**Answer by Portugal to the questionnaire on the protection against violence and discrimination based on sexual orientation and gender identity**

Portugal has developed a legal and policy framework that ensures protection against discrimination based on sexual orientation and gender identity. In this context, the following should be mentioned:

1. The Portuguese Constitution expressly prohibits discrimination based on sexual orientation (Article 13).
2. The Portuguese Penal Code establishes anyone who publicly and by any means of dissemination, provokes acts of violence against, slanders or insults, threatens, incites violence or hate against a person or groups of persons based on their sexual orientation or gender identity, is punishable with a prison sentence between 6 months and 5 years.
3. In March 2018, the Government approved the National Strategy for Equality and Non-Discrimination 2018-2030, which includes – for the first time in the country – a specific Action Plan to Combat Discrimination on the Grounds of Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (Council of Ministers Resolution 61/2018). The strategy includes two other action plans: 1) to promote equality between women and men; and 2) to prevent and combat violence against women and domestic violence. The implementation of the national strategy (and action plans) is coordinated and monitored by the Commission for Citizenship and Gender Equality (CIG).

The Action Plan to Combat Discrimination on the Grounds of Sexual Orientation, Gender Identity and Expression, and Sex Characteristics establishes concrete measures to be developed in the first four years of implementation (2018-2021) to be revised every four years. It pursues three main strategic objectives:

* Promote knowledge on the needs of LGBTI people and on discrimination based sexual orientation, gender identity and expression, and sex characteristics;
* Ensure the mainstreaming of policies and measures against discrimination based on sexual orientation, gender identity and expression, and sex characteristics;
* Combat all forms of discrimination and violence against LGBTI people in public and private life.

This Action Plan includes 20 specific measures with indicators and benchmarks. A Technical Committee was established to monitor the plan, including representatives of all sectors involved as well as civil society organizations, which meets at least twice a year.

1. [Law no. 38/2018](https://dre.pt/pesquisa/-/search/115933863/details/maximized) of 7 August, establishes the right to self-determination of gender identity and gender expression, as well as the right to the protection of each person’s sex characteristics. It is in force since the 8th of August 2018.

This is the first integrated legal framework to protect the rights of trans and intersex persons in Portugal, including new measures to prevent discrimination in a variety of fields: legal documents, education and healthcare, among others. The final formulation of the law reflects contributions from civil society organisations representing trans persons, health professionals and social science experts, as well as lessons from other countries.

Based on the principle of self-determination, this new law:

* Distinguishes legal and social rights from medical procedures, eliminating the requisite of a medical diagnosis for legal gender recognition (similarly to Malta, Norway, Argentina, etc.);
* Ensures respect for the diversity of trans identities, namely regarding body changes or gender expression;
* Concerning intersex persons, treatments and interventions at any age without the person’s consent are forbidden except in cases of proven risk for the person’s health.

Moreover:

* Health authorities must guarantee the access of trans persons to specialised services and define a standard model of intervention;
* Measures must be taken to prevent discrimination in schools, including teachers’ training and complaint mechanisms;
* Change of gender marker in legal documents is possible since the age of 16. For those aged 18 or older, the procedure is requested by the individual at the civil registry. For minors (aged 16 or 17), the procedure is requested at the civil registry through their legal guardians, together with a medical or psychological report confirming that the minor is fully informed and capable of making decisions.
* The law also recognizes the right of trans persons to be officially identified by the adopted name regardless of any change in legal documents – very important, especially for those under 16 at school.

This Law expressly states that the practice of any discriminatory act, including by omission, grants the injured person the right to be compensated for pecuniary and non-pecuniary damages under the general civil liability regime. Moreover, any act of retaliation against a person who presented a complaint, claim or action to defend their right to gender identity and gender expression self-determination shall be void.

1. Following the Law 38/2018, the Order 7247/2019 was adopted in August 2019 establishing the administrative measures to guarantee the free development of all children’s and youth’s personality and non-discrimination at school, namely:
* Measures to prevent and fight discrimination based on gender identity, gender expression and sex characteristics;
* Mechanisms to detect and intervene in risk situations that endanger the healthy development of children and youth with a gender identity or expression that does not correspond to their legal gender;
* Creation of conditions for an adequate protection of the gender identity, gender expression and sex characteristics against all forms of social exclusion and violence at school, based on the respect for the autonomy, privacy and self-determination of children and youth;
* Adequate training for teachers and other education professionals on these matters.
1. Also, in 2019 and following the Law 38/2018, the first Health Strategy for LGBTI Persons was produced by the Health General Directorate with contributions from seven civil society organizations representing and supporting LGBTI persons. Launched on the 1st of July 2019, the first stage of this Strategy is dedicated to the promotion of the health of trans and intersex persons, and it establishes:
* The healthcare services provided to trans and intersex persons, including referral circuits;
* A timeline for issuing organizational and clinical standards that will harmonize procedures, based on the Standards of Care da WPATH - World Professional Association for Transgender Health;
* A country-wide training plan to ensure: a) that each institution has professionals acting as focal points (to peers and to patients) on issues related with gender identity and sex characteristics; b) an increasing number of professionals are trained and prepared to clinically follow up on LGBTI persons.