**Consultation by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on practices of so-called “conversion therapy”**

(December 2019)

The Portuguese Ombudsman institution, in its capacity of national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the call for input received from the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. The current mandate holder is Maria Lúcia Amaral.

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In Portugal, there are no legal acts or provisions referring to sexual reorientation or conversion therapies.

The protection provided by the Portuguese Constitution, that proclaims human dignity as the basis of the Portuguese Republic[[1]](#footnote-1), namely by article 13[[2]](#footnote-2), prohibiting discrimination on the grounds of sexual orientation, and by article 26[[3]](#footnote-3), safeguarding the fundamental right to personal identity and fundamental right to personality development, demonstrates to be contrary to conversion therapies.

Also, in the last years, the Portuguese framework has undergone changes, with the purpose of promoting LGBTI human rights and fighting against biases, stigma, social exclusion and discrimination, whose spirit would conflict with the admissibility of such kind of practices, namely:

* Law 7/2001, of 11 May, that adopted measures to protect unmarried couples, recognizing and granting the same rights to *de facto* unions of same-sex couples;
* in 2004, article 13 of the Constitution was amended in order to include sexual orientation as one of the grounds on which discrimination is prohibited;
* Law 9/2010, of 31 May, allowed and recognized same-sex marriage;
* the Student Status and School Ethics Act, approved in September 2012, recognized that students may not, under any circumstances, be victims of discrimination based on sexual orientation and gender identity;
* the Criminal Code was amended in order to include sexual orientation (2007) and gender identity (2013) among the aggravating factors of hate crimes and of the crime of discrimination;
* the Code of Administrative Procedure was revised in 2015 and, since then, article 6 includes sexual orientation as one of the grounds on which discrimination is prohibited in the public administration;
* Law 38/2018, of 7 August, established the right to self-determination of gender identity and gender expression and the protection of the sexual characteristics of each person; this law prohibits modifications, treatments and surgeries on intersex children, except in situations of proven risk to their health. It establishes the administrative procedures necessary to change the mention of sex in the civil register and the amendment of the applicant’s name. No medical procedures, including sex reassignment surgery, sterilization or hormone therapy, are requisites to the administrative procedure.

The National Strategy for Equality and Non-Discrimination – Portugal + Equal (2018 – 2030), launched in May 2018[[4]](#footnote-4), includes the Action Plan for combating discrimination on grounds of sexual orientation, gender identity, gender expression and sexual characteristics.

This Action Plan provides for the development of guidelines and technical standards on the health field of LGBTI persons. In this context, the General Directorate for Health published, in November 2019, the document “Health Strategy for Lesbian, Gay, Bisexual, Transsexual and Intersex People - Volume 1”[[5]](#footnote-5), focusing primarily on health promotion and health care for transsexual and intersex people, with particular attention to the organizational model that, at the National Health Service level, can ensure a better response to the health needs of LGBTI people by rationalizing resources and ensuring the implementation of good practices. According to this document “*The stigma that is sometimes projected on LGBTI people, as well as the gaps in the training and preparation of most health professionals in these subjects, pre and postgraduate, affects the health needs of these persons. If, on the one hand, avoidance attitudes on the part of professionals may constraint the responses to common health problems experienced by LGBTI people, on the other hand, their scarce scientific and technical knowledge on these issues can also result in bad practice, either by omission or by improper action*”.

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* In January 2019, a private television channel broadcasted an investigation on a group of psychologists, psychiatrists and priests that carried out sexual conversion therapies[[6]](#footnote-6). It included an interview with a licensed psychologist who expressed favorable opinions to conversion therapy. This report led to some public debate on the subject. The Portuguese Association of Psychologists issued a Statement clarifying that, according to all available scientific evidence, to the very broad consensus between researchers and practitioners and to the position of leading health professional organizations, homosexuality is not a mental disorder nor does it imply any kind of disability, being a variant of human sexuality and thus cannot be associated with any form of psychopathology[[7]](#footnote-7). A complaint against the interviewed psychologist was filed before the Portuguese Association of Psychologists[[8]](#footnote-8) and is under investigation. Furthermore, an open letter, signed by more than 250 psychologists, was addressed the Portuguese Association of Psychologists, requesting an investigation of the professionals who practiced conversion therapies. The Portuguese Society of Clinical Sexology also issued a Statement on sexual orientation conversion therapies stressing that non-heterosexual sexual orientation is not a disease, disorder, or clinical syndrome[[9]](#footnote-9).
* The Commission for Citizenship and Gender Equality, the official mechanism responsible for the implementation of the public policies designed to promote gender equality in the country, transmitted to the Portuguese Ombudsman that, to the present date, no complaints had been presented with regard to conversion therapies.
* ILGA Portugal communicated that no specific complaints on conversion therapies had been received. However, several testimonies arriving to ILGA Portugal from LGB people, mainly from youngsters, report they were told by general clinic doctors and psychiatrists within the National Health Service that homosexuality is susceptible to be cured through medication and psychiatric treatment[[10]](#footnote-10)
* The non-governmental associations “Associação Plano I”[[11]](#footnote-11) and “Casa Qui”[[12]](#footnote-12) also informed that, although there were no direct complaints on conversion therapies, this is an issue of concern.
* The Portuguese Ombudsman did not receive complaints related to conversion therapies. The complaints received by the institution in connection to health issues of LGBTI persons refer to the capacity of the National Health Service to provide adequate answer to sexual reassignment surgeries.
1. Article 1 (Portuguese Republic): Portugal is a sovereign Republic, based on the dignity of the human person and the will of the people and committed to building a free, just and solidary society. [↑](#footnote-ref-1)
2. Article 13 (Principle of equality): All citizens possess the same social dignity and are equal before the law.

No one may be privileged, favored, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation. [↑](#footnote-ref-2)
3. Article 26 (Other personal rights): 1. Everyone is accorded the rights to personal identity, to the development of personality, to civil capacity, to citizenship, to a good name and reputation, to their image, to speak out, to protect the privacy of their personal and family life, and to legal protection against any form of discrimination. 2. The law shall lay down effective guarantees against the improper procurement and misuse of information concerning persons and families and its procurement or use contrary to human dignity. 3. The law shall guarantee the personal dignity and genetic identity of the human person, particularly in the creation, development and use of technologies and in scientific experimentation. 4. Deprivation of citizenship and restrictions on civil capacity may only occur in the cases and under the terms that are provided for by law, and may not be based on political motives. [↑](#footnote-ref-3)
4. <https://dre.pt/web/guest/home/-/dre/115360036/details/maximized> [↑](#footnote-ref-4)
5. <https://www.dgs.pt/documentos-e-publicacoes/estrategia-de-saude-para-as-pessoas-lesbicas-gays-bissexuais-trans-e-intersexo-lgbti-pdf.aspx> [↑](#footnote-ref-5)
6. <https://tvi24.iol.pt/sociedade/programa-ana-leal/ana-leal-grupo-secreto-quer-curar-homossexuais> [↑](#footnote-ref-6)
7. <https://www.ordemdospsicologos.pt/pt/noticia/2454> [↑](#footnote-ref-7)
8. In 2015, the Portuguese Psychologists Association established the Working Group with LGBT People, which produced the Guidelines for Psychological Intervention with LGBT People (2017), available at <https://www.ordemdospsicologos.pt/ficheiros/documentos/guidelines_opp_lgbt_marco_2017.pdf> [↑](#footnote-ref-8)
9. <https://www.tandfonline.com/doi/full/10.1080/19317611.2019.1642280> [↑](#footnote-ref-9)
10. In 2014, ILGA Portugal conducted a survey on access to health services. It revealed that in 11 % of medical appointments and psychotherapy consultations within the National Health Service to LBG persons it was suggested that homosexuality was a disease and could be cured <https://ilga-portugal.pt/ficheiros/pdfs/igualdadenasaude.pdf> [↑](#footnote-ref-10)
11. <https://www.associacaoplanoi.org/> [↑](#footnote-ref-11)
12. <https://www.casa-qui.pt/> [↑](#footnote-ref-12)