phillips*, Brazilian judge approves 'gay conversion therapy', sparking national outrage, <https://www.theguardian.com/world/2017/sep/19/brazilian-judge-approves-gay-conversion-therapy>, (last accessed on 15/10/2019). [↑](#footnote-ref-53)
54. Ibid. [↑](#footnote-ref-54)
55. *International Lesbian, Gay, Bisexual, Trans and Intersex Association: Mendos*, (fn.104), p.270. [↑](#footnote-ref-55)
56. “Article 151(3) of the Comprehensive Organic Penal Code of 2014 also criminalizes any act of torture (defined in broad terms) perpetrated with the intention of modifying a persons’ sexual orientation.”, Ibid. [↑](#footnote-ref-56)
57. *Gutierrez,* Why 200 Lesbian Torture Clinics Are Still Operating in Ecuador, <https://www.huffpost.com/entry/ecuador-lesbian-torture-clinics_b_1087533>, (last accessed on 15/10/2019).; *Guglielmone*, Fight Against “Reparative Sexual Therapy” in Ecuador, <http://www.coha.org/fight-against-reparative-sexual-therapy-in-ecuador/>. [↑](#footnote-ref-57)
58. *Nichols,* Terrifying Photos Recreate The Horrors Of Gay ‘Conversion Therapy’ Centers The clinics are illegal in Ecuador but still operate in secrecy., <https://www.huffpost.com/entry/gay-conversion-therapy-camps-horrors_n_593ebc3de4b02402687b8697>. [↑](#footnote-ref-58)
59. *International Lesbian, Gay, Bisexual, Trans and Intersex Association: Mendos*, (fn.104), p.272. [↑](#footnote-ref-59)
60. Ibid. [↑](#footnote-ref-60)
61. *International Lesbian, Gay, Bisexual, Trans and Intersex Association: Mendos*, (fn.104), p.271. [↑](#footnote-ref-61)
62. Ibid. [↑](#footnote-ref-62)
63. Gay Chinese man wins legal battle over forced conversion therapy, <https://www.bbc.com/news/world-asia-40490946>. [↑](#footnote-ref-63)
64. *Bahandari,* Conversion Therapy Still Promoted in China, Investigation Finds, <https://www.sixthtone.com/news/1003870/conversion-therapy-still-promoted-in-china%2C-investigation-finds>. [↑](#footnote-ref-64)
65. *Outright Action International*, (fn.132), p.28. [↑](#footnote-ref-65)
66. *Rainbow Action against Sexual Minority Discrimination,* Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and HIV Status in the Republic of Korea, <https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/KOR/INT_CAT_CSS_KOR_27029_E.pdf>. [↑](#footnote-ref-66)
67. Ibid. [↑](#footnote-ref-67)