



Strasbourg, 18 March 2013

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**STEERING COMMITTEE FOR HUMAN RIGHTS  
COMITE DIRECTEUR POUR LES DROITS DE L'HOMME**

**(CDDH)**

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**Follow-up to Committee of Ministers' Recommendation CM/Rec(2010)5  
on measures to combat discrimination on grounds of  
sexual orientation or gender identity**

**Suivi de la Recommandation CM/Rec(2010)5 du Comité des Ministres  
sur des mesures visant à combattre la discrimination fondée sur  
l'orientation sexuelle ou l'identité de genre**

**Member States replies/Réponses des États membres**

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**ALBANIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☐ Adequate X ☒ Insufficient ☐ Absent ☐

Please explain your reply.

In compliance with the recommendations the implementation of the Action Plan “For non-discrimination because of sexual orientation and gender identity 2012-2014” has started.

The recommendations have been taken into account also by the Commissioner for Protection from Discrimination during their practice in processing cases of discrimination because of sexual orientation / gender identity.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. X ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Throughout 2012 the inter-institutional group has worked together and the Action Plan for “non-discrimination because of sexual orientation or tender identity” 2012-2014 was adopted.

On the basis of this plan and the implementation of the Law for Protection from Discrimination work is being done to see if there is a necessity for interventions in the law. Meanwhile amendments have been proposed to the Penal and Labor Codes, which deal specifically with additions for protection from discrimination because of sexual orientation and gender identity.

Are there measures in place to redress any such discrimination?

a. ☐ b. X ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Action Plan against discrimination has started implementation, which so far has consisted on raising capacities of employees from central and local institutions, in raising awareness of the general public through meetings with LGBT organizations, activities on International Day against Homophobia, several publications etc.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation

2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

Yes. The adoption of the Law for Protection from Discrimination in February 2010; the establishment and strengthening capacities of the Office for Protection from Discrimination; creation of Inter-institutional group for drafting an action plan; the adoption and implementation of the plan; raising capacities of institutions; awareness raising activities.

The OSCE/ODIHR is preparing a training program to raise capacities of the Police, inspectors and civil society organizations in relation to crimes and speeches motivated by hatred towards different social groups, including LGBT. These trainings will take place in coordination with the State Police, the Police Academy, the Prosecutor, the Ministry of Justice, Ombudsman, and Commissioner for Protection from Discrimination etc.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. X ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. X ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☐ d. X ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Commissioner for Protection from Discrimination keeps annual records of cases it investigates during the year. The data is folded in accordance with the cause of discrimination, area, gender of complainant, final decision on the case and the type of measure order by the Commissioner in order to redress the discriminatory action.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The "Law for Protection from Discrimination" guarantees protection from discrimination because of sexual orientation and gender identity. Based on this law, victims of discrimination

can submit complaints at the Commissioner for Protection from Discrimination as well as courts and other judicial bodies. When the Commissioner identifies that a discriminatory action has taken place, with a specific decision she orders appropriate measures, which have to be appropriate, effective and preventive. In case the person against whom this decision has been made does not comply with the Commissioner's decision, the latter can impose a fine on him/her. In case the person complies with the decision, within 7 days from the day the fine was imposed, the Commissioner can reverse the decision. Regarding court reviews of cases of discrimination, the Law for Protection from Discrimination predicts that when the Court finds that legal dispositions have been violated and the complainant has suffered discrimination then it can apply reparation and the time when it should take place.

In accordance with the Law for Protection from Discrimination, reparation includes among other things the remedy of legal violations and their consequences through a return to the previous situation, proper compensation for property or non-property damages or through other appropriate measures.

The introduction of measures and remedies because of discrimination under the Law for Protection from Discrimination the imposition of additional measures because of other existing legislation is not excluded. The Commissioner has prepared a copy of a complaint form which can be found on their official website: [www.kmd.al](http://www.kmd.al) which can be sent via mail or electronically.

Complaint forms are distributed regularly during awareness activities organized during 2012 and will continue in 2013. Activities where the Commissioner has met with citizens have taken place on very regular bases. During open days participants are informed of their rights under the law for protection from discrimination and the forms of appeal in case a violation has taken place.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

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7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The translated recommendation has been distributed at meetings with different interest groups.
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## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☐ b. ☐ c. X ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Yes. Several trainings with the police force have taken place.

February 2013 - a significant change to the Criminal Code will be required to sexual crimes section, where with the intention of eliminating discrimination that may arise due to wrong definitions and improper use of words in Albanian in all offenses, will be required to remove the word "homosexual". Sexual offenses against children, whether they are carried out with the same or opposite gender, remain punishable by Penal Code. Specifications that exists in the Criminal Code, such as: "... And homosexual sexual acts" gives the impression that they are 2 different offenses or that one of them is heavier than the other.

On the other hand from the description and punishment given by the relevant article, it is understood that we are talking about the same offence, committed between either opposite or same sex. The wrong use of the words "homosexual" is related to a wrong medical definition which has been removed from the list of medical pathologies for more than 30 years. The use of this word in the code is inappropriate, and creates reason to believe that the purpose of the use is due to prejudice and discrimination based on sexual orientation and gender identity. It is proposed that instead of the word "homosexual" to be used the word "same-sex".

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. X☒ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. X☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In proposals for changes to the Criminal Code which are now being processed in Parliament, are proposed amendments to Article 50 of this code, which is related to additional aggravating circumstances when an offence is committed and driven by motives concerning, among other things, sexual orientation and gender identity.

Meanwhile the Commissioner for Protection from Discrimination is preparing a recommendation in the context of changes to the Penal Code related to hate speech because of sexual orientation and gender identity to be considered a criminal offense.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On May 2012, PINK Embassy / LGBT Pro Albania (NGO) and the Commissioner for Protection from Discrimination prepared a brochure: "My rights in front of the Commissioner" in order to raise awareness among the LGBT community about their rights for protection from discrimination by being able to ask the help of this institutions. The brochure has been distributed to the community and continues to be distributed in different activities with the public.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Trainings of professionals are provided in the Action Plan on measures against discrimination because of sexual orientation and 2012-2014 gender identity.

- Office of the OSCE / ODIHR is preparing a training program to raise capacities of the State Police, Inspectors and organizations from civil society in relation to crimes and speeches motivated by hatred towards different social groups, including LGBT. These trainings will take place in coordination with the State Police, Police Academy, Prosecutor, Ministry of Justice, Ombudsman, Commissioner for Protection from Discrimination etc.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In order to guarantee the safety and dignity of LGBT people who are in prison, the Commissioner for Protection from Discrimination has signed an agreement of collaboration with the General Directorate of Prisons.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Commissioner has taken a decision on the language used against LGBT people by the Deputy Chairman of a political party. Hate speech is not expressly provided for by the legislation in force. In its decision the Commissioner was referring to recent practice at the European Court of Human Rights *Vejdeland and others v. Sweden* (Application no. 1813/07) and considered it a direct discrimination.

Statements of the Commissioner in public activities such as the Festival of Diversity organized on May 17<sup>th</sup> (International Day Against Homophobia) on May 17, 2012, the Commissioner declared that the institutions she represents will strongly condemn any hate speech due to sexual orientation or gender identity.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

Everyone has the right to organize collectively for any lawful purpose. This constitutes a constitutional right that is protected by law for protection from discrimination.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Systematic support of Tirana Police Force to take part in any activity carried out by LGBT organizations and by providing effective protection in all activities.

17. Have measures been taken to 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Non-governmental organizations that focus on the protection of the rights of LGBT persons are part of inter-institutional group that drafted the Action Plan. We constantly cooperate with these organizations for the implementation of this action plan activities and others. Collaboration with NGOs has been considered by the Commissioner also in relation to sharing relevant information in order to continue with investigations. Cooperation agreements between the Commissioner and NGO's have also been signed.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:



Freedom of expression, right to information and right to peaceful demonstrations is guaranteed by the Constitution of the Republic of Albania. The law for Protection from Discrimination guarantees protection from discrimination because of sexual orientation and gender identity also for these constitutional rights.

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On the International Day against Homophobia and Transphobia a series of activities were organized by PINK Embassy called "Festival of Diveristy" where representatives of government institutions, NGO-s, civil society and international organizations in order to support the needs of the LGBT community in order for them to ask for more engagement by institutions and the Albanian public for the advancement and respect of the rights of this community.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

One of the measures of the Action Plan is to review Albanian legislation. The end of this study will evidence the gaps and will make recommendation for further interventions in legislation.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

In relation to this point, two laws are in place with Commissioner offices: The law for protection from discrimination and the Law for the Protection of Personal Data, no. 9887, date 10.03.2008.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

- a. ☐ b. ☐ c. ☐ d. ☐ e. X ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X ☐

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

i) Access to employment

- a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

ii) Promotion, dismissals, pay and other working conditions

a. X ☐ b. X ☐ c. ☐ d. ☐ e. ☐

iii) Prevention and punishment of harassment

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

iv) Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. ☐ c. ☐ d. X ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no legal measures in place or in process for the recognition of changed gender, referring also to part IV of the questionnaire.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. X ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

i) Anti-discrimination training or support and teaching aids

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

ii) Information, protection and support for pupils and students

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

iii) Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. X ☐ c. ☐ d. ☐ e. ☐

iv) School equality and safety policies and action plans

a. ☐ b. ☐ c. ☐ d. ☐ e. x ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

All basic education school documentation is in the process of review: subject standards and curriculum frameworks. At the beginning of the new school year all educational departments will be instructed to adopt in their working plan activities in accordance with the Action Plan on LGBT.

According to the Law on Protection from Discrimination educational institutions have an obligation to take effective measures to prevent and combat discrimination. From a monitoring conducted by the Commissioner for Protection from Discrimination during 2011 it was concluded that schools need to implement policies and programs to combat discriminatory behaviour and bullying in schools.

Revision of textbooks to eliminate any discriminatory provision in them is necessary. This conclusion is the result of the examination of an issue that has been made by the Commissioner, after the complaint was filed by an NGO that defends the rights of LGBT discriminatory content in the text of a university subject. The Commissioner sent recommendations for authors of textbooks and the Faculties of Law and Medicine. The response was positive. Subjects took measures to remove from the market all copies of the text book, immediate revision of text and up to the marketing of the revised version the text will be accompanied by a revised material for

parts that were considered by the decision of the Commissioner that they were discriminating against the LGBT community.

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☐ b. X☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law "On Protection from Discrimination", provides protection against discrimination because of sexual orientation and gender identity in the field of goods and services, including all the goods and services related to health.

In the framework of the action plan for protection from discrimination to LGBT people, trainings for medical personnel will take place by the Ministry of Health in order to better address their specific needs.

29. Has homosexuality been removed from the national classification of diseases?

- a. X☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X☒

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

This service is not provided in Albania. There is no expertise.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. X☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law "on Protection from Discrimination", provides protection against discrimination because of sexual orientation and gender identity in the field of goods and services including housing. While the right to property is a constitutional right and protection from discrimination law protects against discrimination all their rights and freedoms provided for in the Constitution.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the

relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law "On Protection from Discrimination", provides protection against discrimination because of sexual orientation and gender identity in the field of goods and services including any benefit or advantage from social protection schemes or other social advantage offered to the public.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. X ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the law no.8432, dated 14.12.1998, "On asylum in the Republic of Albania", Albania recognizes and accepts the obligations contained in the European Convention for the Prevention of Torture and inhuman or degrading treatment or punishment in the United Nations Conventions Against Torture, to civil and political rights, on the rights of the child and any other international instrument to which the Republic of Albania is or will be a party;

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Article 7 of Law no. 8432, dated 14.12.1998, "On asylum in the Republic of Albania", provided that RA recognizes and respects the obligation not to return or ask to leave its territory, any person who has acquired the right of asylum or temporary protection that, inter alia, when in a country where their life or freedom is threatened because of race, religion, nationality, membership in a particular social group or political opinion.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Law for Protection from Discrimination regulates the implementation and observance of the principle of equality in relation to a non-exhaustive list of causes, namely sex, race, colour, ethnicity, language, gender identity, sexual orientation, political opinions, religious or philosophical beliefs, economic condition, educational or social status, pregnancy, parental affiliation, parental responsibility, age, family or marital status, residence, health status, genetic predisposition, disability, belonging to a particular group, or any other reasons.

The Commissioner for protection from Discrimination has the power:

- to offer help to victims of discrimination in pursuing their complaints about discrimination, including: - reviewing complaints from persons or groups of persons who claim to have been discriminated against; reviewing appeals by organizations that have a legitimate interest in acting on behalf of and with the written consent of the individuals or groups of individuals who claim that discrimination has occurred; conducting administrative investigations after receiving credible information of violations of the law; - administrative sanctions; submitting a written opinion on any matter that associated with investing discrimination due to the request of the court to consider the matter; applicant's representation in the judiciary, with his approval;
- conduct independent surveys concerning discrimination;
- publish reports and make recommendations on any issues related to discrimination, including recommendations for legislation change opo new legislation approval;
- raise awareness and promote the principle of equality and non-discrimination

Commissioner's powers are both public authorities and private. Split protection against discrimination on the basis of the Law "On Protection from Discrimination" guarantee for the rights and freedoms set forth in the Constitution of the Republic of Albania, in its ratified international acts and laws in force.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

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39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

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40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

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**ANDORRE**

La plupart des questions appellent une réponse fondée sur la codification suivante :

a. Oui, c'est fait <input type="checkbox"/>	b. Oui, des travaux sont en cours <input type="checkbox"/>	c. Nous avons l'intention d'y travailler <input type="checkbox"/>	d. Rien n'est encore décidé <input type="checkbox"/>	e. Non <input type="checkbox"/>
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**Section I – Mise en œuvre et diffusion de la recommandation**

1. Comment évaluez-vous la mise en œuvre de la recommandation dans votre pays ?

Pleinement satisfaisant ☐ Satisfaisant ☐ Insuffisant ☐ Absence d'impact ☐

2. Veuillez expliquer votre réponse.

En Andorre, il peut être constaté qu'il existe des mesures législatives (avec la Constitution à la tête) qui interdisent toute discrimination pour des motifs d'orientation sexuelle. Il existe également des mesures (dans le Code Pénal notamment) qui permettent combattre les discriminations qui puissent être commises.

D'un autre côté, en Andorre il n'existe pas un problème social d'intolérance et donc, il ne s'est pas révélé nécessaire de mettre en place des actions pour promouvoir la tolérance à l'égard des personnes lesbiennes, gays, bisexuelles et transgenres.

3. A-t-il été procédé à un examen des mesures en vigueur, législatives ou autres, susceptibles d'avoir pour effet, directement ou indirectement, de créer une discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez préciser et, le cas échéant, donner un exemple des mesures détectées :

Y a-t-il des mesures en place en vue de remédier à une telle discrimination

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques:

Les tribunaux corrigent les éventuelles discriminations dues à l'interprétation des textes en vigueur. Récemment, le Tribunal Supérieur a reconnu le droit, au conjoint survivant d'un mariage homosexuel officié en Espagne (arrêt du 20 décembre 2012), de percevoir une pension de veuf.

4. Des mesures (législatives ou autres) de lutte contre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre ont-elles été adoptées et mises en œuvre depuis l'adoption de la Recommandation CM/Rec(2010)5 (y compris l'éventuelle mise en place de plans d'action nationaux, l'ajout de la Recommandation dans des plans existants ou la création de groupes de travail intersectoriels pour sa mise en œuvre)?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Le cas échéant, veuillez donner des exemples de mesures adoptées ou en préparation.



5. Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives à la discrimination fondée sur l'orientation sexuelle?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives à la discrimination fondée sur l'identité de genre?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives aux crimes de haine et autres incidents motivés par la haine pour lesquels l'orientation sexuelle ou l'identité de genre de la victime peut être raisonnablement soupçonnée d'avoir été l'un des motifs de l'auteur de l'infraction ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques:

Il n'y a pas eu de crimes ni d'accidents fondés sur l'orientation sexuelle des victimes, qui aient requis l'adoption de mesures pour collecter et analyser des données.

6. Existe-t-il des voies de recours effectives pour les victimes de discrimination fondée sur l'orientation sexuelle ou l'identité de genre (y compris des sanctions en cas d'infraction et des réparations adéquates pour les victimes) ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place pour informer les victimes des dispositifs existants et faciliter leur accès à ces voies de recours ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Il n'existe pas des mesures spéciales pour informer uniquement les victimes de discriminations fondées sur l'orientation sexuelle. Ces victimes peuvent bénéficier, comme toute autre personne, des recours existants. Par exemple, le Barreau des avocats réalise toutes les semaines, des sessions d'information gratuites, où les victimes peuvent s'informer. Ceci n'empêche pas que les victimes peuvent aussi porter à la connaissance de la police ou des juges –moyennant une dénonciation ou une requête- les faits qui pourraient être constitutifs de délit.

7. Des obstacles ont-ils été rencontrés dans la mise en œuvre de la recommandation ? Si, oui, lesquels ? Non.

8. La recommandation, y compris son annexe, a-t-elle été traduite dans toutes les langues nationales ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

9. Quelles mesures ont été prises pour veiller à ce que la recommandation ainsi que son annexe soient diffusées aussi largement que possible ?

## Section II – Mise en œuvre des dispositions spécifiques énoncées en annexe

### I. Droit à la vie, à la sécurité et à la protection contre la violence

10. Y a-t-il des mesures garantissant qu'une enquête efficace, rapide et impartiale soit menée sur les allégations d'infractions pénales et autres incidents pour lesquels l'orientation sexuelle ou l'identité de genre de la victime peut être raisonnablement soupçonnée d'avoir été l'un des motifs de l'auteur de l'infraction ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

11. Y a-t-il des mesures en place pour qu'un mobile fondé sur un préjugé lié à l'orientation sexuelle puisse être pris en compte en tant que circonstance aggravante ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures en place pour qu'un mobile fondé sur un préjugé lié à l'identité de genre puisse être pris en compte en tant que circonstance aggravante ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

L'article 30 du Code Pénal prévoit que les faits commis pour des motifs basés sur le sexe ou l'orientation sexuelle –entre autres-, constituent une circonstance aggravante.  
En Andorre, la discrimination elle-même, constitue un délit selon il est prévu à l'article 338 du Code Pénal.

12. Des mesures appropriées ont-elles été prises pour s'assurer que les victimes et les témoins de « crimes de haine » ou d'autres incidents motivés par la haine fondée sur l'orientation sexuelle ou l'identité de genre soient encouragés à dénoncer ces crimes et incidents ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

13. Existe-t-il des procédures et des programmes de formation pour que les membres des forces de l'ordre, de la magistrature et du personnel pénitentiaire disposent des connaissances et des compétences requises pour identifier de tels crimes et incidents et apporter une assistance et un soutien adéquats aux victimes et témoins ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

14. Y a-t-il des mesures spécifiques visant à assurer la sécurité et la dignité des personnes lesbiennes, gays, bisexuelles et transgenres placées en prison ou se trouvant dans d'autres situations de privation de liberté, conformément au paragraphe 4 de l'annexe à la recommandation ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

15. Des mesures appropriées ont-elles été prises afin de combattre toutes les formes de « discours de haine » à l'égard des personnes lesbiennes, gays, bisexuelles et transgenres, conformément à l'Article 10 de la Convention Européenne des droits de l'homme et au paragraphe 6 de l'annexe à la recommandation ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Dans l'affirmative, des mesures spécifiques ont-elles été prises afin de sensibiliser les autorités et les organismes publics à leur responsabilité de s'abstenir de faire des déclarations pouvant raisonnablement être interprétées comme cautionnant de telles attitudes haineuses ou discriminatoires à l'égard des personnes lesbiennes, gays, bisexuelles et transgenres ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

## **II. Liberté d'association**

16. Y a-t-il des mesures garantissant la jouissance du droit à la liberté d'association (y compris l'accès au financement public disponible pour les organisations non gouvernementales) sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Le cas échéant, veuillez donner des exemples de restrictions ou exceptions aux garanties énoncées aux paragraphes 9 et 10 de l'annexe à la recommandation et indiquez si des mesures visant à revoir ou lever de telles restrictions ou exceptions sont en préparation.

17. Y a-t-il des mesures spécifiques en place pour protéger de manière effective les défenseurs des droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres contre les

actes d'hostilité et les agressions auxquels ils peuvent être exposés, y compris lorsqu'ils sont censés avoir été commis par des agents de l'Etat, conformément à la Déclaration du Comité des Ministres sur l'action du Conseil de l'Europe pour améliorer la protection des défenseurs des droits de l'homme et promouvoir leurs activités ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

18. Des mesures ont-elles été prises pour veiller à ce que les organisations non gouvernementales défendant les droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres soient consultées, de manière appropriée, sur l'adoption et la mise en œuvre de mesures pouvant avoir un impact sur les droits de l'homme de ces personnes ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

### **III. Liberté d'expression et de réunion pacifique**

19. Y a-t-il des mesures garantissant que la liberté d'expression, notamment la liberté de recevoir et de transmettre des informations concernant l'orientation sexuelle ou l'identité de genre, puisse être exercée sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures garantissant que la liberté de réunion pacifique puisse être exercée sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Si des exceptions ou des restrictions spécifiques sont en place à l'égard de ces libertés, veuillez donner des exemples et indiquer si des mesures visant à revoir ou lever ces dispositions sont en préparation :

En Andorre, toutes ces libertés sont reconnues et il n'existe pas d'exceptions ni de restrictions spécifiques à l'égard des LGBT.

20. Les services répressifs prennent-ils les mesures appropriées pour protéger les participants à des manifestations pacifiques en faveur des droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Jusqu'à présent, il ne s'est pas produit en Andorre des manifestations pacifiques en faveur des droits des personnes LGBT et donc aucune mesure n'a pas dut être adoptée.

**IV. Droit au respect de la vie privée et familiale**

21. Des mesures ont-elles été prises pour veiller à ce que les dispositions de droit pénal pouvant se prêter, en raison de leur formulation ou de leur champ d'application, à une application discriminatoire s'agissant de l'orientation sexuelle ou l'identité de genre soient abrogées, amendées ou appliquées d'une manière compatible avec le principe de non-discrimination ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

(Il n'existe pas de dispositions en droit pénal pouvant prêter à une application discriminatoire qui ait requis l'adoption de mesures.)

22. Y a-t-il des mesures visant à faire en sorte que les données à caractère personnel mentionnant l'orientation sexuelle ou l'identité de genre d'une personne ne soient ni collectées ni conservées ou utilisées d'une autre manière, sauf si cela est nécessaire à des fins spécifiques, légales et légitimes, et que les enregistrements existants non conformes à ce principe soient détruits ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez donner des exemples d'exception à ce principe, le cas échéant :

L'article 19 de la Loi 15/2003, du 18 décembre, qualifiée de protection des données personnelles , interdit la création de fichiers dans le but de collecter ou traiter des données relatives à la vie sexuelle ou autres données sensibles.  
Le Code pénal punit, à son article 184, l'obtention ou l'usage de données collectées en contre de ce que prévoient les lois. La tentative est également punissable.

23. Des mesures appropriées ont-elles été prises pour garantir la reconnaissance juridique intégrale du changement de genre d'une personne dans tous les domaines de la vie, conformément aux dispositions du paragraphe 21 de l'annexe à la recommandation?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Les conditions préalables à la reconnaissance juridique d'un changement de genre ont-elles été réévaluées afin de lever celles qui seraient abusives ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

24. Une fois le changement de sexe accompli et juridiquement reconnu, le droit d'une personne transgenre d'épouser une personne du sexe opposé à son nouveau sexe est-il effectivement garanti ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

25. Lorsque la législation nationale reconnaît les partenariats enregistrés entre personnes de même sexe, leur statut juridique et leurs droits et obligations sont-ils équivalents à ceux des couples hétérosexuels dans une situation comparable ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Lorsque la législation nationale ne reconnaît ni confère aucun droit aux partenariats enregistrés entre personnes de même sexe et aux couples non-mariés, la possibilité de fournir aux couples de même sexe des moyens juridiques ou autres pour répondre aux problèmes pratiques liés à ce fait a-t-elle été considérée?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez donner des exemples :

26. Y a-t-il des mesures en place pour s'assurer que les décisions en matière de responsabilité parentale et d'adoption d'un enfant soient prises premièrement dans l'intérêt supérieur de l'enfant, ainsi que sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Les Tribunaux veillent sur l'intérêt supérieur de l'enfant.

### **V. Emploi**

La législation prohibe-t-elle la discrimination en matière d'emploi dans le secteur public et dans le secteur privé pour des motifs d'orientation sexuelle?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

La législation prohibe-t-elle la discrimination en matière d'emploi dans le secteur public et dans le secteur privé pour des motifs d'identité de genre ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place concernant plus particulièrement :

i) Les conditions d'accès à l'emploi

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

ii) Promotions, licenciements, salaires et autres conditions de travail

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iii) La prévention du harcèlement et les sanctions applicables

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

iv) La protection du droit à la vie privée des personnes transgenres (conformément au paragraphe 30 de l'annexe à la recommandation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

La Loi de la fonction publique (du 15 décembre 2000) et notamment la Loi 35/2008 (le Code des relations de travail) interdisent toutes les formes de discrimination et notamment, celle fondée sur le sexe ou l'orientation sexuelle.

## **VI. Education**

27. Y a-t-il des mesures appropriées, législatives ou autres, visant le personnel enseignant et les élèves, afin de garantir la jouissance effective du droit à l'éducation sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, en tenant dument compte de l'intérêt supérieur de l'enfant et des droits des parents concernant l'éducation de leurs enfants ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place prévoyant plus particulièrement :

i) Formations, soutiens et outils pédagogiques anti-discrimination

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

ii) L'information, la protection et le soutien des élèves et étudiants

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iii) Des informations objectives concernant l'orientation sexuelle et l'identité de genre dans les programmes scolaires

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iv) Politiques scolaires et plans d'action pour l'égalité et la sécurité

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

En Andorre il y a différents systèmes éducatifs (andorran, français et espagnol). Dans tous ces systèmes les élèves travaillent l'exercice des droits, les libertés personnelles, le respect des autres personnes et le refus de toute discrimination.

## **VII. Santé**

28. Des mesures appropriées ont-elles été prises pour assurer la jouissance effective du plus haut niveau de santé réalisable, sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, conformément aux dispositions du paragraphe 33 de l'annexe à la recommandation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Tout le monde accède aux mêmes niveaux de santé sans discrimination.

29. L'homosexualité a-t-elle été retirée de la classification nationale des maladies ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Y a-t-il des mesures visant à faire en sorte que les personnes transgenres aient un accès effectif aux services appropriés de changement de sexe ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

La couverture par l'assurance maladie des coûts d'une procédure de changement de sexe est-elle limitée ? Dans l'affirmative, veuillez donner des précisions :

Les coûts de ces procédures ne sont pas pris en charge par la Sécurité Sociale.

### **VIII. Logement**

31. Des mesures ont-elles été prises afin de garantir la jouissance effective et égale par tous de l'accès à un logement convenable sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, la protection contre les expulsions discriminatoires, et l'égalité des droits d'acquisition et de propriété de terres et autres biens ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

L'article 338 du Code Pénal établit que les personnes qui refusent de vendre ou de louer des biens à quelqu'un, sur la prise en considération de ses conditions personnelles (comme son orientation sexuelle), commettent une discrimination punissable.

32. Par rapport aux risques encourus par les personnes lesbiennes, gays, bisexuelles et transgenres de se retrouver sans abri, des mesures ont-elles été prises pour faire en sorte que les services sociaux pertinents soient assurés sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Les services sociaux sont garantis à toutes les personnes sans faire des discriminations basées sur leur orientation sexuelle ou l'identité de genre.

### **IX. Sports**

33. Des mesures (notamment de sensibilisation) ont-elles été prises pour combattre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre (y compris les insultes discriminatoires) dans le sport ou dans le cadre de manifestations sportives ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒



Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

### **X. Droit de demander l'asile**

34. Dans le cas votre Etat a des obligations internationales à cet égard, une crainte bien fondée de persécution motivée par l'orientation sexuelle ou l'identité de genre peut-elle être reconnue comme un motif valide d'octroi du statut de réfugié et de l'asile ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

35. Votre pays s'assure-t-il que les demandeurs d'asile ne sont pas envoyés dans un pays où leur vie ou leur liberté seraient menacées en raison de leur orientation sexuelle ou de leur identité de genre ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

### **XI. Structures nationales des droits de l'homme**

36. Y a-t-il des structures nationales des droits de l'homme (organismes de promotion de l'égalité de traitement, médiateur, institutions nationales de protection des droits de l'homme) clairement mandatées pour examiner les discriminations fondées sur l'orientation sexuelle ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Y a-t-il des structures nationales des droits de l'homme (organismes de promotion de l'égalité de traitement, médiateur, institutions nationales de protection des droits de l'homme) clairement mandatées pour examiner les discriminations fondées sur l'identité de genre ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez expliquer et indiquer en particulier, le cas échéant, les possibilités d'intervention prévues par leur mandat, notamment eu égard à la discrimination multiple :

### **XII. Discrimination multiple**

37. Y a-t-il des mesures garantissant que les dispositions du droit national interdisant ou empêchant les discriminations protègent également contre les discriminations fondées sur des motifs multiples, y compris celles fondées sur l'orientation sexuelle ou l'identité de genre ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

### Section III - Suivi

38. Quelles mesures par le Conseil de l'Europe recommanderiez-vous pour garantir que les états membres s'inspirent, dans leur législation et dans leurs pratiques nationales, des principes énoncés dans la recommandation et dans son annexe ?

39. Le Conseil de l'Europe devrait-il continuer à examiner périodiquement la mise en œuvre de cette recommandation ? Si oui, cet examen devrait-il, à l'avenir, se concentrer sur des questions spécifiques ? En l'espèce, lesquelles recommanderiez-vous d'aborder ?

40. Existe-t-il des questions sur lesquelles la recommandation et son annexe devraient être modifiées ou complétées ? Si oui, merci d'indiquer lesquelles.

**ARMENIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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*Armenia perceives the implementation of the Recommendation Cm/Rec(2010)5 in the light of the statement made by Armenia when adopting this Recommendation (as also mentioned in footnote No 1). Particularly, Armenia stated that while the elimination of all types of discrimination, including on the grounds of sexual orientation, should be strongly promoted, the legal status of the Recommendation as a non-binding document and the role of national legislative bodies as definers of the legal framework of each country should not be disregarded.*

*In addition to the above-mentioned, answers to several questions in the Questionnaire have been left blank because of the perception that the situation in Armenia will not be appropriately reflected in the five types of possible answers indicated. In those cases brief explanations are provided.*

## Section I – Implementation and dissemination of the Recommendation

41. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

The Constitution of Armenia prohibits all types of discrimination. The implementation of the Recommendation shall be viewed in line with the promotion of elimination of all types of discrimination, as it is provided Article 14.1, which states: “Everyone shall be equal before the law. Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited.”

Therefore, Armenia observes the implementation of the Recommendation within its general anti-discriminatory policy, without distinguishing the rights and interests of any specific social group.

42. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please explain and, if appropriate, provide examples of any such measures found:

The legislation of Armenia *per se* does not contain discriminative clauses. Allegedly discriminatory provisions, if any, are usually removed in the drafting process of a legislative act. Moreover, special anti-discrimination clauses are to be found almost in every legal act. Although

sexual orientation or gender identity is not mentioned in these laws as grounds for discrimination, it does not imply that discrimination on these grounds is not prohibited by law.

Are there measures in place to redress any such discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Redress, according to legislation, shall be provided for any kind of infringement, including discrimination.

43. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The Office of the Human Rights Defender (HRD) is currently elaborating a Draft Law against Discrimination, which among others will deal with the issues related to discrimination on grounds of sexual orientation and gender identity.

44. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Data on discrimination on the grounds of sexual orientation or gender identity is collected not only by the corresponding law enforcement authorities, but also by the actors of civil society in that field.

45. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Regardless of the type of infringement, there is an unbiased approach towards victims in criminal procedure legislation and in practice.

The legislation of the Republic of Armenia contains a number of fundamental provisions forbidding limitation on any grounds of the rights and freedoms of individuals. Article 14.1 of the Constitution is also reflected in the sectoral legislation (Article 8 of the Criminal Procedure Code of the Republic of Armenia<sup>1</sup>, Articles 6<sup>2</sup> and 143<sup>3</sup> of the Criminal Code of the Republic of Armenia). In June 2012 a Draft Law on Domestic Violence was put into circulation by the Ministry of Labor and Social Affairs, and the Police also took an active part in the elaboration of the Draft.

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The functions of the Public Relations and Information Department of the Police of the Republic of Armenia include informing the public and providing consultative measures once such problems occur ("02" and "Duty" TV programme series, "02" weekly, "02" radio programme and the Police website [www.police.am])

46. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

No insurmountable obstacles have been indicated by the bodies and organizations directly dealing with the subject.

47. Has the Recommendation, including its Appendix, been translated in all your national languages?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

48. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation has been disseminated to all the relevant state authorities, including different ministries, the Police office and the Ombudsman office.

## Section II – Implementation of the specific provisions in the Appendix

<sup>1</sup> Article 8. Equality of All Before the Law: All people are equal before the law and shall enjoy equal protection of the law, without any discrimination.

<sup>2</sup> Article 6. Principle of equality before the law: The persons who committed a crime are equal before the law and are subject to criminal liability regardless of sex, race, color, language, religion, political or other beliefs, national or social origin, ethnic minority identity, birth, property, or other statuses.

<sup>3</sup> Article 143. Breach of citizens' legal equality:

1. Direct or indirect breach of the human rights and freedoms of citizens, for reasons of the citizen's nationality, race, sex, language, religion, political or other views, social origin, property or other statuses, which damaged the citizen's legal interests, is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment for up to 2 years.

2. The same action committed by abusing official position, is punished with a fine in the amount of 300 to 500 minimal salaries, or by deprivation of the right to hold certain posts or practice certain activities for 2 to 5 years, or with imprisonment for up to 3 years.

**I. Right to life, security and protection from violence**

49. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The legislation of Armenia ensures the protection of the rights and freedoms of all persons, regardless of their sexual orientation or gender identity.  
The principle of equality before the law and before the court is one of the basic principles in the Code of Criminal Procedure of the Republic of Armenia.

50. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

51. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Victims and witnesses of all crimes and incidents, including those involving hate based on sexual orientation or gender identity, are encouraged via the PR mechanisms of the Police to report them.

52. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area

53. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

54. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Any statements which may reasonably be understood as legitimising hatred or discrimination on any grounds are contrary to the law.

## **II. Freedom of association**

55. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

There are many registered and functioning NGOs and civil initiatives in Armenia, which deal with protection of LGBT people’s rights and interests. The state authorities neither intervene in the activity of those organizations, nor create obstacles for their registration and financing.

56. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Human rights’ activists perform freely in Armenia and their activity is not hindered by the state in any manner.

57. Have measures been taken to ensure that non-governmental organisations defending the rights of 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Any draft legislation is available on the website of the relevant state authority and thereafter on the Parliament's website. Generally public hearings are organized and round-table discussions are held.

### **III. Freedom of expression and peaceful assembly**

58. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

There is no restriction on freedom of expression in Armenia except in the exclusive cases provided by the Law on Dissemination of Mass Information.

59. Do 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In 2012, the "Guide for the Police Actions during Meetings" has been developed in the RA Police with the professional consultation and direct participation of the OSCE Expert on protection of participants in peaceful meetings, and Manager of the "Advice for Legal and Judicial Reform in the South Caucasus" Project. The Guide is aimed at ensuring the implementation of the constitutional right of citizens to freedom of assembly in peaceful manner, without the use of arms and violence. Paragraph 1 of the Guide stipulates the principle of support to peaceful assembly, "The state's positive duty to protect peaceful assembly requires from the Police to support peaceful assemblies and to protect their participants." Meanwhile, the Article 163 of the Criminal Code of Armenia incurs criminal liability for preventing the assemblies and the participation in them. The most recent example in this regard was the peaceful rally in May 2012 on the Day of Diversity proclaimed by the UN, which took place with the active participation of many LGBT organizations' representatives. The Police duly performed its functions and effectively protected the participants from the occasional acts of discontent and aggression.



**IV. Right to respect for private and family life**

60. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The provisions of the criminal legislation incurring criminal liability for homosexuality have been repealed before the adoption of Recommendation.

61. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

According to the law of the Republic of Armenia on Personal data, in the Republic of Armenia personal data are collected for clearly defined and declared legal purposes and shall not be used for other reasons, except the cases defined by law.  
Therefore, collection and processing of data that are not necessary for the achievement of the purpose of processing, is prohibited. Consequently, personal data is kept insofar those purposes require.

62. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

According to the Law of the Republic of Armenia on Civil Status Acts the sex of the person shall be recorded in the Birth Certificate. The authority responsible for registering civil status acts issues a conclusion on the correction, amendment or modification made in the Civil Status Act based on the relevant document on gender change, issued by a medical organization, according to the legislation of the Republic of Armenia. The change of the record related to sex in the Birth Certificate and the submission of the document to the passport issuing authorities shall be sufficient to change the passport in the period of time prescribed by law.

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See answer to part 1 of Question No 22.

63. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Constitution, men and women of marriageable age have the right to marry and found a family according to their free will. The Family Code states two preconditions for marriage: the voluntary mutual accord and the marriageable age.

64. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please provide examples:

65. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the legislation of the Republic of Armenia, decisions regarding parental responsibility and adoption of a child are taken in the child's interests. As to discrimination based on sexual orientation or gender identity, legislative or other measures are not envisaged.

### **V. Employment**

66. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

v) Access to employment

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

vi) Promotion, dismissals, pay and other working conditions

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

vii) Prevention and punishment of harassment

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

viii) Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See answer to question No 2.

## **VI. Education**

67. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

v) Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

The curricula of the primary schools include subjects which are related to sexual issues and address discrimination, pupils get knowledge about sexual issues, learn about addressing discrimination on sexual grounds, acquire tolerance skills.

vi) Information, protection and support for pupils and students

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

According to the " State standards of public education", the quality requirements for graduates of public education programs stem from the primary goals of public education, which, in terms of formation of pupils' values, pay importance to teaching gender equality and exclusion of sexual discrimination in the society.

vii) Objective information on sexual orientation and gender identity in school curricula ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

See answer to question No 27.

viii) School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on Education prescribes that the right to education is ensured in the Republic of Armenia, regardless of nationality, race, gender, language, beliefs, political or other views, social origin, financial situation or other aspects.

**VII. Health**

68. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Republic of Armenia Law on Public Medical Care and Services, "Everyone, regardless of nationality, race, sex, language, religion, age, health condition, political or other opinion, social origin, property and other circumstances has the right to receive medical care in the Republic of Armenia."

In recent years, the Ministry of Health and non-governmental organizations have implemented a number of studies, including behavioral research on HIV prevention, as well as on sexual orientation and gender identity issues. Discussions, seminars and informative workshops have been organized in order to raise public awareness, fight against homophobia and transphobia.

69. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

By Order N 67 of the Ministry of Economy of Armenia, dated March 31, 2005 "on the establishment of a classifier", the classifier of diseases has been established and sexual orientation in itself cannot be regarded as a disorder.

70. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

See answer to question No 22.

**VIII. Housing**

71. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The article 31 of the Constitution states: *"Everyone shall have the right to freely own, use, dispose of and bequeath the property belonging to him/her. The right to property shall not be exercised to cause damage to the environment or infringe on the rights and lawful interests of other persons, the society and the state."*

*No one shall be deprived of property except for cases prescribed by law in conformity with the judicial procedure".*

72. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See answer to question No 2.

### **IX. Sports**

73. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Measures to tackle discrimination on grounds of sexual orientation or gender identity in sports and in connection with sport events have not been taken due to the lack of necessity to take such measures.

### **X. Right to seek asylum**

74. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Law on Refugees and Asylum a refugee is [a foreign national who, owing to well-founded fear of being persecuted for the reasons of race, religion, nationality, *membership to a particular social group* or for political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of the country of his/her nationality; or who, not having a nationality and being outside the country of his/her former habitual residence, is unable or, owing to such fear, is unwilling to return to it...]. When considering an application of anyone fearing prosecution on the ground of sexual orientation or gender identity, the notion of *membership to a particular social group* could be applied.

75. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 9 (Non-refoulement) of the Law of the Republic of Armenia on Refugees and Asylum provides that: "...[T]he principle of non-refoulement means not returning a refugee in any

manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of race, religion, nationality, *membership of a particular social group*, political opinion or generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other serious events disrupting public order (...). As it was described in the answer to the question No34, the concept of *membership of a particular social group* could be applied.

#### **XI. National Human Rights Structures**

76. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The HRD's competences generally encompass dealing with cases in which human rights are breached by state bodies or state officers and the HRD perceives these issues to be systemic and works towards improving the legislation in that domain. Currently, the HRD is elaborating a Draft Law against Discrimination.

#### **XII. Discrimination on multiple grounds**

77. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

### **Section III - Follow-up**

78. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

79. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

80. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

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**AUSTRIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

81. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

E.g. Registered Partnership Act entered into force in 2010 (cf ECHR *Schalk and Kopf v Austria*, judgment 24 June 2010); the EU Equal Treatment Directives are implemented at the level of the federation as well at the level of the provinces (*Länder*). E.g. concerning the Civil Service of Austria, legislative measures have been taken to prohibit any kind of discrimination on the grounds of sexual orientation or gender identity; the Equal Treatment Act (ETA) in its section II (Equal Treatment on the – inter alia - ground of sexual orientation at the workplace) secures that no discrimination on the ground of sexual orientation may take place at the workplace; with respect to goods and services, education, social protection and social benefits (section III of the Equal Treatment Act) the levelling up is under consideration. Examples from the provinces:  
Establishment of Wiener Antidiskriminierungsstelle für gleichgeschlechtliche und transgender Lebensweisen; Gleichbehandlungsbeauftragte der Stadt Wien  
Subsidies by the province Vorarlberg granted the ngos „Go West“ and „Transman“ for counselling and supporting LGBT people.

82. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

E.g. every two years all ministers of the Austrian government report to the Chancellor about the status of equalisation in their ministries and the Chancellor has to compile all these reports to one common report. This Equal Treatment Report of the Austrian Government is sent to the National Assembly and is part of discussions and considerations there. The report of the Austrian Government is accessible for free at: <http://www.frauen.bka.gv.at/site/5535/default.aspx> (in German)

Cf example for review by civil society: [www.rklambda.at](http://www.rklambda.at)

Are there measures in place to redress any such discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

According to the ETA, victims are granted compensation (minimum amount: € 1.000,-- for harassment; € 500,-- for discrimination)



83. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

E.g. the protection was extended so that earnings of the registered mate must by no means be reason for any kind of discrimination  
The minimum amount of compensation in the case of harassment has been increased from € 720.- to € 1000.-

84. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Periodic reports by the Ombuds for Equal Treatment at federal as well at provincial level.  
E.g. the data bank of the Federal Ombud for Equal Treatment displays the annual figures of cases on discrimination on grounds of sexual orientation and on gender identity. It is planned to interlink these general figure with the type of discrimination, e.g. harassment, access to employment, promotion.

85. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Cf. : <http://www.chancen-gleichheit.at/ChancenGleichheit/Publikationen/default.htm>  
<http://www.chancen-gleichheit.at/ChancenGleichheit/Projekte/default.htm>  
In the Austrian Civil Service, victims of discrimination can not only take legal advice from the equal treatment officers (trustees on equalisation), but also get assistance from them during the procedure at the Federal Equal Treatment Commission.  
Effective legal remedies are provided by general Austrian tort law. Particularly, Sec. 1328a of the Austrian Civil Code (ABGB) entitles victims of discrimination to a claim to damages in case of violation of

their private sphere. In addition, the ETA provide for sanctions, such as compensation, in case of discrimination in the working world.

There are also easily accessible conciliatory proceedings. The Ombud for Equal Treatment supports and counsels victims including to facilitate friendly agreements for them. It does not, however, have the competence to go to court. Victims of discrimination are often supported by trade unions or the "Chamber of Work" to actually bring an action for damages.

86. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Different political opinions at parliamentary level and stereotypes motivated by religion.

87. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

88. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

Civil society has disseminated the recommendation.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

89. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Criminal police and public prosecution service are in general obliged to prosecute ex officio every suspicion of a criminal offence which gets known to them. Such a suspicion may not only be based on pure speculations, but on concrete indications for a criminal offence. For most investigation measures which require an order of the public prosecution service it is provided for that the criminal police can carry out these measures on their own, if there is danger ahead.

90. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

91. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

92. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

For many years training programmes for prison staff dealing with typical problems in that area as a standard feature. The objective of these measures is to raise the staff's awareness of socially sensitive situations. In addition when allocating the cells, i.e. accommodating the prisoners within the prison, a high level of attention is paid to ensuring that multi-occupancy cells only contain inmates who are compatible with each other so that no sexual orientation- or gender identity-related conflicts may arise. Special training programs for judges and public prosecutors are under consideration. The law enforcement authorities have to pass human rights training.

93. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Video surveillance has been established in Austrian prisons which on the one hand shall satisfy requirements of the right to privacy as well as data protection rights and on the other hand shall inter alia protect inmates from assaults etc by fellow prisoners as well as by prison staff.

All "official tasks" are to be carried out "in compliance with the applicable laws and regulations in a loyal, diligent, committed and impartial manner". Therefore any conduct of civil servants which is not subject to criminal prosecution may, if necessary, be investigated under disciplinary law (Sects. 43 and 43a of the Public Services Code of 1979)

94. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As of January 1, 2012 the scope of the Austrian Penal Code's main offence against hate speech, "Incitement" according to Sec 283, has been expanded beyond the "traditionally" protected groups (determined by race, religion or ethnic origin) and now covers also the incitement to violence or hatred against groups of persons or individual persons because of their sexual orientation or because of their gender.

## **II. Freedom of association**

95. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Federal Constitutional Law keeps both the legislative and the executive branch from making any distinctions that cannot be justified by factual reasons. Moreover, a strict principle of legality is applicable in Austria which stipulates that the entire public administration must be based on law. The administrative branch is furthermore bound by a prohibition of arbitrariness and the principle of proportionality. The Austrian legal system provides also for well-developed individual legal protection.

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

96. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Cf question 9. - All "official tasks" are to be carried out "in compliance with the applicable laws and regulations in a loyal, diligent, committed and impartial manner". Therefore any conduct of civil servants which is not subject to criminal prosecution may, if necessary, be investigated under disciplinary law (Sects. 43 and 43a of the Public Services Code of 1979)

97. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A well-established system of review of legislative proposals is working for decades; relevant ngos are invited on a regular basis to take part in that process.  
E.g. <http://www.hosiwien.at/?s=begutachtung>

### **III. Freedom of expression and peaceful assembly**

98. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

--

99. Do 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Cf. question 15
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### **IV. Right to respect for private and family life**

100. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Since 2002, all provisions of the Austrian Penal Code are gender neutral and do not refer to the sexual orientation of the victim or the perpetrator.
---

101. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

The Austrian data protection regime is very strict. According to Sec. 4.2 of the Data Protection Act data on sex life are sensitive data which ensures an increased level of protection.
--

102. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

--

103. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 15 of the Austrian Civil Status Act ( <i>Personenstandsgesetz</i> )
---

104. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

Cf the Austrian Registered Partnership Act (cf ECHR <i>Schalk and Kopf v Austria</i> ); with regard to joint adoption by a same-sex couple and adoption by a same-sex partner cf the pending case <i>X ua v Austria</i> (the judgment will be issued on 19 February 2013)
---

105. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

<p>Austrian Law allows joint custody only parents, not persons of the same sex. According to other forms of parental responsibility the sexual orientation is no criteria.</p> <p>Ad joint adoption by a same-sex couple and adoption by a same-sex partner cf the pending case <i>X ua v Austria</i> (the judgment will be issued on 19 February 2013)</p> <p>The principle of the best interests of the child has been included explicitly in Art. 1 of the Federal Constitutional Law on the Rights of Children and other relevant legislation.</p>
--

### **V. Employment**

106. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Cf. [www.chancen-gleichheit.at/ChancenGleichheit/Publikationen/default.htm](http://www.chancen-gleichheit.at/ChancenGleichheit/Publikationen/default.htm)

Sec. 13 of the Federal Act on Equal Treatment states that nobody shall directly or indirectly be discriminated against due to her or his sexual orientation. This specifically includes the establishment of employment or an apprenticeship, pay, social benefits, inhouse training, promotion, general working conditions and termination of employment. § 16 leg.cit. stipulates that every harassment by the employer or one of its representatives, any failure to protect employees from any harassment by third parties and any harassment by third parties in connection with employment constitutes an illegal discrimination. Sects. 17 to 19a contain sanctions which vary depending on the character of the discrimination. Anti-discrimination is also an integral part of curricula to ensure further awareness-raising and educate employees accordingly.

According to Sec. 4 of the Data Protection Act, data on sex life are sensitive data which ensures an increased level of protection.

### **VI. Education**

107. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

E.g. gender-sensitive education is a principle of teaching („**Geschlechtssensible Pädagogik in der Schule**“). It aims at widening the room for manoeuvre of girls and boys also in their future life. In a lively process of learning, the differences between people shall – in due consideration of the sex ration of society - - be taken into account.

### **VII. Health**

108. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Art 4 para 1 of the agreement between the Federation and the Länder relating to the securing of the rights of patients (“Patientencharta”), the Federation and the Länder undertake to secure in due time the necessary and adequate services in the field of public health for all patients without discrimination on any ground of age, sex, social origin, fortune, religion, kind and cause of the affection and the like. This comprises also the prohibition on any ground of discrimination on grounds of sexual orientation or gender identity.

109. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

110. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

### **VIII. Housing**

111. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

E.g. the City of Vienna owns approximately 220 000 flats, the access to these flats is regulated in special guidelines (the “Vormerk- und Vergaberichtlinien der Stadt Wien”) without any discrimination



112. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

E.g. the City of Vienna provides without any discrimination young people (younger than 30 years) with flats who otherwise may have problems renting a flat.

### **IX. Sports**

113. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

114. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Austrian Constitutional Court, decision of 5 March 2012, U1776/11

115. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Austrian Constitutional Court, decision of 5 March 2012, U1776/11

### **XI. National Human Rights Structures**

116. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Ombud for Equal Treatment supports and counsels victims of discrimination, intervenes with employers and other persons or institutions responsible for discrimination, facilitates friendly settlements and brings a case to the Equal Treatment Commission. If discrimination on multiple grounds takes place, the amount of compensation should be higher (Sec. 12 para. 13 and Sec. 26 para. 13 ETA).

The Ombud for Equal Treatment also supports and counsels persons feeling discriminated against on grounds of sexual orientation beyond the workplace.

The Equal Treatment Commission (GBK) and the Federal Equal Treatment Commission (B-GBK):  
Senate I

Equal treatment between women and men in employment, occupation and multiple discrimination

Senate II

Equal treatment on grounds of ethnic origin, religion or belief, age or sexual orientation in employment and occupation

Area of Authority of the GBK:

Expert opinions on whether the Equal Treatment Act has been violated or not in individual cases

In case of a violation, a proposal is presented to the employer/ person how to eliminate discrimination

Expert opinions on general questions related to discrimination

Expert opinions are published (anonymized)

### **XII. Discrimination on multiple grounds**

117. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

### **Section III - Follow-up**

118. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

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119. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

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120. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**BELGIQUE**

La plupart des questions appellent une réponse fondée sur la codification suivante :

a. Oui, c'est fait <input type="checkbox"/>	b. Oui, des travaux sont en cours <input type="checkbox"/>	c. Nous avons l'intention d'y travailler <input type="checkbox"/>	d. Rien n'est encore décidé <input type="checkbox"/>	e. Non <input type="checkbox"/>
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**Section I – Mise en œuvre et diffusion de la recommandation**

1. Comment évaluez-vous la mise en œuvre de la recommandation dans votre pays ?

Pleinement satisfaisant ☐ Satisfaisant ☒ Insuffisant ☐ Absence d'impact ☐

Veuillez expliquer votre réponse.

Suite à l'adoption de la Recommandation en 2010, les instances compétentes ont orientées de nouvelles mesures sur base de ces recommandations :

- La loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes<sup>4</sup>, qui répond déjà à toute une série de mesures visant à combattre la discrimination fondée sur l'identité de genre, est entrée dans un **processus d'évaluation** et d'évolution dont l'un des points vise à intégrer l'identité de genre comme critère spécifiquement protégé. La recommandation du Conseil de l'Europe a inspiré et soutenu la démarche de prise en compte du critère de l'identité de genre dans l'accompagnement et la défense des plaignants transgenres au sein de l'Institut pour l'égalité des femmes et des hommes.
- Flanders has been working on LGB-policy since 1995 and a T-policy since 2010 with a focus on empowerment of the target group and a mentality change in society. Its policy is based on three principles: a concerted action involving government, civil society and the academic world; the use of various tools and methodologies and the combination of a functional policy with a horizontal mainstreaming policy (in cooperation with other Ministers).

2. A-t-il été procédé à un examen des mesures en vigueur, législatives ou autres, susceptibles d'avoir pour effet, directement ou indirectement, de créer une discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez préciser et, le cas échéant, donner un exemple des mesures détectées :

- Concernant l'identité de genre, l'Institut pour l'égalité des femmes et des hommes a fait réaliser une étude qui s'est déroulée de mars 2008 à juin 2009 sur la situation sociale et juridique des personnes transgenres en Belgique « **Etre transgenre en Belgique** ». L'objectif de cette étude était de dresser un aperçu des discriminations et des inégalités observées dans la pratique, dans la politique et dans la législation, afin de pouvoir ainsi traiter les plaintes de façon correcte et efficace, développer une politique effective pour les personnes transgenres et transsexuelles et formuler des recommandations efficaces destinées aux autorités, aux particuliers et aux institutions.<sup>5</sup>

Voici les principaux résultats de cette étude:

- Aspects légaux :

<sup>4</sup> M.B., 30 mai 2007.

<sup>5</sup> [http://igvm-iefh.belgium.be/fr/publications/leven\\_als\\_transgender\\_in\\_belgi.jsp](http://igvm-iefh.belgium.be/fr/publications/leven_als_transgender_in_belgi.jsp)

- Les critères médicaux nécessaires pour accéder au changement officiel de prénom ou de sexe sont critiqués par la plupart des personnes transgenres car ils sont très stricts.
- De nombreuses personnes transgenres ne tombent pas dans le cadre légal de protection contre les discriminations, car elles n'ont pas changé officiellement de sexe, ne sont pas dans un processus de transition, ou ont l'intention de le faire.
- De plus, moins de la moitié des personnes transgenres savent que la loi qui tend à lutter contre la discrimination entre les femmes et les hommes règle également les discriminations relatives au changement de sexe, avec pour conséquence que peu de personnes transgenres portent plainte pour traitement discriminatoire.
- **Emploi :**
  - En matière d'emploi, les personnes transgenres rencontrent de très nombreux problèmes.
  - Les personnes transgenres sont souvent victimes de harcèlement sur leur lieu de travail.
  - 54,1% des personnes transgenres de l'étude cachent leur identité de genre au travail. Les réactions les plus négatives proviennent des collègues.
  - Seules 9,5% des entreprises qui appliquent une politique d'égalité des chances ou de diversité accordent de l'importance à la thématique transgenre.
  - Tant les salariés transgenres que leurs employeurs manquent d'information sur leurs droits et obligations respectifs.
  - Malgré un niveau de formation souvent élevé, 15,6% des personnes transgenres de l'étude sont au chômage. Se porter candidat pour un poste est une démarche qui se révèle souvent difficile, les documents d'identité et les diplômes non adaptés les contraignent à divulguer leur statut transgenre. Les écoles et les universités ne sont (pour le moment) pas obligées de changer le prénom sur les diplômes.
- **Soins de santé :**
  - L'étude a montré que 60% des personnes transgenres ont cherché une aide médicale ou psychologique liée à leurs problèmes d'identité de genre.
  - 62% des répondants ont déjà envisagé le suicide et 22% ont tenté de se suicider.
  - L'enquête indique que l'assistance à l'attention des personnes transgenres n'est pas suffisante et que l'accès aux soins de santé spécifiquement transgenres n'est pas optimal.
  - Le fait que les généralistes et les psychologues ne disposent souvent pas d'informations suffisantes leur permettant d'accueillir correctement et d'orienter adéquatement les personnes transgenres vers les instances compétentes constitue un problème.
  - En outre, seule une partie des interventions chirurgicales ou autres est remboursée, ce qui n'est pas bénéfique à l'accessibilité des soins.
- **Image :**
  - Les témoignages des personnes transgenres évoquent les préjugés, les stéréotypes et les opinions fausses à leur égard.
- **Soutien aux associations :**
  - La plupart des personnes transgenres de l'étude ont déjà fait appel à des associations de soutien.
  - Souvent, ces associations fonctionnent avec des moyens très limités et sur base totalement bénévole. Elles comblent en partie le vide laissé par le manque de dispositifs institutionnels et d'assistance trans-spécifique et devraient dès lors être mieux subventionnées.

- Dans une résolution adoptée le 6 décembre 2012, le Sénat demande au Gouvernement fédéral de souscrire aux principes de Yogyakarta et d'en appliquer pleinement les dispositions dans tous les domaines de la vie publique et privée, afin de mettre fin à toute discrimination basée sur l'orientation sexuelle et l'identité de genre.

Y a-t-il des mesures en place en vue de remédier à une telle discrimination

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Veillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques:

- Depuis l'étude « Etre transgenre en Belgique », l'Institut pour l'égalité des femmes et des hommes a développé son expertise en ce qui concerne la **thématique transgenre**, ce qui permet un meilleur accueil de ces personnes et une meilleure approche de la thématique.

Ainsi, le partenariat, le travail d'échange et de collaboration avec les associations représentatives des personnes transgenres s'est mis en place de manière effective et efficace, le personnel de l'Institut a été formé à l'écoute spécifique des personnes transgenres, et l'Institut participe à différents séminaires et colloques sur la thématique et organise de son côté de tels séminaires et colloques afin de donner un écho à ses recherches et recommandations dans le domaine.

Un travail sur l'accessibilité de l'information relative aux droits des personnes transgenres a été réalisé. Ainsi, le formulaire de signalement d'une discrimination a été adapté afin de s'adresser également et spécifiquement aux personnes transgenres et le site internet de l'Institut a été adapté dans le même sens.<sup>6</sup>

- En outre, des progrès ont été réalisés en matière de **diplôme**.  
En Flandre, pour les personnes transsexuelles qui ont officiellement changé de prénom, cet aspect est réglé par un décret entré en vigueur le 1er septembre 2012.  
En Fédération Wallonie-Bruxelles, l'Institut pour l'égalité des femmes et des hommes et le service du médiateur, en collaboration avec la Direction de l'égalité des chances de la Fédération Wallonie-Bruxelles ont rédigé un avis conjoint en 2012 dans le cadre du décret visant à lutter contre certaines formes de discriminations, sur les conséquences discriminatoires de la réglementation et des pratiques en matière de changement de prénom sur les titres, diplômes et autres documents certificatifs.

3. Des mesures (législatives ou autres) de lutte contre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre ont-elles été adoptées et mises en œuvre depuis l'adoption de la Recommandation CM/Rec(2010)5 (y compris l'éventuelle mise en place de plans d'action nationaux, l'ajout de la Recommandation dans des plans existants ou la création de groupes de travail intersectoriels pour sa mise en œuvre)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Le cas échéant, veuillez donner des exemples de mesures adoptées ou en préparation.

- En matière répressive, la **loi du 14 janvier 2013 modifiant l'article 405quater du Code pénal et l'article 2 de la loi du 4 octobre 1867 sur les circonstances atténuantes**<sup>7</sup>, insère un nouveau critère de discrimination relatif au changement de sexe dans le Code pénal. Elle y aggrave les peines relatives à la circonstance aggravante applicable en cas d'homicide et de coups et blessures volontaires lorsque le mobile du crime ou du délit est la haine, le

<sup>6</sup> <http://igvm-iefh.belgium.be/fr/>

<sup>7</sup> Publié au Moniteur Belge le 31 janvier 2013.

mépris ou l'hostilité à l'égard de personnes en raison de sa prétendue race, de sa couleur de peau, de son ascendance, de son origine nationale ou ethnique, de sa nationalité, de son sexe, de son changement de sexe, de son orientation sexuelle, de son état civil, de sa naissance, de son âge, de sa fortune, de sa conviction religieuse ou philosophique, de son état de santé actuel ou futur, d'un handicap, de sa langue, de sa conviction politique, de sa conviction syndicale, d'une caractéristique physique ou génétique ou de son origine sociale.

- **L'évaluation de la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes** est actuellement en cours et l'un des aspects de celle-ci envisage la nécessité de reprendre l'identité et l'expression de genre comme motifs de discrimination.
- Une **circulaire du Collège des procureurs généraux près les Cours d'Appel est en cours de préparation** au sein d'un groupe de travail réunissant : des magistrats des parquets généraux et de première instance, des représentants des cellules stratégiques des Ministres de la Justice et de l'Intérieur et de l'Egalité des Chances, de la police, du Service de la Politique criminelle, du Centre pour l'Egalité des Chances et la lutte contre le racisme et de l'Institut pour l'Egalité des Femmes et des Hommes.

Cette circulaire a pour objectif principal d'uniformiser les politiques des recherches et poursuites du chef des infractions aux lois et décrets anti-discrimination. A cette fin, elle prévoit un cadre et des critères uniformes permettant un développement homogène de cette politique sur le terrain.

Les objectifs de la circulaire sont :

- L'identification et enregistrement plus efficaces de faits de discrimination;
  - La sensibilisation des magistrats du parquet, de l'auditorat du travail, du tribunal de la jeunesse et de la police à la problématique et à la législation actuelle;
  - L'orientation plus efficace dans la recherche et la poursuite des infractions concernées pour les magistrats et les policiers sur le terrain;
  - L'amélioration de la collaboration et de l'échange de l'information entre le Centre pour l'Egalité des Chances et la Lutte contre le racisme, l'Institut pour l'égalité des femmes et des hommes et les acteurs policiers et judiciaires ;
  - Une attention particulière sera portée sur la recherche des infractions commises par le biais d'Internet et des collaborations spécifiques seront développées.
- Le **plan interfédéral de lutte contre les violences homophobes et transphobes** adopté le 31 janvier 2013 vise à prévenir et à combattre toutes les formes d'agression homophobe et transphobe dues à l'orientation sexuelle réelle ou supposée et à l'identité ou l'expression de genre d'une personne dans toutes les phases de sa vie.  
Le plan s'étend sur deux ans (2013-2014) et décrit six priorités comprenant un certain nombre d'objectifs et correspond aux conclusions des travaux préparatoires.

Les six objectifs du plan sont :

- 1) Le développement des connaissances ;
- 2) L'amélioration de la législation ;
- 3) L'amélioration de la prévention ;
- 4) La sensibilisation ;
- 5) L'aide aux victimes ;
- 6) Le suivi et les poursuites.

Ce plan interfédéral a pour objectif de créer un cadre général d'action, en concertation avec les gouvernements concernés et les acteurs institutionnels chargés de sa mise en œuvre.

Pas moins de trois groupes seront chargés :

- de l'amélioration de la coopération (groupe interdépartemental) ;
- de l'échange de connaissance (réseau interfédéral d'experts) ;
- de l'évaluation et de la communication du plan (comité de pilotage).

En outre, dans un second temps, le plan d'action sera élargi afin de promouvoir la qualité de vie, élément nécessaire dans la prévention. Le plan d'action visera à combattre la discrimination des LGBT et de promouvoir l'égalité des chances de ce groupe. Ceci impliquera le développement d'une matrice des actions politiques existantes ainsi que l'élargissement et la concrétisation du plan actuel en actions et indicateurs.

- Flanders is working on changing the existing legislation to include the grounds gender identity and gender expression as separate grounds (now included under sex).

4. Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives à la discrimination fondée sur l'orientation sexuelle?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives à la discrimination fondée sur l'identité de genre?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐ (Communauté et Région flamande)

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (l'Institut pour l'égalité des femmes et des hommes)

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (Fédéral)

Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives aux crimes de haine et autres incidents motivés par la haine pour lesquels l'orientation sexuelle ou l'identité de genre de la victime peut être raisonnablement soupçonnée d'avoir été l'un des motifs de l'auteur de l'infraction ?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques:

- La **circulaire Col 14/2006** « lutte contre les actes homophobes » vise l'enregistrement des données au sein des parquets. Une infraction à la loi est encodée selon le code de prévention qui lui est propre. De surcroît, le parquet dispose d'un champ contexte dans lequel il peut inscrire le terme « homophobie » si l'acte semble être motivé par l'homophobie. Des discussions sont en cours afin de modifier cette circulaire pour la rendre plus efficace. La circulaire du collège des procureurs généraux près les Cours d'Appel, actuellement en préparation, prévoit au sein de la police et des acteurs judiciaires, l'identification et l'enregistrement plus efficace des faits de discrimination, de même que l'échange d'information avec l'Institut pour l'égalité des femmes et des hommes. (cfr. Question n°3)
- Une banque de données a été créée au sein de l'**Institut pour l'égalité des femmes et des hommes** afin de consigner les types de signalements qui nous parviennent.
- Le **Centre pour l'égalité des chances et la lutte contre le racisme**, collecte et analyse des données, il les publie dans son rapport annuel.<sup>8</sup>

<sup>8</sup> Voir : rapport annuel 2011, p. 88. Nouveaux dossiers 2011 - orientation sexuelle par domaine. ([http://www.diversite.be/index.php?action=publicatie\\_detail&id=147&thema=2&select\\_page=216](http://www.diversite.be/index.php?action=publicatie_detail&id=147&thema=2&select_page=216)).

- Via ad hoc research and structural research in the Research **Centre for Equal Opportunities**, in 2012, research on violence against LGB was set up. Via in-depth interviews with victims insight was gained into the circumstances and impact of these violent experiences.

That same year a project was launched that researched genderbased violence and violence against LGBT in Brussels via 'participative observation'. The scope is wider than just violence against LGB. It focuses on people that 'transgress' gender expectations.

In 2013 the research on LGB will be followed-up by a quantitative survey focusing on the nature of the aggression, the prevalence, relation with gender conformity, impact, etc. The results of both will be available in 2014.

5. Existe-t-il des voies de recours effectives pour les victimes de discrimination fondée sur l'orientation sexuelle ou l'identité de genre (y compris des sanctions en cas d'infraction et des réparations adéquates pour les victimes) ?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place pour informer les victimes des dispositifs existants et faciliter leur accès à ces voies de recours ?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- La *loi du 10 mai 2007 tendant à lutter contre certaines formes de discriminations* autorise certaines associations à 'ester en justice'. Il s'agit du Centre pour l'égalité des chances et la lutte contre le racisme, de syndicats, d'organisations patronales, d'organisations du personnel de la fonction publique, d'organisations d'indépendants, d'établissements d'utilité publique et d'associations qui, en vertu de leurs statuts, ont pour but de défendre les droits de l'Homme ou de combattre la discrimination. Ces organisations peuvent agir en justice soit au civil en introduisant une procédure devant le tribunal compétent, soit au pénal en déposant une plainte auprès du procureur du roi.
- Le **Centre pour l'égalité des chances et la lutte contre le racisme** reçoit et enregistre des plaintes, aide les victimes de discriminations, met sur pied des campagnes d'information. Si une personne pense être victime d'une discrimination, elle peut contacter le Centre. Celui-ci assure un traitement personnalisé de son dossier, de manière confidentielle et en concertation étroite avec la personne. Le Centre répond à toutes les questions, donne des conseils, intervient dans des conciliations et des médiations. Il peut aussi entreprendre des procédures judiciaires. Pour faire cesser la discrimination, on peut s'adresser au tribunal. Mais, le Centre opte en premier lieu pour le dialogue. Des collaborateurs expérimentés et professionnels écoutent la plainte et aident les victimes à faire une analyse de la situation et des possibilités. Le Centre joue un rôle actif dans la conciliation/médiation.

Le centre publie également des brochures d'information sur les voies de recours disponibles en cas de discrimination.<sup>9</sup>

<sup>9</sup> Brochure « Discrimination des lesbiennes » (2009) :

[http://www.diversite.be/index.php?action=publicatie\\_detail&id=64&thema=3&select\\_page=216](http://www.diversite.be/index.php?action=publicatie_detail&id=64&thema=3&select_page=216)



- Des voies de recours effectives tant sur le plan civil que pénal sont prévues par la *loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes*.

Il est important de préciser qu'à l'heure actuelle, seules les personnes transsexuelles sont concernées. La loi fédérale assimile le critère « sexe » et critère « changement de sexe ». Toutefois, la loi fédérale fait l'objet d'une évaluation en vue d'améliorer la protection offerte et l'étendre également aux personnes victimes de discrimination sur base de l'identité de genre. (cfr. Question n°1 et n°3)

Il en va de même dans les compétences de la Fédération Wallonie Bruxelles et son décret du 12 décembre 2008 tendant à lutter contre certaines formes de discrimination.

- En vertu de sa loi fondatrice et des autres lois relatives à cette matière, **l'Institut pour l'Égalité des Femmes et des Hommes** a pour mission d'apporter de l'aide, dans les limites de son objet, à toute personne sollicitant une consultation sur l'étendue de ses droits et obligations. Cette aide permet à son/sa bénéficiaire d'obtenir des informations et des conseils sur les moyens de faire valoir ses droits.

Tout comme le Centre pour l'égalité des chances et la lutte contre le racisme, l'Institut peut ester en justice dans les litiges auxquels peut donner lieu l'application de la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes, ainsi que du chapitre Vbis de la loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail et des lois pénales et autres lois ayant spécifiquement pour objet de garantir l'égalité des femmes et des hommes.

**L'Institut pour l'égalité des femmes et des hommes** diffuse les informations sur les moyens de faire valoir les droits des personnes trans', au travers de ses missions d'information et de conseil à l'attention des victimes et témoins de discrimination<sup>10</sup>.

L'étude « Etre transgenre en Belgique » diffusée en 2009 a également contribué à la diffusion d'informations, sur les recours notamment.

Enfin, des contacts étroits et réguliers avec le monde associatif transgenre, ainsi que de nombreux colloques et séminaires sur ce thème, participent également à la diffusion d'informations sur les droits et les recours offerts aux personnes victimes. Le site internet de l'Institut constitue également une source utile d'informations.

- The decree holding the framework for the Flemish Equal Opportunities and Equal Treatment Policy, 10 July 2008 also contains legal remedies in case of discrimination on the basis of SOGI. (section V, sanctions and procedures, from art. 27 on). For ex: invalidity of legislative measures contrary to the antidiscrimination legislation, damages in case of discrimination, non-compliance penalty and imprisonment.
- Victims of discrimination can file a complaint in complaint centres "Meldpunten" (in 13 cities in Flanders) and at the **Centre for Equal Opportunities and Opposition to Racism**. These complaint centres have the competence to mediate between partners. If no agreement can be reached, the Centre for Equal Opportunities and Opposition to Racism can provide assistance, either on behalf or in support of the complainant, in court proceedings.

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Brochure « Poser une question. Introduire un signalement. Le traitement des demandes individuelles au Centre pour l'égalité des chances et la lutte contre le racisme. » (2012) :

[http://www.diversite.be/?action=publicatie\\_detail&id=158&thema=2&select\\_page=216](http://www.diversite.be/?action=publicatie_detail&id=158&thema=2&select_page=216)

<sup>10</sup> Publications telles que les brochures d'information sur l'aide juridique offerte aux personnes trans', accueil téléphonique via un numéro d'appel gratuit.

- Dans le cadre d'un protocole signé avec la région wallonne, le Centre pour l'égalité des chances et la lutte contre le racisme collabore avec les "**espaces Wallonie**", présents dans 10 villes wallonnes. Les citoyens victimes d'une discrimination seront orientés via ces points d'appui vers le Centre pour l'égalité des chances et la lutte contre le racisme.

6. Des obstacles ont-ils été rencontrés dans la mise en œuvre de la recommandation ? Si oui, lesquels ?

- Ce volet fera partie d'un monitoring externe par l'ECRI lors de sa prochaine visite en Belgique du 11 au 15 mars 2013.

7. La recommandation, y compris son annexe, a-t-elle été traduite dans toutes les langues nationales ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Quelles mesures ont été prises pour veiller à ce que la recommandation ainsi que son annexe soient diffusées aussi largement que possible ?

- Suite à son adoption le 31 mars 2010, la recommandation a été diffusée auprès des administrations nationales et régionales, en demandant la plus large diffusion possible, y compris auprès des associations concernées.

## Section II – Mise en œuvre des dispositions spécifiques énoncées en annexe

### 1. Droit à la vie, à la sécurité et à la protection contre la violence

9. Y a-t-il des mesures garantissant qu'une enquête efficace, rapide et impartiale soit menée sur les allégations d'infractions pénales et autres incidents pour lesquels l'orientation sexuelle ou l'identité de genre de la victime peut être raisonnablement soupçonnée d'avoir été l'un des motifs de l'auteur de l'infraction ?

- a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- La **circulaire COL 14/2006** prévoit que si la police constate une infraction ou acte une plainte, elle l'enregistre sous son code habituel. Si elle constate que le mobile de l'infraction a un caractère homophobe, elle indique ce caractère dans le champ « mention parquet » prévu dans l'en-tête de la première page du procès-verbal. (cfr. Question n°4)
- Le **plan interfédéral de lutte contre les violences homophobes et transphobes** adopté le 31 janvier 2013, vise notamment une meilleure coordination entre la police et la justice. (cfr. Question n°3)
- La **circulaire du Collège des procureurs généraux près les cours d'appel**, actuellement en préparation et à destination des services de police et des parquets, vise toutes les formes de discriminations, y compris l'homophobie, et devrait assurer un suivi d'une plainte dès le moment de son dépôt. Des magistrats ainsi qu'un policier de référence seront désignés. De plus, des formations à leur attention seront organisées ainsi que des campagnes de sensibilisation. (cfr. Question N°3 et n°4)

10. Y a-t-il des mesures en place pour qu'un mobile fondé sur un préjugé lié à l'orientation sexuelle puisse être pris en compte en tant que circonstance aggravante ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures en place pour qu'un mobile fondé sur un préjugé lié à l'identité de genre puisse être pris en compte en tant que circonstance aggravante ?

- a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Le code pénal belge prévoit une aggravation des peines lorsque certains crimes et délits sont commis avec pour mobile la haine, le mépris, l'hostilité à l'égard de la victime en raison notamment de son sexe. Le droit pénal étant de stricte interprétation, une interprétation extensive du critère « sexe », pour y inclure le changement de sexe ou l'identité de genre n'est pas possible, notamment pour des raisons de sécurité juridique.  
Des travaux d'adaptation sont en cours, dans un souci d'amélioration constante de la législation. La loi précitée du 14 janvier 2013, publiée au Moniteur belge la 31 janvier 2013, insère un nouveau critère de discrimination dans l'article 405quater du Code pénal, à savoir le changement de sexe. (cfr. Question n°3)
- A titre d'exemple, des décisions judiciaires relatives à des crimes de haine motivés par l'homophobie:
  - Par arrêt du 5 janvier 2011, la Cour d'appel de Bruxelles condamne un homme pour un car-jacking et le vol d'un portefeuille et d'un gsm et aggrave la peine en raison du caractère volontaire, délibéré et homophobe de l'agression.
  - Par décision du 3 mars 2011, le Tribunal correctionnel de Liège retient la présence de circonstances aggravantes et l'incitation à la violence sur base de l'orientation sexuelle des victimes (deux hommes insultés et frappés par le passager d'une voiture – lorsqu'ils se tenaient par la main).
  - Par une décision du 18 janvier 2012, le Tribunal correctionnel d'Anvers juge que l'influence de l'orientation sexuelle n'est pas prouvée, mais bien que la violence dont il est question est inacceptable et gratuite. La victime avait fait connaissance de quelques jeunes dans un café et il est gravement battu par eux, après avoir quitté les lieux (5 semaines d'incapacité de travail, édenté, fracture au niveau du bras).
  - Par jugements du 26 mars et 20 avril 2005, le Tribunal de la jeunesse de Louvain a condamné l'attitude et les propos envers des victimes de coups et blessures, inspirés par la haine, le mépris ou l'animosité en raison de leur orientation sexuelle. Les victimes, un couple homosexuel, se rendaient vers une fête holebi et marchaient main dans la main en se bécotant. Ils ont été agressés physiquement par 3 mineurs. Avant et durant l'agression, les auteurs des faits ont profané des insultes homophobes, comme « sales pédés (vuile jeanetten) ». Le juge a déclaré la constitution de partie civile de la victime et du Centre recevable et fondée en se basant sur les propos et actes envers les victimes et le Centre a reçu 1 € de dédommagement.<sup>11</sup>
- Le nouveau plan d'action interfédéral contre les violences homophobes et transphobes prévoit que la législation pertinente, tant fédérale que communautaire et régionale, devra reprendre non seulement l'orientation sexuelle, mais également l'expression et l'identité de genre.

11. Des mesures appropriées ont-elles été prises pour s'assurer que les victimes et les témoins de « crimes de haine » ou d'autres incidents motivés par la haine fondée sur l'orientation sexuelle ou l'identité de genre soient encouragés à dénoncer ces crimes et incidents ?

<sup>11</sup> Projet de compilation d'informations en vue de la visite d'ECRI – Commission européenne contre l'intolérance et le racisme – en mars 2013 en Belgique, p. 17.

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- La *circulaire du Collège des PG n°14/2006 du 26 juin 2006* visant à lutter contre les actes homophobes, oblige notamment les policiers à signaler dans leurs P.-V. si un mobile homophobe peut être invoqué en cas de constatation d'une infraction. (cfr. Questions n° 4 et n°9)
- La police a collaboré avec le cabinet du secrétaire d'Etat à l'égalité des chances de Bruxelles capitale sur une campagne de sensibilisation afin d'encourager la communauté homosexuelle à déposer plainte à la police.
- Le service Diversité de la police fédérale a lancé une campagne de sensibilisation sur la cyberhaine pour toute la police intégrée et pour la population.  
[www.cyberhate.be](http://www.cyberhate.be)
- On peut également mentionner la proposition de résolution relative à l'instauration de la plainte anonyme en cas de violence homophobe (*Doc. parl., Chambre. Sess. ord., 2011-2012, doc. n° 53-2136/001*), et la proposition de résolution afin d'améliorer le respect et les droits des personnes LGBT en Belgique (idem, doc. N°53-2352).
- The Province of Flemish Brabant created an informative brochure on transphobic violence for police services and discrimination contact points that focuses on the legal framework, reporting and follow-up, searches, cooperation with civil society, referral,...
- Le Centre pour l'égalité des chances a lancé en 2011 une campagne de sensibilisation pour lutter contre le sous-rapportage des faits homophobes (discriminations, délits de haine,...). Campagne « Signale-le » (2011) <http://www.signale-le.be/>
- La *loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes* s'applique actuellement aux personnes transsexuelles, de même que le décret de la Fédération Wallonie-Bruxelles. Lorsque l'identité de genre comme telle sera protégée, les victimes ou témoins de discrimination fondée sur l'identité de genre bénéficieront de l'ensemble des mesures déjà d'application pour les personnes transsexuelles, et notamment la possibilité de saisir l'Institut pour l'Egalité des Femmes et des Hommes d'une plainte pour ce type de faits, de bénéficier d'une écoute, de conseils et d'aide juridique gratuite. L'Institut assure l'anonymat de la victime ou du témoin vis à vis de tiers.
- Des formations de magistrats et des forces de l'ordre sont organisées avec la participation active de l'Institut pour l'Egalité des Femmes et des Hommes, de façon à permettre un accueil approprié des personnes victimes ou témoins, et un traitement adéquat de dossiers de crimes de haine.

12. Existe-t-il des procédures et des programmes de formation pour que les membres des forces de l'ordre, de la magistrature et du personnel pénitentiaire disposent des connaissances et des compétences requises pour identifier de tels crimes et incidents et apporter une assistance et un soutien adéquats aux victimes et témoins ?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐ (personnel pénitentiaires)
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Concernant le Centre de formation DG EPI (Direction Général Etablissements pénitentiaires) pour la région Sud (CFPP), il n'existe pas à l'heure actuelle de réel cours concernant la problématique. Néanmoins, l'ensemble du programme de formation est axé sur les règles élémentaires telles que l'intégrité, la déontologie et le respect des droits humains à travers des cours théoriques et pratiques. Un seul cours spécifique, « Relations à risque », aborde la problématique en insistant sur le respect des limites et de la distance essentielle à respecter dans l'approche d'une personne détenue. Ce cours est donné en formation initiale et en formation continuée.

Concernant le Centre de formation DG EPI pour la région Nord (OCCP), il n'existe pas non plus de programme de formation spécifique afin que les membres du personnel soient capables d'identifier de tels crimes et incidents et de prévoir un accueil adéquat pour les victimes.

Cependant, il existe dans la formation de base pour les assistants pénitentiaires un module « savoir manier la diversité, la multiculturalité » sous le thème le thème général « aptitudes sociales ». Il s'agit d'une formation de 7 heures qui sensibilise de façon préventive la confrontation à la diversité. Pour le personnel qui n'exerce pas de tâches de surveillance, ils sont formés pendant 7 heures sur comment manier des conflits, la diversité pouvant en être la source.

- Des formations de magistrats et des forces de l'ordre sont organisées avec la participation active de l'**Institut pour l'Egalité des Femmes et des Hommes**, de façon à permettre un accueil approprié des personnes victimes ou témoins, et un traitement adéquat de dossiers de crimes de haine.
- Des formations continuées, sur base volontaire, sont organisées par le Service Egalité Diversité de la police fédérale et données par le **Centre pour l'égalité des chances et la lutte contre le racisme** aux fonctionnaires de police. Le Module 5.4 « discrimination » est donné en formation de base à tous les futurs policiers belges.

13. Y a-t-il des mesures spécifiques visant à assurer la sécurité et la dignité des personnes lesbiennes, gays, bisexuelles et transgenres placées en prison ou se trouvant dans d'autres situations de privation de liberté, conformément au paragraphe 4 de l'annexe à la recommandation ?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Le principe de base est la non-discrimination (par exemple dans le contexte des visites dans l'intimité), mais actuellement il n'y a rien de proactif dans ce domaine.

14. Des mesures appropriées ont-elles été prises afin de combattre toutes les formes de « discours de haine » à l'égard des personnes lesbiennes, gays, bisexuelles et transgenres, conformément à l'Article 10 de la Convention Européenne des droits de l'homme et au paragraphe 6 de l'annexe à la recommandation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Dans l'affirmative, des mesures spécifiques ont-elles été prises afin de sensibiliser les autorités et les organismes publics à leur responsabilité de s'abstenir de faire des déclarations pouvant raisonnablement être interprétées comme cautionnant de telles attitudes haineuses ou discriminatoires à l'égard des personnes lesbiennes, gays, bisexuelles et transgenres ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Des dispositions pénales sont prévues dans la *loi du 10 mai 2007 visant à lutter contre certaines formes de discrimination* ainsi que dans la *loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes*, et visent à sanctionner l'incitation à la discrimination, et l'incitation à la haine ou à la violence. Ces lois contiennent chacune des dispositions spécifiques s'appliquant aux agents publics. La même disposition est également prévue à l'article 55 du décret de la Fédération Wallonie Bruxelles.
- Le **Centre pour l'égalité des chances et la lutte contre le racisme** a lancé en 2012 deux campagnes de sensibilisation concernant la lutte contre les discours de haine.<sup>12</sup> (cfr. Question n°11)
- In October 2012 a charter was signed by the major actors in the educational field aiming to create a policy on gender and sexual identity in schools. In that framework a broad range of activities will be set up, such as collecting and implementing useable materials in good practices, setting up networks, and sensitising and informing key players (such as school directions, teachers, pedagogical services, teachers trainings, etc.)

## II. Liberté d'association

15. Y a-t-il des mesures garantissant la jouissance du droit à la liberté d'association (y compris l'accès au financement public disponible pour les organisations non gouvernementales) sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Le cas échéant, veuillez donner des exemples de **restrictions ou exceptions** aux garanties énoncées aux paragraphes 9 et 10 de l'annexe à la recommandation et indiquez si des mesures visant à revoir ou lever de telles restrictions ou exceptions sont en préparation.

- Le champ d'application de la *loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes* comprend , sans discrimination fondée sur le changement de sexe, l'accès, la participation et tout autre exercice d'une activité économique, sociale, culturelle ou politique accessible au public.

16. Y a-t-il des mesures spécifiques en place pour protéger de manière effective les défenseurs des droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres contre les actes d'hostilité et les agressions auxquels ils peuvent être exposés, y compris lorsqu'ils sont censés avoir été commis par des agents de l'Etat, conformément à la Déclaration du Comité des Ministres sur l'action du Conseil de l'Europe pour améliorer la protection des défenseurs des droits de l'homme et promouvoir leurs activités ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

<sup>12</sup> 1) Campagne « Pas de haine sur scène » :

<http://www.pasdehainesurscene.be/>

2) Campagne « Stop Cyberh@te » :

<http://www.diversite.be/index.php?action=onderdeel&onderdeel=277&titel=Stop+Cyberh%40te%3A+la+police+fait+campagne>

- La loi du 10 mai 2007 visant à lutter contre certaines formes de discrimination prévoit des mesures spécifiques à l'égard des agents publics à son article 23. (cfr. Question n°14)

17. Des mesures ont-elles été prises pour veiller à ce que les organisations non gouvernementales défendant les droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres soient consultées, de manière appropriée, sur l'adoption et la mise en œuvre de mesures pouvant avoir un impact sur les droits de l'homme de ces personnes ?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Des réunions sont régulièrement organisées à l'**Institut pour l'égalité des femmes et des hommes** avec les différentes organisations représentatives des personnes transgenres afin d'organiser la collaboration aussi bien en ce qui concerne l'échange des informations, le traitement des plaintes que leur consultation en ce qui concerne les modifications législatives nécessaires y compris leur consultation formelle dans le cadre du Plan d'Action National contre l'homophobie et la transphobie.
- In Flanders there is no structural consultation with the LGBT field, but they are consulted at the beginning of the legislature to share their priorities and most relevant bottlenecks to deal with, and are funded (project wise or structurally) to help to implement the policy.
- Le **Plan interfédéral de lutte contre les violences homophobes et transphobes** récemment adopté a été élaboré en étroite collaboration avec les organisations non gouvernementales.
- Le premier **plan wallon de l'Egalité** a été adopté par l'ensemble des membres du gouvernement wallon le 24 février 2011. Il s'agit d'un plan transversal où chaque ministre du gouvernement wallon s'engage à prendre des mesures visant à réduire les discriminations en générale. Pour assurer le suivi du plan, un groupe de travail a été mis en place. Il s'agit d'un groupe intercabinet, élargi à des experts de certains axes de l'égalité des chances et la lutte contre les discriminations, dont notamment la Fédération Arc-en-ciel Wallonie (fédération wallonne des associations LGBT) (cfr. Question n°5).

### III. Liberté d'expression et de réunion pacifique

18. Y a-t-il des mesures garantissant que la liberté d'expression, notamment la liberté de recevoir et de transmettre des informations concernant l'orientation sexuelle ou l'identité de genre, puisse être exercée sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures garantissant que la liberté de réunion pacifique puisse être exercée sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Si des **exceptions ou des restrictions** spécifiques sont en place à l'égard de ces libertés, veuillez donner des exemples et indiquer si des mesures visant à revoir ou lever ces dispositions sont en préparation :

19. Les services répressifs prennent-ils les mesures appropriées pour protéger les participants à des manifestations pacifiques en faveur des droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐



Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Les forces de l'ordre sont présents aux différentes « gay prides » organisées dans le pays. L'ASBL « Rainbowcops Belgium »<sup>13</sup>, est également présente lors de ces manifestations.

#### **IV. Droit au respect de la vie privée et familiale**

20. Des mesures ont-elles été prises pour veiller à ce que les dispositions de droit pénal pouvant se prêter, en raison de leur formulation ou de leur champ d'application, à une application discriminatoire s'agissant de l'orientation sexuelle ou l'identité de genre soient abrogées, amendées ou appliquées d'une manière compatible avec le principe de non-discrimination ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- La Cour Constitutionnelle peut annuler, déclarer inconstitutionnels et suspendre des lois, décrets et ordonnances pour violation du Titre II de la Constitution (articles 8 à 32 relatifs aux droits et libertés des Belges), des articles 170 et 172 (légalité et égalité des impôts) et 191 de celle-ci (protection des étrangers) et des règles répartitrices de compétence prévues par la Constitution et par les lois de réformes institutionnelles.<sup>14</sup>
- Art. 27 of the Flemish decree holding the framework for the Flemish Equal Opportunities and Equal Treatment Policy states the invalidity of (legislative) measure contrary to the anti-discrimination legislation.

21. Y a-t-il des mesures visant à faire en sorte que les données à caractère personnel mentionnant l'orientation sexuelle ou l'identité de genre d'une personne ne soient ni collectées ni conservées ou utilisées d'une autre manière, sauf si cela est nécessaire à des fins spécifiques, légales et légitimes, et que les enregistrements existants non conformes à ce principe soient détruits ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez donner des exemples d'exception à ce principe, le cas échéant :

- La loi du 8 décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel, instaure un principe d'interdiction de traiter les données relatives à la vie sexuelle. Des exceptions à ce principe sont prévues notamment si la personne a donné son consentement, si le traitement est nécessaire à la défense des intérêts

<sup>13</sup> L'asbl Rainbowcops Belgium représente et défend les intérêts des policiers LGBT, et apporte un soutien à l'ensemble des policiers qui, dans leurs relations avec le citoyen, ont à gérer des situations difficiles, liées à la question LGBT. [www.rainbow-cops-belgium.be](http://www.rainbow-cops-belgium.be)

<sup>14</sup> Art. 142 de la Constitution

*Il y a, pour toute la Belgique, une Cour constitutionnelle, dont la composition, la compétence et le fonctionnement sont déterminés par la loi.*

*Cette Cour statue par voie d'arrêt sur :*

*1° les conflits visés à l'article 141;*

*2° la violation par une loi, un décret ou une règle visée à l'article 134, des articles 10, 11 et 24;*

*3° la violation par une loi, un décret ou une règle visée à l'article 134, des articles de la Constitution que la loi détermine.*

*La Cour peut être saisie par toute autorité que la loi désigne, par toute personne justifiant d'un intérêt ou, à titre préjudiciel, par toute juridiction.*

*Les lois visées à l'alinéa 1er, à l'alinéa 2, 3°, et à l'alinéa 3, sont adoptées à la majorité prévue à l'article 4, dernier alinéa.*



vitaux de la personne concernée, lorsque le traitement est nécessaire à la constatation, à l'exercice ou à la défense d'un droit en justice, le traitement est permis par une loi, etc.

- Une réglementation spécifique transgenre existe au niveau du registre national afin d'éviter que l'information concernant le changement de sexe de ces personnes ne soit divulguée à l'occasion notamment de la consultation des données du registre national dans le cadre d'enquêtes statistiques ou autres.

22. Des mesures appropriées ont-elles été prises pour garantir la reconnaissance juridique intégrale du changement de genre d'une personne dans tous les domaines de la vie, conformément aux dispositions du paragraphe 21 de l'annexe à la recommandation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Les conditions préalables à la reconnaissance juridique d'un changement de genre ont-elles été réévaluées afin de lever celles qui seraient abusives ?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- La *loi du 10 mai 2007 relative à la transsexualité*<sup>15</sup> introduit une procédure administrative devant l'officier de l'état civil, avec contrôle judiciaire, qui permet au transsexuel de changer de sexe rapidement, à prix abordable et de manière moins éprouvante sur le plan psychique. La demande de changement de sexe, s'effectue par simple déclaration à l'officier de l'état civil, accompagnée d'une déclaration signée par un psychiatre et un chirurgien. Quant aux effets, dès que l'acte portant mention du nouveau sexe est inscrit dans le registre des actes de naissance, la personne a juridiquement changé de sexe et est traitée conformément à son nouveau sexe. La loi prévoit par ailleurs que le transsexuel dispose d'un droit au changement de prénom (auparavant, il s'agissait d'une faveur accordée par le ministre de la Justice).
- Répondant à la première partie de cette question, l'Institut pour l'égalité des femmes et des hommes soutient que, la *loi du 10 mai 2007 sur la transsexualité* a eu pour objectif de simplifier la procédure visant une reconnaissance juridique intégrale du changement de genre d'une personne en transformant cette reconnaissance en un processus purement administratif au lieu d'une procédure judiciaire. Visant plus particulièrement les conditions préalables à la reconnaissance juridique d'un changement de genre, cette loi a rapidement suscité d'importantes réticences, en raison des conditions médicales strictes et de l'exigence de stérilisation irréversible qui y figurent.  
Une analyse de ces conditions préalables a été réalisée par l'Institut en concertation avec les organisations représentatives des personnes transgenre et des travaux sont en cours pour la formulation de recommandations.

23. Une fois le changement de sexe accompli et juridiquement reconnu, le droit d'une personne transgenre d'épouser une personne du sexe opposé à son nouveau sexe est-il effectivement garanti ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

<sup>15</sup> M.B., 11 juillet 2007.

- Depuis l'entrée en vigueur de la *loi du 13 février 2003 ouvrant le mariage à des personnes de même sexe et modifiant certaines dispositions du Code civil*, le droit au mariage n'est plus soumis à des conditions liées au sexe des futurs époux.

24. Lorsque la législation nationale reconnaît les partenariats enregistrés entre personnes de même sexe, leur statut juridique et leurs droits et obligations sont-ils équivalents à ceux des couples hétérosexuels dans une situation comparable ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Lorsque la législation nationale ne reconnaît ni confère aucun droit aux partenariats enregistrés entre personnes de même sexe et aux couples non-mariés, la possibilité de fournir aux couples de même sexe des moyens juridiques ou autres pour répondre aux problèmes pratiques liés à ce fait a-t-elle été considérée?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez donner des exemples :

- La *loi du 23 novembre 1998 instaurant la cohabitation légale*, ne fait pas de distinction entre les cohabitants de sexes différents et les cohabitants de même sexe, et leur accorde donc les mêmes droits.
- La seconde question est sans objet.

25. Y a-t-il des mesures en place pour s'assurer que les décisions en matière de responsabilité parentale et d'adoption d'un enfant soient prises premièrement dans l'intérêt supérieur de l'enfant, ainsi que sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Depuis l'entrée en vigueur de la *loi du 18 mai 2006 modifiant certaines dispositions du Code civil en vue de permettre l'adoption par des personnes de même sexe*, les (candidats) adoptants disposent des droits et obligations identiques, qu'ils soient de même sexe ou de sexes différents.  
Par ailleurs, l'article 344-1 du Code civil précise que « *Toute adoption doit se fonder sur de justes motifs et, si elle porte sur un enfant, ne peut avoir lieu que dans son intérêt supérieur et dans le respect des droits fondamentaux qui lui sont reconnus en droit international* ».
- The **Flemish Central Authority on Adoption** works on inclusive adoption. Although same-sex couples legally have the right to adopt, numbers show that interstate adoption isn't often realisable due to the reluctance in the countries of origin to entrust children to same-sex couples. That is why an active information campaign towards those countries was started up about the possibilities and the vision existing in Flanders about adoption by same-sex couples.
- Pour lutter contre la discrimination entre les couples hétérosexuels et homosexuels en matière de droit de filiation, le gouvernement prépare une réforme en profondeur. Les partenaires de femmes lesbiennes qui accouchent d'un enfant doivent pouvoir être co-mères sans avoir recours à la procédure d'adoption.

**V. Emploi**

26. La législation prohibe-t-elle la discrimination en matière d'emploi dans le secteur public et dans le secteur privé pour des motifs d'orientation sexuelle?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

La législation prohibe-t-elle la discrimination en matière d'emploi dans le secteur public et dans le secteur privé pour des motifs d'identité de genre ?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place concernant plus particulièrement :

ix) Les conditions d'accès à l'emploi

- a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

x) Promotions, licenciements, salaires et autres conditions de travail

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

xi) La prévention du harcèlement et les sanctions applicables

- a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

xii) La protection du droit à la vie privée des personnes transgenres  
(conformément au paragraphe 30 de l'annexe à la recommandation)

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- La discrimination en matière d'emploi dans le secteur public et dans le secteur privé pour des motifs d'orientation sexuelle est prohibée spécifiquement par plusieurs législations :
  - La Convention Collective de Travail n°95 du 10 octobre 2008 (Fédéral);
  - La Convention Collective de Travail n°38 sexies du 10 octobre 2008 (Fédéral) ;
  - Le Décret du Conseil flamand du 8 mai 2002 modifié le 30 avril 2004 relatif à la participation proportionnelle sur le marché de l'emploi (Communauté flamande et région flamande);
  - Le Décret du 06 novembre 2008 relatif à la lutte contre certaines formes de discrimination, en ce compris la discrimination, entre les femmes et les hommes en matière d'économie, d'emploi et de formation professionnelle (Région wallonne) ;
  - L'Ordonnance du 04 septembre 2008 relative à la lutte contre la discrimination et à l'égalité de traitement en matière d'emploi (Région de Bruxelles-Capitale);
  - Le Décret du 17 mai 2004 relatif à la garantie de l'égalité de traitement sur le marché du travail (Communauté germanophone).
- Lorsque le critère de l'identité de genre aura été expressément inclus dans la loi fédérale et dans le décret de la Fédération Wallonie Bruxelles, les victimes de discrimination sur base de ce critère bénéficieront de toute la protection contre la discrimination offerte par la loi dans le domaine des relations de travail.
- In 2013 a brochure with information for employers will be published on the topic of transgenderism 'Transgender on the work floor'. It will provide advice and practical tips on how to deal constructively and respectfully with employees undergoing gender reassignment: terminology, the medical process, the legal framework, pointers for job interviews and hiring, and tools to deal with complicated situations during the transition process or in case of bullying or discriminatory behaviour.

**VI. Education**

27. Y a-t-il des mesures appropriées, législatives ou autres, visant le personnel enseignant et les élèves, afin de garantir la jouissance effective du droit à l'éducation sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, en tenant dument compte de l'intérêt supérieur de l'enfant et des droits des parents concernant l'éducation de leurs enfants ?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (Communauté flamande)  
 a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (Communauté française)

Dans l'affirmative, y a-t-il des mesures en place prévoyant plus particulièrement :

ix) Formations, soutiens et outils pédagogiques anti-discrimination

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (Communauté flamande)  
 a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (Communauté française)

x) L'information, la protection et le soutien des élèves et étudiants

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (Communauté flamande)  
 a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (Communauté française)

xi) Des informations objectives concernant l'orientation sexuelle et l'identité de genre dans les programmes scolaires

- a. ☐ b. ☒ c. ☒ d. ☐ e. ☐ (Communauté flamande)  
 a. ☐ b. ☐ c. ☒ d. ☐ e. ☐ (Communauté française)

xii) Politiques scolaires et plans d'action pour l'égalité et la sécurité

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (Communauté flamande)  
 a. ☐ b. ☐ c. ☐ d. ☒ e. ☐ (Communauté française)

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

L'éducation relève des compétences communautaires en Belgique.

- En ce qui concerne la **Fédération Wallonie Bruxelles**, le 12 décembre 2008 un décret a été adopté, visant à lutter contre certaines formes de discrimination, dans l'ensemble des matières relevant de la compétence de la Fédération, dont l'éducation, l'enseignement et la formation professionnelle. Le critère « sexe » et « changement de sexe » sont visés par le décret, et les protections offertes visent tant les élèves et étudiants que les professeurs.

Le décret de la Fédération Wallonie Bruxelles devra faire l'objet d'une évaluation en vue d'assurer une protection claire aux victimes et témoins de discriminations fondées sur l'identité de genre.

Au quotidien, la Direction Egalité des chances du Ministère de la Fédération Wallonie-Bruxelles veille à la diffusion du décret par l'organisation de nombreuses séances d'information et de formation à destination des fonctionnaires actifs dans le domaine de l'enseignement et de l'éducation, ainsi qu'auprès des élèves par le biais de publications adaptées, visant à informer sur les droits garantis par le décret ainsi que les moyens de les faire valoir.

- In **Flanders**, measures and tools were adopted:
  - Gender in the blender: tool with theory, exercises and tips for secondary education about gender and diversity. The website [www.genderindeblender.be](http://www.genderindeblender.be) provides tips for a gender-neutral and LGBT friendly school and examples of diversity policies;

- Open book: This project (2010-2011) provides instruments on how to break genderstereotypical and heteronormative images. The project focused on publishers of books and manuals for schools;
- Department of education structurally funds the educational work of cavarria (umbrella for LGBT organisations);
- Flag System and a manual on 'relational and sexual competences': both tools were developed by Sensoa (expertise centre on sexual health – funded by the Flemish Government). The Flag System is a tool that will allow schools to discuss 'sexually intolerable behaviour';
- The new manual serves as inspiration for schools to create a policy on relations and sexuality. The manuals focuses on the diversity of target groups: aspects of sexual orientation, (trans)gender, socio-cultural background are discussed;
- In addition the diverse contexts of teaching are taken into account relating to the diversity of the class, the age, sexual development, etc.

### VII. Santé

28. Des mesures appropriées ont-elles été prises pour assurer la jouissance effective du plus haut niveau de santé réalisable, sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, conformément aux dispositions du paragraphe 33 de l'annexe à la recommandation ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- La loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination ainsi que la loi du 22 août 2002 relative aux droits du patient, protègent les patients contre toutes les formes de discriminations dans le domaine de la santé.
- In Flanders, the employees of Centres for General Welfare receive special training on LGBT issues. A set up of a specific preventive health policy towards lesbian women regarding cervical cancer.

29. L'homosexualité a-t-elle été retirée de la classification nationale des maladies ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Y a-t-il des mesures visant à faire en sorte que les personnes transgenres aient un accès effectif aux services appropriés de changement de sexe ?

- a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

La couverture par l'assurance maladie des coûts d'une procédure de changement de sexe est-elle limitée ? Dans l'affirmative, veuillez donner des précisions :

- Concernant la procédure de changement de sexe, l'assurance maladie offre un remboursement partiel (ticket modérateur) et conditionnel pouvant être complété par une assurance hospitalisation.  
Le ticket modérateur étant la quote-part personnelle, c'est-à-dire l'ensemble des montants non-remboursés par l'assurance maladie qui sont réclamés aux patients au moment où ils ont recours aux structures de soins.
- Le nouveau plan d'action interfédéral contre les violences homophobes et transphobes prévoit l'évaluation de la loi transsexualité, avec l'avis préalable des associations LGBT, en vue de son adaptation.

### ***VIII. Logement***

31. Des mesures ont-elles été prises afin de garantir la jouissance effective et égale par tous de l'accès à un logement convenable sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, la protection contre les expulsions discriminatoires, et l'égalité des droits d'acquisition et de propriété de terres et autres biens?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- L'accès à un logement convenable sans discrimination est couvert par :
  - la loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination ;
  - la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes ;
  - le décret du 12 décembre 2008 tendant à lutter contre certaines formes de discrimination adopté par la Fédération Wallonie Bruxelles ;
  - le décret du 10 juillet 2008 portant le cadre de la politique flamande de l'égalité des chances et de traitement.
- L'évaluation de la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes est actuellement en cours et l'un des aspects de celle-ci envisage la nécessité de reprendre l'identité et l'expression de genre comme motifs de discrimination.

32. Par rapport aux risques encourus par les personnes lesbiennes, gays, bisexuelles et transgenres de se retrouver sans abri, des mesures ont-elles été prises pour faire en sorte que les services sociaux pertinents soient assurés sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- La législation belge offre une protection égale contre la discrimination dans ce domaine.
- L'évaluation de la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes est actuellement en cours et l'un des aspects de celle-ci envisage la nécessité de reprendre l'identité et l'expression de genre comme motifs de discrimination.

### ***IX. Sports***

33. Des mesures (notamment de sensibilisation) ont-elles été prises pour combattre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre (y compris les insultes discriminatoires) dans le sport ou dans le cadre de manifestations sportives ?

a. ☒ (promotion) b. ☐ c. ☒ (Centres sportifs) d. ☐ e. ☐ (Communauté française)  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ (Communauté flamande)

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Le sport relève des compétences communautaires en Belgique.

**COMMUNAUTÉ FRANÇAISE**

- Le sport est une matière couverte par le *décret antidiscrimination adopté par la Fédération Wallonie Bruxelles en 2008*.
- Concernant le sport à haut niveau, l'absence de dispositions spécifiques en matière de prévention contre *toute* forme de ségrégation est compensée par l'obligation générale pour les fédérations sportives d'intégrer dans leurs statuts ou règlements le code éthique sportive en vigueur en Communauté française (Décret du 8 décembre 2006).  
Par ailleurs, la convention de détachement de nos sportifs sous contrat vers les fédérations sportives précise que « *Le sportif doit être respectueux de l'éthique sportive en observant un comportement exemplaire et fair-play* ».
- Au niveau des Centres sportifs ADEPS (C.S), aucun texte réglementaire ne régit cette matière. Cependant, cette notion est intégrée dans le nouveau projet pédagogique, actuellement en cours de rédaction, au chapitre traitant de la volonté de la D.G. Sport de rendre ses activités accessibles à tous.  
Par ailleurs, les règlements d'organisation des événements sportifs organisés par le Service Sport pour tous de l'Adeps, imposent la mixité pour la participation aux épreuves (Rhéto-Trophée et Trophée Communes sportives).
- Concernant les Centres sportifs locaux, le *Décret du 19 juillet 2011 modifiant le décret du 27 février 2003 organisant la reconnaissance et le subventionnement des centres sportifs locaux* (intégrés) précise les conditions d'agrégation, parmi lesquelles :
  - « promouvoir une pratique sportive ambitieuse et de qualité sous toutes ses formes et sans discrimination » ;
  - « promouvoir les valeurs éthique sportive et de fair-play auprès des utilisateurs du centre ».
- Depuis 2013, la *Charte du mouvement sportif de la Fédération Wallonie Bruxelles* prévoit le rejet et la condamnation de toutes formes de discrimination. Le respect de sa charte, mais aussi sa promotion, constituent depuis 2013 l'une des conditions à l'obtention des aides disponibles à la Direction générale du Sport. Les conventions Eté Sport, Mon club-mon école et Eté Jeunesse prévoient cette clause d'adhésion et de promotion de la charte.  
Les Centres de Conseil du Sport de la D.G. Sport (antennes décentralisées) assurent également la promotion de la charte dans les activités spécifiques qu'ils organisent, ou auxquelles ils collaborent (ex. Opération Cross à l'école, synergies ou projet-pilotes avec les communes).

**COMMUNAUTÉ FLAMANDE**

- At the time of the Eurogames (2008), the Minister for Sports launched a campaign "Are you thinking about sex now?". In this campaign LGB organisations worked together with the Flemish Sports Federation. Posters were distributed, displaying images of physical contact between rugby players' during a rugby game. A feminine version portrayed a picture of two gymnasts helping each other during an exercise. This campaign was accompanied by a 'Charter for the equal treatment of heterosexuality and homosexuality in the sports club'. By signing and displaying the poster, a sports club clearly states that LGB can come out in the open about their sexual identity and that homophobic remark and actions are unacceptable.
- In 2013 the Flemish minister for Equal Opportunities is planning a campaign about homophobia in football in 2013.
- During the summer of 2013 the World Outgames are happening in Antwerp. These games are an excellent opportunity to increase the visibility of LGBT, to empower them via sports

and at the same time an excellent moment to demand attention for the fight against homophobia in all sports.

**X. Droit de demander l'asile**

34. Dans le cas votre Etat a des obligations internationales à cet égard, une crainte bien fondée de persécution motivée par l'orientation sexuelle ou l'identité de genre peut-elle être reconnue comme un motif valide d'octroi du statut de réfugié et de l'asile ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Une crainte fondée de persécution en raison de l'orientation sexuelle ou de l'identité de genre sont des motifs valables de reconnaissance de la qualité de réfugié. L'article 48/3, §4, d), de la *loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* mentionne comme motif de persécution « l'appartenance à un certain groupe social. En fonction des conditions qui prévalent dans leurs pays d'origine, les demandeurs et demandeuses d'asile ayant une crainte fondée de persécution en raison de leur orientation sexuelle ou leur identité de genre sont reconnus réfugiés en raison de leur appartenance à un « un certain groupe social », au sens de la loi précitée.
- Les instances belges prennent en compte les besoins spécifiques et la vulnérabilité de certains groupes de migrants spécifiques tels que les femmes ou les personnes qui ont fui leurs pays en raison de persécutions liées au genre (mariages forcés, MGF, violences liées à l'honneur, orientation sexuelle et identité de genre, etc.).
- Les personnes demandeuses d'asile (femmes et hommes) peuvent demander d'être auditionnées par un agent de sexe féminin tant à l'Office des étrangers qu'au Commissariat général aux réfugiés et apatrides (CGRA).
- Le **Commissariat général aux réfugiés et aux apatrides** est l'instance centrale d'asile en Belgique. Il a pris des mesures spécifiques en matière de traitement de demandes d'asile introduites par des femmes ou pour des motifs d'asile liés au genre.

Lors de l'audition, l'agent (officier de protection) est invité à créer et à maintenir un climat de confiance en insistant notamment sur la confidentialité. Il invite aussi la personne à exposer non seulement les raisons pour lesquelles elle a quitté son pays mais également tous les éléments pour lesquels elle pourrait estimer avoir une crainte, en cas de retour. Les auditions se déroulent individuellement pour pouvoir rapporter d'éventuels faits de violences liées au genre et cela même si la demande d'asile est liée à celle d'un autre membre de sa famille.

Depuis 2005, la cellule «genre» créée au sein du CGRA poursuit ses missions, à savoir, déterminer des directives de traitement de demandes d'asile introduites par des femmes, ou par des personnes (hommes et femmes) qui invoquent le motif d'orientation sexuelle ou d'identité de genre.

- Entre 2009 et 2012, ont été engagés au CGRA un nombre important de nouveaux officiers de protection (membres du personnel chargés du traitement des demandes d'asile, c'est-à-dire principalement de l'audition des demandeurs et demandeuses d'asile, et de la rédaction d'une proposition de décision quant à l'octroi ou non de l'asile en Belgique).



Depuis 2010, les nouveaux officiers de protection reçoivent une formation concernant le traitement de demandes d'asile dans lesquelles est invoqué le motif « orientation sexuelle et identité de genre ». Il s'agit d'une formation pratique et spécifique qui familiarise les officiers de protection avec les outils existants pour traiter les dossiers et leur fournit des pistes concrètes pour préparer et mener les auditions et prendre les décisions.

Un centaine d'interprètes travaillant pour le CGRA ont reçu cette année (2012) une formation spécifique sur la manière d'interpréter des récits d'asile liés au genre, incluant une sensibilisation à ces questions, une information et la familiarisation avec des consignes. Au cours de cette formation, une attention particulière a été portée aux questions liées à l'orientation sexuelle et à l'identité de genre, aux aspects auxquels il convient d'être particulièrement attentifs, en tant qu'interprète, lors des auditions de demandeurs et demandeuses d'asile invoquant ces motifs.

35. Votre pays s'assure-t-il que les demandeurs d'asile ne sont pas envoyés dans un pays où leur vie ou leur liberté seraient menacées en raison de leur orientation sexuelle ou de leur identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- S'agissant de l'éloignement d'un demandeur d'asile, celui-ci peut invoquer le fait qu'il encourt un risque réel de subir la torture ou des traitements inhumains ou dégradants dans le pays de destination. Ces éléments sont examinés au cas par cas.  
Par ailleurs, lorsqu'il dispose des documents requis pour l'entrée et le séjour dans le pays tiers, le demandeur d'asile a le choix de la frontière.
- En cas d'éloignement, le Conseil du Contentieux des Etrangers (CCE) examine les allégations de violation de l'article 3 de la Convention européenne des droits de l'homme (CEDH), en ce compris en extrême urgence.  
Dans le cadre de l'examen du préjudice gravement réparable en cas d'éloignement, le CCE vérifie sa probabilité et sa précision.  
En outre, le préjudice ne doit plus être individualisé mais il peut s'appliquer à une catégorie de personnes. Désormais, il y a, donc un examen préalable sur les risques et les raisons invoqués par l'étranger, un partage de la charge de la preuve et une prise en compte de la particulière vulnérabilité de l'étranger, tandis que le respect des garanties procédurales est essentiel (information dans une langue, délais, demandes, décisions).

#### **XI. Structures nationales des droits de l'homme**

36. Y a-t-il des structures nationales des droits de l'homme (organismes de promotion de l'égalité de traitement, médiateur, institutions nationales de protection des droits de l'homme) clairement mandatées pour examiner les discriminations fondées sur l'orientation sexuelle ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des structures nationales des droits de l'homme (organismes de promotion de l'égalité de traitement, médiateur, institutions nationales de protection des droits de l'homme) clairement mandatées pour examiner les discriminations fondées sur l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez expliquer et indiquer en particulier, le cas échéant, les possibilités d'intervention prévues par leur mandat, notamment eu égard à la discrimination multiple :

- Le **Centre pour l'égalité des chances et la lutte contre le racisme** est un organisme indépendant créé par le législateur belge par la loi du 15 février 1993.

Le Centre a pour mission, notamment, de promouvoir l'égalité des chances et de combattre toute forme de distinction, d'exclusion, de restriction ou de préférence fondée sur **l'orientation sexuelle**.

Le Centre est habilité à effectuer toutes les études et recherches nécessaires à l'accomplissement de sa mission, à adresser des avis et recommandations aux pouvoirs publics en vue de l'amélioration de la réglementation, à aider, dans les limites de sa mission définie à l'article 2, toute personne sollicitant une consultation sur l'étendue de ses droits et obligations. Cette aide permet au bénéficiaire d'obtenir des informations et des conseils sur les moyens de faire valoir ses droits, à recevoir, dans les limites de sa mission, des plaintes, à les traiter et à accomplir toute mission de médiation qu'il juge utile, à ester en justice dans les litiges auxquels pourrait donner lieu l'application de la loi du *10 mai 2007 tendant à lutter contre certaines formes de discrimination*.

L'Accord de Gouvernement prévoit que : *Le Centre pour l'égalité des chances et de lutte contre le racisme deviendra un organe interfédéral indépendant.*

- L'**Institut pour l'égalité des femmes et des hommes** est un organisme indépendant créé par le législateur belge par la loi du 16 décembre 2002.<sup>16</sup>

Il a pour objet de combattre toute forme de discrimination et d'inégalité basée sur le sexe, étant entendu que la loi du 10 mai 2007 assimile la discrimination fondée sur le **changement de sexe à la discrimination fondée sur le sexe** (art.4 par. 2).

L'Institut est habilité, pour ce faire, à mener des études et des recherches en matière de genre, adresser des recommandations aux pouvoirs publics en vue de l'amélioration des lois et des réglementations, aider toute personne sollicitant une consultation sur l'étendue de ses droits et obligations et agir en justice dans les litiges auxquels pourraient donner lieu les législations tendant à lutter contre les discriminations liées au genre.

L'Institut exerce ces missions également pour les compétences relevant de la Fédération Wallonie Bruxelles en vertu d'un protocole de collaboration. Le décret du 12 décembre 2008 (FWB) désigne l'IEFH compétent pour accomplir les missions précitées dans les domaines couverts par cette norme.

L'Accord de Gouvernement prévoit que : *L'Institut pour l'Egalité des Femmes et des Hommes, pour ce qui concerne les discriminations liées au genre, deviendra un organe interfédéral indépendant.*

## **XII. Discrimination multiple**

37. Y a-t-il des mesures garantissant que les dispositions du droit national interdisant ou empêchant les discriminations protègent également contre les discriminations fondées sur des motifs multiples, y compris celles fondées sur l'orientation sexuelle ou l'identité de genre ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

<sup>16</sup> M.B., 31.12.2002, 4<sup>ème</sup> éd.

- Le Code pénal belge comporte plusieurs circonstances aggravantes qui prévoient une aggravation des peines lorsqu'un des mobiles du crime ou du délit est la haine, le mépris ou l'hostilité à l'égard de personnes en raison de sa prétendue race, de sa couleur de peau, de son ascendance, de son origine nationale ou ethnique, de sa nationalité, de son sexe, de son changement de sexe, de son orientation sexuelle, de son état civil, de sa naissance, de son âge, de sa fortune, de sa conviction religieuse ou philosophique, de son état de santé actuel ou futur, d'un handicap, de sa langue, de sa conviction politique, de sa conviction syndicale, d'une caractéristique physique ou génétique ou de son origine sociale. L'augmentation des peines concerne l'ensemble des mobiles discriminatoires visés par les articles 377bis, 405quater, 422quater, 438bis, 442ter, 453bis, 514bis et 523bis du Code pénal.
- En ce qui concerne la discrimination multiple, des actions conjointes en vue d'aider les personnes victimes sont menées en collaboration avec d'autres instances compétentes pour aider les personnes victimes en raison d'autres critères. En Fédération Wallonie Bruxelles, l'ensemble des critères protégés sont repris dans un décret-cadre, couvrant l'ensemble des compétences et l'ensemble des critères, ce qui constitue un bon outil de lutte contre les discriminations multiples, avec la nuance apportée sur l'absence de critère « identité de genre » comme tel dans les dispositions précitées.
- Le Centre pour l'égalité des chances et la lutte contre le racisme a lancé la Campagne « La discrimination s'arrête ici », qui vise de manière générale la prévention/sensibilisation à la lutte contre les discriminations, entre autres celles relatives à l'orientation sexuelle.  
<http://www.stop-discrimination.be/fr/index.php>

### Section III - Suivi

38. Quelles mesures par le Conseil de l'Europe recommanderiez-vous pour garantir que les états membres s'inspirent, dans leur législation et dans leurs pratiques nationales, des principes énoncés dans la recommandation et dans son annexe ?

- Une évaluation périodique de la recommandation.
- Quid d'une analyse des possibilités de coopération et/ou coordination avec les activités de l'Union européenne et plus particulièrement avec les deux agences européennes compétentes pour ces questions ?

39. Le Conseil de l'Europe devrait-il continuer à examiner périodiquement la mise en œuvre de cette recommandation ? Si oui, cet examen devrait-il, à l'avenir, se concentrer sur des questions spécifiques ? En l'espèce, lesquelles recommanderiez-vous d'aborder ?

- Les résultats de cette première évaluation devraient permettre d'indiquer quelles questions nécessitent un suivi plus spécifique.

40. Existe-t-il des questions sur lesquelles la recommandation et son annexe devraient être modifiées ou complétées ? Si oui, merci d'indiquer lesquelles.

**BOSNIA AND HERZEGOVINA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐

Please explain your reply.

BiH did not 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; measures to ensure that, once gender reassignment has been completed and legally recognised, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed;

did not 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;

Public authorities did not publicly condemn, notably in the media, 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.

BiH did not 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.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please explain and, if appropriate, provide examples of any such measures found:

- Are there measures in place to redress any such discrimination?  
 a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Persons discriminated on the basis of sexual orientation and gender identity can redress to human rights ombudsman or to the courts. Ombudsman issued recommendation to erase questions on sexual orientation from blood donating forms and to remove inappropriate articles from public media.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

If appropriate, please provide examples of measures adopted or in preparation.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices:

Court data collection system can show cases relating to discrimination in general, while there is no central database at the state level to include all cases of such kind of discrimination. Human Rights Ombudsman Institution has a database showing all reported cases of discrimination including on grounds of sexual orientation and it analyses this data in its annual report.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☐ b. ☐ c.X d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☐ c.X d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There have been several public and media campaigns aimed at encouraging victims of sexual orientation or gender identity discrimination to report such cases. Human rights ombudsman placed large posters within its public area to achieve the same goal.  
In case crime has been committed, Criminal code prescribes sentences (both jail and monetary fines) for infringements while victims are entitled to reparation.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

There is no rulebook or other procedural guidelines how to collect data in comprehensive manner, as not all cases end up in courts.

There is low level of awareness among general population as well as among public officials concerning problems of victims of sexual orientation or gender identity discrimination. There are only few cases reported to Human Rights Ombudsmen, while there are virtually none referred to the courts.

The primary goal is to raise awareness, to educate the public and to encourage victims to report cases of discrimination. It is equally important to ensure that the victims will not suffer further consequences due to the reporting of the abuse, and the police have a significant role to play in this regard.

Some of the obstacles encountered in the implementation of the Recommendation are of financial nature, since Ombudsman Institution did not receive the budget for the work of Department for elimination of all forms of discrimination.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☐ b. ☐ c. ☐ d. ☐ e. x

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☐ b. ☐ c. X d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Human rights ombudsmen opened ex officio investigation when person was assaulted based on his sexual orientation

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. X d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. X d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Republika Srpska and Brcko District have such provisions included in Criminal Code, while the procedure of amending Federation BiH Criminal Code is under way. Ombudsmen is actively involved in this process.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There have been several round tables organized mainly by NGO sector where representatives of Ombudsman institution took active participation

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

- a. ☐ b. ☐ c. X d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman institution issued recommendation to remove insulting press report from religious orientated newspaper

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. X e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

there are no specific measures in place

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do 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?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Parade organizers received threats so it was not organized

### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☐ c. ☐ d. X e. ☐



Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please provide examples of exceptions to this principle, if any:

there are no specific measures in place

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

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

a. ☐ b. ☐ c. ☐ d. ☐ e. X

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please provide examples:

national legislation does not recognise registered same-sex partnership

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

national legislation does not recognise registered same-sex partnership

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. X b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. X b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☐ b. ☐ c. ☐ d. X e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☐ b. ☐ c. ☐ d. X e. ☐

Prevention and punishment of harassment

- a. ☐ b. X c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☐ b. X c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no "affirmative action" measures aimed at promoting employment and promotion of these categories, but any harassment or deprivation of rights is prohibited and victims can resort to Ombudsman institution or to courts

### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☐ b. X c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

- a. ☐ b. ☐ c. ☐ d. X e. ☐

Information, protection and support for pupils and students

- a. ☐ b. ☐ c. ☐ d. X e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X  
 xiii) School equality and safety policies and action plans  
 a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?  
 a. ☐ b. X c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

29. Has homosexuality been removed from the national classification of diseases?  
 a. ☐ b. X c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?  
 a. ☐ b. ☐ c. ☐ d. X e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

health insurance does not cover for gender reassignment

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?  
 a. ☐ b. X c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?  
 a. ☐ b. ☐ c. X d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

**IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

**X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

**XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. X b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

issuing recommendations, follow-up on recommendation, public campaigns aimed at combating discrimination, media releases, reporting to parliaments

**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. X d. ☐ e. ☐

### Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

law enforcement authorities should 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

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

yes, especially in enjoyment of right to peaceful assembly and use of public space

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

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**CROATIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

The Republic of Croatia has adopted legislation and national policies with the aim of suppression of discrimination based on sexual orientation and gender identity. The **Anti-discrimination Act** recognizes sexual orientation and gender identity as a ground on which discrimination is prohibited.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Following the adoption of Anti-discrimination Act, several Acts have been amended further regulating discrimination based on sexual orientation/gender identity. Thus, the new **Criminal Code** was adopted by the Parliament in October 2011 introducing new discrimination grounds related to the criminal offence of violation of right to equality, harmonizing this stipulation with the discriminatory bases contained in the Constitution and the Anti-discrimination Act. Furthermore, the Criminal Code defined hate motive as either aggravating or qualifying circumstance of the criminal act, with a more severe prescribed sanction. Special part of the Code also introduces criminal act of public encouragement to violence and hate.

**Personal data protection act of the Croatian Employment Service (CES)** defines professional confidentiality which includes the data about personal or family life of the unemployed, job seekers or other persons which use CES service when they attend regular activities. It also includes the data received by psychological testing and interviews about mental and physical health of the client as well as causes, circumstances and consequences of his/her health condition. The unauthorized disclosure of the mentioned personal data could be detrimental to the person concerned or his/her family members. The professional confidentiality is considered to be personal data about CES employees, data about salary restrictions as well as data on other employee's benefits.

In addition, the **Ethical code of the CES**, among other things, defines the relation between advisers and clients in a way that the activities of the CES employees are targeted at professional provision of services and this relation must not be endangered by any other interest or intention. The CES employees treat equally all citizens, without any discrimination regarding age, nationality, ethnic or social origin, language or race, religion or political belief, disability, education, social status, gender, marital or family status, sexual orientation or any other basis.

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Currently, the Ministry of Administration has set up a working group responsible for drafting of the Act on Registered Partnerships.

Also, on 4th October 2011 the Government adopted the new Act on Misdemeanours against Public Order and Peace, currently in parliamentary procedure.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

In terms of measures against discrimination on grounds of sexual orientation or gender identity the Republic of Croatia has adopted **Anti-discrimination Act** and **Gender Equality Act**. In October 2011 The Croatian Parliament adopted a new Criminal Code.

Also, on 4th October 2011 the Government adopted the new **Act on Misdemeanours against Public Order and Peace**, currently in parliamentary procedure. The Act recognizes hate crime; when offence is committed on account of a person's race, colour, religion, national or ethnic origin, disability, gender, sexual orientation or gender identity the prescribed sanction for the offence is doubled or a possibility of imprisonment is foreseen.

Furthermore, the Croatian Parliament adopted in 2011 the **National Policy for Gender Equality**, for the Period 2011-2015 and currently the **National Plan for Fight against Discrimination 2008 – 2013** with accompanying **Action Plan (2011-2013)** is in its last year of implementation.

Also, Croatian Government adopted in 2011 **Protocol for Dealing with the Case of Hate Crimes**.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Within the Office for Human Rights and Rights of National Minorities the Working group for Monitoring Hate Crime Incidents has drafted a **Protocol for Dealing with the Cases of Hate Crimes**. Accordingly, the purpose of the Protocol is to provide conditions for effective and comprehensive

work of the competent authorities involved in the identification, acting and monitoring of procedures relating to hate crime. Subsequently, through the work of the Working Group data regarding hate crime is collected which is broken down according to the ground. It has defined manner in which data is collected by all relevant institutions (Ministry of Interior, State Attorney, Ministry of Justice):

Annex 1.

Form for statistical monitoring of criminal offenses relating to hate crimes

Hate crimes - statistics					
Criminal offences					
Ministry of Interior reported criminal offences in total	Ministry of Interior resolved criminal offences	State Attorney's Office – processed in relation to Art.89.§36.	State Attorney's Office – processed without Art.89.§36.	State Attorney's Office – rejection / cancellation of prosecution	Final judgment + sanction

Annex 2.

Form for statistical monitoring of misdemeanors particularly marked in relation to the motive of hatred

Hate crimes - statistics			
Misdemeanours particularly marked in relation to the motive of hatred			
Number of misdemeanours In total	Rejection of bill of indictment	Number of verdicts of release or of abandonment	Final judgment + sanction

Furthermore, in accordance with the Anti-discrimination Act, the Ministry of Justice created track records for judicial proceedings conducted in reference to discrimination based on the ground.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐



If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Anti-discrimination Act, the Ombudsman (and in this case Gender Equality Ombudswoman) are granted authority to receive reports of all the natural and legal persons referred to in Article 10 of this Act; to provide necessary information to natural and legal persons that have filed a complaint on account of discrimination with regard to their rights and obligations and to possibilities of court and other protection; and if the court proceedings have not yet been initiated, examine individual reports and take actions falling within his/her competence required for elimination of discrimination and protection of rights of discriminated persons.

Additionally, the Act has foreseen that any person who considers that his/her right has been violated on account of discrimination may request protection of that right in the proceedings.

Thus, a person claiming to be a victim of discrimination is authorised to bring a legal action and request the following to be performed:

1. to establish that the defendant has violated the plaintiff's right to equal treatment or that the action the defendant has undertaken or failed to undertake may directly result in the violation of the right to equal treatment (action for determination of discrimination);
2. to prohibit the undertaking of activities which violate or may violate the plaintiff's right to equal treatment, or to carry out activities which eliminate discrimination or its consequences (action for prohibition or elimination of discrimination);
3. to compensate for proprietary and non-proprietary damage caused by the violation of the rights protected by this Act (action for damages);
4. to publish in the media the ruling establishing the violation of the right to equal treatment, at the defendant's cost.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

The main obstacle in implementation of the Recommendation refers to lack of public awareness on the right of not to discriminate based on sexual orientation and gender identity.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

Government Office for Gender Equality translated the Recommendation in 2011 which is available for download on the website of the Office [www.ured-ravnopravnost.hr](http://www.ured-ravnopravnost.hr).

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Criminal Code adopted in October 2011 introduced changes in definition of hate crime recognizing the grounds of sexual orientation and gender identity. Additionally, Protocol on Dealing with the Cases of Hate Crime was adopted in 2011 defining the role of the Ministry of Interior, State Attorney's Office and Ministry of Justice in suppression of hate crime. Furthermore, the Working Group monitoring Hate Crime Incidents has been proven as a valuable tool in strengthening cooperation between institutions and NGOs in this area.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to a new Criminal Code hate crime is defined as an aggravating circumstance but in cases of female genital mutilation, bodily injury, serious bodily injury, aggravated assault, serious criminal offence against sexual freedom and provoking riots it is defined as qualifying circumstance.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A lot of effort has been put in building trust. For this reason the Working Group for Monitoring of Hate Crime Incidents includes representatives of civil society organizations. Also, the Croatian police has worked closely with LGBT groups. Currently, it is included in the project "Together for LGBT equality" – a project for trust building between the police and LGBT citizens, financed by the City of Zagreb in the framework of the projects of interests of the City of Zagreb, in the field of promotion of human rights

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Training programmes are organized through Judicial Academy and Police Academy. Thus, the National Policy for Gender Equality 2011-2015 includes the *measure 5.2.2. Systematic training will be provided to staff in the judiciary, municipal and county state attorney offices, in the health care and education systems, in family centres and police administrations, and to social workers and mental health experts, in order to improve the provision of legal protection and assistance to victims*

*of violence, especially victims of sexual violence, as well as to victims of discrimination on the grounds of sexual orientation, gender identity and gender expression.*

Thus, some examples refer to trainings on anti-discrimination organized in cooperation between Judicial Academy, Ombudsman Office and Office for Human Rights and Rights of National Minorities – these were held for judges on 17 and 19 April 2012 and for state attorneys on 18 April 2012.

When it comes to Police Academy, the training of police officers is continuously conducted through the regular education system at the Police academy as well as in the framework of the dialogue of the MoI with non-governmental organizations on the topic of improving the cooperation in the suppression of hate crimes. Thus, only in the period between September 2012 and end of January 2013, the police, with the aim of strengthening the capacities for the prevention and suppression of hate crimes, have additionally trained 216 police officers.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

--

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Criminal Code
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## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

--

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

--

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?
- a. **X** b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**The National Policy for Gender Equality 2011-2015** foresees *measure 1.1.8. Representatives of organisations fighting for the equality of LGBT persons will be included in the working bodies for the adoption of laws, programmes and strategies related to the rights of sexual minorities.* Additionally, the Government has adopted the **Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, other Regulations and Acts.** Accordingly, it provides guidelines for effective consultation of state administrative bodies and the interested public in process of adopting laws and regulations, as well as existing good practice on consultation that is already being implemented by some government bodies. In addition to general principles, standards and measures in consultation procedures, the Code has also foreseen the development of guidelines for its implementation, and a program of systematic training for consultation coordinators, appointed by all central government bodies or government offices responsible for the drafting of laws, regulations and other legislative documents, as contact person with the aim of consistent monitoring and coordination of consultation procedures with the interested public.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?
- a. **X** b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. **X** b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

--

19. Do 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?
- a. **X** b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Example of good practice is manifestation "Zagreb Pride".

#### **IV. Right to respect for private and family life**

Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

N/A

20. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Data Protection Act regulates this issue.

21. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

22. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

A.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

23. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

Ministry of Administration is preparing the **Act on Registered Partnerships**.

B.

24. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **V. Employment**

25. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**The Anti-discrimination Act**, Article 8. *This Act shall apply to the conduct of all state bodies, bodies of local and regional self-government units, legal persons vested with public authority, and to the conduct of all legal and natural persons, especially in the following areas: 1. work and working conditions; access to self-employment and occupation, including selection criteria, recruiting and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining;*

**Labour Act**, Article 2. *Direct and indirect discrimination of a person seeking employment and employed person (worker, civil service employee, civil servant or other worker– hereinafter: the worker) on the grounds of race, colour, gender, sexual orientation, marital status, family responsibilities, age, language, religion, political or other belief, national or social background,*

*financial status, birth, social status, membership or non-membership in a political party or trade union, and physical or psychological difficulties shall be prohibited.*

According to the **National classification of occupations**, the Croatian Employment Service presents occupations for men as well as women, in the database for the unemployed and job seekers as well as in the job vacancies announcements from 2010.

During the Progress Project of the Croatian Employment Service (CES), “**Supporting Equality in Croatian Labour Market**” (2010), the participants developed a Compendium of best practices in promoting diversity and implementing anti-discrimination measures in the labour market. Guidelines for combating discrimination and promoting diversity in the labour market were developed as an instrument of raising awareness about combating discrimination among all stakeholders in the process of creating policies, strategies and activities in the labour market as well as toolkit for the implementation of the anti-discrimination measures and diversity management for employers. Also, CES counsellors were educated for recognition of different forms of discrimination in the labour market and activation in rising of employer’s awareness of discrimination consequence at candidate choice for job-vacancy.

In 2011, as a follow up of Supporting Equality in Croatian Labour Market Project, CES has created and lead a Project “**Equally Diverse**” in which was provided education of trainers for practical work with employers regarding discrimination issues in labour market. Also, Help desk for procedure of antidiscrimination measures were established for employers in CES.

In aim to promote gender equality and combat discrimination on gender identity ground **Career guidance computer program My Choice** includes gender sensitive job titles in masculine and feminine form for 350 job descriptions. This Program has been developed and implemented in CES since 2007 and has reached wide range of target groups (especially young).

“**Girls days**”- promotion of non-stereotypes occupational choices for girls and boys were performed on regular annual Job fairs in some CES regional offices.

*Further decentralisation and modernisation of CES services and establishing of Career guidance centres in local communities (in progress in 2013) shall improve clients’ accessibility to different career management services including on-line services and contribute to combat discrimination on gender identity and sexual orientation ground.*

## **VI. Education**

26. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a.X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The **Constitution Act** as well as the **Act on education in primary and secondary schools** guarantees equal access to education for all regardless of sexual orientation/gender identity. Teachers are employed regardless of their sexual orientation and have the possibility/obligation of professional training/development which is provided by the Education and Teacher Training Agency (ETTA) and the Vocational Education and Training and Adult Education Agency (VETAE). Many have been trained in the area of civics, and consequently human rights and anti-discrimination in general, but also on issues of anti-discrimination on grounds of sexual orientation and gender identity. On the other hand pupils get professional/individual help on different issues, as well as on sexual orientation/gender identity issues at schools (by teachers, pedagogues).

In school year 2012/2013 **Curricula for health education** has been introduced into all Croatian schools and sexual orientation/gender identity is a part of the Curricula (Module 4).

At the same time, the **Curricula on civic education** has been experimentally introduced into 12 primary and secondary schools, and it offers the objective information on those issues as well. All schools have to report all cases of violence due to two Protocols (Protocol for dealing/acting in case of sexual violence and the Protocol for dealing in case of violence). All such cases are registered at the Ministry of Science, Education and Sport (MoSES), and each is dealt with in cooperation with schools, ETTA and sometimes other ministries or local education authorities. Violence is recognized as one of the biggest problems in schools, so most schools have their individual action plans to prevent it, and they also include activities to prevent discrimination on grounds of sexual orientation or gender identity.

More info on Croatian preventive programs (for teachers, pupils, students, parents): [preventivni.hr](http://preventivni.hr).

## **VII. Health**

27. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

28. Has homosexuality been removed from the national classification of diseases?
- a. ☒ b. ☐ c. ☒ d. ☐ e. ☐

29. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:



### **VIII. Housing**

30. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

31. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **IX. Sports**

32. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

33. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. **X** b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Asylum Act, Article 2. *Particular social group means persons from the same environment, with the same customs or the same social status. Members of that group share innate characteristics, common background or beliefs which their identity or conscience is based on, and they do not want to renounce them. Such a group must have a distinct identity in the relevant country and differ from the surrounding society. Depending on circumstances in the country of origin, a particular social group may also mean a group based on common characteristics of sexual orientation.*

34. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. **X** b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Asylum Act, Article 3. *It is not allowed to expel or in any other way coerce an alien into returning to a country where his/her life or freedom would be threatened on account of his/her race, religious or national affiliation, affiliation to a particular social group or political opinion, or to a country where he/she could be exposed to torture, inhuman or degrading treatment or punishment.*

### **XI. National Human Rights Structures**

35. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. **X** b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. **X** b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

Ombudsman and Ombudswoman for gender equality.  
 Heir scope of work is defined in the following manner:  
 Within the scope of his/her work, the Ombudsman shall: 1. receive reports of all the natural and legal persons referred to in Article 10 of this Act; 2. provide necessary information to natural and legal persons that have filed a complaint on account of discrimination with regard to their rights and obligations and to possibilities of court and other protection; 3. if the court proceedings have not yet been initiated, examine individual reports and take actions falling within his/her competence required for elimination of discrimination and protection of rights of discriminated persons; 4. warn the public about the occurrence of discrimination; 5. with the parties' consent, conduct mediation with a possibility of reaching an out-of-court settlement; 6. file criminal charges related to discrimination cases to the competent state attorney's office; 7. collect and analyse statistical data on discrimination cases, 8. inform the Croatian Parliament on the occurrence of discrimination in his/her annual and, when required, extraordinary reports; 9. conduct surveys concerning discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government of the Republic of Croatia.

Certain activities referred to in Article 12, paragraph 2, items 1 to 6 of this Act shall be performed by special ombudsmen when this is regulated by a special law.

### **XII. Discrimination on multiple grounds**

36. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. **X** b. ☐ c. ☐ d. ☐ e. ☐

### Section III - Follow-up

37. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

38. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

39. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**CYPRUS**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

- Are there measures in place to redress any such discrimination?  
 a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?  
 a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The Ministry of Justice and Public Order is in the process of proposing an amendment to the Criminal Code for the purposes of establishing a new offence on hate speech on grounds of sexual orientation and gender identity.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?  
 a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The police maintain a central registry of offences/incidents of a racial nature or with racial motive since 2005.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See comments to question no. 36.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Police training curricula, lesson 146 (Racial and other Discrimination) is relevant.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A series of decisions establish that the punishment of crime falls within the exclusive province of the judiciary. So are aggravating and mitigating circumstances. The courts may well consider the bias motive related to sexual orientation or gender identity as an aggravating circumstance.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The issue of professionalism with regards to members of the LGBT community is covered in Police Training (lesson 146).

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In relation to the police, trainings on diversity issues are organised periodically.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Lesbian, gay , bisexual and transgender persons are given the opportunity upon written request to be placed at a separate cell.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Ministry of Justice and Public Order is in the process of proposing an amendment to the Criminal Code for the purposes of establishing a new offence on hate speech on grounds of sexual orientation and gender identity.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

There are no specific measures in this regard. However, the relevant legislation (i.e. association and institutions law) does not provide for any restriction on the freedom of association for LGBT persons or any discrimination on the grounds of sexual orientation or gender identity.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

## **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

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19. Do 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?
- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No such need was assessed and/or identified.
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#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 171 of the Criminal Code which criminalised same-sex sexual acts between consenting adults was repealed in 1998 by law 40(I)/1998. The equalisation with respect to the age consent for same-sex sexual acts and heterosexual acts took place in 2002 by law 145(I)/2002. This means that there is no difference in treatment between homosexual and heterosexual sexual relations with regards to the age of consent.
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21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Section 2 of the Data Protection Law (138(I)/2001) defines "sensitive data" as data concerning, inter alia, sexual life or sexual orientation of a person. Section 6 provides that the collection and processing of personal data is prohibited. At the same time the law enumerates a list of exceptions to this rule. Those exceptions are the following: (a) The data subject has given his explicit consent unless this consent has been obtained illegally or is contrary to accepted moral values, custom or if a specific law provides that the consent does not lift the prohibition; (b) The processing is necessary so that the data controller can fulfil his obligations or carry out his duties in the field of employment law and the Commissioner has given a permit for this purpose; (c) The processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent; (d) The processing is carried out by an institution, club or any other non-profit making organisation which has political, philosophical, religious or trade-union aims, and relates solely to its members and such other persons with whom the aforesaid club, institution or organisation retains by reasons of its aims. Such data may be communicated to third parties only if the data subject gives his consent; (e) The processing relates
--



exclusively to data which are made public by the data subject or is necessary for establishment, exercise or defence of legal claims before the Courts; (f) The processing relates to medical data and is performed by a person providing health services by profession and has a duty of confidentiality or is subject to relevant codes of ethics on condition that the processing is necessary for preventive medicine, medical diagnosis, the provision of treatment or the management of health services; (g) The processing is necessary for serving national interests or national security, and criminological or correctional policy needs and as long as it is carried out by a service of the Republic or an organisation or institution authorised for that purpose by a service of the Republic and concerns the ascertainment of crimes, criminal sentencing, security measures and investigation into major destructions, i.e. natural disasters or large scale destruction caused by terrorist attacks or other criminal activity; (h) The processing is carried out exclusively for statistical, research, scientific and historical purposes, under the condition that according to the decision of the Commissioner it is deemed that there are serious reasons of public interest and all the necessary measures for the protection of the data subjects are taken; (i) the processing is carried out exclusively for journalistic purposes or within the framework of artistic expression provided that the right of protection of private and family life is not violated under any circumstances.

With regards to the police, it does not keep such data.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In these circumstances the Civil Registry Department changes the name and gender of the person in the Population Registry. This means that the interested person is issued a new identity card, new passport and new voting card.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Taking into consideration that the Marriage Law does not provide for any restrictions in this regard and that the gender reassignment results in the change of name and gender in the Population Registry and the issuing of a new identity card and passport, it seems that once gender reassignment has been completed and legally recognised, the transgender person may marry a person of the sex opposite to their reassigned sex.

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

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

The law on the right of citizens of the Union and their family members to move and reside freely within the territory of the Republic of Cyprus (7(I)/2007) does not recognise registered same sex partnerships or unmarried couples as “family members” for the purposes of the said law. However, the Law Office of the Republic of Cyprus in 2008 issued a law opinion in this regard that the administration should facilitate the entry and residence in the Republic of the homosexual partner.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child’s best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

#### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Equal Treatment in Employment and Occupation law (58(I)/2004) refers to discrimination in the spheres of employment on the grounds of, inter alia, sexual orientation. The prohibition of discrimination is prohibited in the public and private sector. Section 9 of the said law refers to positive obligations. It establishes that a favourable treatment on the grounds of, inter alia, sexual

orientation, is not considered as discrimination when the aim of the favourable treatment is to prevent or compensate for disadvantages linked to, inter alia, sexual orientation.

### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Ministry of Education and Culture has included the issue of sexual orientation and gender identity under the subject of Health Education (from pre-primary until the end of lower secondary education). The instructional methodology of this subject includes, among other, practical information, education and support services and materials related to self acceptance, tolerance and tackling homophobia.

There have been training opportunities for educators at all education levels. In the area of Health Education optional seminars are offered, which in 2012-2013, offer the following courses: school bullying, new health and sex education.

The recent establishment of an “observatory for violent behaviour in the school environment” provides information, protection and support to pupils and students.

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Each patient is treated according to his/her personal needs.

29. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

There are no specific measures. However, each patient is treated according to his/her personal needs.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No such need was assessed and/or identified.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 3D (1) (d) (ii) of the Refugee Law. There are also examples where the status of refugee was granted to persons who have been recognised as facing a well founded fear of persecution based on sexual orientation and gender identity in their countries.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 19 of the Refugee Law is broad enough to cover instances where asylum seekers face real risk to their life or freedom because of their sexual orientation and gender identity.

#### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The *Combating of Racism and Other Discrimination (Commissioner) Law 2004* vests the Commissioner for Administration – an independent Officer - with special competences, duties, and powers for combating and eliminating discrimination in both public and private sectors. Under its provisions, any person or group may lodge a complaint to the Commissioner as to having been subjected to discrimination prohibited by any law. In case of a finding of discrimination (following an investigation into the complaint), the Commissioner is empowered to order the person or authority responsible to pay a fine, and/or to address recommendations to them to take specific practical measures, for putting an end to, or not repeating the relevant treatment or conduct or application of the specific provision/term/criterion/practice, not only vis-a-vis the complainant, but also vis-a-vis all persons who are, or may find themselves in a similar situation. The Commissioner can also carry out investigations ex pro prio motu into incidents of discrimination, and also examine, following requests from persons or groups, whether some treatment or conduct or application of a provision/term/criterion/practice contemplated by them, constitutes discrimination. Findings and reports made by the Commissioner, when involving discriminatory provisions/ terms/ criteria/ practices found in legislation, must be communicated to the Attorney-General of the Republic, that is, to the Republic's Legal Adviser, who is under the Constitution an independent Officer of the State. As the Republic's Legal Adviser, the Attorney-General is responsible for advising the Government concerning its human rights obligations, and the enforcement of human rights through administrative/legislative measures.

**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Cyprus has signed and ratified the Protocol No. 12 of the European Convention of Human Rights.

**Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**CZECH REPUBLIC**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

No, such a comprehensive review has not been carried out yet. However, anyone can lodge a constitutional complaint alleging discrimination on grounds of sexual orientation or gender identity with the Constitutional Court. Also, the Committee for the Sexual Minorities, the working committee of the Government Council for Human Rights, the Government's advisory body, has widely discussed the Recommendation and decided to act upon it.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Such discrimination is addressed within the Labour Act, the Anti-discrimination Act and the Minor Offence Act.

The Public Defender of Rights may assist victims with initiating lawsuits on account of discrimination. Any person can lodge a constitutional complaint alleging discrimination on grounds of sexual orientation or gender identity with the Constitutional Court.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

The Public Defender of Rights issues brief statistics of the complaints received, they don't entail criminal justice.

The Criminal Code does not refer to sexual orientation or gender identity and therefore the law enforcement bodies do not collect any such data.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Should the complainant meet statutory requirements, s/he can ask for free legal aid.

The Public Defender of Rights contributes to promotion of the right to equal treatment of all persons regardless of their sexual identity or sexual orientation. The Act on the Public Defender of Rights stipulates that the Defender provides methodical assistance to victims of discrimination in lodging their proposals for commencement of proceedings concerning discrimination.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation was discussed within the Prague Pride 2011 events and at the meeting of the Committee for the Sexual Minorities.



## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Government proposed a draft Law on the Victims of Criminal Offences seeking to provide the victims with the comprehensive compensation, rehabilitation, care, privacy protection and access to relevant information. It was adopted by the Lower House of the Parliament and is being discussed in the Upper House, it replaces the current relevant law. According to the draft law, at the pre-trial stage the victim of an offence is entitled to interrogation by a person of the same or the opposite sex.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Criminal Code, sexual orientation or gender identity is not directly listed as a motive that may be taken into account as an aggravating circumstance. However, it falls within "other highly deplorable motives" that may be taken into account.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A draft Law on the Free Legal Aid is being proposed by the Government. A draft Law on the Victims of Criminal Offences was adopted by the Lower House of the Parliament and is being discussed in the Upper House. It is to replace the current Act and seeks to provide the victims with the comprehensive compensation, rehabilitation, care, privacy protection and access to relevant information.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Both general laws on enforcement of sentences and specific directives deal with these issues. In particular, the Directive of the General Director of the Prison Service No. 12/2012 on the Prevention and Early Detection of the Violence among the Charged, Convicted and Inmates is applicable. It provides that any person susceptible to physical assault or sexual abuse qualifies for special measures to ensure his/her safety – separate housing, extra visual checks, extra medical examinations.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Criminal Code does not refer to sexual orientation or gender identity.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

There are no limitations with regard to sexual orientation or gender identity whatsoever.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

17. Have measures been taken to 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The NGOs defending human rights of LGBT persons are represented within the Committee for Sexual Minorities which forms a part of the Government Human Rights Council, the advisory body of the Government. The Secretariat of the Government is consulted when bills of laws are drafted and may seek guidance from the Committee.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Until 30 April 2001 rape was defined as a violent act against a woman. If a man was raped crime with a more lenient sentence was to be established. Later, the wording of the offence of rape was amended to be gender-blind.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Administrative procedures to obtain legal gender recognition are in place, however they require a surgical reassignment and a divorce.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Neither joint nor second parent adoption is available to same-sex couples in the Czech Republic.

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Equal treatment in employment is guaranteed by the Charter of Fundamental Rights and Basic Freedoms and by the Anti-Discrimination Act. In Article 26(3) the Charter guarantees the right to acquire the means of his/her livelihood by work. The Anti-Discrimination Act prohibits discrimination in access to employment, promotion, dismissals, pay and other working conditions. Harassment is special form of discrimination.

Protection of privacy of transgender persons: Article 10(3) of the Charter lays down everyone's right to be protected from the unauthorized gathering, public revelation, or other misuse of personal data. In Article 316(4) the Labour Act provides for the protection of privacy of employees. The employer is not allowed to require from an employee any information which does not directly relate to work performance and to labour relationship. The employer is not allowed to require the information in particular of sexual identity, pregnancy, family and property information, origin, etc.

### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The prohibition of discrimination in education is guaranteed by the Charter of Fundamental Rights and Basic Freedoms, the Anti-Discrimination Act and by the Education Act. Education is based on the principles of equal access of all citizens of the Czech Republic or nationals of any other European Union Member State to education without any discrimination based on any ground such as race, colour, sex, language, belief or religion, nationality, ethnic or social origin, property, gender, the health condition or any other status (section 2 of Education Act).

“Curriculum” is contained in the Framework Educational Programmes. Every Framework Educational Programme reflects the latest findings of scientific disciplines whose fundamental findings and practical usage should be delivered by education. It also reflects the latest findings of pedagogy and psychology on effective methods and organisation of education appropriate to the age and development of learners.

“School educational programmes” of every school have to be in compliance with the Framework Educational Programme. One of the aims of basic education, set by the Framework Educational Programme, is to lead pupils and students to tolerance to others, and the theme of the Educational Programme “Human and Society” is equality and prohibition of discrimination.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Equal treatment in health services is guaranteed by the Charter of Fundamental Rights and Freedoms and the Anti-Discrimination Act. Specific health needs of transgender persons are reflected in the Specific Health Services Act (sex reassignment therapy and surgery for example).

29. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The right to own immovable property without any discrimination is guaranteed by the Charter of Fundamental Rights and Freedoms. Equal treatment in housing is guaranteed by the Anti-Discrimination Act, which prohibits discrimination in access to goods and services, including housing.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no special laws to prevent lesbian, gay, bisexual and transgender persons from becoming homeless. However, every form of access to housing is protected by the Anti-discrimination Act in general. Also, the Anti-discrimination Act deals with social care. Social benefits (like housing benefit or extra housing allowance) have to be provided on equal basis.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

#### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Office of the Public Defender of Rights is the Czech equality body. The Office provides methodical assistance (after investigation) to victims of discrimination with complaining or taking legal action against somebody who discriminates, and in some cases the Office can try to procure free advocate. Also, the Office also carries out research, publishes reports and issues recommendations on discrimination-related questions.

#### **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

### **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?



A periodical examination of the implementation can be carried out, but with a medium term frequency (5 years or so).

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**DENMARK**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

41. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☒ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

Most recommendations were already fulfilled in national law prior to the adoption of the Recommendation.

42. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

In 2012, a change of the Marriage Act made it possible for 2 persons of the same sex to marry each other instead of entering into a registered partnership. Following this, a survey was carried out aiming at making family law gender neutral. The findings in the rapport are under consideration.

Are there measures in place to redress any such discrimination?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

43. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

Reference is made to the information provided on the change of the Marriage Act (same sex marriage) in reply to question no. 2.

44. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Danish Security and Intelligence Service (PET) collects information about criminal acts presumably motivated by extremist opinions concerning the victim's sexual orientation or political, racial, national, ethnic or religious issues.

The purpose of the collection of data on hate crimes is to enable the Danish Security and Intelligence Service to assess if any signs may be detected of more organized and systematic criminal activity rooted in the victim's sexual orientation etc.

The collection of data by the Security and Intelligence Service is described in an instruction from 18 December 2001 and an instruction from 23 December 2008. Since 1 January 2009 the relevant data has been gathered by the Security and Intelligence Service directly from the police's electronic case handling system. Before this date, data was reported to the Security and Intelligence Service on a standard form filled out by the police districts.

The Security and Intelligence Service publishes annually a report about the data collected on hate crimes in the previous year. The reports are public and can be found on the internet on the following website: <http://www.pet.dk/Publikationer/RACI-indberetning.aspx> (the reports are available in Danish only).

Furthermore, various websites publish judgments on differential treatment on the labour market. Some of the websites are payment websites.

Also The Board of Equal Treatment publishes all its judgments on its website so it is possible to follow the development of practice. Access to the website is free of charge.

45. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Victims of discrimination on the labour market on ground of gender and sexual orientation can be awarded compensation and dismissals can be set aside.

The Board of Equal Treatment (reference is made to the reply to question no. 36) makes a big effort to raise awareness about antidiscrimination in general. The secretariat for The Board of Equal Treatment regularly holds dialogue sessions with stakeholders, particularly organizations that have special insight into equality issues. The purpose of these meetings is to obtain knowledge about how the board can best communicate with citizens. Also the secretariat makes educational presentations for organisations and trade unions.

The Danish Institute of Human Rights (reference is made to the reply to question no. 36) promotes, monitor, and support equal treatment of women and men without discrimination on the basis of gender.

46. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

47. Has the Recommendation, including its Appendix, been translated in all your national languages?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

48. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation has been forwarded to relevant national authorities.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

49. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Danish Criminal Code section 81 (6) it must generally be considered an aggravating circumstance that an offence is rooted in other persons' ethnic origin, religion, sexual orientation (including gender identity) etc., when the penalty for the offence is determined.

Guidelines in relation to section 81 (6) have been laid down in Instruction No. 2/2011 from the Director of Public Prosecutions. According to the guidelines police officers – when alleged offences are reported to and investigated by the police – must be aware of any circumstances in the specific case that indicate that the offence may have been committed in full or in part because of other persons' ethnic origin, religion, sexual orientation or the like. The guidelines contain examples of concrete hate crime indicators. The guidelines also state that the police in such cases is obliged to investigate this aspect of the case and that prosecutors are obliged to ensure that evidence concerning a possible hate motive is presented to the court and to ask for an increased sentence in such cases. Instruction No. 2/2011 from the Director of Public Prosecutions can be found on the internet on the following website: [http://www.rigsadvokaten.dk/media/RM\\_2-2011.pdf](http://www.rigsadvokaten.dk/media/RM_2-2011.pdf) (the instruction is available in Danish only).

50. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Reference is made to the reply to question no. 9.

51. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In August 2010, the police district of Copenhagen together with the Danish Institute for Human Rights, the Municipality of Copenhagen and the Municipality of Frederiksberg launched a campaign called "Stop Hadforbrydelser" (stop hate crimes). The purpose of the campaign was to raise awareness about hate crimes and get victims and witnesses to report these types of crimes to the police.

The campaign included posters and stickers displayed in public places such as on busses and at the side of roads in August 2010. The campaign also included artwork with a hate crime theme being displayed in Copenhagen and a campaign on Facebook. Shops in the centre of Copenhagen and in the Copenhagen neighbourhood of Nørrebro were also invited to contribute to the campaign by displaying stickers on windows, front doors etc. The campaign also featured a website with information about how to report a hate crime to the police. The website had information about the different types of hate crimes, the hate crime offenders and the victims of hate crimes. The website also contained information in different languages about the victim's right to have an attorney appointed in case of a trial against the offender.

In October 2012, The Ministry of Justice supported the continuance of the campaign. The new campaign consists of an outdoor campaign targeted at raising awareness and inciting people to report hate crimes. The campaign also involves an "information and campaign bus" which will make it possible to get out among the young people and engage in dialogue with both victims and perpetrators.

52. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Reference can be made to Instruction No. 2/2011, reference is made to the reply to question no. 9. Furthermore, in 2009 the police district of Copenhagen issued an informational folder and guidelines regarding the case handling and investigation in cases involving hate crimes. The purpose of this was to make sure that the police during the investigation of a possible hate crime remember to ask the victim and possible witnesses questions regarding the motive of the perpetrator.

It should also be noted that starting in autumn 2011 a number of one-day seminars on hate crime were held in the police districts in Denmark. The seminars were developed by the Danish Security and Intelligence Service and the Danish Institute for Human Rights. The police and prosecution service attended the seminars, which addressed subjects such as human rights, identification and registration of hate crimes and guidelines concerning investigation and prosecution of hate crimes, including relevant legal provisions.

Finally it should be mentioned that the Minister for Social Affairs and Integration and the Minister of Justice in March 2012 hosted a camp on hate crimes and intolerance. At the camp representatives from different parts of society took part in workshops on how locally to continue the efforts to prevent intolerance and hate crimes and to ensure that victims of hate crimes are receiving the necessary support.

53. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

To ensure the safety and dignity of the persons referred to in the question, the Danish Prison and Probation Service follows the general rules laid down in the Act on Enforcement of Sentences. A prison sentence may be enforced in a special unit in state prisons if it is deemed necessary in order to protect the convicted offender against assaults. Furthermore the first requirement in the Programs of Principles for Prison and Probation work in Denmark is the respect of the individual person and generally accepted human rights, including protection against inhuman treatment and discrimination.

54. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Section 266 b of the Danish Criminal Code prohibits the dissemination of statements or other information by which a group of people is threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation. (In accordance with the preparatory work, the term "sexual orientation" is assumed to encompass gender identity.)

According to subsection 2 of Section 266 b, it shall be considered an aggravating circumstance if the conduct can be characterized as propaganda. Propaganda is understood as systematic, intensive or continuous efforts with a view to influencing opinion formation.

In 2011 the Director of Public Prosecutions issued new guidelines concerning the handling of cases of violation of section 266 b of the Criminal Code (Instruction No. 2/2011 replacing Instruction No. 9/2006 – a link to the Instruction can be found in the reply to question no. 9).

In order to ensure transparency and a uniform practice by the police and prosecution as to the application of section 266 b in cases concerning hate speech the new Instruction contains detailed guidelines supplemented with relevant case law as to when an act as a general rule should be considered a violation of section 266 b. New paragraphs discussing the freedom of expression relative to such cases as well as guidelines on the investigation and the sentence claimed in such cases have been inserted in the Instruction.

The reporting scheme of Instruction No. 9/2006 concerning violations of Section 266 b is continued in the new Instruction. Thus, all cases in which a charge for violation of Section 266 b has been preferred must be submitted to the Director of Public Prosecutions together with a recommendation on the question of prosecution. Thus, it is the Director of Public Prosecutions that determines whether or not to prosecute cases, where a charge has been preferred.

If no charge has been preferred and the Commissioner of Police finds that a report of an alleged violation of section 266 b should be dismissed or that there is no basis for continuing the investigation, the case must be submitted to the Regional Public Prosecutor together with a recommendation. Thus, it is for the Regional Public Prosecutor to determine whether or not a report of an alleged violation of section 266 b should be dismissed or the investigation discontinued. The Director of Public Prosecutions must be notified of the decision of the Regional Public Prosecutor.

The purpose of the reporting scheme is to ensure a uniform charging practice nationally and supervise the processing of cases.

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Reference is made to the reply to question no. 11.

## **II. Freedom of association**

55. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

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56. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Danish Constitution guarantees freedom of expression for all and NGOs are not required to obtain clearance by any authorized state body prior to publications raising human rights issues etc. According to section 77 of the Danish Constitution anyone is entitled to publish his ideas in print, in writing and in speech, subject to the authority of the Courts. Censorship and other preventive measures may never be reintroduced. Section 78 of the Danish Constitution protects the forming of associations for lawful purposes. NGOs, as well as other organisations, automatically have legal personality when they are formed. The forming of a new NGO does not require prior permission.

57. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to general practice the Danish Institute of Human Rights and relevant NGOs are consulted when new legislation is drafted. Thus, they may provide comments which will then form part of the law-making process. In cases of more extensive legislative reforms or legislation concerning important principles, new legislation may be prepared by preparatory committees, commissions, or working groups. In these cases affected parties – including relevant NGOs – are oftentimes represented on the committee etc.

### **III. Freedom of expression and peaceful assembly**

58. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

59. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Pursuant to section 7 of the Act on the Activities of the Police, the Police have a duty to protect the citizens' freedom to assemble. This includes participants in demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons. The provision emphasises that the Police has a duty to defend the right to assembly as enshrined in the Constitution. In doing this, the Police have a duty to secure the peaceful execution of the demonstration with the necessary personnel and equipment. If unrest or riots occur, it is the principal task of the Police to secure restoration of law and order. Furthermore, it is the task of the Police, if possible, to prosecute the alleged perpetrators, who have violated the law, regardless of the nature of the expected punishment.

#### **IV. Right to respect for private and family life**

60. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 221 of the Danish Criminal Code prohibits the deceitful obtaining of sexual intercourse with a person who wrongly believes to be married to the obtainer or mistakes the obtainer for someone else. Due to historical reasons, the provision only applies to heterosexual inter-course as well as other heterosexual relations. The Government has recently presented a proposal for amendment of the Danish Criminal Code's provisions regarding sexual offences. The Government proposes, inter alia, to amend Section 221 in order to ensure that homosexual relations fall within the scope of the provision to the same extent as heterosexual relations.

61. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

The Act on Processing of Personal Data is not applicable to the processing of data undertaken by a natural person with a view to exercise of purely personal activities and processing of data covered by the Act on information databases operated by the mass media. Section 7 (dealing with sensitive information) does also not apply to processing of data which take place exclusively for journalistic purposes or for the sole purpose of artistic or literary expression. Regarding data collection and health care an example of an exception is the collection of necessary personal data as a part of health care services. Such necessary data are stored in the National Patient Register (LPR) according to the principles on protection of personal data in the Act on Health Care and the Act on Processing of Personal Data.

62. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐



Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Requirements for legal recognition of a gender reassignment were not reviewed after the adoption of the Recommendation.

However, persons who on the basis of a gender reassignment surgery have been awarded a new personal identification number will be given a corresponding gender designation in their passports. Furthermore, pursuant to section 5 (5) of the Danish executive order on passports a person who has not undergone gender reassignment surgery may be authorized to mark the gender as X (unspecified) in the passport if he or she is considered by the Sexological Clinic of the Danish Rigshospital to be transsexual or completely comparable to transsexual.

Furthermore, the Danish government has decided to establish a working group with a view to assess the possibilities of granting transsexuals a right to legal gender reassignment without gender reassignment surgery (castration). The working group is expected to finish its work by the end of 2013.

63. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Reference is made to the information on the change of the Marriage Act (same sex marriage), provided in reply to question no. 2.

64. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

65. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Danish legislation, all decision on parental responsibility and adoption are taken in the child's best interest. Legally, it is not permitted to take the sexual orientation or gender identity of a party into consideration.

### **V. Employment**

66. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In Denmark the prohibition against discrimination on the basis of sexual orientation is specified by the Act on prohibition against discrimination on the labour market.  
The act forbids direct and indirect discrimination and applies in connection with employment, dismissal, reassignment, promotion and in regard to pay and working conditions.  
The Act on Equal Treatment between men and women and the Act on Equal Pay to men and women prohibits discrimination on the basis of gender.

Discrimination of transgender persons is in Denmark considered as discrimination based on gender. As concerns the privacy of transgender individuals in context of employment (e.g. irrelevant disclosure of their gender history or their former name) protection is provided by the Personal Data Protection Act.

### **VI. Education**

67. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

xiv) Anti-discrimination training or support and teaching aids

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

xv) Information, protection and support for pupils and students

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

xvi) Objective information on sexual orientation and gender identity in school curricula ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

xvii) School equality and safety policies and action plans

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The curriculum and binding learning objectives in the subjects of Health and sexual education as well as other subjects in lower and secondary education reflects tolerance, empathy and pluralism in terms of for example:

- sexual orientation, race and religion
- political opinion
- family patterns
- social status

## **VII. Health**

68. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In Denmark, men and women, children and adults, have equal access to prevention, treatment, care and support. The Danish government has focus on lesbian, gay, bisexual and transgender persons in health prevention and health promotion policies. The Danish Health and Medicines Authority advises and produces recommendations to municipalities on good practices in the fields of health care services, prevention and health promotion. The Authority has launched new recommendations concerning tobacco, alcohol, physical inactivity, mental health and sexual health. These so-called "prevention-packages" are targeted at municipalities. The recommendations describe in detail which health promoting and preventive measures municipalities should implement in the coming 10 years. The recommendations are non-binding because the government does not have the legal basis to instruct the municipalities in these matters. The prevention-package regarding sexual health focuses on how municipalities can ensure that adolescents, ethnic minority groups, and vulnerable groups such as lesbian, gay and transgender persons get the necessary advice, information and treatment.

Further, as regards sexually transmitted diseases such as HIV/AIDS the Danish policy is based on the principles that there should be no compulsion and that anonymity must be preserved. Open, direct, and honest information is available, which is intended to enable the individual to refer freely to the health authorities. Furthermore, an important element in the Danish AIDS policy is to avoid any form of discrimination. Also information and motivation are very important elements in the AIDS policy. At the same time, the Government ensures economic support to voluntary associations working with prevention and health promotion regarding HIV/AIDS and gives economic support to voluntary associations campaigns and school materials containing information about healthy sexuality and protection against sexually transmitted diseases. Gender reassignment services are part of the public health care system, classified as a highly specialized treatment. The National Board of Health is currently adjusting the guidance on the treatment of persons with gender identity problems aiming to improve the treatments and the scheme further.

69. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

70. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

Costs of offered gender reassignment services are unlimited. Much medicine bought on prescription in Denmark comes with general reimbursement, including hormones as a part of gender reassignment. The general conditions for the reimbursement must be met for this medicine as well as for other medicine, which means that part of the expenses for medicine cannot be reimbursed.

### **VIII. Housing**

71. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The possibility for housing in terms of owning your home, renting on the private housing market or renting in the system for social housing is equal to all citizens. The social housing dwellings are owned by (non-profit) housing associations. Everyone can be placed on a waiting list, which the housing associations is obliged to use when assigning tenants to flats. Besides the waiting lists, the local authorities have a municipal allotment right for a certain percentage of the vacant flats in the social housing. The general legislation on tenancy provides protection against groundless eviction.

72. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

One fifth of the total housing stock is social housing owned by (non-profit) housing associations, where everyone can be placed on a waiting list, which the housing associations is obliged to use when assigning tenants to flats. Besides the waiting lists, the local authorities have a municipal allotment right for a certain percentage of the vacant flats in the social housing, which is used to help people in need of housing.

### **IX. Sports**

73. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The National Olympic Committee and Sports Confederation of Denmark has issued an ethical codex for all athletes, trainers, officials, leaders, supporters etc. involved with sports and sports events in Denmark. This codex emphasizes equal treatment of all, regardless of gender, race, ethnic, political or sexual orientation.

### **X. Right to seek asylum**

74. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to section 7 (1) of the Danish Aliens Act a residence permit will be issued to an alien upon application if the alien falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951). Pursuant to section 7 (2) of the Danish Aliens Act a residence permit will be issued upon application if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. An application as referred to in the first sentence hereof is also considered an application for a residence permit under subsection (1).

Cases concerning granting of refugee status or asylum in accordance with section 7 (1) and section 7 (2) of the Danish Aliens Act are subject to a concrete and individual assessment of each applicant's motive for seeking asylum combined with the background knowledge on the general situation in the country of origin. It is broadly accepted that cases where the motive for seeking asylum is based on gender or sexual orientation fall within the meaning of section 7 (1) and section 7 (2) of the Danish Aliens Act.

75. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Reference is made to the reply to question no. 34.

### **XI. National Human Rights Structures**

76. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

In Denmark the prohibition against discrimination on the basis of race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin, is specified by the Act on prohibition against discrimination on the labour market.

The Act on Equal Treatment between men and women and the Act on Equal Pay to men and women prohibits discrimination on the basis of gender. Discrimination of transgender persons is in Denmark considered as discrimination based on gender.

In 2009 an administrative Board of Equal Treatment was established. The board handles complaints concerning discrimination both outside (gender and ethnic origin) and on (gender, race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin) the labour market. The Board may award compensation and set aside dismissals to the extent provided for by the acts covered by the board.

The decisions made by the board cannot be appealed against to any other administrative authority. Once the Board has made a decision about a complaint, either party may bring the matter before the courts. Where the

decisions made by the Board are not observed, the Board shall, at the complainant's request and on his or her behalf, bring the matter before the courts.

Bringing a case before the Board of Equal Treatment is free of charge. It is also free of charge for the complainant, when the board, at the complainant's request, brings the matter before the court.

The Danish Institute of Human Rights (DIHR) has in March 2011 been appointed equality body in relation to gender. This means that DIHR is mandated to promote, evaluate, monitor, and support equal treatment of women and men without discrimination on the basis of gender. The mandate includes giving assistance to victims of discrimination to have their complaints dealt with, initiating independent analyses on discrimination and publishing reports and making recommendations on issues relating to discrimination.

## **XII. Discrimination on multiple grounds**

77. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

The Danish legislation does not contain a specific provision about discrimination on multiple grounds, but the Board of Equal Treatment has reviewed some cases concerning multiple discrimination and has in these cases assessed whether the use of the single criteria constituted a violation.

## **Section III - Follow-up**

78. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

The Council of Europe should publish the analysis of the responses to this questionnaire including the responses regarding best practices. This could provide valuable information and inspiration for member states.

79. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

This thorough examination is sufficient to monitor the implementation of the Recommendation.

80. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

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**ESTONIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐

Please explain your reply.

The current status of the implementation of the measures of the Recommendation is twofold, due to differences in scopes of protection provided by the Gender Equality Act (GEA) and the Equal Treatment Act (ETA). The GEA prohibits discrimination, which is based on gender (and gender identity) in all areas of, while the ETA divides the protected areas depending on the basis of discrimination.

The legal framework for equal treatment and non-discrimination mostly covers the area of employment (as required by Directive 2000/78/EC). The insufficiency of the of implementation of the Recommendation occurs in the areas of private life and family relations.

Steps have been taken to amend the situation. Two important developments currently in the process of consultations concerning the LGBT issues in Estonia are the amendment of the existing Criminal Code of Estonia and the civil partnership law concept.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please explain and, if appropriate, provide examples of any such measures found:

There has been no comprehensive review of existing legislative and other measures. Each Ministry is responsible for ensuring respect of equal treatment principles within its area of competence. New legal acts or amendments to existing acts must take this principle into account. Ministry of Social Affairs, through the gender equality department, is tasked with coordinating the activities of other state authorities relating to equal treatment in general.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Equal Treatment Act stipulates that discrimination disputes shall be resolved by a court or a labour dispute committee. Discrimination disputes shall be resolved by the Chancellor of Justice by conciliation procedure.

According to the Gender Equality Act (GEA § 13) and the Equal Treatment Act (ETA § 24) the victims can demand both that the infringing party ends the discrimination and also compensates the

damages caused, both material and moral damages. There are no differences in the possible sanctions depending on the ground of discrimination.

Commissioner and the Chancellor can make recommendations on how to redress the discrimination in non-material terms and how to avoid such situations in the future. However, their opinions are not legally binding, except for the agreement reached at the mediation proceedings, and do not amount to recommendations being made by courts or labour dispute committees.

The scope, duration and nature of the discrimination is taken into account in determining the amount of compensation (GEA § 13(3), ETA § 24(3)). In case of non-proprietary (or moral) damage, the victim can ask for 'a reasonable amount of money' as compensation (GEA § 13(2), ETA § 24(2)). In case of moral damages, if the exact amount of the damage cannot be established or if the establishment thereof would involve major difficulties or unreasonably high costs the court will assess the amount of compensation according to its discretion.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If appropriate, please provide examples of measures adopted or in preparation.

No legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5).

Two major developments concerning the LGBT issues currently in the process of consultations are the amendment of the existing Criminal Code of Estonia and the potential civil partnership law concept.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

A draft amendment to the Penal code is being prepared to address the deficiency.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

☒ a. ☐ b. ☐ c. ☐ d. ☐ e. ☐



If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

✓ a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In Estonia the sanctions and the right of action is regulated by Law of Obligations Act, Equal Treatment Act and Penal Code.

Penal Code §151 regulates the sanctions for incitement of hatred. It says that activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person are punishable by a fine up to 300 fine units or by detention.

Penal Code §152 regulates sanctions for violation of equality. It says that unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status is punishable by a fine of up to 300 fine units or by detention.

Law of Obligations Act (LOA) §1043 stipulates that a person (tortfeasor) who unlawfully causes damage to another person (victim) shall compensate for the damage if the tortfeasor is culpable of causing the damage or is liable for causing the damage pursuant to law.

The conditions of the claim are:

- damage is caused to a victim
- unlawfulness of causing damage
- causation between unlawful act on causing of damages

LOA §128 regulates the types of damage subject to compensation. Pursuant to the law damage subject to compensation may be patrimonial or non-patrimonial. Patrimonial damage includes, primarily, direct patrimonial damage and loss of profit. Non-patrimonial damage involves primarily the physical and emotional distress and suffering caused to the aggrieved person.

LOA §134 subsection 2 states that in the case of an obligation to compensate for damage arising from depriving a person of liberty, causing bodily injuries to or damage to the health of a person or violation of other personality rights, including defamation of a person, the aggrieved person shall be paid a reasonable amount of money as compensation for non-patrimonial damage. Same paragraph subsection 5 says that the gravity and scope of the violation and the conduct and attitude of the person who caused damage to the aggrieved person after the violation shall be taken into account for the purposes of determining the compensation for non-patrimonial damage.

According to LOA §1045 subsection 1 point 4 causing of damage is unlawful if, above all, the damage is caused by violation of a personality right of the victim.

Hence taking into account of the previous, a person discriminated on the basis of sexual orientation or sexual identity, has the right of compensation for damages (both patrimonial or non-patrimonial). Analogous regulation appears on Equal Treatment Act. Its §23 says that discrimination disputes shall be resolved by a court or a labour dispute committee. Discrimination disputes shall be resolved by the Legal Chancellor by way of conciliation proceedings.

Equal Treatment Act §24 subsection 1 says that a victim demand that the person who violates the rights terminate the discrimination. Analogous paragraph is in LOA: § 1055 subsection 1, which states, that if unlawful damage is caused continually or a threat is made that unlawful damage will be caused, the victim or the person who is threatened has the right to demand that behaviour which causes damage be terminated or the making of threats with such behaviour be refrained from. In the case of bodily injury, damage to health, violation of inviolability of personal life or any

other personality rights, it may be demanded, inter alia, that the tortfeasor be prohibited to approach other persons (restraining order), the use of housing or communication be regulated or other similar measures be applied.

According to Victim Support Act all persons (including the victims of sexual orientation or gender identity discrimination) who have fallen victim to negligence, mistreatment or physical, mental or sexual abuse, i.e. all those to whom suffering or injury have been caused, are entitled to victim support. Any person who has been subject to suffering or injury has access to counselling regardless of whether the identity of the perpetrator has been disclosed or criminal proceedings have been brought against him/her.

The purpose of the victim support service is to maintain or improve a victim's ability to cope. For improved coping, a victim needs both emotional support and information on the forms of assistance available (such as psychological counselling, legal assistance etc), and guidance on how to address the organisations. If a victim is assisted in due course, his/her coping ability can be maintained.

The law provides for the establishment of a network of victim support centres in all counties. The main duty of regional victim support services is to create and employ a network of organisations in the region which offer assistance and services to victims of crime, and to develop and strengthen this network where possible.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

The obstacles in the provision of law.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation and its Appendix have been translated into Estonian by the Council of Europe and will be available on the Internet.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

However, such motives have not been clearly set in the law. An amendment is being prepared.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The amendment is being prepared.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures have been taken.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Training will be foreseen to take place after the amendment has entered into force.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures have been taken.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The consultation process of the amendment of the existing Criminal Code is currently ongoing. The amendment foresees specific provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing. Judges have been participating in several trainings as regards discrimination.

**II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

No compliances have been made to Gender Equality and Equal Treatment Commissioner that freedom of association (including access to public funding available for non-governmental organisations) has been limited because of discrimination on grounds of sexual orientation or gender identity.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures have been adopted to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression. The usual means can be employed – complaints can be made to the Police if hostility or aggression potentially amount to a crime, complaints can also be made to the Chancellor of Justice or to a court.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No measures have been taken. There are no specific measures to protect, facilitate or encourage LGBT organisations. Free operation is based on the respective acts. In case of violations in regard to such organisations, they can turn to respective institutions, such as courts or the Chancellor of justice.

**III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

Pursuant to the Constitution of the Republic of Estonia § 47 everyone has the right to assemble peacefully and to conduct meetings without prior permission. The right to hold public meetings is regulated in the Public Meeting Law Act. Freedom of Speech is expressed in the Constitution § 45 - Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means.

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The right to freedom of peaceful assembly in Estonia is in general regulated by the Constitution of Estonia. Section 47 of the Constitution states: „Everyone has the right, without prior permission, to assemble peacefully and to conduct meetings. This right may be restricted in the cases and pursuant to procedure provided by law to ensure national security, public order, morals, traffic safety, and the safety of participants in a meeting, or to prevent the spread of an infectious disease.”

Restrictions to this regulations are stated in the Public Meetings Act (hereinafter PMA). Regulation and also the restrictions of the PMA can be divided into three separate parts I) when the public meeting is forbidden; II) the places where it is forbidden to hold public meetings; and III) cases when the meeting has to be registered beforehand.

I) PMA states, that public meetings are forbidden when: they are directed against the sovereignty of Estonia, it's aim is to forcibly change the existing polity, it advocates violation of the territorial integrity of Estonia, it encourages hatred, violence or discrimination as to nationality, race, colour, sex, language, origin, religion, sexual orientation, political belief or economic or social status; it advocates to breach public order or infringes morality.

II) PMA states, that public meetings can't be held: at a border checkpoint and closer than 300 meters to the border, on the territory of Estonian defence forces and closer than 50 meters to the defence forces territory, on a bridge, on a railroad, in a mine, under high voltage power lines, on a territory where infectious disease is spreading, at a place which is naturally dangerous to humans or at any other dangerous place to humans.

III) PMA states, that an organized public meeting has to be registered at least four workdays before the meeting at the rural municipality or city government, when it's necessary to redirect traffic, it's necessary to erect a tent, stage, bleacher or any other large scale construction, it's necessary to use sound or lighting equipment. All other public meetings (if they already haven't been registered in the above procedure) have to be registered at least two hours before the meeting at the police. The registration at police can be done in person at a police station or by using means of communication (phone, e-mail etc).

Also, in order to protect the right to freedom of peaceful assembly the Estonian penal code (section 158) states, that: “Interference with or violent dispersion of a lawfully organized public meeting is punishable by a pecuniary punishment or up to one year of imprisonment.” The cited acts are in accordance with the Constitution of Estonia and there haven't been any implications that the constitution itself or other acts pursuant to the constitution aren't in accordance with the international human rights law.

As a positive institutional measure taken to facilitate the exercise the right to freedom of peaceful assembly is for example the re-establishment of Police Rapid Response Unit (riot police) in 2002.

The aim was to create a modern rapid response unit according to the best European practice. The vision was that specific tasks are performed/ carried out by specially trained police officers who use modern equipment which will not cause disproportionate damage to the offender but will protect the officer against attacks. It's important to emphasize that the riot police was also created for the protection of peaceful demonstrators against the attacks of provocateurs and counter-demonstrators.

As described before all organized public meetings have to be registered and by doing so the fact is known to the police and police can take appropriate measures to ensure the protection of peaceful protesters. As an additional measure section 6 of the PMA states that the organizer of a peaceful protest has to appoint a steward to ensure the safety of the peaceful assembly. The appointed steward has the right to make proposals to police officers to eliminate protesters who don't follow his orders given to preserve the safety of the peaceful meetings. Also by the PMA the organizer has to ensure the safety of participants, limit dangerous places with barriers, adhere to the health requirements, warn offenders etc. The Estonian practice shows, that this regulation has been adequate and it works in practice.

As mentioned before section 158 of the Estonian Penal Code states, that Interference with or violent dispersion of a lawfully organized public meeting is punishable by a pecuniary punishment or up to one year of imprisonment. During the years 2010 and 2011 no violations of this section were registered.

Right to freely gather for peaceful meetings is assured in Estonia. With the right to organize meetings, obligation to plan the meeting in a way it does not jeopardise law and order, traffic safety and safety of the attending people, accompanies. Law enforcement authorities have never refused to provide consultations to any management how to fulfil those obligations. In 2006 and 2007 Tallinn Pride management board was provided with written recommendations. Limitations to the organisation of meetings are allowed if there is basis to believe that meeting may endanger law and order, traffic safety and participants. Specifying obligations, rights and competencies of organizing public meetings, project of new public order act has been elaborated, which is under legislative proceedings in The Parliament of the Estonia.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no such provisions.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Article 6 of the Personal Data Protection Act stipulates that upon processing of personal data, a processor of personal data is required to adhere to the following principles: principle of legality, principle of purposefulness, principle of minimalism, principle of restricted use, principle of data quality, principle of security, principle of individual participation. In accordance with Article 4(2)(6) of the Personal Data Protection Act information on sex life is sensitive personal data.

This means that for processing sensitive personal data, the person must be explained that the data to be processed is sensitive personal data and the data subject's consent shall be obtained in a format which can be reproduced in writing (Article 12(4) of the Act). However, pursuant to Article 14 of the same Act processing of personal data is permitted without the consent of a data subject if the personal data are to be processed:

- 1) on the basis of law;
- 2) for performance of a task prescribed by an international agreement or directly applicable legislation of the Council of the European Union or the European Commission;
- 3) in individual cases for the protection of the life, health or freedom of the data subject or other person if obtaining the consent of the data subject is impossible;
- 4) for performance of a contract entered into with the data subject or for ensuring the performance of such contract unless the data to be processed are sensitive personal data.

Communication of personal data or granting access to personal data to third persons for the purposes of processing is permitted without the consent of the data subject:

- 1) if the third person to whom such data are communicated processes the personal data for the purposes of performing a task prescribed by law, an international agreement or directly applicable legislation of the Council of the European Union or the European Commission;
- 2) in individual cases for the protection of the life, health or freedom of the data subject or other person if obtaining the consent of the data subject is impossible;
- 3) if the third person requests information obtained or created in the process of performance of public duties provided by an Act or legislation issued on the basis thereof and the data requested do not contain any sensitive personal data and access to it has not been restricted for any other reasons.

Furthermore, Article 27(1) of the Personal Data Protection Act states that if a processor of personal data has not appointed a person responsible for the protection of personal data provided in Article 30 of the Act, the processor of personal data is required to register the processing of sensitive personal data with the Data Protection Inspectorate. If personal data are processed by an authorised processor then the applications shall be submitted by the chief processor. Article 27(4) of the same Act provides that processing of sensitive personal data is prohibited if the Data Protection Inspectorate has not registered the processing of sensitive personal data, except in the case specified in subsection 30 (1) of the Act or the term for processing sensitive personal data has expired or the Data Protection Inspectorate has suspended or prohibited the processing of sensitive personal data. Article 27(5) of the same Act states that the Data Protection Inspectorate shall refuse to register processing of sensitive personal data if there are no legal grounds for processing or the conditions for processing do not meet the requirements provided for in the Act, another Act or legislation established on the basis thereof or the organisational, physical and information technology security measures applied for the protection of personal data do not ensure compliance with the requirements provided for in Article 25 of the Act.

Pursuant to Article 42 of the Act violation of the obligation to register the processing of sensitive personal data, violation of the requirements regarding security measures to protect personal data or violation of other requirements for the processing of personal data is punishable by a fine of up to 300 fine units and the same act, and if committed by a legal person, is punishable by a fine of up

to 32,000 euros. Article 32(1) of the Act provides that the Data Protection Inspectorate is responsible for monitoring compliance with the Act and legislation established on the basis thereof. In accordance with Article 2(1) of the Act, the following are nevertheless excluded from the scope of the Personal Data Protection Act: processing of personal data by natural persons for personal purposes as well as transmission of personal data through the Estonian territory without any other processing of such data in Estonia.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The regulation on common requirements to medical acts of sex change is the basis for all medical and legal acts regarding gender reassignment in Estonia. Although the Ministry of Social Affairs has considered it, so far no special regulation for gender reassignment has been worked out. According to the current regulation, the Minister of Social Affairs assembles a committee of medical experts competent to decide about a person's gender, they also grant permission for medical and surgical procedures necessary for gender change. A person applying for gender recognition must submit an application to the Ministry. The applicant must also present evidence about his/her transsexual identity during at least two years prior to the application; a psychiatrist's assessment excluding a psychiatric disorder, and the results of genetic research on compatibility of chromo somatic and gonad gender. The decision of a committee of medical experts is the basis for a decree by the Ministry of Social Affairs, which authorises hormonal treatment and medical acts, both of which are voluntary, to change an applicant's gender. This decision will also be a basis for legal change of gender and name.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Family Law Act a marriage is contracted between a man and a woman. Therefore once gender reassignment has been completed and legally recognised, the right of a transgender person to marry a person of the sex opposite to their reassigned sex is guaranteed.

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?



- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please provide examples:

Estonian national legislation does not regulate same-sex partnerships. Compared to heterosexual couples, same sex couples do not have the right to marry.

In May 2011 the Estonian Chancellor of Justice requested that the Ministry of Justice introduce legislation to give same-sex partnerships a legal foundation. In Chancellor's view, the law needed to be changed to cover areas such as property ownership and legal succession. The Chancellor of Justice requested the Ministry of Justice to introduce civil partnership law. The proposal was drafted in August 2012 and is currently under the process of consultation.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Joint adoption or an adoption of the biological child of one's same-sex partner is not possible in Estonia (Family Law Act, § 148). Only marriage allows this type of adoption. The Family Law Act allows adoption by a single person of at least 25 years of age (§ 148, 150). Therefore, in principle, a person in a same-sex partnership may adopt a child.

Decisions regarding parental responsibility and adoption of a child have to base on the Family Law Act and have to be primarily in the child's best interest as well as follow the non-discrimination principle.

§ 147 of the Act permits adoption if it is necessary in the interests of the child and there is reason to believe that a parent-child relationship will be created between the adoptive parent and the child. Upon the selection of an adoptive parent, his or her personal characteristics, relationship with the child being adopted, his or her financial situation and ability to perform the obligations arising from the adoption relationship and, if possible, the presumed will of the parents of the child shall be taken into account. If possible, the need for consistency of raising of the child and his or her national, religious, cultural and linguistic origin shall be taken into account upon making a decision. Adoption is not permitted if it is in conflict with weighty interests of the children of the adoptive parent or the child being adopted or if there is reasonable doubt that the children of the adoptive parent damage the interests of the child being adopted. Adoption shall not be decided on based on proprietary interests. Upon deciding, it shall be verified that the consents have not been granted for charge or any other compensation.

There are no court cases or cases processed by non-judicial institutions that have involved adoption issues in the light of adoptive parent's sexual orientation.

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Equal Treatment Act § 2 discrimination on the ground of sexual orientation is prohibited.

Subsection (2) prohibits discrimination of persons on grounds of religion or other beliefs, age, disability or sexual orientation is prohibited upon:

- 1) establishment of conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, as well as upon promotion;
- 2) entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination or cancellation of employment contracts or contracts for the provision of services, release from office;
- 3) access to vocational guidance, vocational training, advanced vocational training and retraining, practical work experience;
- 4) membership in an organisation of employees or employers, including a professional organisation, and grant of benefits by such organisations.

The Act does not preclude the requirements of equal treatment in labour relations on grounds of any characteristic not specified in subsection.

The Republic of Estonia Employment Contracts Act § 3 obliges employer to guarantee the employees the environment of non-discrimination and promote the principles of equal treatment according to the Gender Equality and Equal Treatment Acts. The ECA came into force in 2009 after negotiations with social partners. Related to the enforcement of the law several seminars were carried out across Estonia to the employers and employees, which handled also the principles of gender equality and equal treatment.

The new Public Service Act, which comes into force in 01.04.2013, contains a regulation according to which all public service bodies have to assure a public servant or a person wishing to enter into public service the protection against discrimination and promote equal treatment

Discrimination disputes shall be resolved by a court or a labour dispute committee. Discrimination disputes shall be resolved by the Chancellor of Justice by way of conciliation procedure.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Although specific measures have not been taken and LGBT issues are not directly part of the curriculum, the curricula of civics include topics of equal treatment, including LGBT issues. There has been no discrimination cases reported about discrimination on the ground of sexual orientation in schools. NGO Estonian LGBT Association organizes trainings for school teachers and youth workers in order to provide adequate information and break negative stereotyping on LGBT issues. The NGO reports that the interest about the topic is generally growing and the fact that it might be one of the motives behind school bullying and exclusion is increasingly acknowledged among teachers and school leaders.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Estonian health policy is built on the principle of equal treatment. According to the Health Care Services Organisation Act, all people staying in the territory of the Republic of Estonia have the right to emergency care. Health insurance is provided also for the registered unemployed in order to alleviate the negative impacts of unemployment on health. Free health services are also available for all the people with the HIV or tuberculosis infection. Estonian health insurance relies on the principle of solidarity. If a person is covered by health insurance, he or she has access to all health services according to the same conditions as everyone else. Trainings of health service personnel have to be in accordance to the highest standards of possible health services and everybody must be guaranteed the necessary requirements for achieving the best possible state of health, regardless of someone's sexual orientation or gender identity. The National Health Plan does not separately cover the LGBT topic. The health service providers are encouraged to take into consideration of all patients' particular needs.

29. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

Transgender people have access to services on the same basis as everyone who is covered by the Estonian Health Insurance Fund; this includes access to specialists according to the general waiting list. The costs of surgical procedures are usually covered by the patient themselves.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Equal Treatment Act prohibits discrimination of persons on the grounds of nationality (ethnic origin), race or colour in relation to access to and supply of goods and services, which are available to the public; this also includes housing. This protection does not extend to sexual minorities. The Gender Equality Act does cover supply of services, including housing, in its prohibition of discrimination based on gender.

The state is obligated to create conditions in the housing market (legislation, institutional arrangement and support measures), which enable residents to solve their housing problems independently. The implementation of the Estonian Housing Policy is designed to be supported by employment, welfare and regional policy measures. Pursuant to the Constitution and the Local Government Organisation Act, local governments are responsible for organising housing and utilities in their administrative territory.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Even though there are no provisions targeting the LGBT community in particular, to a certain extent, Estonian legislature protects people who cannot afford housing for economic reasons or who need temporary housing or shelter for socio-economic or other reasons. Under the Social Welfare Act, local government authorities are required to provide dwelling for persons or families who are unable or incapable of securing housing for themselves or their families, and to create, if necessary, the opportunity to lease social housing.<sup>319</sup> The rural municipality council or city council establishes the procedure for provision and use of social housing. Persons who have difficulties moving about, caring for themselves or communicating in a dwelling are assisted by the rural municipality government or city government in adapting their dwelling or in obtaining a more suitable dwelling. Paragraph 18 of the Social Welfare Act establishes types of social welfare institutions:

- shelters – temporary twenty-four hour assistance, support and protection for persons;
- substitute homes – substitute home service to children;

- youth homes – living and rehabilitation for young people over the age of fifteen who are from substitute homes, schools for students with special needs, residential educational institutions or have been left without parental care;
- residential educational institutions – living, care, development and education for disabled school age children.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No measures have been taken.

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Estonia has no practice in these cases.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Estonia has no practice in these cases.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

There are no national human rights institutions as accredited by the United Nations under the Paris Principles. The Chancellor of Justice and the Equal Treatment Commissioner are human rights institutions created by law and mandated to address discrimination.

Gender Equality and Equal Treatment Commissioner has competence in issues of gender, racial or ethnic origin, colour, religion or belief, age, disability and sexual orientation. She accepts applications from individuals and provides her opinion and recommendations on discrimination issues. She is also authorised to act on her own initiative.

Persons can also turn to Chancellor of Justice, an independent institution created in accordance with the Constitution (§ 139). In addition to accepting applications on possible infringements of fundamental rights and freedoms by a public authority, he also accepts applications regarding constitutionality or legality of legal acts. According to the recent amendment of the Chancellor of Justice Act, the Chancellor (§ 15 (2)) can also act on his own initiative.

Neither the Commissioner nor the Chancellor can give legally binding opinions, neither is there an enforcement mechanism for them. They can both make recommendations to state and local authorities. The Chancellor can also make recommendations to the parliament. More importantly, unlike the Commissioner, the Chancellor can raise matters before the Supreme Court if the adopting institution has refused to amend the act.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

Examples of good practices would be helpful for working out different measures for better implementation of the Recommendation.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes, Council of Europe should continue examining the implementation of this Recommendation periodically.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**FINLAND**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

Based on the Recommendation, and bearing in mind that the rights of LGBTI-people are defined in the Government Report to Parliament on the Human Rights Policy of Finland (2009) as one of the priorities of Finland's human rights policy, the Ministry for Foreign Affairs of Finland has set up a cross-sectoral working group on LGBTI-issues. The task of the working group has been to consider which measures the report and the recommendation would call for, to promote and monitor these measures and to inform about issues related to this minority. The working group also coordinates the work done in different fields of the administration. This working group has also prepared the answers to this questionnaire. The working group was led by the Unit for Human Rights Policy of Ministry for Foreign Affairs and it has had representatives from relevant ministries and authorities as well as from two Finnish LGBTI-organizations (The members of the working group represent Ministry of Justice, Ministry of the Interior, Ministry of Defence, Ministry of Education and Culture, Ministry of Employment and the Economy, Ministry for Social Affairs and Health, National Police Board, Office of the Ombudsman for Equality, the Defence Command, NGOs Seta and Trasek, and Ministry for Foreign Affairs).

The working group has assessed the relevant national legislation and practices and discussed possible ways to promote the implementation of the Recommendation.

In the current national legislation there are especially two acts that regulate equality – the Non-Discrimination Act (*yhdenvertaisuuslaki*), which covers inter alia sexual orientation, and the Act on Equality between Women and Men (further on the Gender Equality Act, *laki naisten ja miesten välisestä tasa-arvosta, tasa-arvolaki*), which regulates issues related to gender equality. There are legislative reviews under way regarding both of these acts (see below). Although these reviews were initiated before the Recommendation was given, it influences these legislative projects.

The current Non-Discrimination Act (*yhdenvertaisuuslaki*) 6 § prohibits discrimination on the basis of sexual orientation. Section 9 stipulates that a supplier of work, property, services, education or benefits who discriminates someone on the basis of sexual orientation shall pay a compensation up to 15.000 euro to the injured party.

The Non-Discrimination Act is currently in the process of being revised. The intention is to extend the protection against discrimination so that all grounds of discrimination, including discrimination on sexual orientation, would be covered by equal means for legal protection and compensation. The scope of the law is expected to cover all public and private activities, including the social and

health sector as well as housing. Compliance with the Act in working life would most likely be supervised by the Occupational Safety and Health Authorities. Compliance with the Act in other spheres of life would be supervised by the Ombudsman for Equal Treatment and the Equality Tribunal. The Ombudsman for Equal Treatment would replace the current Ombudsman for Minorities and the Equality Tribunal would replace the current Discrimination Tribunal and the (Gender) Equality Board.

The Gender Equality Act regulates matters related to gender equality. The scope of application of the act is general. Outside the scope are actions relating to religious practices of religious communities and relationships that belong to the area of private life. The Gender Equality Act covers discrimination inter alia in employment, education and provision of goods and services.

The Gender Equality Act also sets out remedies in relation to gender discrimination. Essential remedies are supervision, instruction and counselling by the Ombudsman for Equality, and the Equality Board, which under penalty of a fine, can ban inter alia employers from continuing or renewing a discriminatory action. Also the victim of discrimination can plead his or her case before a district court (as a first instance) demanding compensation.

The Parliamentary Committee on Employment and Equality stated in its report (TyVM 3/2005 vp) that the regulations in the Gender Equality Act have to be interpreted consistently with the opinion by the EU court, so that it covers also discrimination based on gender reassignment. According to the instructions given by the Ombudsman for Equality, the scope of application of the Act is even wider, including all trans and intersex persons, until this issue is clearly defined in legislation.

The parliament has required that the government prepares a proposition on the amendment of the Gender Equality Act so that inter alia the protection of trans and intersex persons will be included in the Act. The reform of the law is currently under way and it will cover broadly discrimination based on gender identity and gender expression. Discrimination based on sexual orientation will continue to be covered in the Non-Discrimination Act (*yhdenvertaisuuslaki*).

The Conscription Act (*asevelvollisuuslaki*) 56 § prohibits discrimination on age, origin, language, religion or conviction, opinion, state of health, disability, gender, sexual orientation or on other grounds related to an individual.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. x c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The Office of the Ombudsman for Equality has published a report on the rights of trans and intersex persons. The Ombudsman for Equality wanted to investigate how trans and intersex persons find themselves in a worse position than others especially in terms of provisions pertaining to various sectors of life and their application. Various authorities and organizations representing trans and intersex persons were interviewed for the report. The report highlights not only the general lack of awareness and factual information but also several problems faced by trans and intersex persons, including discrimination.



The cross-sectoral working group on LGBTI-issues mentioned in answer 1 has reviewed mainly existing legislation and to some extent also other measures which could directly or indirectly result in discrimination based on sexual orientation or gender identity.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

There are measures, but their scope varies. For further details see answers 1 and 5. There are legislative reviews under way regarding both the Gender Equality Act and the Non-Discrimination Act.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The National Action Plan on Fundamental and Human Rights was adopted by the Finnish Government in 2012. The Action Plan notes the need for formal coordination mechanism for LGBTI-issues. It also states i.e. that in the reform of the Gender Equality Act one of the aims is to include provisions on the protection of trans and intersex persons.

The Ombudsman for Equality has commissioned a report on the status of trans and intersex persons, laying the groundwork for the development of gender equality policy from the perspective of trans and intersex persons. According to the Government Action Plan for Gender Equality 2012 - 2015 the status of trans and intersex persons and the need to improve it will be further explored (by the Ministry of Social Affairs and Health).

Based on the Recommendation the Ministry for Foreign Affairs set up a cross-sectoral working group tasked to follow and promote the implementation of the recommendations nationally. The working group has also prepared Finland's answers to this questionnaire. For further details, see answer 1.

The reviews of two acts, the Non-Discrimination Act (*yhdenvertaisuuslaki*) and the Gender Equality Act (*tasa-arvolaki*) are under way. The review processes started already before the recommendation was given, but the recommendations will be taken note of in the review processes.

In the revision process of the Non-Discrimination Act (*yhdenvertaisuuslaki*) the intention is to extend the means for legal protection to cover all grounds for discrimination on an equal footing. The Ombudsman for Equal Treatment would replace the current Ombudsman for Minorities and the mandate of the Ombudsman would be broadened to cover also sexual orientation. A new Equality Tribunal would replace the current Discrimination Tribunal and its mandate would be broadened to cover all discrimination grounds, including sexual orientation.

In the revision process of the Gender Equality Act (*tasa-arvolaki*) provisions will be added to protect trans and intersex persons against discrimination and to promote their equality.

For further details see answers 1 and 5.

The provision regarding aggravating circumstances when issuing punishments of the Finnish Criminal Code was revised in 2011. The provision now explicitly mentions sexual orientation. For further details see answer 10.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. x c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. x c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. x c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Statistics on judgments on hate oriented-crimes are compiled by the Legal register centre. These crimes are discrimination, incitement to discrimination and war crimes. In these crimes sexual orientation is mentioned as one of the constituent hate-element of an offence. The statistics cover however only the crimes in question and don't specify the eventual motives.

There is a follow-up process through which data-acquisition is developed in order to make it possible to assess discrimination experienced by LGBTI-persons. Also so called YES-project (see answer 33) has analyzed to what extent LHBTI-youth have experienced discrimination.

At the beginning of 2008 the Ministry of the Interior established a Discrimination Monitoring project to gather information on the realization of non-discrimination in various population groups. The Finnish Action Plan for Monitoring of Discrimination 2010–2013 was published by Monitoring Group for monitoring of Discrimination in January 2010. The purpose of the system is to provide current, objective information on the prevalence, nature, basis and consequences of discrimination in Finland. Discrimination is being monitored over the period from 2010 to 2013 through annual discrimination studies analyzing various areas of life and covering all grounds for discrimination (including LGBTI-groups). The Discrimination in Education and Leisure Time -study, which was part of the national discrimination monitoring and published in 2010 focused especially on the discrimination experienced by young people belonging to sexual and gender minorities during secondary education.

The national non-discrimination project YES – Equality is a Priority has also published studies with LGBT-focus. The study called *Yhteiset kentät* (shared fields) brought new evidence on homophobia in the field of sports in year 2012 and the study *Kuka ei kuule joukkoon* gathered the experiences of youngsters with LGBT-background in year 2010.

The Police College of Finland publishes a yearly report that reviews suspected hate crimes reported to the police in Finland. For the purpose of the statistics, hate crime has been defined as a crime

against person, group, property or institution motivated by prejudice or hostility towards the victim's ethnic or national origin, religion, sexual orientation or disability. The statistical report looks into the potential motives of the crimes (e.g. sexual orientation). The results of the research of the Police College related to hate crimes have been used for example in the planning of different kinds of actions against hate motivated crimes. Events and education in order to advance equality of LGBTI persons have also been organized. The police has also developed compilation of statistics on hate crimes. Instructions on classification of hate crimes in the police data system was given in 2012. The classification also takes into account LGBTI persons.

The Defense Forces follows discrimination on the basis of sexual orientation based on an equality survey. In the survey the repliers are asked whether they have s experienced discrimination based on sexual orientation. The survey was for carried out the first time in the summer of 2011 as part of a broader study on equality, the final report of the study was finished June 2012. In the future surveys will be carried out every three years. There is also a separate equality survey for conscripts, which is carried out on a regular basis. The obligation to interfere in cases of discrimination is regulated in a norm; (Preventing and dealing with inappropriate people of employed personnel in the defence force, *Palkatun henkilöstön epäasiallisen kohtelun ehkäisy ja käsittely puolustusvoimien työpaikoilla*) covers employed personnel. There is a separate directive related to conscripts about preventing bullying. Instructions and advice about what to do is given both to supervisors and the people that have been discriminated against or bullied.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?
- a. ☐ b. x c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☐ c. x d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See answers 1 and 3 for further information of the available compensation for victims and the review processes that are under way.

In the review of the Non-Discrimination Act the intention is to broaden the scope of application of the compensation and widen the mandate of the Ombudsman and the Tribunal. Compensation for discrimination could be sought from public authorities, provider of work or education or from provider of goods and services in relation to all discrimination grounds prohibited in the Act. In addition, the upper limit for maximum compensation would be removed. The mandate of the current Minority Ombudsman and the current Discrimination Tribunal would be broadened to cover all discrimination grounds prohibited in the Act, including sexual orientation. This would mean improving the legal remedies available for persons belonging to sexual minorities since the current mandate of the Ombudsman and the Tribunal cover only discrimination on ethnic origin.

Ongoing research project which is part of the national discrimination monitoring systems collects the data on access to justice and evaluates the legal remedies available for victims of discrimination in practice. This study will bring new information also on the use of legal remedies within the LGBTI-community in Finland.

In the revision process of the Gender Equality Act (tasa-arvolaki) provisions will be added to protect trans and intersex persons against discrimination and to promote their equality. This amendment would clarify that the legal remedies of the Act cover also discrimination based on gender identity and gender expression. Essential remedies are supervision, instruction and counselling by the Ombudsman for Equality, and the Equality Board, which under penalty of a fine, can ban inter alia employers from continuing or renewing a discriminatory action. Also the victim of discrimination can plead his or her case before a district court (as a first instance) demanding compensation.

Criminal Code includes a general provision on discrimination. According to this section a person can be held liable for discrimination if he or she in his or her trade or profession, service of the general public, exercise of official authority or other public function or in the arrangement of a public amusement or meeting, without a justified reason refuses someone service in accordance with the generally applicable conditions, refuses someone entry to the amusement or meeting or ejects him or her or places someone in a clearly unequal or otherwise essentially inferior position owing to his or her race, national or ethnic origin, skin colour, language, sex, age, family ties, sexual orientation, inheritance, disability or state of health, or religion, political orientation, political or industrial activity or another comparable circumstance. The punishment is a fine or a maximum penalty of six months imprisonment. Sexual preference is specifically mentioned in the provision. Gender identity however is not mentioned as such but it could fall under the comparison clause "or other comparable circumstance" (see also answer 10 regarding the Criminal Code provision on aggravating circumstances). Criminal Code includes also a specific provision on discrimination in Employment in which sexual orientation is specifically mentioned but not gender identity. In provision gender identity could fall under the comparison clause "or other comparable circumstance".

Furthermore, the Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime has been adopted 2012 and Member State have three years to adopt the necessary national provision. A working group will be established to adopt the necessary measures and the possible impacts, including impacts on sexual minorities will be assessed.

Generally speaking no substantive active measures have been taken to raise awareness and facilitate access of victims to the remedies available. The working group on LGBTI-issues is also trying to find solutions to this issue.

Trans and intersex persons have, however, been in contact with the Office of the Ombudsman for Equality, so it seems that they are becoming more and more aware of this possibility. In courts the Gender Equality Act has been applied at least once in a case related to discrimination based on gender reassignment.

An information bulletin published by the Defence Forces which is part of a nationwide equality scheme informs the personnel and conscripts about all available legal remedies related to different kind of cases of discrimination.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Several ministries and authorities are responsible for different parts of the recommendation, so coordination is a challenge. The working group mentioned in answer 1 has been led by the Ministry

for Foreign Affairs. The MFA is however not one of the ministries with the main responsibility for the implementation of the Recommendation. The lack of a formal coordination mechanism for these issues has been noted in the Finnish National Action Plan on Fundamental and Human Rights published in 2012 and the matter will be discussed further by a cross-ministerial network for coordination of Human rights issues set up through the action plan.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

The Recommendation has been translated into Finnish. The Recommendation has also been translated into Swedish by Sweden.

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Ministry for Foreign Affairs has translated the Recommendation into Finnish. Sweden has translated the Recommendation into Swedish, so at least at this point Finland has not translated the recommendation into Swedish. There are however some term differences in Swedish spoken in Finland and in Sweden.

Every ministry has the responsibility to inform the public in its own field. The Recommendation is available on the MFA web page in Finnish. On the web page there's also a link to the Government of Sweden's translation of the Recommendation in Swedish. MFA has also distributed material at Helsinki Pride.

The working group mentioned in answer 1 has also been a platform where different means of active information sharing have been discussed. The Ombudsman for Equality organized a seminar in 2011 about the equality and human rights of trans and intersex persons. The Ombudsman has drafted a report (also available on the internet) on the situation of gender minorities and the Recommendation is attached to the report. Furthermore, the Ministry for Foreign Affairs arranged a seminar in 2012 in order to raise awareness about LGBTI-issues, including the Recommendation.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Finnish national legislation does not define the term *hate crime*. These crimes, however, include for example agitation against a specific group, including in an aggravated form, discrimination in the Criminal Code and employment discrimination.

There are no specific measures in place to ensure effective, prompt and impartial investigation into these specific crimes and other incidents, but there are general measures in place to ensure

effective, prompt and impartial investigation in all crimes. Nevertheless, when specifically investigating hate crimes (including crimes, where the motive is related to sexual orientation or gender identity), the target group and special characteristics related to these crimes are taken into account.

If there is a suspicion that a public authority, e.g. a police officer, has behaved inappropriately or failed to fulfil his duties, a complaint can be filed to the Parliamentary Ombudsman or Chancellor of Justice of the Government. They are supreme guardians of law and exercise oversight in order to ensure that public authorities and officials observe the law in the line of duty. The police also has its own system of oversight, and in case there is suspicion of a crime committed by a police officer, criminal procedures can be started and a public prosecutor will be in charge of the investigation.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐   b. x   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In certain cases The Finnish Criminal Code recognizes aggravating circumstances when issuing punishments. The provision addressing aggravated circumstances was revised in 2011. It mentions the following possible aggravated circumstances relating to the motive of the crime; race, colour, descent, ethnic or national origin, religion or conviction, sexual orientation, disability, or other corresponding grounds. Gender identity is not specifically mentioned in the section. However, in the Government Bill in which the content of this section is described in detail it is stated that gender minorities, such as transgender persons, can be seen as falling under the comparison clause "or other comparable grounds". Already under the previous Criminal code, which didn't specifically mention sexual orientation as an aggravating circumstance, the Helsinki District Court considered it as one in a case regarding Gay Pride in Helsinki 2010.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐   b. ☐   c. x   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no specific measure related to victims and witnesses of sexual orientation- or gender identity -related crimes and incidents. Authorities, such as police officers that meet the victims in different phases of the investigation, play a crucial role in encouraging the victims to report crimes, so educating the authorities, including the police, is a core question (see answer 12).

There is information available on the police web page about hate crimes and what to do when one encounters hate speech or wants to report a hate crime. Within the police there are specific internet police officers, who can be contacted through internet, in order to make the first contact easier. Their mandate is broad and not limited to or specifically targeted to hate crimes. Within the police there is net tips system in the internet. People can inform police through "net tips" pages about e.g hate crimes.

It is possible to report a crime anonymously, but litigants or witnesses cannot stay anonymous in pre-trial investigation.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The police is given both basic and advanced training. This includes training on human rights issues. Partly the training on LGBTI issues has been given in cooperation with representatives from LGBTI organizations. There is a yearly seminar on police and human rights, the agenda of which includes inter alia hate crimes. Special attention is given to encountering vulnerable groups in all police action and investigating crimes related to them.

There are no special units or contact persons for specific groups. There is, nevertheless, a person in charge of this issue placed in the National Police Board.

In the education of judges the equality of all parties is highlighted. Judges are instructed in how to support victims and witnesses during the process, regardless of the offense. There is specific education available about sex crimes and in which also sexual and gender minorities are dealt with.

The education of the personnel of Criminal Sanctions Agency (*rikosseuraamuslaitos*) is based on the Imprisonment Act which regulates enforcement of sentences. According the Act all prisoners shall be treated equally (also sexual orientation is mentioned as a ground for discrimination). The basic 13 month education of the personnel covers takes fundamental and human rights, as well as the ethical principles of the Criminal Sanctions Agency. This education also covers specific questions relating to the treatment of prisoners belonging to different kinds of minorities as well as the dynamics in the prison community. Practical education about how to behave in different kinds of difficult situations is included in the education.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐   b. ☐   c. x   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See answer 12. The issue of how to deal with prisoners belonging to specific groups is taken up in the education of prison officials. The Safety and dignity of all prisoners or people who in other ways are deprived of their liberty, is a core value in criminal sanctions field. Also the principle of discretion is exercised for example in relation to body search or physical examination. The background and situation in life of a convicted offender is analyzed by an assessment centre of criminal sanctions agency before the imprisonment. The prisoners are placed in different institutions and assigned to different activities based on this evaluation and individual sentence plan prepared by the assessment unit. The convicted offender is heard during the process. If he/she takes up his/her sexual orientation during the process, it will be taken into account when in the

prison. Prisoners are placed to institutions based on their personal identity code, which includes information of gender. However, when prisoners are placed in different units in prison the external habitus and prisoners' own requests are carefully taken into account.

There are different kinds of measures in place in order to prevent violence in prisons. They are mainly related to locating the prisoners so that they won't be in contact with one another, if this could endanger their security. Violence in prisons is registered and handled in prison and taken to the police for further investigation in accordance with the law. Also health care personnel in the institutions compile statistics on violence. There are several independent systems available for a prisoner who has become a victim of inappropriate behaviour or an offense to take his case forward, should the offender be a member of the personnel or a fellow prisoner.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As mentioned in earlier answers, Finnish national legislation does not define a *hate crime* or *hate speech*. An example of *Hate speech* is nevertheless agitation against a specific group, which is punishable by up to 2 years' (4 years, when occurring in an aggravated form) imprisonment. In the definition of the crime of agitation, sexual orientation is explicitly mentioned. The definition includes the notion of "*similar kind of grounds*", which can be seen as also covering gender identity. In fact, in the Government Bill, in which the content of this provision is described in detail, it is stated that gender minorities, such as transgender persons, can be seen as falling under comparison clause "*other comparable ground*". There is, however, no case law available about this question.

The police starts an investigation, when there is reason to suspect that a crime has been committed. The crime of agitation against a group is prohibited in all media, including the internet. At least one judgement has been rendered (in 2011) where a person was convicted of agitation against homosexuals on the internet.

The police has been involved in developing rules of conduct for internet service providers. Legislation also gives certain possibilities to remove content from the internet, and in this regard also hate speech is covered.

All authorities are obliged to make a plan concerning ethnic equality. The Ministry of the Interior gives further recommendations on the plans. In the current recommendations it states that a plan will be more useful should it also cover other grounds, such as sexual orientation. The equality plan of the Defence Forces e.g. prohibits hate speech and obliges supervisors to interfere, should this occur. There are specific instructions for victims and supervisors on how to solve the issues.



**II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

There are no exceptions or limitations in this regard. In Finland all associations have the right to register in the register for associations governed by the National Board of Patents and Registration of Finland. All associations are treated equally and the extract from the register for association does not mention the purpose of the association. Anyone dissatisfied with a decision taken by the Board of Appeal may appeal against it to the Supreme Administrative Court by filing a written appeal within 60 days of receipt of service.

LGBT-organizations are eligible to receive public funding from Finland's Slot Machine Association (*Raha-automaattiyhdistys*) without discrimination. This public funding for charity purposes has long traditions. For example the NGO Seta receives yearly over 500.000 € for different activities from FSMA. The funding includes both general funding, project funding, and funding for *Transtukipiste* (Trans support centre) which gives guidance for transgender and intersex people and their intimates. In addition another NGO Trasek receives annually less than 5000 € from FSMA. This general funding is channelled through an umbrella organisation the Finnish Union of Patients (Suomen potilasliitto).

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐   b. x   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no specific measures for protecting explicitly the defenders of human rights of LGBTI-persons. See answers 9 and 36 about oversight. The existing mechanisms to oversee the activities of all authorities give a safeguard to everyone should e.g. a police officer be reluctant towards investigating a crime, or an authority be suspected of committing a crime.

In the education of judges specific attention is paid to ensuring the equality of all parties involved in criminal proceedings. Already under the previous Criminal Code, which didn't specifically mention sexual orientation as an aggravating circumstance (which it now does), The Helsinki District Court applied it its verdict in a case regarding an attack at Gay Pride in Helsinki 2010.

As regards the Finnish representations abroad and visa-practices, the MFA has taken note of the EU LGBT toolkit and the Guidelines concerning Human Rights Defenders, which recommend inter alia visiting prisons and following trials. The MFA shall find out to which extent the recommendations are applied, and consider whether there is a possibility to grant fast visas.

Granting Schengen visas is rather rapid always, so there is seldom need for expedited processes. So far there have been no cases regarding LGBT human rights defenders, where it would have been necessary to differ from the normal process.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☐ b. x c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

All ministries are responsible for conducting consultations with NGO:s on their own fields of action. LGBT-organizations have been involved in the preparation of the government policy against discrimination. Participation has been enhanced for example by adopting an NGO strategy. LGBT-organizations have been involved also in working groups, such as the LGBTI working group mentioned in answer 1. Some of the working groups also prepare legislation. The organizations have inter alia been heard officially in the preparation of legislation which has an impact on the human rights of LGBTI-people, such as in the preparation of the reforms of Gender Equality Act and Non-Discrimination Act and in the preparation of the Act on Confirmation of the Gender of a Transsexual (*laki transseksuaalin sukupuolen vahvistamisesta*) from year 2002. An LGBT-organization has been involved in the advisory board for international human rights, which is an advisory organ for the Ministry for Foreign Affairs.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. x b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. x b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

The organiser of a public meeting, such as a demonstration, has to notify the police before the meeting, but no permission is required. There are no limitations on the purpose of a peaceful assembly. There are no exceptions related to freedom of expression or assembly dealing with sexual orientation or gender identity; the same rules apply for everyone. See answers 9 and 36 about oversight (inter alia the police).

19. Do 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?

a. x b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The police is obliged by law to ensure the right to peaceful assembly. The police aims to prevent infringements of the right to peaceful assembly by cooperating with the organizers of an event beforehand, and interferes if there are infringements during the event itself.

When there has been reason to suspect that a crime has been committed, the police has investigated the issue. For example the attack on Helsinki Pride 2010 was investigated and three offenders were convicted in court.

**C. IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Same-sex sexual activity is not criminalized in Finland. The age of consent defined in the Criminal Code is gender neutral and it applies to everyone regardless of gender, sexual orientation or gender identity. The same applies to other sections in chapter 20 of the Criminal Code which regulates sex offences.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Please provide examples of exceptions to this principle, if any:

Measures in place:

The Constitution of Finland (*perustuslaki*) guarantees everyone's right to private life. The Personal Data Act (*henkilötietolaki*) stipulates the protection of personal data in detail, including general prerequisites for processing of personal data, the purpose limitation, the conditions for collecting personal data (f.ex. *necessity requirement*) and the rights of data subject.

The processing of sensitive data is prohibited by the Act (e.g. sexual orientation and sexual behaviour are defined as sensitive data). Exceptions to prohibition to process sensitive data are explicitly laid down in the Act, for example a health care unit or a health care professional may process such data collected in the course of their operations and relating to the treatment or other measures directed at the data subject. According to the Act sensitive data shall be erased from the data file immediately when there no longer is a reason for its processing.

The Act on the Status and Rights of Patients (*potilaslaki*) and the Ministerial Decree on Patient Records stipulate that data regarding a patient's sexual orientation or gender identity can be collected and stored when it is relevant information for the treatment of the patient (such as gender reassignment treatment).

The Population Information Act (*laki väestötietojärjestelmästä ja väestörekisterikeskuksen varmennepalveluista*) stipulates in detail in which limited situations information about gender reassignment or previous first names and previous personal identity code can be disclosed.

The Data Protection Ombudsman (*tietosuojavaltuutettu*) and the Data Protection Board (*tietosuojalautakunta*) are the independent authorities responsible for supervising the use of personal data. The Office of the Data Protection Ombudsman is not aware (through requests or otherwise) of personal data mentioned in Paragraph 19 of the appendix to the Recommendation having been collected, stored, used by the authorities in a way contrary to the law.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. x c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. x c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The relevant requirements for legal recognition of a gender reassignment are currently the following: he or she

1) provides medical clarifications that he or she permanently feels that he or she belongs to the opposite gender and lives in the corresponding gender role as well as that he or she has been sterilised or is for some other reason incapable of reproducing; 2) is above 18 years of age; 3) is not married or in a civil partnership; and 4) is a Finnish citizen or has residence in Finland. Section 2 of the same Act provides for exceptions from the marital status requirement. A marriage or a civil partnership does not prevent the confirmation of gender if the spouse or the partner personally gives his or her consent to it before a local Register Office. When belonging to the opposite gender is confirmed, a marriage is turned ex lege into a civil partnership and a civil partnership into a marriage. This modification shall be noted in the population register.

The Ministry of Social Affairs and Health is going to start a working group in order to examine, whether there is need to review the Act on Confirmation of the Gender of a Transsexual (*laki transseksuaalin sukupuolen vahvistamisesta*). The Office of the Ombudsman for Equality has published a report on the rights of trans and intersex persons. The recommendations made in the publication are being considered by the Ministry.

The Ombudsman for Equality and authorities related to occupational health and safety have given a common recommendation that employers would give new letters of reference to people who have gone through gender reassignment, with new personal data.

The Ministry of Education and Culture has recommended in a letter that study certificates should be given under new name and personal identity code, when necessary due to gender reassignment. The Ministry is currently renewing this recommendation.

The Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, stated in his report following his visit to Finland June 2012 that the practice of stipulating infertility and non-marriage as requirements for the official recognition of gender reassignment should be abolished.

The legal provisions relating to the legal recognition of gender reassignment (Population Information System, personal identity code, changing one's name, obtaining a new personal health insurance card) are clear. Nevertheless, for example in a case when a person is married or in a civil partnership and the spouse or partner does not give his or her consent, the situation is more complex. The European Court of Human Rights gave a judgment in case H. v. Finland (37359/09) in November 2012 relating to this kind of a situation, where the court nevertheless ruled that there had been no violation of Articles 8 or 14 of the Convention.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

After gender reassignment has been completed and legally recognised, he or she is covered by the same rules as a person born male/female and has the same right to marry a person of the sex opposite to theirs.

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

a. ☐   b. x   c. ☐   d. ☐   e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐   b. ☐   c. ☐   d. ☐   e. ☐

Please provide examples:

In Finland national legislation recognises registered same-sex partnerships. Generally speaking the registration of partnership shall have the same legal effects as the conclusion of marriage. The exceptions to this rule are mentioned in Article 9 of the Act on Registered Partnerships. The exceptions concern e.g. establishment of paternity on the basis of marriage and provisions of the Names Act on the family name of a spouse. Provisions of the Adoption Act relating to conditions concerning spouses are not applied to registered partnerships. However, a partner can adopt the child of the other partner and the adoption is governed by the rules of the Adoption Act that concern conditions and legal effects of adoption when the adoptee is a child of the other spouse.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In all decisions and other measures concerning the parental responsibility and adoption of a child the best interest of the child is the paramount consideration. This is also stipulated by the relevant legislation.

Unmarried persons can adopt children individually regardless of gender identity or sexual orientation of the adopter.

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. x   b. x   c. ☐   d. ☐   e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Promotion, dismissals, pay and other working conditions

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Prevention and punishment of harassment

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐   b. x   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See answers 1, 3 and 5 about the scope, measures and review processes of Non-Discrimination Act (*yhdenvertaisuuslaki*) and the Act on Equality between Women and Men (further on the Gender Equality Act, *tasa-arvolaki*).

In the Non-Discrimination Act both direct and indirect discrimination, harassment, and incitement to discriminate are prohibited. The Non-Discrimination Act is applied to public and private matters when relating to employment, work conditions, terms of employment, personnel training or career advancement.

Further prohibitions concerning discrimination are included in legislation such as the acts on employment and civil service relationships, which apply alongside the provisions of the Non-Discrimination Act.

State Civil Servants Act 11 § regulates of non-discrimination in the public sector (central government). The employer is not allowed, without due course, to put civil servants in different positions due to descent, ethnic origin, nationality, gender, sexual orientation, religion, conviction, disability, age, trade union activity or any other factor equivalent to these.

Furthermore, there are specific regulations on discrimination regarding local government, as well as maritime work.

The Employment Contracts Act (55/2001) contains a provision including prohibition of discrimination and equal treatment in Chapter 2 Section 2: "The employer shall not exercise any unjustified discrimination against employees on the basis of age, health, national or ethnic origin, nationality, sexual orientation, language, religion, opinion, belief, family ties, trade union activity, political activity or any other comparable circumstance.

The Occupational Safety and Health Authorities oversee the compliance of the Non-Discrimination Act and the Contracts of Employment Act. The Ministry of Social Affairs and Health's labour protection unit has issued instructions to labour protection authorities concerning the supervision of work related discrimination. Instructions aim at clarifying and streamlining of supervision methods.

The Gender Equality Act (8 §) covers discrimination inter alia in employment, salary, other terms of contract, supervision, assignment, dismissal, transfer, lay-off, or other working conditions. It is possible to claim compensation. It is also discrimination, if an employer doesn't take measures in order to remove harassment, when he or she finds about it. The Ombudsman for Equality has stated that the scope of application of the act includes people belonging to gender minorities, until this issue is clearly defined in legislation (see the interpretation in detail in answer 2).

For example the Finnish defence forces' national plan for equality and non-discrimination (*tasa-arvo- ja yhdenvertaisuussuunnitelma*), published in 2007, prohibits all kinds of discrimination and discriminative behaviour. The plan obliges all work places within the armed forces to evaluate possible issues relating to discrimination and to draw up local plans with instructions on how to resolve problems which may occur. Information material for employees and conscripts about training has been made, taking into account the principles of equality and non-discrimination. Guidelines, pertaining to paid staff, to eliminate discrimination and other inappropriate treatment are laid down in a norm (*Palkatun henkilöstön epäasiallisen kohtelun ehkäisy ja käsittely puolustusvoimien työpaikoilla*). Guidelines to prevent bullying of conscripts are also included. In both cases recommendations for courses of action are given to staff supervisors and to persons experiencing bullying. Principles for non-discrimination are also written into the general service regulation (*palveluohjesääntö*) which is the main code regulating behaviour in military service.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. x c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. x c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. x c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☐ c. x d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. x c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Non-Discrimination Act and the Gender Equality Act obligate authorities to promote equality and non-discrimination systematically. According to the Gender Equality Act, all schools/educational

institutions excluding basic education are required to draft an equality plan that aims at improving the school's/educational institutions' functions. Some higher education institutions have made combined equality and non-discrimination plans in which LGBT issues are explicitly taken into account.

The Gender Equality Act prohibits discrimination in education (8 b §) . It is possible to seek compensation for discrimination. Also sexual harassment or harassment based on gender is prohibited. The specific provision (8 b §) is not applied in basic education, but the general provision prohibiting discrimination (7 §) mentioned above is.

Several projects have been arranged in different levels of education as well as teachers' education relating to LGBTI-issues. Good examples of this are e.g. project SUMO about gender neutral methods in teachers' education, a project on sexual and gender minorities in primary health care, and TASUKO project (Equality and gender awareness in teacher education).

The laws guarantee a safe learning environment, which covers bullying in schools (Basic Education Act 628/1998, Secondary Academic Education Act 629/1998 and Secondary Vocational Education Act 630/1998.)

The national core curriculum for basic education is being renewed. It will come into force in 2016 and will include LGBTI people better than the current one.

The Ministry of Education and Culture has recommended in a letter that study certificates should be given under new name and personal identity code, when necessary due to gender reassignment. The Ministry is currently renewing this recommendation.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On the basis of the constitution, the Health Care Act (*terveydenhuoltolaki*) and the Act on the Status and Rights of Patients (*potilaslaki*) health care services are non-discriminatory. The Act on the Status and Rights of Patients states that health care services are given in consensus with the patient. The Ministry of Social Affairs and Health has published an action plan for 2007-2011 concerning the promotion of sexual health and reproductive health (*Seksuaali- ja lisääntymisterveyden edistämisen toimintaohjelma 2007-2011*).

The action plan aims to ensure that adequate knowledge on sexuality, sexual health and reproductive health are included in the basic degrees' (including matriculation examination) of professionals working in the field of social and health care services. It further ensures that students studying for professions in this field are given the advanced knowledge on sexual and reproductive health, and that they are trained to provide sexual consulting.



Sexual health in health care education curricula, especially in tertiary education, has been developed and is included in the required courses. Sexual diversity is taken into account in tertiary level polytechnics' (*ammattikorkeakoulu*) courses and in the minimum requirements relating to medical education.

It is noted in the midterm evaluation measures to strengthen professionals' understanding and considering of specific themes relating to LGBTI-issues. In order to achieve the above-said, broad and systematic education and high-quality study materials are needed. Study materials have been produced by NGOs (for example HIV Foundation). SETA has produced material to improve knowledge about diversity of gender and sexual orientation.

The action plan states that sexual counseling is integrated into regular health care services. Counseling is done in an equal manner based on person's need regardless of his/her gender, age, cultural background or other personal qualities. Every health centre has at its disposal at least one employee who has received further training on sexual counseling and has the ability to counsel specific groups such as sexual minority groups and gender minority groups.

In sexual consultation services the needs of minority groups are taken into account so that persons belonging to sexual minority or gender minority have the possibility to receive consultation within their local social and health care services. Furthermore it is ensured that employees of social and health care services and municipal services are able to direct persons belonging to sexual minority or gender minority to services provided by different organizations.

Government's decree school and student health care (338/2011) states that services promoting sexual health (including the support for sexual and gender orientation) are part of health care provided to students (*opiskeluterveydenhuolto*).

On the basis of Government's decree on psychiatric and endocrinological examinations, the initiation of treatment and genital surgery (excluding the removal of womb and ovaries) are done at Helsinki University Hospital. Psychiatric and endocrinological examinations and medical treatment are also done at Tampere University Hospital. This arrangement is there to ensure that the national medical expertise can be utilized in an optimal manner. Examinations and treatments are available and these are included in the national statutory care guarantee (*hoitotakuu*).

29. Has homosexuality been removed from the national classification of diseases?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

The health insurance scheme does not involve any particular restrictions regarding gender reassignments but the general provisions all people are applied to them. The decisions on reimbursement are based on medical evaluation of the necessity of the treatment. Treatments that are deemed necessary will be reimbursed. In regard to hormonal treatment the entitlement to reimbursement starts after the person has been provided with a new personal identity code

consistent with his or her new gender. Surgical operations that are purely esthetic surgery are not reimbursable under the health insurance scheme, and therefore esthetic surgery operations performed after a gender reassignment surgery are not reimbursable under health insurance.

### VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?
- a. x   b. ☐   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On the basis of Non-Discrimination Act it is possible to take action in cases of discrimination in housing. The Act covers all publicly available housing units excluding those juridical acts which belong to the sphere of private life and domesticity. Thus, regarding publicly available apartments, it covers all government subsidized rented apartments, apartments owned and rented by municipalities and other communities, and some of the privately owned rented apartments.

In general issues relating to housing belong to the administrative authority of the Ministry of the Environment. However in cases where there is also need for special services, or the lack of residence threatens social well-being or one needs special support in obtaining a residence, the administrative authority belongs to the Ministry of Social Affairs and Health. The Act on Social Welfare (*sosiaalihuoltolaki*) states that municipalities must provide social services to deal with the above-mentioned issues. The premise for social services is the best interest of the customer and the need for service. The personnel in social services have also gotten training in this issue. Due to lack of resources some municipalities are not always able to meet the demand of services.

All applicants are treated equally when they apply for apartments granted on social grounds, i.e. government subsidized rental apartments. Factors that are taken into account in the selection process are the assessed need for an apartment, household income and other assets. Even though income limits have been removed from the selection process, the above-mentioned factors are used in the resident selection process. Ministry of the Environment has not been informed of discrimination cases based on either sexual orientation or gender identity in government subsidized rented apartments.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?
- a. x   b. ☐   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In housing services targeted to the homeless people discrimination based on sexual minority status has not appeared as a problem. One contributing factor to this is Finland's effort to cease using shared accommodation, such as hostels and shelters, as a form of temporary accommodation, and instead providing an individual room for all homeless persons also in case of temporary accommodation.

**IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. x c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

One purpose of the Sports Act (*liikuntalaki*) is to promote equality and tolerance through sports. The state and the municipalities are responsible for providing the general premises for sports. The organizing of sports is primarily done by sports organizations.

The Ministry of Education and Culture annually hands out government grants to sports organizations. The Sports Act obliges the Ministry to take into consideration the way the organization takes into account the ethical principles of sport in its activities.

Finnish Sports Federation (FSF) (*Suomen Liikunta ja Urheilu*) is the umbrella organization for sport organizations. It receives annual state funding. It has defined the ethical principles for sport in its Fair Play (*Reilu Peli*) document. Fair Play covers the ethical ideals and goals for sports and physical activities to which the FSF and its 130 member organizations are committed to. According to Fair Play everyone has the equal right to sports and physical activities regardless of e.g. ethnicity, gender, age, disability or sexual orientation. Homophobic and transphobic yelling is in itself against sport's Fair Play code.

The FSF published a guidebook on sexual minorities and gender minorities ("*Lupa kuulua, lupa näkyä*", transl. "*Right to be heard, right to be seen*") in 2005. A broad group of sport and LGBT-organization experts took part in the making of the guidebook. The guide highlights the questions pertaining to sexual minorities and gender minorities in sport and physical activity and offers information and action models to possible problem situations (e.g. discrimination situations). The guide is intended to everyone operating in the field of sport (e.g. coaches, board members, athletes or parents) and is downloadable without charge from the internet. The guide has been used in the training of sports club personnel and it includes a separate material for educators and instructors.

In 2009 FSF, supported by EU's Youth in Action program, was a main partner in organizing a campaign called Uskalla (transl. "*Dare*"). Directed against homophobia, the campaign offered information on sexual minorities and gender minorities and gave support through different stories, which were all put to the campaign's web site. Sexual minorities and gender minorities were also made visible for example through a poster and post card campaign which was carried out in different sport and physical activity sites. The campaign's patron was the President Tarja Halonen.

A good example of the appreciation of the work of FSF was, when its president Timo Laitinen was nominated to Good Will Person (*hyvän tahdon lähettiläs*) on the International Day against Homophobia 2011.

Finland has ratified the European Convention on Spectator Violence and Misbehaviour at Sports Events. Finland enforces the convention and participates actively in the monitoring e.g. through reports.

Sport unions are asked to take into account in their rules of competition International Olympic Committee's policies (2004) regarding the terms for participation in sport events of persons who have undergone gender reassignment.

Ministry of Education and Culture has participated actively to EU's YES projects which are carried out in national context. One example, which was done within these projects, was the guide of equal functions of associations which was directed at sports and youth associations. Ministry has also funded the research project Discrimination of Sexual and Gender Minorities in Sports and Exercise. Information from the research will be used when defining sport policy.

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

LGBTI applicants with well-founded fear of persecution are considered to belong to a particular social group according to the definition in 1951 Convention relating to the Status of Refugees. We follow the UNHCR Guidelines on these issues. The Supreme Administrative Court has on its decision 23 dated on 13.1.2012 followed the reasoning in HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department (2010 UKC31, United Kingdom; Supreme Court, 7 July 2010) Finnish Immigration Service follows that guidance in its decision making.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. x   b. ☐   c. ☐   d. ☐   e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Credible LGBTI applicants whose life or freedom are threatened in their home country because of their sexual orientation or gender identity will be granted asylum. They are not at risk of being sent back to their country of origin.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☐   b. ☐   c. x   d. ☐   e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐   b. x   c. ☐   d. ☐   e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

Parliamentary Ombudsman Act states that the Parliamentary Ombudsman oversees the constitution of Finland, courts of law, other authorities, officials, employees of public bodies and also other parties performing public tasks. In addition the Ombudsman shall oversee the legality of the decisions and actions of the Government, the Ministers and the President of the Republic.

A Human Rights Center, founded by law, operates in connection with the office of the Parliamentary Ombudsman. According to the Parliamentary Ombudsman Act the tasks of the Human Rights Centre are:

- 1) to promote information, education, training and research concerning fundamental and human rights as well as cooperation relating to them;
- 2) to draft reports on implementation of fundamental and human rights;
- 3) to present initiatives and issue statements in order to promote and implement fundamental and human rights;
- 4) to participate in European and international cooperation associated with promoting and safeguarding fundamental and human rights;
- 5) to take care of other comparable tasks associated with promoting and implementing fundamental and human rights.

The Chancellor of Justice supervises the legality of the official actions of the Government and the President of the Republic (*valtioneuvoston oikeuskanslerista annettu laki*). The Chancellor of Justice also supervises the official actions of the courts of law, other authorities and other persons or bodies assigned to perform public tasks.

Reform of the Non-Discrimination Act is being prepared by the Ministry of Justice. In the reform supervisory authorities' (Ombudsman for Minorities, board) jurisdiction is reviewed in the manner explained in the answer to question (see answer 2 for further details).

The Ombudsman for Equality monitors the observance of the Gender Equality Act and promotes the purpose of the Act by making initiatives, giving advice and instructions. The Ombudsman for Equality does not settle individual complaints relating to discrimination; however the Ombudsman can issue a statement regarding the application of the law in an individual case or refer a case to the Equality Board (*tasa-arvolautakunta*). The Ombudsman also supervises the legal protection of trans and intersex persons against discrimination and has issued statements concerning discrimination cases against trans and intersex persons and has taken a stand on issues relating to equal treatment of trans and intersex persons. In legal praxis the Gender Equality Act has been applied once in a case concerning discrimination on the basis of gender reassignment. The ongoing reform of the Act aims at expanding the sphere of the law so that discrimination based on gender identity and gender expression would be included in an unequivocal manner in the Act. This amendment would also clarify the Ombudsman's mandate over discrimination cases of trans and intersex persons.

The current reform of equal treatment legislation aims at clarifying the cases pertaining to discrimination on multiple grounds and the legal supervision of them.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. x d. ☐ e. ☐

### Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

The LGBTI issues must be mainstreamed within the Council of Europe's system and be an integral part of the organisation's work in the field of human rights in general and of non-discrimination in particular. Visible and strong support from the Secretary General, the Council of Ministers and the Commissioner for Human Rights as well as from other bodies and mechanisms within the organisation is of crucial importance in this regard.

The Government of Finland is very pleased with the pro-active role taken by the Council of Europe's LGBT Issues Unit, in spite of its very limited resources. Finland proposes that the Council of Europe take further measures to strengthen the Unit by allocating adequate and sustained financial resources and maximizing the utilization of available personnel resources to achieve the goals of the Unit. As part of its continuing support for the Council of Europe, Finland pledges to fund the secondment of an expert to the LGBT Unit for a fixed-term appointment.

The Government of Finland would like to propose for the consideration of the Council of Europe that it identifies, promotes and exchanges views on good practices related to legislative, judicial, administrative and other measures to combat discrimination on grounds of sexual orientation or gender identity and, in this regard, prepares a compilation of good practices based on the information submitted by Member States to the CDDH's questionnaire. National human rights institutions and civil society organizations should also be invited to contribute to the compilation of good practices.

The Commissioner for Human Rights has pointed out that there is too little objective data and information available to conduct a well-informed discussion on the LGBTI issues. Therefore it is important that the Council of Europe compiles, analyses and publishes data on the socio-legal position of LGBTI persons. In this context the role of ECRI could also be explored.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

The Recommendation provides a concrete tool to address discrimination against LGBTI persons on grounds of their sexual orientation and gender identity in all Member States. However, it is apparent that Member States need guidance for the realization of human rights of LGBTI persons. The Government of Finland proposes that the Council of Europe set up a systematic examination system for the implementation of the Recommendation by sending periodic (e.g. every four years) questionnaires. The periodic examination would provide up-dated information on the socio-legal position of LGBTI persons at regular intervals as well as enhance opportunities for sharing experiences, good practices, knowledge and lessons learnt between Member States.

The examination should preferably cover the whole scope of the Recommendation.

The Council of Europe should invite national human rights institutions and non-governmental organizations to contribute to the examination of the implementation.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

The Recommendation provides an important, versatile tool for combating all forms of discrimination on grounds of sexual orientation or gender identity. The Government of Finland is of the view that the concrete implementation of the Recommendation will expand its scope of application and further improve its content. For example, in Finland the Recommendation is already interpreted expansively so that it also covers discrimination on grounds of gender expression and intersex even though these are not explicitly mentioned in the Recommendation.

**FRANCE**

La plupart des questions appellent une réponse fondée sur la codification suivante :

a. Oui, c'est fait <input type="checkbox"/>	b. Oui, des travaux sont <input type="checkbox"/> en cours	c. Nous avons l'intention d'y <input type="checkbox"/> travailler	d. Rien n'est encore décidé <input type="checkbox"/>	e. Non <input type="checkbox"/>
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**Section I – Mise en œuvre et diffusion de la recommandation**

1. Comment évaluez-vous la mise en œuvre de la recommandation dans votre pays ?  
 Pleinement satisfaisant ☐ Satisfaisant ☒ Insuffisant ☐ Absence d'impact ☐

**Explications**

La présente Recommandation a permis de confirmer l'engagement de la France et de renforcer son action sur la question de la lutte contre la discrimination fondée sur l'orientation sexuelle et l'identité de genre en alimentant la réflexion sur la stratégie à adopter pour progresser en ce domaine. La France a adapté sa législation aux nouveaux enjeux auxquels doivent faire face les politiques de l'intégration et l'exigence de respect du principe d'égalité. Ce principe, ainsi que celui de non-discrimination, sont consacrés dans la Constitution française et sont au cœur du modèle social français. A ce titre, les personnes lesbiennes, gays, bisexuelles et transgenres bénéficient d'une protection effective et égale contre la discrimination.

Si la France possède un dispositif législatif important pour répondre à ce type de discrimination, la Recommandation a permis d'identifier les améliorations à engager afin de garantir efficacement les droits des personnes LGBT. Des actions déterminées ont ainsi été menées. Elles sont développées dans le contenu du rapport.

2. A-t-il été procédé à un examen des mesures en vigueur, législatives ou autres, susceptibles d'avoir pour effet, directement ou indirectement, de créer une discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?  
 a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez préciser et, le cas échéant, donner un exemple des mesures détectées :

Un programme d'actions gouvernemental contre les violences et discriminations commises à raison de l'orientation sexuelle ou de l'identité de genre a été adopté le 31 octobre 2012, à la demande du Premier Ministre. Il a été élaboré dans le cadre d'une large consultation interministérielle et a permis, de ce fait, d'identifier les différents domaines nécessitant une action spécifique.

Y a-t-il des mesures en place en vue de remédier à une telle discrimination ?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques :

Le droit français bénéficie d'un dispositif complet permettant la lutte contre les discriminations fondées sur l'orientation sexuelle ou l'identité de genre : sanctions pénales, disciplinaires, saisine du Défenseur des droits. Ces dispositifs sont développés dans les questions suivantes.



3. Des mesures (législatives ou autres) de lutte contre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre ont-elles été adoptées et mises en œuvre depuis l'adoption de la Recommandation CM/Rec(2010)5 (y compris l'éventuelle mise en place de plans d'action nationaux, l'ajout de la Recommandation dans des plans existants ou la création de groupes de travail intersectoriels pour sa mise en œuvre) ?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Le cas échéant, veuillez donner des exemples de mesures adoptées ou en préparation :

**Mesures de politique générale**

- Un Ministère des Droits des femmes a été instauré, notamment chargé d'animer la coordination du travail gouvernemental contre les violences et les discriminations liées à l'orientation sexuelle et à l'identité de genre.
- La France s'est dotée d'un programme d'actions gouvernemental contre les violences et les discriminations commises à raison de l'orientation sexuelle ou l'identité de genre qui a été adopté le 31 octobre 2012 (annexe 4). Ce programme interministériel est placé sous l'égide de la Ministre des droits des femmes qui en a coordonné l'élaboration et en assure désormais la mise en œuvre.

Il vise notamment à renforcer les outils de prévention et de lutte contre les violences et discriminations à l'égard des personnes LGBT. Quatre axes sont retenus :

1. lutter contre les violences
2. s'appuyer sur la jeunesse pour faire évoluer les mentalités
3. agir contre les discriminations au quotidien
4. relancer le combat international pour les droits des personnes LGBT.

Un comité de suivi examinera les conditions de mise en œuvre de ce plan et associera les acteurs mobilisés pour son élaboration. Les mesures concrètes de ce plan seront développées dans la suite du rapport.

[http://femmes.gouv.fr/wp-content/uploads/2012/11/violence\\_v5+\\_06-2011.pdf](http://femmes.gouv.fr/wp-content/uploads/2012/11/violence_v5+_06-2011.pdf)

**Mesures législatives**

- Par la loi organique n° 2011-33 du 29 mars 2011, la France a mis en place le Défenseur des droits qui a notamment pour mission de « *lutter contre les discriminations, directes ou indirectes, prohibées par la loi ou par un engagement international régulièrement ratifié ou approuvé par la France ainsi que promouvoir l'égalité* ». Il réunit les compétences antérieurement dévolues à plusieurs autorités administratives indépendantes, dont la haute autorité de lutte contre les discriminations et pour l'égalité (HALDE).
- Afin de prendre en compte la situation des personnes transsexuelles et transgenres, la loi n°2012-954 du 6 août 2012 relative au harcèlement sexuel a incriminé les discriminations commises à raison de l'identité sexuelle<sup>17</sup> (antérieurement, seul était visé le motif de l'orientation sexuelle) et a aggravé les sanctions des infractions commises pour ce motif. De nombreuses dispositions du code pénal, du code de procédure pénale, du code des sports, du code du travail, du code de la santé publique, de la loi du 9 juillet 1881 sur la liberté de la

<sup>17</sup> Article 225-1 du code pénal : « *Constitue une discrimination toute distinction opérée entre les personnes physiques à raison de [...] leur orientation ou identité sexuelle [...]* ».

presse, de la loi du 13 juillet 1983 portant droits et obligations des fonctionnaires et de la loi du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations ont subséquemment été modifiées (cf annexe 2).

A cet égard, il convient de préciser que la terminologie « *identité de genre* » n'existe pas dans le droit positif français, le législateur lui ayant préféré les termes « *identité sexuelle* ». Néanmoins, cette formulation recouvre la situation des personnes transsexuelles mais également celle des personnes transgenres, conformément à la présente Recommandation.

4. Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives à la discrimination fondée sur l'orientation sexuelle ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives à la discrimination fondée sur l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives aux crimes de haine et autres incidents motivés par la haine pour lesquels l'orientation sexuelle ou l'identité de genre de la victime peut être raisonnablement soupçonnée d'avoir été l'un des motifs de l'auteur de l'infraction ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques :

- L'ensemble des infractions de discriminations ainsi que des infractions de droit commun connaissant la circonstance aggravante liée à l'orientation sexuelle de la victime font l'objet d'une codification spécifique qui permet leur recensement dans les statistiques issues des condamnations inscrites au casier judiciaire national. Ces données sont disponibles pour chaque année en septembre de l'année suivante. Depuis l'entrée en vigueur de la loi n° 2012-954 du 6 août 2012 relative au harcèlement sexuel, ces codifications englobent également le mobile fondé sur l'identité de genre.
- **Le Programme d'actions gouvernemental** prévoit que les violences faites aux personnes à raison de leur orientation sexuelle feront l'objet d'un travail de recueil, de mesure et d'analyse. Les données statistiques seront rassemblées et les études nécessaires au pilotage des politiques contre ces violences seront engagées.
- Une enquête portant sur les « *Violences et rapports de genre – Contexte et conséquence des violences subies par les femmes et par les hommes* », menée par l'Institut national des études démographiques et cofinancée par le ministère des droits des femmes, sera complétée par des données illustrant l'exposition des personnes LGBT aux risques de discrimination et de violence.
- **Sport** : mise en place, courant 2013, au niveau national, d'outils d'appréhension des comportements contraires au respect des valeurs du sport (concernant notamment les discriminations contre les personnes LGBT), sur les plans quantitatif (statistiques) et qualitatif (études permettant de comprendre le contexte et l'environnement de la

survenance de tels comportements). Un guide méthodologique d'appropriation des outils a été réalisé à cet effet à destination des futurs utilisateurs que seront les services aux niveaux régional et départemental mais aussi les fédérations sportives. Ce guide sera soumis à l'avis d'un groupe d'experts, début janvier 2013, avant d'être validé puis expérimenté sur la base du volontariat lors de la saison sportive 2013-2014.

5. Existe-t-il des voies de recours effectives pour les victimes de discrimination fondée sur l'orientation sexuelle ou l'identité de genre (y compris des sanctions en cas d'infraction et des réparations adéquates pour les victimes) ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place pour informer les victimes des dispositifs existants et faciliter leur accès à des voies de recours ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- **Défenseur des droits** : il peut être saisi par toute personne qui s'estime victime d'une discrimination, directe ou indirecte, prohibée par la loi ou par un engagement international régulièrement ratifié ou approuvé par la France, ou par toute association régulièrement déclarée depuis au moins cinq ans à la date des faits et dont l'objet est de combattre les discriminations ou d'assister les victimes de discriminations, conjointement avec la personne s'estimant victime de discrimination ou avec son accord. Le Défenseur des droits peut être saisi des agissements de personnes publiques ou privées. Il peut en outre se saisir d'office ou être saisi par les ayants droit de la personne dont les droits et libertés sont en cause.
- Toute personne qui s'estime victime d'une discrimination peut déposer plainte auprès des services de police ou de gendarmerie ou directement dénoncer les faits auprès du procureur de la République afin qu'une enquête soit menée. Si ce dernier [décide de ne pas](#) engager de poursuites, le plaignant reçoit un avis de classement sans suite qui doit être motivé et peut contester la décision en formant un recours auprès du Procureur Général ou déposer une [plainte avec constitution de partie civile auprès du juge d'instruction](#).
- **Création de pôles anti-discriminations au sein des tribunaux de grande instance** par circulaire du 11 juillet 2007. Leur compétence a été étendue en 2009 à tous les actes commis en particulier à raison de l'orientation sexuelle. Ils sont destinés à favoriser l'accès à la justice des victimes de tels agissements et à améliorer la qualité de la réponse pénale. Dans ce cadre, chaque tribunal de grande instance a procédé à la désignation d'un magistrat référent chargé d'animer le pôle, en lien avec l'ensemble des acteurs oeuvrant dans le domaine de la lutte contre les discriminations, et de conduire la politique pénale en la matière.
- **Action civile des associations** : la loi n° 2000-516 du 15 juin 2000 renforçant la protection de la présomption d'innocence et les droits des victimes a complété l'article 2-6 du code de procédure pénale afin de permettre aux associations de lutte contre les discriminations commises en raison du sexe ou des mœurs de la victime d'exercer les droits reconnus à la partie civile dans le cas de poursuites engagées sur le fondement de l'article 225-1 du code pénal (incrimination des discriminations), de l'article 432-7 du même code (discrimination

commise par une personne dépositaire de l'autorité publique ou chargée d'une mission de service public, dans l'exercice ou à l'occasion de l'exercice de ses fonctions ou de sa mission) ou de l'article L. 123-1 du code du travail (discrimination en raison du sexe commise à l'encontre d'un salarié ou d'un candidat au recrutement). Voir également question n°11.

- **Associations d'aide aux victimes** : s'il l'estime nécessaire, le procureur de la République peut permettre à toute association d'aide aux victimes d'intervenir aux côtés de personnes victimes de discriminations et de les soutenir dans toutes les démarches de la procédure. Au niveau de chaque département, il existe un correspondant chargé de l'aide aux victimes en lien avec les associations. Des boîtes électroniques spécialement dédiées à l'aide aux victimes sont également mises à leur disposition dans les commissariats. Des permanences ou points d'accueil d'associations d'aide aux victimes sont installés dans les locaux des services de police dans le cadre de conventions conclues avec les réseaux associatifs. Toute victime d'infraction pénale se voit remettre les coordonnées d'une association d'aide aux victimes lors de son dépôt de plainte.
- **Exemples de bonne pratique** : afin d'améliorer la lutte contre les discriminations, les procureurs de la République s'attachent à former les enquêteurs (ex : Albertville, Mâcon, Meaux) dont certains peuvent être désignés comme référents (ex : Angoulême, Gap) et à mettre à disposition des formulaires spécifiques de plainte ou de signalement, notamment dans les commissariats, gendarmeries ou maisons du droit - lieux d'information, de médiation et d'aide aux victimes, généralement implantées dans des zones urbaines sensibles (ex : Ajaccio, Bobigny, Chaumont, Lille, Sens, Villefranche-sur-Saône). Les procureurs de la République ont conclu des protocoles de coopération en matière de lutte contre les discriminations avec le Défenseur des droits.
- **Santé** : toute personne qui s'estime victime d'un refus de soins illégitime peut saisir le directeur de l'organisme local d'assurance maladie ou le président du conseil de l'ordre. La procédure est décrite à l'article L. 1110-3 du code de la santé publique.
- **Programme d'actions gouvernemental** : il prévoit l'organisation d'une campagne d'information sur les droits des victimes d'actes homophobes ainsi que le renforcement et la promotion de la ligne d'écoute de l'association SOS Homophobie. Par ailleurs, afin d'aider les enquêteurs chargés de recueillir les plaintes des victimes, des modèles d'audition d'une personne victime d'une infraction homophobe seront élaborés conjointement par les ministères de la justice et de l'intérieur, comme cela existe déjà pour d'autres infractions.

6. Des obstacles ont-ils été rencontrés dans la mise en œuvre de la recommandation ? Si oui, lesquels ?

Aucun obstacle n'a été rencontré.

7. La recommandation, y compris son annexe, a-t-elle été traduite dans toutes les langues nationales ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Quelles mesures ont-elles été prises pour veiller à ce que la recommandation ainsi que son annexe soient diffusées aussi largement que possible ?

Aucune action particulière n'a été entreprise.

## Section II – Mise en œuvre des dispositions spécifiques énoncées en annexe

### *I. Droit à la vie, à la sécurité et à la protection contre la violence*

9. Y a-t-il des mesures garantissant qu'une enquête efficace, rapide et impartiale soit menée sur les allégations d'infractions pénales et autres incidents pour lesquels l'orientation sexuelle ou l'identité de genre de la victime peut être raisonnablement soupçonnée d'avoir été l'un des motifs de l'auteur de l'infraction ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- En application de l'article 15-3 du code de procédure pénale, la police judiciaire est tenue de recevoir la plainte déposée par une victime d'infraction, quel que soit le lieu de commission des faits ou le domicile de la victime. Ce dépôt de plainte déclenche sans délai l'ouverture d'une enquête pénale menée sous la direction et le contrôle du procureur de la République, qui veille à ce que l'ensemble des investigations réalisées par les services de police et unités de gendarmerie le soit avec efficacité et impartialité.  
Au même titre que pour les autres infractions, les officiers de police judiciaire sont tenus d'informer sans délai le procureur de la République des infractions pénales pour lesquels l'orientation sexuelle ou l'identité de genre de la victime est susceptible d'avoir été l'un des motifs de l'infraction.  
Lorsqu'une procédure d'information est ouverte auprès d'un juge d'instruction, la police judiciaire exécute les ordonnances et réquisitions de celui-ci.  
Par ailleurs, une victime peut également déposer plainte directement auprès du juge d'instruction et ainsi déclencher l'action publique.  
Cette organisation judiciaire garantit qu'une enquête efficace, rapide et impartiale soit menée, sans aucune discrimination.
- Le Programme d'actions gouvernemental précité prévoit de consacrer une circulaire à la réponse pénale à apporter aux violences commises à raison de l'orientation sexuelle ou l'identité de genre.

10. Y a-t-il des mesures en place pour qu'un mobile fondé sur un préjugé lié à l'orientation sexuelle puisse être pris en compte en tant que circonstance aggravante ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures en place pour qu'un mobile fondé sur un préjugé lié à l'identité de genre puisse être pris en compte en tant que circonstance aggravante ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Le droit pénal français qualifie de circonstance aggravante le « *mobile* » fondé sur un préjugé lié à l'orientation sexuelle ou l'identité de genre (le droit français emploie les termes « identité sexuelle », voir précisions dans réponse n°3). La peine encourue pour une infraction commise pour un tel motif est alors aggravée.

Ainsi, l'article 132-77 du code pénal dispose que « *dans les cas prévus par la loi, les peines encourues pour un crime ou un délit sont aggravées lorsque l'infraction est commises à raison de l'orientation ou identité sexuelle de la victime. La circonstance aggravante définie au premier alinéa est constituée lorsque l'infraction est précédée, accompagnée ou suivie de propos, écrits, utilisation d'images ou d'objets ou actes de toute nature portant atteinte à l'honneur ou à la considération de la victime ou d'un groupe de personnes dont fait partie la victime à raison de leur orientation ou identité sexuelle vraie ou supposée* » (cf en annexe 2, un tableau des principales infractions commises à raison de l'orientation ou de l'identité sexuelle de la victime).

11. Des mesures appropriées ont-elles été prises pour s'assurer que les victimes et les témoins de « crimes de haine » ou d'autres incidents motivés par la haine fondée sur l'orientation sexuelle ou l'identité de genre soient encouragés à dénoncer ces crimes et incidents ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

La législation pénale française réprime l'ensemble des infractions qualifiées par la Recommandation « *crimes de haine* ». Afin de favoriser les signalements et le traitement des plaintes en matière de discrimination, les procureurs de la République ont poursuivi la mise en œuvre d'une politique partenariale dynamique.

- **Diffusion de modèles de fiche** de signalement auprès des mairies, des associations d'aide aux victimes, des commissariats ou des brigades de gendarmerie qui complète les dispositifs destinés à favoriser l'émergence de plaintes (ex : Chaumont, Villefranche-sur-Saône).
- **Actions de formation** sur le racisme et les discriminations menées par les procureurs de la République auprès des associations spécialisées (ex : Chambéry, Paris, Senlis), des enquêteurs (Bordeaux, Bourges) ainsi que des établissements scolaires (ex : Vienne).
- **Les délégués du Défenseur des droits** assurent des permanences au sein des maisons de justice et du droit (ex : Avesnes-sur-Helpe, Bergerac, Fontainebleau, Thonon-les-Bains) afin d'accueillir les victimes de discrimination et les orienter dans leurs démarches. Ces missions sont également assurées dans certains ressorts par les délégués du procureur spécialisés en ces matières (ex : Nîmes, Perpignan).
- **Exemple de bonnes pratiques** : le pôle anti-discriminations d'Ajaccio, animé par le procureur de la République, a diffusé un support d'information pour le public ainsi qu'un outil de signalement à destination des administrations publiques et du secteur privé.  
Le parquet de Chaumont a diffusé des formulaires de plainte détaillés au sein du tribunal de grande instance, dans les brigades de gendarmerie et les commissariats de police, formulaires également mis à disposition dans les mairies et les associations d'aide aux victimes du département.

12. Existe-t-il des procédures et des programmes de formation pour que les membres des forces de l'ordre, de la magistrature et du personnel pénitentiaire disposent des connaissances et des compétences requises pour identifier de tels crimes et incidents et apporter une assistance et un soutien adéquats aux victimes et témoins ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- **Formation des magistrats :** l'Ecole nationale de la magistrature (ENM), chargée de la formation initiale et continue des juges et procureurs, a renforcé l'enseignement de notions transversales concernant l'insertion de la justice dans le monde contemporain, le respect des droits de l'homme et l'impartialité. Les règles d'éthique et de déontologie font l'objet d'un enseignement particulier. Dans le cadre de la formation dispensée au cours de leur carrière, de multiples modules sont proposés sur l'éthique et la déontologie, la Convention européenne des droits de l'homme, les droits fondamentaux, le Défenseur des droits etc.
- **Formation des personnels pénitentiaires :** l'Ecole nationale de l'administration pénitentiaire (ENAP) est chargée de la formation initiale et continue des personnels pénitentiaires. La formation sur la lutte contre toute forme de discrimination à l'encontre des personnes placées sous main de justice (PPSMJ) repose sur les principes mêmes du droit pénitentiaire français et européen :
  - les Règles pénitentiaires européennes (RPE) interdisent notamment toute discrimination « *fondée notamment sur le sexe, la race, la couleur, la langue, la religion, les opinions politiques ou toutes autres opinions, l'origine nationale ou sociale, l'appartenance à une minorité nationale, la fortune, la naissance ou toute autre situation* » (Règle n°13),
  - l'article 22 de la loi pénitentiaire du 24 novembre 2009 prévoit que « *l'administration pénitentiaire garantit à toute personne détenue le respect de sa dignité et de ses droits* »,
  - l'article 15 du code de déontologie pénitentiaire dispose que « *le personnel de l'administration pénitentiaire a le respect absolu des personnes qui lui sont confiées par l'autorité judiciaire et de leurs droits. Il s'interdit à leur égard toute forme de violence ou d'intimidation. Il ne manifeste aucune discrimination* ».

Les formateurs de l'ENAP reprennent ces références dans tous les enseignements. Ils rappellent le principe de respect de la dignité et le devoir de non discrimination de la personne détenue dans sa prise en charge. En revanche, la question de l'orientation sexuelle ne fait pas spécifiquement l'objet d'un programme d'enseignement.
- **Formation des gardiens de la paix et des adjoints de sécurité :** elle aborde la question de la lutte contre les discriminations et l'impact des préjugés et des stéréotypes sur l'action du policier.
- **Le Programme d'actions gouvernemental** précité prévoit d'engager des formations pluridisciplinaires. Dans ce cadre, la formation des forces de l'ordre sur la question des violences et des discriminations homophobes sera renforcée. Les enseignements dispensés aux officiers stagiaires en formation initiale par l'Ecole Nationale supérieure de la Police en

matière d'interrogatoire, d'audition et d'accueil des victimes traiteront des discriminations commises à raison de l'orientation sexuelle. Les enseignements de droit pénal aborderont spécifiquement les infractions liées aux discriminations.

Des sessions de formation pluridisciplinaire relative à la lutte contre les violences homophobes seront organisées à l'attention des policiers, gendarmes et magistrats.

Le code de la déontologie de la police inclura les termes de l'article 225-1 précité (en vigueur depuis la loi du 6 août 2012).

13. Y a-t-il des mesures spécifiques visant à assurer la sécurité des personnes lesbiennes, gays, bisexuelles et transgenres placées en prison ou se trouvant dans d'autres situations de privation de liberté, conformément au paragraphe 4 de l'annexe à la recommandation ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- A titre liminaire, il importe de préciser que le législateur français a institué en 2007 un contrôleur général des lieux de privation de liberté, autorité indépendante qui a pour mission de veiller au respect des droits intangibles inhérents à la dignité de la personne humaine. A cette fin, il peut visiter à tout moment, sur l'ensemble du territoire français, tout lieu où des personnes sont privées de liberté et notamment des établissements pénitentiaires, des établissements de santé ou encore des locaux de garde à vue.
- Prise en considération particulière des personnes transgenres : il s'agit d'une préoccupation commune des ministères de la justice et de la santé. Ainsi, la circulaire du 30 octobre 2012 actualisant le guide méthodologique sur la prise en charge sanitaire des personnes détenues aborde la question des droits des personnes transsexuelles. Ce guide contient des recommandations spécifiques à la prise en charge médicale des personnes transsexuelles.
  - *accompagnement des personnes détenues* souffrant de troubles de l'identité de genre dans leur démarche et leur orientation vers les services médicaux de l'établissement pénitentiaire : elles ont accès aux consultations des équipes pluridisciplinaires spécialisées. L'administration pénitentiaire veille par ailleurs à mettre en œuvre sans délai la réalisation des consultations spécialisées en milieu hospitalier prescrites par les intervenants médicaux. Le guide conseille d'une part, de sensibiliser les équipes de soins à cette problématique et d'assurer le lien avec les équipes et intervenants spécialisés à l'extérieur et, d'autre part, de favoriser l'intervention d'associations spécialisées dans le soutien et l'accompagnement des personnes transsexuelles.
  - *affectation des personnes transsexuelles* : elle doit se faire au mieux des intérêts de la personne (encellulement individuel, affectation dans un secteur de détention favorisant la prise en charge des personnes vulnérables, placement à l'isolement) et des impératifs des établissements pénitentiaires. Le fait qu'une personne détenue soit inscrite dans un processus de conversion de sexe est un élément pris en considération. Dès qu'une modification de l'état civil a été décidée, la personne concernée fait l'objet d'une affectation dans un établissement ou un quartier correspondant à sa nouvelle identité sexuelle. L'administration pénitentiaire est par ailleurs attentive à tout élément lié à la problématique de prise en charge sanitaire présenté à l'appui d'une demande de transfert.
  - *protection de l'intégrité physique et psychique de la personne* : une attention particulière y



est portée au long du parcours de soins, si besoin en prévoyant un accompagnement psychologique adapté. Par ailleurs, les personnes concernées ont la possibilité d'acquérir divers objets (cosmétiques, vêtements, sous-vêtements) sans condition d'engagement dans un processus médical (art. D.343 du code de procédure pénale). Le port de vêtements marquant l'appartenance à l'autre sexe est autorisé, sauf à démontrer qu'il serait la cause directe d'un trouble grave.

- *conditions de réalisation des fouilles* : l'article R. 57-7-81 du code de procédure pénale dispose que « les personnes détenues ne peuvent être fouillées que par des agents de leur sexe ». Toutefois, la présence d'un gradé lors des opérations de fouille est prévue dans certains établissements pénitentiaires, afin de contrôler les conditions de sa réalisation.

- En ce qui concerne les droits des personnes hospitalisées en psychiatrie, le code de la Santé publique indique qu'« *en toutes circonstances, la dignité de la personne hospitalisée doit être respectée et sa réinsertion recherchée* » (articles L.3211-2 et L.3211-3). Par ailleurs, le code de déontologie médicale rappelle l'interdiction de toute discrimination, quel qu'en soit le motif, dans l'accès et la fourniture de soins. Le non-respect de ces dispositions relève de la juridiction disciplinaire ou pénale.
- Le Programme d'actions gouvernemental prévoit qu'« *une attention particulière sera portée sur les violences et discriminations homophobes dans les lieux de détention et aux besoins des personnes concernées* ».

14. Des mesures appropriées ont-elles été prises afin de combattre toutes les formes de « discours de haine » à l'égard des personnes lesbiennes, gays, bisexuelles et transgenres, conformément à l'article 10 de la Convention européenne des droits de l'homme et au paragraphe 6 de l'annexe à la recommandation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Dans l'affirmative, des mesures spécifiques ont-elles été prises afin de sensibiliser les autorités et les organismes publics à leur responsabilité de s'abstenir de faire des déclarations pouvant raisonnablement être interprétées comme cautionnant de telles attitudes haineuses ou discriminatoires à l'égard des personnes lesbiennes, gays, bisexuelles et transgenres ?

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- La législation française prohibe toutes formes d'expression motivées par la haine, quel que soit le mode d'expression utilisé. La loi du 29 juillet 1881 sur la liberté de la presse réprime les infractions suivantes commises à l'égard d'une personne ou d'un groupe de personnes à raison de l'orientation sexuelle ou de l'identité sexuelle (comme il a été précédemment indiqué, ce dernier motif a été ajouté par la loi du 6 août 2012) :
  - provocation publique à la haine ou à la violence (article 24 al. 7 - peines encourues : 1 an d'emprisonnement et/ou 45.000 euros d'amende) ;
  - diffamation publique (article 32 al. 3 – peines encourues : 1 an d'emprisonnement et/ou 45.000 euros d'amende) ;
  - injure publique (article 33 al.4 – peines encourues : 6 mois d'emprisonnement et/ou 22.500 euros d'amende).

Dans tous les cas, le tribunal peut en outre ordonner l'affichage ou la diffusion de la décision

prononcée.

Aux termes de l'article 48-4 de la loi du 29 juillet 1881, les associations régulièrement déclarées depuis plus de cinq ans à la date des faits, qui se proposent par leur statuts, de combattre les violences et les discriminations fondées sur l'orientation ou l'identité sexuelle, ou d'assister les victimes de ces discriminations, peuvent exercer les droits reconnus à la partie civile. Parmi ces droits, figure la possibilité d'engager des poursuites pénales à l'encontre de l'auteur supposé d'une provocation à la haine, à la violence ou à la discrimination, d'une diffamation ou d'une injure publique, commise au préjudice d'une personne ou d'un groupe de personnes en raison de leur orientation ou identité sexuelle.

#### **Mesures spécifiques de sensibilisation concernant les autorités et organismes**

- Des actions de formation sont dispensées depuis plusieurs années par l'Ecole nationale de la magistrature, à l'attention des magistrats et des enquêteurs (police, gendarmerie). En outre, ces derniers sont régulièrement sensibilisés à ces questions par les procureurs de la République.
  - **Charte contre l'homophobie dans le sport** (annexe n° 5): élaborée en 2010 et signée en 2011 par l'ensemble des fédérations sportives subventionnées par le ministère des sports, elle engage les signataires à dénoncer et sanctionner « *tout comportement discriminant* » qu'il se manifeste par « *des agressions verbales* » ou « *par des propos insultants en raison de l'orientation sexuelle réelle ou supposée* » de la personne. L'ensemble des organismes sportifs s'engagent également à apporter leur soutien et leur aide « *aux pratiquants, entraîneurs ou autres personnes évoluant dans le sport qui pourraient être harcelés, insultés ou mis à l'écart en raison de leur orientation sexuelle* ».
- Une évaluation de la mise en œuvre de la charte par chacune des fédérations sportives est en cours ; le bilan devrait être réalisé en février 2013.

## **II. Liberté d'association**

15. Y a-t-il des mesures garantissant la jouissance du droit à la liberté d'association (y compris l'accès au financement public disponible pour les organisations non gouvernementales) sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Le cas échéant, veuillez donner des exemples de restrictions ou exceptions aux garanties énoncées aux paragraphes 9 et 10 de l'annexe à la recommandation et indiquez si des mesures visant à revoir ou lever de telles restrictions sont en préparation.

- En France, la liberté d'association est un principe de valeur constitutionnelle visant non seulement la liberté de s'associer mais également de déclarer l'association afin d'obtenir la capacité juridique. La déclaration préalable de l'association – et non l'autorisation préalable – a ainsi pour effet de lui permettre d'ester en justice, de recevoir des dons, de percevoir les cotisations de ses membres, d'acquérir, de posséder et d'administrer les immeubles nécessaires à son fonctionnement.
- Toute intervention préalable dans ce processus, de quelque autorité que ce soit, est contraire à la Constitution. Par conséquent, aucune discrimination, quel qu'en soit le fondement, ne peut entraver la jouissance du droit à la liberté d'association.

- Au même titre que toute autre association contribuant à l'intérêt général, les associations de défense des droits des personnes LGBT peuvent bénéficier d'aides d'Etat dans le respect des règles communautaires et de droit interne. A cet égard, les démarches administratives pour solliciter les aides publiques ont été simplifiées et un dispositif de demande de subvention par internet a été mis en place (circulaire du 18 janvier 2010).

16. Y a-t-il des mesures spécifiques en place pour protéger de manière effective les défenseurs des droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres contre les actes d'hostilité et les agressions auxquels ils peuvent être exposés, y compris lorsqu'ils sont censés avoir été commis par des agents de l'Etat, conformément à la Déclaration du Comité des Ministres sur l'action du Conseil de l'Europe pour améliorer la protection des défenseurs des droits de l'homme et promouvoir leurs activités ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Le Défenseur des droits, et ses délégués, sont protégés comme les autres citoyens par la loi. En outre, étant considérés comme des personnes chargées d'une mission de service public, les peines prévues pour les faits d'atteintes à leur personne sont aggravées.

Par ailleurs, des dispositions pénales spécifiques ont été créées par la loi n° 2011-334 du 29 mars 2011 relative au Défenseur des droits, afin de protéger ses attributions spécifiques et de lui permettre de remplir sereinement ses missions :

- « Est puni de six mois d'emprisonnement et de 7 500 € d'amende le fait d'avoir fait ou laissé figurer le nom du Défenseur des droits, suivi ou non de l'indication de sa qualité, dans tout document de propagande ou de publicité, quelle qu'en soit la nature. Est puni des mêmes peines le fait de faire figurer ou laisser figurer l'indication de la qualité passée de Défenseur des droits dans tout document de propagande ou de publicité, quelle qu'en soit la nature » (art. 11),
- « Est puni d'un an d'emprisonnement et de 15 000 € d'amende le fait de ne pas déférer aux convocations du Défenseur des droits, de ne pas lui communiquer les informations et pièces utiles à l'exercice de sa mission ou de l'empêcher d'accéder à des locaux administratifs ou privés, dans des conditions contraires à la loi organique n° 2011-333 du 29 mars 2011 relative au Défenseur des droits » (art. 12).

En application de l'article 13 de cette loi, les personnes physiques coupables des infractions précitées encourent également des peines complémentaires d'interdiction des droits civils, civiques et de famille, d'interdiction professionnelle et de confiscation, ainsi que d'affichage de la décision. Les personnes morales coupables de ces infractions encourent en outre une peine d'exclusion des marchés publics.

17. Des mesures ont-elles été prises pour veiller à ce que les organisations non gouvernementales défendant les droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres soient consultées, de manière appropriée, sur l'adoption et la mise en œuvre de mesures pouvant avoir un impact sur les droits fondamentaux de ces personnes ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- **La Commission nationale consultative des droits de l'homme** est saisie ou se saisit de projets de loi ou de propositions relatifs aux droits de l'homme. Elle a ainsi été amenée à se prononcer à diverses reprises sur des projets de loi tendant à renforcer la lutte contre les discriminations.
  
- **Programme d'actions gouvernemental contre les violences et les discriminations commises à raison de l'orientation ou de l'identité de genre** : ce programme a fait l'objet d'une large consultation et d'un travail interministériel inédit puisqu'il a été conçu en lien étroit avec l'ensemble des associations LGBT. Une centaine d'organisations a été associée à cette consultation : associations de défense des droits des personnes LGBT, associations de défense des droits de l'homme, acteurs de l'éducation nationale, institutions concernées par la lutte contre les violences et les discriminations. Ces organisations ont ainsi pu déposer des contributions dans ce cadre.  
Six groupes de travail portant sur la lutte contre les stéréotypes, la lutte contre les discriminations en matière d'emploi, les mesures contre les violences, les actions à l'égard des services sociaux, l'action internationale et les parcours des personnes transsexuelles ont été mis en place.  
Par ailleurs, des rencontres de terrain dans plusieurs villes de France ont permis d'échanger avec les acteurs impliqués dans la lutte contre les discriminations à l'égard des personnes LGBT. Ces acteurs, comme le défenseur des droits, ont permis, par leur engagement, de faire progresser la lutte contre de telles discriminations.
  
- **Santé** : les associations représentant les personnes LGBT ont été associées aux travaux menés par le ministère de la santé sur la qualité de la prise en charge du transsexualisme (printemps et automne 2010).
  
- **Sport** : les associations, en particulier les associations de lutte contre l'homophobie – telles que l'association Sos-homophobie ou la Fédération sportive Gay et Lesbienne – ont été consultées dans le cadre de l'élaboration des différents outils décrits à la question 33 (en qualité d'experts dans les groupes de travail mis en place par le ministère des sports).

### **III. Liberté d'expression et de réunion pacifique**

18. Y a-t-il des mesures garantissant que la liberté d'expression, notamment la liberté de recevoir et de transmettre des informations concernant l'orientation sexuelle ou l'identité de genre, puisse être exercée sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures garantissant que la liberté de réunion pacifique puisse être exercée sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Si des exceptions ou des restrictions spécifiques sont en place à l'égard de ces libertés, veuillez donner des exemples et indiquer si des mesures visant à revoir ou lever ces dispositions sont en préparation :

Sans objet.

19. Les services répressifs prennent-ils les mesures appropriées pour protéger les participants à des manifestations pacifiques en faveur des droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Comme pour toute manifestation publique, les autorités françaises peuvent prévoir, en lien avec les organisateurs, des mesures de sécurité adaptées afin de protéger les participants à une manifestation pacifique en faveur des droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres.

La tenue d'une manifestation constitue, en France, une liberté politique fondamentale en tant que « *droit d'expression collective des idées et des opinions* » figurant parmi les « *libertés constitutionnellement garanties* ». Ceci explique que la manifestation est soumise à un régime de déclaration préalable et non d'autorisation. Cette obligation de déclaration a pour but d'identifier les interlocuteurs et de préparer la manifestation pour qu'elle se déroule au mieux. Cette démarche est souvent l'occasion d'un dialogue entre l'association et les pouvoirs publics en vue, notamment, d'assurer la sécurité des personnes et des biens. L'autorité publique fait souvent bénéficier l'association de privilèges en matière de sécurisation, de circulation ou de mobilisation des équipements publics. Il appartient en effet aux autorités publiques d'éviter que les manifestations ne soient l'occasion, pour des individus extérieurs, de provoquer des troubles à l'ordre public et plus spécialement, des atteintes aux personnes et aux biens.

#### **IV. Droit au respect de la vie privée**

20. Des mesures ont-elles été prises pour veiller à ce que les dispositions du droit pénal pouvant se prêter, en raison de leur formulation ou de leur champ d'application, à une application discriminatoire s'agissant de l'orientation sexuelle ou l'identité de genre soient abrogées, amendées ou appliquées d'une manière compatible avec le principe de non-discrimination ?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Aucune disposition du droit pénal français pouvant se prêter à une application de manière discriminatoire, il n'y a pas eu d'abrogation ou de modification de la législation.

21. Y a-t-il des mesures visant à faire en sorte que les données à caractère personnel mentionnant l'orientation sexuelle ou l'identité de genre d'une personne ne soient ni collectées ni conservées ou utilisées d'une autre manière, sauf si cela est nécessaire à

des fins spécifiques, légales et légitimes, et que les enregistrements existants non conformes à ce principe soient détruits ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez donner des exemples d'exception à ce principe, le cas échéant:

**Principe d'interdiction** : l'article 8 I. de la loi 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, interdit la collecte et le traitement des données à caractère personnel qui sont relatives aux origines raciales ou ethniques, aux opinions politiques, philosophiques ou religieuses, à l'appartenance syndicale, à la santé ou à la vie sexuelle des personnes.

**Exceptions** : certaines collectes sont autorisées sous réserve d'anonymisation, du consentement exprès de la personne concernée et si elles sont justifiées par l'intérêt public.

22. Des mesures appropriées ont-elles été prises pour garantir la reconnaissance juridique intégrale du changement de genre d'une personne dans tous les domaines de la vie, conformément aux dispositions du paragraphe 21 de l'annexe à la recommandation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Les conditions préalables à la reconnaissance juridique d'un changement de genre ont-elles été réévaluées afin de lever celles qui seraient abusives ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Il existe deux procédures distinctes permettant de mettre en adéquation l'état civil et la réalité sociale :

**1. Le changement de sexe à l'état civil** : il n'existe pas en droit français de disposition législative ou réglementaire spécifique organisant le changement de sexe à l'état civil de la personne concernée. En revanche, la jurisprudence a admis de longue date la possibilité de changement de sexe à l'état civil pour cette catégorie de personnes (arrêts rendus le 11 décembre 1992 par l'assemblée plénière de la Cour de cassation, à la suite de la condamnation de la France par la Cour européenne des droits de l'Homme le 25 mars 1992). Depuis ces deux arrêts, la notion de traitement médico-chirurgical était traditionnellement entendue comme exigeant l'ablation des organes génitaux d'origine et leur remplacement par des organes génitaux artificiels du sexe revendiqué (opération de réassignation sexuelle).

Toutefois, certaines juridictions du fond interprétaient de manière plus souple la notion de traitement, estimant que celle-ci pouvait résulter notamment d'opérations de chirurgie plastique (prothèses mammaires, chirurgie esthétique du visage...) sans exiger pour autant l'ablation préalable des organes génitaux. De même, l'exigence d'une expertise était appréciée différemment par les juridictions.

Dans un but de clarification, le ministère de la justice a diffusé, le 14 mai 2010, une circulaire préconisant à titre principal :

- qu'il soit donné un avis favorable à la demande de changement d'état civil émanant d'une personne transsexuelle ou transgenre, dès lors que les traitements hormonaux ayant pour effet une transformation physique ou physiologique définitive, ont entraîné un changement de sexe irréversible, sans qu'il soit exigé pour autant l'ablation des organes génitaux,

- de veiller à ne solliciter d'expertises que si les éléments fournis révèlent un doute sérieux sur la réalité du transsexualisme du demandeur.

Si les conditions préalables à la reconnaissance juridique du changement de sexe ont donc été réévaluées, il n'est toutefois pas envisagé de remplacer la procédure judiciaire actuelle par une procédure administrative permettant la seule intervention de l'officier de l'état civil, sous le contrôle du juge. L'identité sexuelle étant l'une des composantes de l'état des personnes, elle est, à ce titre, soumise au principe d'ordre public d'indisponibilité. C'est la raison pour laquelle une décision judiciaire est nécessaire pour statuer sur les demandes de changement de sexe.

Un bilan d'application de la circulaire réalisé en 2011 montre que les préconisations de la circulaire sont globalement suivies : ainsi, au cours de l'année 2010, 127 requêtes ont été formées dans 36 cours d'appel, 73 décisions ont été rendues et sur l'ensemble de ces décisions, deux appels seulement ont été formés. Seules 21 expertises ont été ordonnées.

La décision admettant le changement de sexe est constitutive et non déclarative, ce qui signifie que le changement s'opère sans rétroactivité. La modification n'a d'effet que pour l'avenir et ne remet pas en cause l'acte de naissance des enfants nés d'un transsexuel avant son changement d'état. Par conséquent, la filiation des enfants nés de l'union de deux personnes, dont l'une s'est ensuite avérée être transsexuelle, n'est pas remise en cause. Que les parents soient mariés ou non, le changement de sexe est sans incidence sur la présomption de paternité du mari devenu femme ou sur la reconnaissance souscrite.

En l'état du droit, il ne paraît pas exclu au regard des conditions juridiques de l'assistance médicale à la procréation qu'un couple, dont l'un des membres est une personne transsexuelle, ait accès à la procréation médicalement assistée dès lors que la mention du sexe à l'état civil a été modifiée, et que la personne transsexuelle a pour conjoint ou concubin une personne du sexe opposé à son nouvel état civil.

**2. Le changement de prénom :** pendant la période de conversion et avant toute décision sur le changement de sexe à l'état civil, les personnes concernées peuvent solliciter du juge aux affaires familiales une modification de leur prénom, fondée sur la conviction d'appartenance à l'autre sexe. De manière générale, le juge fait droit à cette demande au motif que cette circonstance constitue bien l'intérêt légitime exigé par les dispositions de l'article 60 du code civil.

Une fois la décision de changement de prénom devenue définitive et apposée en marge de son acte de naissance, l'intéressé peut solliciter de nouveaux titres d'identité, qui, s'ils font toujours apparaître son sexe d'origine, mentionnent un prénom en adéquation avec son sexe apparent.

**3. Incidence du projet de loi ouvrant le mariage aux couples de même sexe sur la situation des transsexuels :** il sera possible en vertu de ce texte, qui est en cours d'examen au Parlement, une fois le changement de sexe acquis, de faire mentionner celui-ci sur l'acte de mariage (ce qui n'est pas possible actuellement compte tenu de l'exigence d'altérité sexuelle au mariage). Ceci permettrait à la personne ayant changé d'état de disposer également d'un livret de famille conforme à son état, et ce faisant, faciliter l'exercice de l'autorité parentale des transsexuels.

- **Programme d'actions gouvernemental :** le Gouvernement s'engage à permettre une rectification plus simple de l'état civil. La Commission nationale consultative des droits de l'homme sera saisie pour répondre à la question de la définition de l'identité de genre et à sa

place dans le droit français, ainsi qu'à la question du changement d'état civil. Enfin, la possibilité ouverte aux personnes transgenres d'utiliser un numéro de sécurité sociale provisoire sera simplifiée.

23. Une fois le changement de sexe accompli et juridiquement reconnu, le droit d'une personne transgenre d'épouser une personne du sexe opposé à son nouveau est-il effectivement garanti ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

En France, le transsexualisme n'a pas de conséquence sur le droit au mariage. En effet, dès lors qu'il a été procédé à la rectification de la mention du sexe en marge de l'acte de naissance de l'intéressé, rien ne s'oppose légalement à ce qu'une personne transsexuelle entre dans les liens du mariage avec une personne du sexe opposé à son nouvel état civil.

L'adoption du projet de loi relatif à l'ouverture du mariage aux personnes de même sexe facilitera l'exercice de ce droit, en autorisant le mariage alors même qu'à l'état civil le changement de sexe n'aura pas nécessairement encore été constaté, quel que soit le sexe du futur époux.

24. Lorsque la législation nationale reconnaît les partenariats enregistrés entre personnes de même sexe, leur statut juridique et leurs droits et obligations sont-ils équivalents à ceux des couples hétérosexuels dans une situation comparable ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez donner des exemples:

Il existe un partenariat enregistré : le pacte civil de solidarité (PACS). Celui-ci est ouvert tant aux couples de même sexe qu'aux couples hétérosexuels. Le PACS ouvre des droits similaires aux couples homosexuels et hétérosexuels, qui ne sont toutefois pas identiques à ceux des couples mariés. Toutefois, le mariage doit très prochainement être ouvert aux couples de même sexe, un projet de loi étant actuellement en cours d'examen devant le Parlement français.

Lorsque la législation nationale ne reconnaît ni ne confère aucun droit aux partenariats enregistrés entre personnes de même sexe et aux couples non-mariés, la possibilité de fournir aux couples de même sexe des moyens juridiques ou autres pour répondre aux problèmes pratiques liés à ce fait a-t-elle été considérée ?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Sans objet.

25. Y a-t-il des mesures en place pour s'assurer que les décisions en matière de responsabilité parentale et d'adoption d'un enfant soient prises premièrement dans



l'intérêt supérieur de l'enfant, ainsi que sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Toute discrimination fondée sur l'orientation ou l'identité sexuelle est pénalement réprimée par le droit français.

Il ne peut donc y avoir de décision prise en matière de responsabilité parentale et d'adoption d'un enfant fondée sur l'orientation sexuelle ou l'identité de genre. La considération de l'intérêt de l'enfant qui prime dans ces matières ne peut en aucun cas justifier une décision sanctionnant en réalité l'orientation sexuelle d'un demandeur. En particulier, les conseils généraux ne peuvent refuser de délivrer un agrément sur le seul fondement de l'orientation sexuelle du demandeur, sans se mettre en contradiction avec les articles 8 et 14 de la convention européenne de sauvegarde des droits de l'Homme (cf. CEDH, 22 janvier 2008, EB. c/ France).

### **V. Emploi**

26. La législation prohibe-t-elle la discrimination en matière d'emploi dans le secteur public et dans le secteur privé pour des motifs d'orientation sexuelle ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

La législation prohibe-t-elle la discrimination en matière d'emploi dans le secteur public et dans le secteur privé pour des motifs de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place concernant plus particulièrement :

i) Les conditions d'accès à l'emploi

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

ii) Promotions, licenciements, salaires et autres conditions de travail

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iii) La prévention du harcèlement et les sanctions applicables

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iv) La protection du droit à la vie privée des personnes transgenres (conformément au paragraphe 30 de l'annexe à la recommandation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

▪ Article L.1132-1 du code du travail pour le secteur privé qui pose le principe de non-

discrimination dans l'emploi y compris pour des motifs liés à l'orientation ou l'identité sexuelle<sup>18</sup>. Le principe de non-discrimination s'applique également dans la fonction publique (article 6 du statut de la fonction publique modifié par la loi du 6 août 2012 précitée)<sup>19</sup>.

- Articles 225-1 et 225-2 du code pénal qui répriment la discrimination fondée sur l'orientation ou l'identité sexuelle lorsqu'elle consiste notamment à refuser d'embaucher une personne, à la sanctionner, à la licencier ou à lui refuser un stage ou lorsqu'elle consiste à subordonner une offre d'emploi, une demande de stage ou une période de formation en entreprise à une condition de nature discriminatoire. La peine encourue est de 3 ans d'emprisonnement et 45.000 euros d'amende.  
Une aggravation des peines encourues est prévue lorsque la discrimination est commise par une personne dépositaire de l'autorité publique ou chargée d'une mission de service public, dans l'exercice ou à l'occasion de l'exercice de ses fonctions ou de sa mission.
- La législation française réprime le harcèlement sexuel (articles L.1153-1 et suivants du code du travail) ainsi que le harcèlement moral (articles L.1152-1 et suivants du code du travail). (Voir annexe 3). Le harcèlement sexuel et le harcèlement moral sont punis de 2 ans d'emprisonnement et 30.000 euros d'amende. Une aggravation de la peine encourue est prévue dans certaines circonstances.  
Les faits de discriminations commis à la suite d'un harcèlement moral ou sexuel sont punis d'un an d'emprisonnement et d'une amende de 3.750 € La juridiction peut également ordonner, à titre de peine complémentaire, l'affichage du jugement aux frais de la personne condamnée et son insertion, intégrale ou par extraits, dans les journaux qu'elle désigne.
- Une réflexion générale, en lien avec les différents partenaires sociaux, sur les discriminations liées à l'orientation sexuelle ou l'identité de genre dans le monde du travail, en particulier la question du respect de la vie privée et des conditions d'accès à l'emploi, sera à l'ordre du jour de la grande conférence sociale de 2013.
- Recours : toute personne s'estimant victime d'une discrimination peut :
  - déposer plainte auprès du procureur de la République

<sup>18</sup> « Aucune personne ne peut être écartée d'une procédure de recrutement ou de l'accès à un stage ou à une période de formation en entreprise, aucun salarié ne peut être sanctionné, licencié ou faire l'objet d'une mesure discriminatoire, directe ou indirecte, telle que définie à l'article 1er de la loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations, notamment en matière de rémunération, au sens de l'article L. 3221-3, de mesures d'intéressement ou de distribution d'actions, de formation, de reclassement, d'affectation, de qualification, de classification, de promotion professionnelle, de mutation ou de renouvellement de contrat en raison de son origine, de son sexe, de ses mœurs, **de son orientation ou identité sexuelle**, de son âge, de sa situation de famille ou de sa grossesse, de ses caractéristiques génétiques, de son appartenance ou de sa non-appartenance, vraie ou supposée, à une ethnie, une nation ou une race, de ses opinions politiques, de ses activités syndicales ou mutualistes, de ses convictions religieuses, de son apparence physique, de son nom de famille ou en raison de son état de santé ou de son handicap. »

<sup>19</sup> Article 6 de la loi du 13 juillet 1983 : « Aucune distinction, directe ou indirecte, ne peut être faite entre les fonctionnaires en raison de leurs opinions politiques, syndicales, philosophiques ou religieuses, de leur origine, **de leur orientation ou identité sexuelle**, de leur âge, de leur patronyme, de leur état de santé, de leur apparence physique, de leur handicap ou de leur appartenance ou de leur non-appartenance, vraie ou supposée, à une ethnie ou une race ».

- faire un recours administratif (pour les agents de la fonction publique) ou devant les juridictions prud'homales (pour les salariés du secteur privé) ;
- saisir le Défenseur des droits ([www.defenseurdesdroits.fr](http://www.defenseurdesdroits.fr)).

La responsabilité de l'Etat peut être engagée en cas d'absence d'actions de prévention.

- **Le Programme d'actions gouvernemental** s'engage à renforcer la lutte contre les discriminations en matière d'emploi. Les axes d'action :
  - intégrer dans les outils de lutte contre les discriminations, adressés aux inspecteurs du travail, la prise en compte de la question de l'orientation sexuelle ou de l'identité de genre ;
  - réaffirmer dans le cadre de la révision de la charte de l'égalité dans la fonction publique la lutte contre de telles discriminations.
  - proposer l'extension aux salariés liés par un partenariat civil (Pacs) des droits à congés accordés aux salariés à l'occasion de la célébration de leur mariage.

## **VII. Education**

27. Y a-t-il des mesures appropriées, législatives ou autres, visant le personnel enseignant et les élèves, afin de garantir la jouissance effective du droit à l'éducation sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, en tenant dûment compte de l'intérêt supérieur de l'enfant et des droits des parents concernant l'éducation de leurs enfants ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Dans l'affirmative y a-t-il des mesures en place prévoyant plus particulièrement :

- i) Formations, soutiens et outils pédagogiques anti-discrimination
 

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
- ii) L'information, la protection et le soutien des élèves et étudiants
 

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
- iii) Des informations objectives concernant l'orientation sexuelle et l'identité de genre dans les programmes scolaires
 

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
- iv) Politiques scolaires et plans d'action pour l'égalité et la sécurité
 

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Le ministère de l'éducation nationale mène une politique globale de lutte contre toutes les formes de discriminations, et en particulier celles liées à l'orientation sexuelle.

### **Mesures et bonnes pratiques :**

- Mise en place d'une mission relative à la lutte contre les discriminations liées à l'orientation sexuelle ou l'identité de genre dont les travaux porteront notamment sur la prévention du suicide des jeunes victimes d'homophobie. Des propositions devraient être formulées début 2013.
- Publication en septembre 2010 d'un rapport sur les discriminations à l'école.

<ul style="list-style-type: none"> <li>▪ Réalisation en 2011 d'une enquête de victimation. Sera reconduite en 2013.</li> <li>▪ Participation de la France à l'enquête Health Behaviour in school-aged children réalisée tous les 4 ans sous l'égide de l'OMS et portant sur le bien-être, l'image de soi, l'engagement dans la sexualité et le harcèlement.</li> <li>▪ une ligne d'écoute et de soutien, la ligne « Azur », est ouverte aux jeunes qui se posent des questions sur leur orientation sexuelle. Elle fait l'objet d'une campagne de communication, pour la troisième année consécutive, dans les établissements scolaires.</li> <li>▪ Inscription de ces questions dans les programmes d'enseignement. Quelques exemples : programme de science de la vie et de la terre dans le cadre duquel est abordée le thème « masculin-féminin » (différenciation identité et orientation sexuelles) – question de l'homoparentalité abordée dans l'enseignement « Droit et grands enjeux du monde contemporain ».</li> <li>▪ Dans le cadre des cours d'éducation à la santé, est abordée la question des préjugés et violences sexistes ou homophobes. Des partenariats avec des associations de lutte contre les discriminations peuvent être mis en œuvre par l'Education nationale. Exemples : signature début 2013 d'une convention entre le ministère de l'Education nationale et l'association du Planning familial – association dont l'objet est notamment de promouvoir l'éducation à la sexualité / l'association <i>Estim'</i> dont l'objet est d'aider les jeunes à mieux vivre et assumer leur sexualité, leurs différences et accepter celles des autres a obtenu l'agrément de l'Education nationale qui lui permet d'intervenir auprès des élèves.</li> </ul> <p>▪ <b>Le programme d'actions gouvernemental</b> se propose :</p> <ul style="list-style-type: none"> <li>- d'actualiser la circulaire du 17 février 2003 relative à l'éducation à la sexualité et de mettre en place un groupe de travail sur la question, en y associant une association de lutte contre l'homophobie.</li> <li>- de généraliser l'intégration à la formation initiale des personnels d'enseignement, d'orientation et d'éducation une sensibilisation à la lutte contre les discriminations liées à l'orientation sexuelle ou l'identité de genre.</li> </ul> <p><b>Sites et documents consultables</b></p> <p>Sites de l'éducation nationale :</p> <p><a href="http://www.education.gouv.fr/cid27781/lutte-contre-l-homophobie.html">http://www.education.gouv.fr/cid27781/lutte-contre-l-homophobie.html</a></p> <p><a href="http://eduscol.education.fr/cid50566/lutter-contre-l-homophobie.html">http://eduscol.education.fr/cid50566/lutter-contre-l-homophobie.html</a></p> <p>Brochure, « L'homophobie : savoir et réagir » :</p> <p><a href="http://cache.media.eduscol.education.fr/file/Valeurs_republicaines/36/4/brochure_homophobie_2011_173364.pdf">http://cache.media.eduscol.education.fr/file/Valeurs_republicaines/36/4/brochure_homophobie_2011_173364.pdf</a></p> <p>Outils pour les équipes éducatives : <a href="http://www.inpes.sante.fr/professionnels-education/outils/jeune-et-homo/outil-lutte-homophobie.asp">http://www.inpes.sante.fr/professionnels-education/outils/jeune-et-homo/outil-lutte-homophobie.asp</a></p> <p>Ligne Azur : <a href="http://www.ligneazur.org/">http://www.ligneazur.org/</a></p>
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### VIII. Santé

28. Des mesures appropriées ont-elles été prises pour assurer la jouissance effective du plus haut niveau de santé réalisable, sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, conformément aux dispositions du paragraphe 33 de l'annexe à la recommandation ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

▪ **Principes** : Le droit français garantit l'accès aux établissements, aux biens et aux services de santé sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre. Le code de la santé publique rappelle l'interdiction de toute discrimination, quel qu'en soit le motif et affirme que la continuité des soins doit être assurée quelles que soient les circonstances (articles 225-1 et 225-2 du code pénal, L. 1110-3 du code de la santé publique<sup>20</sup>).

Conformément à l'annexe de la présente Recommandation, toute personne bénéficie d'un droit d'accès à son dossier médical et aux informations la concernant (article L.1111-7 du code de la santé publique<sup>21</sup>).

Toujours en conformité avec ce texte, le droit interne reconnaît comme « personne de confiance » une personne (un parent ou un proche) désignée comme telle par le patient majeur et qui consultée, sans discrimination quelconque, dès lors que le patient est hors d'état de manifester sa volonté.

▪ **Exemples d'actions menées** :

- publication en 2012 par l'Institut national de prévention et d'éducation à la santé : « *Les minorités sexuelles face au risque suicidaire* » et « *Jeunes et homosexuels sous le regard des autres* ». Les rapports proposent une sensibilisation de l'ensemble des professionnels à la question de l'orientation ou l'identité sexuelle.
- des centres de formation en soins infirmiers intègrent une session sur la prise en charge des personnes homosexuelles.

▪ **Programme d'actions gouvernemental** : trois axes d'intervention ont été arrêtés :

1. **Faire de la lutte contre l'homophobie une priorité des plans de santé publique** : les questions liées à l'orientation sexuelle et l'identité de genre seront prises en compte par le ministère de la santé dans le cadre du programme « Santé des jeunes » (éducation à la sexualité, prévention des infections sexuellement transmissibles) et dans celui de la « Santé mentale ». Des actions de prévention du suicide des personnes victimes d'homophobie seront en particulier menées dans ce cadre.
2. **Agir avec les personnels de santé contre l'homophobie, la lesbophobie, la transphobie** : sensibilisation des personnels de santé, mise en place d'un module sur l'orientation sexuelle et l'identité de genre dans la formation des infirmiers.
3. **Prévenir les ruptures dans la vie des personnes transsexuelles** :
  - la possibilité ouverte aux personnes transsexuelles d'utiliser un numéro de sécurité sociale provisoire sera simplifiée,
  - le Gouvernement reprendra le travail pour la réorganisation de l'offre de soin à l'égard des personnes transsexuelles pour améliorer la qualité des parcours de

<sup>20</sup> « Aucune personne ne peut faire l'objet de discriminations dans l'accès et la prévention aux soins. Un professionnel de santé ne peut refuser de soigner une personne pour l'un des motifs visés au premier alinéa de l'article 225-1 du code pénal (...) » [en particulier l'orientation ou l'identité sexuelle depuis la loi du 6 août 2012 précitée].

<sup>21</sup> Article L.1111-7 al. 1 : « Toute personne a accès à l'ensemble des informations concernant sa santé détenues, à quelque titre que ce soit, par des professionnels et établissements de santé, qui sont formalisées ou ont fait l'objet d'échanges écrits entre professionnels de santé, notamment des résultats d'examen, comptes rendus de consultation, d'intervention, d'exploration ou d'hospitalisation, des protocoles et prescriptions thérapeutiques mis en oeuvre, feuilles de surveillance, correspondances entre professionnels de santé, à l'exception des informations mentionnant qu'elles ont été recueillies auprès de tiers n'intervenant pas dans la prise en charge thérapeutique ou concernant un tel tiers ».

soins, dans le respect du principe du libre choix du médecin et de la dignité des personnes,

- la Haute Autorité de Santé sera saisie d'une demande d'avis ou de recommandation sur l'hormonothérapie des personnes transsexuelles.
- les recherches sur les traitements hormonaux seront encouragées.

29. L'homosexualité a-t-elle été retirée de la classification nationale des maladies ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Y a-t-il des mesures visant à faire en sorte que les personnes transgenres aient un accès effectif aux services appropriés de changement de sexe ?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

La couverture par l'assurance maladie des coûts d'une procédure de changement de sexe est-elle limitée ? Dans l'affirmative, veuillez donner des précisions :

- **Actions menées** : à titre d'exemple :
  - après la remise en 2009 d'un rapport de la Haute autorité de santé sur la prise en charge du transsexualisme, le ministère de la santé a mis en place un groupe de travail sur l'organisation de l'offre de soins, et en particulier sur la création de centres de référence multidisciplinaires. Les travaux de ce groupe, interrompus, doivent reprendre sous l'impulsion du rapport publié en mai 2012 par l'Inspection générale des affaires sociales (service interministériel chargé de contrôler et d'évaluer les politiques sociales) sur « *l'évaluation de la prise en charge des conditions de prise en charge médicales et sociales des personnes trans et du transsexualisme* ».
- **Bonnes pratiques** : création en 2010 de la Société française d'études et de prise en charge du transsexualisme (SoFECT) qui a pour objet de réunir les professionnels de la prise en charge des problèmes relatifs à l'identité de genre, dans un but de recherche, d'enseignement, de formation, d'information, d'organisation, de coordination, d'évaluation et d'amélioration de cette prise en charge, dans le respect du code de déontologie médicale et de la législation française. Cette association permet de coordonner les réseaux régionaux, qui rassemblent des hôpitaux publics et privés.
- La prise en charge par l'assurance maladie de la chirurgie de réassignation sexuelle est fondée sur un protocole élaboré en 1989. Il prévoit la prise en charge à 100% des actes et produits prescrits dans le cadre de la transition. Les soins « annexes » peuvent également être remboursés, sous réserve de certaines conditions tenant en particulier à la souffrance exprimée par le patient, à la durée du traitement et à son coût dû à la fréquence des actes ou à leur caractère onéreux.

### VIII. Logement

31. Des mesures ont-elles été prises afin de garantir la jouissance effective et égale par tous de l'accès à un logement convenable sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, la protection contre les expulsions discriminatoires, et l'égalité des droits d'acquisition et de propriété des terres et autres biens ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Reconnu comme un droit fondamental, le droit au logement est également opposable en droit français depuis la loi du 5 mars 2007. Le législateur a par ailleurs qualifié de délit réprimé par le code pénal le refus de vendre ou de louer un logement en raison de l'origine, du patronyme, de l'apparence physique, du sexe, de la situation de famille, de l'état de santé, du handicap, des mœurs ou de l'orientation sexuelle, des opinions politiques, des activités syndicales ou de l'appartenance ou non-appartenance vraie ou supposée de la personne à une ethnie, une nation, une race ou une religion déterminée .

32. Par rapport aux risques encourus par les personnes lesbiennes, gays, bisexuelles et transgenres de se retrouver sans abri, des mesures ont-elles été prises pour faire en sorte que les services sociaux pertinents soient assurés sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

L'obligation d'accueil dans les structures d'hébergement d'urgence n'est soumise à aucune condition : seule est prise en considération la réalité de la situation de détresse des personnes (article L.345-2-2 du code de l'action sociale et des familles).

### **IX. Sports**

33. Des mesures (notamment de sensibilisation) ont-elles été prises pour combattre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre (y compris les insultes discriminatoires) dans le sport ou dans le cadre de manifestations sportives ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Plusieurs outils d'information et de sensibilisation ont été réalisés par le ministère des sports, de la jeunesse, de l'éducation populaire et de la vie associative :
  - La Charte contre l'homophobie dans le sport, élaborée en 2010, et signée par l'ensemble des fédérations sportives (annexe n° 5).
  - Comité de lutte contre les discriminations mis en place en 2011.
  - Création d'un kit pédagogique intitulé « *Différents mais tous pareils dans le sport* », comprenant un DVD et un livret pédagogique sur la lutte contre les discriminations. Ce support, disponible depuis janvier 2012, est principalement destiné aux formateurs sportifs.
  - Un guide juridique relatif à la prévention et à la lutte contre les incivilités, les violences et les discriminations dans le sport a officiellement été présenté par la ministre des sports le 11 février 2013 à l'ensemble des acteurs du sport. Ce guide se présente sous forme de fiches thématiques organisées en questions-réponses. Il a vocation à dresser un panorama complet et actualisé de la législation mais également d'apporter des éléments de définition précis sur la notion de discrimination et sur les

infractions associées.

- Le Programme d'actions Gouvernemental précité s'engage à :
  - Renforcer l'effectivité de la Charte contre l'homophobie dans le sport. Cette question sera évoquée avec l'ensemble des fédérations sportives dès 2013 et lors de la révision des conventions conclues avec les pouvoirs publics pour les années 2014-2017. Les fédérations s'engageront en particulier à diffuser les objectifs de la Charte au plus près des clubs sportifs.
  - Inclure dans la formation des animateurs sportifs les thèmes des violences et des discriminations homophobes.
- Exemples de bonnes pratiques :
  - Une convention de partenariat a été conclue entre l'association Paris Gay Football et le club de football Paris Saint-Germain. Initiative soutenue par le ministère des sports.
  - L'association SOS Homophobie et la Fédération sportive gaie et lesbienne – FSGL – ont participé aux travaux de création du kit pédagogique.
  - Le ministère des sports apporte son soutien financier à des actions en faveur de la lutte contre les discriminations à l'égard des personnes LGBT, telles que l'organisation, en décembre 2011, d'une conférence par la FSGL sur le thème « Sportifs homosexuels et homosexuels sportifs : l'homophobie en question ».

### **X. Droit de demander l'asile**

34. Dans le cas de votre Etat a des obligations internationales à cet égard, une crainte bien fondée de persécution motivée par l'orientation sexuelle ou l'identité de genre peut-elle être reconnue comme un motif valide d'octroi du statut de réfugié et de l'asile ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

- Conformément à la présente Recommandation, les risques auxquels peuvent être exposées les personnes lesbiennes, gays, bisexuelles et transgenres dans leur pays d'origine figurent parmi les motifs pris en compte par l'Office français de protection des réfugiés et des apatrides (OFPRA), sous le contrôle juridictionnel de la Cour nationale du droit d'asile (CNDA), pour octroyer une protection.
  - a) La protection internationale peut tout d'abord être accordée sur le fondement de la Convention de Genève (article 1 A2), notamment du fait de son appartenance à un « groupe social ». L'applicabilité de cette notion à l'orientation sexuelle a été reconnue dans les années 1990 par la jurisprudence de la Commission de recours des réfugiés (devenue CNDA) et du Conseil d'Etat, à la lumière de la directive 2004/83/CE du Conseil du 29 avril 2004.

Le juge sera en particulier sensible au degré de manifestation de l'orientation sexuelle (visibilité du groupe, sans toutefois exiger une exposition publique de la vie intime) et au degré de tolérance de la société (perception négative que la société environnante peut avoir du groupe).

En matière de persécution, il en va pour ce motif comme pour les autres motifs : les craintes doivent être individualisées, présenter un certain degré de gravité et le lien doit être établi entre ces craintes et l'appartenance au groupe social. Depuis la loi du 10 décembre 1983, il n'est plus nécessaire que les persécutions soient d'origine étatique ; il suffit que la protection



des autorités étatiques soit inexistante ou insuffisante.

b) La « protection subsidiaire » peut également être attribuée aux personnes LGBT lorsqu'il est établi qu'elles sont exposées à certaines menaces graves (peine de mort, torture ou peines ou traitements inhumains ou dégradants) et que le demandeur ne satisfait pas aux critères d'attribution du statut de réfugié.

Exemple de bonnes pratiques :

- des groupes de travail associant l'ensemble des services concernés par la question des personnes LGBT ont été mis en place afin de définir des outils visant à améliorer les techniques d'entretien et à faciliter la rédaction et la prise de décision sur ces sujets complexes.
- En 2011, l'OFPRA a intégré de manière effective le projet European Asylum Curriculum (EAC) au plan de formation de l'Office. Cette formation, destinée aux praticiens de l'asile, propose notamment un module relatif à la prise en compte de la vulnérabilité lors de l'entretien de demande d'asile, qui inclut les besoins de protection liés au genre.
- La division de l'information, de la documentation et des recherches de l'Office consacre dans ses fiches sur les pays, une partie à l'examen de la problématique liée au genre, si la situation l'exige.

**Programme d'actions gouvernemental :** il prévoit la mise en œuvre d'une action de formation impliquant les associations LGBT au sein de l'OFPRA.

35. Votre pays s'assure-t-il que les demandeurs d'asile ne sont pas envoyés dans un pays où leur vie ou leur liberté serait menacée en raison de leur orientation sexuelle ou leur identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

En France, diverses dispositions visent à garantir le sérieux de l'examen des risques encourus par un demandeur d'asile débouté, et ce en conformité avec le principe de « non refoulement » prescrit par les normes internationales.

Ainsi, lorsque la demande d'asile de l'intéressé est rejetée par l'OFPRA et la CNDA, les services administratifs (préfecturaux) français procèdent à un examen systématique et approfondi de la situation personnelle et administrative de l'étranger préalablement à son éloignement. Ils s'assurent que celui-ci ne peut être admis au séjour en France sur le fondement d'autres dispositions et que son éloignement n'est pas susceptible de porter atteinte à sa sécurité, à sa liberté ou à son droit de mener une vie familiale normale, conformément aux dispositions des articles 3 et 8 de la Convention européenne des droits de l'homme.

Si, au terme de ce nouvel examen, la personne fait tout de même l'objet d'une mesure d'éloignement, elle pourra toutefois exercer un recours contre cette mesure devant le juge

administratif et bénéficier à nouveau d'un examen approfondi sur la conformité de la mesure à l'article L. 513-2 du code de l'entrée et du séjour des étrangers et du droit d'asile<sup>22</sup> et aux conventions internationales.

### **XI. Structures nationales des droits de l'homme**

36. Y a-t-il des structures nationales des droits de l'homme (organismes de protection de l'égalité de traitement, médiateur, institutions nationales de protection des droits de l'homme) clairement mandatées pour examiner les discriminations fondées sur l'orientation sexuelle ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des structures nationales des droits de l'homme (organismes de protection de l'égalité de traitement, médiateur, institutions nationales de protection des droits de l'homme) clairement mandatées pour examiner les discriminations fondées sur l'identité de genre ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez expliquer et indiquer en particulier, le cas échéant, les possibilités d'intervention prévues par leur mandat, notamment eu égard à la discrimination multiple :

- **Commission nationale consultative des droits de l'homme** : assimilée à une autorité administrative indépendante, elle est une structure de l'Etat qui assure en toute indépendance, auprès du gouvernement et du parlement un rôle de conseil et de proposition dans le domaine des droits de l'homme, du droit et de l'action humanitaire et du respect des garanties fondamentales accordées aux citoyens pour l'exercice des libertés publiques. Elle est saisie ou se saisit de projets de loi ou de propositions relatifs aux droits de l'homme et vise en particulier à favoriser la concertation entre les pouvoirs publics et la société civile.
- **Défenseur des droits** : autorité constitutionnelle indépendante instituée le 29 mars 2011. Dans le cadre de sa mission de protection des droits et libertés, et de promotion de l'égalité, il est spécialement chargé de lutter contre les discriminations, en particulier celles fondées sur l'orientation sexuelle ou l'identité de genre.

### **XII. Discrimination multiple**

37. Y a-t-il des mesures garantissant que les dispositions du droit national interdisant ou empêchant les discriminations protègent également contre les discriminations fondées

<sup>22</sup> « L'étranger qui fait l'objet d'une mesure d'éloignement est éloigné : 1° A destination du pays dont il a la nationalité, sauf si l'Office français de protection des réfugiés et apatrides ou la Cour nationale du droit d'asile lui a reconnu le statut de réfugié ou lui a accordé le bénéfice de la protection subsidiaire ou s'il n'a pas encore été statué sur sa demande d'asile ; 2° Ou à destination du pays qui lui a délivré un document de voyage en cours de validité ; 3° Ou à destination d'un autre pays dans lequel il est légalement admissible. Un étranger ne peut être éloigné à destination d'un pays s'il établit que sa vie ou sa liberté y sont menacées ou qu'il y est exposé à des traitements contraires aux stipulations de l'article 3 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales du 4 novembre 1950 ».

sur des motifs multiples, y compris celles fondées sur l'orientation sexuelle ou l'identité de genre ?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

En l'état actuel de la législation pénale en vigueur, aucune disposition ne traite spécifiquement des discriminations multiples. Le traitement des plaintes ou réclamations s'opère à travers la recherche du motif « déterminant », c'est-à-dire, selon les cas, le motif que l'on considère comme « principal » dans le cas traité ou bien celui qui dispose du régime juridique le plus élaboré.

Toutefois, il convient de souligner que le mandat du Défenseur des droits est particulièrement étendu puisqu'il vise à combattre les inégalités fondées à partir des 19 critères prohibés par la loi, comme l'origine ou le handicap, l'orientation ou l'identité sexuelle, dans le domaine de l'emploi, du logement, de l'éducation et de l'accès aux biens et services.

### Section III – Suivi

38. Quelles mesures par le Conseil de l'Europe recommanderiez-vous pour garantir que les Etats membres s'inspirent, dans leur législation et dans leurs pratiques nationales, des principes énoncés dans la recommandation et dans son annexe ?

Mise en place des groupes de travail afin d'élaborer des outils d'informations, de sensibilisation et d'échanges de bonnes pratiques.

39. Le Conseil de l'Europe devrait-il continuer à examiner périodiquement la mise en œuvre de cette recommandation ? Si oui, cet examen devrait-il, à l'avenir, se concentrer sur des questions spécifiques ? En l'espèce, lesquelles recommanderiez-vous d'aborder ?

La France est favorable à l'instauration d'un examen périodique sur la mise en œuvre de la présente Recommandation, en prévoyant un délai suffisamment souple afin de permettre aux Etats d'adapter leur législation et de mettre en œuvre les mesures pertinentes ; une périodicité fixée à 5 ans serait à cet égard raisonnable.

40. Existe-t-il des questions sur lesquelles la recommandation et son annexe devraient être modifiées ou complétées ? Si oui, merci d'indiquer lesquelles.

**GEORGIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

Following the adoption of Committee of Minister's Recommendation CM/Rec (2010)5 several legislative measures were carried in order to expressly outlaw discrimination on the basis of sexual orientation and gender identity. Nevertheless, there are persistent challenges present which needs to be further addressed.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Over the recent period the existing legislation, which could cause any direct or indirect discrimination on the ground of sexual orientation or gender identity, has not been revised. However, it must be emphasized the direct or indirect discrimination on the ground of sexual orientation and gender identity in compliance with European standard is constantly monitored by the relevant state organ, namely the Ministry of Justice of Georgia. Furthermore, it is within the competence of the Ministry of Justice to secure the legislative measures and their effective implementation in order to eliminate discrimination on any ground.

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The legislation of Georgia, currently in force, prohibits discrimination on several grounds. At the outset, according to the article 14 of the Constitution of Georgia everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence. The fact that the sexual orientation or gender identity as possible ground of discrimination is not expressly listed in the provision, does not mean that LGBT persons may not enjoy the protection guaranteed by the supreme law of Georgia. In the decision of 27 December 2010, the Constitutional Court of Georgia refused the narrow or pure grammatical interpretation of the article 14 of the Constitution and explained that in light of the principle of equality and non-discrimination the provision in question

shall be interpreted widely to cover other groups as well including those not directly envisaged in the provision.<sup>23</sup>

Furthermore, the Code of Ethics for the Employees of the Office of the Prosecutors of Georgia adopted in 2006 imposes duty on the prosecutors to promote eradication of all forms of discrimination and respect the principle of equality before the law.

The draft Code of Ethics of Police states that the law-enforcement official must remain impartial in its work and resolve the matters based on respect of the parties' interests regardless one's race or ethnic or social belonging, language, gender, age, religion, political or other opinions, property, title, and sexual orientation.

In addition, the principle of non-discrimination is enshrined in a number of legal instruments in the area of healthcare, education and employment, which will be discussed below.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The legislative amendments that have been introduced in several areas, including criminal law, employment and healthcare will be extensively discusses below.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

However, it should be pointed out that the processing of crime related statistical data is carried out by the analytical department of the Chief's Prosecutor office.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

<sup>23</sup> Decision of Constitutional Court of Georgia, №1/1/493, 27 December 2010,II-4

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The victims of discrimination on the ground of sexual orientation or gender identity have equal access to justice. They are entitled to address the law-enforcement authorities under article 101 of the Criminal Procedural Code of Georgia and request to launch the investigation with respect to alleged discrimination. According to article 100 of CPC, the authorities are under the obligation to commence the investigation. Furthermore, the victims may also file a complaint before Public Defender and request the examination of the case. In addition, he/she may ask for reparation through civil proceedings, for either material or moral damages.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

Information not available

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Please see the response under question # 5

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On 17 March 2012 legislative amendments to the article 53 of Criminal Code of Georgia was introduced as a result of which hatred on account of sexual orientation and gender identity was added to list of aggravating circumstances of a crime. Correspondingly, the hate-motivated offence on the ground of sexual orientation and gender identity shall be taken into account while determining the sanction for the perpetrator.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The victims of discrimination on any ground, including sexual orientation or gender identity have equal access to justice. Furthermore, it should be pointed out that under the law on Legal Aid the victim of discrimination is eligible to obtain legal advice or legal aid at the expense of the State. The Legal Aid Service was established under the Ministry of Correction and Legal Assistance in July 2007. Today it covers the entire territory of Georgia through its Bureaus and Consultation Centres.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Police Academy of the Ministry of Internal Affairs in cooperation with non-governmental and international organizations regularly organizes intensive course in human rights protection. Furthermore, since 2011 the Police Academy in cooperation with the Tolerance Centre functioning under the Public Defender's Office, has been implementing the nation-wide training course for the police on the subject of Non-Discrimination. The project is financed by the EU and involves various issues including effective investigation of hate-crimes. The training program focuses on reviewing the Georgian legislation and international law with emphasis on non-discrimination, stereotypes, xenophobia, racism and relevant case law of the European Court of Human Rights. Within the framework of this project the brochure "non-discrimination" was prepared and distributed to the police stations.

In addition, in November 2010 staff of the Internal Affairs was trained within the framework of EU instrument-TAIEX "Hate crimes and their investigations." The trainers were invited from OSCE/ODIHR, UK and Italy.

Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

13. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Hate speech is not criminalized in Georgia, but regulated by means of civil, media and election legislation. The law on Broadcasting stipulates the conditions for broadcasting in accordance with the principle of free expression and free enterprise. The law further defines the rules of establishment of an independent regulatory authority in the broadcasting sector and determines the terms and procedures for issuing license and reviewing complaints. According to this law, license holders shall ensure accurate and fair coverage of facts and opinions and the identification of personal views, as well as the establishment of non-discriminatory and pluralistic coverage of public opinion and concerns. The same law prohibits broadcasting the programs containing material directed to incite hatred, discrimination that is offensive to any person or group on the basis of ethnic background, religion, opinion, age, gender, sexual preference or disability, or any other feature or status. Special emphasis of these features or statuses is only permissible within the context of a program if its aims merely to illustrate such hatred or discrimination, as they already exist in society.

Additionally, in this context, the Charter of Journalist Ethics of Georgia adopted in 2009 must be emphasized. Namely, under Principle 7 of the Charter journalist shall exercises diligence in order to avoid any kind of discrimination on racial gender, sexual orientation, language, religious, political or other grounds. Additionally, the protection of privacy and non-interference within one’s private life has given due regard in the Charter.

Furthermore, according to article 4(8) of law on Advertising the placement and distribution of the improper advertising is prohibited. In addition, the Election Code of Georgia imposes certain restriction on the use of hate speech and on stirring up animosity among different social groups. Namely, article 45 (3) states that “The election program must not contain propaganda of war and violence, of overthrowing the existing state and social system or replacing it through violence, of violating the territorial integrity of Georgia, of calling to foster citizen hatred and enmity, religious and ethnic confrontation.”

Organic law of Georgia on Political Unions of Citizens encompasses the similar non-discrimination clause. Precisely, article 5 (2) bans in its all forms creation and operation of a party aimed at subversion or forcible change of constitutional order of Georgia, infringement upon the country’s independence, interference with its territorial integrity or which propagates war or violence or stirs up national, community religious or social animosity.

## **II. Freedom of association**

14. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?



- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

The constitution of Georgia guarantees everyone's right to form and to join public associations including trade unions. Furthermore, as a consequence of the legislative amendments introduced in 2009, the process of registration of the non-commercial organizations has been significantly simplified. The registration period was reduced to 1 day and the list of documents prerequisite to the registration was substantially decreased as well. As for the registration of organization which focuses their work on the protection of LGBT person's right, until now there are no reported cases of denial of registration. The organizations operate freely.

However, it should be pointed out that the right of association is not an absolute right and it can be restricted in the cases provided for by the law. According to the Constitution of Georgia formation of association is impermissible if such association aims at overthrowing or forcibly changing the constitutional structure of Georgia, infringing upon the independence and territorial integrity of the country or propagandising war or violence, inciting national, local, religious or social animosity.

15. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Human Rights organizations focusing on defending the rights of lesbian, gay, bisexual and transgender person enjoy equal protection against hostility and aggression as any other organization. As explained above, in case of hostile incidents directed against the staff, they are entitled to file a complaint before the relevant state organ, request the investigation of the matter and punishment of the perpetrators.

16. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the recent period cooperation between the non-governmental organizations defending human rights of lesbian, gay, bisexual and transgender persons and the Government has been significantly improved. To this end, the legislative amendments of 27 March 2012 to the Criminal Code of Georgia should be pointed out. As a result of productive consultation with non-governmental organizations, hate motive to LGBT persons was added to the list of aggravating circumstances.

**III. Freedom of expression and peaceful assembly**

17. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

18. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There has been number of peaceful demonstrations in favour of the human rights of lesbian, gay bisexual and transgender persons carried out last year, the practice indicates that the City Council in none of those cases interfered with their right of peaceful assembly. As for the protection of the demonstrators against the hostility during the freedom of assembly events, it should be pointed out that on 18 May 2012, the law-enforcement officials fulfilled its obligation and effectively protected the demonstrators gathered in front of the Parliament Building from the third-party violence.

**IV. Right to respect for private and family life**

19. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Georgian criminal legislation, currently enforced, contains no provisions which may lead to a discriminatory effect. Homosexuality was decriminalised in Georgian in June 200. The age of consent for sexual affair is 16 for both- homo or heterosexual people.

20. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

The law of Georgia on Personal Data Protection is the primary legal instrument regulating the rules of protection of personal data. According to the article 2, the list of sensitive information under law includes: person's race or ethnic origin, political opinion, religion, philosophical belief, trade union membership, health status, sexual life or conviction history and biometrical data, upon which the person can be identified. In light of the latter provision, the information regarding the person's sexual orientation is classified as data falling to special category and is subject to better protection. According to the article 6, part 1 of the above law, processing of information falling to special category is prohibited. However, part 2 of the same article defines the exceptions to the rule. Namely, restriction of processing sensitive data will not be effective in the following circumstances: a) The subject of data gave the written consent on the processing of special category data; b) the subject of data made public information about him/her without clear prohibition of using the data on him/her; c) the data processing is necessary for a persons who processes it for fulfilling his/her labour responsibilities, or for implementation of the right related to it; d) data processing is necessary for protecting the vital important interests of the data subject of the third person and the data subject or legal capacity to give the consent; e) data processing is exercised for the purposes of public health, by the medical institutions for protection of a person's health, also if it is necessary for management or functioning of the healthcare system. It should be pointed out that the list included additional exception, under which the collection of the data was permissible "in the interest of the public", however by the amendments of 25 May 2012 Law on Personal Data Protection prepared by the Ministry of Justice aimed at better compliance with EU Directive EC/95/46, the above exception was repealed.

Furthermore, it should be emphasized that the data subject enjoys certain rights, which provide him/her with the possibility to control the process of his/her data. Namely, under article 21(1) of the Law of Georgia on Personal Data Protection the data subject is entitled to request the information regarding his/her data procession from the processing body. The above body, is required to provide the data subject within the 10 days limit the following information: what kind of data about him/her is being processed; the purpose of the data processing; the legal base for the data processing; the ways of data collection, to whom the the data was submitted and the ground and the purpose of such submission.

21. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Georgian legislation envisages the measure for the full legal recognition of a person's gender reassignment. Under the Article 22 of the Law on the Protection of Personal Data, the data subject is entitled to request the change or update of his/her personal information. In such case, the data processing official is required to correct, update, change, add, block, delete or destroy the data, if it is incomplete, incorrect or outdated, or if they have been collected unlawfully.

Most importantly, according to the law on the Civil Acts, a person has a right to ask the civil act registration body to make changes and/or additions to his entry including the name. The ground of such request includes the change of gender.

22. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Provided that the relevant documentation necessary by law for the marriage is obtained, including the personal identification document recognizing the change of gender, Georgian legislation envisages no restriction of the right of a transgender person to marry a person of the sex opposite to their reassigned sex.

23. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

24. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no discrimination on the ground of sexual orientation and gender identity in procedures of child adoption. The Civil Code of Georgia and the Law of Georgia on Adoption and Foster Care regulates the rules of child adoption. According to the article 1245 and 1245 of Civil Code adopting parent can be single person except to those persons who due to illness, moral or other personal characteristics cannot exercise the rights of parents or married couple. Furthermore, Article 5 of the Law on Georgia on Adoption and Foster Care defines the legal criteria for the adoption. Adopting parent may be any adult having legal capacity, accepts those:

- who was deprived of the parental right or previously has adopted person, was a guardian of minor or exercised the function of foster parent but these relations were annulled due to the improper performance of his/her duties.
- Whose right to parenthood has been restricted under the procedure established for by the Georgian legislation.
- Who was convicted by the Court for grave or especially grave crime and the conviction is not annulled pursuant to the procedure provided for by the Georgian legislation.

-Who is convicted for the offence considered in the Chapter XXIV of the Criminal Code of Georgia and his/her conviction is not annulled pursuant to the procedure provided for by the Georgian legislation.

In the view of the above considerations, it is clear that the law contains no restrictive provision directed against the rights of the adopting parent on the ground of sexual orientation or gender identity.

### **V. Employment**

25. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Labour Code of Georgia, precisely article 3, expressly prohibits discrimination based on sexual orientation. While it is true that said provisions, currently in force, only applies to person who are already employed and it does not include recruitment process, it should be stressed out that the recent package of changes to the labour code elaborated by the Ministry of Justice of Georgia intends to fill in the gap. According to the draft bill, the discrimination on the ground of sexual orientation will be prohibited at the selection stage as well. The public presentation of the amendment package has already carried out. In the near future, package of changes will be submitted to the Parliament of Georgia for further examination.

### **VI. Education**

26. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

xviii) Anti-discrimination training or support and teaching aids

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

xix) Information, protection and support for pupils and students

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

xx) Objective information on sexual orientation and gender identity in school curricula?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

xxi) School equality and safety policies and action plans

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The law of Georgia on General Education and the Law of Georgia on Higher education contains the provision, which expressly prohibits discrimination on any ground and recognizes access to education for all.<sup>24</sup>

### **VII. Health**

27. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Georgian legislation, namely the Law on Public Health of Georgia prohibits discrimination against patients on any ground, including the sexual orientation. Every citizen has equal access to medical assistance provided by state programs. Article 5-6 of the aforementioned law stipulates that discrimination against the patient on the ground of race, colour, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and position status, residence, morbidity, sexual orientation or personal negative mood is impermissible.

28. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

29. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

The rules related to the gender-reassignment surgery are not prescribed in the law; however it is possible to undergo the procedure in two clinics in Georgia without any obstacles. According to the practice in the field, the person willing to undergo the surgery is referred to the State Commission on Bioethics. The commission appoints independent experts including psychologist, sexologist and psychiatrist. Following the course of the observation, the based on the diagnosis of “genuine transsexuality” the person in question may undergo the procedure. However the costs of the surgery is not covered by the insurance companies; therefore it is borne by the person undergoing the surgery.

<sup>24</sup> The Law of Georgia on General Education, article 13/(3) j

**VIII. Housing**

30. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Constitution of Georgia entitles everyone legally present within the territory to have the right to liberty of movement and freedom to choose his/her residence throughout the territory of Georgia.<sup>25</sup> In addition, the Civil Code enshrines the principle of equality in property, family and personal relations of private nature.<sup>26</sup> Correspondingly, in civil relations legislation prohibits discrimination on any ground, including sexual orientation or gender identity.

31. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**IX. Sports**

32. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**X. Right to seek asylum**

33. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Georgian legislation excludes any discrimination in asylum seeking on any ground, including sexual orientation and gender identity. The law of Georgia on Refugee and Humanitarian Statuses declares that the status of refugee can be granted to a person if he/she has a justified fear that

<sup>25</sup> Constitution of Georgia, Article 22, part 1

<sup>26</sup> The Civil Code of Georgia, Article 1

he/she may become the victim of persecution due to his/her race, religion, belief, nationality, belonging to the particular social group or political opinions, and he/she cannot or does not want, because of that fear, to return in the country of his/her origin, or enjoy protection of that country.<sup>27</sup> Despite the fact that the list described above does not contain specifically discriminatory ground for sexual orientation or gender identity the “Membership of a social group” should be interpreted widely to include the LGBT group as well.

34. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Government of Georgia respects the principle of non-refoulement and ensures that asylum seekers are not returned to a country where their life or freedoms will be in danger. Namely, the Law of Georgia on the Legal Status of Aliens prohibits the deportation of an alien from Georgia to a country where: one is being persecuted for political opinion or an act which is not considered a crime under Georgian legislation, for protecting human rights or peace or progressive political and public or scientific, or other activity, or where one's life and health will be in danger.

#### **XI. National Human Rights Structures**

35. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

According to the Article 12 of Organic law of Georgia “on Public Defender of Georgia” the competence of the Public Defender includes the monitoring the observance of human rights and freedoms within the territory and jurisdiction of Georgia. Furthermore, examination of cases concerning alleged human rights violation, the protection of minority, including sexual minority is considered to be one of the most important functions of Public Defender's Office. Correspondingly, the despite the clear wording mandating this role to the Public Defender's Office, the practice shows that PDO assumes the responsibility to protect the sexual minority and implement appropriate measures when necessary. To this ends, it should be emphasized that subsequent to the intervention in the IDAHO March on 17 May 2012, the Public Defender made the public statement condemning the actions directed against the peaceful demonstrators.

<sup>27</sup> The Law of Georgian on Refugee and Humanitarian Statutes, Article 2



**XII. Discrimination on multiple grounds**

36. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

**Section III - Follow-up**

37. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix?

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38. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

The Government welcomes the efforts from Council of Europe to continue the periodic implementation of the recommendation.
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39. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

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**GERMANY**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

As will be evident from the replies made in the present questionnaire, significant steps already have been taken in Germany in the sense of the Recommendation. In our reply, we checked the option "Adequate" as regards the status of the Recommendation's implementation in Germany since combating discrimination on the grounds of sexual orientation or gender identity is an ongoing and complex task that cannot be regarded as having been conclusively accomplished. Combating discrimination is a challenge that all of society must face up to, and one that will require the commitment of state actors and non-state actors alike.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please explain and, if appropriate, provide examples of any such measures found:

The General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz*) has entered into force only relatively recently.  
 Many issues of discrimination in Germany have not been the subject of scientific analysis as yet, nor have they been definitively addressed by the German courts.

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Please see the reply to Question 5.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?  
 a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

On 27 October 2001, the Federal Republic of Germany, represented by the Federal Ministry of Justice, established the **Magnus Hirschfeld Foundation**.  
 The foundation's task is to promote education, science, and research in order to counteract the discrimination and social exclusion of homosexual men and women in Germany.

Through its work and diverse programmes, it makes an important contribution to overcoming prejudice and resentment against those perceived as different, and to educating the public. The Magnus Hirschfeld Foundation, a foundation under civil law with legal capacity, is based in Berlin. The foundation's mission, as defined in section 2 (1) of its statute, is to promote education, science, and research, and in particular to

1. Keep alive the memory of Nazi persecution of homosexuals,
2. Scientifically research and present the life and work of Magnus Hirschfeld as well as the life and social environment of homosexual men and women who have lived and live in Germany, and
3. Counteract discrimination and social exclusion of homosexual men and women in Germany.

The purposes of the statute are achieved in particular through:

1. The initiation and promotion of education and the development of an appropriate network,
2. Technical cooperation with universities as well as with educational and research institutions,
3. Independent scientific research and the encouragement and promotion of scientific research and its publication,
4. The collection, documentation, and scientific evaluation of materials and eyewitness reports, and
5. The implementation of exhibitions, conferences, discussion forums, and similar events.

The independent **Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*)** completed / funded two research projects that dealt with issues of discrimination on grounds of sexual identity and/or transsexuality and, to some extent, of intersexuality.

In 2009, the Federal Anti-Discrimination Agency (referred to as “ADS” hereinbelow) resolved to fund and support a campaign of the antidiscrimination organisation, *Lesbenberatung Berlin e.V. - LesMigraS*, to combat **“Violence and multiple discrimination against lesbian and bisexual women and trans\* people in Germany.”** The campaign's primary focus was on conducting a quantitative and qualitative analysis of the topic, the results of which were presented at a conference in September 2012 and will be published in a final report by LesMigraS. The study shows that lesbian and bisexual women as well as trans\* people in Germany continue to experience a range of discrimination and violence in the areas of education, work, and healthcare, at government agencies, as well as in the public and private spheres. In this context, it is in particular trans\* people and queers of colour who are affected by multiple discrimination. The study proves that racism, heterosexism, and cis-sexism – as forms of discrimination against trans\* people – are still major issues in Germany, and that there is a need to counteract and prevent these forms of discrimination and violence also in the future.

In addition, ADS published a report by Jannik Franzen and Arn Sauer on **“Discrimination against Trans\* People, Especially in the Workplace”** in 2010. The study shows that trans\* people face intense discrimination in all spheres of daily life, especially in the workplace. Discrimination impacts their ability to gain access to the labour market and their career opportunities, and ranges from rejection and harassment to outright violence. Trans\* people are disproportionately affected by job loss, unemployment, and poverty, and they often work in positions for which they are overqualified. They report transphobic behaviour and attitudes from colleagues and superiors, as well as structural discrimination resulting from the way that the medical and legal systems approach people transcending gender boundaries.

Recommended actions based on the study's findings included a broad, long-term effort to educate the public and raise awareness about the social and legal situation of trans\* people and the discrimination they face in businesses, organisations and government agencies, healthcare, while also informing about case law and providing trans\* people with opportunities to obtain legal consultation. These include gender mainstreaming and anti-discrimination strategies, which take as their foundation a diversity of sexual identities and modes of expressing gender and discuss them individually. The report (in German) is available for download from the ADS website.

Further, the Federal Anti-Discrimination Agency plans to recruit *Land* and local governments as partners in a campaign to end discrimination in society. Federal, *Land*, and local governments will show a united front against discrimination. Berlin, Hamburg, Brandenburg, Bremen, and the Rhineland-Palatinate have already joined the **“Coalition against Discrimination.”**

The *Länder* and municipalities joining this campaign have issued a statement of intent that reflects their desire to ensure the following:

- That the issue of discrimination receives more public attention;
- That every possible means is applied to provide people who are discriminated against the best possible counseling and advice in the city or town of their residence;
- That, whenever possible, central points of contact are identified;
- That protection against discrimination is firmly anchored as a political goal of all governments at the *Land*, municipal, and sub-municipal levels.

Example of measures taken at the *Land* level:

**North Rhine-Westphalia:** The government of the *Land* of North Rhine-Westphalia (NRW) wants to decisively counter discrimination against lesbian, gay, bisexual, transsexual, transgendered, and intersexual people – abbreviated as LGBTTI. It is taking action to promote acceptance and the universal recognition of the value of others. Its aim is to create a tolerant NRW, where diversity is a matter of course – something that people can both embody and experience in others. On 30 October 2012, an **“NRW Action Plan for Equality and Acceptance of Sexual and Gender Diversity”** was adopted. It requires all governmental departments to take into account the task of combatting discrimination and homophobia in their substantive agendas and budget plans.

A broad array of stakeholders participated in a process to determine what urgent changes are necessary so that lesbian, gay, bisexual, transsexual, transgendered, and intersexual people can enjoy equal treatment and acceptance. Representatives of the legislative branch (the speakers for LGBTTI issues of each parliamentary group in the *Land* parliament), service providers (NGOs and counseling infrastructure), and government agencies engaged in a planning group. In a constructive dialogue and on an equal footing, the participants contributed their knowledge and experience to identify what action and resources are needed and to set priorities for future work.

Following broad participation in eleven subcommittees, which included further experts representing organisations responsible for the execution of certain programmes, associations, and government agencies, the group developed recommendations for the *Land* government's action plan based on four mutually agreed upon headline goals.

In the action plan, the government agencies declare their intention to implement diverse measures that will target people in all phases and spheres of life and members of specific groups. They also commit to undertaking consciousness-raising efforts. The action area "Discrimination / Violence / Domestic Violence" is one of 12 such action areas, and comprises various projects.

While the action plan was still in the development phase, fundamental measures were initiated or completed. For instance, the legal equality of civil unions with marriages was established in the laws of NRW, funding was secured for a qualitative study on the situation of transsexuals and for a special analysis of the long-term study "Group-Related Hostility towards other People" with regard to homophobia, funding for the material costs of psycho-social counseling services and self-help organisations was increased, and an office was set up for the campaign "Different and Equal – Respect is the Only Answer." In addition, funding was secured for various programmes that will provide networking and coordination opportunities and services in addition to the existing counseling infrastructure, which currently includes the two central offices of the gay and lesbian self-help organisations for the *Land* of NRW, a state-wide coordination office for anti-violence work, and five psycho-social counseling offices for gays, lesbians, and their family members. This new funding will support the following: the project "Gay and Lesbian Awareness in NRW" (*SchLAU - Schwul-lesbische Aufklärung NRW*), gay and lesbian youth work in the Lower Rhine Region, the campaign "Schools without Homophobia – Schools of Diversity," services for senior citizens, and programmes in the fields of long-term care and migration. At present, the campaign "Different and Equal – Respect is the Only Answer" is conducting a broad public outreach effort, which includes, *inter alia*, the dissemination of an educational brochure and posters.

The *Land* government is planning to conduct an evaluation of the measures initiated and implemented thus far, with an expected completion date of 31 July 2015. Based on the findings of this evaluation, the *Land* government will decide on whether to continue implementing the action plan and will coordinate any further steps.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Since 2006, **ADS** has kept statistics regarding the requests for legal counseling services and evaluated these with regard to the characteristics outlined in the General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz*). Inquiries from transsexuals as well as inquiries from intersexuals are both indexed with the characteristic "Gender."

Since 2001, xenophobic and anti-Semitic crimes have been tracked separately by the police as "Hate Crimes." They are registered separately, based on the criteria catalogue of the Criminal Investigation Department's Reporting Service for Politically Motivated Crimes (*Kriminalpolizeilicher Meldedienst - Politisch motivierte Kriminalität*).

The classification of a crime as a hate crime is contingent on the motivation of the perpetrator, which is to be investigated with consideration given to all the circumstances of the illegal act and/or the perpetrator's mindset. In this context, "Hate Crime" is a general category that currently includes the following sub-categories: anti-Semitism, crimes against the disabled, xenophobia, crimes committed based on social status, racism, religious orientation, and sexual orientation.

However, a single crime may be attributed to many motivations. Germany's system for tracking crime statistics allows for a multi-dimensional view of politically motivated crimes that accommodates multiple motivations.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The **regulations of general tort law** set out in the German Civil Code (*Bürgerliches Gesetzbuch*) provide effective means of obtaining legal protection for the victims of discrimination on grounds of sexual orientation or gender identity, above and beyond those set out in the General Act on Equal Treatment. Section 21 (3) of the General Act on Equal Treatment (respectively section 15 (5) of said Act) makes it clear that any claims in tort will be concurring causes in action.

In this regard, the following claims under tort law for compensation of damages are conceivable:

- Section 823 (1) of the German Civil Code, where the discrimination is tantamount to an invasion of general personal privacy (as "another right of another person" in the sense of the term as used in that regulation);

- Section 823 (2) BGB in conjunction with section 185 of the German Criminal Code (*Strafgesetzbuch*) in those cases in which the discrimination is joined to an insult; however, it is disputed whether the stipulations of section 19 (1) und 2 of the General Act on Equal Treatment extend further and can be regarded as a protective law in the sense of section 823 (2) of the German Civil Code;
- Section 826 of the German Civil Code in cases in which damage was intentionally inflicted in a manner contrary to public policy.

Furthermore, claims for removal and injunction pursuant to section 1004 of the German Civil Code may exist, by analogy, for an ongoing or threatening invasion of general personal privacy.

The claims under tort law may be of particular interest to the parties discriminated against since according to the express wording of the General Act on Equal Treatment, the two-month preclusive time limit stipulated by section 21 (5) first sentence of the General Act on Equal Treatment does not apply.

As regards **employment relationships**, the following applies:

Where the corresponding pre-requisites are met, the employees affected are entitled to lodge a complaint (section 13 of the General Act on Equal Treatment), have the right to refuse performance (section 14 of the said Act) and have a claim to appropriate compensation of the non-pecuniary damages they have suffered (immaterial damages).

In the event of an action being pursued before the courts, the rules concerning the taking of evidence are simplified where employees are submitting evidence to the court (section 22 of the General Act on Equal Treatment). Should, in the event of a dispute, a party submit evidentiary facts to the court, and prove them, which indicate that the party affected was in fact discriminated against on one of the grounds set out in the General Act on Equal Treatment, the burden of proof shall be on the other party as to there having been no violation of the provisions protecting against discrimination.

Upon the **General Act on Equal Treatment** having been signed into law in 2006, any discrimination on grounds of gender and sexual identity, *inter alia*, is prohibited. Gender identity is not a characteristic separately identified in section 1 of the General Act on Equal Treatment. However, cases concerning gender identity (of trans\* and intersexual persons) are covered by the prohibition of discrimination.

The principle of non-discrimination extends to cover the fields of labour law and some fields of civil law. Section 15 of the General Act on Equal Treatment provides for compensation and damages in the field of labour law. The claims arising from discrimination in the field of civil law are governed by section 21 of the General Act on Equal Treatment.

In its work, **ADS** is proceeding based on a "horizontal approach," meaning that any form of discrimination is regarded to be equivalent. In the context of its public relations work, ADS also advertises the consultancy services it provides. The agency wishes to be available to all people potentially affected by discrimination, regardless of the specific characteristic that may apply.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?  
None.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

All the agencies and departments affected as well as **ADS** and the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*) have received a translation of the Recommendation.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As a matter of principle, all German law enforcement agencies are obligated to initiate an investigation as soon as factual indications lead them to suspect that a crime has been committed (section 152 (2) of the Code of Criminal Procedure (*Strafprozessordnung*)). This obligation also extends to cases in which the motive for the crime may be linked to the sexual orientation or gender identity of the victim.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to section 46 of the German Criminal Code (*Strafgesetzbuch*), the courts shall weigh the the circumstances in favour of and against the offender in sentencing. The Code expressly states that the circumstances to be taken into consideration should include the motives and aims of the perpetrator, as well as the attitude evinced by the crime. If the offender is found to have been motivated by the sexual orientation or gender identity of the victim in committing the crime, either circumstance can be considered grounds for a more severe sentence.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Examples of good practice at the *Land* level:  
 In 1992, the **Berlin police forces** established the position of an **LGBT Liaison Commissioner** (*AnsprechpartnerIn für gleichgeschlechtliche Lebensweisen*). In 2006, an additional position was created to represent the issues of lesbian women. The aim pursued in appointing these commissioners is to reduce barriers and encourage LGBT persons to contact the police authorities, without having to fear discriminatory treatment. The contact person is also involved in the prevention of crimes against LGBT persons and contributes to the investigation of these crimes. The contact person offers advice to individuals, independent organisations, and governmental employees. Per year, about 400 consultations are carried out over the phone or in person. Victims of crimes may also be lent support in reporting a crime and will be transferred to specialised support services.  
  
 In August 2012, **Berlin's public prosecutor's office** introduced a contact person for homophobic hate crimes. It is the first office of this kind in Germany. In the course of establishing the office, the responsibilities of the unit on violent and hate crimes were expanded to include 'offenses committed

against a person solely or predominantly due to his/her sexual orientation.’ As of now, it will be generally assumed that it is in the public interest to prosecute crimes against lesbian, gay, bi- or transsexual persons; accordingly, it is not possible to terminate such proceedings because they might be resolved in proceedings under civil law, or due to the trivial nature of the offence.

The **Berlin Network of Lesbian, Gays and Transgender People for Equal Treatment - Against Discrimination** provides advice and support in cases of discrimination. It receives funding from the Senate Administration for Labour, Integration and Women.

The **Guide to Counselling, Services, and Support** of the **Land Office for Equal Treatment – Against Discrimination** helps victims of discrimination identify the correct point of contact in order to obtain the support that they need.

In 1990, the **Berlin Anti-Violence-Project MANEO** was founded as the first project against homophobic violence in Germany. The initiative MANEO supports gay and bisexual men affected by violence and discrimination, records and documents homophobic offences, and engages in educational work. Support is offered to victims, persons close to the victim, as well as witnesses of a crime related to homophobia. MANEO provides information on dealing with the police and other public authorities and lends support in the corresponding processes; the project also refers victims to doctors or lawyers and advises them on insurance issues or compensation. Furthermore, the organisation accompanies clients to court hearings and the police. Any interaction with MANEO is confidential, and any person seeking advice or help may also do so anonymously; this does not depend on whether or not the victim reports the case to the police. MANEO also supports victims opting to participate in the programme mediating between victims and offenders.

Since 1992, one of the focuses of the **Support Services for Lesbians** (*Lesbenberatung*) is to combat the discrimination of lesbian, bisexual women and trans\* people and to eliminate violence against them. The project **LesMigraS** focuses on lesbian, bisexual women and trans\* people in Berlin. LesMigraS was founded in 1998 to combat the multiple discrimination of lesbian and bisexual migrants and black women, to engage in networking and to generally support the empowerment of this group. In recent years the focus has been expanded. The project's tasks now comprise anti-discrimination, anti-racist and anti-violence efforts as well as the provision of counselling services. The support team counsels individuals who have experienced violence and discrimination or who are in need of legal advice.

As part of its projects, **LSVD Berlin-Brandenburg e.V.** offers individual **Legal Counselling** for its members and victims of discrimination pursuant to the General Act on Equal Treatment. These initial consultations are offered by volunteer attorneys specialising in discrimination law. The legal fields covered include the General Act on Equal Treatment, aliens law, family law, social law, and criminal law. Further information may be obtained (in German) at: <http://berlin.lsvd.de/gruppen-beratung/rechtsberatung/>

**Online form (in various languages)** for reporting and tracking cases of discrimination:  
**Anti-Discrimination Office of the State of Saxony** ([www.adb-sachsen.de/beschwerde.html](http://www.adb-sachsen.de/beschwerde.html))

The **Cologne Anti-Gay Violence Hotline 19228** has counselled victims and witnesses of anti-gay violence since 1992. More information can be retrieved from the German website <http://koeln19228.wordpress.com/>. The hotline's mission is to provide aid and counselling services to victims and witnesses as well as to document anti-gay violence. The hotline is a long-term member of the Working Group of Victims' Aid organisations in Germany and a member of the "Working Group of Anti-Gay Violence Hotlines and Gay Anti-violence Projects in Germany" (ASAD). Model concepts developed for Cologne such as victims' aid work, cooperation with the police and violence prevention efforts, are now implemented in various regional projects (the "Cologne Model"). In addition, **anti-violence efforts** to protect lesbian, gay, bisexual, and trans\* people in North Rhine-Westphalia is coordinated by an office that receives state funding. Additional information and points of contact can be found (in German) via the link <http://www.vielfalt-statt-gewalt.de/>.



12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

**Also see the reply to Question 1.**

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Question 12 - Police**

In General: While there are no training events or programmes that deal exclusively with the groups described, education about human rights is an integral component of various police-science and legal subjects covered during the training of police officers. Police education in the subjects/fields of public law and constitutional law, civics, European law, law enforcement powers and civil rights, situational and communications training, search for persons, and interrogation/testimony, also deals with the topics of human rights, civil rights, the principle of non-discrimination, the prohibition against mistreatment and torture, the UN Charter and the European Convention on Human Rights as well as intercultural competence.

Police training relies on practical case examples in order to ensure that the future officers' human rights education is aligned with their actual tasks. In subjects such as sociology, psychology and professional ethics, police training programmes discuss the core values that underlie human society, the origin of prejudices, the significance of social groups, and the formation of social judgments and values. These aspects of police training increase the awareness of future police officers with regard to specific social groups, the problems they face, and their need for protection. It also teaches them to recognise and prevent discrimination. Great emphasis is placed on the protection of victims.

Upon completing their education, officers are expected to be able to help victims of crime avail themselves of all accessible measures for their protection, and to provide advice on how they might conduct themselves in future to prevent crimes in the future.

The continuing education and training that professional police officers receive also deals with the topics of human rights and the prohibition of discrimination. Thus, the professional expertise and the social competence of police officers are constantly expanded. In addition, various professional development programmes are designed to educate police officers about the causes and context that give rise to discrimination. Such programmes are designed to promote understanding and tolerance of all people, irrespective of their gender or sexual orientation.

Examples of good practice at the *Land* level

Brandenburg: The content of legal and criminological as well as sociological and behavioral science courses is drawn in particular from the **“Action Concept of the Police of the *Land* of Brandenburg for Combatting Politically Motivated Crime”** as well as the **“Police Concept for the Protection of Victims.”** The topic of victim protection, irrespective of specific groups of victims, also plays a role in professional development courses. In addition to the Police Concept for the Protection of Victims, the Brandenburg police also provide victims an **informational hand-out entitled “The Role of the Police in Protecting Victims”** as a matter of standard procedure. It provides recommendations for conduct, while providing information about victims' rights and institutions that can provide aid. It includes information about various categories of offences as well as the guideline on “Domestic Violence” published by the Brandenburg police.

Hamburg: During training, various courses cover topics such as **“Foundations of Social Perception and Communication.”** A deeper understanding of verbal and non-verbal communication as well as the social context for an individual's actions helps police officers better recognise certain behaviour patterns and better understand the true impact of crimes on victims. This knowledge is of particular importance in combatting discrimination on the grounds of sexual orientation or gender identity. Therefore, training delves intensively into **victimology**, which includes discussion of victimization and

its consequences, the needs and expectations of victims, crime reporting behaviour, the fear of crime, and dealing with victims of crimes.

This category of offenses is regularly discussed in professional development courses offered by the **Equal Opportunity Commissioner of the Hamburg Police** to “expand professional as well as personal leadership competence.”

Mecklenburg-Western Pomerania: The **LGBT Liaison Commissioner of the City of Rostock** helped familiarise students with this topic as a guest lecturer.

In Lower Saxony, **LGBT Liaison Commissioners of the Lower Saxony Police** are on hand to provide support and advice.

1. They are available to provide support and advice for all officers and employees in matters of official contact with citizens from the gay and lesbian communities. In addition, they offer employees who seek counsel or advice a safe and trustworthy conversation partner, and they provide support should crisis interventions become necessary in the workplace.
2. They may also be enlisted to support victims of anti-lesbian/anti-gay violence as part of the police response to the issue.
3. They are also available to provide support and advice for the creation and implementation of professional development courses. In this regard, great importance is attached to sensitising employees to the concerns of lesbians and gays in order to prevent discrimination.
4. They also contribute to the development of prospective courses of action to prevent anti-lesbian/anti-gay violence.
5. They may also perform public relations work in coordination with the local media relations offices as regards gay and lesbian issues.

In Saxony-Anhalt as well, there are **Police LGBT Liaison Commissioners**

Their duties include: Participating in external events (e.g., Christopher Street Day), cooperating with the Gay and Lesbian Alliance, the Gay and Lesbian Policy Roundtable of the *Land* of Saxony Anhalt and other aid organisations, contributing to professional development courses offered by the University of Applied Sciences for Police of Saxony Anhalt; they also contribute a fixed number of hours of instruction in the curriculum to courses in the bachelor's degree and trainee programmes.

In the Rhineland-Palatinate, the police instituted a **state-wide, interagency office liaising with the LGBT community** in 2011. In particular, the office serves as a point of contact for gay, lesbian, and bisexual victims of violence as well as initiatives and organisations dedicated to education and prevention. In addition, officers of the Rhineland-Palatinate police can also avail themselves of the office's services. The office also presents its work to young prospective police officers in the police training component of bachelor's degree programmes in order to increase their awareness of the issue.

A **national conference on the issue of “Hate Crimes”** was held from 28-30 November 2012 in Mainz. The conference was jointly organised by the *Land* Criminal Police Office of the Rhineland-Palatinate, the *Land* Police Academy of the Rhineland-Palatinate and the central office for crime prevention of the Ministry of the Interior, Sports and Infrastructure. Representatives of government, churches, unions, the media, academia, the police, and victims' aid organisations examined the phenomenon and discussed opportunities for cooperation. The conference brought these stakeholders together in order to facilitate the sharing of knowledge, develop an array of possible responses, and forge networks than can mount a comprehensive effort to combat the phenomenon.

In May of 2013, the Ministry of the Interior, Sports, and Infrastructure will hold a **Symposium** with the title **“Understanding Diversity as an Opportunity – the LGBT Community as a Challenge for the Police”**. The goal of this programme is to examine the issue in its overall context and develop an appropriate approach to the challenges the police must face in this regard internally, as well as official police contact with members of this group in the field.

## Question 12 – Penal Institutions

In General: The training that employees of penal institutions undergo comprises a significant share of coursework on the fundamentals of psychology and human behaviour, with numerous examples illustrating the topic. Moreover, students are taught how to react adequately in situations typical to life in a penal institution, as well as appropriate behavioural patterns. In this way, employees are given the ability to identify criminal offences or critical incidents of any kind – and thus also hate crimes – , to react in a manner appropriate to the situation and to give assistance to the persons concerned. The abilities and knowledge so taught are intensified in regular refresher courses.

Examples of good practice at the *Land* level:

Baden-Württemberg: The state-wide professional development programme for penal institutions featured a central **Professional Development Conference** called “**Colourful Cultures**” in 2010 that had a corresponding thematic focus. Among the speakers invited to the conference was a speaker from VelsPol Deutschland e.V., the German association of lesbian and gay police officers. The same speaker gave a presentation in 2012 during a three-day conference on “Diversity Management.” In 2013, the following conferences are planned: “Intercultural Competencies” – 22-23 April 2013, targeted towards general correctional officers and the employees running the correctional facilities’ workshops; and “Diversity Management” – 24-26 April 2013, targeted towards upper intermediate and higher level civil servants working in penal institutions. Education and training programmes for prospective corrections professionals are designed to break down taboos around this topic and make students more aware of it.

Berlin: The training facility of the Berlin Department of Corrections is currently developing a **professional development course** on the topic of “**Diversity**” in cooperation with the *Land* Office for Equal Treatment - Against Discrimination. This course will begin in April 2013 with an introductory class for trainers who will lead professional development courses. The objective of the programme is to convey the concept of diversity with a focus on gender and sexual diversity, the importance of valuing others and preventing discrimination for Berlin’s public administration, and the connection of diversity issues to one’s own work, as well as the role of management in implementing a positive approach to diversity. These measures are being taken in the context of the initiative “Berlin Stands Up for Self-Determination and Acceptance of Sexual Diversity” and the accompanying package of measures to combat homophobia, which were adopted in 2010 by the Berlin City Parliament (*Abgeordnetenhaus*).

The two-year training programme for intermediate-level civil servants in penal institutions, which blends theory and practice, also covers the topic “protection of minority rights” comprehensively. Groups such as the Berlin association “**Mann-o-Meter**” offer counselling for homosexual and bisexual inmates of Berlin’s correctional facilities as well as consulting services and information for correctional officers with regard to the issues faced by specific groups.

Lower Saxony: Correctional officers are trained to recognise and prevent violence among inmates, including violence aimed at homosexual, bisexual and transgender inmates. Furthermore, there are plans to develop **professional development courses for correctional employees at all levels of the civil service** with the following content:

- Origins of undesirable conflict-resolution strategies among inmates and how to avoid them;
- Dealing with violent and disruptive prisoners;
- Communications training;
- Working to implement group measures.

Rhineland-Palatinate: Instruction, especially about the General Act on Equal Treatment, in which the prohibition of discrimination based on sexual identity is discussed, serves to **raise awareness with all employees** regarding this issue.

**Question 12 - Judges, Prosecutors**

In General: Combatting hate crimes of any kind, including those motivated by bias based on sexual orientation or sexual identity, is a fundamental mission of the justice system. Judges and prosecutors are qualified and empowered to recognise and prosecute hate crimes because of their special mandate as well as the education they complete in the attainment of their profession. Separate training and professional development courses with a specific focus on combatting hate crimes motivated by bias based on sexual orientation or sexual identity have not typically been offered thus far. However, professional development courses are offered that facilitate the recognition and suppression of hate crimes in general. For example, the German Judicial Academy (*Deutsche Richterakademie*) hosted an event on “Right-wing Radicalism and Neo-Nazism – Latest Trends,” and a week-long conference on “Political Extremism – A Challenge for Society and the Judicial System.” The conferences 7c/2013, “Dealing with Victims of Sexual Violence in Criminal Trials” and 12d/2013, “Developments and Trends in Criminal Law” are two examples of events that also addressed this subject matter. These professional development courses are open to judges and prosecutors from all the German *Länder*. In addition, judges and prosecutors also attend specific professional development courses for judges at the Academy of European Law on topics such as “Combating Discrimination in the European Union”.

Examples of good practice at the Land level:

Joint Legal Examination Office of the *Länder* of Berlin and Brandenburg:

The phenomenon of crimes motivated by bias against specific gender and sexual identities was examined from various perspectives in **professional development courses** offered to judges and prosecutors organised by the Joint Legal Examination Office of the States of Berlin and Brandenburg (hereinafter the “Examination Office”).

In 2009, the Examination Office presented a working conference for judges, prosecutors, and police case workers on the topic of “**Crimes against Sexual Self-Determination.**” The conference dealt with various aspects of the prosecution of sex crimes with a focus on “Sexual Violence against Adults.”

Group-related hostility towards other people and hate crime were also the subject of a series of events on the topic of “**Extremism**” that the Examination Office held regularly at the Academy of the Judicial Service in Königs Wusterhausen (May 2010) and the German Judicial Academy (2010 and December 2012).

Most recently, the Examination Office organised a conference on “**Current Developments in Right-Wing Extremism,**” which took place from 3-8 December 2012 at the German Judicial Academy in Wustrau. This conference included an examination of the significance of gender roles in modern right-wing extremism with a particular emphasis on homophobia. In addition, the examination of witnesses traumatised as a consequence of homophobia and hate crime was the subject of a *Land* conference on the “**Psychology of Witness Examination**” at the Judicial Academy in Königs Wusterhausen in December of 2012.

In Spring 2013, Senior Prosecutor Ines Karl, the commissioner liaising with the LGBT community at the Public Prosecutor’s Office of Berlin, will give a presentation on the topic of “**Homophobic Crimes and Victims’ Interests – Achieving Equality through Criminal Prosecution**” at the conference, “Dealing with Victims of Sexual Violence in Criminal Trials, especially Children and Youth” at the German Judicial Academy in Wustrau.

Hamburg: In 2010, a professional development course for the judiciary of the *Land* called “**Dealing with Victims of Crime on the Witness Stand in Criminal Trials**” was intended to help participants be more sensitive in dealing with victims of violence. The *Land* of Hamburg intends to offer further professional development events on the topic of victim protection.

North Rhine-Westphalia (NRW): The **NRW Action Plan for Equality and Acceptance of Sexual and Gender Diversity** includes the following passage: “Efforts are being made to raise awareness within the judiciary. The consequences of violence against victims with LGBTTI backgrounds (Lesbian, Gay, Bisexual, Transsexual, Transgender and Intersexual) is dealt with in professional development courses offered to judges and prosecutors. Special attention is given to the issues

faced by transsexuals. The *Land* Ministry of Justice is currently examining to what extent this topic can be integrated into the professional development courses offered by the Judicial Academy of North Rhine-Westphalia in Recklinghausen.”

Schleswig-Holstein: Prosecutors take part in events including the **professional development courses** of the police directorate for training and education and the rapid reaction force of the Schleswig-Holstein police on the subject of the investigation and prosecution of sexual crimes.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

**Also see the reply to Question 1.**

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

#### **Question 13 – Penal Institutions**

In General: Measures taken in penal institutions that directly serve the safety and, more particularly, the protection of individual inmates typically will not be designed for any specific group of people. Notwithstanding this fact, an inmate's background will be considered for each individual case, as will be the causes for his or her requiring special protection; the protective measures will then be taken based on the nature and intensity of the respective psychological or physical dangers. The safety and dignity of the group of people addressed, as one of several groups of minorities, is also addressed at the therapeutic level, in order to counteract discrimination at the atmospheric level, as well as verbal discrimination.

#### Examples of good practice at the Land level:

Bavaria: If the administration of a penal institution is aware that inmates belong to a minority group (prisoners are not required to disclose their sexual orientation), and this could potentially lead to conflicts with other groups of prisoners, then special consideration is given to this circumstance in the assignment of cells as well as daily routines (assignment of work, doors of cells kept open, yard exercise periods). An effort is made to accommodate the wishes of those affected whenever possible.

Berlin: The prisoner intake department of the Berlin correctional services has comprehensive experience with transgender individuals in particular. In order to protect them from attacks, they can be housed, for example, in women's facilities or, in isolated cases, in the prison hospital. Information about the sexual orientation of prisoners is not routinely collected in Berlin's penal institutions. Nevertheless, given the principle that detention should not cause harm, the administration of each penal institution does everything within its means to protect prisoners, regardless of their nationality, religious faith, or sexual orientation, and to eliminate assaults and create a violence-free environment.

Furthermore, the intake department has comprehensive expertise in counselling and supervising homosexuals and bisexuals who express their sexual orientation outwardly such that it is clearly recognised by others.

If the crime committed by a new inmate indicates repressed or denied homosexuality, intake will also address this issue with the new inmate. In some cases, the institution may facilitate a process in which prisoners can come out in a safe environment, either with the help of an external expert or in the context of prison social therapy.

Brandenburg: In order to ensure the safety and dignity of incarcerated lesbian, gay, bisexual and transgender people, prisoners are informed of their rights and obligations immediately during the admission procedure. Following said admission procedure, a treatment examination is conducted, during which the personality and life circumstances of the prisoner are explored. The examination

may yield indications that a prisoner is inclined to commit hate crimes. Prisoners' incarceration is planned and designed in significant measure based on the information gleaned through this process. If the results of the examination indicate that a prisoner could pose a danger to lesbian, gay, bisexual or transgender people, then the treatment and incarceration plan is adjusted to account for this fact. In individual cases, special security measures or determinations regarding the accommodation of the prisoner may be ordered, including his or her segregation from other prisoners or even solitary confinement. The prisoner's participation in work or vocational programmes, work-therapy activities, education and training, and free-time activities may be restricted or, if necessary, prohibited entirely. If these protective mechanisms are insufficient, the prisoner may be assigned to a different penal institution than the one designated by the Scheme of Execution of the *Land* of Brandenburg for prison sentences, including facilities outside the *Land* of Brandenburg. Such transfers may be made to ensure the prisoner's own safety or to protect other inmates.

The correction and prevention scheme, which outlines the course of the prisoner's sentence with regard to individual objectives, defines specific treatment measures. The correction and prevention scheme is aligned with the prisoner's development and updated in accordance with further results obtained in exploring his or her personality. If there is any suspicion that a prisoner harbours bias or may even spread discriminatory thought to other prisoners, treatment countermeasures are taken. Social workers, psychologists, and clergy are part of the treatment team and contribute expert knowledge. They are available to both perpetrators and victims. They support inmates during their incarceration and help prepare them for life after their release, and also assist the inmates' families.

Hessen: Inspired by a minor interpellation of the parliamentary group "Die Linke" regarding the recommendations of the study "Fleeing Homophobia," the treatment of lesbian, gay, bisexual, transsexual, intersexual, and transgender people was discussed in a meeting last year of penal institutions' directors. This discussion helped raise awareness of the issue. Likewise, the annual conference of correctional facility physicians included a discussion of this topic aimed at identifying needed measures in each facility.

### **Question 13 - Police**

In General: The procedures to be followed in connection with the arrest of persons, or taking them into custody, are governed specifically by the Police Custody Ordinance (*Polizeigewahrsamsordnung*) of the respective Land and the service instructions accompanying it. These rules stipulate that any detained person is to be afforded proper treatment, and that their dignity is to be respected. Restrictions are to be imposed on detainees only to the degree required by the purpose of their detention and the maintenance of order in custody. Moreover, any detainees are to be placed individually if at all possible, regardless of their sexual orientation or gender identity.

### **Question 13 – Forensic Psychiatric Institutions / Psychiatric Facilities**

In General: The rights of all patients placed in a psychiatric facility or a forensic psychiatric institution in the context of a measure depriving them of their liberty based on the Mental Health Laws, the Laws on the Execution of Measures of Correction and Prevention, or the Acts on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders in force in the respective Länder, are protected by the government supervisory authority responsible, as well as the supreme supervisory authority. Furthermore, patients's rights are represented by independent visiting commissions, which accordingly are not subject to any instructions and whose task consists of visiting the psychiatric institutions and auditing them with a view to whether all patients' rights and legitimate interests are safeguarded. This audit also comprises the review of whether or not the principles of equal treatment are observed, and whether or not discrimination is prevented. As a matter of course, these measures are also intended to protect inmates against discrimination due to their gender and sexuality, both in psychological and physical form.

Examples of good practice at the Land level:

Baden Württemberg: In Baden-Württemberg, the institution of the “patient advocate” was created to serve as a neutral party that represents the interests of patients being treated in inpatient as well as in outpatient psychiatric facilities.

The planned Mental Health Law is intended to further strengthen the rights of patients and their families in Baden-Württemberg. Information, counselling, and grievance offices at the city and rural district level are intended to **expand and further develop the role of patient advocates**. The staffing and operation of these offices will be based on the concept of a “trialogue,” which denotes a culture of equal communication among psychiatric experts, the families of mentally ill people, and volunteers. Further plans call for the establishment of a **Land Ombudsman's Office**, which is expected to offer special legal expertise and will advise the grievance offices. The Ombudsman's Office will be required to report on its activities to the *Land* Parliament.

North Rhine-Westphalia: Team meetings, clinical supervision of staff, and therapeutic concept discussions often include discussions of sexuality, sexual identity, and dealing with discrimination of any kind due to the varied clinical illness patterns of patients in facilities implementing the measures of reform and prevention serving to protect the public (*Massregelvollzug*). Because of their forensic training, the specialists working in such reform and prevention facilities are prepared to deal with potentially problematic situations that arise in their daily work in the ward.

A patient's sexual identity will only play a role in the therapy he or she receives during the reform and prevention treatment if there is an indication that the crimes that resulted in the patient being institutionalised were connected to the patient's sexual identity, or if the patient expresses a desire to deal with this subject in the therapeutic process.

Discriminatory behaviour among patients is also dealt with in the context of individual and group therapy or of ward assemblies. The resulting discussions are supervised by mental health professionals.

Patients who feel they have been the victim of discrimination as a result of their sexual identity have numerous avenues to file a grievance. They may turn to the institution itself by filing a request for administrative review with the institution's management, or file a complaint with the grievance offices of the Regional Councils, the *Land* Commissioner for Reform and Preventive Treatment, the petitions committee of the *Land* Parliament or other institutions. All patients are informed verbally and in writing about these avenues for filing grievances and legal action when they are admitted to the reform and preventive treatment facility.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Pursuant to section 130 (1) of the German Criminal Code (*Strafgesetzbuch - StGB*), whosoever, in a manner capable of disturbing the public peace:

1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or
2. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population,

is guilty of the crime of incitement to hatred and shall be liable to punishment.

A segment of the population, in the sense of the term as used here, is any domestic body of persons of such a large number that it cannot be reasonably viewed as a group of specific individuals, and which differs from the overall population due to certain characteristics of an internal or external nature. The law was amended on 16 March 2011 to its current status, with the express objective of including among the protected segments of the population those groups named in Question 1, as well as individuals who are attacked as supposed representatives of these groups.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

- Freedom of association: Article 9 (1) of the Basic Law (*Grundgesetz* - GG)  
 - Equal access to support from the state: Article 3 (1) of the Basic Law

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There has been no indication of any need for such specific protection in Germany.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 47 of the Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien* - GGO) ensures that non-governmental organisations active at the national level are involved prior to the adoption and implementation of laws concerning the particular topic that they lobby for.

## **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?



- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

- Freedom of opinion / information: Article 5 (1) first sentence of the Basic Law (*Grundgesetz* – GG)
- Freedom of assembly: Article 8 (1) of the Basic Law

19. Do 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In General: The fundamental right of assembly (Article 8 of the Basic Law) is of the utmost value. Thus arises the state's duty not only to respect this fundamental right, but to create conditions that make the actual exercise of this fundamental right possible.

Against this backdrop, the police are duty-bound to protect all peaceful, registered assemblies from disturbances. This duty stands regardless of the objective of a given demonstration. Therefore, people who participate in demonstrations or assemblies for the rights of lesbian, gay, bisexual or transgender people enjoy this protection as a matter of course.

Examples of good practice at the Land level:

Lower Saxony: Those who subscribe to extreme right-wing viewpoints in particular are to be regarded as a potential threat to the public discussion regarding questions of sexual orientation or gender identity. The **Overall Concept for Combatting Right-Wing Extremism**<sup>28</sup>, introduced in 2001 and updated in 2012, provides the *Land* government of Lower Saxony a sophisticated, interdepartmental strategic response to right-wing extremism, one which includes numerous preventative and suppressive measures intended to promote a democratic and tolerant mindset in the population. Thus, this approach to combatting the phenomenon of right-wing extremism also contributes to strengthening the rights of the groups in question that need protection.

Rhineland Palatinate: The situation assessment conducted by police departments in the Rhineland Palatinate in preparation for deployment at a public demonstration includes evaluations of the organiser, the participants, and any potential disruptive influences. These standards are applied regardless of the sexual orientation of the participants in the assembly. When the police become aware of an assembly dealing with the human rights of lesbian, gay, bisexual, and transgender people, the concrete preparations they undertake before deployment are tailored to the content of the demonstration. The objective of a demonstration is also part of the situation assessment conducted by the police. If necessary, the officers who will be deployed at a specific event will receive training aimed at raising their awareness of the issues they may face in dealing with particular groups of people at the demonstration.

During the assembly, the police will stop disruptions aimed at the demonstration or its participants. Their actions are guided by the principle of focusing on disruptors. The police measures will be directed at those who create danger or are responsible for crimes – regardless of their gender, age, nationality, religion, gender identity, ethnic background, disability, or sexual orientation.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity

<sup>28</sup> Combatting Right-Wing Extremism in Lower Saxony – Strengthening Democracy. Overall Concept for Combatting Right-Wing Extremism of the Lower Saxony Ministry of the Interior and Sports; version of 16 January 2012.

are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 175 of the Criminal Code, in its old version, which penalised any sexual contact whatever between men, continued in force unchanged following the end of World War II. From the late 1960s onwards until the mid-1970s, the provision was modified to become a penal provision serving the protection of male youth against sexual acts by adult men. The provision was repealed by Article 1 no. 1 of the 29<sup>th</sup> Act Amending the Criminal Code of 31 May 1994, with effect as per 11 June 1994. This put an end to the special treatment of homosexual acts under the Criminal Code.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Special types of personal data as defined by section 3 (9) of the Federal Data Protection Act (*Bundesdatenschutzgesetz* – BDSG) (such as, for example, information on a person's sexual life) may be collected, processed, or used, subject to the pre-requisites being met set out in section 13 (2) and section 28 paragraphs (6) through (9) of the Federal Data Protection Act.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

In Germany, marriage is an institution reserved for two persons of the opposite sex. Persons of the same sex may enter into a civil union pursuant to the **Act on Civil Unions**

**(Lebenspartnerschaftsgesetz – LPartG)**. In family law, civil unions have been given nearly fully equal status with marriages. The Act on Civil Unions entered into force on 1 August 2001, and its amended version entered into force on 1 January 2005; the Act was further amended by subsequent laws. It includes, *inter alia*, the following core stipulations:

- Creation of a separate institution under family law, this being the civil union, which has been structured to correspond to marriage to a very significant extent;
- Complete integration of the laws governing marital property, including pension rights adjustment following the dissolution of the partnership;
- Complete integration of the laws governing maintenance;
- Establishment of a statutory inheritance right of the surviving partner in a civil union;
- Dissolution of a civil union by the family court;
- Granting of “minor custody rights” to a partner in a civil union (who is entitled to participate in the decisions concerning matters of the child’s daily life) and permission to adopt step-children.

Today, partnerships between persons of the same sex are equivalent to marriage in the entire German legal system also outside of family law, with only a few exceptions. The Federal Government has compiled those instances in which partnerships between persons of the same sex are not given equal treatment when it replied to a major interpellation by the parliamentary fraction of BÜNDNIS 90 / DIE GRÜNEN on 31 December 2012 (published in the Official Records of the German Parliament, *Bundestagsdrucksache* - BT-Drs. 17/8248). The differences mainly concern the principle of descent, income tax regulations, and the laws governing adoptions. Thus, section 1592 no. 1 of the Civil Code (*Bürgerliches Gesetzbuch* – BGB) stipulates that the husband of a child’s mother is the legal father and no corresponding provision has been made for the mother’s partner in a civil union.

Furthermore, partners in a civil union cannot apply, like their married counterparts are able to do, the income splitting method to their tax payment obligations. They may only adopt a child on their own, or they may adopt the biological child of their partner in a civil union; partners in a civil union are not permitted to jointly adopt a child (which is the rule for married couples), nor may they adopt a child that their partner in a civil union has already adopted. A hearing was held before the Federal Constitutional Court (*Bundesverfassungsgericht*) on 18 December 2012 to review this provision of the law; the decision of the court is still pending.

Please provide examples:

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25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child’s best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

According to the German laws on **custody**, a child’s parents will have custody as a matter of principle, and where the parents are married to each other, they will have joint custody as a matter of principle (section 1626 of the Civil Code); parents who are not married to each other will have joint custody if they have made a declaration of parental custody pursuant to section 1626a of the Civil Code, or if a court has transferred custody to them jointly. Where a partner in a civil union has adopted the (biological) child of his/her partner (adoption of a stepchild), the partners in a civil union have joint custody of that child just as if they were parents who are married. Section 1627 of the Civil Code stipulates that parents must exercise parental custody by mutual agreement for the best interests of the child. In cases in which the child’s parents have separated and that parent who has sole custody of the child enters into a new marriage or civil union, the spouse or the partner in a civil union of a parent with sole parental custody has the power to make joint decisions in matters of the everyday life

of the child (section 1687 b of the Civil Code, section 9 (1) of the Act on Civil Unions – so-called “minor custody rights”).

According to the German **laws governing adoptions**, adopting a child is admissible where it serves the child's best interests and where it can be expected that a relationship as given between parents and children will develop between the adopting parties and the child (section 1741 (1) first sentence of the Civil Code). In this context, the sexual orientation of the adoptive parent(s) does not play any role; a homosexual person not bound in a civil union may adopt a child alone just as a heterosexual, unmarried person can. A spouse a marriage, or a partner in a civil union, may also adopt the child of the other spouse or partner in a civil union. The only differences to the situation of married couples is that children can be adopted by both spouses together, and that they have the possibility to further adopt a child that has already been adopted by the spouse, which options are not available to partners in a civil union (please also see the answer to Question 24).

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The project **Rainbow Families** offers counselling, networking, exchange, group programmes, topical events, and educational courses. It works to communicate the concerns of rainbow families to the majority society and, in particular, to combat discrimination. It pursues these objectives by providing counselling and education course, while raising awareness through public relations campaigns, presence in the media and in person, and information booths at relevant events.

Counselling and self-help services (in German):

<http://berlin.lsvd.de/projekte/regenbogenfamilien/>

Online handbook and guide for family counseling services (in German):

<http://www.family.lsvd.de/beratungsfuehrer/>

Online brochure “Becoming and Being a Rainbow Family” with a list of further resources (in German):

<http://www.lesben-nrw.de/Regenbogenfamilie.htm>.

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The General Act on Equal Treatment protects employees against discrimination based on their sexual identity. This also covers discrimination on grounds of “gender identity” (cf. the Official Records of the German Parliament, *Bundestagsdrucksache* - BT-Drs. 17/1780, p. 30). This protection against discrimination applies *mutatis mutandis* to public sector employees (section 24 of the General Act on Equal Treatment).

In order to effectively counteract any discrimination in employment and in professions, the General Act on Equal Treatment has established a general prohibition of discrimination (section 7 of the said Act). This stipulates that no-one may be discriminated against at the workplace on grounds of, *inter alia*, gender or sexual orientation. According to the definition given in section 3 of the General Act on Equal Treatment, the term “discrimination” covers any direct or indirect disadvantages as well as harassment, including sexual harassment. Pursuant to section 2 of the General Act on Equal Treatment, any discrimination based on one of the grounds set out therein is impermissible, both as concerns conditions for access to dependent employment and self-employment (including selection criteria and recruitment conditions) as well as concerning employment conditions and working conditions (including pay and reasons for dismissal).

Employers are under obligation to take appropriate measures protecting employees against discrimination (section 12 of the General Act on Equal Treatment). This also includes the obligation of the employer to draw attention, in a suitable manner, in particular in the context of professional training and professional development programmes, to the fact that discrimination is impermissible and to use his or her influence to ensure that such discrimination does not occur.

#### Examples of good practice:

Baden-Württemberg: The topic “Homosexuality in the Police Force” has been a fixed component of the police training curriculum, covered in two instructional units since 2012. The instructional units are led by representatives of the Association of Lesbian and Gay Police Officers in Baden-Württemberg (VelsPol-BW e.V.).

Federal Ministry of Defence: Even before the Recommendation of 31 March 2010 was adopted, the Leadership Development and Civic Education Centre in Koblenz was running courses that cover the aspect of combating discrimination on grounds of sexual orientation and gender identity. It is one aspect of the prohibition of discrimination, on which the Act on the Equal Treatment of Female and Male Military Personnel in particular contains clear rules.

All personnel on relevant posts are briefed on this act and educated about its practical relevance for their individual area of responsibility as part of compulsory training units on leadership development and civic education, namely *Innere Führung mit Einheitsführern* (for company-level commanders and officers in comparable positions as well as their deputies) and *Innere Führung mit Kompaniefeldwebeln* (for first sergeants / masters-at-arms and personnel in comparable positions). These classes introduce the law and clarify its practical relevance for each area of responsibility. The objective of eliminating existing and preventing future discrimination, including discrimination on the grounds of sexual orientation or gender identity, is also an important component of initial and follow-on training courses that the Leadership Development and Civic Education Centre runs for military commissioners for gender equality and their deputies as well as for female equal opportunity representatives.

Together with partner administrations from **Brandenburg, Hamburg, Nuremberg and Stuttgart**, the **Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes* - ADS)** completed the project “**Verifying (Equal) Opportunities Right Away – Diversity Mainstreaming for Public Administrations**” between November 2010 and December 2011.

The project received funding through the EU programme PROGRESS, which supports member states in fulfilling their obligations under the EU Equal Treatment Directive.

The objective was to help the *Länder* and municipalities achieve an optimal implementation and development of measures combating discrimination and promoting equal opportunity. The project consisted of two central components

- Research on the topic of mainstreaming equal opportunity within the administration as well as beyond the administration through the use of the administration's powers and resources;
- A series of workshops for employees of state and municipal administrations.

One element of the research conducted on the topic of mainstreaming equal opportunity and diversity was a survey of prior experiences within the partner administrations. This investigation focused on what instruments were already available for the achievement of equal rights in the Länder and municipalities, what experiences the administrations had had applying these instruments, and what prospects existed for approaches that cut across target groups. In addition, reports were created that dealt with the question of equal opportunity as a criterion for measuring the quality of work performed by and in an administration, as well as the implementation of diversity mainstreaming in other European countries. In the fall / winter 2011, a two-part workshop series was held for administration employees. Representatives from the federal, Land, and municipal administrations discussed the range of possible actions open to administrations for the promotion of diversity and exchanged lessons learned. The results of the project were documented in a report and incorporated into a hand-out for administration employees (see also [www.antidiskriminierungsstelle.de](http://www.antidiskriminierungsstelle.de), which is published in several languages).

### VI. Education

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Teacher training:** see *Standards for Teacher Training: Educational Sciences* (Resolution of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (*Kultusministerkonferenz* - KMK) of 16 December 2004): here: Competency: Education.

Currently, a joint working group of the Standing Conference of the Ministers for Equal Opportunity and Women of the Länder (*Gleichstellungs- und Frauenministerkonferenz* – GFMK) and the Standing Conference of the Ministers of Education and Cultural Affairs is engaged in a process of stocktaking and developing potential measures to address **“Overcoming Gender Stereotypes” in schools**.

In November of 2010, the project **“Queerformat”** was launched, which is intended to foster the acceptance of homosexuals in schools and in the work done by youth welfare services (*Jugendhilfe*) by appropriate educative measures, e.g. the compulsory participation of pedagogic personnel in diversity training courses and the introduction of training courses on sexual diversity into school curriculums. The initiative was taken as the consequence of research results proving that homosexual juveniles suffer most from being stigmatised, and that this demographic has particularly high suicide rates, drug addiction rates and homelessness rates.

The project is part of the wider campaign “Berlin stands for self-determination and acceptance of sexual diversity” (***Berlin tritt ein für Selbstbestimmung und Akzeptanz Sexueller Vielfalt***) **launched by the Berlin government**. The campaign encompasses 60 projects in six areas of action, such as education, discrimination and violence, change in administration services, research, legal harmonisation, and dialogue.

In other German cities, initiatives combine awareness-raising campaigns directed at a young audience with concrete offers for counselling, e.g. the project “Love the way you want” (***Liebe wie Du willst***, [www.liebewieduwillst.de](http://www.liebewieduwillst.de)) in Giessen and Marburg.

The *LesBiSchwule* (Lesbian, Gay, Bisexual) School Project is a sexuality education programme for school classes. The goal is to facilitate personal encounters and exchanges with lesbian, gay, and bisexual people for students. The men and women on the team tell students about their own coming out, answer questions and provide the opportunity to discuss issues related to sexual orientation.

**SchIAuNRW** ([www.schlau-nrw.de](http://www.schlau-nrw.de)) stands for “Gay, Lesbian, Bi and Trans\* Awareness” (*Schwul Lesbisch Bi Trans\* Aufklärung*) in North Rhine-Westphalia. Currently, it is a network of twelve local education teams from across the *Land*. The volunteer groups visit schools, youth centres, and other educational institutions in their city or county. SchLAu is centred on encounters between children and young adults and lesbian, gay, bisexual and trans\* people. It is based on the idea that prejudice and clichés can be effectively challenged and overcome through direct encounters. This concept has been applied in other German Länder, and a nationwide network is currently being developed.

The initiative “**Schools without homophobia, schools of diversity**” ([www.schule-der-vielfalt.de](http://www.schule-der-vielfalt.de)), which receives funding from the Ministry for Schools and Professional Development of North Rhine-Westphalia, is campaigning for more action against homophobia and for acceptance of different lifestyles at schools in NRW. Students and teachers can engage in projects to promote their own “school of diversity.”

Another important player is the **Federal Agency for Civic Education (*Bundeszentrale für politische Bildung*)**, which works to prevent prejudice by disseminating information. It does so by providing literature and online information ([www.bpb.de/gesellschaft/gender/homosexualitaet/](http://www.bpb.de/gesellschaft/gender/homosexualitaet/) <<http://www.bpb.de/gesellschaft/gender/homosexualitaet/>>, both pages are in German while the general website has been translated into English) on the topic of homosexuality as well as materials for school classes.

#### **Teaching materials:**

- Political action, especially for equal opportunity and the acceptance of rainbow families (<http://www.lsvd-blog.de/?p=3422>) and LGBT-friendly schools (<http://www.lsvd-blog.de/?p=2817>, both pages in German)
- Events dealing with diversity and non-discrimination in the workplace (<http://www.lsvd-blog.de/?p=3455>)
- LGBT-friendly schools (<http://saar.lsvd.de/lsvd-saar/checkpoint-schule/>, in German)

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 19 of the General Act on Equal Treatment sets out a general prohibition of discrimination under civil law. The provision stipulates that any discrimination on grounds of, *inter alia*, gender or sexual identity shall be illegal when founding, executing, or terminating relationships under civil law entailing the performance of obligations. This prohibition applies only to such obligations under civil law which typically arise without regard of person, or where the regard of person is of subordinate significance.

Likewise, rental agreements for housing are covered by this prohibition, unless the exceptions set out in section 19 (5) of the General Act on Equal Treatment are given. Thus, the prohibition of discrimination is not applicable, as a general rule, where a particularly close relationship of trust is given between the contracting parties as a result of their using residential space on one and the same plot of land. Any difference of treatment in the sense of the term as used in section 19 of the General Act on Equal Treatment also may be justified where it is based on one of the objective reasons set out in section 20 of the General Act on Equal Treatment.

The principles set out hereinabove also apply to the acquisition of land and properties in a contract under civil law as to the sale and purchase of such real estate.

On evictions: Neither gender nor sexual orientation are factors that would merit particular consideration in eviction proceedings. On the contrary, the question of whether the matter entails discrimination will be reviewed, as a general rule, in the court proceedings pursued in advance of the termination of the housing usage. Moreover, the Code of Civil Procedure (*Zivilprozessordnung – ZPO*) provides special legal remedies against compulsory enforcement (in section 721 – specifically granting a period of time for the vacation of premises – and section 765a – concerning all matters entailing the vacation of premises), which provide for the protective needs that may remain.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:



**IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

**Also see the reply to Question 1.**

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The German Olympic Sports Confederation (*Deutscher Olympischer Sportbund* – DOSB) is in the process of developing a concept for diversity management in sports. This will also address discrimination on grounds of sexual orientation or gender identity.

Examples:

- 2013: Brochure "Diversity in Sports," including good practices in sports clubs for combatting discrimination on grounds of sexual orientation or gender identity;
- 2012: Seminar for leaders in sports "Diversity in Leadership Positions";
- 2011: Position paper "Promotion of Equal Opportunities and Diversity in Sports".

The **ADS** is working to increase diversity and in particular to overcome homophobia in soccer. It is recruiting multipliers and actively working to raise awareness among fans, clubs, and associations. In this context, the ADS is closely coordinating its efforts with the German Soccer Association (Deutscher Fussballbund - DFB).

#### **Fighting Prejudice in Sports**

The project **Respect Gaymes** has focused on two areas of action. Education and awareness-raising workshops on the topic of sexual diversity and the LGBT community take place year-round in schools and youth-centres. The workshops are intended to help young people develop respect and tolerance for lesbian, gay, and trans\* people, while encouraging them to reflect on and overcome their own prejudices. In addition, programmes on the same topic are held for multipliers from schools, youth aid programmes, youth centres, and athletic organisations.

In order to boost the efficacy of these events, the second focus of the Respect Gaymes is a major sporting and cultural event that takes place once annually with the motto "Show respect for gays and lesbians!" At the Gaymes, homosexual, heterosexual, bisexual and trans\* young people engage in football, beach volleyball, breakdancing, and workshops and gather in the village, at the stage, or for special programmes at information booths. Shared experiences through sports and music engender a sense of community and mutual respect.

<http://berlin.lsvd.de/projekte/respect-gaymes/>

#### **Fans against Homophobia**

The mission of the project **Soccer Sound** is to engender greater sensitivity for the issue of diversity and counteract prejudice and homophobia in sports, especially soccer. Conversations with league and club representatives show again and again that the topic of homosexuality remains the top taboo in sports. In youth sports, the prevailing climate remains one in which young people hardly dare to come out, while the issue continues to be shrouded in silence in many clubs, and epithets like "fairy" (*Schwuchtel*) or "gay sow" (*schwule Sau*) are commonly used insults, especially in soccer. The project responds to these problems on three different levels. The first is the Berlin Soccer Association (BFV), where efforts are pursued to raise awareness and counselling is offered. Through the BFV, those who supervise young athletes also receive training. At the club level, the project works to deepen relations with its network of contacts and to enhance the awareness in new clubs of the issue. The third level addresses fans through the very successful campaign "Soccer Fans Against Homophobia."

<http://berlin.lsvd.de/projekte/soccer-sound/>

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

These measures result from the international obligations that the Federal Republic of Germany has entered into, and in particular the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Where refugees do not already enjoy protection (cf. the answer to Question 34), Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms at least serves as a basis for the prohibition of extraditing them.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes - ADS*) is an independent resource for people affected by discrimination. It was created to protect people from discrimination on grounds of the characteristics described in Section 1 of the General Act on Equal Treatment. Section 25 (1) of the General Act on Equal Treatment expressly calls for the creation of the ADS. Section 1 of the General Act on Equal Treatment states that the law's objective is to prevent or eliminate discrimination on the grounds, inter alia, of sexual identity and gender. Gender identity is not listed as a separate characteristic in Section 1 of the General Act on Equal Treatment. ADS disseminates information about the rights that citizens have, and their options for legal action, in order to protect themselves against discrimination in the context of the statutory framework. It can also arrange consultations with other offices and agencies. Furthermore, it can work toward amicable settlements between parties. As explained in the answer to Question 5, ADS is proceeding based on a "horizontal approach." People rarely experience discrimination on grounds of just one of the characteristics outlined in Section 1 of the General Act on Equal Treatment. Rather, a

combination of characteristics usually plays a role. The horizontal approach ensures more effective protection from multi-dimensional discrimination.

The **German Institute for Human Rights (*Deutsches Institut für Menschenrechte*)** was founded in March of 2001 on the recommendation of the German *Bundestag*. It disseminates information about the human rights situations in Germany and abroad. It contributes to the prevention of human rights violations and the safeguarding of human rights.

Its mission includes, in particular:

- Information and documentation;
- Research intended to provide an evidence-based foundation for human rights work;
- Advising policymakers and society;
- Human-rights education, such as the creation of training programmes for professionals, agencies, and schools, or continuing education for international development cooperation specialists, the police, and the military;
- International cooperation with other national human rights institutions and the human rights organisations of the European Union, the European Council, the Organisation for Security and Co-operation in Europe and the United Nations;
- Promoting dialogue and co-operation on human rights issues in Germany.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

**Section 4 of the General Act on Equal Treatment** has expressly provided for discrimination on several grounds, stipulating that any unequal treatment occurring on several of the grounds referred to under section 1 of the said Act may only be justified under sections 8 to 10 and 20 when the justification extends to all those grounds for which the unequal treatment occurred. The first report that ADS submitted to the German *Bundestag*, jointly with the responsible Commissioners of the Federal Government and of the *Bundestag*, pursuant to section 27 (4) of the General Act on Equal Treatment, addressed such discrimination on multiple grounds and set out recommendations in this regard.

Examples of good practice:

### **Discrimination on Multiple Grounds and Solidarity among Minorities**

The efforts by the **Centre for Immigrants, Lesbians and Gays (MILES)** aims to support lesbian, bisexual, trans\* and intersex people with immigrant backgrounds as well as their family members. Its primary mission includes the following:

- 1) Psychosocial and legal counselling on the topic of coming out, LGBTI-identity, psychological distress and mental illness, violence, discrimination and the General Act on Equal Treatment as well as the right of residence for foreign nationals;
- 2) Providing opportunities for social networking and self-determined process of identifying with a specific culture of one's own choice, empowerment;
- 3) Education and efforts to raise the awareness of the general public of racism and homophobia within and for immigrant communities and multipliers;
- 4) Networking among groups and individuals that specialize in LGBTI and immigration issues in order to ensure a broad representation of LGBTI people with immigrant backgrounds;
- 5) Creation of educational materials in simple German and in the native languages of the major immigrant communities. In addition to LGBTI people with immigrant families as such, the centre engages people and organisations in their immediate spheres, such as family members, institutions, NGO's, and special interest groups. These include, for example, families and partners, social welfare projects and religious communities, schools and the public administration, as well as immigrant organisations and sports clubs. <http://berlin.lsvd.de/projekte/miles/>

In North Rhine-Westphalia the project “**Psychosocial counselling, get-together and self-organised network of people from immigrant families with an LGBTI background**” in Cologne has received funding to function as a point of contact throughout the *Land* of NRW.

### Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

The European Council should continue to evaluate the implementation of this Recommendation.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

The Recommendation could also address the situation of intersex people.

**GREECE**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐

Please explain your reply.

Greece is relatively tolerant in LGBT matters, but the legal and factual situation is not always promoting LGBT rights. The Greek legal order endeavours to ensure the minimum standards under the country's international and EU obligations.  
 No special measures have been taken for the further implementation of the Recommendation.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please explain and, if appropriate, provide examples of any such measures found:

It is to be noted that, according to the 2011 Annual Report of the Greek Ombudsman, the lack of complaints addressed to the Greek Ombudsman on discrimination on grounds of sexual orientation may be explained by the fact that alleged victims of such discrimination are rather hesitant to disclose some aspects of their personal or social life by submitting relevant complaints to the authorities. The Greek Ombudsman places a strong emphasis on the need to raise public awareness of the provisions of anti-discrimination law 3304/2005 and to create networks to coordinate the fight against discrimination.  
 The lack of sufficient information on discrimination on grounds of sexual orientation has been highlighted by the "Network of socio-economic experts in the anti-discrimination field".

Are there measures in place to redress any such discrimination?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Ministry of Justice, more specifically the General Secretariat of Transparency and Human Rights, is in the process of elaborating a National Action Plan on Human Rights, with the participation of all competent authorities, which will also address the issue of discrimination.

It has also been recognized that one of the most important challenges, which needs to be tackled as a matter of priority to ensure effective implementation of the principle of non-discrimination, is the low number of complaints submitted to the competent authorities and the insufficient level of information of the general public. The Ministry of Labour, Social Security and Welfare, in designing the annual national framework for combating discrimination, calls all interested stakeholders to a public consultation, with a view to increasing their involvement, networking and coordination, as

well as elaborating and implementing activities to combat discrimination, including on grounds of sexual orientation.

Up to now, a number of initiatives have been taken, such as the drafting of an information leaflet on the legal framework against discrimination, information campaigns all over the country, the creation of an “Observatory on combating discrimination”, the preparation of code of ethics on combating discrimination in the workplace.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The Ministry of Justice, more specifically the General Secretariat of Transparency and Human Rights, is in the process of elaborating a National Action Plan on Human Rights, with the participation of all competent authorities, which will also address the issue of discrimination.

When drafting annual action plans against discrimination, specific reference is made to discrimination on grounds of sexual orientation (current situation – measures to combat discrimination).

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

See above answer to question 2.

One of the aims of the “Observatory on Combating Discrimination” (see question 2) is the evaluation of the relevant institutional framework in order to assess the clarity and effectiveness of the legislation in force, the level of protection afforded to victims of discrimination, acceptance of and compliance with the relevant legislation, the effectiveness of the work of equality bodies, the adoption of special (positive) measures, the impact of the legislation on the socio-economic situation of victims of discrimination.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

General measures of legal protection of victims of any crime are provided for in the Greek legal order, which are considered sufficient for the legal protection of victims of sexual orientation or gender identity discrimination as well.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

On a general note, the reaction by some political or social actors may act as a deterrent to further promotion of LGBT rights.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The aforementioned translation has been carried out by an NGO.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Prosecution of crimes is based on the principles of impartiality and respect by all responsible state authorities of their obligations and duties.

The investigation of the existence of a racist motive constitutes an obligation of the police personnel, which derives from a relevant circular issued by the Headquarters of the Hellenic Police, according to which, « *specific criteria for identifying the racist motive are the confession of the said motive by the potential perpetrator, the claim by the victim that such motive exists, sufficient evidence in accordance with the Code of Penal Procedure, or the alleged difference of social origin between the perpetrator and the victim* ». Moreover, by virtue of the aforementioned circular, the police personnel shall investigate the existence of a racist motive, also in cases of racist - xenophobic violence, in which policemen are allegedly involved during their service.

Furthermore, by virtue of the same circular, the term “racism” includes « *...any belief, act or manifestation of discrimination against people who belong to various racial, national, religious and other social groups, and is based on the special features attributed to them* ». Consequently, victims

of racist violence on grounds of sexual orientation or gender identity may fall under the scope of the above provision.

In particular, with respect to incidents of racist - xenophobic violence in which members of the police personnel are allegedly involved during their service, Law No 3938/2011 has instituted the Incidents of Abuse Office, which is directly subject to the Minister of Public Order and Citizen Protection and is an autonomous, effective mechanism of investigation of allegations against police personnel. This Office has been entrusted with the duty to collect, record, evaluate and promote the investigation of allegations concerning acts of the personnel of the Hellenic Police, the Hellenic Fire Service and the Hellenic Coastguard, during the execution of their duties or in abuse of their power. Moreover, the Office shall handle any case, in which a judgment finding a violation of the ECHR has been delivered by the European Court of Human Rights. It should be noted that the Office is not yet operational, due to the fact that its staffing has not been completed. Thus, an amendment of the provisions concerning the operation of the Office is pending and many efforts are being made in this direction.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 79 par. 3 of the Penal Code provides that the commission of an offense motivated by ethnic, racial, religious hatred or hatred motivated by sexual orientation constitutes an aggravating circumstance.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

By virtue of Article 4 of the Code of Police Ethics (Presidential Decree n. 254/2004), the police personnel «*shall protect persons who have suffered damage and witnesses, in particular when there is a risk of intimidation. Police shall also take seriously into consideration the mental health, the specific condition and the interests of victims of sexual exploitation or molestation, trying as much as possible to limit the victim's secondary victimization*».

Specific instructions have been given for the implementation of the above provision.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:



As regards to the education of police personnel in the field of human rights, many efforts are made, both during the basic education of the cadet officers, and throughout their career. Their training contains lectures, as well as traineeships.

In the educational programs of the Police Academy and in particular through the courses entitled “Constitutional Law - Human Rights”, “Criminal Law” and “Public Safety”, the basic principles on how to address any crime, including racist incidents, are being taught.

Moreover, through lectures, topics such as “human rights”, “managing diversity” and “racist phenomena and action to be taken by the Hellenic Police” are being taught as well.

Thus, all police officers have the basic knowledge and skills in order to recognize such crimes and accordingly manage every similar situation.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In practice, arrested LGBT persons are placed in separate prison facilities for safety reasons.

By virtue of Article 3 of the Code of Police Ethics (Presidential Decree n. 254/2004), «... *the arrest shall be conducted in a cautious and consistent way, the police personnel must behave correctly and omit any action that can insult the honor and pride of the arrested person and in general offend the dignity of a person*». Furthermore, the aforementioned article provides that the police personnel «*shall take care of the direct communication...of the arrested persons with another person of their choice or the consular authorities of their country in case they are foreign citizens...*» and «*shall make easier the provision of legal assistance of the arrested person and secure his / her unimpeded communication with a lawyer* ». Moreover, the police personnel «*shall prevent and immediately report any act of torture or other form of inhuman, cruel or degrading treatment or punishment, any form of violence ... as well as any form of discriminatory treatment against the detainee*».

Furthermore, the aforementioned article provides that the police personnel «*shall ensure detention conditions that guarantee safety, health and protection of the personality of the detainee and make sure that the rest of detainees are not put together with criminal detainees, men and women, minors with adults, while special care shall be provided to vulnerable persons*».

It is also to be noted that the Headquarters of the Hellenic Police has issued a circular that lists all necessary actions, which have to be made by the competent Services, so that the adequacy of the detention facilities in terms of safety, as well as hygiene, is permanently secured. The conducting of regular inspection of the detention centers under the responsibility of the commanders is particularly emphasized.

It should be added that a manual for the conduct of the police personnel towards religious and other vulnerable groups has been issued recently.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The elaboration of a draft law ratifying the Convention of the Council of Europe on Cybercrime and its Additional Protocol, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems is currently being examined.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

There are no specific limitations. Freedom of association may be exercised by LGBT persons under the same conditions (legal formalities under the Civil Code provisions) as those applicable to any association, without discrimination on grounds of sexual orientation or gender identity.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Public consultation through the internet is conducted in view of the adoption of new legislative measures.

**III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

The general restrictions on the exercise of human rights and fundamental freedoms, under the conditions set out in the relevant instruments, are applicable.

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Hellenic Police takes all necessary measures, in order to guarantee to all citizens that their right to participate in a peaceful assembly is freely exercised, by virtue of article 4 of Legislative Decree n. 794/1971. Moreover, the grounds which permit police intervention in order to dissolve a public assembly are listed exhaustively in the aforementioned decree and the dissolution process is defined in detail in Royal Decree n. 269/1972.

**IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Greece has a comprehensive legislation on the protection of personal data (Law 2472/1997 on the protection of personal data, implementing EU directive 95/46/EC on the protection of individuals

with regard to the processing of personal data and on the free movement of such data). The implementation of the said law is monitored by an independent authority, the Hellenic Data Protection Authority.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In practice the Social Security Fund (IKA) has once authorized the expenses of a person's gender reassignment. There is no specific legal framework.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?
- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the case under consideration, marriage between two persons of different sex is permitted, provided gender reassignment has been completed and legally recognised.

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please provide examples:

With regard to same-sex couples, the Greek Government deems necessary to await the outcome of the discussions on the two relevant Proposals for Council Regulations, which are currently being discussed within the E.U. (the first on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (MPR) and the second on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (RP)), before forming a final view on the issue.

It is to be noted that, on January 16, 2013, the Grand Chamber of the European Court of Human Rights held a hearing in a case against Greece concerning the legislation on "civil unions" that entered into force in Greece in November 2008. The applicants alleged that the above unions, comprising a "contract between two individuals of full age and of different sexes", were discriminatory.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest. However, the issue of sexual orientation or gender identity is not specifically covered.

#### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law 3304/2005 on the "Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation" (transposing into the national legal order EU Directives 2000/43 and 2000/78/EC on equal treatment) prohibits direct or indirect discrimination, as well as harassment, both in the public and the private sector, on grounds, inter alia, of sexual orientation.

More particularly, the scope of the prohibition of discrimination covers the following : (a) conditions of access to employment and to occupation in general, including selection criteria, recruitment conditions and professional advancement, (b) access to all types and levels of vocational guidance, training, retraining and practical work experience, (c) employment and working conditions, including dismissals and pay, (d) membership of and participation to an organization of workers or employers or any other professional organization, (e) social protection, including social security and health care, (f) social advantages, (g) education, (h) access to and supply of goods and services which are made available to the public, including housing.

Article 3 of Law 3896/2010, "Implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation – Harmonisation of the

legislation in force with Directive 2006/54/EC” provides that any less favorable treatment of a person related to gender reassignment constitutes discrimination on grounds of gender.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Greek Constitution, education is one of the basic missions of the State and every Greek citizen is entitled to it free of charge at all levels. The basic target of primary and secondary education is to contribute “to the complete, harmonious and balanced development of the intellectual, psychological and physical potential of the pupils, so that, **regardless of their gender or origin**, they may become integral personalities and live in harmony”.

What is more, answer a in question 27a actually derives from measures that ensure the right to education which can be effectively enjoyed without discrimination on grounds of gender identity. There is no explicit mention on sexual orientation in the existing legislation on education. Nevertheless, certain measures with regard to sexual education have been taken at times but do not constitute a permanent part on the educational practices, or a separate subject in the curricula.

Finally, answers b in Question 27aii and 27aiii derive from the fact that more could be done and is to be done in the specific fields with regard especially to issues of sexual education and, therefore, sexual orientation. Nevertheless, a considerable amount of work has been done so far in the direction of gender issues in education through specific programmes that ran in the schools, especially of secondary education. Also, gender and equality issues are included in the school curricula.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

29. Has homosexuality been removed from the national classification of diseases?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

The International Classification of Diseases and Related Health Problems ICD-10 (version 2008) of WHO which has been officially translated in Greek under copyright agreement between the Hellenic Ministry of Health and WHO, contains the codes:

F66.0 Sexual maturation disorder

F66.1 Egodystonic sexual orientation

F66.2 Sexual relationship disorder

So, whenever these codes are used on official documents (e.g. diagnosis forms, hospital discharge form, etc), the term "homosexual" does not appear.

The term "homosexual" is only included in the explanatory guidance notes which the doctor consults, in order to select the correct code among the above mentioned 3 codes

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

According to the Integrated Regulation for Healthcare Services of the National Organization for the Provision of Healthcare Services - EOPYY (article 10), treatments non-frequently performed nor scientifically approved, are not reimbursed by EOPYY, unless otherwise decided by the Central Health Council or the Supreme Medical Council of EOPYY. In cases that gender reassignment cannot be handled in Greece, it has to be defined as disease in order for EOPYY to reimburse the hospitalization expenses abroad.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law 3304/2005 on the "Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation" (transposing into the national legal order Directives 2000/43 and 2000/78 EC on equal treatment) prohibits discrimination on grounds, inter alia, of sexual orientation in the field of access to and supply of goods and services which are made available to the public, including housing.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the

relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

- a. x☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

By virtue of article 2 of Presidential Decree n. 96/2008, the term “refugee” includes all cases in which a well - founded fear of persecution is based on the fact that a person belongs to a particular social group or to a minority. Besides, article 20 of the Law n. 3907/2011 provides that the Authorities shall take into account the general principle of non – refoulement, while examining a request for international protection.

Thereafter, a well - founded fear of persecution based on discrimination on grounds of sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum, under the national law.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. x☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

By virtue of Law n. 3907/2011 an Asylum Service, as well as a First Reception Service shall be established in the Ministry of Public Order and Citizen Protection. Those Services shall be subject directly to the Minister of Public Order and Citizen Protection and have as their mission the implementation of asylum legislation and the handling of migrants who have entered the country, thus contributing to the designing and implementation of a modern asylum policy, through the establishment of specific processes of first reception.



**XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

Since 2005, the Ombudsman operates as one of the equal treatment bodies responsible for the implementation of the anti-discrimination legislation (Law 3304/2005), which, as already explained, prohibits discrimination also on grounds of sexual orientation. The Greek Ombudsman has a wide scope of action and could also address issues of discrimination on multiple grounds.

Under the same Law 3304/2005, the Labor Inspectorate takes up cases of alleged discrimination (including on grounds of sexual orientation) in the fields of occupation and employment, other than those falling within the competence of the Office of the Ombudsman.

The Committee for Equal Treatment (CET), a body established within the Ministry of Justice, Transparency and Human Rights, examines violations of the principle of equal treatment by natural and legal persons, other than those which fall within the competence of the abovementioned bodies. The relevant practice is very limited.

The National Commission for Human Rights (NCHR), a consultative organ of the State, which also includes six NGOs, has, as main fields of activity, the elaboration of studies on human rights issues, the submission of recommendations and proposals, awareness-raising and human rights education. Such mandate also covers issues of discrimination on multiple grounds. In a 2011 report on draft legislation on racism and xenophobia, the NCHR referred to gender identity and mentioned CM/Rec(2010)5.

**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

**Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix?

In the field under consideration, the Council of Europe could focus, as appropriate, on how to highlight some minimum standards and good practices promoting LGBT rights.

A priority issue would be protection from any form of violence against LGBT persons.

Furthermore, special attention should be given to public awareness of the abovementioned rights.

It would also be advisable to use as a tool in this respect the relevant September 2011 Study of the Council of Europe Commissioner's for Human Rights.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**HUNGARY**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

The new Fundamental Law (Constitution) and the whole legal system ensure the rights of LGBT people.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The whole legal system was reviewed from the aspect of discrimination in 2010 and 2011 in connection of the drafting of the new Fundamental Law

Are there measures in place to redress any such discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

See point 3.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?  
a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

Articles II., VI. and XV. of the new Fundamental Law.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?  
a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☐ d. ☐ e. X ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator, the victim has an effective, prompt and impartial investigation.

**As to the Criminal Procedure Act.**

**Section 3** (1) Everyone has the right to have the charge filed against him adjudicated by a court.

(2) It is the exclusive right of the court to ascertain the liability of a person in committing a criminal offence and to impose punishment therefor.

### **Right to defence**

**Section 5** (1) The defendant shall have the right to defence.

(2) Everyone has the right to defend himself at liberty. This right may only be restricted or a person be deprived of his freedom for reasons and in compliance with the procedure set forth in this Act.

(3) The defendant may undertake his own defence, and may be defended by a counsel at any phase of the proceedings. The court, the prosecutor and the investigating authority shall ensure that the person against whom criminal proceedings are conducted can defend himself as prescribed in this Act.

(4) In the cases specified in this Act, it is compulsory to retain a defence counsel.

### **Presumption of innocence**

**Section 7** Everyone shall be presumed innocent until convicted in a final court verdict.

### **Independent judgement of criminal liability**

**Section 10** When establishing whether the defendant has committed a criminal offence and the nature of the offence, the court, the prosecutor and the investigating authority shall not be bound by decisions adopted in other procedures, thus especially in civil proceedings, procedure for misdemeanours or disciplinary actions, nor by the facts set forth therein.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The bias motive is an aggravating circumstance in a lot of crimes.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Victim Centers were established regionally.  
Information is available on the website of police.hu

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The safety and dignity of special groups of prisoners are taken into account.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area: Section 269. of the Criminal Code:

#### **Incitement Against a Community**

Any person who incites to hatred before great publicity against:

- a) the Hungarian nation;  
b) any national, ethnic, racial group or certain groups of the population;  
is guilty of a misdemeanor punishable by imprisonment for up to three years.

#### **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

A new Act was passed by the Parliament on the associations (Act No. CLXXV. of 2011) which makes it possible to establish an association if it is not against the Fundamental Law or the rights of others.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Government established a National Human Rights Working Group in order to consult with the NGO-s

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b.X ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b.X ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do 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?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

D. The participants of the 2012 Budapest Parade were protected by the police effectively.

### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

According to the relevant legislation (Act No. CXII. of 2011) the data concerning sexual orientation is a sensitive data. These data may be processed if the data subject has given his explicit consent in writing, or for the implementation of an international treaty, or if ordered by law in connection with the enforcement of some constitutional right or for national security reasons or preventing crimes or military purposes.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. ☐ e. X ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:



25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest. But the same sex partners can not adopt a child.

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. X☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

XX. and XXI. Sections of the Fundamental Law

29. Has homosexuality been removed from the national classification of diseases?

a. X☐ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. X☐ b. ☐ c. ☐ d. ☐ e. ☐

E.

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. X☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See point 3.

#### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

#### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

According to the Act No. CXXXV. of 2003 the Equal Treatment Authority shall conduct an investigation whether the principle of equal treatment has been violated. On the basis of the public interest they can initiate a lawsuit with a view to protect rights of persons.

#### **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

### Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**IRELAND**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☒ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

The Irish Government is satisfied that good progress has been made and will continue to be made in combating discrimination and promoting equal treatment on grounds of sexual orientation or gender identity in the areas addressed in Recommendation CM/Rec(2010)5. As with combating discrimination on other grounds, it is recognised that this is an ongoing task, to which the Government attaches a high priority.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☒ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

A technical review of the Social Welfare Code to examine its compatibility with the Equal Status Acts was completed by the Department of Social and Family Affairs (now the Department of Social Protection) in 2009. The review arose from an equality case taken against the Department by the Equality Authority on behalf of a same-sex couple in 2003. This issue was addressed through the Social Welfare and Pensions Act 2010. Since the 1st January 2011 same-sex couples are recognised in the Social Welfare code. The material produced in the 2009 report was a technical review for the Department and the issues which were identified are being and have been addressed as appropriate.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

A framework, built on constitutional and legislative provisions, exists in Ireland at national level to put into effect the principle of equal treatment and combating discrimination. A robust equality infrastructure consists of legal prohibitions on discrimination based on nine specified grounds (gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community), which provides an individual complaints mechanism for persons who suffer discrimination and two specialised bodies – the Equality Authority and the Equality Tribunal, which were established on a statutory basis in 1999. The principal legislative provisions are the Employment Equality Acts 1998-2011 which prohibit discrimination in employment and vocational training and the Equal Status Acts 2000-2012 prohibit discrimination in the supply of and access to goods and services, including housing,

education and healthcare. The Pensions Acts 1990-2012 prohibit discrimination in occupational pensions.

Persons who feel they have been discriminated against, harassed or victimised, contrary to the Employment Equality Acts, may refer a complaint to the Equality Tribunal, which is an independent, quasi-judicial forum which has powers to issue legally binding decisions.

Complaints may be referred on one or more of the 9 specified discriminatory grounds, or in regard to victimisation. The gender ground has been interpreted in by the Equality Tribunal to apply to transgender persons, while the disability ground applies to persons undergoing treatment in respect to gender reassignment.

The Equality Authority works towards the elimination of discrimination and promotion of equality of opportunity in the areas to which equality legislation apply. Its functions also include provision of information to the public about equality legislation and undertaking research. In partnership with public bodies, the private sector, civil society and the academic community, the Equality Authority has developed a series of equality and diversity tools and guidelines for the public and private sector.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

Initiatives to promote equal treatment and combat discrimination against LGBT persons have been ongoing in Ireland over the past 10 years, with the Department of Justice and Equality carrying out a coordination role. The Department commissioned a study from the National Economic and Social Forum, published in 2003, on "Equality Policies for Lesbian, Gay and Bisexual People: Implementation Issues" (report no. 27) and subsequently funded a 3-year Policy Liaison & Equality Implementation programme in the Gay & Lesbian Equality Network (GLEN), to work with Government Departments in considering and implementing the recommendations. The engagement between Government agencies and NGOs in the LGBT area established under this programme is ongoing and has led to significant advances, most notably in providing for legal recognition of same-sex partnerships, but also in the areas of health and education.

In the period since 2010, civil partnership legislation for same-sex couples has come into force. Recent amendments to the Domestic Violence Act extend the protection of the Act on the same basis to unmarried opposite-sex couples and same-sex couples who have not registered a civil partnership.

Work commenced in this period which is still in progress includes development of a national health strategy and action plan for LGBT people, drafting of legislation to provide for legal recognition of change of gender and legislation to reform and bring clarity to issues relating to parentage, guardianship and custody of children of gay couples.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Equality modules conducted in 2004 and 2010 under the Quarterly National Household Survey have included questions on experience of discrimination on the ground of sexual orientation. An equality analysis has been carried out on the Census of Population 2006 and is in progress in respect of the 2011 Census. While no direct question on sexual orientation is included, the data facilitates analysis on the basis of self-identified same-sex couples. These studies are available from the Central Statistics Office and from the Equality Authority.

Developments in the health and education sectors have been driven by research into the experiences of LGBT persons, undertaken by NGOs and Government agencies working in partnership. Landmark studies are

"Supporting LGBT Lives: A Study of the Mental Health and Well-Being of Lesbian, Gay, Bisexual and Transgender People" commissioned by BeLonG To Youth Services and GLEN (Gay and Lesbian Equality Network), funded by the HSE's National Office for Suicide Prevention (NOSP), published in 2009; and

"Visible Lives: Identifying the Experiences and Needs of Older Lesbian, Gay, Bisexual and Transgender People in Ireland", commissioned by GLEN (Gay and Lesbian Equality Network), funded by Age and Opportunity through the Get Vocal programme and the Health Service Executive, published in 2011.

The Garda Racial, Intercultural and Diversity Office (GRIDO) monitors crimes motivated by factors such as homophobia, racism and xenophobia on a constant basis so as to ensure that all such crimes are properly recorded and investigated.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The forms of redress which the Equality Tribunal may order under equality legislation include orders for equal pay and arrears of pay, orders for equal treatment, compensation for the effects of discrimination, harassment and victimisation, orders for reinstatement or re-engagement, as appropriate in the circumstances of the case. The Equality Tribunal may also order that a named person or persons take a specific course of action, an option which is widely used, for example to require employers to produce and implement equality policies and to train staff appropriately.

Raising public awareness on equality matters, including access to remedies across all 9 discriminatory grounds in equality legislation, is a statutory function of the Equality Authority.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

No particular obstacles have been encountered.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation and its Appendix have been circulated to all Government Departments responsible for the activities within its scope.

## Section II – Implementation of the specific provisions in the Appendix

### 1. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

All reports of criminal acts are fully investigated by An Garda Síochána (police force), irrespective of the perceived motives of the perpetrators.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Where criminal offences such as assault, criminal damage, harassment or public order offences are committed with a bias motive related to sexual orientation or gender identity, they are prosecuted as generic offences through the wider criminal law. The trial judge can take aggravating factors into account at sentencing.

The Prohibition of Incitement to Hatred Act 1989 defines "hatred" as "hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation". Under Section 2 of the Act, it is an offence to publish or distribute written material or to distribute, show or play a recording of visual images or sounds, if the written material, visual images or sounds are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred. The term "written material" includes any sign or other visual representation. This would apply to material published on websites or social networking sites. Section 3 of the Act provides for an offence of broadcasting any threatening,



abusive or insulting material which is likely to or intended to stir up hatred. The term "broadcast" in the 1989 Act is very broadly defined. It means the transmission, relaying or distribution by wireless telegraphy or by any other means or by wireless telegraphy in conjunction with any other means of communications, sounds, signs, visual images or signals, intended for direct reception by the public whether such communication, sounds, signs, visual images or signals are actually received or not. Similarly, section 4 of the Act provides for an offence where a person possesses a recording of sounds or visual images with a view to its being distributed, shown, played, broadcast or otherwise published, in the State or elsewhere, whether by himself or another. Section 6 of the Interpretation Act 2005 provides for the construction of statutory provisions so as to allow for any changes in law, social conditions and technology which have occurred since the provision was enacted. This would apply to any material broadcast on websites or via the internet.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

An Garda Síochána (police force) attach importance to managing with sensitivity cases where members of the lesbian, gay, bisexual and transgender (LGBT) communities are victims of crime. Where appropriate, such a victim is referred to a trained LGBT Officer within An Garda Síochána. This commitment is explicitly stated in An Garda Síochána's policy on the services and support provided to all victims of crime, found in the An Garda Síochána Victims Charter available at [www.garda.ie](http://www.garda.ie).  
All victims of crimes are urged to report the matter to their local Gardaí.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

All student-probationer Gardaí (police) receive training on dealing with hate motivated crimes, which includes instruction given on the law in relation to hate-motivated crime and the Prohibition of Incitement to Hatred Act 1989 and on the protection of human dignity and the rights of all persons. The Garda Racial, Intercultural and Diversity Office (GRIDO) monitors crimes motivated by factors such as homophobia, racism and xenophobia on a constant basis so as to ensure that all such crimes are properly recorded and investigated. GRIDO has responsibility for coordinating, monitoring and giving advice on policing Ireland's diverse communities and covers all nine grounds of discrimination set out in the Equal Status Act 2000, and works closely with organisations that represent the LGBT communities. It coordinates the work of 328 Ethnic Liaison Officers/LGBT Officers who are based in community policing units in each Garda Division in the country. These officers are given specialist training, including training in sensitivity in dealing with the victims of hate crime, liaise with groups from diverse communities and advise them of the Garda services available.  
The Judiciary is independent in the exercise of its functions under the law and the Constitution. Responsibility for Judicial training is a matter for the Committee for Judicial Studies which was established to provide for the training and ongoing education of the judiciary. Training is judge-

led and the content and topics designed by the judiciary itself. Training has been organised for Judges in relation to equality issues. Members of the judiciary have also received a received a Bench Book entitled "The Equal Treatment of Persons in Court".

In the administration of Justice in Ireland, the courts are managed by the Courts Service, which supports the judiciary and provides a high quality and professional service to all users of the courts. The policy of the Service is to deal with customers in a fair and open manner irrespective of race, gender, socio-economic status, language, disability, and/or other social attributes. The Service has a formal customer complaints procedure and Quality Customer Service Officer to deal with any perceived shortfall in the level of service provided.

Since September 2007, all Recruit Prison Officers complete a two year Higher Certificate in Custodial Care, accredited by Sligo Institute of Technology. As part of this programme all Recruit Prison Officers complete a module on Equality and Diversity including discrimination and racism. They also complete a module on Human Rights with also addresses areas of discrimination and equality.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the **Health sector**, robust measures are in place to ensure the safety and dignity of all persons who are involuntarily detained in approved centres. Section 32 of the Mental Health Act 2001 established the Mental Health Commission as an independent Statutory body, whose principal functions are to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres under the Act. The Commission has developed, following consultation with stakeholders, a quality framework applicable to all mental health services in the public, voluntary and independent sectors. One of the standards in the framework specifically states that Service users receive services in a manner that respects and acknowledges their specific beliefs and experiences, and a criteria used for this standard is that service users experience receipt of care that is in compliance with equality legislation and prohibits discrimination on the grounds of gender, civil status, sexual orientation, religion, age, disability, ethnicity, membership of the Traveller community or social class.

It is the policy of the **Irish Prison Service** that all persons will be treated with dignity and respect as part of the prison community, regardless of their role and background. These principles are reflected in the IPS Mission Statement and core values. The Irish Prison Service is committed to treating its staff with courtesy, respecting personal dignity at all times. As set out in the Irish Prison Service 3 year Strategic Plan, which was launched by the Minister for Justice and Equality in April this year (2012), the Prison Service has committed to introducing a Dignity at Work Charter and launching a prison wide dignity and respect campaign. The Irish Prison Service also has a Bullying and Harassment Policy which covers prohibition of discrimination in the workplace including discrimination on the grounds of sexual orientation. Schedule 1 of the Prison Rules 2007 states that a prisoner will be guilty of a breach of prison discipline if he or she "treats with disrespect, through the use of any abusive, insolent, racist or threatening behaviour or language, the Governor, any prison officer, any prisoner, any visitor to the prison or any other person". Any prisoner found guilty of a breach of prison discipline is subject to disciplinary sanctions. Any prisoner who believes that there is a threat to their safety in the

general prison population may seek to go "on protection". A decision will then be taken by the prison governor where that prisoner should be located and if the prisoner should go "on protection". In some instances the prisoner may be transferred to another institution. The immediate separation of prisoners from the general prison population or from specific prisoners identified as presenting a threat demonstrates the prison management's commitment to ensuring their safety and security. Persons under protective custody are reviewed every month. All operational **Garda** (Police Force) Directives now make reference to the relevant human rights principles applicable to the instruction concerned. All detentions in Garda custody are covered by the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006. Those regulations make comprehensive provision for the treatment and care of detained persons. Comprehensive Guidance Notes on the implementation of these regulations issued to each member of the Garda Síochána in 2008. A revised "Information for Persons in Custody" – Form C.72(s) was issued by the Commissioner with the approval of the Minister for Justice and Law Reform. This Form must be read over and given to each detained person to notify them of their rights and also to inform the detainee that the Garda Síochána shall at all times respect their personal rights and dignity as a human being and shall not subject them to ill treatment of any kind. In addition, a revised Custody Record was issued in 2009, providing for a risk assessment for each detained person and providing for all the necessary requirements in relation to a detained person. It acts as a safeguard both for the detained person and the members of the Garda Síochána.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Under Irish criminal law, it is an offence, inter alia, to use words, to publish or distribute written material, or to broadcast any visual images or sounds that are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred. The word "hatred" is defined as "hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation". All of these offences are contained in a single enactment, the Prohibition of Incitement to Hatred Act 1989. Definitions of "written material" and "broadcast" are specified in the 1989 Act, as well as material on section 6 of the Interpretation Act 2005. This deals with online material.

As outlined above, raising awareness among public bodies and the public in general on equality matters is a statutory function of the Equality Authority. These functions include working towards the elimination of discrimination, promoting equality of opportunity and providing information to the public in the areas covered by equality legislation. Its role also includes undertaking or sponsoring research and dissemination of information relevant to its functions. Similarly, the role of the Human Rights Commission (the national human rights institution) includes promoting understanding and awareness of the importance of human rights in the

State. Government plans to merge the Equality Authority and Human Rights Commission into a single organisation with enhanced powers are at an advanced stage.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

The Constitution of Ireland explicitly provides for freedom of association (Art.40.6.1(iii)). This right may be exercised within the law, regardless of sexual orientation and gender identity.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The cause of human rights defenders globally is an important aspect of Irish foreign policy, as are the EU Guidelines on Human Rights Defenders which represent a strong political commitment by EU Member States at ministerial level to advancing the work of human rights defenders in the EU's external relations.

Ireland co-sponsored a Resolution on Human Rights, Sexual Orientation and Gender Identity adopted at the United Nations Human Rights Council in June 2011. This was the first time that a United Nations Resolution explicitly acknowledged human rights protection as covering sexual orientation. Ireland is also actively engaged in discussions regarding a resolution on human rights defenders to be tabled at the 22<sup>nd</sup> Session of the UN Human Rights Council in March 2013. In this regard, Ireland has been engaged in inter-governmental discussions and has also consulted with a number of civil society organisations working on the issue human rights defenders.

At a national level, the Garda Síochána Ombudsman Commission provides the public with an independent oversight of policing and is mandated to receive complaints by members of the public concerning the conduct of members of the police force.

In addition, the Human Rights Commission, Ireland's National Human Rights Institution is mandated to carry out enquiries, provide legal assistance, initiate legal proceedings and appear as Amicus Curiae before the High Court and Supreme Court in cases concerning alleged violations of human rights.

17. Have measures been taken to 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?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Proposals for introduction or amendment of regulations are subject to a process of regulatory impact assessment (RIA) which incorporates consultation with relevant parties.

As outlined in response to Question 3, under a 3-year policy liaison project from 2006-2009, the Gay and Lesbian Equality Network (GLEN) was funded by the Department of Justice, Equality and Law Reform to engage directly with Government Departments and State bodies to promote equality policies for LGB persons.

Recent initiatives developed in consultation with NGOs representing the LGBT communities include civil partnership legislation, reviews of the equality and human rights infrastructure, alternative models of school patronage, and gender recognition proposals.

Legal recognition for all purposes, including the right to marry and the right to a new birth certificate in the preferred gender, has been examined by the Gender Recognition Advisory Group (GRAG), established in 2010 to advise the Government on the legislation required to give legal recognition to the acquired gender of transgender persons. In examining and reporting on this issue the GRAG completed an extensive consultation. A consultation document inviting submissions from both the public and interested groups was published on the Department of Social Protection website on 4 August, 2010. The Group received 40 submissions in total – 14 from organisations and 26 from individuals. The high quality and constructive nature of the submissions received was noted by the Group. Based on an assessment of the submissions, the Group met with 10 of the organisations and individuals in mid-October, 2010.

The Report of the Group was accepted by the Government on 12 July 2011, and published on 14 July 2011. The Government has accepted its recommendations and has instructed the Minister for Social Protection to prepare the scheme of a Bill to provide for a process to formally recognise the gender of persons who have made a permanent transition to the preferred gender. Since the publication of the report, officials in the Dept. of Social Protection (DSP) have been working on progressing the draft Heads of the Bill.

The Department of Health consults with NGOs representing the LGBT communities with regard to HIV and AIDS and other sexual health matters.

In 1997, the Government established the Department of Foreign Affairs –NGO Standing Committee on Human Rights, in recognition of the role played by the NGO community and civil society in the area of human rights. It comprises representatives of a broad range of civil society organisations in Ireland, who serve in a voluntary capacity, as well as officers of the Department of Foreign Affairs and Trade. The purpose of the Committee is to provide a formal framework for a regular exchange of views between the Department of Foreign Affairs and Trade and civil society representatives. The Gay and Lesbian Equality Network (GLEN) are represented on the Committee.

The Government conducted wide consultation with NGOs and interested stakeholders during 2011 in preparation for Ireland's first report under the UN Universal Periodic Review process and will continue this dialogue. Individuals and NGOs from the LGBT communities played an active part in these consultations.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

The Constitution of Ireland explicitly provides for freedom of expression (Art. 40.6.1 (i)). This right may be exercised within the law, regardless of sexual orientation and gender identity. The right in Ireland to assemble or meet peacefully and without weapons is also guaranteed by the Constitution (Art. 40.6.1 (ii)). This right is limited by legislation to protect public order and morality. The law prevents or controls meetings that are calculated or designed to cause a riot or breach of the peace. Parades and processions are not illegal but it is a public nuisance to obstruct a highway.

19. Do 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Gay Pride events and festivities are celebrated peacefully throughout the country, and promoted by the State tourism boards.

The preservation of peace and public order is one of the core functions of An Garda Síochána and the management of this function in situations of crowd protest or civil disobedience requires, among other factors, skilled personnel to ensure the safety of all concerned. Public order training forms part of the Garda student/probationer training programme with additional specialist training provided for members selected for duty with Divisional and regional public order units. Further training is provided for officers in the management of incidents requiring the deployment of public order units. In recognition of the sophisticated response which is required in handling situations relating to crowd protest or civil disobedience, the comprehensive training provided by An Garda Síochána includes nine separate elements from Garda induction to the supervision and tactical command of such incidents. Any individual complaints concerning Garda misconduct in public order situations is subject to independent investigation by the Garda Síochána Ombudsman Commission (GSOC).

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Irish law does not criminalise same-sex sexual acts between consenting adults. There is a single age of consent for same-sex and heterosexual sexual acts.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Data protection legislation applies, which states that information held about a person must be accurate, only made available to those that should have it and only used for specified purposes. This legislation also applies to personal data held by An Garda Síochána (the Irish Police Force), gathered and stored as part of the main function of An Garda Síochána; that is, to investigate and detect crime, to protect life and property and to prevent crime. With some restrictions, a person may request a copy of any personal data being kept on them by An Garda Síochána. The Office of the Data Protection Commissioner is responsible for upholding the privacy rights of individuals in relation to the processing of their personal data.

Under proposals for legislation to give legal recognition to the acquired gender of transgender persons, it is intended that the General Register Office in Ireland (GRO) will keep a record of the Gender Recognition Certificate and other relevant administrative forms, while also retaining records of the original birth certificate and any other identification or relevant information furnished. It is proposed that measures for retention and access to these records would mirror those in place for records relating to adoptions, which GRO has maintained since the 1950's. The GRO has no example of any such records being destroyed for any purpose.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The acquired gender of transgender persons is currently recognised in many official dealings with the State, such as the provision of passports, driving licences and in social welfare, healthcare and revenue matters.

Legal recognition for all purposes including the right to marry and the right to a new birth certificate in the preferred gender has been examined by the Gender Recognition Advisory Group (GRAG), established in 2010 to advise the Government on the legislation required to give legal recognition to the acquired gender of transgender persons. The Report of the Group was accepted by the Government on 12 July 2011, and published on 14 July 2011. The Government has accepted its recommendations and has instructed the Minister for Social Protection to prepare the scheme of a Bill to provide for a process to formally recognise the gender of persons who have made a permanent transition to the preferred gender. The decision-making body will be an independent three-person Gender Recognition Panel. It is intended to introduce the legislation as quickly as possible.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

F.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Gender reassignment is not yet recognised in Ireland. However, the General Registrar Office in Ireland (GRO) will accept a birth certificate amended by another State where gender reassignment is recognised in support of notification of intention to marry or to enter into a civil partnership, from a person born outside of Ireland.

It is proposed to include provision for civil marriage in the proposed gender recognition legislation in order that a transgender person may marry a person of the opposite sex to their reassigned sex. Provision will also be made in order that a transgender person may enter into a Civil Partnership with a person of the same sex as their reassigned sex.

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

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

Under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 a statutory civil partnership registration scheme for same-sex couples was introduced on 1st January 2011. Under the scheme registered civil partners have broadly the same rights and obligations towards each other as the rights and obligations of married couples towards each other. The Government has referred the issue of same-sex marriage to the Convention on the Constitution established in 2012 to consider and make recommendations on certain topics as possible future amendments to the Constitution.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 also amended a number of laws where rights are already available to opposite-sex cohabitants in order to make such rights available to same-sex cohabitants, such as providing for inheritance of tenancies, civil liability in the event of wrongful death, and matters concerning enduring powers of attorney. A redress scheme was also introduced for long-term cohabiting couples whose relationship has ended, which provides for a broadly similar range of orders as are available to married couples when they separate or divorce.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The rights of the child, and ensuring that in this area the best interests of the child are the paramount consideration, has a firm constitutional basis in the new provisions contained in Article 42A of the Constitution, effected by referendum in 2012.

Issues concerning guardianship of children in households headed by same-sex couples, and related matters are being examined in the context of recommendations from the Law Reform Commission. A Family Relationships and Childrens Bill is in preparation to reform and bring clarity to issues including those relating to parentage, guardianship and custody of children of gay couples.

Under Irish law, adoption is permitted by a single person (irrespective of the individual's sexual orientation or gender identity), or by married couples (jointly). There is no provision for joint adoption by unmarried opposite-sex couples or same-sex partners.



**V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As outlined in response to Question 2, the scope of the Employment Equality Acts extends to all the areas listed and prohibits discrimination, harassment on grounds including sexual orientation, gender & disability (covering gender identity and transgender) and civil status (includes registered partnership), sexual harassment and victimisation. A statutory Code of Practice on harassment and sexual harassment in the workplace setting out good practice in this area has been in place since 2002 and was updated in 2012.

Irish equality legislation facilitates submission of complaints of discrimination on multiple grounds. While issues of gender identity are not referred to explicitly in equality legislation, the Equality Tribunal has found discrimination on the grounds of gender and disability to be relevant to the situation of a transgender person in transition. The practical impact of this decision is that people in transgender situations are protected from discrimination by our legislation.

Data protection legislation applies to protect the privacy of transgender persons. This states that information held about a person must be accurate, only made available to those that should have it and only used for specified purposes. The Office of the Data Protection Commissioner is responsible for upholding the privacy rights of individuals in relation to the processing of their personal data.

**VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Employment Equality Acts 1998-2011 and the Equal Status Acts 2000-2012 are relevant to activities that occur in the school setting. The Equal Status Acts require that schools do not discriminate across the nine grounds, which includes discrimination on the grounds of sexual orientation and gender identity. The Education Welfare Act 2000 requires each school to prepare a Code of Behaviour. Specific measures to assist schools tackle homophobic bullying are dealt with in the context of overall anti-bullying measures within the school Code of Behaviour. The Department of Education and Skills Inspectorate provides supports to schools through supporting/advising and evaluating anti-bullying measures, which includes homophobic bullying, through Whole School Evaluations at primary and post-primary level and through Social Personal and Health Education (SPHE) subject inspections. The Social Personal and Health Education (SPHE) is a mandatory part of the curriculum in primary schools and in junior cycle since 2003. SPHE, in providing opportunities to foster the personal development, health and well-being of the child allows for addressing issues of sexual orientation. The SPHE Support Service provides a range of services to support this area, including courses for SPHE teachers – topics include bullying awareness and prevention.

In recent years there has been a considerable amount of work done to address the issue of bullying in schools by State agencies and by NGOs such as GLEN and BeLongTo and collaborative efforts of all of the foregoing. In recognition of the fact that existing guidelines and templates on countering bullying in schools needed to be updated, particularly in relation to homophobic bullying, a Forum to explore ways of tackling bullying in schools, was held in May 2012.

Following the Forum the Minister for Education and Skills also established a working group to address the issue of tackling bullying in schools. The Group is considering further actions required to tackle bullying in schools, including homophobic bullying, cyber bullying and racist bullying in particular. A 12-point national Action Plan on Bullying was also launched in January 2013 by the Minister for Education and Skills. This Action Plan, applicable to all schools, includes a focus on homophobic bullying.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Equality legislation requires access to healthcare services on a non-discriminatory basis.

NGOs have worked with a number of professional bodies in the healthcare field, with support from State bodies as appropriate, to develop LGBT-inclusive policies and good practice guides. To date, these include guides on LGB issues for doctors in general practice, primary care staff, psychiatrists, psychologists, mental health staff, social workers and for Samaritans Volunteers. (Available from the website of the Gay and Lesbian Equality Network, [www.glen.ie](http://www.glen.ie)).

Similarly, guides on transgender and gender diversity issues have been produced for psychiatrists, psychologists and for guidance counsellors (available from the website of Transgender Equality Network Ireland, [www.teni.ie](http://www.teni.ie)).

Health and personal social services are delivered by the Health Service Executive (HSE). In 2009, the HSE published an exercise, "LGBT HEALTH: Towards meeting the healthcare needs of lesbian, gay, bisexual and transgender people", to map out existing health-related services, supports, gaps and actions for the LGBT community in Ireland, detailing key health priorities for this population group as evidenced in Irish and international research. The report sets out a number of recommendations to advance the work commenced through this exercise, including development of a National HSE Strategy and Action Plan for LGBT people. This action plan is in preparation and expected to be published shortly.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

There are no limitations in law in this regard. Cover depends on the terms and conditions of the individual's insurance contract.

Under the Health Insurance Act 1994 (Minimum Benefit Regulations 1996), insurers are required to provide a minimum level of cover to every insured person. The Minimum Benefit regulations exclude "cosmetic services or treatment except the correction of accidental disfigurement or significant congenital disfigurement". While some of the procedures associated with gender reassignment (i.e. hysterectomy and breast reduction) are performed in Ireland, insurance cover would only be provided if deemed medically necessary. Certain elements of treatment, e.g. hormonal treatment, can be conducted on an outpatient basis and may be covered depending on the health insurance policy held.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Equal Status legislation prohibits discrimination on grounds including civil status, gender, disability, sexual orientation in housing and in access to goods & services. The Residential Tenancies Act 2004(RTA) provides the regulatory framework for the private rented residential sector and for the operation of the Private Residential Tenancies Board (PRTB). Under the RTA a tenancy may only be terminated by means of a notice of termination that complies with the provisions of the RTA and gives the required statutory notice period. Where a tenant believes that their tenancy has been invalidly terminated he or she may refer the dispute to the PRTB for resolution. Tenants may also refer a case to the PRTB where there is

any dispute in relation to the tenancy, including the failure of a landlord to comply with their obligations under the RTA or any other Act (e.g. s. 6(1) of the Equal Status Act 2000). The PRTB is an independent agency and provides an independent and accessible means of resolving disputes between landlords and tenants.

Existing protections against discriminatory behaviour in the administration of local authority social housing will be enhanced by proposals for legislation currently in development. These proposals would require an independent hearing and ruling in cases of proposed repossession of local authority dwellings, where there is a dispute about the grounds for the repossession.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Access to homeless services is assessed on the basis of need and is provided on a humanitarian basis regardless of sexual orientation and gender identity. In their allocation of public housing, housing authorities are permitted to take account of the differing needs of households (e.g. disability, size of family, etc.).

The Government made a commitment in the Programme for Government to review and update the current National Homelessness Strategy and to adopt a housing-led approach to homelessness. As a consequence of this commitment the Minister for Housing and Planning will publish a new Homelessness Policy Statement shortly. The policy statement has been informed by specially commissioned research and consultations with other Government Departments and agencies, the voluntary sector and other stakeholders. The statement will be explicit regarding the adoption of a housing-led approach to the accommodation of homeless people. Housing-led is about accessing permanent housing as the primary response to homelessness, incorporating the provision of adequate supports to people in their homes according to their needs.

The Government's commitment includes a specific focus on youth homelessness. A high level review of the 2001 Youth Homelessness Strategy will be also completed shortly. The recommendations from this review will inform the policy response required in this area. Services report that no children have been found sleeping rough over the past two years.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The prohibition on discrimination on grounds including gender, sexual orientation and disability under Equal Status legislation applies to sport and to the activities of registered clubs, while permitting certain differences in treatment on the ground of gender and disability.

The Irish Sports Council (ISC), which is funded by the Department of Transport, Tourism and Sport, is the statutory body with responsibility for the promotion, development and coordination of sport. The Code of Ethics and Good Practice for Children's Sport clearly

identifies that no one should be discriminated against within sport on *any* ground. This is clearly outlined within the training courses delivered to support the Code through the National Governing Bodies of sport and Local Sports Partnerships. The ISC will continue to highlight the issue through its work on the Code of Ethics with its stakeholders.

**X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

National regulations (S. I. No. 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006) give effect in Ireland to EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection.

In the investigation of claims of persecution on the basis of sexual orientation, the following factors are relevant:- each case is assessed on its merits; each applicant is interviewed and every opportunity is given to an applicant to explain all the circumstances of their cases and reasons why they fear returning to their country of origin; and in assessing such cases, issues such as whether the treatment feared equates to persecution, whether internal protection in another part of the country is available, country of origin information in relation to the laws and treatment of persons on the basis of their sexual orientation in the country of origin are all relevant factors to be taken into account.

In relation to good practice, caseworkers working in the Office of the Refugee Applications Commissioner (ORAC) and members of the Refugee Appeals Tribunal are aware of the UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity which provides guidance in respect of refugee claims related to sexual orientation and gender identity. Both sexual orientation and gender identity are recognised as valid grounds for granting refugee status where established as the basis of persecution. UNHCR guidelines in relation to the investigation and determination of such claims, state that "A person cannot be expected or required by the State to change or conceal his or her identity in order to avoid persecution. As affirmed by numerous jurisdictions, persecution does not cease to be persecution because those persecuted can eliminate the harm by taking avoiding action."

ORAC has regard to emerging jurisprudence and international best practice and provides a comprehensive programme of training for caseworkers who are involved in investigating and determining applications for asylum. This would include interviewing techniques on vulnerable applicants, such as persons persecuted on the basis of their sexual orientation. ORAC also liaises with relevant groups in civil society in Ireland on the refugee determination process including in relation to lesbian, gay, bi-sexual and transgender issues. Relevant civil society groups also input into ORAC's training programme.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the context of the asylum system in Ireland, Section 5 of the Refugee Act 1996 on the 'prohibition of refoulement' states that a person shall not be returned to a country where they would be threatened on account of membership of a particular social group, defined as

including a group of persons whose defining characteristic is their belonging to the female or the male sex or having a particular sexual orientation.

In determining whether to make a deportation order in relation to a person whose application for asylum has not been successful and who has exhausted the possibilities of appeal under the asylum system, the Minister for Justice and Equality shall have regard to all relevant facts of a case and in particular (as per Section 3(6) of the Immigration Act, 1999)

- (a) the age of the person
- (b) the duration of residence in the State of the person
- (c) the family and domestic circumstances of the person
- (d) the nature of the person's connection with the State, if any
- (e) the employment (including self - employment) record of the person
- (f) the employment (including self - employment) prospects of the person
- (g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions)
- (h) humanitarian considerations
- (i) any representations duly made by or on behalf of the person
- (j) the common good and
- (k) considerations of national security and public policy.

Each case is considered on its own merits and all facts are taken into consideration.

#### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The mandate of the Equality Authority extends to all grounds under national equality legislation, which explicitly include gender and sexual orientation. The Authority's powers extend to informing to the public on equality legislation, advice and support of complainants and investigating and taking complaints where it is not reasonable to expect a victim of discrimination to do so themselves. The Authority also has an important role in developing and promoting good practice by employers and service providers. The mandate of the Human Rights Commission (HRC) extends to implementation by the State of the ECHR and it may act as amicus curiae to assist the courts in interpretation of national human rights legislation.

Government proposals to merge the Equality Authority and the Human Rights Commission into a single enhanced Irish Human Rights and Equality Commission are being advanced this year.

**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

The Employment Equality and Equal Status legislation is framed to permit the taking of cases on multiple grounds. Approximately 20-25% of complaints referred annually to the Equality Tribunal under this legislation are complaints made on multiple grounds.

**Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix?

Ireland suggests that the questionnaire responses from the member states are published.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Ireland would welcome a broad examination of the implementation of this Recommendation in order to encourage continued progress in this area. Ireland would recommend periodic examination every three years as opposed to an annual exercise, particularly given current resources constraints but also to allow for a broader overview to take place of implementation between each review.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

None at present.

**ITALIE**

La plupart des questions appellent une réponse fondée sur la codification suivante :

a. Oui, c'est fait <input type="checkbox"/>	b. Oui, des travaux sont en cours <input type="checkbox"/>	c. Nous avons l'intention d'y travailler <input type="checkbox"/>	d. Rien n'est encore décidé <input type="checkbox"/>	e. Non <input type="checkbox"/>
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**SECTION 1 MISE EN ŒUVRE ET DIFFUSION DE LA RECOMMANDATION****1. Satisfaisant**

L'engagement dans la lutte contre la discrimination fondée sur l'orientation sexuelle et l'identité de genre se concrétise par l'adhésion au projet proposé par le Conseil de l'Europe pour la réalisation et la mise en œuvre de la Recommandation du Comité des Ministres (2010) 5.

Cet engagement est formalisé et confirmé dans la directive du Ministre du Travail avec délégation à l'égalité des chances pour l'activité administrative de l'année 2012, qui attribue à l'Office national contre la discrimination raciale (UNAR), opérant au sein du Département pour l'égalité des chances de la Présidence du Conseil des Ministres, la mise en œuvre des objectifs opérationnels pour la prévention et le combat des discriminations fondées sur l'orientation sexuelle et sur l'identité de genre, et notamment la définition d'une stratégie nationale d'activités en collaboration avec le Conseil de l'Europe.

Il s'agit d'un important et significatif projet pluriannuel qui prévoit une collaboration entre les différentes réalités institutionnelles, le «troisième secteur» et les parties sociales pour la mise en œuvre des politiques de prévention et combat des discriminations à l'égard des personnes LGBT, en harmonie avec la Recommandation adoptée par le Comité des Ministres CM / REC 5 (2010).

En particulier, nous avons l'intention de développer une planification stratégique dans des domaines définis prioritaires, tels que:

- l'éducation et l'enseignement, avec un accent particulier sur la prévention et la lutte contre l'intimidation homophobe et transphobe;
- le monde du travail, en ce qui concerne le combat contre la discrimination envers les personnes LGBT, en particulier les transsexuels et les transgenres;
- la sécurité et les prisons, relativement aux activités d'information et de sensibilisation des forces de l'ordre;
- les médias, en ce qui concerne le combat des stéréotypes et des préjugés dans la représentation de la réalité LGBT.

Nous mettons en évidence que pour la définition de la stratégie ont été impliqués les acteurs institutionnels, du «troisième secteur» et les parties sociales. En particulier, nous avons créé le Groupe national de travail pour la définition de la Stratégie nationale LGBT, qui se compose de 29 associations lgbt qui sont systématiquement consultées.

On a également établi la Table de coordination inter-institutionnelle (en tant qu'outil de travail essentiel pour la planification et le partage des politiques de la stratégie), dont font partie les autorités centrales et les organismes représentatifs des collectivités locales engagées à différents titres dans la stratégie.

Les parties sociales (syndicats patronaux et des salariés) participent aussi au processus de définition et de partage des objectifs et des activités de la Stratégie.

**2. - réponse b)**



A partir de 2010, l'UNAR a réalisé une vérification de la législation en vigueur au niveau national et régional, en finançant des recherches spécifiques dans ce domaine.

En ce qui concerne les mesures qui pourraient conduire à des discriminations directes ou indirectes à cause de l'orientation sexuelle ou de l'identité de genre, l'UNAR a commencé le «monitoring» des actes administratifs ou réglementaire en intervenant pour signaler les éventuelles dispositions discriminatoires.

réponse b)

Exemple: Le Ministère de l'Intérieur a modifié la circulaire sur la mobilité du personnel de police, en supprimant une partie qui pouvait être discriminatoire envers les couples homosexuels (Circulaire du 14 mai 2012 du Département de la Sécurité Publique relative à la «réglementation de la mobilité, sur la demande du personnel de la police d'État dans les rôles de surveillants, assistants et agents, souhaitant une mutation») Dans la circulaire les points prévus pour les besoins familiaux ont été étendus aux éventuelles familles de fait, qui doivent s'entendre comme une famille composée de deux personnes qui vivent ensemble sans être mariées, concubins stables éventuellement avec des enfants, et la partie du texte originale qui se référait à des personnes du sexe opposé a été éliminée.

### 3. - réponse b)

Sur le plan législatif, il y a eu des mesures réglementaires au niveau national relatifs aux questions LGBT.

La législation en vigueur au niveau national prévoit certaines lois fondamentales:

- en ce qui concerne l'orientation sexuelle le décret législatif n. 216 de 2003 sur «La mise en œuvre de la directive 2000/78/CE sur l'égalité de traitement en matière d'emploi et de conditions de travail»;
- concernant l'identité de genre, la loi n. 164 de 1982 sur les «Règles relatives à la rectification de l'attribution du sexe».

Au Parlement, des propositions de loi concernant l'homophobie et la transphobie ont été débattues. A ce jour, cependant, le système juridique italien ne reconnaît pas encore cette situation.

Veuillez noter l'innovation introduite par la loi du 4 Novembre 2010, n. 183 (appelée «Travail connecté») qui a établi les comités uniques de garantie de l'égalité des chances, la mise en valeur du bien-être de ceux qui travaillent et contre les discriminations (Comitati Unici di Garanzia - CUG), pour le combat des différentes formes de discrimination dans le cadre professionnel du secteur public (y compris l'orientation sexuelle et l'identité de genre).

Au niveau jurisprudentiel, nous signalons certains arrêts importants:

- concernant la reconnaissance des unions entre personnes du même sexe, il est à noter que l'arrêt de la Cour constitutionnelle n. 138 du 14 Mars 2010 relatif à l'extension du mariage entre personnes du même sexe, en a déclaré l'inadmissibilité, mais en même temps a reconnu que, sur la base de l'art. 2 de la Constitution, les couples homosexuels sont porteurs de revendications légitimes d'égalité et que le choix de l'instrument spécifique afin d'en reconnaître leurs droits et leurs devoirs revient au Parlement, dans l'exercice de sa pleine discrétion. Actuellement, des propositions de lois sur la reconnaissance du mariage entre les couples du même sexe, les unions civiles, les couples de fait ont été présentées au Parlement.

- en ce qui concerne la condition des transsexuels, on signale deux jugements du Tribunal de Rome: 1) le jugement du 11 Mars 2011 sur l'autorisation au traitement médico-chirurgical d'ajustement des caractères sexuels pour les mineurs transsexuels en légitimant le parent qui a l'autorité parentale, 2) le jugement du 11 Mars 2011 relatif à la rectification des données de l'état civil des personnes en transition, même en l'absence d'une intervention chirurgicale.

- en ce qui concerne le regroupement familial, le jugement du tribunal de Reggio Emilia a établi la possibilité de délivrer un titre de séjour (prévu pour les conjoints des citoyens des pays membres de l'Union européenne) à un couple du même sexe marié à l'étranger (jugement du 13/02/2012).

En ce qui concerne l'adoption d'un plan national de lutte contre la discrimination envers les personnes LGBT, comme déjà mentionné au point 1, dans le cadre du projet promu par le Conseil de l'Europe «Combattre les discriminations fondées sur l'orientation sexuelle et sur l'identité de genre», auquel l'Italie a adhéré par le biais de l'UNAR, on a créé le Groupe National de travail des associations LGBT pour la définition de la Stratégie nationale LGBT. On a, en outre, établi la Table de coordination inter-institutionnelle (en tant qu'outil de travail essentiel pour la planification et le partage des politiques de la stratégie), dont font partie les autorités centrales et les organismes représentatifs des collectivités locales engagées à différents titres dans la stratégie.

On a également signé un protocole d'entente le 19 Décembre 2012 entre le Département pour l'égalité des opportunités, et la Mairie de Turin (en tant que secrétariat national du réseau RE.A.DY réseau – Réseau national des Administrations publiques contre les discriminations fondées sur l'orientation sexuelle et l'identité du genre), afin de promouvoir d'activités communes visant à élaborer une stratégie nationale.

Veillez noter que la Mairie de Turin est particulièrement engagée dans ce domaine en ayant mis en place, depuis 2001, le Service LGBT pour surmonter la discrimination fondée sur l'orientation sexuelle et l'identité de genre et en ayant accompli depuis 2006 les fonctions de coordination et de secrétariat national du réseau susmentionné.

Il est à noter qu'en 2011 se sont déroulés les travaux du Groupe de travail sur l'égalité de traitement et la lutte contre la discrimination des transsexuels et des transgenres dans le milieu professionnel, qui se compose des principaux représentants du monde associatif du secteur.

#### 4. - réponse a)

réponse a)

réponse b)

Le Département pour l'égalité des chances a financé la première enquête nationale sur la discrimination fondée sur l'orientation sexuelle et l'identité de genre. Les résultats de l'enquête menée par l'ISTAT ont été présentés le 17 mai 2012 à la Chambre des Députés. Plus précisément, l'étude analyse les stéréotypes sur l'homosexualité et les couples de même sexe, sur la transsexualité, sur l'aptitude à la discrimination et la perception du phénomène discriminatoire à l'égard des personnes LGBT, sur les difficultés liées au «coming out» et sur la perception de la part des personnes LGBT pour les discriminations subies.

Depuis 2011, le centre de contact UNAR, qui dispose d'un numéro gratuit 800 90 10 10 et d'un site [www.unar.it](http://www.unar.it), collecte et traite les signalements de discriminations fondées sur

l'orientation sexuelle et l'identité de genre, faites par les victimes ou par les témoins d'actes discriminatoires, et réalise un contrôle constant des médias.

En ce qui concerne les statistiques des crimes odieux, même s'il n'y a pas un relevé systématique et exhaustif, il faut noter que certaines données sur les crimes d'inspiration homophobe et transphobe sont relevés tant par l'UNAR que par l'Observatoire pour la protection contre les actes discriminatoire (OSCAD), créé au sein du Ministère de l'Intérieur (DPS – Direction Centrale Police Criminelle). L'UNAR a lancé une collaboration avec l'OSCAD pour le signalement et le traitement des cas de discrimination, y compris ceux pour homophobie et transphobie.

L'OSCAD, parmi ses tâches principales, a celle de recevoir, collecter et analyser les signalements relatifs aux actes discriminatoires concernant la sécurité (infractions), parmi lesquels ceux qui sont motivés par l'orientation sexuelle ou l'identité de genre de la victime, qui parviennent à l'adresse e-mail correcte ou au numéro fax.

5. réponse a)

réponse b)

La législation au niveau national, en ce qui concerne l'orientation sexuelle, prévoit la protection contre la discrimination prévue dans le décret législatif n. 216 de 2003, portant la «Mise en œuvre de la directive 2000/78/CE pour l'égalité de traitement en matière d'emploi et de conditions de travail»

L'article 4 du décret législatif n. 216 de 2003 prévoit une protection juridique spécifique pour les victimes de discrimination dans le cadre du travail en raison de l'orientation sexuelle.

En ce qui concerne les exemples de bonnes pratiques, au cas où le centre de contact de l'UNAR reçoit une communication de discrimination fondée sur l'orientation sexuelle ou l'identité de genre, il fournit à la victime une consultation et une information adéquates, même en impliquant le *back office* spécialisé sur les questions LGBT.

6.

Certains points critiques dans la mise en œuvre de la Recommandation concernent l'absence de législation spécifique dans certains domaines.

7. - Réponse a)

8. Nous avons procédé à la traduction de la recommandation et de l'annexe en langue italienne et à leur diffusion aussi bien en ligne, via le site UNAR [www.unar.it](http://www.unar.it), que par la publication et la distribution de clefs USB, que par le biais de la version papier.

En particulier, la Conférence internationale de lancement du projet LGBT du Conseil de l'Europe qui s'est tenue à Rome le 16 Février 2012 a représenté une occasion importante pour la diffusion de la recommandation à toutes les ONG spécialisées sur les questions LGBT, certaines institutions nationales, les syndicats patronaux et des salariés, la Fédération nationale de la presse.

## **SECTION 2 - APPLICATION DES DISPOSITIONS SPECIFIQUES ENONCEES EN ANNEXE.**

### **I. Droit à la vie, à la sécurité et à la protection contre la violence**

#### **9. - réponse a)**

L'OSCAD, parmi ses tâches principales, a celle d'activer rapidement, sur la base des signalements reçus, des interventions ciblées par les forces de police sur le territoire, ainsi que de suivre l'évolution de l'enquête sur les plaintes de discrimination en matière de sécurité (infractions) présentées directement à la police.

#### **10. - réponse e) réponse e)**

#### **11. - réponse a)**

Aussi bien l'UNAR Contact Center (numéro gratuit 800 90 10 10 et un site [www.unar.it](http://www.unar.it)) que l'OSCAD (voir point 4) sont d'utiles instruments pour les victimes ou les témoins pour les plaintes éventuelles odieuses envers les personnes LGBT.

La création de l'OSCAD et la mise en œuvre de l'email [oscad@dcpc.interno.it](mailto:oscad@dcpc.interno.it) et des fax consacrés permet à n'importe qui, même de façon anonyme, de signaler des actes discriminatoires concernant la sécurité (infractions).

Cela permet, dans de nombreux cas, une intervention rapide et efficace afin de faire cesser la discrimination et la violence. L'UNAR a lancé une collaboration avec l'OSCAD pour le signalement et le traitement des affaires de discrimination, parmi lesquels ceux pour l'homophobie et la transphobie.

Cette collaboration prévoit, par ailleurs, l'envoi à l'OSCAD des cas de discrimination ayant un caractère pénal pour lesquels il faut recueillir des informations par les forces de l'ordre et / ou nécessitant l'accomplissement d'activités de police.

#### **12. - Réponse a)**

L'UNAR a signé le 7 avril 2011 avec l'OSCAD un protocole d'entente pour le signalement et le traitement des cas de discrimination liés à différents facteurs (la race / l'ethnie, l'handicap, la religion ou les convictions personnelles, l'orientation sexuelle et l'identité de genre).

La mise en œuvre du Protocole prévoit en outre des mesures d'information, de sensibilisation et de formation des forces de police en matière de lutte contre la discrimination.

La nécessité d'intensifier l'action contre la discrimination est, en effet, un des objectifs prioritaires et partagés par les deux institutions, qui ont l'intention de cette façon de promouvoir une plus grande conscience parmi les opérateurs des forces de police et de fournir les connaissances nécessaires pour une action efficace.

Dans le cadre de la mise en œuvre du protocole on a mis en place une table de travail au sein de l'Unar afin de définir des modules de formation pour le personnel des corps de police en matière de lutte contre les discriminations.

La formation des forces de police sur le thème de la lutte contre la discrimination est un des objectifs prioritaires de l'OSCAD. Au cours de l'année 2012, avec la collaboration de l'UNAR des modules spécifiques ont été préparés pour les dirigeants et les commissaires de police nationale et des officiers du corps des «Carabinieri», dans le cadre de leur respective formation, dans le but d'une "Formation des formateurs".

En outre, la question de la lutte contre la discrimination a été incluse parmi les matières de mise à jour professionnelle pour 2012, pour tout le personnel de la police d'État déjà en service.

Des initiatives similaires sont prévues au niveau international pour 2013.

L'OSCAD a participé, avec l'UNAR, au Séminaire international sur la formation des forces de police sur le sujet des LGBT organisé par le Conseil de l'Europe au Monténégro, au cours duquel l'expérience italienne et les modules de formation expérimentés ont été présentés.

### **13. - Réponse b)**

L'administration pénitentiaire doit garantir un traitement adéquat en prison aux détenus transsexuels en raison de leur délicate et particulière situation à l'intérieur des établissements pénitentiaires.

Pour cette raison, la Direction générale des Détenus et du Traitement du Département de l'Administration pénitentiaire, ces dernières années, a tenté de fournir des réponses le plus possible adéquates à ces problématiques et, par conséquent, a proposé d'identifier des modèles de traitement valables pour les typologies en question et de créer des lignes directrices pour une formation appropriée au profit des personnes appelées à les gérer.

De ces exigences sont nées deux Plans exécutifs annuels, un en particulier intitulé «Développement d'un modèle de traitement pour les transsexuels » qui a bénéficié de la collaboration de SAIFIP (Service pour l'ajustement entre l'identité physique et l'identité psychique).

Par la suite des projets expérimentaux ont été lancés auprès de certains établissements pénitentiaires.

Les mesures adoptées dans certaines prisons pour protéger les détenus LGBT se concrétisent par la création de structures spécifiques (par exemple la prison de Rebibbia a une section spéciale pour les personnes transgenres).

Des interventions expérimentales de formation ont été mises en place pour le personnel de l'administration pénitentiaire.

### **14. - Réponse b)**

Réponse b)

La législation italienne règlemente le discours de la haine uniquement pour des raisons de race, d'ethnie, de nationalité ou de religion. Il n'y a pas de législation spécifique pour le discours de la haine en raison de l'orientation sexuelle ou de l'identité de genre.

Le Décret Législatif n. N. 44/2010, appliquant la directive 2007/65/CE sur la radiodiffusion télévisuelle, prévoit expressément que les communications commerciales audiovisuelles fournies par les fournisseurs de services de radiodiffusion télévisuelle relevant de la juridiction italienne, ne peuvent pas comporter ou promouvoir des discriminations fondées sur l'orientation sexuelle.

## **II. Liberté d'association**

**15. - réponse a)**

**16. - réponse e)**

Des mesures spécifiques ne sont pas prévues, car les forces de police italiennes sont tenues à prendre les initiatives les plus adéquates pour protéger l'intégrité de n'importe quel citoyen en situation de danger.

Par conséquent, si une personne engagée dans la défense des droits des personnes LGBT subissait «des actes d'hostilité ou des agressions», en s'adressant à la police, éventuellement par le biais de l'OSCAD, elle trouverait une forme adéquate de protection, même si ces actes ont été commis par des officiers publics («agents de l'Etat»).

**17. - Réponse a)**

Les associations LGBT sont souvent entraînées et consultées sur les questions qui les concernent. En particulier, au sein de l'UNAR, a été créé par décret du 20 novembre 2012 suite à l'avis public de manifestation d'intérêt pour la participation au Programme «Combattre les discriminations fondées sur l'orientation sexuelle ou l'identité de genre», promu par le Conseil de l'Europe pour la mise en œuvre de la Recommandation CM / Rec (2010) 5, adressé aux associations qui remplissent des activités liées à la promotion des droits et à la protection des personnes LGBT.

Le groupe national LGBT est composé de 29 associations du secteur, identifiées sur la base des demandes qui arrivent. Cependant, des experts et des représentants d'autres associations ou organismes reconnus par le Bureau, avec expertise spécifique dans les questions liées à l'orientation sexuelle et l'identité de genre, peuvent participer aux sessions, si cela paraît nécessaire. Dans le processus de construction de la stratégie, des consultations sont prévues lors de la réunion plénière du Groupe national LGBT, ainsi que la collaboration en ligne entre les associations et l'Administration.

L'OSCAD, aussi, prévoit des moments de consultation des associations LGBT en ce qui concerne les crimes odieux.

## **III. La liberté d'expression et de réunion pacifique**

**18. - Réponse a)**

Réponse a)

En Italie, conformément à l'art. 17 de la Constitution: «Les citoyens ont le droit de se réunir de façon pacifique et sans armes » Ce principe d'ordre général s'applique, évidemment, aussi aux manifestations qui ont pour thème la protection des droits liés à l'orientation sexuelle et l'identité de genre.

**19. - Réponse a)**

En Italie - à l'occasion de chaque forme de manifestation, aussi, évidemment, en cas de manifestation pour sauvegarder les droits liés à l'orientation sexuelle et à l'identité de genre – l'Autorité publique de Sécurité (Préfet) dispose de services spéciaux afin de protéger les participants et d'assurer, en général, l'ordre et la sécurité publique.

#### **IV. Droit au respect de la vie privée et familiale**

##### **20. - Réponse e)**

Il n'existe pas dans l'ordre juridique des normes pénales discriminatoires par rapport à l'orientation sexuelle et à l'identité de genre.

En ce qui concerne le respect de la vie familiale, le système juridique italien ne prévoit ni la reconnaissance du mariage entre personnes du même sexe ni les unions civiles. En outre, la possibilité d'adoption pour les couples du même sexe n'est pas prévue.

##### **21. - Réponse a)**

Le droit au respect de la vie privée est garanti par une série de mesures spécifiques sur la protection des données personnelles.

En ce qui concerne la collecte et le traitement des données personnelles, le décret législatif 196 de 2003 ("Code en matière de protection des données personnelles") prévoit que les données à caractère personnel qui pourraient révéler la vie sexuelle de l'individu doivent être considérées comme «sensibles» et, par conséquent, des conditions particulières sont requises pour la légitimité de leur collecte et traitement. De plus, la Cour de Cassation dans l'arrêt n. 14390 du 8 juillet 2005 a établi que les données personnelles susceptibles de révéler la vie sexuelle relèvent de la catégorie des données "ultra-sensibles" et doivent par conséquent bénéficier d'une protection renforcée. En outre, en référence au cadre professionnel, il faut signaler que le Décret législatif n. 276 de 2003 interdit aux agences pour l'emploi, publiques et privées, d'effectuer n'importe quelle enquête ou néanmoins tout autre traitement des données ou de présélection des salariés, même avec leur consentement, sur la base de l'orientation sexuelle.

##### **22. - Réponse a)**

Réponse a)

En ce qui concerne la reconnaissance légale du changement de genre, la matière est réglementée par la loi n. 164 de 1982 sur les «Dispositions relatives à la rectification de l'attribution du sexe».

L'article 1 dispose que «La rectification s'effectue sur la base du jugement du tribunal passé en force de chose jugée qui attribue à une personne un sexe différent de celui énoncé dans l'acte de naissance à la suite de modifications de ses caractères sexuels».

Nous signalons deux jugements du Tribunal de Rome: le jugement du 11 Mars 2011 sur l'autorisation au traitement médico-chirurgical d'ajustement des caractères sexuels pour les mineurs transsexuels qui légitime le parent ayant l'autorité parentale, 2) le jugement du 11 Mars 2011 relatif à la rectification des données de l'état civil des personnes en transition, même en l'absence d'une intervention chirurgicale.

##### **23. - Réponse a)**

L'article 4 de la loi susmentionnée n. 164 de 1982 prévoit que le jugement de rectification d'attribution du sexe "provoque la dissolution du mariage ou la cessation des effets civils découlant de la célébration du mariage religieux. À cet égard, on applique les dispositions du Code civil et de la loi du 1er Décembre 1970, n. 898 et modifications suivantes, en matière de dissolution du mariage.

Après avoir obtenu la rectification de l'attribution du sexe, les personnes transsexuelles ont le droit de se marier.

#### **24. - Aucune réponse**

##### Réponse b)

Le système juridique italien ne prévoit pas la reconnaissance des unions civiles entre personnes du même sexe, il n'y a donc pas de reconnaissance des droits et des devoirs correspondants.

Veuillez noter que l'arrêt de la Cour constitutionnelle n. 138 du 14 Mars 2010 sur l'extension du mariage même entre personnes du même sexe, en a déclaré l'inadmissibilité, mais en même temps, a reconnu que, sur la base de l'art. 2 de la Constitution, les couples homosexuels sont porteurs de revendications d'égalité légitimes et que le choix de l'instrument spécifique afin d'en reconnaître leurs droits et leurs devoirs revient au Parlement, dans l'exercice de sa pleine discrétion. Actuellement, des propositions de lois sur la reconnaissance du mariage entre personnes du même sexe, les unions civiles, les couples de fait ont été présentées au Parlement.

Cependant, il y a divers jugements qui reconnaissent certains droits spécifiques. Par exemple: en matière de regroupement familial, le jugement du Tribunal de Reggio Emilia a reconnu la possibilité de délivrer le titre de séjour (prévu pour les conjoints de citoyens d'États membres de l'Union européenne) à un couple du même sexe marié à l'étranger (jugement du 13/02/2012).

#### **25. - Réponse a)**

La loi prévoit toujours le principe du respect de l'intérêt supérieur de l'enfant.

Il n'y a pas de mesures spécifiques en matière de responsabilité parentale et l'adoption pour les enfants de couples homosexuels.

La prééminence de l'intérêt supérieur de l'enfant dans les décisions concernant la responsabilité parentale ou le placement d'un enfant est garanti par cet État membre, dont la législation prévoit, à l'art 2, paragraphe 1 de la loi n. 184 de 1983 "Droit de l'enfant à une famille» et modifications et intégrations suivantes, que «l'enfant temporairement privé d'un cadre familial approprié, malgré les interventions de soutien et d'aide disposées conformément à l'art. 1, est confié à une famille, de préférence avec des enfants mineurs, ou à une personne seule, en mesure de lui assurer l'entretien, l'éducation, l'instruction et l'affection dont il a besoin».

Il faut donc noter que déjà la loi elle-même exclut d'éventuelles discriminations de genre, en prévoyant la possibilité de la garde d'un mineur à une personne célibataire, sans discriminations fondées sur l'orientation sexuelle ou l'identité de genre.

En outre, nous soulignons que la législation nationale avec la loi n. 54 du 8 février 2006 «Dispositions en matière de séparation des parents et de garde partagée des enfants» à l'article 1, dispose: *«Même en cas de séparation des parents l'enfant mineur a le droit de conserver une relation équilibrée et continue avec chacun d'entre eux, de recevoir des soins, l'éducation et l'instruction de la part des deux et d'entretenir des relations constructives avec les ascendants et les parents de chaque branche parentale. «Omissis» (...) «le juge (..) considère de façon prioritaire la possibilité que la garde des enfants mineurs soit donnée aux deux parents (..) L'autorité parentale est exercée par les deux parents. Les décisions les plus importantes pour les enfants sur l'éducation, l'instruction et la santé sont prises d'un commun accord en tenant compte des aptitudes, des inclinations naturelles et des aspirations des enfants. (..)».*

On met en évidence que l'Italie assure la prééminence de l'intérêt de l'enfant dans les décisions concernant l'adoption de l'enfant, sans discriminations fondées sur l'identité



sexuelle ou le sexe, car la loi susmentionnée n. 184 de 1983 prévoit à l'art. 6 que: «L'adoption est autorisée pour les époux mariés depuis au moins trois ans (...)».

On met en évidence que le système juridique ne prévoit pas la possibilité que deux personnes du même sexe se marient.

Par conséquent, même en matière d'adoption, il n'est pas possible de relever des discriminations fondées sur l'orientation sexuelle ou l'identité de genre.

## **V. Travail**

**26. - réponse a)**

réponse e)

i) réponse e)

ii) réponse e)

iii) réponse e)

iv) réponse e)

La législation en vigueur au niveau national, en ce qui concerne l'orientation sexuelle, prévoit la protection contre la discrimination dans le cadre professionnel comme prévu dans le décret législatif n. 216 de 2003 sur «La mise en œuvre de la directive 2000/78/CE sur l'égalité de traitement en matière d'emploi et de conditions de travail» Celle-ci détermine la discrimination directe, indirecte, le harcèlement. Même l'ordre de discriminer est considéré comme une discrimination. Cette protection s'applique aussi bien dans le secteur public que privé et concerne: a) l'accès à l'emploi et au travail, aussi bien indépendant que salarié, y compris les critères de sélection et les conditions de recrutement, b) l'emploi et les conditions de travail, y compris les avancements de carrière, la rémunération et les conditions de licenciement c) l'accès à tous les formes et à tous les niveaux d'orientation et de formation professionnelle, de perfectionnement et de reconversion professionnelle, y compris les stages; d) l'affiliation et les activités au sein des syndicats de salariés, d'employeurs ou d'autres organisations professionnelles et les services fournis par ces mêmes organisations. La norme prévoit, en outre, une protection juridictionnelle spécifique.

Les dispositions anti-discriminatoires susmentionnées ne prévoient pas la protection des discriminations dans le cadre professionnel pour identité de genre.

En ce qui concerne la discrimination envers les transsexuels et transgenres, en fait, la Cour de Justice des Communautés Européennes, dans l'arrêt C-13/94 du 30 avril 1996, a reconnu qu'il faut appliquer les dispositions introduites par la Directive 1976/207/CE sur l'égalité entre les hommes et les femmes (adoptée en Italie avec la loi du 9 décembre 1977, n. 903, par la suite modifiée et complétée par la loi 125 du 10 avril 1991). Par conséquent le champ d'application du principe de l'égalité de traitement entre les hommes et les femmes doit s'étendre aussi aux discriminations à l'égard des transsexuels et des transgenres.

Nous voulons signaler l'innovation introduite par la loi du 4 Novembre 2010, n. 183 (appelée «Collegato lavoro») qui a institué les Comités uniques de protection de l'égalité des chances, du développement du bien-être de ceux qui travaillent et contre les discriminations (Comitati Unici di Garanzia - CUG), pour le combat contre les différentes formes de discrimination dans le cadre professionnel du secteur public.

L'article 21 du «Collegato lavoro» a introduit cet organisme qui réunit les compétences précédemment attribuées sous forme distincte aux Comités pour l'égalité des chances et aux Comités paritaires sur le *mobbing*, prévus par les conventions collectives. Cette disposition

étend la protection à toutes les formes de discrimination, puisque c'est aux autorités publiques que revient le devoir de garantir «la parité et l'égalité des chances entre hommes et femmes et l'absence de toute forme de discrimination, directe et indirecte, liée au genre, à l'âge, à l'orientation sexuelle, à la race, à l'origine ethnique, au handicap, à la religion ou à la langue, dans l'accès au travail, dans le traitement et les conditions de travail, dans la formation professionnelle, dans les promotions et dans la sécurité au travail». Ceci dans l'optique d'optimiser la productivité du secteur public, en améliorant l'efficacité des prestations liée à la protection d'un milieu professionnel caractérisé par le respect des principes de l'égalité des chances, de bien-être organisationnel et par le combat contre toutes les formes de discrimination et de violence morale et psychique pour les hommes et les femmes qui travaillent. L'élargissement des garanties de protection, en plus des discriminations liées au genre, aussi dans les autres domaines est conforme aux indications de l'Union européenne.

Veuillez noter que, dans le cadre des activités du Centre de Contact de l'UNAR, les discriminations en milieu professionnel sont également relevées et traitées.

Quant aux mesures spécifiques pour lutter contre les discriminations, les harcèlements ou d'autres formes d'abus dans le secteur public/privé, veuillez noter que ce domaine est l'une des priorités de la Stratégie nationale en cours de définition, qui prévoira des mesures spécifiques et concrètement réalisables.

On signale, en outre, les activités suivantes de l'UNAR à partir de 2010.

-La table nationale pour l'égalité de traitement et la non-discrimination envers les transsexuels et les transgenres en milieu professionnel.

Une attention particulière a été accordée aux discriminations contre les transsexuels et les transgenres dans le travail. La recherche, financée par le Fonds social européen (dans le cadre du PON GAS FSE axe D "Égalité des chances et non-discrimination", ob. 4,2), a mis en évidence, en ce qui concerne spécifiquement les transsexuels et les transgenres, que le domaine professionnel, en particulier l'accès au travail, présente les majeures critiques aussi bien en termes de fréquence d'épisodes discriminatoires que par leur gravité. D'après les résultats de la recherche, l'UNAR a entamé une confrontation aussi bien avec les organisations syndicales qu'avec les principales associations de transsexuels et transgenres afin d'acquérir des éléments d'information utiles pour la prévention et la lutte contre les discriminations fondées sur l'identité du genre dans le milieu professionnel, surtout en ce qui concerne la protection des personnes en transition, pour réaliser des actions positives dans ce sens. En 2011 se sont déroulés les travaux du «Groupe de travail sur l'égalité de traitement et la lutte contre la discrimination des transsexuels et des transgenres dans le milieu professionnel», formellement constitué auprès de l'UNAR, avec des fonctions de consultation et d'élaboration de propositions, composé par les représentants des organisations transsexuelles et transgenres actives au niveau national et territorial. Le Groupe de travail, sur la base de l'analyse de la situation de l'accès à l'emploi et des conditions de travail des transsexuels et transgenres, a procédé à l'identification des propositions à l'UNAR afin de définir, dans le cadre du programme d'activités annuel, d'activités et d'actions dans le domaine spécifique d'intervention. Le Groupe de travail a également procédé à l'élaboration de matériel et de documentation visant à la rédaction d'un «vademecum» sur les droits en milieu professionnelle destiné aux travailleurs transsexuels et à leurs employeurs.

A cet égard, l'UNAR a lancé des contacts avec les Régions, par le biais de la Conférence des Régions, en tant que compétentes sur les questions liées à la formation et au travail; avec la

Direction générale du Marché de l'Emploi du Ministère du Travail; avec la Conseillère nationale pour l'égalité.

- La collaboration avec la Conseillère nationale pour l'égalité pour le traitement des discriminations contre les transsexuels et transgenres: sur la base des problèmes mis en évidence dans le Groupe de travail mentionné ci-dessus, a été lancée une collaboration avec la Conseillère nationale pour l'égalité pour le traitement des discriminations qui parviennent audit Centre de Contact au détriment des transsexuels et transgenres en matière d'accès à l'emploi, des conditions de travail, de formation et reconversion professionnelle, afin d'identifier aussi des parcours pilote de protection de l'égalité de traitement.

- Dans le cadre de l'activité «Diversité au travail», une initiative créée afin de promouvoir les opportunités de rencontre entre les entreprises et les personnes défavorisées, qui sont souvent victimes de discrimination dans le monde du travail, une attention particulière a été accordée au thème de la discrimination fondée sur l'identité de genre à partir de l'édition du 5 juin 2012 à Milan. Le Forum sur la Carrière «Diversité au travail» prévoit la possibilité pour certains sujets vulnérables (personnes d'origine étrangère, personnes handicapées, transsexuels et transgenres) de rencontrer personnellement les responsables pour la sélection du personnel des entreprises les plus importantes en Italie, de présenter leur CV et d'obtenir des entretiens d'embauche, afin d'en promouvoir l'inclusion sociale et l'emploi. Plus de 30 entreprises sont concernées (parmi lesquelles Microsoft, IBM, Vodafone, Allianz, L'Oréal, Telecom etc.). «Diversité au travail» opère pour soutenir les entreprises dans l'approche à l'égalité des chances, dans la diffusion des bonnes pratiques dans le monde du travail et pour soutenir et divulguer les politiques de diversité et d'inclusion. En outre, veuillez noter que nous avons procédé à l'élimination, dans le curriculum vitae, de la demande d'indication du genre, afin de faciliter l'accès des transgenres.

Une autre activité concerne le lancement de parcours de sensibilisation et d'information adressés aux entreprises (dirigeants et employés) pour le développement de la «gestion de la diversité». L'activité vise également à créer une «journée-carrière» pour les personnes vulnérables (4 jours dans chaque chef-lieu du département), avec la participation de représentants institutionnels et privés, dans lequel peut se réaliser la rencontre entre la demande et l'offre d'emploi.

## **VI. Éducation**

### **27. - Réponse a)**

- i) réponse a)
- ii) réponse a)
- iii) réponse a)
- iv) réponse a)

Le Protocole d'entente entre le Ministre pour l'égalité des chances et le Ministère de l'Éducation, Université et de la Recherche (MIUR), signé le 3 juillet 2009, a mis en place la Semaine contre la violence, une initiative de sensibilisation, d'information et de formation qui aura lieu dans les écoles de chaque ordre et chaque niveau au cours du mois d'octobre de chaque année. D'après le Protocole, l'initiative s'adresse aux différentes composantes de l'école (élèves, parents, enseignants et administrateurs) sur le territoire national.

Dans l'édition 2012/2013 les activités de sensibilisation, d'information et de formation impliquent plus de 200 écoles, en assurant une distribution équitable sur le territoire national.

En janvier 2013 un nouveau protocole d'entente a été signé entre le Ministre pour l'égalité des chances et le Ministre de l'Éducation, de l'Université et de la Recherche, avec lequel on a étendu les activités de la Semaine aux diverses formes de discrimination, en conformité avec les activités déjà mises en place par le Département pour l'égalité des chances, avec le soutien de l'UNAR.

Les domaines d'intervention concernant toutes les formes de discrimination et de violence (genre, race /origine ethnique, religion, handicap, âge, orientation sexuelle et identité de genre) ont été mis en place, avec une attention particulière pour le phénomène de l'intimidation (bullying) d'inspiration homophobe et transphobe aussi. On prévoit la mise en valeur des journées commémoratives / de célébration internationales relatives aux différentes discriminations, y compris la Journée internationale contre l'homophobie (17 mai). Lors de la Semaine contre la violence, des fiches d'information sur les différents types de violence, y compris celle liée au genre et à l'homophobie, ont été préparées et adressées à toutes les écoles.

Nous signalons que, lors de la Journée internationale contre l'homophobie, le Ministre de l'Éducation a publié une circulaire spéciale destinée à toutes les écoles.

Il est utile de rappeler que, parmi les tâches de l'école, il y a celle de contribuer avec ses propres moyens à l'élimination de toutes les formes d'intolérance, de violence, des préjugés et de la discrimination et que l'école italienne favorise la croissance commune des jeunes en évitant les divisions, les discriminations et les préjugés et favorise un enseignement basé sur la connaissance des droits fondamentaux, sur l'éducation à la légalité, le respect et la bienveillance.

Il faut en outre remarquer que les initiatives et les activités visant à lutter contre toutes les formes de violence et d'intimidation dans les écoles et à diffuser la culture de la légalité parmi les jeunes sont parmi les interventions prioritaires de ce Ministère, engagé dans l'élimination des obstacles qui empêchent le développement et la mise en valeur de la personnalité humaine et le pleine potentialité des relations.

Il est également un des objectifs du Ministère de l'Éducation, Université et Recherche d'améliorer ce qui est indiqué dans le Protocole d'Entente avec les Associations nationales des parents, parmi lesquelles l'Agedo, qui prévoit la conception et l'expérimentation d'initiatives visant à prévenir et combattre tout phénomène de violence, d'intolérance parmi les jeunes au sein de l'institution scolaire et de parcours pilotes pour la mise en valeur de la diversité dans l'optique de considérer unique et irremplaçable l'identité spécifique de chaque élève, ainsi que de promouvoir et de soutenir des projets culturels et éducatifs qui contribuent à la prévention et à la compréhension du phénomène de l'intimidation, y compris les actes d'intolérance raciale ou religieuse, de la violence homophobe et de la violence juvénile sous toutes ses formes physiques et psychologiques.

On rappelle qu'on a activé au sein du Ministère de l'Éducation un numéro vert national (800 66 96 96) pour l'écoute et la consultation en cas de violence et d'intolérance - de toute forme - à l'école, qui jusqu'à présent a rempli quelques fonctions importantes:

- le service a un rôle de médiateur entre l'école et la famille pour la gestion des cas difficiles et très conflictuels ;
- à travers le numéro vert il est possible de faire émerger un certain nombre de cas «souterrains». Plusieurs enfants et jeunes qui n'avaient pas le courage de déclarer à leurs parents d'être victimes d'intimidation – même homophobe - par l'anonymat se sont sentis libres de demander de l'aide et du soutien;
- on a également suivi beaucoup de cas pendant longtemps, en fournissant du soutien et des conseils aux parents, aux enseignants, aux administrateurs scolaires et aux étudiants sur les

stratégies possibles pas encore mises en place dans la situation spécifique et sur les ressources locales, scolaires et des observateurs régionaux, qui auraient pu être activées;

- une autre fonction importante est celle de constituer un observatoire permanent sur la qualité et l'évolution du phénomène et sur les projets de prévention qui sont menées progressivement sur le territoire.

- L'expérience acquise jusqu'à présent nous a permis de développer un modèle de réponse téléphonique et un modèle d'analyse du phénomène, qui est une bonne pratique pour identifier les indicateurs de risque de ce phénomène en vigueur actuellement aussi bien en Italie que dans d'autres pays.

- en outre, il a été possible de recueillir de nombreux signalements sur le malaise en générale présent dans l'école.

On a également institué des Observatoires régionaux permanents, qui non seulement veilleront sur le phénomène du harcèlement scolaire et contrôleront la réalisation des activités par les diverses écoles, mais auront aussi pour tâche de promouvoir des parcours d'éducation à la légalité, dans les écoles, par des activités scolaires et extrascolaires.

Ces activités se fondent sur l'éducation à la légalité et le respect en tant que prise de conscience des règles de base de la communauté, et aident à soutenir les activités qui permettent de considérer la diversité comme un paradigme de l'identité de l'école et comme une opportunité pour ouvrir le système éducatif tout entier à toutes les différences.

Pour la première fois, au sein de la Direction Générale pour les étudiants au Ministère de l'Éducation on a créé un Bureau consacré à «La participation scolaire, la légalité et la citoyenneté» avec la tâche de définir les interventions à l'appui de la condition étudiante et de promouvoir une culture de la légalité à l'intérieur et à l'extérieur de l'école, y compris les mesures de prévention et de lutte contre l'harcèlement et la promotion de l'éducation à la paix et aux droits de l'homme, ainsi que les parcours de formation pour la promotion de la citoyenneté active.

En matière de mesures disciplinaires envers les élèves qui commettent des actes graves d'harcèlement, de violence et d'outrage à la dignité des personnes, depuis l'entrée en vigueur du décret du 21 novembre 2007, n. 235, avec effet à compter du 2 janvier 2008, les articles 4 et 5 du décret du Président de la République Italienne 24 juin 1998, n. 249 «Statut des élèves de sexe féminin et masculin» ont été modifiés.

Les modifications permettent aux écoles de punir avec plus de rigueur et de sévérité que dans le passé les cas les plus graves de violence et d'harcèlement des élèves. Selon un principe de proportionnalité entre la sanction qu'on peut infliger et l'infraction disciplinaire commise, on peut adopter de nouvelles mesures disciplinaires, particulièrement sévères, face à des conduites répréhensibles et caractérisées par un degré élevé de non-valeur sociale.

En particulier:

- à l'égard des élèves qui commettent, à l'école, des infractions qui violent la dignité et le respect de la personne humaine ou qui compromettent la sécurité des personnes il sera possible d'imposer une sanction d'expulsion de l'étudiant pour une période même au-delà de 15 jours;

- à l'égard des étudiants ayant les conduites susmentionnées au point 1), dans les cas où il y a la récidivité, d'actes de violence grave ou autrement caractérisés par une telle gravité qu'elle peut provoquer une alarme sociale élevée, il sera possible de disposer l'éloignement de l'élève jusqu'à la fin des cours;

- dans les cas les plus graves, il sera possible de disposer l'exclusion de l'élève du scrutin final ou la non admission à l'examen d'état final.

A l'égard des élèves qui commettent des infractions disciplinaires moins graves, lesquelles doivent être spécifiquement définies par les règlements d'établissement de chaque école, on continue à appliquer les dispositions précédentes: l'éloignement de la communauté scolaire pour une période non supérieure à 15 jours, des sanctions éducatives de caractère réparateur impliquant des activités de nature sociale ou culturelle et, en général, au bénéfice de la communauté scolaire. Ce dernier type de sanctions doit également accompagner les sanctions prévues pour les cas les plus graves énumérés aux 3 points précédents.

Avec la signature du décret ministériel n. 5 du 16 janvier 2009 on a également réglementé les buts, les caractéristiques et les effets de l'évaluation de la conduite des élèves de sexe féminin et masculin de tous les niveaux, en prévoyant automatiquement, en cas de notation du comportement inférieur à la suffisance, à savoir 6/10, obtenue par l'étudiant/e à la fin de l'année scolaire, qu'il ou qu'elle ne soit pas admis/e aux cours de l'année suivante ou à l'examen final de passage.

L'introduction du «Pacte éducatif de co-responsabilité» entre l'école, les familles et les étudiants a également rendu possible la participation des parents. Avec cet outil les familles, dans le cadre d'une définition plus détaillée et partagée des droits et des devoirs des parents envers l'école, prennent l'engagement de répondre directement des actions de leurs enfants au cas où ils violeraient les devoirs prévus dans le règlement d'établissement et dans le Statut des étudiants.

Sous cette optique, par conséquent, la qualité des relations, le climat scolaire et les différentes façons dont on vit l'école, prennent une importance fondamentale.

## **VII Santé**

### **28. - Réponse b)**

Nous présentons ci-dessous quelques exemples de bonne pratique dans ce domaine :

Plan National Prévention (PNP) :

Projet : "Prévention du sida et des autres maladies sexuellement transmissibles dans les lycées" Région Vénétie

Projet : "promotion du bien-être et prévention du mal-être au sein des adolescents et des jeunes : la prévention des comportements sexuelles à risque parmi les adolescents étrangers" Région Emilie Romagne

Projet : "La santé de la population immigré : le contrôle de la part des Systèmes Sanitaires Régionaux – Surveillance et contrôle des maladies infectieuses dans les Centres pour Immigrés" Région Calabre

Projet Ministère de la Santé / Institut Supérieur de Santé :

"Expérimentation d'un modèle d'intervention de prévention de l'infection du virus HIV destiné à un publique jeune selon les actions de 'bonne pratique' indiqué par *European Center for Disease Control (ECDC)*".

Projet Ministère Santé/CCM Centre National pour la prévention et le contrôle des maladies : "Lignes d'intervention transculturelles dans l'assistance de base et dans le service maternel infantile".

### **29. - Réponse a)**

**30. - Réponse b)**

En ce qui concerne la législation il existe les procédures énoncées dans la loi du 14 avril 1982, n. 164 qui prévoit : “Dispositions en matière de rectification d’attribution du sexe” (telle que modifiée par l’article 34 al.39 du d.lgs. 150 du 1er septembre 2011). Le parcours est long et articulé et suppose que le demandeur ait un accès effectif aux services, autrement dit un centre qui le prenne en charge du point de vue psychologique, pharmacologique et éventuellement chirurgical.

Le remboursement des frais relatifs à ce parcours, dans toutes le Régions, est à charge des Services Sanitaires Régionaux contenu qu’il s’agit néanmoins des soins hospitaliers.

Toutefois, il existe une zone d’ombre lié à la prescription de médicaments stéroïdiens, prescrits ‘off-label’, pour le quels le patient doit être continuellement contrôlé et qui à long terme peuvent avoir des effets collatéraux ; en effet, ces médicaments devraient être prescrits par des centres spécialisés multidisciplinaires qui prennent en charge le patient. Actuellement, ces centres ne sont pas représentés de manière uniforme sur le territoire national.

**VIII Habitation**

**31. - Réponse e)**

Le système juridique italien ne prévoit aucune disposition discriminatoire qui limite le droit à l’habitation et à la propriété. Ces droits sont garantis constitutionnellement.

Avec la réforme du Titre V de la Constitution de 2001 l’Etat a la compétence exclusive en matière de détermination des niveaux essentiels des prestations concernant les droits civils et sociaux qui doivent être garantis sur le territoire national entier.

Les politiques d’hébergement sont de la compétence des législateurs régionaux.

**32. - Réponse c)**

**IX Sport**

**33. - Réponse b)**

En ce qui concerne le foot, le Code de Justice Sportive à l’art. 11 (Responsabilité pour les comportements discriminatoires) dispose que :

“1. Toute conduite qui, directement ou indirectement, comporte une offense, une dénigration ou une insulte en raison de la race, de la couleur, de la religion, de la langue, du sexe, de la nationalité, de l’origine territoriale ou ethnique, ou qui constitue une propagande idéologique interdite par la loi ou qui provoquent des comportements discriminatoires constitue un comportement discriminatoire, punissable en tant qu’illicite”.

Des sanctions sont prévues aussi bien à l’encontre des joueurs que des dirigeants, que des abonnés de la société, que des supporters.

Certaines sociétés sportives de foot ont promu des campagnes de sensibilisation (ex. Hellas Verona). D’autres initiatives ont été prises individuellement par des joueurs.

Certaines sociétés ont inséré la lutte aux discriminations à l’intérieur du propre Code éthique (ex. F.C. International Milan dans son propre code éthique affirme qu’il s’engage, dans la gestion du personnel, à offrir des chances de travail égales sans discrimination sur la base de

l'orientation sexuelle ; le Code Ethique de l'AC Fiorentina prévoit expressément de s'engager à créer un cadre de travail qui exclut aussi les formes de discrimination et le harcèlement relatifs aux tendances sexuelles).

### **X Droit d'asile**

#### **34. - Réponse a)**

La protection des demandeurs d'asile pour motifs d'orientation sexuelle trouve son fondement dans l'art. 10, alinéa III, de la Constitution italienne qui établit que « l'étranger, auquel il est interdit dans son pays d'exercer effectivement les libertés démocratiques garanties par la Constitution italienne, a le droit d'asile sur le territoire de la République selon les conditions établies par la loi ».

Avec le Décret législatif n. 251 de 2007, mettant en œuvre la Directive 2004/83/CE en matière de définition des critères pour l'attribution du qualificatif de réfugié, le système juridique italien considère la persécution pour des raisons liées à l'orientation sexuelle comme motif de demande de protection internationale, en l'articulant sous les deux formes de reconnaissance du statut de réfugié et de la protection subsidiaire, qui est attribuée par les Commissions Territoriales à la suite d'un examen des demandes individuelles et d'un entretien individuel avec le demandeur d'asile.

En particulier, l'art. 8 détermine parmi les motifs de persécution à la lettre d) l'appartenance à un « groupe social particulier », défini comme « celui constitué par des membres qui partagent une caractéristique innée ou une histoire commune, qui ne peut pas être changée ou qui partagent une caractéristique ou une foi qui est tellement essentielle pour l'identité ou la conscience qu'une personne ne devrait pas être obligée d'y renoncer, ou bien celui qui possède une identité différente dans le Pays d'origine, car il y est perçu comme différent par la société environnante. En fonction de la situation dans le Pays d'origine, un groupe social particulier peut être déterminé sur la base de la caractéristique commune de l'orientation sexuelle, étant bien entendu que cette orientation n'inclut pas des actes pénalement répréhensibles au sens de la législation italienne.

Dans l'évaluation des demandes d'asile basées sur les motifs d'orientation sexuelle et identité de genre, les Commissions Territoriales pour la reconnaissance de la protection internationale prennent en considération des lignes directrices émises par l'UNHCR (novembre 2008) sur ce thème spécifique.

Le système juridique national établit que le demandeur d'asile est autorisé à rester sur le territoire de l'Etat jusqu'à la décision sur la demande de la part de la Commission territoriale compétente (art. 7 du décret législatif n. 25/2008 mettant en œuvre la directive 2005/85/CE portant « Normes minimales pour les procédures qui s'appliquent dans les Etats membres pour la reconnaissance et la révocation du statut de réfugié »).

Un système de protection pour les demandeurs d'asile et les réfugiés (SPRAR) est prévu et constitué par le réseau des autorités locales et coordonné par le Ministère de l'Intérieur. Au niveau territorial les autorités locales, avec le support des réalités du secteur tertiaire, garantissent des interventions d'« accueil intégré » qui vont au-delà de la simple distribution d'aliments et d'hébergement, en prévoyant de façon complémentaire également des informations, accompagnement, assistance et orientation, à travers la construction de parcours individuels d'insertion socio-économique.



Les demandeurs sont hébergés dans des centres d'accueil spécifiques (CARA), dans les cas prévus par l'article 20 du décret législatif n.25/2008 (par exemple quand il est nécessaire de vérifier la nationalité ou l'identité du demandeur d'asile qui n'est pas en possession de documents de voyage ou d'identité).

La Commission nationale pour le droit d'asile effectue périodiquement la formation et la mise à jour - même sur le sujet spécifique – des membres des Commissions territoriales pour la reconnaissance de la protection internationale, tel que prévu à l'article 5 du décret législatif n.25/2008.

### **35. - Réponse a)**

Le Décret législatif n.286/1998, « texte unique des dispositions concernant la réglementation de l'immigration et dispositions sur la condition de l'étranger » et modifications suivantes, interdit, à l'art.19, al.1, d'expulser ou de repousser l'étranger vers un pays dans le quel celui-ci peut faire l'objet de « persécution pour des motifs de race, de sexe, de langue, de nationalité, de religion, d'opinions politiques, de conditions personnelles ou sociales, ou s'il risque d'être renvoyé vers un autre Etat dans lequel il ne serait pas protégé contre la persécution ». Même si l'orientation sexuelle n'est pas expressément mentionnée, cette disposition a été constamment interprétée comme si ce motif de persécution était prévu.

Au cas où la demande d'asile est rejetée, la Commission territoriale, compte tenu de la situation en vigueur dans le Pays d'origine ou de provenance, en présence de graves motifs de caractère humanitaire, transmet les documents au Préfet pour l'éventuelle délivrance d'un permis de séjour humanitaire (art.5 du décret législatif n.286/1998).

En général, le principe de non refoulement s'applique, reconnu au niveau international, et pour lequel il existe une jurisprudence bien consolidée de la CEDH à laquelle adhère également le système italien, en ce qui concerne l'interdiction de traitements inhumains et dégradants et la protection du droit à la vie privée et familiale, comprenant également l'orientation et la vie sexuelle des personnes.

## **XI Organismes nationaux pour la protection des droits humains**

### **36. - Réponse a)**

L'organisme pour la lutte contre les discriminations opérationnel en Italie est le bureau pour la promotion de l'égalité de traitement et l'élimination des discriminations fondées sur la race ou sur l'origine ethnique, plus brièvement dénommé UNAR – Bureau National Anti Discriminations Raciales.

L'UNAR, créé par décret législatif n.215 du 9 juillet 2003 en application de la directive communautaire n.2000/43/CE, a pour fonction de garantir, en pleine autonomie de justice et d'impartialité, l'effectivité du principe d'égalité de traitement entre les personnes, de veiller sur la mise en application des instruments de protection contre les discriminations mais de contribuer également à éliminer les discriminations fondées sur la race et l'origine ethnique, en analysant les différentes conséquences que celles-ci ont sur le genre et sur les autres facteurs de la discrimination et leur rapport avec les autres formes de racisme de caractère culturelle et religieux, au sens de l'art.7 al.3 du décret législatif n.215 du 9 juillet 2003 et du DPCM du 11 décembre 2003.

A partir de 2010, l'UNAR a élargi les propres compétences au différents facteurs de discrimination (handicap, religion, convictions personnelles, âge, orientation sexuelle et identité de genre) en exerçant les tâches de Equality Body, en conformité avec les indications européennes, à travers les directives annuelles pour l'action administrative du Ministère pour l'égalité des chances.

Le Décret Ministériel d'organisation interne du Département pour l'égalité des chances du 4 décembre 2012 établi que l'UNAR « élabore des propositions, des actions de système et de méthodologies pour l'assistance légale et le support aux victimes de comportements discriminatoires, qui, avec référence particulière à la race et à l'ethnie, peuvent être reliés à d'autres facteurs et au phénomènes des discriminations multiples ».

Dans cette optique, l'UNAR, est constamment engagé dans la programmation et la mise en application d'interventions en matière anti discriminatoires pour motif d'orientation sexuelle et identité de genre. Cette intervention s'intègre dans le contexte élargi de actions de lutte contre les différentes formes de discrimination qui prévoit une approche intégrée et synergique, mais aussi des interventions adressées à des cibles spécifiques.

Dans ce contexte s'insèrent des actions spécifiques réalisées par le bureau en matière de prévention et de lutte contre les discriminations basées sur l'orientation sexuelle et sur l'identité de genre, et qui se sont concrétisées d'une part en activités de sensibilisation, information et formation pour intervenir sur un plan culturel pour casser les stéréotypes et les préjugés et d'autre part en actions de lutte contre les discrimination à l'égard des personnes LGBT.

Par le biais du Contact Center ([www.unar.it](http://www.unar.it) n. vert 800 90 10 10) les signalements de discrimination sont automatiquement recueillis même pour orientation sexuelle et identité de genre, adressés par les victimes ou les témoins auxquels est fourni une information adéquate et une consultation. Le contrôle des media et du web est aussi effectué automatiquement.

## **XII Discriminations multiples**

**37. - Réponse b)**

### **SECTION 3 – SUITES**

**38. Nous suggérons :**

- Le renforcement de la UNIT LGBT du Conseil de l'Europe afin de garantir la continuité des actions et l'efficacité du travail ;
- Le support à l'adoption de la part des Etats membres d'une stratégie nationale pour la mise en application de la Recommandation ;
- La création d'un observatoire spécifique sur la discrimination envers les personnes LGBT

**39. Nous considérons que le Conseil de l'Europe devrait effectuer un contrôle périodique de la Recommandation avec une attention particulière sur la condition des transsexuels et transgenres.**

**LATVIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

**Overall, the implementation of the Recommendation in Latvia is adequate.**

**It should be noted that the Recommendation has been translated into Latvian, thus raising awareness of its content.**

**In practice, however, the number of complaints related to discrimination on grounds of sexual orientation or gender identity remains low. Furthermore, the application of existing legal provisions is not always satisfactory, leaving room for progress. Therefore, Latvia has undertaken several initiatives and is planning to implement them to further raise awareness on LGBT issues and promote tolerance towards LGBT persons. Work of the NGOs has to be commended; cooperation between the NGOs and State institutions has ensured implementation of several initiatives. In keeping good cooperation with the NGOs, a meeting was organised with the NGOs to discuss the present questionnaire, Latvia's replies and the situations of LGBTs in Latvia.**

**Work is still in progress to ensure full implementation of the Recommendation and close the existing gaps. For example, there is no legal recognition of same-sex partnerships; the rights and obligations of the same-sex partners are not equalized with those of heterosexual couples.**

**On 2 February 2011 the Ministry of Culture of the Republic of Latvia expressed its interest and willingness to take part in the Council of Europe Project "Combating Discrimination on Grounds of Sexual Orientation and Gender Identity". The Recommendation (2010)5 constitutes the main framework for the project.**

**As regards the legislation, Article 204<sup>17</sup> of the Latvian Administrative Violations Code provides a fine in an amount of LVL 100 to LVL 500 (EUR 141 – EUR 708) to be imposed for a violation of the prohibition of discrimination as specified in the Latvian legislation.**

**According to Section 149<sup>1</sup> of the Criminal Law a fine not exceeding thirty times the minimum monthly wage may be imposed for discrimination based on racial or ethnic origin or for violation of prohibition of discrimination as specified in other laws, if committed repeatedly within a one year period. For a person who commits the same acts, if by such acts substantial harm is caused or they are associated with violence, fraud or threats, or where they are committed by a group of persons or a State official, or a responsible employee of an undertaking (company) or organisation, or if it is committed through automated data processing systems, the applicable punishment is deprivation of liberty for a term not**

exceeding two years or community service, or a fine not exceeding fifty times the minimum monthly wage.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

**Within the framework of the Council of Europe Project “Combating Discrimination on Grounds of Sexual Orientation and Gender Identity” the Ministry of Culture organised start-up seminar in Latvia on 15 November 2012. The work of the seminar was divided in three sessions. One of the sessions included presentations from the local LGBT NGO, academics, and government representatives who made an assessment of the situation regarding discrimination on grounds of sexual orientation and gender identity.**

**During the seminar attitudes of society towards LGBT persons were discussed; researchers indicated several facts reflecting the general situation. An opinion poll showed the following attitudes:**

**- How would you personally feel about having a homosexual as a neighbour? On a 10-point “comfort scale” respondents in Latvia are less comfortable (5.5).**

**- How would you react if you found out that your colleague is homosexual? – 45.1% of respondents said their relationship would not change, 28% would decrease contacts with the colleague.**

**- What do you think about homosexuals and homosexual relationships:**

**- Both are condemnable (24,5%)**

**- No objections against homosexuals, but homosexual relationships are condemnable (29,3%)**

**- Neither homosexual relationships, nor homosexuals are condemnable (31, 8%)**

**- N/A – 14,3%**

**Among youth (aged 15-24) 13,7% regard both - homosexuals and homosexual relationships are condemnable.**

Are there measures in place to redress any such discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

**During an international seminar “Equality, Non-discrimination, Inclusive Policy – European and International Practice” on 1 June 2012 participants discussed equal treatment and the prevention of discrimination in various environments and in the society as a whole. The seminar also looked at the case law and practice of the European Court of Human Rights and the application of domestic law in Latvia and other countries. Examples of best practices were identified as to the facilitation of tolerance in the society, especially as a result of activities by the non-governmental sector.**

**Within the framework of the Council of Europe Project “Combating Discrimination on Grounds of Sexual Orientation and Gender Identity”, on 15 November 2012 the Ministry of Culture organised a start-up seminar. One of the sessions of the seminar included workshop for representatives of ministries and State institutions in a form of a roundtable discussion answering the following questions: how to improve situation of LGBT and other minority groups; what improvements are needed in policy planning documents and legislation; what is the vision for a better public administration for LGBT persons.**

**As regards legislation, Article 91 of the Constitution of the Republic of Latvia states that all human beings in Latvia shall be equal before the law and the courts and human rights shall be realised without discrimination of any kind.**

**Prohibition of discrimination on any ground is specifically defined in only three areas: labour law, social security law and law on the execution of sentences.**

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

**The following legislative and policy planning documents have been adopted since the adoption of the Recommendation 2010(5):**

- the Out-of-court Debt Recovery Law in Article 10 states that in communication with the debtor it is prohibited to use aggressive forms of communication, including to threat and take action that infringes the person's gender affiliation and sexual orientation;
- the Law on the Prohibition of Discrimination against Physical Persons – Economic Activities Performers contains prohibition of differential treatment of individuals performing or carrying out economic activities; it sets out seven prohibited grounds of discrimination, namely, sex, race, ethnicity, disability, age, religion and sexual orientation;
- amendments to the Law on Consumer Rights' Protection, adopted by the Government on 19 June 2012, provide supplement to the list of prohibited grounds of discrimination in the Section "Prohibition of differential treatment" of the Law. Thereby, not only the person's sex, race, ethnic origin and disability, but also age, religion and sexual orientation are to be listed as prohibited discrimination grounds. The draft law is still to be discussed in the Parliament;
- Guidelines on National Identity, Civil Society and Integration Policy for 2012–2018, adopted by the Government on 20 October 2011 define the integration policy strategy; the Action Plan of the Guidelines, in the Section "Promotion of inclusion of socially excluded groups into the society and preventing discrimination", envisages activities targeted to combat discrimination, e.g., promotion of intercultural dialogue skills in the field of education, development of non-discrimination monitoring and evaluation system, public information measures and training of professionals of various supporting professions etc.

**Latvia will continue to take measures, including training, seminars etc., to improve the LGBT situation.**

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

**The Action Plan of the Guidelines on National Identity, Civil Society and Integration Policy for 2012–2018, in the Section “To promote inclusion of socially excluded groups into the society and to prevent discrimination”, envisages activities targeted at combating discrimination, including development of non-discrimination monitoring and evaluation system.**

**Within the framework of the Council of Europe Project “Combating Discrimination on Grounds of Sexual Orientation and Gender Identity” the Ministry of Culture together with the NGOs is planning to organise training workshops for social workers, journalists and the police, as well as a workshop on data collection regarding discrimination on grounds of sexual orientation and gender identity.**

**Data on hate crimes and hate-oriented incidents can be collected from the Court’s Information System. However, at the moment this data is not disaggregated depending on the motive for the perpetrator.**

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Article 92 of the Constitution states that, in the event of a groundless offense of rights everyone has the right to a corresponding compensation. The Constitutional Court has further interpreted this provision and stated that the right to receive compensation does not depend on the existence of *lex specialis* granting a right to receive compensation for a particular breach of rights. This approach has been followed by administrative courts, where Article 92 of the Constitution has been applied directly as a legal basis for granting a compensation for non-pecuniary damage.**

**Even though all the laws do not contain provisions regarding the right to receive compensation in the case of breach of the article on prohibition of discrimination, this right is provided for in general laws. Article 1635 of the Civil Law states that every delict, that is, every wrongful act *per se*, as a result of which harm has been caused (also moral injury), shall give the person who suffered the harm therefrom the right to claim satisfaction from the infringer, insofar as he or she may be held at fault for such act. The term ‘act’ is used within the widest meaning, including not only acts, but also the failure to act, that is, inaction. By moral injury is understood physical or mental suffering which is caused as a result of unlawful acts committed to the non-financial rights or non-financial benefit delicts of the person who suffered the harm. The amount of compensation for moral injury shall be determined by a**

court at its own discretion, taking into account the seriousness and the consequences of the moral injury.

Article 22 of the Criminal Procedure Law provides that a person upon whom harm has been inflicted by a criminal offence shall, taking into account the moral injury, physical suffering, and financial loss thereof, be guaranteed procedural opportunities to request and receive moral and financial compensation.

The Law on State Compensation to Victims ensures that a person who has been recognized as a victim in a criminal proceeding has the right to receive State compensation.

Article 92 of the Administrative Procedure Law provides that everyone is entitled to claim due compensation for financial loss or personal harm, including moral injury, which has been caused him or her by an administrative act or an actual action of an institution.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

**The prejudices existing in the society and historically formed views on marriage, family and its values can be seen as a barrier to the successful implementation of the Recommendation. Furthermore, it has to be admitted that legislative provisions are not always applied and interpreted in a manner originally envisaged by the legislator, and taking into account the most recent developments in international and human rights law.**

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

**One of the measures to disseminate information on the provisions of the Recommendation was the start-up seminar of the Council of Europe Project "Combating Discrimination on Grounds of Sexual Orientation and Gender Identity" held on 15 November 2012 which brought together representatives of many State institutions dealing with non-discrimination issues in Latvia.**

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**As regards the legislation, Article 8 of the Criminal Procedure Law ensures the principle of equality by stating that the Law shall determine a uniform procedure for all persons, irrespective of their origin, social and financial situation, employment, citizenship, race, nationality, attitudes towards religion, sex, education, language, place of residence, and other conditions, involved in criminal proceedings. Article 6 of the Law stipulates that the official who is authorised to pursue criminal proceedings has a duty, within his or her competence, to**

initiate criminal proceedings and to lead such proceedings to a fair regulation in accordance with the provisions of the Criminal Law in each case where the cause and ground for initiating criminal proceedings have become known.

Within the framework of the project “Combating Discrimination on Grounds of Sexual Orientation and Gender Identity” the Council of Europe organised a seminar “Police Training relating to LGBT Issues” on 14-15 December 2012. During the seminar State representatives, NGOs and lecturers from police academies gave presentations about best practice in police training from their own perspective. One of the aims was to ensure the trust between police and the LGBT community.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Discussions are taking place on the necessity to expand the list of aggravating circumstances in Article 48 of the Criminal Law.**

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**As regards the procedure, Article 369 of the Criminal Procedure Law states that the basis for initiation of a criminal proceeding is an application to an investigating institution, Prosecutor’s Office, or the court, containing information on a possible criminal offence or obtainment of such information from an institution in charge of pursuing criminal proceedings. The information may be submitted by the victim of a criminal offence, as well as by any other physical or legal person not being the direct victim.**

**As mentioned above (response to the question no.10; also see response to question no.12), a seminar on police training was organised in order to strengthen the trust between the law enforcement agencies and LGBT community, which, in turn, would encourage proper reporting on hate crimes and incidents.**

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐



Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**From 2010 the State Police College together with the NGO "Mozaika" annually organizes training for police officers on issues of discrimination on different grounds (including sexual orientation and gender identity). Each training session gathers together about 55 police officers of different rank. After the training lecturers make an overall assessment of the program and the training process.**

**Human rights' training to judges is provided on a regular basis. In addition, annual analysis of the case law of the European Court of Human rights and the Court of Justice of the European Union is made and presented to judges.**

**The State Police and the State Police College have developed close cooperation with NGOs to raise awareness of the police on identification of hate crimes and preventive measures. In 2012 reacting to an NGO initiative the State Police College organised two seminars on Identification and Prevention of Hate Crimes. 44 officers took part in the seminars which included the following issues:**

- the concept of a hate crime; delimitation of hate crimes from other crimes,
- criminal characterisation of hate crimes and qualification problems,
- characterisation and motives of persons committing hate crimes,
- psychological consequences of hate crimes; assistance measures,
- preventive measures in combating hate crimes,
- the situation of hate crimes in Latvia; discussion with the NGOs.

**On 24 October 2012, the Riga Graduate School of Law in cooperation with several ministries organised a Conference „Towards Inclusive Society without Hatred: Experience, Achievements and Challenges in Latvia”, which was opened by the President of Latvia. The conference was aimed at media representatives, journalists, politicians, members of the judiciary and education experts. The objective of the conference was to analyse experience, achievements and challenges in Latvia on its way towards inclusive and tolerant society in the context of hate speech, and to strengthen capacity of the state to protect people from discrimination and hate. The situation in Latvia, inter alia, was analysed in a context of international standards and experience. The conference speakers addressed such aspects as the role of mass media in preventing hate crime, ways of improving the work of courts and law enforcement institutions in fighting hate crimes, and empowering the education system to foster tolerance and prevent discrimination, hate crime and political radicalism. Several speakers indicated a necessity to review the existing legislation to bring it into conformity with recent international human rights provisions.**

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**As regards legislation, Articles 100 and 116 of the Constitution of Latvia establish the right to freedom of expression, which includes freedom to acquire, retain, and disseminate information, to express views; this right may be limited in the cases provided for by law, to protect other human rights, democratic government, public safety, welfare and morals. Article 7 of the Law on the Press and other Mass Media states that mass media shall be prohibited to publish information promoting violence and the overthrow of the prevailing order, advocates war, cruelty, racial, national or religious superiority and intolerance, and incites to the commission of other crimes; it is prohibited to publish information containing defamation or insulting the honour and dignity of a physical or legal person.**

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

**As regards legislation, the Law on Associations and Foundations, the Law on Trade Unions, the Law Political Parties provide for the right of freedom of association, regardless of a person's gender identity or sexual orientation. The right of association (official register of a legal person) may be limited if the association, its aims or actions are prohibited by law; there is no prohibition of freedom of association based on sexual orientation or gender identity. There is no provision regarding access to public funding contained in legislation, however, there are no restrictions in this regard either, including for organizations working in this area.**

**Latvia does not have a single registry of NGOS, which would classify the organisations according to their area of activities.**

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**There is a general provision contained in several laws and regulations (e.g. the Law on Development of Planning System, Regulation No.970 of the Cabinet of Ministers of 25 August 2009, on the Procedure for Public Participation in the Process of Development Planning, Instruction No.19 of the Cabinet of Ministers of 15 December 2009, on Initial Impact Assessment Procedure of Draft Laws) for public participation and involvement of interested groups in the process of drafting legislation.**

**During the process of organising the start-up seminar of the Council of Europe Project "Combating Discrimination on Grounds of Sexual Orientation and Gender Identity" the Ministry of Culture invited the relevant stakeholders working with the issues of human rights of LGBT persons to take part in that preparation process.**

**Furthermore, NGOs were consulted when drafting replies to this particular questionnaire.**

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

**Article 100 of the Constitution of Latvia guarantees the right to freedom of expression, which includes freedom to acquire, retain, and disseminate information, to express views. The Law on the Press and other Mass Media provides for independence of the press, namely, any person, group of persons, authorities of State institutions and all types of organisations and undertakings in the Republic of Latvia have the right to freely express their views and opinions, disseminate announcements in the press and other mass media, and by such means receive information on societal life or any issue they are interested in.**

**The Law on Meetings, Street Processions and Pickets guarantees the right to freedom of peaceful assembly in meetings, marches and pickets. Any restriction to this right is examined by court. There have been cases where courts have lifted decisions of the Riga municipality prohibiting holding prides.**

19. Do 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?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Baltic Pride 2012 took place in Riga from 30 May to 2 June 2012. The Baltic Pride was a series of various activities and events including the pride march, international seminar "Equality, Non-Discrimination and Inclusive Policy –European and International Practice", various workshops and cultural events. The Pride was held without any major incidents that might have caused harm, violate or in other way disturb the march.

The State Police ensures public order during pride. However, NGOs have stated that during pride some incidents have taken place without appropriate response from law enforcement officers.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**The Criminal Law does not contain provisions that may lead to a discriminatory application with respect to sexual orientation or gender identity. At the same time some of the terminology contained in the Criminal Law may be regarded as contributing to stigmatisation.**

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

**The Latvian legislation provides administrative as well as criminal liability for violations of provisions relating to personal data processing.**

**The Law on Personal Data Protection strictly regulates the processing of personal data. Information regarding a person's health or sexual life is considered to be sensitive personal data. The Data State Inspection is the responsible authority in the field and is entitled to claim false or demand deletion or destruction of unlawfully obtained data.**

**Article 11 of the Law on Personal Data Protection states that processing of sensitive personal data is prohibited, except in cases where:**

- 1) the data subject has given his or her written consent for the processing of his or her sensitive personal data;**
- 2) special processing of personal data, without requesting the consent of the data subject, is provided for by regulatory enactments, which regulate legal relations regarding employment, and such regulatory enactments guarantee the protection of personal data;**
- 3) personal data processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent;**
- 4) personal data processing is necessary to achieve lawful, non-commercial objectives of public organisations and their associations, if such data processing is only related to the**

- members of these organisations or their associations and the personal data are not transferred to third parties;
- 5) personal data processing is necessary for the purposes of medical treatment, the provision of health care services or the administration thereof and the distribution of means of medical treatment;
  - 6) the processing concerns such personal data which is necessary for the protection of lawful rights and interests of physical or legal persons in court proceedings;
  - 7) personal data processing is necessary for the provision of social assistance and it is performed by the provider of social assistance services;
  - 8) personal data processing is necessary for the development of Latvian national documentary heritage and it is performed by the State archives and an accredited private archive;
  - 9) personal data processing is necessary for statistical research, which is performed by the Central Statistics Bureau;
  - 10) the processing relates to such personal data, which the data subject has him or herself made public;
  - 11) personal data processing is necessary in fulfilling State administration functions or developing State information systems as prescribed by law;
  - 12) personal data processing is necessary for the protection of the rights or lawful interests of physical or legal persons when applying for reimbursement in accordance with the insurance agreement;
  - 13) in accordance with the Law on Patient's Rights patient's data as recorded in medical documentation is used in researches.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**As regards legislation, Articles 23 and 37 of the Law on Registration of Civil Registration Record provide that marriage registration record and birth registration record is supplemented with information on gender reassignment. Information on gender reassignment in the civil register is updated about the person him/herself, his/her parents, or the spouse.**

**The Department of Administrative Cases of the Supreme Court Senate has adopted a judgement which established that the State has an obligation to provide adequate procedure for recognition of a person's gender reassignment according to gender characteristics.**

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**According to the Article 110 of the Constitution of Latvia marriage can be established only between a man and a woman. Therefore, if gender reassignment is legally recognised there are no obstacles for this person to enter into marriage with person of an opposite gender.**

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

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please provide examples:

**There has been a discussion on the possibility to establish legal framework for registration of same-sex partnerships; however, such a regulation has not yet been adopted.**

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**The Civil Law contains several provisions regarding adoption of a child.**  
**First of all, the adoption of a minor child is permitted if it is in the interests of the child. A minor child may be adopted if prior to the approval of the adoption he or she has been in the care and supervision of the adopter (up to the period of six months) and the mutual suitability of the child and adopter has been determined, as well as is there is a basis for considering that as a result of the adoption between the adopter and the adoptee will establish a true child and parent relationship.**

**A child may be adopted by spouses or by a single individual. Persons who are not married to each other may not adopt the same child. No distinction, however, is made between unmarried homosexual and heterosexual persons.**

**Consent of all parties to the adoption (the adopter; the adoptee if he or she has reached the age of twelve years; the parents of a minor adoptee if they have not had custody rights removed, or a guardian) is compulsory. It is necessary that all parties to the adoption give their consent to the adoption.**

**For the adoption of a child, a decision by the Custody Court that such an adoption is in the interests of the child is required. In taking such a decision the Custody Court ascertains the views of the adoptee, if he or she is able to formulate such, as well as takes into account information regarding the adopter, including his or her personality, , material circumstances, household circumstances, capacity to raise a child, as well as information regarding the adoptee, including his or her personality, religious faith if there is such, health and ancestry.**

**The Civil Law does not recognise sexual orientation as a ground for prohibiting adoption . According to the Regulations of the Cabinet of Ministers on Procedure of Adoption, the**

Custody Court examines the family wishing to adopt a child, to see if the family would be suitable for placement of a child.

Article 6 of the Law on Protection of the Rights of the Child states that in all measures with regard to a child, irrespective of whether they are carried out by State or local government institutions, public organisations or other physical or legal persons, as well as the courts and other law enforcement institutions, the ensuring of the rights and interests of the child shall take priority.

### V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**The Labour Law prohibits discrimination based on gender and sexual orientation in public as well as in private sector (also in relation to questions i), ii), iii)).**

**The legislation does not contain explicit prohibition of discrimination on grounds of gender identity; however, according to the Labour Law discrimination on any grounds is prohibited.**

**The Labour Law states that everyone has an equal right to work, to fair, safe and wealthy working conditions, as well as to fair remuneration. These rights shall be ensured without direct or indirect discrimination. In accordance with the Law harassment of a person also is deemed as discrimination and is prohibited by law; administrative fine may be imposed for harassment.**

**Questions regarding the person's gender (including whether the person is a transgender person or not) during establishment of working relations and during the employment period are not acceptable; also other questions that do not directly impact performance of duties or are not related to suitability of the employee are not acceptable.**

**All information about the employee or job applicant may be disclosed to a third party only with the consent of the person concerned.**

**The Law of Self-employed Persons explicitly lists sexual orientation as a prohibited ground for discrimination.**

### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plan

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Gender identity issues are included in various general education subjects, such as "Social Science", "Ethics", "Christian Studies", "Natural Sciences", "Biology", "Health Studies", "Philosophy" and in the content of sample subject program in accordance with the Cabinet of Ministers' Regulations No.1027 of 19 December 2006 on the State Basic Education Standard and Basic Education Subject Standards and the Cabinet of Ministers' Regulations No.715 of 2 September 2008 on the State General Secondary Education Standard and General Secondary Education Subject Standards. The basic requirements of several subjects determine the issues pupils need to acquire until grade 6, grade 9 or grade 12.**

**Basic rights are set out in Chapter VIII of the Constitution of Latvia, including the right to education to everyone and the responsibility of the State to ensure that everyone acquires primary and secondary education free of charge; primary education is compulsory.**

**Section 3.<sup>1</sup> of the Law on Education establishes prohibition of differential treatment. The Law states that citizens of Latvia, non-citizens of Latvia, citizens of the European Union, European Economic Area and Swiss Confederation, permanent residents of the European Community, who have a valid residence permit in the Republic of Latvia, stateless persons, who have a valid travel document of the stateless person issued in the Republic of Latvia, third-country nationals or stateless persons, who have a valid residence permit in the Republic of Latvia, refugees or persons, who have acquired alternative status, and persons, who have received temporary protection in the Republic of Latvia have the right to acquire education regardless of the material and social status, race, nationality, ethnic belonging, gender, religious and political affiliation, state of health, occupation and place of residence. Differential treatment towards a person based on the aforementioned grounds can only be permitted, if it is objectively substantiated with a legal purpose, the means selected for the achievement of which are proportionate. The Section 3.<sup>1</sup> of the Law on Education also lists measures to be taken, when there is suspicion of differential treatment.**



**VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**According to Article 111 of the Constitution, the State protects human health and guarantees a basic level of medical assistance for everyone.**

**Section 16 of the Medical Treatment Law states that everyone has the right to receive emergency medical care in accordance with procedures prescribed by the Cabinet of Ministers.**

**Section 3 of the Law On the Rights of Patients provides that in ensuring the rights of patients, differential treatment based on a person's race, ethnic origin, skin colour, gender, age, disability, state of health, religious, political or other persuasion, national or social origin, property or marital status or other circumstances is prohibited. Differential treatment includes direct or indirect discrimination of a person, infringement of a person or an implication to discriminate him or her.**

**The Public Health Strategy for 2011-2017 (adopted by the Cabinet of Ministers Order No.504 of 5 October 2011) is a medium term policy planning document which has been developed and adopted in order to continue implementation of the public health policy. The aim of a public health policy is to prolong healthy life years of the Latvian population and to prevent untimely deaths, while maintaining, improving and restoring health. To reach the main aim of the public health policy, the objective to eliminate injustice in the field of health by implementing measures to ensure equal health opportunities for all Latvian inhabitants has been set. One of the main points of progress for reaching the set aim is by ensuring partnership and inter-sector cooperation, and promoting equal health opportunities for all inhabitants.**

**Program for Limiting the Spread of HIV for 2009–2013 is elaborated and adopted by the Cabinet of Ministers to limit the spread of HIV and to reduce new HIV cases in total and among main risk groups.**

**Guidelines for Health Promotion in Municipalities were elaborated and adopted (by the Order of the Ministry of Health No.243 of 29 December 2011) to provide municipalities with science-based information so that they can realize health promotion. These guidelines provide events and activities (both educational and practical activities, etc.) that municipalities should carry out in their territories to tackle health promotion issues in four main population groups – children and adolescents, working age population, young families and elderly.**

29. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

**Since a national classification of diseases has not been developed in Latvia, the International Classification of Diseases is used.**

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

**Gender reassignment services are not covered from the State budget. According to the NGOs, financial implications and uncertainty related to gender reassignment may be regarded as obstacles preventing persons from actually undergoing reassignment.**

### VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**The legislation does not allow any discrimination based on sexual orientation or gender identity with regard to ownership or possession of land and other property, eviction and other issues concerned with housing.**

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**According to the legislation the receipt of social services is not subjected to sexual orientation or gender identity.**

### IX. Sports

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**There have been no cases (no legal proceedings or other information on any forms of abuse) where discrimination based on sexual orientation or gender was identified in sports. Therefore, there has been no need to tackle discrimination on ground of sexual orientation or gender identity in sports. At the same time, Section 3 of the Law on Sports states that among the basic principles to be observed in the field of sport is also the principle of equality, which provides that every person has a right to engage in sport.**

### X. Right to seek asylum

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**According to the Asylum Law (section 22) persecution based on sexual orientation or gender identity is considered as a valid ground for the granting of refugee status and asylum.**

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**According to the national legislation asylum seekers are not sent back to the country in cases when their life is under threats.**

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

**The mandate of the Ombudsman of Latvia includes the right to investigate discrimination cases on all grounds prescribed by law. Section 11 *Functions of the Ombudsman* of the Law on the Ombudsman as one of the functions of the Ombudsman determines to promote the compliance with the principles of equal treatment and prevention of any kind of discrimination. Section 13 *Rights of the Ombudsman* provides that upon termination of a verification procedure and establishment of a violation, the Ombudsman has a right to apply to a court in such civil cases, where the nature of the action is related to a violation of the prohibition of differential treatment.**

### **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

**To continue cooperation with the Council of Europe, including under the project "Combating Discrimination on Grounds of Sexual Orientation and Gender Identity", to promote training, awareness raising etc.**

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

**Yes.**

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**No.**

**LIECHTENSTEIN**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

The Constitution of Liechtenstein (article 31) provides that all citizens are equal before the law and does not differentiate for either sexual orientation or gender identity. Therefore, LGBT persons enjoy in principal the rights as any other citizen in Liechtenstein with only a few exceptions concerning marital law as well as the right to adoption for registered same-sex couples.

There is only a small number of measures targeted on the rights of LGBT persons. One example for specific legislation in force is the registered same-sex partnership from 2011, which was a big step forward in this context.

Since Liechtenstein is a very small country, it is not always possible to adopt specific measures or legislation. The authorities do not observe direct or indirect discriminations of LGBT persons. This does not mean that there is no need for further measures at all but in general, the implementation of the recommendation can be considered to be adequate.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Since such a review is very time-consuming and would produce a high amount of workload which is disproportionate for a small administration like Liechtenstein's, this has not systematically happened until today. However, this review can happen when specific legislation is reviewed in other contexts in the future.

Are there measures in place to redress any such discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

As mentioned above, no systematic review of the legislation has been undertaken until today. In addition, since the entry into force of the law on registered same-sex partnership, no cases of discrimination have been brought to the attention of the competent authorities. Consequently, there are no specific plans to redress possible sources of discrimination. Nevertheless, this may happen in the future.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5)

(including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

In June 2011, the law on registered same-sex partnership was adopted by the People in a popular vote. The new law entered into force in September 2011.

In the context of the popular vote, several campaigns to sensitise the public were carried out also by the Office for Equal Opportunities.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Facts and figures on the human rights situation in Liechtenstein are published on a yearly basis. Sexual orientation is one category, where data is published on. The data are based on a survey and provide information about how homosexuals think about discrimination in Liechtenstein.

The National Police use a template to collect data of hate or bias motivated crimes. Sexual orientation is one of the criteria that have to be filled in by the competent police officer to assess and report a hate crime. No crimes where sexual orientation of a victim constituted a motive for the perpetrator have been either identified or reported to the National Police until today.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no specific provisions in the relevant legislation for sexual orientation or gender identity. Still, since the Constitution stipulates that all citizens are equal before the law, this also includes LGBT persons. This rule applies to the relation between the State and individuals which means that the State may in general not discriminate individuals on the grounds of sexual orientation or gender identity except for cases where this is proportionate. Consequently, individuals may appeal to courts in cases of unjustified discrimination.

On the other hand, the rule does not apply to the relation between individuals.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The recommendation has been disseminated by the Office for Equal Opportunities to particular associations representing the rights of Lesbian and Gay persons in Liechtenstein.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In principle, every case of crime is investigated as effectively, promptly and impartially as possible and independently from the motive of the crime. Offences motivated by the sexual orientation or gender identity of the victim are not treated differently from offences motivated by other factors. There is no provision in the Criminal Code, which would explicitly include such crime motives. There have been several ideas to include such elements of an offence in the Criminal Code.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Criminal Code of Liechtenstein provides for a series of motives that may be taken into account as aggravating circumstances. Namely, § 33 of the Criminal Code includes racist, xenophobic and other reprehensible motives. In this context, bias motives related to sexual orientation or gender identity may be considered as “other reprehensible motives”.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no specific measures in force. Though, it is worth to mention that in 2008 the Victims Assistance Act entered into force in Liechtenstein. People immediately affected by a criminal offence in a physical, psychological or sexual respect have the right to victims' assistance in Liechtenstein. Pursuant to the Victims Assistance Act, there is a Victims Assistance Office in Liechtenstein offering various services.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Hate crime issues in general are a permanent topic in the competent police unit. Due to the size of the police in Liechtenstein and the centralised structure of the police body the competent officers have knowledge of all offences committed in Liechtenstein and monitor these cases for hate crimes on a daily basis.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Specific measures do not exist in Liechtenstein. In reality, the authorities do not observe that hate speech concerning LGBT persons takes place. For instance, during the campaign for the law on registered same-sex partnership, there was of course a debate on the pros and cons of the new law without hate speech taking place in the public. The discussion in the public between officials, politicians and representatives of interest groups took place on an objective basis.



**II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

According to article 41 of the Constitution, the freedom of association and assembly is guaranteed within the limitations provided by the law. There is no law in force limiting the freedom of association and assembly on the grounds of sexual orientation or gender identity. Consequently, this right is fully guaranteed and no further measures seem to be required.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no regulation in the Liechtenstein law that would differentiate between human rights defenders of LGBT persons and other individuals. As a result, such persons or associations can ask for protection by the National Police if they experience hostility and aggression. Since such aggression is not experienced in Liechtenstein, there is no urgent need for specific regulations in this context. If such aggressions happen, the authorities are of the view that the provisions in force are sufficient to protect human rights defenders of LGBT persons.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Generally, in the legislative process, the Government publicly circulates every draft law for comments. Target groups who have or might have a special interest in the proposal are specially invited to comment. This includes associations representing the interests of LGBT persons. Not only those invited to comment may in fact comment, however. In principle, any person or organisation with an interest in the proposal may submit comments.

**III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

This right is guaranteed by article 40 of the Constitution which stipulates that everyone can freely express his opinion within the limitations of the law. The law does not provide any restrictions related to sexual orientation or gender identity.

19. Do 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to article 2 of the Police Act, the National Police have to take all necessary measures to make permitted assemblies possible. The Police are obliged to protect such assemblies against assaults independent of the content or the group of participants of the assembly.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As already explained in question 2, no targeted review of the legislation in this context has taken place until today.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

The Liechtenstein Law on Data Protection implements the EU-standard on the protection of data (Directive 95/46/EC), which takes the requirements mentioned in question 21 into consideration. In addition, a Data Protection Office responsible for the supervision of compliance with law provisions exists.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

G.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

Registered same-sex partnership enables same-sex couples to enjoy similar rights as married couples with several important restrictions. For instance, same-sex couples do not have the right to adopt children.
--

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The law stipulates (§ 179 ff Civil Code) that every decision on adoption must be taken in the child's best interest. The adoption of a child by a couple is possible if the couple in question is married. Adoption by a couple having the status of a registered same-sex partnership is not possible. However, adoption by an individual is examined case by case, whereby sexual orientation of the individual in question may but not must be a criterion for the decision.
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## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no specific legislation in Liechtenstein providing explicitly for protection against discrimination in employment on the basis of gender identity and sexual orientation. However, protection against discrimination can be construed from the provisions of the Constitution and there are also several general provisions in labour legislation.

**1. Constitution (Art. 31)**

In article 31 of the Constitution it is written down that all citizens are equal before the law. Regarding public employment, this specific provision may be applied in cases of discrimination on the grounds of sexual orientation or gender identity. Equality before the law is guaranteed for every citizen, independent of any other characteristics. This principle is binding for the State and therefore it includes all public employment. Though, this rule cannot be applied to the relationship between individuals, which means that private employment is not included.

**2. Labour Contract law (§ 1173a Civil Law Code, ABGB):**

Private employment is regulated within the Civil Law Code. According to §1173a article 27(1) of the Civil Law Code the personality of the employee must be respected and protected. The employer must (1) respect and protect the personality, (2) take sufficiently into consideration the physical condition and (3) protect morality. In particular, the employer has to make sure that employees are not harassed or sexually harassed and that victims of harassment or sexual harassment do not experience any further disadvantages.

The term “personality” must be interpreted broadly. For instance, it includes characteristics like gender, civil status, pregnancy, origin, race, nationality, age, physical characteristics, disease, disability, religion, conviction, sexual orientation, partner- or relationship to a third party. Although there is no specific case law in Liechtenstein on the exact interpretation of personality, it must be taken into consideration that the Liechtenstein Labour Law is very similar to the Swiss Labour Law, where the mentioned interpretation of personality has been adopted in case law. It can therefore be assumed that a Liechtenstein Court would use a comparable interpretation.

There are also regulations regarding the conditions of dismissals by the employer. Such dismissals are considered to be abusive if they are based on a characteristic of the employee that belongs to his or her personality. According to the interpretation of personality, this means that dismissals based on the sexual orientation of an employee may be abusive. In such cases, the employee may have to pay compensations.

**VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The right to education is explicitly guaranteed in the Constitution without any discrimination. Schooling is compulsory for every child. It has to be mentioned that the Government is responsible for the supervision of the whole education sector in Liechtenstein, including private schools and confessional education. Through this way, the quality of education can be secured and potentially discriminatory contents can be removed, when detected.

Sex education is integrated in the course of instruction which applies to all the schools in Liechtenstein.

Sexual identity and tolerance are topics of high importance within the course of instruction. The implementation in the classes as well as the teaching methods is chosen by the different schools and the responsible teacher. In this way, it is guaranteed that individual needs of the pupils are taken sufficiently into account.

Schools and teachers are provided with various offers, which can support them and their pupils in dealing with these sensitive issues. In particular, social work and psychological service at the schools are worth to mention.

Recently, mobbing has become a more and more important topic. The Office of Education has significantly intensified its measures to combat mobbing. The measures include information events, lectures and training teachers. Since LGBT persons can be target of mobbing activities, these measures can be of particular relevance in this context.

**VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In principle, Liechtenstein is too small to create specific health plans for particular population groups. The basic principle of the health system in Liechtenstein is that no population group is discriminated in any form in the access to health services.

The particular needs of LGBT persons are taken care of by the institute for questions related to sex and the prevention of HIV (Fachstelle für Sexualfragen und HIV-Prävention). In this context, a mandate from the Government exists.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Although there are no specific measures in force, the competent authorities report that they are not aware of such discriminations on the housing market. According to their experiences, there is a liberal practice in renting apartments or houses. Concerning ownership of land and other property, the law does not make any distinction between LGBT and other persons. Equality in this respect is therefore guaranteed.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Social services by the Office for Social Affairs in all cases are granted without any discrimination on the grounds of sexual orientation or gender identity.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Liechtenstein Law on Asylum, foreigners are recognised as refugees if they leave their country due to the reasonable fear to be persecuted on the grounds of their race, religion, nationality, belonging to a specific social group or their gender.

Reasonable fear is given if the person in question can claim that there is a threat to his or her life, physical condition or freedom.

The criterion of the belonging to a specific social group applies to persons sharing a common social attribute and is the connecting factor for objectively not justifiable persecution. This includes the persecution on the grounds of sexual orientation or gender identity.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Liechtenstein Law on Asylum provides that no person can be forced to leave for a country where his life, physical condition or freedom is threatened. Also, nobody can be forced to leave for a country where the person in question will suffer torture or other cruel, inhuman or degrading treatment or punishment.

This principle also applies to persons threatened based on their sexual orientation or gender identity.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

There are several institutions in Liechtenstein for the promotion of human rights. As one of the first bodies, an inter-office Equal Opportunity Commission was created in 2005. At the same time, the Government decided to expand the Office of Gender Equality into an Office of Equal Opportunity (Stabsstelle Chancengleichheit, SCG). The SCG's focus is on combating discrimination and promoting de

facto and de jure equal opportunity in areas key to the protection of human rights, such as the equality of women and men, disabilities, migration and integration of foreigners, social disadvantage, sexual orientation, and gender identity. The SCG maintains publically available documentation and provides free advice to individuals, organisations and companies. Additionally, the SCG is engaged on behalf of sensitisation measures, issues comments on draft laws, consultations and ordinances, serves as the secretariat of the Equal Opportunity Commission, and coordinates measures within the Administration to ensure equal opportunity.

### **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

### **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.



**LITHUANIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input checked="" type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

The Law of the Republic of Lithuania on Equal Treatment ensures equal treatment on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

Article 29 of the Constitution of the Republic of Lithuania prohibits discrimination on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views. The practice of the Constitutional Court of the Republic of Lithuania shows that this list of grounds of discrimination should be realized as parallel to the open list of grounds of discrimination given in Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (conclusion of the Constitutional Court of the Republic of Lithuania of 24 January 1995). Articles 1 and 13 of the Law on Equal Treatment of the Republic of Lithuania also prohibit discrimination on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion. According to Article 12 of the Law on Equal Treatment of the Republic of Lithuania, a person who considers himself wronged by failure to apply equal treatment to him/her shall have the right to appeal to the Equal Opportunities Ombudsman or to address the national courts directly. Moreover, the courts of the Republic of Lithuania take the Recommendation into consideration. For example, the Supreme Administrative Court of Lithuania has referred to the Recommendation as a source important for interpretation of Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (case No. AS822-339/2010; published in the bulletin "Administrative law", 2010. No. 19).

According to Article 14 of the Law on Equal Opportunities, the Equal Opportunities Ombudsman shall supervise the implementation of the Law on Equal Treatment in the manner prescribed by the Law on Equal Opportunities of Women and Men. According to Article 12 of the latter Law, the Equal Opportunities Ombudsperson shall investigate the complaints related to direct and indirect discrimination, harassment and sexual harassment and shall provide objective and unbiased consultations related therewith. The Equal Opportunities Ombudsperson shall submit conclusions about the implementation of this Law and recommendations to state and municipal institutions and agencies of the Republic of Lithuania on improvement of legal acts and the priorities in the policy of the implementation of equal rights. Moreover, the Equal Opportunities Ombudsperson shall exchange any available information with the European Union agencies performing equivalent functions.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Seeking to implement the policy of equal opportunities, non-discrimination and tolerance in Lithuania, the Government of the Republic of Lithuania approved the Interinstitutional Action Plan to Promote Non-discrimination for 2012–2014 (hereinafter referred to as the Plan) by Resolution No. 1281 on 2nd November 2011. Following this Plan Ministry of Social Security and Labour is going to carry out such a review in 2014.

Are there measures in place to redress any such discrimination?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Gender identity is not settled as a separate ground for non-discrimination in Constitution, but the list of grounds is not exhaustive.

According to Article 30 of the Constitution of the Republic of Lithuania the person whose constitutional rights or freedoms are violated shall have the right to apply to court. According to Article 1.138 of the Civil Code of the Republic of Lithuania, the rights shall be protected by the court acting within its competence and according to the procedure established by laws. The ways of protecting civil rights are the following:

- 1) acknowledgement of rights;
- 2) restoration of the situation that existed before the right was violated;
- 3) prevention of unlawful actions or prohibition to perform actions that pose reasonable threat of the occurrence of damage (preventive action);
- 4) ad judgement to perform an obligation in kind;
- 5) interruption or modification of a legal relationship;
- 6) recovery of pecuniary or non-pecuniary damage from the person who infringes the law and, in cases established by the law or contract, recovery of a penalty (fine, interest);
- 7) declaration as voidable of unlawful acts of the state or those of the institutions of local governments or the officials thereof in the cases established in paragraph 4 Article 1.3 of this Code;
- 8) other ways provided by laws. The grounds for civil liability and the duty to redress any damage caused are also established by the Civil Code of the Republic of Lithuania.

Moreover, according to the Law on Equal Treatment of the Republic of Lithuania, a person who has suffered discrimination on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion shall have the right to address the Equal Opportunities Ombudsman who may take adequate measures to provide redress. In the course of the investigation or upon completion of the investigation, the Equal Opportunities Ombudsperson may take a decision:

- 1) to refer the investigation material to a pre-trial investigation institution or the prosecutor if features of a criminal act have been established;
- 2) to address an appropriate person or institution with a recommendation to discontinue the actions violating equal rights and to amend or repeal a legal act related thereto;
- 3) to hear cases of administrative offences and impose administrative sanctions;
- 4) to dismiss the complaint if the violations indicated in it have not been corroborated;
- 5) to terminate the investigation if the complainant withdraws his complaint or when there is a lack of objective evidence about the committed violation or when the complainant and offender conciliate or when acts that violate equal rights cease to be performed or when a legal act that violates equal rights is amended or repealed;
- 6) to admonish for committing a violation;

7) to suspend the investigation if the person, whose complaint or actions, in reference to which a complaint has been made, are under investigation, is ill or away;

8) temporarily, until taking the final decision, to ban an advertisement if there is sufficient evidence that the displayed or intended to be displayed advertisement can be recognised as inciting ethnic, racial, religious hatred or hatred on the basis of sex, sexual orientation, disability, beliefs or age and would do serious harm to the public interests, would humiliate human honour and dignity and would pose threat to the principles of public morals;

9) to impose an obligation on operators of advertising activity to terminate an unauthorised advertisement and to establish the terms and conditions for the discharge of this obligation.

According to the Law on Equal Opportunities, the persons who have suffered discrimination on mentioned grounds may also claim compensation for pecuniary and non pecuniary damage from the persons guilty thereof following the procedure prescribed by law. Liability for discrimination and duty to redress the damage caused also may arise pursuant to other relevant laws, such as regulating the employment relationships, etc.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

There were several legislative initiatives aiming at elimination of the legislative lacuna (as Article 2.27 of the Civil Code of the Republic of Lithuania establishes that the procedure and conditions for the change of the designation of one's sex shall be prescribed by law, and no such law has been adopted yet). Those initiatives are currently registered at and pending before the Parliament.

It must be nevertheless noted that the national courts, having regard to the above explained legislative lacuna do award compensations for the damage sustained in this respect.

It might be noted that Article 2.18 of the Civil Code provides that upon reassignment of gender a person's civil status records shall be modified. In order to simplify the said procedure a draft of relevant legislative amendments has been prepared and is currently pending before the Parliament.

Also, it should be noted, that the Ministry of Social Security and Labour coordinated the implementation of the National Antidiscrimination Programme for 2009–2011, approved by Resolution No. 317 on 15th April 2009. Seeking to implement successfully the policy of equal opportunities, non-discrimination and tolerance further, the Government of the Republic of Lithuania approved the Interinstitutional Action Plan to Promote Non-discrimination for 2012–2014.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania collects and analyses data on every type of crime, including hate crimes. Hate crimes are described and defined in the Criminal Code of the Republic of Lithuania.

In 2009 the Criminal Code was supplemented with a new aggravating circumstance: "actions committed with the aim to express hatred to a group of persons or to a person belonging to it based on age, gender, sexual orientation, disability, race, nationality, language, origin, social status, faith, beliefs or attitudes", and tightened criminal liability for hate crimes, i.e. for criminal acts committed based on the belonging of the aggrieved person to a specific social group.

According to Article 169 of the Criminal Code of the Republic of Lithuania, a person who carries out the actions aimed at hindering, on grounds of sex, *sexual orientation*, race, nationality, language, descent, social status, religion, convictions or views, a group of persons or a person belonging thereto to participate on a par with other persons in political, economic, social, cultural, labour or other activities or at restricting the rights and freedoms of such a group of persons or of the person belonging thereto, shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.

According to Article 170 of the Criminal Code of the Republic of Lithuania, a person who, by making public statements orally, in writing or in the media, ridicules, expresses contempt for, urges hatred of or incites discrimination against a group of persons or a person belonging thereto on grounds of sex, *sexual orientation*, race, nationality, language, descent, social status, religion, convictions or views, shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years.

According to Article 170<sup>1</sup> of the Criminal Code of the Republic of Lithuania, a person who organised a group of accomplices or an organised group, or organization aiming to discriminate a group of people on grounds of sex, *sexual orientation*, race, nationality, language, descent, social status, religion, convictions or views, or abetted against, or took part in such a group or organization, or financed or materially supported such a group or organization, shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to one year.

Prosecutor General's Office organizes relevant trainings for prosecutors.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Any person whose constitutional rights or freedoms are violated shall have the right to apply to the Office of Equal Opportunities Ombudsperson or court. Gender identity is not settled as a separate ground for non-discrimination in Constitution, but the list of grounds is not exhaustive.

As concerns the general duty to redress for the damage caused, please see the measure indicated in the response to Question 2 above.

As concerns the sanctions for infringements, please see the response to Question 4 above. In addition it might be noted that administrative liability also arises for certain actions. According to Article 41 (6) of the Code of Administrative Offences of the Republic of Lithuania the violation of equal rights and equal opportunities, which are regulated by Law on Equal Opportunities of the Republic of Lithuania, brings a penalty for officials, employers or their authorized persons from one hundred thousand to two thousand Lithuanian Litas. The same actions committed by a person who has been given an administrative penalty for the first part of Article 41 (6) of the Code of Administrative Offences of the Republic of Lithuania shall be punished by a penalty from two thousand to four thousand Lithuanian Litas. It may also be noted that in addition to what is established by the Civil Code in this regard, the Law on Equal Treatment places the burden of proof on the respondent, and not the victim.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Absence of the political will to pass relevant laws.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

Recommendation is translated into Lithuanian language and disseminated by Lithuanian Gay League.

## Section II – Implementation of the specific provisions in the Appendix

### *I. Right to life, security and protection from violence*

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

It must be noted that a general principle of an effective, prompt and impartial investigation of any criminal act or incident is established in the Code of Criminal Procedure and other relevant Lithuanian laws.

The Republic of Lithuania Code of Criminal Procedure provides that the justice in criminal proceedings is carried out under the principle that all persons are equal before the law and the courts, regardless of origin, social or property status, national origin, race, sex, education, language, religious or political beliefs, type and nature of activities, residence and other circumstances. Granting privileges to anyone or making any restrictions based on some circumstances, personal character, social and property status is forbidden.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Article 60 of the Criminal Code of the Republic of Lithuania, if the act has been committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, gender, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views, it shall be considered as an aggravating circumstance.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

To ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support trainings according to the Interinstitutional Action Plan to Promote Non-discrimination for 2012–2014, the trainings are held by the Lithuanian police on communication with the victims including discrimination on all grounds, also are held by Judges and prosecutors.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Gender identity is not settled as a separate ground for non-discrimination in Constitution, but the list of grounds is not exhaustive.

The Law of the Republic of Lithuania on Equal Treatment ensures equal treatment on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

Articles 170 and 170<sup>1</sup> of the Criminal Code of the Republic of Lithuania criminalise an incitement against any national, racial, ethnic, religious or other group of persons (including lesbian, gay, bisexual or transgender persons) as well as creation and activities of the groups and organisations aiming at discriminating a group of persons or inciting against it.

As concerns the administrative liability, please see the response to Question 5 above.

Moreover, in accordance with Article 2.24 of the Civil Code of the Republic of Lithuania, a person shall have the right to demand refutation in judicial proceedings of the publicised data, which abuse his honour and dignity and which are erroneous as well as redress of the property and non-pecuniary damage incurred by the public announcement of the said data. Where erroneous data were publicised by a mass medium (press, television, radio etc.) the person about whom the data was publicised shall have the right to file a refutation and demand the given mass medium to publish the said refutation free of charge or make it public in some other way.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

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16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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17. Have measures been taken to ensure that non-governmental organisations defending the of 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?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 3 of The Law on Fundamentals of Legislation (adopted on 18 September 2012 and not yet in force) states that one of the principles of the process of legislation that must be followed is the principle of openness and transparency, meaning that the process of legislation must be public, and possibilities for the society and interest groups to express their suggestions and participate in the process must be ensured.

According to Article 34 of the Rules on Legislation of the Republic of Lithuania, when drafting laws, it is necessary to consult the community (which also include non-governmental organisations defending human rights of lesbian, gay, bisexual and transgender persons). Consultations with the community have to be organized in order to ascertain the public opinion on the problem and its possible solutions, to estimate the positive and negative consequences of legal regulation, and empower the community and society in general to make influence on the content of the government's decisions.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

There are no specific limitations or exceptions regarding freedom of peaceful assembly and freedom of expression in Lithuania. Lithuanian legislation guarantees the right to have and freely express once convictions to all persons. The freedoms may not be limited in any other way except by law, when that is necessary to protect human health, honour and dignity, private life and morality or to safeguard the constitutional order.

According to Article 7 of the Law on Assemblies of the Republic of Lithuania, a place of a meeting (itinerary of procession), time and any other procedure of organising the meeting are considered and discussed in officials meeting, where the head of an executive body of the municipal council or a representative authorised by him, the meeting organizers and a representative of the police (police have to maintain public order during the meeting) participate. The head of an executive body of the municipal council or a representative authorised by him may offer a different place for the meeting if, for example, there are better conditions to maintain public order over there.

As a positive example the decision of the Supreme Administrative Court of Lithuania 7 May 2010 may be mentioned, whereby the higher court overruled the decision of the Vilnius Regional Administrative Court which had adopted interim measures to suspend the validity of the certificate allowing for the Baltic Pride march. The Supreme Administrative Court of Lithuania stated that according to the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights the state has positive obligations to ensure efficient use of the right to peaceful assemblies to everyone, including those having unpopular views or belonging to minorities. The Supreme Administrative Court of Lithuania stated that there was no strong evidence that the state was not properly prepared to implement the positive obligations to ensure the protection of the participants of the march.



19. Do 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?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According the Law on Assemblies of the Republic of Lithuania police officers are required to enable organization of legitimate gatherings and protection of the rights and freedoms of the organizers and participants of such gatherings as well as other persons, and protection of state and public safety, public order and health of people through organizational and other means provided for by laws.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no need of any repeal, amendments or application in a different manner of the national criminal law provisions; please also see the response to Question 4 above.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

The Law on the Legal Protection of Personal Data aims to protect human right to private life while using his / her personal data. Article 5 of the Law on the Legal Protection of Personal Data provides for a general rule that it is prohibited to use sensitive personal data, which is the data related to an individual's racial or ethnic origin, political views, religion, philosophical or other beliefs, trade union membership, health, sex life, as well as information about person's criminal records. Exceptions to this rule are possible only if:

- (a) the data subject has given his consent;
- (b) the data is necessary for work or public service purposes in cases prescribed by law;
- (c) there is a need to protect the data subject or another person and the data subject is unable to give consent because of a physical disability or incapacity;
- (d) personal data of a person is used only in activity of foundation, association or any other non-profit body in political, philosophical, religious or trade-union purposes, if the processed data is only related to the members of the body or to persons who are regularly involved in its activities on the organization's objectives (this data shall not be disclosed to a third party without the data subject's consent);
- (e) a data subject himself / herself presented his personal data in public;
- (f) it is necessary to prevent criminal or other illegal activities in cases prescribed by law;
- (g) it is necessary for examining a case in court;

(h) the laws obliges the subject to collect such data.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As it has been mentioned above (see the response to Question 3), according to the Civil Code, upon reassignment of gender a person's civil status records shall be modified. In order to simplify the said procedure a draft of relevant legislative amendments has been prepared and is currently pending before the Parliament.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Article 3.13 of the Civil Code of the Republic of Lithuania, marriage shall be contracted by a man and a woman of their own free will. Therefore, marriage is an act of two people of opposite sexes; but only the current sex is important and there is no difference if the sex of birth was different.

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

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please provide examples:

First, there are no operative legal provisions on partnership, neither for opposite-sex couples nor for same-sex couples. However, three different draft laws on partnership were presented to the Parliament in 2011 and 2012, but all of them still await their reading and hearing at the Parliament. The draft Law on Partnership (cohabitation) (*including same-sex couples' partnerships*) (No. XIP-3687) was presented to the Parliament by one of the members of the Parliament on 12 October 2011. That draft law regulates partnerships (as mentioned, also same-sex couples' partnerships), regulates partners' duties and rights, their property issues, and assures partners' children rights. The draft law still awaits its reading and hearing at the Parliament. Nevertheless, the Civil Code of the Republic of Lithuania allows making different types of civil contracts for couples (irrespective of the sex), so every couple has a possibility to define their duties and rights, and this opportunity is fully guaranteed to same-sex and opposite-sex couples equally.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Article 3.210 of the Civil Code of the Republic of Lithuania, the right to adopt a child may be exercised by married couples. As it was mentioned, only opposite-sex couples may make the contract of marriage. In exceptional cases, one of the spouses or an unmarried person (irrespective of his / her sexual orientation or gender identity) may be allowed to adopt a child. The adopter must be an adult woman or man under the age of 50 duly prepared for adopting a child. In exceptional cases the court may grant leave to older persons to adopt a child. Persons who wish to adopt a child (except a parent's spouse or the relatives) must be listed in the list of prospective adopters managed by the State institution for adoption.

As concerns the decisions regarding parental responsibility Article 3.159 of the Civil Code of the Republic of Lithuania states that parents shall be jointly and severally responsible for the care and education of their children and that parental authority may not be used contrary to the interests of the child. Also, according to Article 3.156 the Civil Code of the Republic of Lithuania the father and the mother shall have equal rights and duties in respect of their children. In addition, according to Article 3.170 the Civil Code of the Republic of Lithuania, the father or the mother who lives separately from the child shall have a right to have contact with the child and be involved in the child's education. A child whose parents are separated shall have a right to have constant and direct contact with both the parents irrespective of their residence. The father or the mother with whom the child resides may not interfere with the other parent's contacts with the child or involvement in the child's education. Where the parents cannot agree as to the involvement of the separated father or mother in the education of and association with the child, the procedure of the separated parent's association with the child and involvement in the child's education shall be determined by the court. Therefore, there are no premises to discriminate parents on the grounds their sexual orientation or gender identity.

#### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The duty of the employer to implement equal opportunities at work is also provided for under the Law on Equal Opportunities:

The employer, without taking into account an individual's age, sexual orientation, disability, race or ethnic dependency, religion or convictions, upon recruiting an individual or recruiting him/her to the public service, must apply the same selection criteria, except for cases provided for by law, must create the same work or public service conditions as well as provide the same possibilities for upgrading the qualification, seeking more complex vocational training or re-qualification, or acquiring practical work experience, must also provide the same privileges; must apply the same criteria for the assessment of work and official activities performed by public servants; must apply the same assessment criteria with regard to dismissal from work and from the public service; for the same work and the work of the same value, must pay the same work pay, and must comply with other obligations provided for in the Law.

## VI. Education

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 4 of the Law on Equal Treatment obligates the institutions of education, science and higher education to enforce equal opportunities. The institutions of education, science and higher education must provide persons with equal opportunities regardless their age, sexual orientation, disability, race, ethnicity, religion or beliefs, when: 1) admitting persons to schools of general education, vocational schools, colleges, schools of higher education as well as qualification advancement, re-qualification and other courses; 2) granting student allowances and student loans; 3) drawing up, preparing, approving and selecting teaching programmes; 4) assessing knowledge. Educational, science and higher education institutions as well as the bodies implementing adult education programmes must ensure, within their remit, that teaching programmes and textbooks do not contain provisions discriminating or promoting discrimination on grounds of age, sexual orientation, disability, race, ethnicity, religion or beliefs.

Minister of Education and Science in February 7th, 2007 approved „Preparing for Family Roles and Gender Education Programme“. The main themes of this Programme are as follows: family as social phenomenon, roles in the family, gender aspects, cultural societal trends, sexual health, prevention of risky behaviour etc. It is necessary to mention that all General Education Schools in Lithuania are adapting this general Programme and implementing it in accordance with their needs, goals and conditions.

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Prohibition of patient's discrimination on various grounds (including sexual orientation) is embedded in Lithuanian legislation. The Law on the Rights of Patients and Compensation for the Damage to their Health of the Republic of Lithuania prohibits restriction of the patient's rights on the grounds of gender, age, race, citizenship, nationality, language, origin, social status, religion, belief, views, sexual orientation, genetic qualities, disability or on other grounds, except for the cases specified by laws, without prejudice to the general principles of human rights. According to the Law, patient shall have the right to high quality health care services.

29. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Relevant national legislation provides for the general principle of non-discrimination, therefore any individual case would be assessed by competent authorities, including courts, should a person who is being evicted or who has been denied housing raise the question of any discriminatory grounds thereof.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Relevant national legislation provides for the general principle of non-discrimination.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Paragraph 66 (1) of The description of the procedure for examination of foreigners' asylum application on examination, enactment of decisions on asylum and their implementation approved by the order of the Minister of Interior of 15 November 2004 No. 1V-361 (Official Gazette 2004, No. 168-6196; 2007, No.53-2069) (hereinafter – Description) states that persecution acts could be inter alia acts of physical or mental violence, including acts of sexual violence. It also provides, inter alia, that a particular social group could be formed on the basis of a particular sexual orientation. For the purpose of this provision, sexual orientation does not cover actions, which would be considered crimes under the laws of the Member States. However, the aforementioned provision states that "gender related aspects" may be considered while examining the case.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The above mentioned paragraph 66(1) of the Description states that sexual orientation cannot be considered as acts that, in accordance with the laws of the Member States, would be regarded as crime: gender-related aspects may be considered, even though they do not in itself form a presumption of applying the grounds of persecution. Therefore, in each case possible threats stipulated by person's sexual orientation are acknowledged and duly evaluated while deciding on the possibility of return.

In Lithuania, there were only few cases where asylum claims were based on persecution on account of sexual orientation. Due to scarce case count we are unable to provide any substantial and generalized information on good practices.

**XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

**Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**MALTA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

Malta is conducting an ongoing examination in order to address discrimination of the grounds of sexual orientation or gender identity. Currently laws are also being examined in order to eradicate any discrimination contained therein.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Certain laws have already been amended in order to include the prohibition of hate crimes. However this exercise has as yet not been finalised and the examination/s is/are still being conducted.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

First and foremost, the Constitution of Malta delineates that every person in Malta is entitled to the fundamental rights and freedoms of the individual, whatever his sex. Secondly, the Criminal Code (Cap. 9 of the Laws of Malta) has recently also been amended accordingly to include the prohibition of discrimination on the basis of sexual orientation. This issue is also included in the European Convention Act (Cap. 319 of the Laws of Malta) and in the Press Act (Cap. 248 of the Laws of Malta).

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

In 2012, Chapter 456 of the Laws of Malta – *Equality for Men and Women Act* was amended to cover additional grounds of discrimination, including sexual orientation and gender identity. To this end, equal treatment was further safeguarded on these grounds in relation to employment and education. By



virtue of this legislation, the National Commission for the Promotion of Equality (NCPE) is empowered to safeguard and promote equality in these areas.

Moreover, also in 2012, through Act VIII of 2012, various articles of the Criminal Code (Cap. 9 of the Laws of Malta), namely Articles 82A, 82C, 83B, 222A, 251D and 325A were amended so as to include the prohibition of violence or hatred on the basis of sexual orientation. Article 6 of the Press Act (Cap. 248 of the Laws of Malta) was also amended along these same lines.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

NCPE carried out a qualitative study to analyse the experiences of LGBT persons, as part of an EU co-funded project *VS/2010/0569 - Think Equal*. This study was aimed at identifying the nature and extent of the discrimination experienced by 25 respondents in the spheres of employment, housing, healthcare, education, the provision of goods and services, insurance, public services and other areas. This study also describes experiences of violence, humiliation and victimisation on the grounds of sexual orientation or gender identity and expression. The levels of knowledge and awareness on current anti-discriminatory provisions and preferred methods of assistance are also presented.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

NCPE published an 'Information Booklet' to assist potential victims of discrimination. The aim of this booklet is to serve as a first reference tool for the general public, since it provides a useful list of organisations that are actively providing services to victims of discrimination. The services covered are varied and the six grounds of discrimination are covered, including sexual orientation. In addition, a list of frequently asked questions provides a description of issues related to discrimination. This booklet was published as part of the EU co-funded project *VS/2010/0569 Think Equal*.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

The obstacles encountered were more related to culture rather than to the actual law. In fact, it was the cultural ideas and mentalities that exist in Malta and also the lack of awareness of LGBT rights that brought about obstacles.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒ **In Malta, the English language is one of our national languages, so there was no need to translate this Recommendation into Maltese as well.**

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation and its Appendix were disseminated between various authorities, and also NCPE initiated various awareness campaigns on the matter.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

NCPE assists persons who feel discriminated against on the grounds of sexual orientation and gender identity in employment and education, by investigating their complaints. NCPE provides independent assistance and carries out independent investigations in relation to alleged discriminatory incidents that are lodged with NCPE. The complaints procedure followed by NCPE is delineated in *Legal Notice 316 of 2011 – Procedure for Investigation Regulations*.

Moreover, prohibition of violence or hatred on the basis of sexual orientation is also dealt with, from a penal aspect, under various articles of the Criminal Code (Cap. 9 of the Laws of Malta), as aforementioned.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are various articles in the Criminal Code (Cap. 9 of the Laws of Malta) which specifically deal with the prohibition of discrimination that is aggravated or motivated on the grounds of gender identity and/or sexual orientation amongst others. Moreover, Article 83B of the same Criminal Code reads as follows –

*The punishment established for any offence shall be increased by one or two degrees when the offence is aggravated or motivated, wholly or in part by hatred against a person or a group, on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion within the meaning of sub-articles (3) to (6), both inclusive, of article 222A.*

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above question 9

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

NCPE carried out cross-organisational training, as part of the EU co-funded project *Strengthening Equality beyond Legislation VS/2009/0405* with various entities with the aim of providing more information on different facets related to equal treatment and discrimination on the 6 grounds, including sexual orientation. This training addressed the contexts and working practices of the entities by using various case studies and other examples that are relevant to the particular entity. Particularly, entities that attended this training include equality bodies; as well as representatives from the Office of the Ombudsman, the Office of the Attorney General, the Industrial Tribunal, the Malta Police Force and the Armed Forces of Malta.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In Malta, the same principles in relation to persons in prison or who are deprived of their liberty are afforded to everyone. Whether one is a straight person or a gay person, one is still afforded the same rights and freedoms.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 82A of the Criminal Code (Cap. 9 of the Laws of Malta) deals with the prohibition of violence and hatred on the basis of various factors, including gender identity and sexual orientation. It also includes words and printed material as means through which such discrimination is prohibited. The article reads as follows:

*Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion or whereby such violence or racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.*

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐ **Freedom of association is enshrined in Articles 32 & 42 of the Constitution. With regards to access to public funding available for non-governmental organisations, it is good to note that NCPE is government-funded. However, in Malta there are also other movements who promote LGBT rights. If these qualify as NGO's, then they would benefit from state funding.**

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

The movements in question have to qualify as NGO's in order to benefit from state funding.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

N/A

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

NCPE have created various awareness campaigns on the issue. They also provide adequate information to the public. Following all this, then everyone is free to act as s/he wishes to.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐ **(Article 41 Constitution)**

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐ **(Article 42 Constitution)**

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

With regards to the freedom of expression, one finds certain exceptions in Article 41(2) of the Constitution which reads as follows –

*Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subarticle (1) of this article to the extent that the law in question make provision –*  
*(a) that is reasonably required -*  
*(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or*  
*(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or*  
*(b) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.*

With regards the freedom of association, certain exceptions are laid down in Article 42(2) of the Constitution which reads as follows –

*Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision -*  
*(a) that is reasonably required -*  
*(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or*  
*(ii) for the purpose of protecting the rights or freedoms of other persons; or*  
*(b) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.*

19. Do 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Police attend every demonstration that takes place to ensure the safety of the participants. If the organisers of the demonstration wish even more Police to attend, then a request in this manner would be forwarded to the Commissioner of Police for his consideration.

Moreover, if during any demonstration, some form of aggression occurs (both against or by the participants of the same demonstration), then the Police are duty-bound to prosecute the perpetrators.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 4(b) of the Interpretation Act (Cap. 249 of the Laws of Malta) states as follows – “...words importing the masculine gender shall include females ...”.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Personal data referring to a person's sexual orientation or gender identity is defined under the Data Protection Act (Cap. 440 of the Laws of Malta) as sensitive personal data. The latter means “*personal data that reveals race or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union, health, or sex life*”.

Article 12 of the same Act then goes on to state as follows:

*(1) Subject to the other provisions of this Act no person shall process sensitive personal data: Provided that such personal data may be processed in those cases provided for under subarticle (2) and under articles 13 to 16 or as may be prescribed by the Minister having regard to an important public interest.*

*(2) Sensitive personal data may be processed if the data subject:*

- (a) has given his explicit consent to processing; or  
(b) has made the data public.*

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐ **(Article 257A of the Civil Code (Cap. 16 of the Laws of Malta))**

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A Cohabitation Bill has been presented to the Maltese Parliament and is presently in its first reading.

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

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please provide examples:

A Cohabitation Bill has been presented to the Maltese Parliament and is presently in its first reading.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the family scenario in Malta, family law is wholly oriented in the best interests of the child. In cases regarding parental responsibility and adoption, one finds no discriminatory factors as long as what is done is in the best interests of the child in question.

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒ (**only sexual harassment**)

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Data Protection Act (Cap. 440 of the Laws of Malta) ensures the privacy of all persons. Moreover, following gender reassignment, the person in question is by law allowed to change his/her name, birth certificate, bank accounts and identification documents amongst others.

#### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As part of its core work, NCPE provides training to various groups or entities who request training on equality and non-discrimination issues. In fact, NCPE provides training to students and teachers on areas related to equal treatment within its remit.

In addition, as part of the EU co-funded project *Strengthening Equality beyond Legislation VS/2009/0405* organised forum theatre sessions for students as a means of learning on equality while actively participating by interacting during various exercises, role plays, games and more. These sessions aimed at empowering students to challenge stereotypes and discrimination by being creative and utilising dialogue and teamwork.

As part of this project, NCPE also carried out an equality in schools competition, on the six grounds of discrimination including sexual orientation, with the aim of increasing equal opportunities, creating a more inclusive environment, promoting diversity and enhancing dialogue in order to improve the quality of life of students.

In addition, as part of this project, NCPE carried out a research to analyse the National Minimum Curriculum from an equality perspective on all six grounds of discrimination, including sexual orientation. This review was a comprehensive examination addressing issues of equality of the general approach within the education system and within specific syllabi.



### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Malta's state hospital is free of charge for citizens of Malta and of any other European member state.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐ **The medical operation itself for gender reassignment is not carried out in Malta but in the United Kingdom. What is offered here in Malta is psychological support for persons about to undergo such intervention.**

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

As explained above, gender reassignment is not carried out in Malta and the costs are not covered by health insurance.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no discrimination in this field either – whoever qualifies for social housing will be given all the necessary help needed.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no discrimination in the social services sector either. There is in place a means test and if the person in question qualifies for social services, then s/he will be given such aid, irrespective of his/her sexual orientation or gender identity.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

N/A

#### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The EU Council Directive 2011/95/EC (that is the recast Qualification Directive 2004/83/EC) recognises sexual orientation and gender identity as reasons for persecution. In fact recital (30) reads '*It is equally necessary to introduce a common concept of the persecution ground 'membership of a particular social group'. For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of persecution.*' Also Article 10 (d) states '*Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.*'

The Office of the Refugee Commissioner that is responsible from asylum applications in Malta has granted refugee status protection to third country nationals (TCNs) who suffered or risk suffering persecution on the basis of their sexual orientation or gender identity. The Office examines each claim on a case by case basis taking into consideration the overall circumstances of the case and the situation in the particular country of origin. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Yes. When examining a claim on sexual orientation or gender identity, the Office of the Refugee Commissioner assesses the predicament that the applicant would have to face if returned back to his/her country of origin. In cases where it is shown that the applicant upon return to his/her country of

origin would risk suffering discrimination that amounts to persecution, then the person would be granted refugee protection on the 1951 Geneva Convention ground of a particular social group.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The National Commission for the Promotion of Equality (NCPE) was established by virtue of Chapter 456 of the Laws of Malta - Equality for Men and Women Act. This Act safeguards equal treatment on the grounds of sex or family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, or gender identity in employment, education and financial services. In this regard, the functions of NCPE are:

- (a) to identify, establish and update all policies directly or indirectly related to issues of equality for men and women;
- (b) to identify the needs of persons who are disadvantaged by reasons of their sex and to take such steps within its power and to propose appropriate measures in order to cater for such needs in the widest manner possible;
- (c) to monitor the implementation of national policies with respect to the promotion of equality for men and women;
- (d) to liaise between, and ensure the necessary coordination between, government departments and other agencies in the implementation of measures, services or initiatives proposed by Government or the Commission from time to time;
- (e) to keep direct and continuous contact with local and foreign bodies working in the field of equality issues, and with other groups, agencies or individuals as the need arises;
- (f) to work towards the elimination of discrimination between men and women;
- (g) to carry out general and independent investigations with a view to determine whether the provisions of this Act are being complied with;
- (h) to independently investigate complaints of a more particular or individual character to determine whether the provisions of this Act are being contravened with respect to the complainant and, where deemed appropriate, to mediate with regard to such complaints;
- (i) to inquire into and advise or make determinations in an independent manner on any matter relating to equality between men and women as may be referred to it by the Minister;
- (j) to provide independent assistance, where and as appropriate, to persons suffering from discrimination in enforcing their rights under this Act;
- (k) to keep under review the working of this Act, and where deemed required, at the request of the Minister or otherwise, submit proposals for its amendment or substitution; and
- (l) to perform such other function as may be assigned by this or any other Act or such other functions as may be assigned by the Minister.

In addition, *Legal Notice 85 of 2007 - Equal Treatment of Persons Order* extends NCPE's remit to include the promotion of equality on the grounds of race / ethnic origin in the access to and supply of goods and services. By virtue of this Legal Notice, NCPE ensures that no person, establishment or entity discriminates against any other person in relation to: social protection, including social security and healthcare; social advantages; education; and the access to and supply of goods and services which are available to public, including housing on the grounds of race or ethnic origin.

Furthermore, NCPE is also responsible for enhancing equality between genders in the access to and supply of goods and services, as established by *Legal Notice 181 of 2008 – Access to Goods and Services and their Supply (Equal Treatment) Regulations*. Hence, NCPE also works to combat direct and indirect discrimination as well as sexual harassment on the grounds of gender in the provision of goods and services.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

We would recommend that the Council issues information on this regard on a website which is accessible to all member states. Furthermore, information booklets on the issue should be disseminated amongst the authorities.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

No, the Council should not continue to conduct periodical examinations. It should be left up to the member states to ensure that this Recommendation is satisfactorily implemented on a domestic level.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

No further comments.

**THE REPUBLIC OF MOLDOVA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

There have been some important legislative developments in this sense, which still required implementation and settling in practice (see below for further details).

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

During the proceedings on drafting of Antidiscrimination Law (called [Law no. 121 of 25.05.2012 on securing equality](#)) there have been undertaken such a research, and included in *travaux préparatoires* of the Law. After the adoption of the Antidiscrimination Law, in its final provisions, the Parliament gave instructions to the Government to review again all relevant primary and secondary legislation in this respect and to propose relevant amendments in 6 months beginning with January 2013.

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Antidiscrimination Law is the most appropriate and primary measure. Practices resulted from implementation should be established.

Other relevant example is the Law on gender equality (called [Law no. 5 of 09.02.2002 on securing equality of chances between women and men](#)). The relevant provisions of the domestic Contravention code and Criminal code can be used as a remedy. The domestic Labour Code contains clear provisions prohibiting discrimination basing on gender.

The general remedy, however, remains to be of a judicial nature, although the Antidiscrimination Law establishes a special quasi-judicial committee under judicial control. The Antidiscrimination Committee should be set up in time limit scheduled by the Government in a plan elaborated for the implementation of the Antidiscrimination Law.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the

Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

See above.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Once the Antidiscrimination Committee will be set up it shall develop and establish such practices and measures on gathering of these statistic data.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

There has been disagreement from certain part of civil society representatives and disapproval, mostly, from religious entities.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

It was quoted and referred on in the context of *travaux préparatoires* to the Antidiscrimination Law.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The measures are common available for investigation of any crimes. There cannot be distinguished particular criminal procedural measures for this range of crimes. There can be particular criminalistics tactics for investigation of such crimes, which however result in a variety the investigation measures set in in the criminal procedure code.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

For example, Article 176 of the Criminal code punishes a violation of equality of persons based on, inter alia, sexual orientation and gender.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

May be implemented in line of application of the Antidiscrimination Law. Now such measures are inscribed in general framework of criminal reports.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

-

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are general measures designed to all defenders, without specifying them.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Once implemented the Antidiscrimination Law there can be adopted special measures.



**III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

-

19. Do 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Within the general framework of protection of any kinds of peaceful demonstrations.

**H. IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Criminal code was amended and it does not contain such provisions.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

The Law on protection of personal data establish that such protection is afforded without discrimination. There cannot be such a collection in general based on these particular ground.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The proceedings on issuing of Documents pertaining to Civil Status are now subjected to review.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above. Under consideration. However, no legal prohibition exists.

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

Not applicable

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please provide examples:

-

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There can be a review of this aspect in view of implementation of the Antidiscrimination Law.

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

-

### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

-

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

-

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

Such services are expensive and usually they are available for cases very limited in number. Most of such services are performed abroad. Therefore, there is no particular requirement to cover such expenses by health insurance.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no special criteria for housing based on any discrimination grounds at all. Distribution of housing is based only on social grounds.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

-

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above in respect of implementation of the Antidiscrimination Law

**X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

-

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

-

**XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Antidiscrimination Committee, according to the Antidiscrimination Law, has quasi-judicial and investigative powers.

**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

**Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

Sharing of experience between the States in this respect.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes in both questions. Specific issues vary in every state and must be distinguished in connection with cultural background and national traditions. Certain flexibility in implementation is required.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

Not a case.

**MONTENEGRO**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

We are in the process of reviewing our legislation in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity. Also, we are fully committed to the implementation of the existing legislation in order to ensure respect for the human rights of LGBT people.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The Government of Montenegro during the month of March 2013 will adopt a Strategy (plan of actions) to improve status of LGBT people, which is following CM/Rec(2010)5. For instance, the Government will continue with the intensive training for prosecutors, law enforcers, protectors of human rights and civil sector involved in the protection of LGBT people and the effective exercise of their rights. The Government will initiate the project to respond and approximate the international standards in regard to the same sex relationship and on which basis will continue to work on a proposal for appropriate solutions in the Montenegrin legal system. Also, in the Criminal Law, hate crime will be defined as prohibited ground of discrimination, as well as on the basis of sexual orientation.

Are there measures in place to redress any such discrimination?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Institutional framework:

- Ombudsman Office, as an national mechanism for protection against discrimination
- Parliamentary Council on human rights and freedom
- Ministry for Human and Minority Rights
- Anti-discrimination Council: Prime Minister, five (line) ministers and human rights adviser to the Prime Minister are involved in the work of the Council, and that particularly emphasizes the role that the Council has in combating every form of discrimination as well as in the affirmation of anti-discriminatory policy in Montenegro, and whose main aim is to protect human rights and freedom. The NGOs are also involved in the work of the Council.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The Government of Montenegro during the month of March 2013 will adopt a Strategy (plan of actions) to improve status of LGBT people. The final document is being prepared. For more, please see the answer on question 2, as well as, Strategy to improve status of LGBT people which will be delivered to you, translated into English.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Ministry of Human and Minority Rights adopted the Rulebook on the contents and manner of keeping the records on cases of reported discrimination, ensuring accurate records and providing information to the Protector of Human Rights and Freedoms. Those information are included in the special report on discrimination submitted to the Parliament of Montenegro by the Protector<sup>29</sup>. According to hate crime, data collection system, as well as to all relevant questions from above the legislative should be improved.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

<sup>29</sup> Pursuant to Article 33 paragraph 3 of the Anti-Discrimination Law (Official Gazette of Montenegro, 46/10), on 29th April 2012 the Ministry of Human and Minority Rights adopted the Rulebook on the contents and manner of keeping the records on cases of reported discrimination (Official Gazette of Montenegro, 23/11 of 6th May 2011). This Rulebook prescribes detailed content and manner of keeping the records on cases related to discrimination (hereinafter referred to as "the Record") in courts, inspection bodies and misdemeanour organs. The Report consists of the following information: (1) person filling the complaint or charge, (2) a basis of discrimination, (3) sex and age of discriminated person, (4) date of filling the complaint or charge, (5) date of rendition of the final decision; (6) request for review, (7) time of deciding (8) number of cases received; (9) number of rejected complaints or charges, and (10) number of accepted complaints or charges. The Record represents an electronically-driven database that provides direct access of the Protector of Human Rights and Freedoms in Montenegro to data. Data in the Record are being systematized and kept in the form of registry.



Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Good practices: good ongoing cooperation of the police forces and LGBT community

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

It is necessary always to continue to improve sensibility and capacity building related to the issue.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation is translated to Montenegrin language. But our intention also is to bring translation of Rec to all minority languages, that everybody have access to the Rec text.

On 19th March 2012 in Budva, under the auspices of former Prime Minister Igor Lukšić, took place the conference on the LGBT rights entitled "Together against Discrimination". This Conference was held just a week before the Conference organized under the auspices of the British Chairmanship of the Committee of Ministers of the Council of Europe with the same topic. Basic goal of the Conference was to provide the promotion of Recommendations of the Committee of Ministers of the Council of Europe (CM/Rec(2010)5) on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31st March 2010. The intention was to encourage all relevant state institutions and NGOs in the sphere of intensification of efforts towards further promotion of Recommendations, and to consider possibilities for the establishment of Regional network aimed at combating discrimination based on sexual orientation or gender identity. Further information about the Conference available at:

[http://www.gov.me/en/Together\\_against\\_Discrimination](http://www.gov.me/en/Together_against_Discrimination).

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Government of Montenegro will continue with the intensive training for prosecutors, law enforcers, protectors of human rights and civil sector involved in the protection of LGBT people and the effective exercise of their rights.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Government took several steps to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them:

1.1 The Police Directorate of Montenegro has established LGBT liaison officer, a person who is a contact point with the local LGBT community, as well as with the advisory role to organizations and government branches.

1.2 The Government of Montenegro continues to provide support for hate crime prevention initiatives to reduce known risk factors for offences and victimization in hate crime areas and among vulnerable groups. Ensuring shelter services and violence prevention programming available to LGBT community is an important element to address the violence in this field, as well as to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them.

1.3 In ongoing project, supported by Royal Netherlands Embassy in Belgrade, the Government of Montenegro is working with all relevant stakeholders to establish a Trust Team between Police forces and LGBT Community. Also, the Government of Montenegro continues intensive (massive) training for law enforcement in protection of LGBT people and the effective exercise of their rights.

1.4 Further improving the capacity and sensitivity of police organizations to access, and protect the rights of lesbian, gay, bisexual and transgender persons (LGBT) and increase the confidence of the public in the work of the police service, the **NGO LGBT Forum Progress** and **Police Directorate of Montenegro** signed an Agreement on Cooperation and Understanding. The Agreement has been recognized as an example of good practice which should carefully develop and strengthen mutual capacities to preserve a constructive dialogue and build confidence of the LGBT community towards the police, cherish the existing political will and increase effective contacts to resolve individual cases and provide necessary assistance to the police in collecting evidence material and rounding up cases for the judiciary. Police Directorate, on the basis of the signed Agreement, expressed full readiness for its implementation, which implies that it is prepared to respond to the demands of the LGBT population.

1.5 For instance, on 8<sup>th</sup> December 2011, joint delegation of Police Directorate, Council for civilian control of the police actions and LGBT Forum Progress participated in the conference "Joining the efforts in preventing homophobic and transphobic violence in Europe – cooperation between judicial authorities and civil society", organized in the Hague by the Government of the Kingdom of Netherlands, Dutch Police Academy and ILGA Europe. During the three-day conference, the challenges still dealt by LGBT community around Europe were presented, as well as numerous examples of good practice showing that the containment of strong confidence between the police service, LGBT community and civil society organizations, and assurance of maximum protection of LGBT persons from the hate speech and homophobic violence is possible. At the conference and training in the Hague, the Agreement on cooperation

and understanding, concluded between the LGBT Forum Progress and the Policy Directorate in June 2011, was recognized as an example of good practice.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On 5<sup>th</sup> and 6<sup>th</sup> May 2011, Ministry of Human and Minority Rights organized the workshop „General legal regime of anti-discrimination“ in order to discuss about the concept and forms of discrimination, typical discriminations in certain areas of social life and mechanisms of legal protection against discrimination.

From 27<sup>th</sup> to 30<sup>th</sup> May 2011 in Belgrade, five officers of Police Directorate of Montenegro, together with colleagues from the police of Serbia, participated in training about the work with LGBT persons, held under the auspices of international academic conference “Justice in the Balkans – equality of sexual minorities”. International Council of Conference decided to award the prize “Friends of Justice” to the Police Directorate, bearing in mind their actions and cooperation during the first LGBT conference in Montenegro in October 2009.

On 22<sup>nd</sup> and 23<sup>rd</sup> June 2011, Ministry of Human and Minority Rights organized a second workshop on homophobia and discrimination against LGBT population with reference to practices in the region.

From 2<sup>nd</sup> to 5<sup>th</sup> September 2011, Government of Montenegro organized an international conference “Toward Europe – Toward Equality”. The Conference was dedicated to human rights with special emphasis on the development of legislation and national policy, aimed at improving the human rights of LGBT population and combating discrimination against these persons, anti-discriminatory legislation and policy, as well as the need for rising awareness of the regime and public on these issues. During the Conference, trainings were organized in the area of law enforcement, judiciary and human rights for judges, prosecutors, law enforcers<sup>30</sup>, protectors of human rights and civil sector.<sup>31</sup>

On 24<sup>th</sup> and 25<sup>th</sup> November 2011, Ministry of Human and Minority Rights organized the third workshop on the protection of human rights of LGBT persons, and it was related to education in the area of protection against discrimination.

On 8<sup>th</sup> December 2011, joint delegation of Police Directorate, Council for civilian control of the police actions and LGBT Forum Progress participated in the conference “Joining the efforts in preventing homophobic and transphobic violence in Europe – cooperation between judicial authorities and civil society”, organized in the Hague by the Government of the Kingdom of Netherlands, Dutch Police Academy and ILGA Europe. During the three-day conference, the

<sup>30</sup> At the international conference “Toward Europe - Toward Equality”, organized by the Government of Montenegro, the training of Police officers from all organizational units and regional units was held. During the Conference it was reiterated that the LGBT community can believe in the capacity of the Police and that all officers are ready to show the efficiency at work and a high degree of professionalism, and that the Police Directorate will adequately provide for “Pride Parade” when the LGBT community decides to organize it. It was emphasized that the Police Directorate supports the right of LGBT people to organize the parade. In this regard, the Police has taken a set of measures and activities in the preparation for protection the “Pride Parade” and developed a series of contacts with foreign police services, primarily with the police of the Republic of Croatia and Serbia in order to exchange information and experiences. On this occasion, the delegation of Police Directorate visited the Serbian police, and headquarter was also established for the preparation and maintenance of a safe parade.

<sup>31</sup> Detailed information about the conference/training in English is available at the following link:  
[http://www.gov.me/en/homepage/Conference\\_Toward\\_Europe\\_Toward\\_Equality](http://www.gov.me/en/homepage/Conference_Toward_Europe_Toward_Equality)

challenges still dealt by LGBT community around Europe were presented, as well as numerous examples of good practice showing that the maintenance of strong confidence between the police service, LGBT community and civil society organizations, and assurance of maximum protection of LGBT persons from the hate speech and homophobic violence is possible.

On 26<sup>th</sup> and 27<sup>th</sup> January 2012, four representatives of the Police participated in training dedicated to the rights and position of the LGBT population, organized by the Centre for Civic Education (CGO) and LGBT Forum Progress under the project “It’s okay to be different”. The aim was to contribute to the culture of human rights and sustainable democratic society by enhancing social capacities in promoting LGBT rights and anti-discriminatory policies.

According to judiciary system in this issue, Montenegro has started the project with German IRZ Foundation, working to improve sensibility and capacity building related to the ECtHR judgments in the issue, as well as through Council of Europe LGBT project assistance.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The legal framework regulating the protection of the rights of the abovementioned persons in Montenegro - at the level of Constitutional provisions (Article 6 and 8) – guarantees and protects the rights and freedoms and prohibits all forms of direct and indirect discrimination on any grounds. In addition, system law in the area of enforcement criminal sanctions (Law on Enforcement of Criminal Sanctions) guarantees the protection of fundamental rights guaranteed under the Constitution and prohibits the placing into a mutually unequal position with regard to race, colour, sex, religion, political or other belief, national or social origin, property, origin, education, social status or other characteristics. At the same time, the by-laws which more closely regulate the enforcement of criminal sanctions guarantee the respect for rights and freedoms of all convicted persons.

At the Institution for Enforcement of Criminal Sanctions, through the work of the Department for Treatment, it was recorded that a certain number of gays and lesbians as well as bisexuals are serving the prison sentence. The treatment of these persons, as well as other measures implemented in the institution in the field of re-socialization takes place on the same regime as well as for other prisoners. So far, there have been no cases of discrimination based on sexual orientation recorded, nor any reports or complaints concerning the mutual relations of prisoners, and relations towards the staff of the Institution. There have been no cases recorded of denial of health care for this category of persons, neither have so far been any objections in this respect.

Finally, it should be noted that the Institution for Enforcement of Criminal Sanctions sets a good example how even in this type of institutions there is no (and should not be) cases of discrimination based on sexual orientation and that this policy will be continued in the future.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

It is unlawful to publish ideas, information and opinions that promote discrimination, hate or violence against a person, or a group of persons because of their sexual orientation, regardless of whether a criminal offence was committed by such publishing. The Law on Media stipulates that Montenegro provides for and guarantees the freedom of information at the level of standards contained in international documents on human rights and freedoms. In addition, Montenegro guarantees the right to free foundation and work of media based on the freedom of expression of thoughts, freedom of research, collection, dissemination, publishing and receiving information, free access to all sources of information, protection of person's personality and dignity, and free flow of information. Article 23 of the same Law prohibits dissemination of information and opinions that encourage discrimination, hatred or violence against persons or group of persons due to their race, religion, nationality, ethnical group, sex or sexual orientation. In addition, this Law stipulates that the state provides for certain amount of funds for exercise of rights of citizens guaranteed by the Constitution and the right to information, without discrimination. Program of the Ministry for Human and Minority Rights on the implementation of the Anti-Discrimination Law includes the education plan and media promotion plan of anti-discriminatory behavior which, among other things, includes LGBT group.<sup>32</sup> Visual identity of the media campaign in the fight against discrimination of LGBT populations, persons with disabilities and based on gender identity has been developed. The campaign began with the implementation on 27th May 2011 and included television spots, radio jingles, newspaper ads, flyers and billboards throughout Montenegro. Special TV spot, newspaper ad, flyer and poster for billboards with the theme of discrimination against LGBT population have been issued. The Broadcasting Law stipulates that "broadcasters of public broadcasting services produce and broadcast programmes designed for all segments of the society, without discrimination whatsoever, specially taking into account specific social groups". The Law on Public Broadcasting Services of Montenegro stipulates the obligation of the Radio and Televisions of Montenegro (RTCG) to, while applying high standards of professional ethic and quality, regardless of any form of discrimination and social diversity, produce and broadcast programme contents that are designed for all segments of the society, specially taking into account members of minority groups and other minority national communities, and to contribute to the respect and promotion of fundamental human rights and freedoms.

A good practice also is a work of Anti-Discrimination Council.

The Anti-Discrimination Council:

<http://www.gov.me/en/News/117570/Council-for-Protection-against-Discrimination-strongly-condemns.html>

<sup>32</sup> Education and promotion of anti-discrimination behavior, as well as the fight against homophobia in society will continue in 2013, covering the broadest possible population, in order to ensure the respect of all human rights, creating a supportive and tolerant environment,.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

There are no limitations or exceptions related to the issue.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Anti-Discrimination Council:

<http://www.gov.me/en/News/117570/Council-for-Protection-against-Discrimination-strongly-condemns.html>

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Deputy Prime Minister and Minister of Justice Duško Marković, on 14<sup>th</sup> October 2011, held a meeting with representatives of civil society committed to the promotion and protection of human rights of LGBT persons. The meeting was held with an aim of establishing and strengthening forms of cooperation and mutual support that has been formalized by signing a Memorandum on cooperation between competent ministries and civil society organizations engaged in promoting and protecting human rights of LGBT persons. Special attention is given to the initiative of holding the first Pride Parade, when the Deputy Prime Minister Duško Marković and chief executive of LGBT Forum Progress Zdravko Cimbalević signed a joint public statement<sup>33</sup>. Also, as a result of the establishment of institutional cooperation between the Government and civil society representatives who are committed to the protection of LGBT rights in Montenegro, the Government has formed (a) Working team for developing the programme document for fighting homophobia with the Action Plan<sup>34</sup>, (b) Expert work group

<sup>33</sup> Joint public statement available at:

<http://www.gov.me/en/News/117570/Council-for-Protection-against-Discrimination-strongly-condemns.html>

<sup>34</sup> The task of the Working Team for developing the program document for fighting homophobia is the preparation of program document with the purpose of establishing guidelines for the improvement of government anti-discrimination policy, promotion of anti-discrimination and protection of human rights of LGBT community.

for preparation of the analysis of legislation from the aspect of LGBT rights<sup>35</sup>, and (c) Expert work group for preparation of the analysis of human rights of LGBT persons in the textbooks within the education system of Montenegro<sup>36</sup>. These bodies, composed of representatives of state institutions and civil society dedicated to strengthening the position of LGBT persons in Montenegro, will offer proposals, opinions and expert explanations that may be of assistance to the Government in further work in this area. Also, the NGOs, as well as representatives of LGBT community were included in Working Group of Antidiscrimination Council which has been drafted final proposal of LGBT Strategy, as an result of the (whole) consultation process.

Also, representatives of NGOs are fully and equally involved in work of Antidiscrimination Council, as well as to the different GOV's working groups related to the issue.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

There are no specific limitations or exceptions regarding questions in place.

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law enforcement authorities were fully commitment to protect all participants on every organized peaceful demonstrations related to the issue.

### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

<sup>35</sup> Expert Working Group for preparation of the analysis of legislation from the aspect of LGBT rights is devoted to the development of analysis of the compatibility of national legal framework with international standards in this area.

<sup>36</sup> The task of the Expert work group for preparation of the analysis of human rights of LGBT persons in the textbooks within the education system of Montenegro, in addition to the analysis, is to provide recommendations for improvement and raising awareness of human rights of LGBT population.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

This issue is part of the Strategy to improve status of LGBT people in Montenegro: LGBT Human Rights.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Article 9, paragraph 1, item 7 of the Law on Protection of Personal Data (Official Gazette of Montenegro 79/08, 70/09 and 44/12) prescribes: "Special categories of personal data shall be the personal data relating to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership in trade unions, as well as data concerning health condition or sex life."

Article 13 of the Law on Protection of Personal Data (Official Gazette of Montenegro 79/08, 70/09 and 44/12) prescribes:

"Special categories of personal data may be processed only:

1. with the express consent of the person;
2. when the processing of personal data is necessary for employment in accordance with the law governing labour relations, while adequate safeguards must be prescribed;
3. when the processing of personal data is necessary for the purpose of detection, prevention, diagnosis and treatment of a person, as well as for the purpose of management of health care services, if these data are processed by a health care worker or other person who is under the obligation of confidentiality;
4. when that is necessary in order to protect life or other vital interests of a person to whom the personal data refer or another person who is unable to give consent in person, as well as in other cases provided by law;
5. if the person has in an obvious way made the personal data available to the public or the processing is necessary for the exercise or protection of legal interests of that person before a court or other authority;
6. when the processing of personal data is performed within the lawful activities of a non-governmental organization or association or other non-profit organization with a political, philosophical, religious or trade union objectives, if these data refer solely to the members of such organizations or the persons who have regular contact with it in connection with the purpose of its scope of activity and if such data are not disclosed without the consent of such persons.

Special categories of personal data are specially marked and protected to prevent unauthorized access to the data.

Method of labelling and protection of personal data referred to in paragraph 2 of this Article shall be determined by the Ministry in charge of public administration affairs."

Ministry of Interior issued the Rulebook on the method of labelling and protection of special categories of personal data (Official Gazette of Montenegro 11/11).

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐



Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on Registers of Birth, Marriages and Deaths prescribes that a Montenegrin citizen can get a sex change. The entry of such facts, that is the sex change, is performed upon the request of a person on the basis of his/her medical record. Based on the person's requirement, the new identification number and the new name of the person is defined, and entered into the registers and into the citizens' register, and a new ID and passport is being issued to such a person.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

When gender reassignment has been completed, legally recognised and when the new documents are issued to a person, there are no legal obstacles, according to the Family Law, for such a person to enter into a marriage with a person of the opposite sex.

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

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please provide examples:

The Government will initiate the project to respond and approximate the European experience/international standards in this regard, and on which basis the competent Commission will continue to work on a proposal of appropriate solutions for the Montenegrin legal system.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Family Law of Montenegro stipulates that everyone shall act in the best interests of a child in all activities concerning the child, and therefore also when it comes to the decisions concerning the exercise of parental rights and adoption. Since the Family Law stipulates that marriage shall be entered into by a man and a woman, as well as that the common-law marriage shall consist of a man and a woman, and that a child can be fully adopted by married or common-law spouses together, this indicates that homosexually oriented persons cannot completely adopt the child. The law also provides for the possibility that a person who is not married may, if there are special reasons, perform incomplete adoption of a child.

In practice, there have been no cases of adoption of children by homosexual persons.

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The provision of Article 5 of the Labour Law (Official Gazette of Montenegro 49/08 and 59/11) prescribes that direct and indirect discrimination against job seekers and employees, with respect to sex, origin, language, race, religion, colour, age, pregnancy, health condition, namely disability, nationality, marital status, family responsibilities, sexual orientation, political or other belief, social origin, property, membership in political and trade union organizations or other personal characteristics shall be prohibited.

Article 6 of the same Law stipulates that direct discrimination, in the sense of this Law, shall be any action caused on any of the grounds referred to in Article 5 of this Law that a person seeking employment, as well as employees placed in a disadvantageous position compared to other persons in the same or similar situation.

Indirect discrimination, in the sense of this Law, shall exist when a certain provision, criterion or practice places or would place in a disadvantageous position compared to other persons, a person seeking employment and an employee, because of certain characteristic, status, affiliation or beliefs.

Furthermore, Article 7 of the Labour Law stipulates that discrimination referred to in Art. 5 and 6 of this Law shall be prohibited in respect of:

- 1) the conditions of employment and selection of candidates for a specific job;
- 2) conditions of work and all labour rights;
- 3) education, training and specialization;
- 4) promotion at work;
- 5) cancellation of employment contract.

The provisions of the labour contract whereby discrimination is established on any of the grounds referred to in Art. 5 and 6 of this Law shall be null and void.

Also, harassment and sexual harassment at work and in connection with work shall be prohibited, pursuant to the provision of Article 8 of the Labour Law.

Harassment, in terms of this Law, shall be any unwanted behaviour caused by any of the grounds referred to in Art. 5 and 6 of this Law, as well as harassment by audio and video surveillance, which has the purpose of or represents the violation of dignity of a person seeking employment or an employee, causing fear or creating a hostile, humiliating or offensive environment.

Sexual harassment, in the sense of this Law, shall be any form of unwanted verbal, non-verbal or physical conduct that aims at violating the dignity of a person seeking employment or employee in the sphere of sexual life, and causing fear or creating a hostile, humiliating, unpleasant, aggressive or offensive environment.

An employee shall not suffer adverse consequences in the case of reporting, testifying because of harassment and sexual harassment at work and in connection with work in the sense of paragraph 2 and 3 of this Article.

Pursuant to the provision of Article 8a of the Labour Law, any form of harassment (mobbing) at work, or any conduct towards an employee or group of employees at an employer that is repetitive and has the purpose of violating the dignity, reputation, personal and professional integrity, the position of an employee which causes fear or creates a hostile, humiliating or offensive environment, deteriorates working conditions, or causes the employee to isolate him/herself or leads them to cancel the labour contract at their own initiative shall be prohibited.

Prohibition of harassment at workplace (mobbing), measures to prevent abuse, the procedure to protect persons exposed to abuse, and other issues of importance for the prevention and protection against harassment at work and in connection with the work shall be regulated in more detail by a special law.

Also, the Law on Prohibition of Abuse at Work (Official Gazette of Montenegro 30/12) stipulates the rights, obligations and responsibilities of employers and employees with regard to the prevention of abuse at work or in connection with work (mobbing), as well as other issues important for the prevention and protection against mobbing.

This law stipulates that mobbing is, in the sense of this Law, any active or passive behaviour at work or in connection with work towards an employee or a group of employees, which is repeated, and which aims at or represents a violation of dignity, reputation, personal and professional integrity of an employee and causing fear or creating a hostile, humiliating or offensive environment, deteriorates working conditions, or causes the employee to isolate him/herself or leads them to cancel the labour contract or other contract at their own initiative. Mobbing is also incitement or instigation of others to the conduct in the sense of paragraph 1 of this Article.

An employee who is not satisfied with the outcome of the procedure for protection from mobbing at the employer's may initiate procedure for the protection from mobbing with the Agency for the peaceful settlement of labour disputes or with the competent court.

Rulebook on Code of Conduct of the employer and employee on prevention and protection from abuse at work (Official Gazette of Montenegro 56/12), among other things, stipulates that, for the purpose of protection from and prevention of mobbing, an employer and an employee should avoid conduct that:

could be considered harassment, such as:

- unwanted conduct towards an employee or a person seeking employment, based on sex, origin, language, race, religion, colour, age, pregnancy, health condition, namely disability, nationality, marital status, family responsibilities, sexual orientation, political or other belief, social origin, property, membership in political and trade union organizations or other personal property;

could be considered sexual harassment, such as:

- degrading and inappropriate comments and actions of sexual nature,
- attempted or committed indecent and unwanted physical contact,
- incitement to acceptance of conduct of sexual nature with promising rewards, threats or blackmail etc. (Article 2).

Should, during the proceedings, the prosecutor or the party that submitted the proposal for peaceful settlement of the labour dispute make it probable that mobbing referred to in Article 2 of this Law was committed, the burden of proving that there had not been conduct which poses mobbing falls on the defendant, namely, the other party to the dispute (Article 27 of the Law ).

Hence, labour legislation prohibits discrimination in employment in the public and private sectors on the basis of sexual orientation, prohibits discrimination in employment on the basis of gender identity, as well as in access to employment, working conditions and all rights arising from labour relation, education, training and specialization, promotion at work, cancellation of labour contract.

Also, the Law on Employment and Exercise of Rights to Unemployment Insurance (Official Gazette of Montenegro 14/10 and 45/12) stipulates that the exercise of the rights from unemployment shall be based on the following principles: freedom in the choice of occupation and workplace, anti-discrimination, gender equality, affirmative action oriented towards less employable individuals, impartiality of the entity in charge of employment affairs and free-of-charge character of performance of the employment affairs.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In General Law on Education in Article 9a are proposed that are prohibited any kind of physical, psychological and social violence; abusing and neglecting of children; physical torture and insulting of person, sexual abusing of pupils and staff, and any other kind of discrimination.

Bureau for Education Services published Catalogue for professional development of teacher and staff, and offer different programs, such as topics related to the human and child rights, non-violence, antidiscrimination, fight against prejudice and inequality, intercultural competences, etc.

In education system topics of nondiscrimination on grounds of sexual orientation or gender identity are studied in the following curriculum:

Elementary school level:

1. Biology for IX grade;
2. Nature for VI grade;
3. Civic education for VI and VII grades;
4. Elective subject Healthy life styles for VIII and IX

Secondary school level:

1. Biology for III grade;
2. Sociology for IV grade;
3. Civic education, elective subject in I, II, III and IV grades of Gymnasium;
4. Civic education, elective subject in I IV grades of vocational school;

Schools through the annual plans that are detailed developed in monthly plans cover those issues, regarding development good school atmosphere and ethos.

The Project: "School without violence – safe school environment" is implemented in schools and covers pupils, staff, and parents. It includes trainings for the school mentors and educators, workshops with pupils, and for the parents. Activities are achieved through the 7 steps oriented to raise the level of knowledge and awareness about the problems of peer violence, to establish values and rules that will be respected and implement in the school, develop cooperation with other institutions in order to prevent and solve violent situations, etc. Manuals for use in schools and brochure for the parents have been prepared.

**VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Yes, there is. Action Plan HIV/AIDS, as well as health measures proposed in the Strategy to improve status of LGBT people.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

**Law on Health Insurance** ("Official Gazette of the Republic of Montenegro", Nos. 39/04 from 09.04.2004, 23/05 from 12.04.2005, 29/05 from 09.05.2005 and "Official Gazette of Montenegro", Nos. 12/07 from 14.12.2007, 13/07 from 18.12.2007, 73/10 from 10.12.2010, 40/11 from 08.08.2011, 14/12 from 07.03.2012)

**Article 16b, par. 1(13):** Gender reassignment covered by the health insurance (80% of the costs)

With respect of ensuring gender reassignment services, during 2013, Ministry of Health will adopt appropriate regulation on criteria for gender reassignment.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Proposal of the Law on the Child and Welfare Protection, expected to be adopted in the second quarter of 2013 stipulates that the discrimination of beneficiary on the basis of race, gender, age, nationality, social origin, sexual orientation, religion, political, trade union or other affiliation, property, culture, language, disability, social exclusion, membership in a particular social group or other personal property shall be prohibited.

It is also prescribed that the welfare and child protection aims to support the social inclusion of individuals and families and that, in achievement of the objectives, among other things, an adult and an elderly person who is homeless shall be especially protected.

The abovementioned proposal of the Law, prescribes the service of accommodation in a social care institution and accommodation in a shelter. Accordingly, the right to accommodation services in social care institution and accommodation in a shelter, as a form of protection, shall pertain to the homeless, regardless of sexual orientation or gender identity.

**IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Sports - part of the Strategy to improve status of LGBT people, including measures how to take concrete (step-by-step) actions, in order to tackle discrimination on grounds of sexual orientation or gender identity in sports and in connection with sport. Also, the Government has supported LGBT community to participate at the LGBT Olympic games.

The proposed measures in the Strategy:

Encouraging dialogue and cooperation between LGBT community, the Montenegrin Olympic Committee and national sport organizations and fan clubs;

Supporting sports federations, clubs and fan groups in the development of activities to raise awareness of discrimination against LGBT people in condemning expressions of intolerance and violence against them;

Supporting LGBT sports individuals and organizations at the national and international level;

Conduct research on homophobia and transphobia in sport;

Understanding LGBT perspective in the development of strategic program documents and funding sports concepts from public sources.

**X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law on Asylum (Official Gazette of the Republic of Montenegro 45/06), Article 2, prescribes that a foreigner shall be recognized the refugee status if, from his or her asylum application, it is determined that he/she legitimately fears from persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion in the country of origin, and therefore, cannot or does not want to use the protection of the country of origin. Accordingly, sexual orientation or gender identity is perceived "as membership in a particular social group", which means that this criterion for the granting of refugee status is regulated by the Law. In previous practice, there were no cases that an asylum seeker was persecuted in their own country because of their sexual orientation or gender identity.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law on Asylum, Article 6 stipulates that the person who has been granted asylum or whose asylum is terminated or revoked, must not be returned or expelled to the border of a state in which:

1. their life or freedom would be threatened on account of race, religion, nationality, affiliation to a particular social group or political opinion;
2. could be exposed to torture, inhuman or degrading treatment or punishment;
3. their life, safety or freedom would be threatened by violence of general scope, foreign aggression, internal conflicts, massive jeopardizing of human rights or other circumstances which seriously threaten life, safety or freedom.

In accordance with the abovementioned principles, a person who would be at risk because of their sexual orientation or gender identity will not be returned to their country of origin. So far, we have had no such cases in practice.

#### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

Institutional framework:

- Ombudsman Office, as an national mechanism for protection against discrimination
- Parliamentary Council on human rights and freedom
- Anti-discrimination Council
- Ministry for Human and Minority Rights

For instance, Ministry of Human and Minority Rights has in its organizational structure a special Section for Gender Equality whose activities are as follows: Coordinates activities aimed at establishing gender equality and participates in the preparation and adoption of action plans for the establishment of gender equality at all levels; Monitors the implementation of international documents and conventions, as well as adopted international standards in the field of gender equality, takes measures for their implementation in the legal system of Montenegro and creates a quality monitoring of the adherence to those documents; Prepares the Plan of Activities, proposes its adoption and monitors its implementation; Organizes the research and analysis on the state-of-affairs concerning gender equality and analysis for the implementation of the Plan of Activities, as well as collecting of data within the cooperation at national and international levels; Cooperates with the local government and provides support for the setting of mechanisms for establishment of gender equality at the local level; establishes the cooperation with the non-governmental organizations; Undertakes and encourages the activities concerning education on gender equality and organizes the issuance of occasional publications aimed at promoting gender equality; Proceeds by citizens' petitions that point out to direct or indirect discrimination based on sex, takes positions and gives opinions and recommendations, and when needed, informs the Ombudsman on existence of discrimination based on sex;



**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

**Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

The measures related to: Hate crimes and other hate-motivated incidents; Freedom of association; Freedom of expression and peaceful assembly; Education; Health; Employment; National Human Rights Structure;

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes; Hate crimes and other hate-motivated incidents; Education; Health; Freedom of Expression and peaceful assembly.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

n/o

**THE NETHERLANDS**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☒ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

There remains room for improvement in certain policy areas, however.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Work is in progress to bridge the gap that remains between *de jure* and *de facto* equal treatment on the grounds of sexual orientation and gender identity.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Netherlands is a party to the relevant human rights treaties in this area. In addition, article 1 of the Dutch Constitution provides that everyone in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, sex or any ground whatsoever is not permitted. Furthermore, the Equal Treatment Act (*Algemene wet gelijke behandeling*) has been in force since 1994, laying down general rules to protect against discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or marital status. Anybody who believes that they have been discriminated against on one of these grounds can apply to a court for a judgment on the matter. If the person who considers that they have been or are being discriminated against adduces facts before a court from which it may be presumed that such discrimination has taken place, the other party is required to prove that the action in question was not in breach of this Act (section 10 of the Equal Treatment Act).

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the

Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

Firstly, a Cross-ministerial Working Group on LGBT Equality has been established. That group coordinates and drives the policy of the ten jointly responsible ministries. In addition, a Memorandum of Understanding ('Rainbow Cities') has been drawn up in cooperation with local government authorities to combat discrimination on the grounds of sexual orientation or gender identity.

A National LGBT and Gender Equality Policy Plan has been produced and National LGBT equality monitoring systems have been put in place. Furthermore, a decree amending educational goals in relation to sexual diversity (*Besluit houdende wijziging van de kerndoelen onderwijs op het gebied van seksuele diversiteit*) has been enacted. That decree aims to ensure that children are taught about sexuality and sexual diversity. Finally, a couple of other bills are being considered: a bill on recognition of gender identity (*wetsvoorstel erkenning gender identiteit*) and a bill on legal parenthood status of female partners of mothers otherwise than as a result of adoption (*wetsvoorstel juridisch ouderschap van de vrouwelijke partner van de moeder anders dan door adoptie*).

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

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5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

SEE ATTACHED doc, under paragraph 5.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

None.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The dedicated NGOs are on track in this respect.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The government is making efforts to ensure tougher sentences in cases of violent crime where the circumstances or motive are of a discriminatory nature. The sentence recommended by the Public Prosecution Service in the case of violent crimes where the circumstances or motive are discriminatory was increased as of 1 May 2011.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The government is supporting activities to increase victims' willingness to report, and lodge criminal complaints about, discriminatory incidents. That support is targeted at the regional anti-discrimination services and the criminal justice system.

On 15 November 2012 a national information meeting was organised by the Police Diversity Expertise Centre (*Landelijk Expertise Centrum Discriminatie*; LECD) which focused on registering and tackling discriminatory incidents. At the meeting, particular attention was paid to raising awareness among police officers, so that they draw up criminal complaints in discrimination cases, rather than merely registering reports of incidents. A tailor-made course is available for the regional units that are to be established in the future.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In order to improve the knowledge and expertise about discrimination in the criminal justice system, measures have been adopted to support the use of criminal law to tackle discrimination. The current police training programme includes the subject 'multicultural skills', which addresses different cultures and lifestyles and proper application of the Public Prosecution Service's prosecution guidelines 'Instructions on Discrimination'. In addition, regularly recurring training courses on recognising and acknowledging discrimination are necessary to ensure that discrimination incidents are dealt with properly by the police. In autumn this year, a workshop for police officers on handling discrimination incidents will be developed by the LECD. Furthermore, police officers will be trained to identify offences involving a discriminatory element more easily.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*; DJI) operates a system of confidential advisers dealing with inappropriate behaviour. In the event of discrimination, employees of the prison service can contact one of these advisers. Obviously, the training programme for confidential advisers covers discrimination and how advisers should deal with it in their official capacity. Last year, a meeting of confidential advisers also focused specifically on the subject of homosexuality. The integrity module of the basic DJI training programme for executive staff addresses discrimination in general and will include a case-based discussion of LGBT issues as of 1 January 2013. The annual survey of prisoners includes questions about discrimination, specifically including on the grounds of sexual orientation.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Representatives of public authorities have a visible profile and, since they must set an example to others, speak out in favour of equal treatment regardless of sexual orientation and gender identity and against discrimination against members of the LGBT community.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

Article 1 of the Constitution provides that all persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, sex or on any grounds whatsoever is not permitted. Article 8 of the Constitution regulates the freedom of association. The article recognises the right of association, which may only be restricted by Act of Parliament in the interest of public order. Furthermore, section 6a of the Equal Treatment Act provides that it is unlawful to discriminate with regard to membership of or involvement in an employers’ organisation or trade union, or a professional association, or with regard to the benefits which arise from such membership or involvement. Subject to statutory exceptions, everyone is guaranteed freedom of association.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures have been taken. In general, pursuant to section 10, subsection 2 (e) of the Netherlands Institute for Human Rights Act (*Wet College voor de Rechten van de Mens*) a request to

make findings may be submitted by an association or a foundation which, in accordance with its constitution, represents the interests of those whom the equal treatment legislation is intended to protect. This includes those requiring protection on the grounds of sexual orientation and gender identity. A particular case before what was formerly the Equal Treatment Commission (*Commissie gelijke behandeling*), and has since been replaced by the Netherlands Institute for Human Rights, concerned a foundation which, in accordance with its constitution, had as its objective: ‘ a. promoting the social acceptance and integration of homosexuality and bisexuality; b. promoting personal equal opportunities for homosexuals and bisexuals in society; and furthermore everything that may be directly or indirectly related or conducive to the foregoing, all of this to be understood in the broadest sense’. In its decision of 18 November 2010 (decision no. CGB 2010-169) the Commission held that the foundation’s request to make findings was admissible.

17. Have measures been taken to 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The relevant NGOs are officially recognised by central government and local authorities, and consulted by them on a regular basis.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

Article 1 of the Constitution provides that all persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, sex or any other grounds whatsoever is not permitted. Article 7 of the Constitution regulates the freedom of expression, providing that no one shall require prior permission to publish thoughts or opinions through the press, without prejudice to the responsibility of every person under the law. Article 9 regulates the right of assembly and demonstration. It provides that the right of assembly and demonstration shall be recognised, without prejudice to the responsibility of everyone under the law. This right can only be restricted by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorder. Subject to statutory exceptions, everyone is guaranteed freedom of expression and freedom of assembly.

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Dutch police always handle the supervision/security of demonstrations properly, be it LGBT demonstrations or demonstrations of any other nature; no distinction is made in this respect. No preferential treatment is given for LGBT demonstrations, but neither is any different or lesser form of treatment given. This means that measures are indeed taken with due care. Furthermore, the police themselves get involved with demonstrations and events aimed at equal treatment and non-discrimination in order to send out a signal that discrimination and violence against LGBT individuals will not be tolerated.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐



Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The legal position of transgender individuals is being improved: the gender identity of transgender individuals will be recognised and the possibility of changing that gender identity easily will be created.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Gender-neutral civil marriage and registered partnerships have been introduced.

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

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Major steps have been taken with respect to equal opportunities for LGBT people. Efforts are being made to improve the legal position of children who are brought up by two mothers. For instance, legal consequences under the law of parentage will apply to marriage between two women; the same will apply to registered partnerships. The Same-Sex Marriage Act (*Wet openstelling huwelijk*) has been evaluated. Statutory amendments will be required to establish further equivalence between marriage and registered partnerships in so far as improving the legal position of children is concerned. A man who has entered into a registered partnership with a woman no longer needs to acknowledge paternity of his child if that child is born within the registered partnership.

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Gender identity is not specifically mentioned as one of the grounds in equal treatment legislation. However, the criterion 'sex' in the Equal Treatment Act is understood to refer indirectly to gender identity.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Every child is entitled to enjoy an education without discrimination on grounds of sexual orientation or gender identity. Therefore the education enjoyed by pupils does not vary on those grounds. All

primary and secondary schools are obliged to give consideration to sexual diversity, and all pupils learn to deal respectfully with social diversity, including sexual diversity. Training, information, policies, action plans and other types of plans are available for these purposes.

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

The treatment of primary sexual characteristics is fully reimbursed under the Healthcare Insurance Act (*Zorgverzekeringswet*). The treatment of secondary sexual characteristics such as breast implants or the removal of body hair is not reimbursed. Breast implants for other women are not reimbursed either, with the exception of women who have had breast cancer.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

All social services in the field of homelessness, youth welfare etc. operate without discriminating against LGBT individuals. If general services are not capable of providing suitable intervention to meet the specific demands of LGBT individuals, tailored intervention might be offered. One example of this would be shelters for men who are at risk of honour-based violence because they are gay, bisexual or transgender.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Royal Dutch Football Association (*Koninklijke Nederlandse Voetbal Bond*) has launched an action plan to tackle homophobia in football. The Dutch Minister of Health, Welfare and Sport also makes an active contribution in the context of EPAS/the Council of Europe. Finally, the government contributes financially to the National Gay & Straight Sport Alliance.

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

National legislation contains no specific provision on gender identity or on discrimination on multiple grounds. The concept of 'sex' in the Equal Treatment Act is interpreted as including transsexual and transgender individuals. The Netherlands Institute for Human Rights has also made findings regarding these groups in a number of cases (see for instance decision no. CGB 2012-146 of 31 August 2012 and decision no. CGB 2009-107 of 16 November 2009). The Institute is not competent to review the acts of public authorities; anyone may lodge complaints concerning such acts with the National Ombudsman (*Nationale Ombudsman*). The National Ombudsman considers complaints about public authorities, covering almost all public bodies: government ministries, water authorities, provinces, the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*), the Social Insurance Bank (*Sociale Verzekeringsbank*) and the police. The National Ombudsman also regards private bodies that perform a governmental task as public authorities.

With respect to discrimination on multiple grounds, the Netherlands Institute for Human Rights deems itself competent to make findings on discrimination on multiple grounds, and has done so on several occasions (see for instance decision number CGB 2008–107 of 19 August 2008). In practice, the Institute is able to rely on current legislation in cases involving discrimination on multiple grounds. Although the Institute's findings are not binding, they are followed in 75% of cases.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

Combating discrimination on the grounds of sexual orientation or gender identity should be given a firm position within the infrastructure and mechanisms of the Council of Europe.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes, and we would propose starting with the most far-reaching forms of discrimination and flagrant human rights violations. Furthermore, consideration could also be given to the features of processes in the member states such as interministerial cooperation, dialogue with NGOs, policy letters or reports to Parliament, national monitors, inspections, etc.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

There are none.

**NORWAY**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

The Ministry of Children, Equality and Social Inclusion is responsible for following up the Recommendation in Norway. All ministries have been asked to go through the Recommendation in order to make sure that Norwegian policies and Norwegian law meet with the expectations of the Recommendation within their specific areas of responsibility (Action Plan Status Report 2011, p. 6).

Most of the measures in The Norwegian Government's action plan "Improving quality of life among lesbians, gays, bisexuals and trans persons (2009-2012)", which to a large degree overlap the measures in CoE CM Rec 2010/5, have been implemented. In order to ensure the full implementation of all the measures in the National Action Plan, the implementation period has been extended until the end of 2013. The implementation of the Action Plan will be evaluated in 2013.

One important step towards following up the Action Plan (and also the CoE LGBT Rec.) has been the establishment of a national knowledge centre on sexual orientation and gender identity, the LGBT Knowledge Centre. This measure will provide capacity and increased continuity to the Government's work on LGBT issues.

The Government's National Action Plan was launched in 2007 and has since brought focus and attention to the challenges and needs of LGBT-persons in the general population and in many public service providers. Partly for this reason the CoE recommendation is probably less known and referred to in Norway.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

In 2007, a Government Commission on Anti-discrimination legislation, the Graver Commission, was appointed to review existing legislation and prepare a proposal for strengthened and more comprehensive anti-discrimination legislation. The Commission also considered whether new bases for discrimination should be included in the legislation. This work resulted in an Official Norwegian Report in 2009, suggesting several changes to improve legislation in this area. This Report has been through an extensive consultation process and suggestions for new anti-discrimination legislation will be presented to Parliament in 2013. This will be a new law with protection against discrimination on the grounds of sexual orientation, gender identity and gender expression.

**In 2008** The Ministry of Children and Equality put proposals to The Norwegian Parliament (white paper) regarding amendments to the Marriage Act, Adoption Act, the Act on Biotechnology and the Children Act. Today Norway has a common Marriage Act for heterosexuals and homosexuals which allows couples of the same sex to enter into marriage. Present legislation allows married same sex couples to be considered as prospective adoptive parents on an equal basis with heterosexual married couples. It also gives lesbian spouses and cohabitants the same access to medically assisted reproduction as heterosexual couples and cohabitants, and gives children of lesbian couples conceived by medically assisted reproduction the same legal protection as children born in heterosexual relationships after birth through medically assisted reproduction.

Are there measures in place to redress any such discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

New anti-discrimination legislation is under way (see above). This legislation will also give protection against discrimination on the ground of gender identity/gender expression.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

A national action plan for improving the quality of life among lesbians, gays, bisexuals and trans persons has been in place since 2008 (see above).

The Ministry of Children, Equality and Social Inclusion has chaired an interministerial group consisting of representatives from the Ministry of Labour, the Ministry of Government Administration and Reform, the Ministry of Health and Care Services, the Ministry of Justice and Public Security, the Ministry of Culture, the Ministry of Education and Research, the Ministry of Foreign Affairs and the Ministry of Defence. The latest meeting in this interministerial group took place on the 26<sup>th</sup> of September 2012. The interministerial group has discussed progress on the measures in the Action plan, and progress made has been reported annually in a status report.

In 2011 the LGBT Knowledge Centre was established within the government structure, located in the Directorate for Children, Youth and Family Affairs. The establishment of the centre clearly signals that the Norwegian Government considers expert knowledge on lesbians, gays, bisexuals and transgender people's lives and well-being a responsibility of the state. Increase in expertise for everyone providing public services is needed, and the Centre will be able to provide support for national and local authorities to address LGBT issues and come up with good solutions.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐



Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Ombudsman for equality and anti-discrimination has a mandate to handle reported cases of discrimination that has protection within the anti-discrimination legislation. Currently, sexual orientation is included in anti-discrimination law covering working life and housing. Gender identity and gender expression is not covered by existing laws.

The Ombudsman registers all discrimination cases reported to them. However, there have been very few cases where sexual orientation is reported as the reason for incidents.

A new anti-discrimination law will be presented to parliament during spring 2013 (see earlier comment). In the new legislation, discrimination on the grounds of sexual orientation and gender identity and gender expression will be illegal in all areas of life, except in family life. The mandate of the Discrimination Ombud should be expanded accordingly.

Existing knowledge on discrimination on the grounds of sexual orientation and gender identity is mostly generated through research projects commissioned by the Government. A research program, analyzing the living conditions of LGB-persons in Norway, was initiated by the Government in 2011, and is followed up by the LGBT-Knowledge Centre. The survey includes a broad spectrum of questions, including discrimination on grounds of sexual orientation. The programme also includes a large-scale survey on Norwegian attitudes towards LGBT persons. Several reports from this project will be published during 2013.

The LGBT Knowledge Centre has commissioned research on the living conditions of trans-persons and transsexuals in Norway. The research is to be published in January 2013. However, more research and data (both quantitative and qualitative) is needed about the life and challenges of the trans-population, and on discrimination and hate crimes on the grounds of gender identity / expression.

In 2010, the National Police Directorate did a survey of all reported incidents of hate-crime in 2008-2009. The report analyses the scope, characteristic features and contexts of cases of hate violence, against lesbians, gays, bisexuals and trans- persons, and how public authorities deal with such cases. The report was a follow-up of the report "Hatkriminalitet – anmeldelser registrert i 2007" (*"Hate crime – reports to the police registered in 2007"*).

The Norwegian National LGBT Association (LLH) (a NGO based on individual membership), receives financial support from the Government for the project "*Pink competency justice*" and their internet initiative "*Don't put up with it*". On the project website LGBT people are encouraged to report hate-oriented incidents to the police, or to report incidents of discrimination or violence anonymously to the LLH through an online form. These reports give valuable information on hate-oriented crimes

against lesbians, gays, bisexuals and trans- persons. Through this and other measures, *Pink competency justice* aims at educating the LGBT community in what hate crime is and why it is important to report such crimes to the police, whether it leads to prosecutions or convictions or not.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

An important measure in this regard is the Equality and Anti-Discrimination Ombud (LDO). The Equality and Anti-Discrimination Ombud enforces the discrimination regulations in the housing legislations and the Working Environment Act, but not in the penal code. This means that LDO provides legal guidance and deals with cases related to discrimination against people on the basis of sexual orientation in employment and in housing. Discrimination against people on the basis of gender identity or gender expression, however, is still not covered by these laws and is therefore not part of the mandate of the Ombud. These laws are presently under revision and new legislation will be presented to Parliament in 2013.

The Ombud was established on 1 January 2006 according to the Anti-Discrimination Ombud Act. The law gives the Ombud an independent position, and is only for administrative purposes anchored to the Ministry of Children, Equality and Social Inclusion. The law enforcement role of the Ombud includes making statements regarding complaints about violations of laws and regulations within the mandate of the Ombud, and provides counselling services concerning this legislation. The Ombud shall enforce The Gender Equality Act, The Anti-Discrimination Act, The Anti Discrimination and Accessibility Act (DTL), The chapter on equal opportunities in the Working Environment Act, The non-discrimination clauses in the housing legislation, The Tenancy Act, The Housing Association Act and The Residential Building Association Act.

The Ombud is an alternative to filing a lawsuit in discrimination cases. The Ombud therefore does not act as a legal representative or legal practitioner. Anyone who feels they are being discriminated against should be able to present their case to the Ombud, who will ask for information from both parties, carry out an impartial assessment of the case and make a statement about whether discrimination has taken place. The Ombud's statement may be appealed to the Equality and Anti-Discrimination Tribunal.

The Ombud also has a duty to provide guidance in discrimination cases that are not within their mandate, e.g. in cases on the reporting of racially motivated crimes, dismissal cases that are processed according to other rules than the equal opportunities section of the Working Environment Act, or applications for free legal aid.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

A news article on the Recommendation was posted on the Government's homepage regjeringen.no 09.04.2010, with link to the document on the home page of the Council of Europe.

The LGBT Knowledge centre has published an article about the recommendations on its homepage, along with a link to the Council of Europe publication: "Combating discrimination on grounds of sexual orientation or gender identity – Council of Europe Standards".

The recommendation is referred to in the annual status report of the Norwegian Government's LGBT Action Plan.

The LGBT Knowledge Centre has also translated the recommendation into Norwegian, which has been distributed to all relevant parts of the government along with this questionnaire.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Increasing the competency within the police force on LGBT persons, perspectives and ways of living** is an important step towards ensuring effective, prompt and impartial investigation. **The Norwegian LGBT Association (LLH) has received funding from** the Ministry of Justice and Public Security for a project called *Pink competency justice*. One important purpose of this project is to educate the police force on what it is like to live as LGBT in a hetero-normative world. The project was developed and first launched within the police force of Norway's capital Oslo. The first training session in the program for police force staff was held in February 2012. Experts and professionals on justice, hate crime and LGBT issues are invited to ensure a high quality and relevance of the project's activities and publications. The project has among other things published a leaflet with information about hate crime. This publication has been distributed to the LGBT community and others.

Another relevant measure in this context is the revision of the systems/routines for registration of hate crimes related to sexual orientation/gender identity, that was recently conducted by the Police Directorate and the Ministry of Justice. A high number of updates and adjustments were done, for example have explanatory texts been added to the registration forms, and the victim's and the investigator's assessment of the motive for the crime will from now on be registered in separate text-boxes.

Since 2007, reports of hate crimes have been specifically tagged in the police's system for registering crimes in Norway (BL/STRASAK). A thorough presentation of the numbers for 2007, 2008 and 2009 are presented in the report "Hatkriminalitet – Registrerte anmeldelser i Norge 2007-2009" (*Hate Crimes – registered reports in Norway 2007-2009*) (The National Police Directorate, 2010). A new report will

present the numbers from 2010, 2011 and 2012. The changes in systems and routines mentioned above should over time improve the over-all statistics showing occurrence and long term developments regarding hate crimes against lesbians, gays, bisexuals and trans persons in Norway.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A new criminal code was adopted in 2006 that ensured that bias motive related to sexual orientation may be taken into account as an aggravating circumstance. Bias motive related to gender identity is not explicitly mentioned in the criminal code, however, the criminal code includes "other grounds" that is to cover gender identity and gender expression.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Measures have been taken through the implementation of Measure 58 in the Government's Action plan: Review of the system for registering cases of hate crime. See comments to question 9 above.

*The Norwegian LGBT Association (LLH)* receives financial support from the Government to the project *Pink competency justice* and its website-project "*Don't put up with it*". Through this and other measures, *Pink competency justice* aims at educating the LGBT community in what hate crime is and why it is important to report such crimes to the police, whether it leads to prosecutions/convictions or not. See comments to question 4 above.

The awareness raising program *Awareness leads to security* is an important measure for local police staff. The objective is that the police should be experienced by the public as safe, fair and trustworthy. The program highlights topics like discrimination, prejudice and stereotypes. By the end of the program participants should have a better understanding of how their actions have an impact on others, and how they themselves are affected by how other people behave. Meetings with representatives of different minorities, such as people with different ethnic backgrounds and lgbt-persons, are usually a part of the program. The feedback from the district offices is very positive so far.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Such training programmes are carried out as part of the implementation of Measure 56 in the Government's Action Plan: Training in LGBT perspectives and hate crime. The Norwegian Ministry of Justice and Public Security has commissioned the Norwegian LGBT organisation LLH to complete awareness training and competence building in all Norwegian police districts. See comments to question 9.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On the Government level, eight ministries and the corresponding government authorities have been involved in the development and the implementation of the National LGBT Action plan. Through this action plan, The Government wishes to place the responsibility to take into account LGBT perspectives on decision makers and stakeholders in all policy areas. Knowledge concerning the needs and challenges of LGBT-persons should be integrated in various public services. One of the over-all goals in the plan is  
 "(...) to promote better living-conditions and quality of life" for the LGBT-population. It is further stated that "LGBT persons (should) experience an expressed zero tolerance for slander, threats, exclusion, violence and other forms of discrimination(...) in all sectors and all social arenas." LGBT-persons should (further) "experience all services and arenas as inclusive, relevant and respectful in all phases of life."  
 Specific initiatives have been taken in the areas of sports and education, to ensure that LGBT people do not experience bullying or homophobia. These activities are described in more detail elsewhere.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

The Norwegian government has been eager to support and strengthen the LGBT-NGOs, partly in order to have strong, independent and legitimate commenting bodies. The NGOs receive considerable public funding and they are consulted during the process of developing legislation or policy. For example the Norwegian LGBT Association has been invited to comment on law proposals regulating surrogacy and anti-discrimination. Twice a year, the Director for equality and inclusion has roundtable meetings with all relevant NGOs in order to get comments on and ideas for Norwegian LGBT policies. Several LGHT NGOs are represented in the advisory board of the national LGBT Knowledge Centre (see comments to question 4 above).

The NGOs are directly involved in the implementation of many of the 64 measures in The Norwegian Government's action plan for improving quality of life among LGBT-persons, and thus play a vital role in the implementation of Norwegian LGBT-policies.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Freedom of speech has been granted in Article 100 in the Norwegian Constitution since 1814.

In its national as well as international policies, the Norwegian Government fully acknowledge defenders of human rights of lesbian, gay, bisexual and transgender persons as human rights defenders.

The Ministry of Foreign Affairs has leadership on international efforts to follow-up the Human Rights Council Resolution 17/19 on HR SOGI, and will organise a global conference on this issue in Oslo 15 and 16 of April 2013.

In 2011 an initiative from Norway **resulted in the unanimous adoption of a resolution in the UN General Assembly on strengthening the protection of human rights defenders and the right of peaceful protest.** The Ministry of Foreign Affairs has developed guidelines for systematizing and strengthening embassy efforts to promote the human rights of LGBT people.

Politicians from most political parties, representatives from the police and military personnel in uniform, usually participate in an open and visible way in both national and local LGBT Pride events. Pride organisers/NGOs normally involve the police in the planning and organizing of Pride Parades and other large scale public LGBT events in different parts of the country. When/If necessary, the Police also provides adequate security measures. There have been some, but very few, reports of hostility and aggression during such events in Norway.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

NGOs like the Norwegian LGBT Association are regularly called upon by different ministries to comment on law proposals that might concern LGBT-persons. Twice a year, the Director for equality and inclusion has roundtable meetings with all relevant NGOs in order to get comments on and ideas for Norwegian LGBT policies. Several LGHT NGOs are represented in the advisory board of the national LGBT Knowledge Centre (see comments to question 4, 15 and 16 above).

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

See comments to question 16 above.

19. Do 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See comments to question 16 above.

### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In 2007, a Government Commission on Anti-discrimination legislation, the Graver Commission, was appointed to review existing legislation and prepare a proposal for strengthened and more comprehensive anti-discrimination legislation. The Commission also considered whether new bases for discrimination should be included in the legislation. This work resulted in an Official Norwegian

Report in 2009, suggesting several changes to improve legislation in this area. This Report has been through an extensive consultation process and suggestions for new anti-discrimination legislation will be presented to Parliament in 2013. This will be a new law with protection against discrimination on the grounds of sexual orientation, gender identity and gender expression.

An important measure in this regard is the Equality and Anti-Discrimination Ombud (LDO). The Equality and Anti-Discrimination Ombud enforces the discrimination regulations in the housing legislations and the Working Environment Act, but not in the penal code. This means that LDO provides legal guidance and deals with cases related to discrimination against people on the basis of sexual orientation in employment and in housing. Discrimination against people on the basis of gender identity or gender expression, however, is still not covered by these laws and is therefore not part of the mandate of the Ombud. As mentioned new legislation will be presented to Parliament in 2013.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

The Data Protection Authority shall facilitate protection of individuals from violation of their right to privacy through processing of their personal data.

The ethical principle of confidentiality is clear within public services to protect the privacy of individuals.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Only persons, who are given the diagnosis F64.0 transsexualism, have access to a complete gender reassignment treatment, including therapeutic counselling, hormones and necessary surgery. Only those who have completed the surgery, including sterilization, can change their legal gender. The Norwegian Directorate of Health has recently looked into the present treatment regime and the corresponding legal issues for transgender persons in Norway. They recommend that these procedures should be looked into and reviewed.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐



Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The marriage equality act from 2008 ensures that people can be married to a person of the same gender.

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

On January 1st 2009 amendments to the Norwegian Marriage Act, that gave same-sex couples the same right to marry as couples of opposite sex, entered into force. The Marriage Act states that "Two persons of opposite sex or of the same sex may contract marriage". The legal status, rights and obligations of same-sex couples are equivalent to those of heterosexual couples.

However, the Church of Norway does not permit clergy to wed same sex couples, even if the legislation is open also for this.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Marriage Equality Act of 2008 grants same sex couples the right to be assessed as potential adoptive parents. This measure is carried out in adoptions of children born in Norway. Regarding international adoptions, Norwegian adoption law requires that the donor country must allow adoption to same sex couples, and that there is an agreement between Norway and the relevant country before assessment of potential same sex adoptive parents starts. At present no country meets these requirements, thus no prospective same sex couples are assessed for international adoptions.

The guidelines for foster care parents allows same sex couples to be considered for being foster care families.

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

An important measure in this regard is the Equality and Anti-Discrimination Ombud (LDO). The Equality and Anti-Discrimination Ombud enforces the discrimination regulations in the housing legislations and the Working Environment Act, but not in the penal code. Following this LDO provides legal guidance and deals with cases of discrimination on the basis of sexual orientation in employment and in housing. Discrimination on the basis of gender identity or gender expression, however, is still not covered by these laws, and is not included in the present mandate of the Ombud. The laws mentioned are under revision and new legislation will be presented to Parliament in 2013.

The Ombud is an alternative to filing a lawsuit in discrimination cases. The Ombud therefore does not act as a legal representative or a legal practitioner. Anyone who feels they are being discriminated against should be able to present their case to the Ombud, who will ask for information from both parties, carry out an impartial assessment of the case and make a statement about whether discrimination has taken place. The Ombud's statement may be appealed to the Equality and Anti-Discrimination Tribunal.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Lesbians, gay men, bisexuals and trans persons currently have no specific protection against discrimination in school/education in Norwegian anti-discrimination legislation.

I. In 2011 and 2012, the project Pink Competency School received financial support from the Ministry of Education and Research. The aim of this project is to give employees in the teaching profession anti-discrimination training and increase their competency with regard to LGBT-perspectives in school settings. Topics addressed in the courses are bullying and the use of homo- and transphobic epithets among pupils, and how teachers can make their teaching more LGBT inclusive. The project will be continued in 2013.

In 2009, the Norwegian Directorate for Education and Training published a resource guide on sexual relations and sexuality for teachers in primary school and nurses in the school health service. The guide was updated in 2011. The NGO *Sex og Politikk - the Norwegian association for sexual and reproductive health and rights* works to promote and provide information about sexual and reproductive health and rights (SRHR), both in Norway and internationally. Each year, they organize a week of courses on sexuality for 7<sup>th</sup> to 10<sup>th</sup> graders in primary school. They also provide updated teaching materials for use in sexual education in Norwegian schools. Providing objective information on sexual orientation and gender identity plays an important part in these courses. The courses and materials are funded by the Government.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Norwegian health authorities aims to mainstream the needs of lesbians, gays, bisexual and transgender people into the provisions in the delivery of health services to ensure the attainable standard of health to be effectively enjoyed without discrimination on the grounds of sexual orientation or gender identity. The LGBT action plan has a specific chapter on health. LGBT issues have been included in the upcoming national public health strategy, and a new action plan to prevent suicide and self-harm (in progress) includes specific measures dealing with LGBT as a vulnerable group.

However, sexual orientation and gender identity are not included in the national health surveys carried out by the national statistical bureau. Sexual orientation was included as a trial in the 2007 national survey on health, but since the sample of the survey was too small, the number of respondents labelling themselves as non-heterosexual was insufficient for further statistical analysis. It was concluded that a question about sexual orientation will not be included in future surveys.

The ombudsman for equality and anti-discrimination has carried out a project to ensure equal services in the field of health, including a focus on sexual orientation and gender identity. The ombudsman has provided guidelines for service providers.

The Directorate of health have commissioned the Norwegian LGBT organisation LLH to carry out awareness training and competence building among health personnel and students in the field of health. The project is called Pink Competence health, and has been doing training courses since 2006.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

The Norwegian Directorate of Health has looked into the current treatment regime for transgender in Norway. Only people who get the diagnosis F64.0 “transsexualism” have access to appropriate gender reassignment services. If a person chooses to have gender reassignment treatment abroad, costs are not reimbursed by the national health insurance. The Directorate of Health suggests that the treatment regime for transgender is reviewed further to look at access to gender reassignment services.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Norwegian housing legislation (The Tenancy Act, The Housing Cooperatives Act, The Cooperative Building and Housing Associations Act, The Joint Housing Ownership Act) contain a special prohibition on discrimination against a person on the grounds of sexual orientation. This means for instance that a housing association may not make rules forbidding same sex couples from owning a unit. Also, a home-owner cannot refuse to let his property to a homosexual person.

If a lesbian, gay or bisexual person thinks that he or she has been discriminated against in the context of housing, they may send a complaint to the the Equality and Anti-Discrimination Ombud.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

All municipalities in Norway are legally required to provide women and men over the age of 18 (and their children) with room in a public shelter if they have been subjected to domestic violence, included honour related violence or forced marriage. This may be relevant for LGBT persons who are evicted from their homes or subjected to some sort of domestic violence by their families.

The Child Welfare Service provides care for children who risk homelessness or who must leave their families due to a risk for violence because of their sexual orientation or gender identity. In 2011 and 2012, the Directorate for Children, Youth and Family Affairs has been engaged in awareness raising and capacity building for staff within the child welfare- and family counselling services.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Norwegian Government's LGBT action plan has a section on Recreation, sports and NGOs. Among the measures taken to tackle discrimination in sports, is the project "Med idretten mot homohets" (roughly: *With sports against homophobic hate speech*). The project was funded by the Ministry of Children, Equality and Inclusion and the Norwegian Confederation of Sports. The purpose of the project was to increase the integration of LGBT-persons in the mainstream sports community and to fight the use of homophobic language in all sports.

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Norwegian Ministry of Justice and Public Security has issued guidelines to the Directorate of Immigration concerning asylum seekers who claim to be persecuted on the grounds of being lesbian, gay, bisexual, transgender or intersex (LGBTI). The guidelines are largely based on a ruling from the Norwegian Supreme Court. The guidelines underscore that it may not be expected, demanded or presumed that such persons, upon return, would adapt to social, cultural and legal norms, or hide their sexual orientation or gender identity, in order to avoid persecution. It is noted that restraints on public behaviour that apply to citizens of the country of origin in general, and are not discriminatory or particularly detrimental towards the applicant, do not constitute grounds for international protection.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See the comment to question 34 above.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

See comments about the Ombud for equality and anti-discrimination in previous questions. Currently, the Ombud does not have a mandate to intervene with respect to gender identity, however, a new law (which will be presented to Parliament in the spring of 2013) will extend the Ombud's authority to include gender identity.

The Ombud has responsibility for all grounds of discrimination in which is covered by Norwegian legislation, and works also with issues regarding intersectionality and discrimination on multiple grounds.

### **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

Norway considers it important for the Council of Europe to have a long term plan for its work in ensuring respect of LGBT people's rights, with particular focus on much needed cooperation with the member states. There is a need for setting long term goals, follow up activities including awareness raising, building of competence and funds for such activities in the member states, and to monitor progress. To enable this, there is a need for LGBT specific competence within the Council of Europe secretariat and its supporting structures. A LGBT unit set up as a permanent structure within the Council of Europe secretariat, under the ordinary budget, will be a positive and necessary step in this direction. Such a unit is important in order to enable proactive work towards member states, to support and coordinate activities with other parts of the CoE system, and to provide assistance to member states.

Both a monitoring cycle of the progress in national policy and legislation, and a cyclic analysis of individual survey-data, mapping the situation in representative samples of LGBT-persons in the member states, are of great importance. These two sources of data assessed together will provide a solid platform for a gap-analysis that can give valuable and necessary information about what areas (of the recommendation) are well covered and where further efforts are needed.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

The Council of Europe should continue examining the implementation of the Recommendation, and also collect and analyse additional data on the living conditions among LGBT persons in the Council of Europe area. Reference can be made to the on-going surveys conducted by the European Union Agency for Fundamental Rights that could be enlarged to encompass all member states of the Council of Europe.

When examining the implementation of the recommendation, it is important that also the regional and local levels are included in addition to the national/state level. Public services are typically provided by local authorities, and as such, it is important to see that the implementation of the recommendations, and awareness of the recommendations, also reaches the local level in member states.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

The recommendation could encompass the local and regional levels. It is also important that the recommendation and the appendix cater more towards the different contexts that exist in Member States of the Council of Europe so to be easier applicable.

**POLAND**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

In the case of Poland, the LGBT people are protected by the general provisions of the civil and criminal law. However, in the recent years, more specific and centralized approach has been adopted in respect to the problem of discrimination on grounds of sexual orientation and gender identity.

The actions undertaken by the Government of Poland and other public entities include adoption on 3 December 2010 of comprehensive legislation against discrimination – the Act on implementing certain European Union legislative provisions concerning equal treatment, which defines the individual areas and methods of counteracting violations of the principle of equal treatment, as well as methods of protecting it and appoints the relevant bodies to perform tasks related to the implementation of this principle. The instant Act lists grounds for discrimination, including explicitly sexual orientation. Moreover, in the process of constant review of that Act and in the view of the increase of the public awareness of the specific problems faced by LGBT people, the Government Plenipotentiary for Equal Treatment prepared a draft amendment of the 2010 Act, which *i.a.* provide for the explicit inclusion of gender identity as a protected ground and ensures equal protection in all areas of life regardless of the ground of discrimination, as well as widen the remedies available to the victims of the discrimination.

Together with the legal changes, the change of the judicial practice comes hand in hand, most visibly expressed in the Supreme Court's view that the persons remaining in cohabitation are entitled to succeed tenancy after the death of a partner, who was a tenant, equally if that person is of the same or the opposite sex (Resolution of 28 November 2012, ref. no. III CZP 65/12).

Lastly, it should be underlined that various public authorities acquainted themselves with the Recommendation and its explanatory report, which were translated into Polish, and take it into the account in the course of both their legislative work and administrative practice. The public authorities are nowadays consecutively trained on the issue of anti-discrimination, also on the grounds of sexual orientation and gender identity. They also cooperate with the representatives of the civil society in that field on a regular basis.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

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The Ministry of Justice regularly reviews measures to combat discrimination while filing the reports on the implementation of international agreements in the field of human rights (which are available on the Ministry's website (<http://bip.ms.gov.pl/pl/prawa-czlowieka/onz-i-prawa-czlowieka/sprawozdania-rp>), and more recently during the second cycle of the Universal Periodic Review of Human Rights in Poland.

The Government Plenipotentiary for Equal Treatment (*Pełnomocnik Rządu do spraw Równego Traktowania*) monitors the functioning of **the Act of 3 December 2010 on implementing certain European Union legislative provisions concerning equal treatment** (Journal of Laws of 2010 No. 254, item 1700), in force since 1 January 2011. The Act lists grounds for discrimination, including sexual orientation and prohibits unequal treatment in various areas of life (although with different scope of protection depending on the ground of discrimination) and grants compensation rights to all persons with regard to whom the principle of equal treatment has been violated. **In 2012, the Plenipotentiary reviewed the provisions of the Act and prepared a draft amendment**, which includes not only her own proposals of amendments, but also views expressed by the civil society organizations and the Ombudsman. The amendment provides, among other things, the introduction of an open catalogue of the protected grounds, the simplification of provisions as well as ensuring equal protection regardless of the ground of discrimination, it introduces also the possibility of applying for non-pecuniary compensation for the breach of principle of equal treatment, in addition to the currently existing claim for damage.

The above-presented proposals for amendment were presented to the public at the conference organized in December 2012 by the Government Plenipotentiary for Equal Treatment in cooperation with the Polish Society of Anti-Discrimination Law.

The draft amendment is currently consulted within the Chancellery of the Prime Minister.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

In general, legal measures to combat discrimination based on sexual orientation and gender identity are similar to those functioning in other areas of public life (for example, complaint to the Ombudsman, civil action for compensation or redress, notice of committing a crime).

Additionally, since 1 January 2011, *i.e.* the date of entry into force of the above-mentioned Act of 3 December 2010, there has been an additional measure to protect the principle of equal treatment, introduced by Article 13 of the Act, which provides for the right to compensation for anyone with regard to whom the principle of equal treatment was violated. Provisions of the Civil Code and the Code of Civil Procedure apply in cases involving the violation of equal treatment, with the burden of proof of non-discrimination resting with the party accused of the violation. It should be stressed that claims under the said Act do not deprive of the right to seek redress under the provisions of other laws.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

On 3 December 2010, the Act of on implementing certain European Union legislative provisions concerning equal treatment (Journal of Laws of 2010 No. 254, item 1700) has been adopted. It is in force since 1 January 2011. The Act defines the main areas in which unequal treatment is prohibited and ways to prevent violations of the principle of equal treatment on grounds of sex, race, ethnicity, nationality, religion, belief, creed, disability, age and sexual orientation. The Act includes also definitions of basic terms, such as: direct and indirect discrimination, unequal treatment or harassment.

In respect to sexual orientation, the Act prohibits unequal treatment in (Art. 8 § 1):

1. undertaking vocational training, including training, development, retraining and professional practice;
2. conditions of initiating and performing business or vocational activities, in particular in the framework of labour relations or employment on the basis of a civil contract;
3. access to and activities within trade unions, employers' organizations and professional associations, as well as the use of the powers of the members of these organizations;
4. access to and conditions of use of the instruments of the labour market and labour market services, as defined in the Act of 20 April 2004 on the employment promotion and labour market institutions offered by labour market institutions and instruments of labour market and labour market services offered by other entities acting for the employment, development of human resources and prevention of unemployment.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Statistical data on victims of crime in respect to all forms of discrimination may be collected under the Act on public statistics only on a voluntary basis (Art. 8 of the Public Statistics Act in conjunction with Art. 27 of the Act on the protection of personal data). In view of the above, the Ministry of Justice collects statistical data on the number of first instance judgements as well as final convictions of adults (obtained from the criminal record cards of the National Criminal Record) for hate crimes, referred to in Art. 118 § 1-3, Art. 118a, Art. 119 § 1 and 2, Art. 126a, Art. 126b, Art. 194, Art. 195 § 1 and 2, Art. 196, Art. 256 § 1-4 and Art. 257 of the Criminal Code and in Art. 55 of the Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, **however, without the indication of the motives which drove the perpetrator in committing the hate crime.**

In 2012 the Ministry of Justice took actions to change the methodology of obtaining and collecting of statistical data on crimes motivated by hate. For this purpose, a statistical file in a criminal case on hate crimes under Art. 118 § 1, 118 § 2, 118 § 3, 119 § 1, 119 § 2, 256, 257 of the Criminal Code was developed. **It now includes the statistical data on the perpetrators of these acts and the**

**persons injured, as well as the motives of crimes in this category.** The Ministry of Justice receives the completed files since 1 April 2012.

The Ministry of Justice receives also **the statistical files of cases concerning discrimination in employment (including on the basis of sexual orientation) under the labour law.** It should be noted that currently the statistical database of the MJ contains data on the cases in district and regional courts concerning damage claims for breach of the principle of equal treatment in employment of men and women on the basis of Article 18<sup>3d</sup> of the Labour Code, and in connection with sexual harassment as one of the form of discrimination in the workplace (Art. 18<sup>3a</sup> § 6 of the Labour Code in conjunction with Art. 18<sup>3d</sup> of the Labour Code), as well as on the cases concerning damage and compensation for moral damage claims in connection with mobbing (Art. 94<sup>3</sup> § 3 and 4 of the Labour Code) and on cases concerning discrimination in employment (Art. 11<sup>3</sup> of the Labour Code). That data is gathered in half-yearly and annual cycles.

Furthermore, it should be noted that the Ministry of Justice **is implementing a new system** which will allow collection of detailed statistical data from the courts' records. It will provide comprehensive monitoring of cases of violations of the principle of equal treatment based on a number of factors, including sexual orientation, and monitoring of hate crimes and hate-oriented incidents based on sexual orientation and gender identity. Full implementation of this system is planned for the years 2013-2015.

Further on, in December 2011 a Human Rights Protection Team was established in Department of Control, Complaints and Petitions of Ministry of Interior, on the basis of Monitoring Team on Racism and Xenophobia, which had been functioning earlier (since 2004). Responsibilities of Human Rights Protection Team include, among others, **monitoring cases related to hate crimes, including sexual orientation or gender identity-related crimes.** The Team also undertakes actions aimed to ensure an adequate level of human rights protection during the realization of tasks by bodies subordinated or supervised by Minister of Interior, that also includes counteracting the discriminating behaviour of police and Boarder Guard officers in relation to persons of other nationality, ethnicity, sexual orientation or gender identity. Human Rights Protection Team monitors cases since the event happens till the end of actions of relevant bodies (law enforcement agencies or courts).

The Government Plenipotentiary for Equal Treatment collects statistical data on complaints lodged by from citizens, groups of citizens or non-governmental organizations. She then takes actions on the basis of such applications, as well as on the basis of media reports, out of her own initiative. The Plenipotentiary examines some of the cases in her own capacity (suggesting, for instance, changes in the law or cessation of discriminatory actions), while in others she indicates the rights and possible actions to be undertaken by the applicant. Some cases are handed over to other authorities for consideration, in accordance with their competences. **In 2011, the Office of the Government Plenipotentiary for Equal Treatment examined 405 cases concerning unequal treatment and discriminatory behaviours, of which 46 related to sexual orientation. In 2012, 30 cases - out of the total number of 459 - related to sexual orientation.**

Also the Statistical Information Department of the Office of the Ombudsman collects statistical data on complaints lodged by persons discriminated against on grounds of sexual orientation or gender identity.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As already indicated above, in accordance with Article 13 of the Act of on implementing certain European Union legislative provisions concerning equal treatment, anyone with regard to whom the principle of equal treatment has been violated (e.g. due to sexual orientation), is entitled to compensation.

The 2010 Act does not however allow for the possibility to seek compensation for violation of the principle of equal treatment on the basis of gender identity.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Until recently, Poland has lacked coordinated system actions (policies) in order to combat discrimination based on sexual orientation or gender identity. Now, however, the Government Plenipotentiary for Equal Treatment is working on a comprehensive programme in this respect.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation has been translated into Polish. It was disseminated by posting it on the website of the Government Plenipotentiary for Equal Treatment (<http://rownetraktowanie.gov.pl/akty-prawne/zalecenie-komitetu-ministrow-rady-europy-w-sprawie-przeciwdzialania-dyskryminacji-ze>) and the Ministry of Justice (<http://bip.ms.gov.pl/pl/prawa-czlowieka/inne-organizacje-miedzynarodowe-i-prawa-czlowieka/prawa-czlowieka-w-radzie-europy/>), as well as by the distribution on the conference held in the Chancellery of the Prime Minister on 18 July 2012, organized by the Plenipotentiary and the Council of Europe, inaugurating in Poland the Council of Europe project *Combating discrimination based on sexual orientation or gender identity*. The Recommendation was also distributed to the libraries of the Ministry of Justice and the Central Board of Prison Service.

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A guarantee of effective, prompt and impartial investigation into the hate crimes and hate-motivated incidents is ensured by the general rules of law.

**The prompt conduct of proceedings is guaranteed by** the act of 17 June 2004 on Complaint Against Violation of a Party's Right to Have Its Case Hared Within a Reasonable Period of Time in Court Proceedings or in a Proceedings Conducted or Supervised by a Prosecutor (Journal of Laws 2004, No. 179, item 1843 as amended), according to which a victim can complaint to a Court when it finds that investigation is not conducted without undue delay.

**The impartialness of proceedings is guaranteed by** the separation of the offices of the Minister of Justice and the Public Prosecutor General. Previously these two offices were combined. The separation of the functions was meant to remove any and all doubts as to the full independence and freedom from political influences of the prosecution authority in Poland. The Public Prosecutor General is appointed for a single 6-year term of office. Heads of all district and provincial appellate prosecution authorities are also appointed for terms of office of 6 and 4 years, respectively. The law on prosecution authority enhances the status of so-called front desk public prosecutors that work on particular cases. Superiors of such prosecutors can issue orders to their subordinates, but they must do so in writing and there is an obligation to append a relevant document to the case file. The National Council of Public Prosecutors, which is patterned after the National Judiciary Council, monitors continuous learning and promotion paths of public prosecutors. Mechanisms which make the promotion of a public prosecutor contingent solely on professional criteria were also introduced. According to Polish Code of Criminal Procedure, a prosecutor shall be disqualified by law from participation in a case if: (1) the case concerns him directly, (2) he is the spouse of a party to the proceedings, of the injured person, of the defence counsel, of the attorney, or of the legal representative, or if he lives in cohabitation with one of these persons, (3) he is related to any such person by blood or marriage, directly or collaterally, down to a relation between the children of the sibling of those listed under (2), or else related to any such person by adoption, guardianship or custody, (4) he was an eye-witness to the act from which the pending case arises, or has appeared as a witness or expert in the same case, (5) he has participated in the issuance of a decision subject to appellate measure, or has himself issued a ruling subject to such measure, (6) he had conducted mediation, (7) if there are circumstances of such nature that his impartiality in the given case might give rise to reasonable doubts. The grounds for disqualification shall continue to be valid, even if the ties of marriage, cohabitation, adoption, guardianship or custody upon which they had been founded, have been dissolved.

**The effectiveness of proceedings is guaranteed by** the control by an independent and impartial court over potential decisions not to institute or to discontinue criminal investigation. If the injured party does not agree with the prosecutor's decision to dismiss a case or with the decision to fail to institute proceedings, he or she has the right to take the decision to court and demand that the court order the prosecutor to initiate or continue proceedings. If, having taken the steps ordered by the court, the prosecutor still finds no grounds for indictment, the injured party may seek an indictment on his or her own.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Pursuant to Article 53 of the Criminal Code, homophobic or transphobic motivations are considered to be aggravating circumstances when sentencing. The relevant provisions of the Criminal Code provide that:

Article 53. § 1. The court shall impose the penalty at its discretion, within the limits provided for by law, making sure that its severity does not exceed the degree of guilt, taking into account **the social harmfulness of deed**, and taking into account the objectives of prevention and education, which is achieved in relation to the sentenced, and the need for development of legal awareness of the society.

§ 2. In imposing a penalty, the court shall consider in particular **the motivation and behaviour of the offender**, committing a crime jointly with a minor, the type and degree of infringement of the obligations imposed on the offender, the nature and size of the negative consequences of crime, personal characteristics and conditions of the offender, a way of life before the offence and behaviour after its commission, particularly a desire for compensation or redress in some form to the social sense of justice, and the behaviour of the victim.

Article 115. § 2. In assessing social harmfulness of a deed the court shall take into account the type and nature of the infringed good, the size of the caused or threat of injury, the manner and circumstances of committing the offence, the importance of responsibilities violated by the offender, as well as the form of intention, **the motivation of the offender**, the type of the violated rules of prudence and the degree of violation.

During trainings for the future judges and prosecutors (legal trainees), which are mandatory, human rights in criminal proceedings are broadly discussed. The trainings relate primarily to the issues of substantive criminal law, including the crimes against: life, health, sexual freedom, decency, honour and physical integrity – examined also from a perspective of discriminatory motivation of the perpetrator. Moreover, the trainees familiarize themselves with the case law of the European Court of Human Rights, including the discrimination cases.

The judges and prosecutors take part in the training entitled *"Criminal law aspects of the fight against the discrimination on racial, ethnic, religious grounds, sexual orientation or gender identity grounds."* During this training, the issue of discrimination based on, among other things, sexual orientation or gender identity, and effective ways to combat it, is discussed. Particular emphasis is placed on discriminatory crimes in the criminal code, the problem of discrimination in the context of criminal law protection of the dignity (honour) and physical integrity of a person, and the legal provisions allowing the prosecution of these crimes.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In order to increase public awareness, especially on the subject of the rights of victims, the Ministry of Justice conducted in 2010 a public campaign *"Know your rights. Come out of the shadow. Let help yourself"*, as a part of the project *"Facilitating Access to the Judiciary"*. During this campaign, amongst others, 430 radio programmes were broadcasted.

Within the frames of the above-mentioned project also a website [www.pokrzywdzeni.gov.pl](http://www.pokrzywdzeni.gov.pl) has been updated. That site contains, among other things, the characteristics of selected offences,

including punishable threat, bodily harm, beatings (which, according to the NGOs, particularly often affect LGBT people) and provide information about the institutions in which victims can seek help.

In 2011 also the website of the Ministry of Justice was developed in order to equip the victims of violence with a convenient source of information about their rights and institutions providing assistance.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The judges, prosecutors and Prison Service officers are regularly trained in the field of human rights, also in the field of equality and non-discrimination, including based on sexual orientation and gender identity. These trainings help to increase the level of awareness of the problem of discrimination, detection of crimes committed with discriminatory motives and the proper treatment of the victims among the legal and prosecutor's trainees, judges, prosecutors and their assistants, and Prison Service officers.

#### **Judges and prosecutors**

For judges and prosecutors, trainings in this area are carried out both at the stage of education of trainees (future judges and prosecutors) and for professional judges and prosecutors. The main institution responsible for the preparation of training plans for this group is the Polish National School of Judiciary and Public Prosecution (hereinafter: KSSiP). It conducts training at the national level, as well as in collaboration with foreign and international institutions.

Between 2011 and 2012, 225 trainees were trained in the field of substantive criminal law relating to crimes against life and health, and against sexual freedom and morality.

Judges and prosecutors took part in the following trainings, from 2009 to 2012: *"Discrimination and mobbing in labour relations. Application of the provisions of the Civil Code in cases of labour law"* (2009 - 58 people), *"Criminal law aspects of the combat against the discrimination on racial, ethnic, religious grounds, due to sexual orientation or gender identity. Criminal, criminological and legal aspects of human trafficking"* (2010 – 100 people), *"Equal treatment in employment. Harassment. Protection of personal goods. Employee's claim based on the provisions of the Civil Code"* (2011 – 89 people), *"The obligation of employer to prevent harassment and unequal treatment in employment in judicial decisions"* (2012 – 100 people).

At the same time, between 2009-2012, the following trainings for judges and prosecutors on the phenomenon of discrimination, organized by the Academy of European Law (ERA) and by the European Court of Human Rights, in cooperation with KSSiP, were carried out: *"The EU Anti-Discrimination Directives 2000/43 and 2000/78 in practice," "EC legislation on equal treatment between women and men," "EU Anti-discrimination Law," "Study Visit at the European Court of Human Rights."* In total, they were attended by 53 people.

#### **Prison Service**

Prison Service officers acquaint themselves with the issues of equal treatment and non-discrimination, including on the basis of gender identity and sexual orientation, during trainings organized by the Central Board of the Prison Service, such as: *"International standards of conduct with persons deprived of their liberty," "Penal issues," "Service pragmatics of the Prison Service."* During these trainings, the Prison Service officers learn the norms in various systems of human rights protection and familiarize

themselves with a range of various documents and international conventions. Furthermore, during the “*Situational Workshops*” lead by psychologists, the PS officers learn how to be tolerant in interpersonal contacts. The PS officers are sensitized to the symptoms of violent behaviours among the inmates. In addition, the issues of physical and mental violence, including negative behaviours and attitudes towards LGBT people, are discussed in detail during the interviews with candidates for some official positions, such as correction officer and senior correction officer in a penal institution.

### **Police**

In the Police, changes were introduced in the selection to the police, with an aim to exclude socially prejudiced people, which could have a negative impact on engaging in the combat against crime on homophobia and transphobia, already at the stage of recruitment.

As a part of the 7-month basic training, the issues related to homosexuality and transsexual people are always addressed with an aim of shaping the desired attitudes to contribute to the effective fight against crime on this background.

Moreover, a specialized guide for Police teachers entitled “*To serve and protect*” was developed. Its aim is to develop tolerant attitudes and behaviours, as elements and features necessary for the proper approach of police officers to people with different sexual orientation and gender identity.

Also a workshop for police executives “*Human Rights in Police Management*,” which shapes the specific sensitivity in the prosecution of different categories of offences, including those committed in relation to sexual orientation and gender identity, was developed and implemented.

Since 2006, **specialized workshops for police officers “*Law Enforcement Officers Programme on Combating Hate Crimes*”** (LEOP) have been conducted. The program is being carried out in Polish police in cooperation with ODIHR OSCE and it is coordinated by the Ministry of Interior. In the framework of the program, the system of vocational trainings on counteracting and combating hate crimes, elaborated by the special team, has been implemented. The subject of the trainings includes the issues of identifying hate crimes, investigating them properly and gathering evidences, reacting adequately and preventing hate crimes. The aim of those trainings is to raise the competence of police officers to conduct the investigation in hate crime cases, including sexual orientation- or gender identity-related crimes, as well as to give them the ability to deal with hate crime victims and to sensitize police officers to the issue of discrimination – also in the case when police officers are its perpetrators. Until today, over 50 000 police officers have been trained within the program. Apart from lecturers from the police, the trainings are conducted also by the representatives of nongovernmental organizations acting in the field of combating racism and neofascism and representing the particular groups of minorities which are threatened with hate crimes, including sexual minorities.

Currently a specialized guide for police officers entitled “*Firstly, human – anti-discrimination guide for Police units*” is under preparation, under the patronage of the Office of the Ombudsman. The guide presents *i.a.* the issues connected with the environment of sexual minorities.

**The police programme of environmental meetings entitled “*Position of a victim in a criminal process*,” which is dedicated solely to LGBT people across the country, was developed and implemented.** The programme was created in collaboration with the NGO Campaign Against Homophobia.

The topic of LGBT is also a regular component of seminars and conferences on human rights protection organized in the police environment.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?



- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

One of the primary responsibilities of the Prison Service is to ensure personal safety of all prisoners. What is more, also a condemned person is obliged to immediately inform the supervisor of threats against personal safety (Article 108 of the Executive Criminal Code).

After admitting an LGBT person to the penal institution, the administration is required to take appropriate actions aimed at suitable placing of the inmate and ensuring his/her safety. These actions are taken based on an individual assessment of the situation of each prisoner and consist in particular on the proper selection of fellow inmates or placing a person in a single cell, a suitable organization of walks, visits, cultural and educational activities and sports. Furthermore, under Article 73a of the Executive Criminal Code, the director of the penal institution may decide to monitor the rooms in which such persons are staying.

The Prison Service does not collect any data related to sexual orientation and gender identity of persons deprived liberty, however, any signal of threats to personal safety of the prisoners or the possibility of harassment or symptoms of other discriminatory behaviour is analysed.

Prisoners at risk of intolerant behaviour on the part of other inmates are ensured safe location in cells, and the company of convicts who are characterized by tolerance and open attitude, presenting a low level of social corruption and actively participating in the process of rehabilitation, which holds promise of proper interpersonal relationships between the prisoners. If necessary, the prisoners are provided with psychological help, and the atmosphere in a cell is subject to a systematic supervision. Officers are required to keep sexual orientation in confidentiality, so that the LGBT prisoners are not subjected to stigmatization in the penal institution and are not exposed to undesirable behaviour.

The penitentiary staff implements a number of programmes targeted to specific groups of prisoners promoting attitudes of tolerance, teaching inmates non-aggressive solutions of conflicts and respect for the rights of others. Appropriate disciplinary measures are taken against the prisoners violating social norms in the above-specified fields. The use of preventive measures and programmes preventing aggressive behaviours influences the reduction of the number of such incidents. At the end of 2012, 225 programmes against aggression and violence were implemented, which were attended by 2,224 inmates.

Another important regulation is the provision of Article 102 item 10 of the Executive Criminal Code, which states that the convicted person has the right to submit petitions, complaints and requests to the authority competent to consider them and to present them, in the absence of other people, to the administration of the penal institution, heads of organizational units of Prison Service, penitentiary judge, prosecutor and the Ombudsman.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **With regard to the prosecution and punishment of “hate speech”**

In accordance with the ECHR judgement of 13 February 2002 in *Vejdeland v. Sweden* case, penalizing hate speech that takes the form of distribution of “threats or contempt” is in line with the Convention. In Poland, the dissemination of threats is penalized particularly by Article 190 of the Criminal Code, and contempt in the Article 216 of the Criminal Code.

Polish law distinguishes between “hate speech”, defined as the distribution of “threats or contempt” and “the language of hostility”. It penalizes the former, also on the homophobic and transphobic grounds. Hate speech is penalized in situations when it takes the form of incitement to crimes (Art. 18 § 2 of the Criminal Code) or calling for them or praising them (Art. 255 of the Criminal Code). The latter provision also applies to calling for and praising acts of verbal aggression (Art. 212 and 216 of the Criminal Code) or physical aggression (Art. 148 et seq. Criminal Code) against fellow citizens.

It should be noted that according to the provisions of the European Union (Council Framework Decision 2008/913/JHA of 28 November 2008 *on combating certain forms of racism and xenophobia by means of criminal law* (OJ of EU L of 6 December 2008), such measures cannot violate fundamental rights, including the right to freedom of expression (item 14 of the preamble). Therefore, the Member States are not obliged to criminalize acts of hate speech other than threatening, abusive or insulting, or are likely to cause disruption of public order (Art. 1 sec. 2 of the Decision).

### **Raising the awareness of the public authorities on avoiding the use of discriminatory language**

The Polish National School of Judiciary and Public Prosecution conducts a number of trainings on equality and non-discrimination, including on the grounds of sexual orientation and gender identity. The subject of these trainings also covers prevention of the so-called “hate speech.” For example, the subject of the training *“Criminal law aspects of the combat against the discrimination on racial, ethnic, religious grounds, owing to the sexual orientation or gender identity. Criminal, criminological and legal aspects of human trafficking”* was discrimination based on sexual orientation or gender identity in the context of criminal law protection of the dignity (honour) and physical integrity, the definition of the problem and ways to combat them effectively.

Moreover, the Ministry of Justice and the Polish National School of Judiciary and Public Prosecution, in collaboration with civil society organizations, took actions in order to expand the training programme for spokespersons of the courts and prosecutor's offices and to include the above-mentioned issues. The first edition of the training with the extended programme is planned for 2013.

From 2011 to 2013, the Government Plenipotentiary for Equal Treatment in collaboration with the Jagiellonian University and the School of Economics is implementing the project *“Equal Treatment as a Standard of Good Governance.”* The aim of the project is to prepare the government administration at all levels to draft new law and monitor the existing provisions and to implement anti-discrimination policies concerning *i.a.* LGBT people.

The project includes:

- establishment of a nationwide network of 51 Coordinators for Equal Treatment in all ministries, Chancellery of the Prime Minister, regional offices and selected government agencies and the National Labour Inspectorate;
- development by the Jagiellonian University the Strategic Recommendations for Equal Treatment, which are the basis for development of the National Action Plan for Equal Treatment;
- trainings for about 480 employees of 87 governmental institutions on the implementation of the principle of equal treatment and prevention of all forms of discrimination, raising the competence of public administration personnel;

- activities promoting the ideas of equality and prevention of all forms of discrimination through the implementation of public information campaign on equal treatment and non-discrimination;
- launching of the website [www.siecrownosci.gov.pl](http://www.siecrownosci.gov.pl) ("Network of equality");
- organization of 16 regional and 4 thematic conferences on various aspects of anti-discrimination policy and law;
- dissemination of the results of research carried out within the project.

As a part of the project, the School of Economics conducted between December 2011 and January 2012 expanded research with the extensive Gender Index measure (discrimination on grounds of sex, race, ethnicity, nationality, religion, belief, political views, age, disability, sexual orientation, marital or family status) in all ministries and in the Chancellery of the Prime Minister, thanks to which it will be possible to assess the level of equality of opportunities in all areas of discrimination covered by the catalogue. The research report was drawn up in 2012.

Furthermore, between 2012 and 2013, the Office of the Plenipotentiary for Equal Treatment was implementing the project "*Media of Equal Opportunities*", co-funded by the European Commission within the EU programme for employment and social solidarity PROGRESS. The overall objective of the project was to introduce the notion of equality to the language of public debate through the educational and promotional activities aimed at individuals and communities taking part in the public debate. As a part of the project, two contests were carried out. In the course of the first one, addressed to experts and NGOs, the best reports, research or analyses concerning communications and the language of the media in the context of anti-discrimination or coaching manuals and training materials in the field of policy of equal opportunities and combating discrimination in the mass media were selected. The chosen materials are to be published and distributed as an award. The project creator intended that award as a form of support of the non-governmental sector and promotion of innovative methods and studies related to the topic of anti-discrimination. In the course of the second contest, directed to journalists and journalism students, the best ideas to promote equality and combat discrimination in three categories: pen (Internet), microphone and image were selected.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

Polish law protects the right of association in a way that it even provides for imprisonment up to 2 years of anyone who by using violence or unlawful threat prevents the conduct of a lawful meeting, or disperses such a meeting (Article 260 of the Criminal Code). This concerns in particular the meetings referred to in the Act of 7 April 1989, the Law on Associations (Journal of Laws of 2001, No. 79, item 855, as amended).

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly

committed by state agents, 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Polish criminal law protects defenders of LGBT persons' rights from hostility and aggression, either active (Art. 148 et seq. of the Criminal Code) or verbal (Art. 190, 216, 212 of the Criminal Code).

Polish Criminal Code also provides for severe penalties for a public officer who showed behaviour having features of a crime motivated by discrimination. Any such abuse during or in connection with the performance of the public officer's duties, if reported by the victim or otherwise known to the law enforcement authorities, is the subject of preparatory proceedings as a separate offence of misuse of powers or negligence of duty by the officer. The preparatory proceedings in these cases are conducted in the form of "investigation," rather than a simplified form of "inquiry," which minimizes the potential interference in the course and results of these proceedings. Due to the potential perpetrator, the proceedings are characterized by meticulousness in collecting the evidence.

Decisions of prosecutors on whether to prosecute are under the control of an independent and impartial court. If the victim does not agree with the prosecutor's decision to discontinue the proceedings, he/she can appeal against that decision to the court and request that it orders the prosecutor the initiation or continuation of the proceedings (Art. 330 of the Code of Criminal Procedure), and if the prosecutor, after taking the steps ordered by the court, still cannot see basis for preparing an indictment – the victim can do it on his/her own behalf (Art. 55 of the Code of Criminal Procedure).

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In its legislative activities, the Ministry of Justice closely follows § 12 sec. 5 of the Resolution No. 49 of the Council of Ministers of 19 March 2002 - Rules of Procedure of the Council of Ministers, which provides the possibility of consulting draft documents with the civil society organizations and other stakeholders and institutions. The decision on whether the document will be sent out for consultation is not mandatory and should be taken after considering the content of the government draft document, and taking into account other factors, including its importance and the expected social and economic impact, the degree of its complexity and its urgency. In legislative practice of the Ministry of Justice any document which may be associated with significant effects or whose content provides significant new legislation, is subjected to consultations.

In its non-legislative activities, the Ministry of Justice is working closely with the NGOs. For example, the proposition of cooperation in the training of spokesmen of courts and prosecutor's offices was sent to the NGO Campaign against Homophobia, the Foundation for Transgender People "Trans-Fuzja", the Association Lambda Warszawa and the Anti-discrimination Education Association.

In addition to the above, the Plenipotentiary for Equal Treatment, initiated a series of meetings with representatives of the non-governmental sector and the academic community. During the first meeting, on 1 February 2012, the Plenipotentiary met with the Coalition for Equal Opportunities, which brings together organizations working in different areas of anti-discrimination, including the LGBT persons. The meeting aimed at initiating regular contacts and cooperation. The proposals submitted by organizations were discussed on the meeting. Since that time, a series of meetings, during which the issues of equal treatment were discussed, have been held.

The Ombudsman also meets regularly with the LGBT organizations.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

The Law on Assemblies of 5 July 1990 guarantees the right of freedom of peaceful assembly. This act does not contain any provisions that would discriminate against, or could potentially pose a risk of discrimination based on sexual orientation or gender identity.

The Law on Assemblies 1990 enumeratively lists the data which shall be included in a notice of intention to hold an assembly. The required data does not include indication of the sexual orientation of the applicant, nor can such information be learnt from the notice of intention.

Polish law protects the right to assembly in a way that it provides even for imprisonment up to 2 years of anyone who by using violence or unlawful threat prevent the conduct of an lawful assembly or a march or disperses such an assembly or a march. This applies not only to assemblies and marches reported to the authorities under the Act of 5 July 1990, the Law on Assemblies, but also the so-called "spontaneous assemblies" not reported to the authorities because of the abruptness of the event which caused it (see the judgement of the Constitutional Court of 10 July 2008, Ref. no. P 15/08).

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity

are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Polish criminal law does not contain provisions which, due to their unclear wording, could discriminate LGBT persons.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

In Poland, data on sexual orientation or gender reassignment information is not collected or stored. What is more, that data cannot be coded in reference numbers used in the population records. These issues, along with the possible exceptions in the collection of "sensitive" data, are regulated by the Act of 29 August 1997 on the protection of personal data, which, in so far as relevant, says:

**Article 27. 1. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, religious, party or trade-union membership, as well as the processing of data concerning health, genetic code, addictions or sex life and data relating to convictions, decisions on penalty, fines and other decisions issued in court or administrative proceedings is prohibited.**

**2. Processing of the data referred to in paragraph 1 is acceptable if:**

- 1) **the data subject has given his/her written consent**, unless the processing consists in erasure of personal data,
- 2) the specific provisions of other statute provide for the processing of such data without the data subject's consent and provides for adequate safeguards,
- 3) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his/her consent until the establishment of a guardian or a custodian,
- 4) processing is necessary for the purposes of carrying out the statutory objectives of churches and other religious unions, associations, foundations, and other non-profit seeking organizations or institutions with a political, scientific, religious, philosophical, or trade-union aim and provided that the processing relates solely to the members of those organizations or institutions or to the persons who have a regular contact with them in connection with their activity and subject to providing appropriate safeguards of the processed data,
- 5) **processing relates to the data necessary to pursue a legal claim**,
- 6) processing is necessary to carry out the tasks of the data administrator relating to the employment of employees and other persons, and the extent of processing is provided in the Act,
- 7) **processing is required for the purposes of preventive medicine, the provision of care or treatment**, where the data are processed by a health professional subject involved in treatment, other health care services, or the management of health care services and subject to providing appropriate safeguards,
- 8) the processing relates to those data which were made publicly available by the data subject,

9) it is necessary to conduct scientific researches including preparations of a thesis required for graduating from university or receiving a degree; any results of scientific researches shall not be published in a way which allows identifying data subjects,

10) data processing is conducted by a party to exercise the rights and duties resulting from decisions issued in court or administrative proceedings.

**Article 28. 1. (passage deleted)**

2. Serial numbers applied in the census may include only such features as: sex, date of birth, consecutive number, and control number.

**3. Assigning any hidden meaning to the elements of serial numbers in the records relating to natural persons is prohibited.**

It is worth noting that currently the Constitutional Court is dealing with the issue of a prohibition of processing the so-called sensitive data (including data of LGBT persons) in connection with the processing of personal data by the authorized representatives of the Supreme Chamber of Control. The Constitutional Court will examine the compatibility of the provision of Art. 29 sec. 1 item 2 letter i of the Act of 23 December 1994 on the Supreme Chamber of Control in connection with Art. 27 sec. 2 point 2 of the Act of 29 August 1997 on the protection of personal data – with Art. 2, Art. 47, Art. 51 sec. 2 in connection with Art. 31 sec. 3 and Art. 51 sec. 4 of the Constitution of Poland, as well as with Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ref. K 39/12).

It is also advisable to refer to the statistical information, collected under the Act of 29 June 1995 on Public Statistics, as well as on the basis of the Act on the Protection of Personal Data. The scope of the information collected is defined in executive acts, issued each year based on the provisions of the Act on Public Statistics. In particular, the data in connection with manifestations of all forms of discrimination may be collected under the Act on Public Statistics only on a voluntary basis (Art. 8 of the Act on Public Statistics in conjunction with Art. 27 of the Act on the Protection of Personal Data).

#### **Protection of data of transgender people:**

With regard to the storing of sensitive data of persons after gender reassignment, it should be noted that although the issue of gender reassignment is not regulated in a single procedure and in practice consists of three phases (medical procedure, then the recognition of changes before the court, and finally administrative procedure with the purpose of correcting the data shown in the civil registry records), the privacy of such data is fully guaranteed.

The domestic court's judgment acknowledging gender reassignment (in a procedure under Art. 189 of the Code of Civil Procedure) is forwarded to the Civil Registry Office that issued a birth certificate of a given person in order to make a note of a sex correction on the birth certificate in accordance with Art. 21 of the Law of 29 September 1986 on the Civil Registry Records ("1. If after the preparation of a civil status record events occur that have an impact on its content or validity, changes arising therefrom shall be entered into the act in the form of additional mention; 2. The basis for the mention, referred to in the sec. 1, are final court rulings, final decisions, copies of the civil registry records and other documents that affect the content or validity of the act"), see also the Supreme Court ruling of 22 March 1991, III CRN 28/91, in which it stated that "in case of finding in the judgement that the change of sex took place, such ruling acts with *ex nunc* and is the basis for the disclosure of the circumstances in the civil registry records in the form of an additional entry under Article 21 of the Act on the Civil Registry Records." The sex determined in the birth certificate is then the basis for the preparation of official documents and giving identification numbers. The person concerned may then apply for a change of name to the Civil Registry Office and, in accordance with Article 31b (5) point 2 of the Act of 10 April 1974 on census and identity cards ("**PESEL number is subject to change in case of ...**

**correction of sign or a sex change of the person, to whom it was given”), for a new Social Security number. The next step is to apply for an identity card and other documents reflecting the changes. It should be underlined that the information of one’s sex at birth is showed only in the extended version of the birth certificate, and not in the certified abridged copies of the birth certificate, which are commonly used in the official situations, such as when applying for marriage or for issuing a death certificate. The extended birth certificate is not required in any official situation and it only reflects the "full history" of a person.**

**Detailed information on the collection of data on employment:**

At the recruitment stage, an employer is entitled to require from the person applying for a job only a limited amount of personal data. According to the Labour Code, an employer has the right to request only the data including: name(s) and last name, parents' names, date of birth, place of residence (address for correspondence), education, the course of previous employment, as well as:

- other personal data of an employee, as well as names and birth dates of children of an employee, if providing such data is necessary for an employee to use the special powers provided for in the labour law,

- Social Security number (PESEL) of an employee assigned by the Government Information Centre of Universal Electronic System for Registration of the Population (RCI PESEL).

The employer may request personal data other than those specified above, if the obligation to provide them arises from separate regulations.

**Information on good practice of Border Guard:**

Border Guard strictly complies with the law on the protection of personal data, in particular the so-called sensitive data, which include personal data relating to sexual orientation and gender identity of people. From 1 January 2010 to January 2013, the Border Guard received only 1 complaint about the behaviour of the BG officers in the above-mentioned field, which resulted in immediate preventive measures in the form of training of the personal processing data. Moreover, representatives of commanders of divisions for the protection of human rights were trained in September 2012 by the Administrator of Information Security the Commander in Chief of Border Guard in terms of the protection of personal data, particularly sensitive data.

22. Are appropriate measures available to guarantee full legal recognition of a person’s gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As already indicated above, in Poland, gender reassignment procedure is a three step process, starting with appropriate medical treatment (hormone therapy, surgery), through the court phase, aimed at assigning the proper sex of a person whose gender identity differs from their registered sex, to the administrative procedure for changing the contents of the birth certificate, change of personal data and issuing a new PESEL (social security number). **None of these steps include prior requirements which would have been unnecessary or could have offensive nature.** Medical treatments are performed on the basis of diagnosis of transsexualism, defined as “the difference



between one's mental sense of his or her gender and the morphological and biological build and social gender (metrical), which are perceived as 'alien' by that person and belonging to the opposite sex" (definition by K. Imieliński, accepted without reservations by the Polish science). At the court stage, the basic evidences in the case are diagnosis of a sexologist and the testimony of the plaintiff. The administrative procedures of changing the documents take place on the basis of the final judgement of the court.

It is worth emphasizing that actions aimed at comprehensive regulation of gender reassignment procedures are taken. Among others, on 1 August 2011, the Ombudsman reported to the Minister of Justice the need for a comprehensive legislation on transgender people and the urgent intervention of the legislator in the mode of legal change of registered sex (ref. no. RPO/660929/10/I). On 26 April 2011, the Ombudsman questioned the Minister of Labour and Social Policy in connection with the lack of regulations governing personal data changes in the work's certificate in the event of the former employee's gender reassignment (ref. no. RPO/673031/11/III).

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

People after gender reassignment can freely marry person of the opposite sex, according to the general rules set out in the Family and Guardianship Code. Gender of a person applying for marriage is assessed on the basis of the certified abridged copy of the birth certificate.

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐ - *Not applicable*

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please provide examples:

**In this regard, good practices can be identified in which Polish law gave certain rights to cohabitants, without requiring that they are of the opposite sex.** As an example, it should be noted that it is clear from the decisions of the Supreme Court (Resolution of 28 November 2012, ref. no. III CZP 65/12), that by a person who "actually remained in cohabitation" with the deceased tenant (and therefore is entitled to succeed a tenancy), should also be understood a person of the same sex.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The fundamental principle of the Polish Family Law is the notion of the child's well-being (*dobro dziecka*). The well-being of the child is assessed *in concreto* by deciding what is the best for the child in a given situation and at a given time.

As for the practical activities, it is worth to emphasize the training activities of the Polish National School of Judiciary and Public Prosecution, which organizes trainings entitled "*Selected issues of domestic and foreign adoption*" and "*Adoption – the substantive and procedural issues – foreign adoption (regulations under the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, done in The Hague on 29 May 1993).*" Their scope includes problems of discrimination on the grounds of sexual orientation and gender identity in deciding on the adoption of children by single person. Furthermore, the specific topics covered during this training include the judicial decisions of the European Court of Human Rights about adoptions and issues of foreign adoptions. In the years 2008-2011, 243 people have been trained in that matter.

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**The Act on employment promotion and labour market institutions** stipulates that the provisions of the Act protect the obedience of the principle of equal treatment in access and use of the services of the labour market and labour market instruments, regardless of sex, race, ethnicity, nationality, religion, belief, creed, disability, age or sexual orientation. **List of discriminatory grounds is open**, which means that discrimination on any other grounds, such as gender identity, is prohibited.

The Act prohibits discrimination in the following areas:

- establishing criteria for issuing work permits for foreigners,
- business rules of employment agencies,
- conducting employment recruitment,
- receiving job offers submitted by employers, vocational guidance and career information,
- managing and benefit from trainings.

**Provisions of the Act of 3 December 2010 on implementing certain European Union legislative provisions concerning equal treatment apply to the proceedings for infringement of the principle of equal treatment.**

The Act on employment promotion contains also penal provisions concerning proceedings for violation of the prohibitions of discrimination – in accordance with the provisions, who, leading employment agency, does not respect the principle of non-discrimination on grounds of sex, age, disability, race, religion, ethnic origin, nationality, sexual orientation, political beliefs and faith or because of union membership or because of gender, age, disability, race, religion, nationality, political beliefs, ethnic origin, religion or sexual orientation refuses to employ a candidate for a vacant job or a position of professional preparation, is liable for punishment by fine of not less than PLN 3000 .

The prohibition of discrimination, regardless of the ground for it, is also among the basic principles of the labour law (Article 11<sup>3</sup> of the Labour Code). **The list of the grounds of discrimination contained in the Labour Code is open.** Therefore, even though discrimination based on gender identity is not mentioned directly – it is included in the list and is under protection.

The text of the applicable provisions of the Labour Code:

**Article 11<sup>3</sup>.** Any discrimination in employment, direct or indirect, in particular with regard to sex, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, belief, sexual orientation, as well as employment for a fixed or indefinite time period, full or part-time work – is not allowed.

Chapter II a – Equal treatment in employment

**Article 18<sup>3a</sup>.** § 1. Employees should be treated equally in labour relations in terms of concluding and terminating an employment, terms of employment, promotion and access to training to improve professional qualifications, in particular, regardless of sex, age, disability, race, religion, nationality, political views, trade union membership, ethnicity, belief, sexual orientation as well as employment for a fixed or indefinite time period, full or part-time work.

§ 2. Equal treatment in employment means non-discrimination in any way, directly or indirectly, on the grounds set out in § 1.

§ 3. Direct discrimination occurs when due to one or more of the grounds defined in § 1 an employee is or could be treated in a comparable situation less favourably than other employees.

§ 4. Indirect discrimination occurs when, as a result of an outwardly neutral decision, criterion applied or action undertaken, there are or there may be disadvantageous disproportions or particularly disadvantageous situation in concluding and terminating employment relationships, terms of employment, promotion and access to training in order to improve professional qualifications in relation to all or a substantial number of employees belonging to a group singled out on the basis of one or several discrimination criteria listed in § 1, unless the decision, criterion or action is objectively justified by a lawful objective which is to be reached, while the measures which will serve to reach the objective are proper and necessary.

§ 5. Manifestations of discrimination within the meaning of § 2 also comprise:

- 1) actions which consist in encouraging or ordering any other person to violate the principle of equal treatment in employment,
- 2) undesirable conduct with the purpose or effect of violating the dignity of an employee and creating an atmosphere which is frightening, hostile, degrading, humiliating or insulting (mobbing).

§ 6. Discrimination because of gender also includes any undesirable conduct of a sexual nature or relating to an employee's gender, with the purpose or effect of violating the employee's dignity, an

atmosphere which is frightening, hostile, degrading, humiliating or insulting; such behaviour may consist of physical, verbal or non-verbal elements (sexual harassment).

§ 7. Employee's surrender to mobbing or sexual harassment, as well as employee's actions against mobbing or sexual harassment, should not result in any negative consequences for the employee.

**Article 18<sup>3b</sup>.** § 1. With the reservation of § 2-4, it is considered a breach of the principle of equal treatment in employment when an employer differentiates the situation of an employee on one or several grounds, defined in Article 18<sup>3a</sup> § 1, with the following consequences:

- 1) refusal to conclude or terminate an employment relationship,
- 2) unfavourable terms of remuneration for work or other terms of employment or overlooking an employee in promotion or granting other work-related benefits,
- 3) overlooking an employee in the selection of participants for training to improve professional qualifications, unless the employer can prove that he/she was guided by objective reasons.

§ 2. The principle of equal treatment in employment shall not be infringed by actions which are proportionate to achieving a lawful differentiation of the employee's situation and which consist in:

- 1) not employing an employee on one or several grounds, set out in Article 18<sup>3a</sup> § 1, if the type of work or conditions in which it is to be performed are a reason why the said ground or grounds are a real and decisive professional requirement for the employee,
- 2) terminating the terms of employment connected with duration of working time, if it is justified by reasons which do not concern employees and without referring to any other ground or grounds listed in Article 18<sup>3a</sup> § 1,
- 3) applying measures which differentiate the legal position of an employee due to the protection of parenthood or disability,
- 4) applying the criterion of the length of employment while specifying the terms of engaging and dismissing employees, terms of remuneration and promotion, as well as access to training to improve professional qualifications, which justifies different treatment of employees due to their age.

§ 3. It shall not be a breach of the principle of equal treatment in employment to take measures during a specified period of time, aimed at compensating for unequal opportunities of all or a significant number of employees singled out for one or several grounds defined in Article 18<sup>3a</sup> § 1, by reducing any actual inequalities for the benefit of these employees, to the extent specified in this provision.

§ 4. It shall not be a breach of the principle of equal treatment if churches and other religious unions, as well as organizations with an ethics based on religion or belief restrict access to employment, because of religion or belief if the type or nature of activities carried out by churches and other religious unions, as well as organizations makes religion or belief the real and decisive occupational requirement posed to an employee, proportional to achieving the legitimate aim of diversifying the situation of the person; this applies also to requiring from employees to act in good faith and loyalty to the ethics of church, other religious union and organization whose ethics is based on religion or belief.

**Article 18<sup>3c</sup>.** § 1. Employees have the right to equal remuneration for the same work or for work of the same value.

§ 2. The remuneration referred to in § 1 shall include all components of the remuneration, irrespective of what they are called and of what nature they are, as well as other work-related benefits, granted to the employee in the form of money or in any other form.

§ 3. Work of the same value shall be work which requires comparable professional qualifications, certified by documents specified in separate provisions, or practice and professional experience, and also comparable responsibility and effort.

**Article 18<sup>3d</sup>.** A person who is a victim of a breach by an employer of the principle of equal treatment in employment shall be entitled to compensation in the amount not lower than the minimum remuneration for work, determined on the basis of separate regulations.

**Article 18<sup>3e</sup>.** § 1. The fact that an employee took advantage of the rights to which he or she is entitled in connection with a breach of the principle of equal treatment in employment by the employer shall not constitute grounds for unfavourable treatment of the employee, and it shall not cause any negative consequences for the employee, especially, it shall not be the reason justifying termination, by the employer, of the employment relationship with notice or termination of such relationship without notice.

§ 2. The provision of § 1 shall apply to an employee who has given any form of support to the employee who exercises the powers of the violation of the principle of equal treatment in employment.

Moreover, as already indicated, **the Act of 3 December 2010 on implementing certain European Union legislative provisions concerning equal treatment**, which defines the areas and ways to prevent violations of the principle of equal treatment on grounds of sex, race, ethnicity, nationality, religion, belief, creed, disability, age and sexual orientation, in Article 8 sec. 1 prohibits unequal treatment based on sexual orientation in the following areas:

1. undertaking vocational training, including training, development, retraining and professional practice;
2. conditions of initiating and performing business or vocational activities, in particular in the framework of labour relations or employment on the basis of a civil contract;
3. access to and activities in trade unions, employers' organizations and professional associations, as well as the use of the powers of the members of these organizations;
4. access to and conditions for the use of the instruments of the labour and labour market services, as defined in the Act of 20 April 2004 on the employment promotion and labour market institutions offered by labour market institutions and instruments of labour market and labour market services offered by other entities acting for the employment, development of human resources and prevention of unemployment.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Chapter VI, point 31 of the above-mentioned Recommendation of the Committee of Ministers CM/Rec(2010)5 provides for ensuring respect for the rights of children and young people to learn in a safe environment free from violence, intimidation, social exclusion and other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

The above-mentioned Recommendation of the Committee of Ministers CM/Rec(2010)5 provides also for the obligation of adopting the necessary measures to promote mutual tolerance and respect in schools, regardless of sexual orientation and gender identity.

At this point, the obligation to develop an educational programme and prevention program by school headmasters resulting from educational law should be noted. Headmaster is required to provide the conditions for their implementation and prepare teachers in the required preventive competence. Educational programme and prevention programme must be consistent with the content contained in the core curriculum, also in the education on human sexuality, functioning of social stereotypes and relationships between people in terms of their gender and sexual orientation.

Each school creates an educational programme which takes into account the values important to the school community as well as issues or problems which are important from the point of view of the environment of pupils, parents and teachers. The school is obliged to perform periodical diagnoses of problems, take preventive and corrective measures, appropriate to difficult situations present on its territory, such as prevention of all forms of discrimination. These activities allow realistic assessment of the needs and represent an opportunity to reduce many risk factors, triggering negative behaviour of pupils both in the school environment and outside school, this applies also to aggressive or abusive behaviour directed at pupils who are not accepted by their peers because of their sexual orientation or gender identity.

The core curriculum defines mandatory set of objectives and content of education, including skills described in a form of general and specific requirements for the knowledge and skills which a pupils should have at the end of a particular stage of education, then included in the curriculum.

The core curriculum specified in the *Regulation of the Minister of National Education of 27 August 2012 on the core curriculum of pre-school education and general education in particular types of schools* (Journal of Laws item 977) the issues of sexuality, sexual orientation and sexual health are included in the core curriculum of the subjects, such as family life education and biology.

The core curriculum presents the objectives and educational content of the family life education subject taking into account the age, sensitivity and cognitive needs, and the reception of pupils at a given educational stage:

2nd educational stage (classes IV-VI of primary school)

- the core curriculum focuses on portraying family values in personal life and the help to prepare for the understanding and acceptance of the changes of puberty, pointing to, among others, basic functions of the family with emphasis on the child's place in the family, transfer values and traditions in the family, family bonds, emotional relationships and other relations in the family, motherhood and fatherhood, basic knowledge of the structure and functioning of the human reproductive system, differences and similarities between boys and girls, physical and psychological changes of puberty, human right to privacy and protection of this right, assertive attitudes, the essence of friendship, institutions acting for children and families, responsibility for own development;

3rd educational stage (lower secondary school)

- general objectives relate to issues such as showing respect to other people, appreciation for their effort and work, attitude of self-respect, bringing a positive contribution to the life of own family, adoption of an integral vision of a person, choice and realization of values serving personality development, directing own development, taking self-educational effort in accordance with the recognized standards and values, knowledge of the human body and changes taking place in it and acceptance of one's sexuality, adoption of an integral vision of human sexuality, ability to defend one's privacy and sexual integrity, ability to use counselling for children and young people;

4th educational stage (upper secondary school)

- this stage includes the issues of deepening knowledge related to functions of a family, love, friendship, performing marital and parental roles, human sexuality and procreation, further emphasis is placed on development of skills such as making responsible decisions about the choice of life path, solving problems associated with puberty, adolescence and the choice of the way of life, creating own personality, better understanding of oneself and the immediate surrounding, seeking and giving answers to the questions: who is human, what are his/her goals and objectives in life, what is the meaning of life, the adoption of a positive attitude towards human life, knowledge of basic rules of conduct in the field of human sexuality.

The draft Regulation amending the Regulation of the Minister of National Education of 7 October 2009 on pedagogical supervision (Journal of Laws No. 138, item 1324) lists the requirements of schools and institutions in the implementation of anti-discrimination activities.

In the requirements contained in the proposed Annex to the Regulation, the evaluation of work of schools was differentiated, depending on the scope of the implemented activities taking into account the diversity and specificity of the school environment and including the whole school/institution community. The importance of activities of a school/institution designed to recognize not only how pupils learn, but also their skills, mental and physical capabilities, needs and individual circumstances was highlighted in them.

The evaluation of the school work is dependent on the extent of organization of classes encouraging development of interests and talents. The requirement to support each pupil in the development and providing him or her with optimal psychological and pedagogical help, adequate to the identified needs will undoubtedly contribute to active development of school forms and methods of work with a pupil to combat various forms of discrimination. The evaluation of the school work is also dependent on its cooperation with the entities of the environment responsible for supporting children and youth according to the needs and social situation of pupils, which undoubtedly have a positive impact on raising the level of tolerance.

Centre for Education Development – a unit subordinate to and supervised by the Ministry of National Education, as a part of statutory tasks undertakes a number of activities in the field of education for human rights and civic education, which include themes of non-discrimination, also on grounds of sexual orientation.

Information materials, publications:

- Compasito. A manual on human rights education for children (CODN; Association for Children and Young People CHANCE); Compasito provides practical tools to approach the topic of human rights in the work of a teacher using activating teaching methods.

- Compass. A manual on human rights education with young people (2005, CODN; Association for Children and Young People CHANCE); Compass is a guide to education for human rights and, as such, indicates specific ideas and practical exercises to engage and motivate young people to lead their own research to increase knowledge, develop skills and attitudes close the philosophy of human rights.
- Human Rights – Teacher's Guide (2002, CODN); the publication is devoted to the issues of human rights and introduction of this issue to the Polish school. The book can be used in work related to shaping attitudes of tolerance and spreading knowledge of human rights and freedoms among teachers, children and youth.
- Anti-discrimination. Educational Package (2005, CODN); Anti-discrimination education package developed under the programme PHARE 2002 PL 2002/000-605/01.02 Strengthening anti-discrimination policy in Poland, introduces the issues of equality and preventing discrimination to educational activities undertaken by teachers, educators and representatives of NGOs. The publication provides an excellent substantive base for training relating to the issues of anti-discrimination and the promotion of equal treatment policy. The publication financed with European Union funds.

We would also like to draw attention to the initiatives of the Ministry of National Education supporting the activities of schools in shaping attitudes based on mutual tolerance and dialogue.

The Ministry of National Education continues to support development of schools promoting health, as part of the European Network of Schools for Health in Europe.

Schools promoting health create conditions for building an integrated school community, among others, by the joint identification of priorities for promoting various forms of physical activity, creative leisure time, which prevents the occurrence of peer violence and various forms of discrimination.

Ministry of National Education, in May 2012, announced open competition for the implementation of public tasks entitled: *Live with PASSION. Projects supporting development of child's own activity, education in partnership, mutual respect and acceptance of Janusz Korczak propagating educational ideas*. The aim of the Competition was to select the best offers of the applicants who will plan and implement projects which include activities such as development of interests and talents of children and youth, strengthening mental health through development of skills of coping with stress and preventing mental crisis in schools and/or in other educational institutions.

In the school year 2012/2013, the role played by education and providing pupils with a sense of security in the activities of schools was particularly highlighted.

Ensuring safety of all pupils does not mean focusing only on the prevention of aggression and violence. Attention to safety and education is widely understood, for instance, as taking care of the environment favourable for development and safe for pupils, protection against discrimination, physical and mental violence, building a sense of security, learning mutual respect, tolerance, cooperation, responsibility for self and others. Placing *Strengthening safety* in the national educational policies as one of the priorities means that headmasters are required to pay attention to this aspect in the entire operation of schools as a part of their activities.

In the area of care for the safe behaviour of a pupil, the Ministry of National Education prepared the material entitled *Offer of prevention activities addressed to teaching staff, parents, pupils and authorities running school and institutions* to be used in the implementation of teaching, educational and preventive tasks.

The material is to help teachers in preparing meetings with pupils and parents, as well as help to enrich their workshop, and the included websites allow quick access to the information needed.



The part addressed to parents contains numerous guides and programmes helpful in identifying the causes of problem behaviours of children, as well as the use of effective forms of educational influence, with respect for the rights of the child.

Pupils will find there an offer of scenarios of meetings aimed at developing their psychosocial competence and information concerning the causes and effects of violence. The proposed prevention programmes can contribute to building a positive climate in the classroom and school, and prevent all forms of discrimination.

As a part of the priority of Strengthening Safety in school, the Ministry of National Education prepared an interactive map, which includes the area concerning safety in schools. It consists of issues related to the prevention of aggression and violence, emergency response, resolution of conflicts, attention to the atmosphere in a classroom, school, relationships with peers and adults.

Each separate aspect of safety includes materials which introduce particular problem and show possibility of improving the situation of a pupil and his or her environment.

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

29. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

Outpatient specialized healthcare services in the field of psychology, endocrinology and surgery are available to all people insured within health insurance scheme. Plastic or cosmetic surgery health services are also included in basic benefit package, however, it concerns only services provided in following cases: birth defect, trauma, disease and effects of its treatment. Treatment of other cases is not financed by public payer.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Polish law provides, in Article 691 of the Civil Code, that after the death of a tenant, the person entitled to succeed a tenancy is, *inter alia*, “a person who actually remained in cohabitation with the tenant” (§ 1) provided that he/she lived with a tenant in the property until his/her death. As it stems from the judicial decisions of the Supreme Court (Resolution of 28 November 2012, III CZP 65/12), the person remaining “actually in cohabitation” is understood as the person who was connected with the deceased tenant with an emotional, physical and economic relationship, even if it is a person of the same sex.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Act on social assistance, the right for social assistance benefits, including those granted to the homeless, does not depend on factors such as sexual orientation or gender identity. The law defining the conditions for granting social assistance are clear, unambiguous and make it possible for the concerned entities to understand precisely their rights and responsibilities.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the area of sports, the Ministry of Sport and Tourism are carries out a number of actions to combat all forms of discrimination (caused by race, religion, nationality, etc.), which include also the fight against discrimination based on sexual orientation or gender identity, however, there are no activities or programmes directed solely at the LGBT community.

Ministry of Sport and Tourism, with a view to strengthen the effectiveness of its actions to fight the discrimination, carries out inter-sectoral tasks and cooperates directly with other central offices, such as the Ministry of the Interior, the Council for Sports Events Security and through the participation in projects of the Government Plenipotentiary for Equal Treatment.

Ministry of Sport and Tourism has undertaken a number of activities aimed at realization of the right of equal access to sport for all social groups, and endeavours not to highlight the differences of any of the groups involved in the sporting life.

It should be noted that the various undertakings in the social dimension of sport, do not distinguish specific target groups, and the implemented projects are designed to prevent any possible negative behaviours in sport, including discrimination, intolerance or racism. Implementation of these activities is based on the dissemination of the principle of fair play, both in sports and in everyday life, creation of an atmosphere of tolerance, integration and shaping positive patterns of behaviour. Examples of activities in this area include:

- signing, on 28 January 2011 (the pilot programme in 2010), an agreement on the joint implementation of the programme *I am Fair*, between the Ministry of Sport and Tourism, the Ministry of the Interior, the City of Lodz Office and the University of Lodz. The project also included a number of institutions, associations and organizations, including sports clubs, and the patronage over the project was taken by the Polish Olympic Committee. The programme *I am Fair* aims to promote the idea of fair play, as the educational component of the combat against racism, xenophobia and anti-Semitism and other forms of discrimination and to propagate the attitude of greater understanding and tolerance for other people, cultures and religions among the pupils of the first grade in middle schools;
- organization of an expert conference, from 18 to 19 July 2011, entitled “*Equalizing opportunities through sport as an element of social policy*,” which started a series of events organized as a part of the Polish Presidency in the area of sport and became a part of the implementation of one of the priorities of the Polish presidency of the EU, which was the social dimension of sport;
- implementation of the UEFA EURO 2012™ Social Responsibility Programme, which was carried out with broad collaboration of public sector entities and NGOs. The objective of this programme was to build attitudes of openness, tolerance and cooperation, and promote involvement and active participation of citizens in public life, including the minimization of the violence attitudes and political beliefs of racial overtones in the environment of football fans, promote positive support, promote volunteering in sport;
- measures to prevent riots of spectators at sporting events, including the cases of the use of discriminatory insults, undertaken by the Ministry of Sport and Tourism in cooperation with the entities operating in the area of safety in sport, including the Council for Sport Events Security (a subsidiary organ of the Prime Minister, which unites public administration bodies, the Police, the sports community, and sports fans);
- participation in the project “*Equal Treatment as a Standard of Good Governance*,” coordinated by the Government Plenipotentiary for Equal Treatment. The aim of this project is to take steps to prepare the government administration at all levels to develop and monitor the law and to develop and implement appropriate strategies taking into account the principle of equality. What is more, the Co-ordinator for Equal Treatment was appointed at the department of sport and tourism.

The good practices of the sport unions should also be underlined, such as internal regulations regarding the issues of racism at football stadiums adopted by the Polish Football Association: a resolution on exhibiting banners at football matches (resolution XV/372 of 29 October 2009), which prohibits exhibiting totalitarian, fascist, anarchist, racist and other content which incites intolerance, chauvinism, xenophobia, or hooliganism; a resolution on the identification of participants of football matches classified at mass public events (resolution IV/51 of 30 March 2010); Rules governing the security of matches organized by the PFA, which obligate the match organizer and participating clubs to implement the UEFA 10-point plan on racism. Practical actions undertaken by the PFA include also seconding security delegates to every central-level match – the delegates cooperate with police officers, security staff and the stadium announcer, and draft a report which serves as the basis for possible sanctions against clubs and players; the use of “stadium bans” (bans on entering football stadiums) against hooligans disseminating racist messages and symbols. Moreover, the PFA has published a booklet entitled *Security at Polish Football Stadiums*, which includes a list of graphic signs and symbols used by football hooligans, together with their meaning.

**X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In accordance with Art. 13 para 1 of the *Act of 13 June 200, on granting protection to foreigners within the territory of the Republic of Poland* (Journal of Laws of 2012, item 680), the refugee status shall be granted to a foreigner, if as a result of justified threat of persecution in the country of origin because of his/her race, religion or nationality, political opinion or belonging to a determined social group, he/she cannot or does not want to enjoy protection of such country.

Additionally, Art. 14 para 2 states that depending on conditions prevailing in the country of origin, a determined social group may constitute a group, whose members have common sexual orientation, with the reservation that sexual orientation cannot embrace acts constituting an offence under Polish law.

In the last year the decision makers attended two trainings devoted specifically to the issue of LGBTI. At these trainings they were explained e.g. the concepts of so-called 'discretion requirement' and 'reasonably tolerably test' (UK jurisprudence).

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Each application for granting the refugee status within the territory of the Republic of Poland is examined on the individual basis and the aspects of sexual orientation and gender identity, as explained above, are taken into account in the decision-making process. Nobody whose life or freedom would be threatened because of his/her sexual orientation or gender identity will be sent back to the country of origin.

In this context it is worth to mention the decision of the Polish Refugee Board (second instance authority in the course of the administrative procedure) no. RdU-178/1/S/12 of 25 July 2012. In the abovementioned decision the Refugee Board stated the following:

- penalisation of the homosexual behaviour in the national law constitutes a ground for granting protection, the enforcement of these national provisions is not a decisive factor in this respect;
- the credibility of an applicant in terms of his sexual orientation and gender identity has to be assessed on the basis of general credibility of his/her statements. The complexity of factors which form sexual orientation do not allow for its determination in the course of medical examination.

Additionally, it should be underlined that the Court of Justice of the European Union, whose rulings constitute a binding interpretation of the relevant EU law provisions for its Member States, is expected to issue a preliminary ruling on the following questions asked by the Dutch Raad van State:

- which homosexual activities fall within the scope of the Directive 2004/83/EC and, in the case of acts of persecution in respect of those activities and if the other requirements are met, can that lead to the granting of refugee status? That question encompasses the following subquestions:

(a) Can foreign nationals with a homosexual orientation be expected to conceal their orientation from everyone in their country of origin in order to avoid persecution?

(b) If the previous question is to be answered in the negative, can foreign nationals with a homosexual orientation be expected to exercise restraint, and if so, to what extent, when giving expression to that orientation in their country of origin, in order to avoid persecution? Moreover, can greater restraint be expected of homosexuals than of heterosexuals?

(c) If, in that regard, a distinction can be made between forms of expression which relate to the core area of the orientation and forms of expression which do not, what should be understood to constitute the core area of the orientation and in what way can it be determined?

- Do the criminalization of homosexual activities and the threat of imprisonment, which are discriminatory by nature, constitute an act of persecution?

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

By the means of the Act of 3 December 2010 on implementing certain European Union legislative provisions concerning equal treatment, tasks related to the implementation of the principle of equal treatment were vested to the Civil Rights Ombudsman (*Rzecznik Praw Obywatelskich*), as an independent body, and to the Government Plenipotentiary for Equal Treatment, responsible for implementing Government policy in this field, including counteracting the discrimination on the grounds of sexual orientation.

**The Ombudsman** is tasked with protecting the principle of equal treatment, in particular by analyzing, monitoring and supporting equal treatment of all persons; conducting independent research on discrimination; drafting and publishing independent reports and recommendations pertaining to discrimination. The Ombudsman also provides the Parliament with an annual statement on the implementation of the principle of equal treatment in Poland and the Ombudsman's actions in this field.

It should be noted that originally the Ombudsman's competences were fully of a vertical nature, i.e. when the human rights violation was connected with the activity of public administration bodies, cf. Article 80 of the Constitution of the Republic of Poland. However, the Act of 3 December 2010 assigned to the Ombudsman new tasks, including the obligation to provide independent assistance to victims of discrimination, regardless of which entity has committed the discriminatory treatment. Therefore, as a compromise, the limited competences with regard to relations between private

entities were given to the Ombudsman, who can now acquaint herself with a case involving private entities and consequently advise them on the measures available.

**The Government Plenipotentiary for Equal Treatment**, implements Government policy in the field of equal treatment, in particular by drafting and assessing draft legislation in terms of the principle of equal treatment and their compliance with the principle; taking actions aimed at eliminating the consequences of violation of the principle; monitoring the across-the-board implementation of the principle of equal treatment; promoting and disseminating equal treatment; cooperating with national community organizations, other countries, and foreign and international institutions.

The 2010 Act requires the Plenipotentiary to develop and submit to the Council of Ministers the National Action Programme for Equal Treatment, setting goals and priorities of actions to promote equal treatment, in particular with regard to:

- raising public awareness on equal treatment, including the causes and consequences of violation of the principle of equal treatment;
- prevention of violations of the principle of equal treatment;
- cooperation with the social partners, NGOs and other entities in the field of equal treatment.

Moreover, since 2004, a national network of police plenipotentiaries for the protection of human rights has been operating in the **Police**. It includes full-time positions, working on the basis of three-year strategies

([http://isp.policja.pl/portals/isp/49/3680/Kierunkowa\\_streategia\\_Policji\\_w\\_zakresie\\_systemowej\\_ochrony\\_praw\\_czlowieka\\_na\\_la.html](http://isp.policja.pl/portals/isp/49/3680/Kierunkowa_streategia_Policji_w_zakresie_systemowej_ochrony_praw_czlowieka_na_la.html)). The plenipotentiaries are situated in 17 provincial Police offices, the Central Police headquarters and police academies, and at the same time perform the role of the so-called liaison officers with, among others, the LGBT community.

The positions of Plenipotentiary of the BG Commander in Chief for the Protection of Human Rights and Equal Treatment and plenipotentiaries of the commanders of BG divisions are functioning also within the **Border Guard**.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

Seminars and workshops for public officials; publication of good practices.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

The implementation of this Recommendation should be examined periodically, however in the reasonable periods of time, allowing the national authorities to introduce and implement relevant changes (4-5 years). Such examination, should not be focusing on specific issues, at least at the beginning.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**PORTUGAL**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate X ☒ Insufficient ☐ Absent ☐

Please explain your reply.

The European Year of Equal Opportunities for All — 2007 was a landmark for public policies on equality and non-discrimination, including the area of sexual orientation and gender equality. In fact, its results led to a stronger political commitment in fighting discrimination against LGBT community. Portugal does not have an Equality Body competent to address discrimination on grounds of sexual orientation exclusively, but the Commission for Citizenship and Gender Equality included the area of sexual orientation and gender identity in its Mission. The NGO section of Consultative Council of this Commission included, for the first time, two organizations that represent the LGBT community. Also, public financing is awarded to projects of intervention in this area, implemented by the LGBT NGO. With the objective of increasing knowledge on the conditions of life and discrimination of the LGBT community in Portugal, a first study under public initiative was launched giving the key findings from the research and sets out recommendations, which were taken into account in the IV National Plan for Equality.

Legislation in Portugal recognises that all persons, regardless their sexual orientation and gender identity, are entitled to equality before the law and to equal protection of the law without any discrimination whether or not the enjoyment of another right is also affected. The law prohibits any discrimination and guarantees to all persons equal and effective protection against any such discrimination.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. X ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Over the past years, efforts were made to eliminate remnants of discrimination from the national legislation. For example, Article 13<sup>o</sup> of the Constitution explicitly mentions sexual orientation; since 2001 de facto unions are possible to same-sex couples; as of 2010 marriage equality exists; in 2011 transgender persons were allowed to have their new identity legally recognised, with the sole requirement of a diagnosis' report of gender identity disorder.

Are there measures in place to redress any such discrimination?

a. X ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:



Article 20<sup>o</sup> of the Constitution states that everyone can “access to the law and the courts in order to defend those of his rights and interests that are protected by law”. Furthermore, Article 483<sup>o</sup> n<sup>o</sup>1 of the Civil Code states that any unlawful infringement of rights results in the obligation to redress the victim for any damages caused.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

With regard to the implementation of measures and a comprehensive strategy, it should be stated the approval of the IV National Plan for Equality - gender, citizenship and non-discrimination (2011-2013), whose coordinator is the Commission for Citizenship and Gender Equality (CIG), and that includes a strategic area dedicated to issues of sexual orientation and gender identity, composed of a set of measures to consolidate public policies promoting equality and tackling discrimination of LGBT people, to raise-awareness of the general population to non-discrimination and empower civil society organisations representative of LGBT people.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☐ e. X ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. X ☐

Article 7 n<sup>o</sup> 1 Law 67/98, of 26 October, Law on the Protection of Personal Data, forbids the processing of personal data concerning philosophical or political convictions, membership of political parties or trade unions, religion, private life and racial or ethnic origin, as well as data on health and sexual orientation.

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

There are no specific data identifying hate crime.

Please indicate the measures and, if appropriate, provide examples of good practices:

The criminal law contains provisions making it a criminal offence to incite hatred, violence or discrimination on grounds of sexual orientation (hate speech) as well as the law to considers homophobic intent as an aggravating factor in common crime (hate crime).

Criminal Code of the Portuguese Republic Excerpts from Criminal Code (Law No. 59/2007 on 4 September 2007, Twenty-third amendment to the Penal Code, approved Decree-Law No. 400/82 of 23 September 2007)

Aggravating circumstances: Murder

**Article 132**

Qualified murder

1. When death is produced under circumstances that reveal a special censurability or perversity, the agent shall be punished with imprisonment from 12 to 25 years.

2. The following circumstances reveal the special censurability or perversity that is referred to in the previous paragraph, namely, the fact that the agent:

(...)

(f) is determined by racial, religious or political hatred or colour, ethnic or national origin, motivated hatred or is motivated by the sex or the sexual orientation of the victim;

(...)

**Article 145**

Assault qualified

1. If the offenses provided for in Articles 143 or 144 (SIMPLE ASSUALT Or SERIOUS ASSAULT) are produced in circumstances that present a special agent's reprehensibility or perversity, this is punishable with the penalty for their crime increased by one third in its minimum and maximum.

2. The circumstances described in paragraph 2 of Article 132 are likely to reveal the special agent's reprehensibility or perversity, among others.

**Hate speech**

**Article 240**

Racial, religious or sexual discrimination

1 - Who:

a) Found or constitute the organization or activities organised propaganda which incite to discrimination, hatred or violence against a person or group of persons because of their race, colour, ethnic or national origin, religion, sex or sexual orientation, or that encourage

b) Participate in the organization or in the activities referred to in the preceding paragraph or to provide assistance, including the financing;

shall be punished with imprisonment from 1 to 8 years.

2 - Whoever in a public meeting, in writing intended for dissemination, or by any means of media:

a) Incites violence against an individual or group of individuals because of race, colour, ethnic or national origin or religion, sex or sexual orientation or

b) Defames or slanders an individual or group of individuals because of race, color, ethnic or national origin or religion, sex or sexual orientation, particularly through the denial of war crimes or against peace and humanity;

c) Threaten a person or a group of persons because of their race, colour, ethnic or national origin, religion, sex or sexual orientation

with intent to incite to racial, religious or sexual discrimination or to encourage, shall be punished with imprisonment from 6 months to 5 years.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

The same as for any other kind of victims of these crimes.

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no specific measures concerning this kind of crimes: article 13<sup>o</sup> of the Constitution prohibits discrimination on the grounds of ancestry, sex, race, language, country of origin, religion, political or ideological convictions, education, economic situation, social condition or sexual orientation. Article 26(1) refers to the right to protection against any form of discrimination and forbids any form of discrimination.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Discriminations on the ground of sexual orientation and gender identity are forbidden by Portuguese law, so one can say that probably there won't be many obstacles in the implementation of the Recommendation.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation has been published in Portuguese and widely disseminated. In fact, the publication will be distributed through Libraries Net to all national libraries and the Commission for Citizenship and Gender Equality will disseminate through all relevant stakeholders (Ministries, Parliament, NGO, trade unions, public in general, etc.).

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No information available. Crime investigation quality is supposed to be the same to every kind of crimes.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In Portugal, the Penal Code establishes aggravating circumstances motivated by discrimination on grounds of sex or sexual orientation. See question number 4 (Articles 132.º and 145.º of the Portuguese Penal Code)

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Specific measures intended to victims and witnesses of sexual orientation or gender identity related are not known. Nevertheless, it should be said that they get the same treatment as for any other kind of crimes, regardless the sex orientation or gender identity.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No information available.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Under article 24 nº 2, of the Order 12786/2009, 29<sup>th</sup> May, any person arrested should be treated with humanity and respect for human dignity, without any discrimination, including on grounds of nationality, social status, political beliefs, religious or other.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Portuguese Penal Code has recently been amended and Article 240 covers discrimination based on every ground. Paragraph 1 of this article makes it an offence to establish organizations or engage in organized propaganda activities which incite or encourage discrimination on grounds of race, colour, ethnic origin or nationality, religion, sex or sexual orientation.

Paragraph 2 of Article 240 punishes anyone who in a public meeting, or in a paper intended for dissemination, or by any other means of social communication, provokes acts of violence against an individual or group of individuals on grounds of their race, colour, ethnic origin or nationality, religion, gender or sexual orientation with the intention of inciting or encouraging racial or religious discrimination. Paragraph 2 also punishes anyone who in a public meeting, or in a paper intended for dissemination, or by any other means of social communication, defames or insults an individual or group of individuals on grounds of their race, colour, ethnic origin or nationality, religion, sex or sexual orientation. Those who incite or encourage racial, religious or sexual discrimination will be subject to imprisonment of between six months and five years.

Public authorities are supposed to know and accomplish the law but there is no information on specific measures intended to raise awareness of public authorities on this subject.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

Article 46 (Freedom of association) of the Constitution of the Portuguese Republic enshrines the right to freedom of association:

1. Citizens have the right to form associations freely and without the requirement for any authorisation, on condition that such associations are not intended to promote violence and their purposes are not contrary to the criminal law.
2. Associations shall pursue their purposes freely and without interference from the public authorities, and may not be dissolved by the state or have their activities suspended other than in cases provided for by law and then only by judicial decision.
3. No one may be obliged to belong to an association, or be coerced to remain therein by any means.

(...)

Under the financing mechanisms for NGOs, the Portuguese State has introduced the LGBT issues as eligibility criterion for approval of projects.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no specific measures, for the rules are the same applicable to any other citizen.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The LGBT NGO's are represented in the Consultative Council of the Commission for Citizenship and Gender Equality. These NGO' are also represented in the National Commission for Human Rights.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

There are no limitations or exceptions regarding such freedoms in Portugal.

19. Do 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?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The rules are the same applicable to any other peaceful demonstration.

### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Homosexuality was decriminalised in 1982 and Law nº 59/2007 repealed any references to same-sex acts or differences in the age of consent from the Criminal Code.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?
- a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Under the Law No 22/2008, of 13 May, **National Statistical System's Law**, it is stated in the CHAPTER II - Core principles of the National Statistical System, namely in Article 4 (Statistical authority):

1 — Statistical authorities, within the scope of their activities, may require of all services or bodies, individuals and enterprises, obligatorily and free of charge, the provision of information deemed necessary to produce official statistics. They may also establish the collection of statistically relevant data, although with no bearing on the specific activity of reporting entities.

2 — The provisions of the foregoing paragraph shall prevail over possible limitations or obligations of secrecy included in special regimes; for all purposes, the use of administrative records for official statistical purposes shall be considered one of the key objectives of their collection.

**3 — The provisions of paragraph 1 shall not apply to data subject to security classification, State secret, investigation secrecy, data kept in the data centres of the Portuguese Republic information system's services, genetic or personal data on philosophical or political convictions, party or trade union membership, religious beliefs, private life and racial or ethnic origin and personal data concerning health or sex life.**

**Portuguese Law on Data Protection** (Law No. 67/98 of 26 October 1998) expressly prohibits the treatment of personal data revealing philosophical or political beliefs, political party or trade union membership, religion, privacy and racial or ethnic origin, and the processing of data concerning health or sex life, including genetic data. The processing of data relating to health and sex life, including genetic data, shall be permitted if it is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, provided those data are processed by a health professional bound by professional secrecy or by another person also subject to an equivalent obligation of secrecy and are notified to the CNPD under article 27, and where suitable safeguards are provided. Finally, The systems must guarantee logical separation between data relating to health and sex life, including genetic data, and other personal data.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?
- a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law nº7/2011, of 15 March, states that any Portuguese person, of legal age and not prohibited by mental disorder or disability, may have her/his legal gender identity recognised if she/he is diagnosed with gender identity disorder.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The right to civil marriage for same-sex couples was achieved in Portugal in 2010, so one, transgender or not, can marry a person either his/her own sex or opposite.

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

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

The national legislation recognises registered same-sex partnerships, rights and obligations equivalent to those of heterosexual couples in a comparable situation.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Constitutional legality and the principle of non-discrimination must be used when regulating parental responsibilities, having in mind the child's best interest. Nevertheless, the adoption of same-sex couples is not permitted by Law.

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment



a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

In the sense that for every worker, transgender or not, has the right of intimacy of private life.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The 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, and includes explicitly sexual orientation (articles 22 and 23). This scheme was developed by Law No. 35/2004, of 29 July, which regulated the labour code. 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, 11<sup>th</sup> September 11, which approves the Regime of employment contract in Public Functions). Law 3/2011, 22 February, forbids any discrimination on the access and exercise of independent work.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The law n° 51/2012, 5 September, on the Student Statute, establishes under article 7 n° 1 (Rights of the Student) and article 10 d) (Student Duties) that student should be treated with respect and correction by any member of the educational community, and may not, under any circumstances, be discriminated against on grounds of ethnic origin, health, sex, **sexual orientation**, age, **gender identity**, economic, cultural or social status or political convictions, ideological, philosophical or religious.

Article 2 of Law 60/2009 of 6 August 2009, which establishes the rules for sex education in schools, is very important as it forbids any discriminatory behaviour on grounds of sexual orientation or any violence on grounds of sex 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 sex education in primary and secondary schools and defines the curricula for different educational levels.

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Under the Constitution the Right to health is guaranteed to all citizens on an equal basis (nº 1 article 64º). The IV National Plan for Equality – Gender, Citizenship and Non-discrimination 2011-2013, approved in December 2010, specifies the need to train and raise awareness among health professionals on discrimination on the grounds of sexual orientation and gender identity. Nevertheless, and with regard to medical assistance for conception, the law currently in force does not apply to same-sex partners. Assisted methods of conception are only permitted for married women or living with male partner; single women and lesbian couples are not assisted.

29. Has homosexuality been removed from the national classification of diseases?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

The surgeries as well as psychiatric or other consultations before sex reassignment are 100% subsidised by the national health service (SNS). Private health insurances do not cover the sex reassignment surgery.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. X ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Under the article 65 nº 1 of the Portuguese Constitution (CRP) all Citizens have the right to adequate housing, without discrimination (under article 13º of the CRP).

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the

relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No information available on risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in special.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law n. 5/2007, of the 16th January, Law on Physical Activity and Sports, states in its article 2 nº 1 that everyone, including regardless its sexual orientation, has the right to physical activity and sport. Under article 79 of the Portuguese Constitution, the State is responsible in relation to the exercise of citizens' rights with regard to culture and sport and also for preventing violence associated with sport.  
No information available on specific measures on this subject.

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Under Article 2º of Law nº27/2008, which lays down the conditions and procedures for the admissibility of an asylum request or a subsidiary protection, all conditions must be met regardless person's race, religion, sex, nationality, language, political or ideological beliefs, or his/her belonging to a given social group. Although the persecution of people based on sexual orientation is not a specific criterion for obtaining asylum in Portugal, the law appears to be flexible enough with regard to the interpretation of «persecution of a particular social group».

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No information available.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The national human rights structures do not explicitly address discrimination on grounds of sexual orientation and gender identity. Nevertheless, these grounds of discrimination are protected under national human rights structures, as any other ground. As mentioned above, the Commission for Citizenship and Gender Equality has included in its mandate LGBT issues.

### **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

In what concerns Portugal, the national legislation and practices set out in the Recommendation and in its Appendix are implemented or in implementation.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

In our point of view, the periodic examination on the implementation of the Council of Europe recommendations is always recommendable. This concrete Recommendation should not be an exemption.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

Portugal considers that this Recommendation provides the rationale for a comprehensive strategy to eliminate and fight discrimination against sexual orientation and gender entity.

**ROMANIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

The measures recently adopted by the Government introduced a number of new principles and measures aimed at combating discrimination on grounds of sexual orientation or gender identity. For this purpose the objectives included in legislation aim to ensure the promotion of gender perspective in social life, media awareness campaigns regarding the equality between men and women, promoting gender perspective in social life, introducing gender perspective in formal/informal education.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The current legislative measures in the field of combating discrimination cover a wide sphere of issues, providing efficient methods for the identification of generators, directly or indirectly discriminatory actions based on any of the prohibited grounds of relevant legislation, including on grounds of sexual orientation or gender identity. Revisions and updates of this legislation occur systematically, depending on changes in socio-economic and political Romanian landscape.

Law no. 73/1993 on the establishment, organization and functioning of the Legislative Council states its permanent powers and the main activities it carries out.

Some tasks of the Legislative Council include the development of systematic studies on its own initiative or of the Chamber of Deputies or the Senate for the unification and coordination of the laws, by submitting proposals to the Parliament and Government and tracking the way that public authorities put in execution the laws, ordinances and decisions of the Government, in order to operate an uniform and coordinated legal system.

In the process of approval, which is his current activity, the Legislative Council aims to achieve its main objectives, including harmonization of legislative solutions proposed by the European Union regulations and international conventions to which Romania is a party, and by his activity of reviewing the previous legislation, it examines the conformity of normative acts with the Constitution and the regulations issued thereafter, making appropriate proposals to the Parliament or to the Government. As it can be seen, there is a legal system that ensures harmonization of existing legislation through revisions and systematic updates, activity that is not within the competence of the National Council

for Combating Discrimination. This statement is based on the number of legislative proposals addressed to the N.C.C.D. about the special terms regarding non-discrimination and equal treatment.

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

In most of the cases, the identified problem generates a legislative measure, a solution of the legal framework which is governing that situation. For the implementation of any law, a procedure must be designed for the application of those legal rules. For solving complaints and notifications in order to apply the legislative regulation in practice which the case of G. O. no. 137/2000, it is adopted an internal Procedure.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross – sectorial working groups for its implementation)?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

Romania has undergone an extensive legislative amendment process which resulted in the adoption of four new codes. Consequently, the discrimination phenomenon enjoys protection also under the new criminal legislation (Law no. 286/2009). To this end, the following provisions are relevant:

- article 77, letter h) – aggravating circumstances
- article 282 – torture
- article 297 – misconduct in public office
- article 369 – incitement to hatred or discrimination
- article 439 – crimes against humanity

Romania can provide details about the reglementation of the discrimination based on sexual orientation (among other criteria) in the specific legislation for the activity of the National Council for Combating Discrimination since 2000.

The Ordinance of the Government no. 137/2000 on preventing and sanctioning all forms of discrimination published in Official Gazette no. 781 of 2 September 2000 is the legislative act in the field of combating discrimination, that transposes two directives: the Directive 2000/78/EC establishing a general framework for equal treatment in respect of employment and the Directive 2000/43/EC on implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin.

According to art. 1 par. 2 and par. 3 of G.O.no. 137/2000, republished, the principle of equality among citizens with the exclusion of discrimination and all privileges in the exercise of guaranteed rights refers to people in comparable situations.

The concept of discrimination is defined in art. 2 par. 1 of G. O. no. 137/2000, by referring to some criteria as provided in a non-exhaustive list of prohibited grounds as race, nationality, ethnic origin, language, religion, social category, beliefs, sex, **sexual orientation**, age, disability, chronic non-infectious disease, HIV infection, being part of a disfavored category, **as well as any other criterion** aiming to or resulting in the restriction or elimination of the recognition, use or exercise, in

conditions of equality, of human rights and fundamental liberties or of rights granted by law in the political, economic, social and cultural field or in any other domains of public life.

Although the criterion of gender identity is not expressly provided by the G. O. no. 137/2000, it can be assimilated by the phrase "and any other criteria", which is equally protected by this law.

To achieve its objectives in 2002-2006, the National Council for Combating Discrimination (NCCD) has carried out preventive activities for any form of discrimination based on a National Action Plan for Combating Discrimination. This Plan was developed following the establishment of the National Alliance against Discrimination, after identifying specific problems by human rights NGOs operating in certain areas or representing the interests of certain groups vulnerable to discrimination. Basically, the National Action Plan for Combating Discrimination was the starting point in preventing discrimination and was permanently improved until 2004 when it was approved by Government Decision published in the Official Gazette.

However, since the independence of the institution has been clarified, with the approval of Law no. 324/2006 and the passage from the authority of the Government to the Parliamentary control, N.C.C.D. needed to act strategically structured, integrated and targeted.

Therefore, it was implemented the National Strategy for implementation of measures for preventing and combating discrimination between 2007-2013 as a result of consultations with NGOs working in the field. The strategy was adopted by the Board of Directors, approved by the President of N.C.C.D. no. 286/2007 published in the Official Gazette no. 6 from October 3, 2007.

National Strategy for implementation of measures for preventing and combating discrimination between 2007-2013 is an important contribution that supports the practice of the National Council for Combating Discrimination in the activity of development of programs planned to prevent and combating all forms of discrimination in Romania. The aim of the strategy is to establish guidelines for action in preventing and combating discrimination and to develop an inclusive and intercultural society, based on policies that promote interaction, equality, mutual understanding and respect.

In this regard it was designed a set of five major objectives: **Protection:** the intensification of protection against discrimination, including victimization, harassment or incitement to discrimination;

**I. Inclusion:** the assurance of inclusion and equality in the economic activity in terms of employment and profession;

**II. Promotion:** the assurance of equality in access, participation and results regarding public and private services addressed to the public;

**III. Recognition:** the recognition and strengthening of respect in a culture of diversity, in promotion of interaction and mutual understanding;

**IV. Prevention:** strengthening the efforts of prevention and application of a zero level of tolerance towards the discriminatory manifestations within Romanian society.

Each objective has several priorities, which NCCD pursued each year in the planning and development of programs and projects. The numerous projects undertaken by the National Council for Combating Discrimination over the years of activity for the accomplishment of the objectives from the National Strategy for implementation of measures for preventing and combating discrimination are widely exposed in the reports of the Council's activity.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

N.C.C.D. made no surveys analyzes and reports regarding the way legislative measures adopted in Romania have influenced discrimination on grounds of sexual orientation or gender identity.

In the last five years, the Council has not been requested by the initiators of advisory opinion of the amendments of the laws linked to sexual orientation or gender identity.

Although, N.C.C.D. has made "comments and suggestions" at the request of the Department for Relations with the Parliament, in a single case in the last 5 years on legislative proposals amending Law no. 23/1999 for amending and supplementing certain provisions of the Family Code and the Law no. 119/1996 on civil status. Throughout these legislative proposals, it was seeking the solution of removal of any explicit interpretations regarding the preparation of civil act in the meaning of celebration of same-sex marriage. In this case, N.C.C.D. has expressed its point of view argued by announcing that the Council does not support legislative proposals concerned.

Since 2008, the National Council for Combating Discrimination has been performing a survey on discrimination in Romania, in collaboration with an institute specialized in sociological research.

The data collected through these surveys indicated that the group of sexual minority meets the most prejudices; therefore, we can talk about an important potential homophobia in the population of Romania. In the years 2008 - 2009 84% and 90.5% of the people interviewed said they would feel disturbed if they would find out that a family member is gay. Subsequently, in the years 2010 and 2011 survey showed that 55% or 61% of people felt some discomfort on daily interaction with a homosexual. Also, a percentage of 56% would not dine with a homosexual, and 85% of people would not want to drink from the same cup from which a homosexual drank.

The data obtained during the last years clearly indicated that the high percentage of people who reject people of different sexual orientation is generated by some stereotypes deeply embedded in the collective mentality.

As the National Council for Combating Discrimination strengthens its institutional network and affirms its social role as the competent authority in the field of combating discrimination, the public opinion sees it more believable and consequent in fulfilling its duties, as it is shown in the opinion polls within the past five years

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:



At the national level there is a complex legislative system that provides various remedies against acts of discrimination.

For each provision of the Romanian state regulations, there are prescribed institutions authorized to apply punitive or coercive measures, so that victims of such illegal acts could have effective legal remedies available to remedy the situation. Thus, there are 3 systems of sanctions for discrimination acts established by contraventional law, civil law and criminal law.

By G.O. no. 137/2000 the national legislature established various forms of sanctions: the civil penalty, appropriate to the civil liability, with her function of repairing (consisting in the obligation of the active subject of discrimination to repair the damage caused, or reinstatement and eliminate all consequences of discrimination) and the administrative-contravention sanction that has a repressive and coercive, punitive role.

G.O. no. 137/2000 establishes penalties for any act or action that can be analyzed as discrimination by a decision of the Steering Board; this is a judicial administrative act likely to be challenged in administrative proceedings generally under judicial censure. These issues are stipulated by the provisions of art. 16 (independent body issuing the document), art. 20 (special procedure), art. 20 par. 6 (adversarial principle and the right of defense), art. 20 par. 7 (mandatory motivation of the act), Art. 20 par. 9 (appeal proceedings before the administrative court) of GO no. 137/2000 republished.

As sanctions in accordance with G.O. no. 137/2000, in conjunction with G.O.2/2001 which is the legal regime of contraventions, the Council may impose a warning or a fine. Through art. 26 par. (1) there are established the facts that may be sanctioned with fines from 400 lei to 4,000 lei, if the victim is an individual, and from 600 lei to 8,000 lei if the action is directed against a group of people or a community. The sanctions stipulated by G.O. no. 137/2000 are also applicable to legal persons guilty of discrimination acts.

Subsequently, the national legal framework expressly establishes the civil sanction, for an effective and proportionate repairing to the victim of an act of discrimination, sanction that may be applied separately or as a result of a decision issued by the College Board.

The sanction of warning applied in main cause is also effective, dissuasive and proportionate with the degree of social danger of the act; this sanction is applied in written and is usually accompanied with the instruction to follow the laws, or to take all necessary measures to eliminate the effects of crime.

For the period 2002 – 2010, from an amount of 4453 complaints addressed to the N.C.C.D., about 50 complaints were registered on grounds of sexual orientation.

The Labor Code expressly prohibits any distinction in employment, labor relations based on the criteria specified in art. 5 of this act, including sexual orientation.

The Romanian Criminal Code sanctioned the offense of incitement to discrimination, which is punished with imprisonment from 6 months to 3 years, or a fine. The Romanian Criminal Code also established as an aggravating circumstance of committing other crimes on the prohibited acts under Romanian law.

In the application of G.O. no. 137/2000 and the application of effective remedies it was approved by Council's Order no. 144 of 11 April 2008, the internal procedure for resolving complaints and allegations, which states, among others, the followings: people who can make a complaint to the Council, the required elements for that complaint, how to manage samples and whose task is the burden of proof, and the procedure of handling a complaint, the required elements for the judicial administrative act and how it can be challenged before the courts.

This procedure has always been and is continuously communicated to the public through the Council's website, in brochures distributed on conferences, round tables, projects, partnerships, training and any other action where the Council is involved.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

The National Council for Combating Discrimination has not encountered in the implementation of the Recommendation with any obstacles.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The National Council for Combating Discrimination is not aware of the translation of the Recommendation CM / Rec. (2010) 5 and its Annexes, or of the dissemination of these documents by governments or other institutions of representative organizations in this field.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

- Law no. 218 from 23rd of April, 2002 regarding the organizing and functioning of Romanian Police, Articles: 2 , 26  
 - Law no.360/2002 regarding the status of the police employees, Article 41, letters: a and b  
 Good practices:  
 In order to ensure impartial evidence, the specific investigation activities are carried by the police officers under the prosecutor coordination.  
 During the Gay Fest 2008 the Gendarmerie forces legally reacted against groups with opposite views which incited to intolerance and violence. Since 2008, no incidents occurred in the lawful development of the respective rallies.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

- Government Ordinance no. 27/2002 regarding the petition solving activity's regulation, approved through Law no. 233/2002
- Romanian Criminal Procedure Code, Article 221 (Informing the criminal investigation bodies)
- In application of these provisions, within the Ministry of Internal Affairs there are in place secretariat units with clear responsibilities on solving petitions.

Measures/Good Practices

- The notice boards of the structures of the Romanian Police contain samples of requests that the persons filing petitions must fill in, as well as the list of persons leading the respective unit and their audiences programme.
- The Romanian Gendarmerie encourages all participants to Gay Fest rallies to immediately report situations that occur during the events.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

MEASURES/GOOD PRACTICES

- In the curriculum of all Ministry of Internal Affairs schools were introduced themes that deal with this topic. The most important aims are: to combat discrimination in the field of sexual orientation or gender identity; to eliminate negative practices and attitudes that might exist at the level of employees; be aware about the need to apply the standards that guarantee the respecting of human rights and fundamental freedoms.

Examples/ Good Practices

- Educational project: training course on: Preventing and combating all forms of discrimination

Location: Public Order Studies Institute (it belongs to the Ministry of Internal Affairs)

Period: 2010-2012

Beneficiary: 178 police officers

Issues: awareness of sexual minorities, disadvantaged groups and the defense and promotion of human rights according to the Romanian Constitution and the international treaties to which Romania is party.

- Project: Monitoring and Approaching Hate Crimes against LGBT people

Partners: Romanian Police, Danish Institute for Human Rights and Accept Association

Period: 2010-2012

Results: 2,600 leaflets with the message: "Stop Hate Crimes against LGBT Persons – Guidelines for Policemen" were distributed to police stations in Bucharest

- Educational project: training courses on tracking and approaching Hate Crimes against LGBT people

Partners: Romanian Police and Danish Institute for Human Rights

Period: 2010-2012 (2 sessions: 27-29 September 2010, 11-12 April 2012)

Beneficiary: 24 police officers within the General Police Directorate of Bucharest Municipality

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Legal Framework**

- Romanian Criminal Code, Article 57;
- Criminal Procedure Code, Article 160;
- Law no. 275/2006, Article 32 ;
- Government Decision no.1897/2006, Article 80 (with reference to special categories of detainees).

**Measures**

- In order to respect the rights of persons with a higher degree of vulnerability, Romanian Police - Independent Service for Detention took specific measures.

**Good Practices**

The Ministry of Internal Affairs already signed protocols with NGOs.

- Among them, we can mention:
- the protocols signed between General Inspectorate of Romanian Police and NGOs, such as: European Association for Supporting Human Rights and Combating Corruption and Discrimination (Asociația Europeană pentru Susținerea Drepturilor Omului, Combaterea Discriminării și Corupției – A.E.P.S.D.O.C.D.C.); National and International League Association Protecting Human Rights (Asociația Liga Națională și Internațională pentru Apărarea Drepturilor Omului – A.L.N.I.A.D.O.); Association for Human Rights in Romania – Helsinki Committee (Asociația pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki – A.P.A.D.O.R. – C.H.); European Movement - Organization for Human Rights (Organizația “Mișcarea Europeană” pentru Apărarea Drepturilor Omului – O.M.E.P.A.D.O.); Romanian Independent Society of Human Rights (Societatea Independentă Română a Drepturilor Omului - S.I.R.D.O.); Romanian Harm Reduction Network association – R.H.R.N.). In accordance to these protocols, representatives of NGOs are able to make visits to the police detention units. The principal aims of the activities made by these NGOs are: to track how are respected the rights of detainees, to check the detention conditions of Romanian police detention centres, to prevent any act of torture or discrimination. For example, during 2011-2012 it was made 10 visits to the detentions units in Bucharest.
- the partnerships between Romanian Gendarmerie and Accept Association which is a trusted partner in respect to the organization of Gay Fest rallies and a consultant in the matter.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

To establish guidelines for actions in preventing and combating discrimination the "National Strategy to implement measures to prevent and combat discrimination" was adopted for the

period 2007 - 2013 and, for this, a specialized department for international relations from the Council (N.C.C.D.), has put into practice information programs, protection, prevention, education and training in all areas.

Courses and seminars were held and also cultural events and information campaigns aimed the five major objectives of the Strategy: 1<sup>st</sup> Objective - Effective protection and remedies against discrimination; 2<sup>nd</sup> Objective - Ensure inclusion and equal opportunities in economic and in employment and career goal; 3<sup>rd</sup> Objective - Ensure equality of access, participation and outcome in terms of public and private services to the general public; 4<sup>th</sup> Objective - Increase awareness of diversity recognition and targeting media, culture and sport; 5<sup>th</sup> Objective - Focusing by applying a policy of zero tolerance for any form of discrimination in Romanian society.

When the subject of a claim is any kind of affirmation which affects the human dignity of a person belonging to a minority group such as the LGBT, the Steering Board can state the perpetration of a discrimination deed or of any other act which affects the human dignity, fining the perpetrator with a fine or with a warning.

Where the social danger of the crime is low or you do not meet all the elements of an offense provided in the Ordinance 137/2000, but still there is a place where the offense was committed or the message may conduct to interpretations or associations, a recommendation shall be issued to the perpetrator, to avoid such statements in the future because of its association with some prejudgments of the society.

Recommendations issued by N.C.C.D. do not have the legal force of the coercive sanctions. But in the event of repeated offense, the College will take notice the perpetrator has already received a recommendation.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

The freedom of association is one of the rights protected by the O. G. no. 137/2000; its violation can be sanctioned in accordance with the specific legislation.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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17. Have measures been taken to ensure that non-governmental organizations defending the of 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?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The non-governmental organizations defending the human rights are informed and implicated in many actions regarding the National Council for Combating Discrimination (NCCD)'s activity; therefore, the annual survey is subject to a public debate, where are invited to attend both public institutions and bodies with responsibility for human rights, NGOs, media and other persons willing to come into contact with this field and knowing the reality of the Romanian society. The Council also presents and publishes his annual activity report, report which is later submitted to the Parliament of Romania.

Preparation, organization and carrying out of specific projects for prevention of discrimination in different social backgrounds have been made often in cooperation with non-governmental organizations in many protocols of cooperation. This public-private partnership has resulted in a better knowledge of the institution's activity by non-governmental organizations, to the understanding of organizational and financial aspects, to the achievement of better results.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do 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?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

- Romanian Police and NGOs cooperate in view to identify the best solutions to defend the human rights of lesbian, gay, bisexual and transgender persons.
- In view to prevent the incidents during the Gay Fest, all participants are protected by Romania Gendarmerie against all violence and intolerance that can occur during the event. As a result of this good cooperation the number of the Gendarmerie forces for the Gay Fest continuously decreased (in 2007 - 800 gendarmes; in 2012 – 260 gendarmes). Since 2008, no incidents occurred in the lawful development of the respective rallies. Nevertheless reserves have been always provided.

- The National Council for Combating Discrimination has an active involvement by supporting campaigns and programmes carried out under the National Strategy to implement measures to prevent and combat discrimination.
- The Council has attended and sustained in recent years activities for the manifestations of sexual minorities.

**IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

- Law no. 677/2001 on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data, amended and completed; it applies to the processing of personal data carried out by automated means and / or manuals, which are part of a record system or intended to be included in such a system.
- Law no. 238/2009 regulating the processing of personal data by the structures and units of the Ministry of Administration and Interior in the activities of prevention, investigation and counter crime and maintaining public order republished; it applies to the processing of personal data carried out on public policy.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Putting in legality of an individual with civil status and identity documents is conditioned by the existence of a final and irrevocable judgment regarding the gender reassignment.

**LEGAL FRAMEWORK**

Concerning the right to identity the transgender:

- Law no.119/1996 on the acts of civil status, modified and supplemented by Law no. 117/2006 (Article 43, letter i);
- Government Ordinance no. 41/2003 on the acquisition and administrative change of the persons names, approved by Law no. 323/2003, with subsequent modifications and additions ( Article 4. (2), letter i);

After completing these two legal proceedings, the person may request for the legal identity document.

The costs and deadlines for issuing identity document are common, as for the other reasons.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Yes, a person can marry, using birth certificate and identity document obtained as mentioned above (see answer no. 22) following gender reassignment procedures.

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:



## Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law no. 76/2002 on the unemployment insurance system and employment stimulation, amended and supplemented – art.4 :

(1) Any kind of discriminations for criteria such as politics, race, nationality, ethnic origin, language, religion, social category, beliefs, sex and age shall be excluded in the application of the present law.

Law no. 53/2003 - Labor Code, republished §

– art. 5 :

(1) Within the work relationships, the principle of the equal treatment for all employees and employers shall apply.

(2) Any direct or indirect discrimination towards an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, color of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be prohibited.

– art. 6 :

(1) Any employee who performs work shall benefit from adequate work conditions for the activity carried out, social protection, labor safety and health, as well as the observance of his dignity and conscience, with no discrimination.

(3) For equal work or work of equal value it shall be forbidden any discrimination for criteria such as sex with regard to all remuneration elements and conditions.

– art. 159 :

(3) When establishing and granting the wages, all discrimination shall be prohibited for criteria such as gender, sexual orientation, genetic characteristics, age, national origin, race, color of skin, ethnic origin, religion, political options, social origin, disability, family situation or responsibility, trade union membership or activity.

Government Ordinance no. 129/2000 on adults vocational training, republished – art. 2:

(1) Adults have equal access to vocational training, without discrimination on criteria of age, sex, race, ethnic origin, political or religious. Training programs can be realized both in Romanian and in minority languages or in a foreign language.

The provisions of the Framework Law no.284/2010 on unitary public pay system don't contain payment differences based on gender.

From the perspective of the Equality Body - National Council for Combating Discrimination - In the process of analyze each act of discrimination, the Steering Board corroborate the provisions of Chapter I, "*Principles and definitions*" with the provisions of Cap. II: "*Special Provisions*".

According to section 1 from G. O. 137/2000, "equality in economic activity and in employment and occupation" (art. 5-9), access to employment, promotion, dismissals, pay and other working conditions are protected.

An act of harassment is analyzed by the Steering Board by corroborating the provisions from art. 2 par. 5 with provisions from cap. II.

### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

For 27) The Education Law includes the principle of access to education without discrimination. Also all existing regulations and documents include the principle of non-discrimination and equal access to education.

For i), ii), iii) Have been conducted or are underway a number of projects and programs that have as their target group different categories of students belonging to vulnerable groups. Most of them include a teacher training component.

For iv) According The National Strategy on Preventing and Combating Violence in Schools, approved by OMECT nr.1409/2007, in each school unit is made operational plans to ensure the safety and equality of pupils.

In education, the National Council for Combating Discrimination envisages the following measures from the National Strategy to implement measures to prevent and combat discrimination:

A. Organization of awareness campaigns on the issue of discrimination and its consequences in all the fields covered by the legislation (education, health, access to public services, freedom of expression, employment, economic activity, employment, etc.).

B. Organizing round tables, debates, workshops, seminars on human rights with emphasis on the principle of equality and non-discrimination;

C. Organizing and conducting programs and projects at the national, regional and local levels to address the situation of vulnerable groups to the phenomenon of discrimination, focusing on the effects and action to prevent discrimination;

D. Strengthening the N.C.C.D. information by developing the website of N.C.C.D., continuously updating its materials on the institution's activity, enabling public awareness on the issue of nondiscrimination.

One of the priorities of the strategy is that which refers to "strengthen public education on formal and non-formal nondiscrimination processes". The context for this is: Education is one of the most important means of combating discrimination and of developing a multi-ethnic society, multicultural and inclusive. Through appropriate educational strategies, pupils, students, youth and

the general public must be able to appreciate the importance of cultural diversity and be supported to recognize and oppose prejudgments and discrimination at all levels.

Educational process must relate to the promotion of intercultural discrimination, diversity and tolerance. This is necessary as training specialists and organizing training courses at all levels of formal and non-formal education in order to promote non-discrimination.

In line with the evolution of Romanian society and in line with European practices, N.C.C.D. has developed in recent years a number of projects and programs aimed at areas of interest and impact in society, for a better implementation of antidiscrimination principles and a better reception in society. The NCCD actions covered the entire area of issues established through the objectives of the National Strategy.

Since 2010, we can mention some of the programs developed in the field of education: "Youth speak", "Children talk about discrimination and about their rights", "Stop discrimination in schools 2010", "We have the same rights", "Non-discriminatory school III – training of trainers", "The National Campaign - to be yourself", "Are otherwise? They are talented".

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to art. 1 para. (2) of G.O. no. 137/2000 "(2) The principle of equality among citizens, the elimination of all privileges and discrimination shall be guaranteed, in particular with regard to the exercise of the following rights:

...

e) Economic, social and cultural rights, in particular:

...

(iv) the right to health, medical care, social security and social services

...."

National Council for Combating Discrimination has developed in recent years a number of projects and programs aimed at areas of interest and impact in society – health. We can mention the program "Treatment without discrimination", developed in partnership with The Association for development and social inclusion and other schools and which consisted in the organization of training and courses.

J.

29. Has homosexuality been removed from the national classification of diseases?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐
30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

According to patient's rights law, article 2: "patients have the right to medical healthcare of the highest quality available, according to existing financial, material and human resources."

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The access to adequate housing is one of the rights protected by the G.O. no. 137/2000; its violation can be sanctioned in accordance with the specific legislation.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to art. 1 para. (2) of G.O. no. 137/2000 "(2) The principle of equality among citizens, the elimination of all privileges and discrimination shall be guaranteed, in particular with regard to the exercise of the following rights:

...

e) Economic, social and cultural rights, in particular:

...

(Vi) the right to participate, on an equal participation in cultural activities and sports

..."

Since 2009, N.C.C.D. in partnership with other public institutions and non-governmental organisations has organized lacrosse "Vivicitta" under the slogan "Unity through Sports". This action had the propose to draw public attention to the importance of discrimination and promote diversity and provide a framework through which citizens interact and participate together with the message of the need of social dialogue, of tolerance and diversity awareness.

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**LEGAL FRAMEWORK**

- Law no. 122/2004 on asylum in Romania, Article 23 (1)
    - o Refugee status may be granted, upon request, to an alien who, based on a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is away from his country of origin and is unable, or, due to such fear, unwilling to be under the protection of that country, as well as to stateless persons who are outside their country of usual residence due to the same reasons mentioned above and who are not able or, due to such fear, are unwilling to return.
  - Government Ordinance no.1251/2006 Article 10 (d)
    - o a group shall be considered to form a particular social group where in particular:
      - i) members of that group (share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
      - (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;
      - iii) depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation.
- Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member State: gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**LEGAL FRAMEWORK**

According to Law no. 122/2006 and Government Ordinance no. 1251/2006 (Romanian asylum legislation) refugee status is granted to asylum applicants if there is a reasonable possibility to be exposed to persecution on grounds of membership of a particular social group (which includes sexual orientation or gender identity) in their country of origin.

**XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Ordinance of Government no. 137/2000 on preventing and sanctioning all forms of discrimination, published in Official Gazette no. 781 of 2 September 2000, on art. 23 para. 1 states that the National Council for Combating Discrimination is a specialized body of the central public administration, subordinated to the Government.

In order to transpose the *acquis communautaire* and subsequently, to remove the constant criticism of the European Commission, European Commission against Racism and Intolerance, the Advisory Committee of the Framework Convention on National Minorities and other international institutions, the Romanian legislator has regulated institutional aspects and brought National Council for Combating Discrimination, in terms of its Statute, in accordance with international standards.

Thus, due to the changes brought by Law no. 324/2006, the National Council for Combating Discrimination is investigating the punishable acts of discrimination, as an autonomous legal personality, under parliamentary control, and also as the guarantor of enforcement of the principle of non-discrimination in accordance with law and the international documents to which Romania is a party.

The Council develops and implements public policies in the field of non-discrimination. In this regard, the Council consults public authorities, NGOs, trade unions and other legal entities for the protection of human rights or a legitimate interest in combating discrimination.

In exercising its powers, the National Council for Combating Discrimination operates independently, without being restricted or influenced by other institutions. In order to combat acts of discrimination, the National Council for Combating Discrimination exercises his duties in the following areas: prevention of discrimination, mediation acts of discrimination, investigate, finding and sanctioning discrimination; monitor cases of discrimination specialized assistance to victims of discrimination.

Changing the status of the National Council for Combating Discrimination in specialized body of the central public administration, subordinated to the Government, as the authority autonomous under parliamentary control, meet the standard of independence as defined in European legislation on non-discrimination in accordance with the conclusions of the European Commission.

The activity of the Council is not limited to the two criteria specified in the Committee of Ministers' Recommendation CM/Rec(2010)5, or sexual orientation and gender identity, but is much broader, encompassing all the criteria enumerated in art. 2 para. (1) and even more (the criteria of "any other criteria"). With reference to these criteria the Council is competent to carry out prevention, mediation, investigation, sanctioning and monitoring of acts of discrimination committed in Romania and in different fields.

It can be seen therefore that the Council's work is complex; it is empowered to establish, to sanction or remedy any discriminatory act or action having based on a criteria that puts a person in a less favorably position than another person in the same or comparable position.

The campaigns conducted by the National Council for Combating Discrimination over the years in order to accomplish the objectives set out in the National Strategy for the implementation of measures to prevent and combat discrimination are found widely exposed in the annual report of the Council.

We believe that through his activity, the National Council for Combating Discrimination has achieved the objectives set and offered role in Romanian society in protecting vulnerable groups, regardless of the criteria considered forbidden, against all forms of discrimination.

People's Advocate - Ombudsman

In order to fulfill his constitutional and legal role, the People's Advocate receives, examines and solves, within the conditions of the law, the petitions addressed by any physical entity, regardless of citizenship, age, gender, political affiliation or religious beliefs. The petitions addressed to the People's Advocate will be formulated in writing and sent by mail, including electronic mail, by telephone, fax or directly through hearings, which represent the main means for dialogue with the citizens.

In order to solve the problems brought to his attention, the People's Advocate has the right to compel the public administration authority in question to take the measures necessary for defending the rights and freedoms of the physical entities, as well as to notify the public authorities hierarchically superior about the lack of reaction of the individuals who are compelled to take the necessary measures. Likewise, the People's Advocate can make investigations and formulate recommendations.

The People's Advocate has the power to intervene whenever a person notifies the discriminatory act or fact based on sexual orientation or gender identity.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**SERBIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐

Please explain your reply.

The issue of preventing discrimination against persons on grounds of their sexual orientation and gender identity (LGBT – lesbian, gay, bisexual and transgender persons) is still a sensitive topic for Serbian public opinion. Various forms of discrimination, violence and threats against LGBT persons are present even today. Research of LGBT rights organizations indicates that there is widespread discrimination against that population.

Publicly and privately expressed homophobia and hate speech in public, as well as open forms of violence motivated by intolerance of non-heterosexual orientation, are the main forms of discrimination and human rights violation of LGBT people. LGBT activists and human rights reports produced by domestic and foreign organizations have been pointing to all this in Serbia for years. LGBT persons are faced with a high level of homophobia in society and social distance, as indicated in reports of the Belgrade Centre for Human Rights for many years, Gay-Straight Alliance in 2010 and 2011, Labris in 2009, 2010 and 2011. The data from the Commissioner for Protection of Equality of the 2012 points to the fact that LGBT population is badly perceived in Serbia, 80% of the respondents would not like to have them in their families, half of them would not like to have them as companions, and one-third do not want them as neighbours or colleagues.

The attitude of citizens towards this minority group has slightly improved in 2010, after the President and other senior government officials had expressed their clear support for the 2010 Pride Parade. The reports by organizations for the protection of rights of persons with different sexual orientation contain data on a number of incidents and attacks against people of different sexual orientation.

However, the adoption of the Law on the Prohibition of Discrimination represents a significant qualitative shift in the successful prevention of discrimination against this group of persons.

The Law on the Prohibition of Discrimination (2009), defining the term of discrimination, explicitly determines sexual orientation as one of the personal characteristics, what makes significant progress in protecting LGBT persons not only in terms of terminology but also practically (Article 2). The Law on the Prohibition of Discrimination recognises also, as a special form of discrimination, discrimination on grounds of sexual orientation. Nowadays, there is better legal framework to combat discrimination in Serbia, but the elimination of discrimination and homophobia is still an unachieved goal.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?



a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The Commissioner for Protection of Equality, within his/her competence, is constantly working on the analysis of laws and other regulations.

The Ombudsman, as part of his/her regular activities, analyzes the existing legal framework. Having in mind a large number of laws and fields, the position of the transgender people in the Republic of Serbia is currently in the focus of the Ombudsman. The Expert Working Group, which was formed by Ombudsman together with the institution of the Commissioner for Protection of Equality, has just completed its work. The proposal of the working group was that, in order to achieve real equality of the transgender people, the best solution is to bring a brand new, comprehensive law to fully regulate the rights of transgender persons.

In principle, the Law on State Administration ("Official Gazette of RS" No. 79/05, 101/07 and 95/10 thereof), and the Rules of Procedure of the Government ("Official Gazette of the RS", No.61/06 – consolidated version, 69/08, 88/09, 33/10, 69/10, 20/11 and 37/11), stipulate that executive bodies of state administration are mandated to continuously monitor, within the area of their competence, all domestic and EU regulations and international agreements which were ratified by the Republic of Serbia, and to work on both their implementation and their improvement i.e. their progressive development.

Accordingly, for example, the Gender Equality Directorate, or the Ministry of Labour, Employment and Social Policy checks in practice and, consequently, proposes amendments to certain solutions of the Gender Equality Law ("Official Gazette of RS" 104/09) which is one of the activities provided in the 2013 Plan of the Government of the Republic of Serbia. In terms of terminology, the Law defines the following: 1) sex refers to the biological characteristics of persons, and 2) gender is a term that denotes socially established roles, position and status of women and men in public and private life, which, due to social, cultural and historical differences, lead to discrimination based on belonging to a biological sex. This Law regulates the following areas: 1) employment, social and health protection (among other things: equal opportunities and access to jobs and positions, appointments and promotions, equal pay for equal work or work of equal value), 2) family relationships (for example: giving birth, domestic violence), 3) education, culture and sports (includes: equal gender representation, gender equality as an integral part of education), 4) political and public life (equal opportunities of political and other engagement, obligations of the local government units, statistical records) and 5) judicial protection.

Are there measures in place to redress any such discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Serbian Constitution contains a number of provisions relating to the prohibition of discrimination. According to Article 21 Constitution prohibits any discrimination, direct or indirect, on any grounds, particularly on race, sex, national or social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability.

The Law on Prohibition of Discrimination (published in the "Official Gazette of RS", No. 22/09), as a general law, provides general definition of discrimination and affirmative action; establishes

definitions of discrimination against certain categories of persons and in certain cases; provides forms of discrimination; provides a special organ or body to coordinate actions relating to the prohibition of discrimination and that would have different possibilities against bodies and individuals who violate the law; provides special civil proceedings for the protection from discrimination, establishes infringement liability and provides for discriminatory behaviour, and resolves also other issues which, as a general framework, should provide sufficient institutional guarantees against discrimination.

This law provides full guarantee and protection from discrimination on grounds of sexual orientation, both to nationals and foreigners.

The Law contains a number of provisions devoted to the protection against discrimination on grounds of sexual orientation. It precisely specifies what constitutes discriminatory treatment, and Article 21 stipulates that sexual orientation is a private matter and that no one may be called to publicly declare their sexual orientation, that everyone has the right to declare their sexual orientation, and discriminatory treatment on account of such a declaration is forbidden.

In order to ensure effective implementation of the law and protection against discrimination of vulnerable groups, including those on grounds of their sexual orientation, the Law on the Prohibition of Discrimination provides for judicial protection and establishes the Commissioner for the Protection of Equality as an independent state organ. The establishment of an independent and impartial body for the Protection of Equality has a particular significance in this law, as only this is what should encourage and ensure the future development of legislation in this area.

The Commissioner for Protection of Equality has the following powers: to receive and review complaints pertaining to violations of provisions of the Law on the Prohibition of Discrimination, provide opinions and recommendations in specific cases, and pass the measures; provide information to the person lodging a complaint concerning their rights and the possibility of initiating court proceedings or some other proceedings for the purpose of protection. The Commissioner has *locus standi*, that is, the right to file charges with the consent of the person who has suffered discrimination. With the consent of the parties, they recommend reconciliation, submit an annual report to the National Assembly on the violations of the provisions of this law and inform the public about it; warn the public of the most frequent, typical and severe cases of discrimination through media or otherwise; monitor the implementation of laws and other regulations, initiate the passing or amending of regulations for the purpose of implementing and developing protection against discrimination and provide opinions concerning the provisions of draft laws and other regulations pertaining to the prohibition of discrimination; establish and maintain cooperation with independent bodies authorised to ensure achieving equality and the protection of human rights at the level of local government and territorial autonomy; recommend measures to public authorities and other persons aimed at ensuring equality.

Other laws also contain anti-discrimination provisions with explicit reference to sexual orientation as a basis for anti-discrimination protection or (insufficiently explicit) reference to "other personal characteristics". Provisions of Article 38 of the Law on Public Information prohibit hate speech as the publication of ideas, information and opinions that incite discrimination, hatred or violence against a person or group of persons because of their sexual orientation. Provisions of Article 21 of the Law on Broadcasting provides that the National Broadcasting Agency shall ensure that broadcasters' programmes do not contain information inciting discrimination, hatred or violence

against an individual or a group of individuals on grounds of their different sexual orientation. Furthermore, the provisions of Article 79 thereof instruct public service broadcasters, in their news programme production and broadcasting to abide by the principles of impartiality and fairness in treating different political interests and different persons, uphold the freedom and pluralism of the public expression of opinions, and prevent any form of racial, religious, national, ethnic or other intolerance or hatred, or intolerance on the grounds of sexual orientation. Article 8 of the Law on Higher Education provides that all persons who have completed their secondary education have the right to higher education, regardless of (among other things) their sexual orientation. Provisions of Article 18 of the Law on Labour prohibit direct and indirect discrimination against job seekers and employees also with respect to their sexual orientation. Article 5 of the Law on Youth stipulates that all young people shall be equal and that it shall be prohibited to differentiate or unequally treat young people, whether directly or indirectly, on any grounds, particularly on grounds of their sexual orientation and gender identity. The Law on Social Protection prescribes the principle of non-discrimination of social protection users on grounds of their sexual orientation (Article 25). Provisions of Article 7 of the Law on Advertising stipulate that advertising may not, directly or indirectly, incite to discrimination on any grounds, without mentioning explicitly sexual orientation and gender identity. Article 10 of the Law on Sports forbids any direct or indirect discrimination against athletes in their performance of sports activities, without any reference to sexual orientation and gender identity, only with regard to a personal characteristic.

In accordance with the Law on the Serbian Armed Forces ("RS Official Gazette", no. 116/07, 88/09 and 101/10, and according to Article 11 thereof, the provisions of this Law pertaining to the composition of the Serbian Armed Forces shall equally refer to both women and men. According to Article 13, paragraph 3 it is forbidden to favour or deprive a Serbian Armed Forces member of their rights and duties, especially for their race, religion, gender or nationality, background or another personal feature. According to Article 29, paragraphs 3 and 4, democratic and civil control of the Serbian Armed Forces shall be exercised by the National Assembly, the Ombudsman and other government bodies in accordance with their competences, citizens and the public. Regulations on the Ombudsman pertaining to the protection and fulfilment of citizens' rights shall also apply to the professional members of the Serbian Armed Forces

On 24 March 2011, the Republic of Serbia signed a Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity, submitted to the United Nations Human Rights Council by Colombia on behalf of 85 United Nations member states.

The Provincial Institute for Gender Equality has translated the Report of the High Commissioner for Human Rights of the Council of Europe on discrimination based on sexual orientation of June 2011.

When it comes to the institution of the Commissioner for the Protection of Equality, it was pointed out that most of the complaints of discrimination against LGBT people arrived exactly from the NGO sector which indicates a well established cooperation. Method of data collection by that institution about discrimination against LGBT people is distinguished for its timeliness and accuracy, and represents an institutional example.

Office for Human and Minority Rights highlights its activities in sharing of experiences and cooperation with all partners in this area. The Office conducts activities aimed at promoting the rights of certain vulnerable groups, enhancing tolerance, promoting culture of human rights, support to civil society organizations dealing with the protection and promotion of human rights.

Most prominent is the support for the best projects of organizations that have been selected by open competition, which improve and promote the rights of LGBT people, for example. Labris, Gay Straight Alliance, Gay-Lesbian Regional Info Centre. Street actions, debates, films and other forms of promotion of LGBT culture and creativity, discussions on the rights of LGBT persons throughout Serbia were supported. These organizations and their partners supported the marking of Pride Day, on 24 June within "2012 Calendar of Human Rights". Pride Day, among other things, was marked by lowering the fabric in the colours of the rainbow from the windows of state institutions in Serbia. Gay-Lesbian Regional Info Centre, with support from the Office for Human and Minority Rights, organized activities for the celebration of 1<sup>st</sup> December, the International HIV/AIDS Day. Support was also given to the project of the Duga Association from Sabac dedicated to the celebration of 10<sup>th</sup> December, the International Human Rights Day, among other things, by organising the Living Library concept dedicated to fighting prejudice and discrimination against young people, LGBT people, people who are infected with HIV, the Roma, people with disabilities.

During the first half of 2013, the Office for Human and Minority Rights is planning, within the LGBT Project of the Council of Europe, to organise the training for personnel employed in social care centres for working with LGBT people and their families, on the basis of a training program accredited by the Ministry of Labour and Social Policy, i.e. the National Centre for Social Work, as a result of the pilot project implemented by Duga Association with the support of the former Department of Human and Minority Rights. This is to ensure that all the employees in the centres for social work throughout Serbia are adequately trained and able to provide better quality services to LGBT people and their families.

The Office for Human and Minority Rights, in cooperation with the service of the Commissioner for the Protection of Equality, coordinates the process of preparing the National Strategy for Combating Discrimination in the Republic of Serbia. It has been planned that the strategy be adopted in the second quarter of 2013, followed by developing an Action Plan for its implementation. Civil society organizations, which have been selected through a public call, based on their capacity and experience in the specific area, work on the main segment of the strategy aimed at improving the position of nine vulnerable social groups that are most likely to be discriminated against (members of national minorities, religious communities and religious groups, women, LGBT people, people with disabilities, the elderly, children, refugees, internally displaced persons and members of other vulnerable migrant groups, as well as people whose health condition can be the basis of discrimination). These organizations will be involved in the preparation of the accompanying Action Plan.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The Law on the Prohibition of Discrimination ("Official Gazette of RS ", No. 22/09) was adopted by the National Assembly of the Republic of Serbia on 26 March 2009. This law prohibits discrimination on grounds of sexual orientation.

On 5 July 2011, the National Assembly of the Republic of Serbia adopted the Law on Youth ("Official Gazette of RS ", No. 50/11) which came into force on 16<sup>th</sup> January 2012. This law clearly promotes the principle of equality and non-discrimination (Article 5 of the Law) which states that all young people (population aged 15-30) shall be equal, or which prohibits any discrimination or unequal treatment of young people, directly or indirectly on any grounds, particularly on grounds of actual or perceived personal characteristics which include sexual orientation and gender identity. Also, in the period before the adoption of the Recommendation, the Government of the Republic of Serbia adopted the Strategy of career guidance and counselling in the Republic of Serbia with the Action Plan for its implementation in the period from 2010-2014 ("Official Gazette of RS" No. 16/10) on 4 March 2010. This document promotes social equality and inclusion as one of the strategic objectives. On 9 May 2008, the Government of the Republic of Serbia adopted the National Youth Strategy ("Official Gazette of RS ", No. 55/08), which, among other things, provides that all young people have equal rights regardless of their personal characteristics including sexual orientation. Action plan for the implementation of the National Youth Strategy 2009-2014 ("Official Gazette of RS", No. 7/09) was adopted by the Government on 22<sup>nd</sup> January 2009. This document provides for the development of tolerance of diversity and recognizing capacities of young people from vulnerable social groups.

The drafting of the National strategy for Combating Discrimination is in its final stage and it is the first national strategic document that, among other things, deals with the problems of LGBT people and that will include measures to improve their position and reduce the level of discrimination to which this vulnerable group is exposed.

The contents of the Recommendation form an integral part of this document, and will be taken into account when drafting the Action Plan for the implementation of the said document. It has been planned that the final version of this document be adopted by the Government of the Republic of Serbia in the second quarter of 2013, and prior to its adoption, eleven round tables are to be held throughout Serbia to introduce as many stakeholders as possible to this process, the working version of this document, to be able to send their comments and suggestions. The adoption of the strategy will be preceded by holding a conference in Belgrade.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

These data are included in the 2011 Regular Annual Report of the Commissioner for Protection of Equality. According to these data, out of the 335 complaints received, there were 10 complaints for discrimination on grounds of sexual orientation.

For the purpose of monitoring the implementation of the Law on the Prohibition of Discrimination, the then Ministry of Human and Minority Rights received within the EC IPA 2007 Project entitled Implementation of Priorities in the Area of Human Rights and Protection of National Minority Groups, expert help in creating a database to track cases of discrimination. Data on indicators for monitoring the implementation of the Law on the Prohibition of Discrimination have been collected from various sources, which include government bodies and institutions as well as independent bodies, such as the Commissioner for Protection of Equality and civil society organizations. For each data source, due to the nature of the data originating from a given source, a specific set of indicators

was defined. Also the database was designed as well as all physical characteristics of the base and the way of their implementation. The database on cases of violation of the Law on the Prohibition of Discrimination was installed and the training of database users was conducted. At present, this database is not operational but it is planned that a copy of it be installed at the service of the Commissioner for the Protection of Equality and technical conditions for its operation to be provided within the EC IPA 2011 Project entitled Implementation of Anti-Discrimination Policies.

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

The statistical reports of prosecutors' offices keep records of offenses of inciting national, racial and religious hatred and intolerance as referred to in Article 317 CC, racial and other discrimination in Article 387 CC, as well as other criminal offenses under the Criminal Code, which may be done from motives of hatred. In doing so, the statistical sheets of prosecutors' offices there is no special heading under which the motive for the commission of any criminal offense could be recorded, which can be identified by examining the particular case.

The Law on Organisation of Courts ("Official Gazette of RS", No. 116/08 and 104/09) in Article 70, paragraph 4, provides for the tasks carried out by the Ministry of Justice and Public Administration in connection with monitoring of the work of courts and collecting statistical data on the work of the courts.

Division for Personnel and Research and Analytical Affairs performs among other things research and analytical, statistical and record-keeping activities related to the collection and processing of periodic reports on the work of courts on the basis of data obtained from the automated case management programme and preparation of annual statistical reports on the work of courts (data on number of cases - influx of cases, number of disposed cases, number of pending cases, year and the quality of trial - the number of confirmed, the number of altered and overturned court decisions).

The Criminal Code of the Republic of Serbia, under Chapter Fourteen lists a group of criminal offenses pertaining to discrimination. These are the following offenses: violation of equality in Article 128 CC, violation of the right to use a language and alphabet in Article 129 CC, violation of the right to expression of national or ethnic affiliation in Article 130 CC, violation of the freedom of religion and performing religious service under Article 131 CC.

Violation of Equality

Article 128

(1) Whoever denies or restricts the right of man and citizen guaranteed by the Constitution, laws or other legislation or general acts or ratified international treaties on grounds of nationality or

ethnicity, race or religion or due to absence of such affiliation or difference in political or other conviction, sex, language, education, social status, social origin, property or other personal characteristic, or pursuant to such difference grants another privileges or benefits, shall be punished with imprisonment up to three years.

(2) If the act specified in paragraph 1 of this Article is committed by an official in discharge of duty, such person shall be punished with imprisonment of three months to five years.

Possible sentence – for paragraph 1 up to three years of imprisonment

- for paragraph 2- three months to five years of imprisonment.

In 2011, for this criminal offense, superior courts have imposed three convictions of which 2 persons for up to 6 months, 1 person from 1 to 3 years of imprisonment.

There were 6 ongoing proceedings before basic courts.

The Criminal Code of the Republic of Serbia, in Chapter Seventeen lists criminal offenses against honour and reputation. Among the others, there is criminal offence of ruining the reputation for racial, religious, ethnic or other affiliation under Article 174 CC.

Ruining the Reputation for Racial, Religious, Ethnic or Other Affiliation

Article 174

Whoever publicly ridicules a person or group because of a particular race, color, religion, nationality, ethnic origin or other personal characteristics, shall be punished with a fine or imprisonment up to one year.

Possible sentence - for paragraph 1 up to one year of imprisonment

In 2011, for this criminal offense, basic courts imposed two convictions up to 1 year of imprisonment. There are 5 more ongoing proceedings before the courts.

The Law on Amendments to the Criminal Code of December 2012, in Article 54a stipulates the special circumstance for sentencing for an offense committed out of hatred.

According to the aforementioned legal provision, if the offense was committed out of hatred because of race and religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, the court will consider this circumstance as an aggravating circumstance, unless it is prescribed as an element of a criminal offense.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 21 of the Law on the Prohibition of Discrimination (Discrimination on grounds of sexual orientation) provides that sexual orientation is a private matter and that no one may be called to publicly declare their sexual orientation, and that everyone has the right to declare their sexual orientation, and discriminatory treatment on account of such a declaration shall be forbidden.

In accordance with Article 35 the Law on the Prohibition of Discrimination, persons who consider themselves discriminated against on grounds of sexual orientation or gender identity, have the option of filing a complaint with the Commissioner for Protection of Equality without any obligation to pay a fee or other charges, and the Commissioner shall forward the complaint to the person against whom it was filed, within 15 days of receipt of the complaint.

Also, these persons have the possibility to exercise the right to judicial protection, filing a lawsuit to court.

Accordingly, the Court of Appeals in Novi Sad confirmed, in its final verdict of 14 November 2012 Gž.3144/12, discriminatory behaviour and the severe discrimination against a 25-year-old boy from the city of Vrsac by his colleague from Vlajkovac (age 26). The discrimination was performed during several consecutive months at the workplace in a private company in Vrsac, where they were both employed. The Court of Appeals decided in this case that the defendant was discriminatory towards the plaintiff because of his same-sex sexual orientation and that he repeated it during a six-month period, thereby committing the severe form of discrimination. This verdict was made pursuant to Articles 12, 13 and 21 of the Law on the Prohibition of Discrimination, and the Court of Appeals in its explanation made reference to a breach of Articles 21, 23 and 25 of the Constitution of the Republic of Serbia ("Official Gazette of RS" No. 98/06), which prohibits discrimination on any grounds and guarantees the right to human dignity and mental integrity. The final verdict ordered that the victim be paid 180 thousand dinars for mental anguish on account of the violations of personal rights, honour and dignity, as well as to reimburse the court costs of Gay Straight Alliance Litigation Service (civil society organizations from Belgrade), which held a hearing in court, in the amount of 99 thousand.

In addition, on 25 April 2012, the First Basic Court in Belgrade adopted the claim of the Gay Straight Alliance and established discriminatory behaviour and severe form of discrimination against LGBT people by the defendant Nebojsa Bakarec, alderman in the Belgrade City Hall. Tatjana Lemajić, the judge, made final verdict 29 P No.20182/11 pursuant to Articles 11, 12, 13 and 21 of the Law on the Prohibition of Discrimination. With this verdict the defendant is prohibited from repeating the discriminatory behaviour, and was ordered to pay legal fees to the plaintiff (Gay Straight Alliance) The verdict became final on 3 August 2012, after the defendant did not appeal in the legal time limit.

Before that, on 10 November 2011, the Court of Appeals in Belgrade passed a second instance verdict in the Gay Straight Alliance case Gž.br.5115/11 against the daily newspapers Press doo, dismissing the appeal as unfounded and upheld the defendants first instance judgment of the High Court in Belgrade, which established that the text -readers' comments published on 2 July 2009 on



the website of Press Online are hate speech against the LGBT population and that Press by permitting and facilitating these comments to be placed on the website was discriminatory towards this population on the basis of the Law on the Prohibition of Discrimination and the Law on Public Information ("Official Gazette of RS" Nos. 43/03, 61/05, 71/09 and 89/10-amended by the Decision of the Constitutional Court and 41/11- amended by the Decision of the Constitutional Court). The verdict prohibited Press to publish the said texts on the website again and was ordered to publish the final verdict in its entirety in the printed edition, without any comments and without delay, and to pay GSA the court costs.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Despite the existence of a mechanism to establish independent bodies, one of the challenges is the establishment of an adequate system of support and assistance to victims of human rights violations, including compensation. In this respect, it is necessary to further support the improvement of the work of independent bodies and ensuring the execution of their decisions and recommendations.

In November 2012, the Office for Human and Minority Rights and the Commissioner for Protection of Equality started the implementation of the EC IPA 2011 project "Implementation of anti-discrimination policies". The purpose of the project is to effectively and efficiently implement anti-discrimination policies in line with the EU standards and best practices. IPA 2011 project should enable the empowerment of different mechanisms for effective enforcement of anti-discrimination legislation and training of representatives of relevant government institutions in order to improve respect for tolerance, equality and diversity. It has been planned, among other things, training for the police, the judiciary and prosecutors in the basic anti-discrimination standards, with special emphasis on the promotion and protection of the rights of LGBT people.

In order to further support the work of independent bodies, the project, among other things, provides for the activities aimed at strengthening the capacity of the service of the Commissioner for Protection of Equality, as an independent government body, independent in exercising its jurisdiction, as well as activities aimed at raising public awareness about the importance of tolerance and combating discrimination.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

In the Republic of Serbia, the Serbian language and the Cyrillic script are in official use. The Recommendation of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity has been translated into Serbian and is available to the public on the website of the Office for Human and Minority Rights.

The Constitution of the Republic of Serbia stipulates that official use of other languages and scripts shall be regulated by law based on the Constitution. The law stipulates that the territory of the units of local government traditionally inhabited by national minorities, their language and script can be in equal official use. The local government unit will be required to introduce in official use by its statute the language and the script of a national minority, and if the percentage of that ethnic minority in the total population on its territory reaches 15% according to the latest census.

Based on the presented provisions of the law, 11 minority languages - Albanian, Bosnian, Bulgarian, Hungarian, Macedonian, Romanian, Ruthenian, Slovak, Croatian, Montenegrin and the Czech language - are in official use in the territory of 42 local government units.

Considering the importance of the recommendations of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity, we think that it should be translated into the following minority languages: Albanian, Bulgarian, Hungarian, Macedonian, Roma, Romanian, Ruthenian, Slovak and the Czech language.

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Republic of Serbia is one of the partner countries in the project of the Council of Europe entitled "Combating discrimination on grounds of sexual orientation and gender identity", along with Albania, Italy, Latvia, Montenegro and Poland. Within this project, among other things, the following activities were undertaken:

- On 13 December 2012, the seminar "Combating discrimination on grounds of sexual orientation and gender identity" was held, organised by the Office for Human and Minority Rights, Belgrade. This is the first seminar dedicated to promoting LGBT rights organized by a government institution in the Republic of Serbia, and during it the participants were presented and distributed the Recommendations of the Committee of Ministers of the Council of Europe, as well as the Report by Thomas Hammarberg, Commissioner for Human Rights on discrimination against LGBT people, of June 2011.

- Representatives of the Office for Human and Minority Rights, Ministry of Interior, Criminal Police Academy and the Gay-Straight Alliance attended the seminar devoted to best practices in training police for working with LGBT people, in Budva, Montenegro, on 14 and 15 December 2012. The seminar was organized within the LGBT Project of the Council of Europe.

- In the framework of this project, a multilateral a meeting of all partner countries in the project on the topic of "Best practices in training of health workers and social workers to work with LGBT people" will be organised in Belgrade, in March 2013, in order to present examples of good practice and exchange the experiences in this field.

The Recommendation and Appendix to Recommendation, in Serbian and English, are published on the website of the Office for Human and Minority Rights.

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Ministry of the Interior takes measures providing greater protection for persons of different sexual orientation through direct protection and through intensive operational work for the prevention and suppression of crimes and offenses motivated by sexual orientation or gender identity bias.

With the support of the OSCE Mission, organized activities in the framework of the initiative "Work of the police with marginalized, minority and socially vulnerable groups" are undertaken in order to improve police training, communication and cooperation between the police and members of these communities.

The Ministry of the Interior of the Republic of Serbia, through regular annual in-service training and other forms of education of police officers, pays special attention to the areas of human and minority rights, respect for diversity and the development of communication with citizens.

For example, in-service training of police officers in 2012, among other things, provided for the following topics: Protection of human and minority rights; Work of the police with minority, marginalized and socially vulnerable groups, Treatment of children and minors, and more.

In order to create the conditions for a unified and continuous training of police officers on the work of police with minority, marginalized and vulnerable social groups, appropriate teaching materials (manuals, curricula, etc.) were developed on various aspects of police work with these groups, based on which, through an annual in-service training program, instructional topics in this area are implemented for all police officers in Serbia. In this way, a convergence in police work and adjusting it to the security needs of citizens is provided thereby ensuring the more effective security protection.

The Code of Criminal Procedure prescribes the competences of the public prosecutor whose basic right and basic duty is to prosecute perpetrators of the criminal offenses, and in discharging this function the prosecutor is bound by the principle of legality, according to which he is required to conduct criminal prosecution if there are grounds for suspicion that the criminal offense that has been committed is prosecutable *ex officio*.

The public prosecutor conducts effective, prompt and impartial investigation into all cases of crimes which are prosecutable *ex officio*, including crimes where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator, through exercising his powers prescribed in the Code of Criminal Procedure and the Law on the Public Prosecution.

The Ombudsman, acting in several cases of domestic or partner violence, with the aim of improving the protection and prevention of victims of gender-based violence, sent his opinion to the ministries responsible for social protection, internal affairs and justice with recommendations in order to organise this important issue, which is not a private but public issue.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

The Amendments to the Criminal Procedure Code ("Official Gazette of RS", br.121/12) inserted a new Article 54a providing "special circumstance for sentencing for an offense committed out of hatred," which reads: "If the offense was committed out of hatred because of race and religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, the court will consider this circumstance as an aggravating circumstance, unless it is prescribed as an element of a criminal offense."

Also, the Law on the Prohibition of Discrimination in Article 13(1) stipulates the severe forms of discrimination, and discrimination on grounds of gender identity and sexual orientation is defined as a severe form of discrimination.

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the court practice, the motive for the commission of an offense is considered within the general rules for determining penalties, in which sense it could be considered as an aggravating circumstance. The Law on Amendments to the Criminal Code of 24<sup>th</sup> December 2012, in Article 54a stipulates the special circumstance for sentencing for an offense committed out of hatred. According to the aforementioned legal provision, if the offense was committed out of hatred because of race and religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, the court will consider this circumstance as an aggravating circumstance, unless it is prescribed as an element of a criminal offense.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In cooperation with the OSCE Mission, there has been organised training for police trainers who can train police officers from police departments on improving communication and cooperation and overcoming the prejudices that may contribute to discrimination against people of different sexual orientation and increasing the sensitizing of police officers to the problems faced by people of different sexual orientation. As part of it, the police officers are trained in terms of encouraging crime victims to report crime.

Measures to protect victims and witnesses of crime are prescribed by the Criminal Procedure Code and the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (procedural protection measures), as well as the Law on the Protection Programme for Participants in Criminal Proceedings (extra-procedural protection).

Article 8 of the Gender Equality Act provides that no one shall suffer any harm from giving a statement in front of the competent body in the capacity of a witness or victim of sexual discrimination or from alerting the public about a case of sexual discrimination. As for the violence, particularly within the family, the Republic of Serbia signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (CAHVIO) on 4 April 2012. At the moment, the Convention, which, *inter alia*, in Article 27 (Reporting) and 28 (Reporting by professionals) obliges States Parties to intensify their activities to protect witnesses of domestic violence and persons who reported them, is in the process of ratification. Serbian Constitution provides, in Article 16, that ratified international treaties are an integral part of the legal system of the Republic of Serbia and applied directly, so, accordingly, this should to apply to the said

Convention and its parts, which encourage the adoption of measures for victims and witnesses of criminal offenses and incidents from the scope of this regional legal instrument

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

The Ministry of the Interior is responsible for the education of police officers and realises it through two centres: the Basic Police Training Centre (COPO) in Sremska Kamenica and Specialized Police Training and Advancement Centre.

Basic Police Training Centre (COPO) in Sremska Kamenica is responsible for basic police training and it is the only such institution in Serbia enabling students - future police officers, to acquire knowledge and skills necessary for performing a variety of law enforcement activities. In addition to basic training, which lasts for 12 months, the Basic Police Training Centre in Sremska Kamenica organizes seminars and workshops aimed at in-training of trainers, co- trainers and police mentors in the field of human rights.

Specialized Police Training and Advancement Centre operates in the Headquarters of the Ministry of the Interior and is responsible for organizing and conducting training for active police officers, where the application of different educational methods enables police officers to refresh their knowledge from several areas of policing, advancement, and acquisition of knowledge and skills for implementing new legislation.

#### **Activities of the Basic Police Training Centre in Sremska Kamenica (COPO)**

In accordance with the Curriculum for training students in vocational basic police training, in the period from 2007 to date, eight generations with a total of 1085 students successfully completed the training. Arguing that a well-trained police force is the best possible guarantee against ill-treatment, all trainees in the course of their education, through mandatory subjects, had the opportunity to acquire the necessary knowledge and develop the necessary attitudes regarding the observance of human rights and freedoms and the prevention of torture and misconduct of the police, as well as respect for the diversity of people of different sexual orientation and gender identity.

The curriculum provided continuing education and training of students - future police officers, related to legal regulations, including an important segment of protection of human rights and freedoms, and the prevention of torture and inadequate treatment. The starting point for making this part of the curriculum is the national and international legal framework where the most important is the following: the Constitution of the Republic of Serbia, the Law on Police, Criminal Procedure Code, the Criminal Code, the Law on Personal Data Protection, the Law on Ombudsman, Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Code of Police Ethics, Recommendations of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity, and other national and international legal instruments relating to the conduct of the police.

The area of human rights is addressed through a number of courses and expert modules, among which special place belongs to the course of "Human Rights and Police Ethics". This course deals with the following topics: "Human rights and fundamental freedoms of man", "Morals and Ethics"; "Deontology" and "Code of Police Ethics". The thematic area of "Human rights and fundamental freedoms of people" includes separate teaching units such as "The right to life and the inviolability of physical and mental integrity" which discusses the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Code of Police Ethics, then the provisions of the Constitution of the Republic of Serbia that guarantee the inviolability of the physical and mental integrity and other legal norms, as well as "Gender equality" with specifically implemented excerpts from the Recommendations of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity. Thematic area of the "Code of Police Ethics" includes two teaching units: "Codes of Police Ethics" and "Fundamentals of the Code of Police Ethics of the Republic of Serbia and the European Code of Police Ethics". The students are introduced to the Code of Police Ethics through case studies, practicing and situational role-playing. Special emphasis is put on understanding the relations between the Code of Ethics, police powers and human rights.

The topics related to the protection of human rights and freedoms are addressed within the following teaching subjects: Criminal and Criminal Procedural Law, Police Officers: rights, responsibilities and duties, as well as professional modules: Crime Prevention, Use of Police Powers and the Use of Force in Local Community Policing. Within the modular units "Arrest of Suspect" and "Searching for Information", the students gain knowledge of the rights of persons deprived of their liberty and adopt the views of the necessity of respecting the rights of the arrested person, respect for "the presumption of innocence," respect for human dignity, reputation and honour of the arrested, observance of the principle of proportionate use of force during an arrest, to show concern for the health and security needs of the arrested, oppose all forms of torture, inhuman and degrading treatment, and so on.

Teaching and modular units from these courses and expert modules, which are also related to this area are: "Criminal acts against the rights and freedoms of man and citizen" (the terms such as violation of gender equality, violation of the right to use language and script, illegal detention, extorting of statements etc.), then "Legal instruments available to citizens against acts of the members of the Ministry of the Interior in pre-trial proceedings", "Rights of persons deprived of their liberty", "The treatment of persons deprived of their liberty," "Duties of police officers with regard to respect for human dignity, reputation, honour and rights person to refuse to give evidence", "General requirements for the application of police powers, "" National and international standards of police conduct", "Police officers, their rights and duties", "Disciplinary accountability of police officers ", "Respecting the Equality"," Work of police with minority and socially vulnerable groups", "General requirements and principles for the use of police powers", "Support, protection and assistance to victims (vulnerable groups in law enforcement, etc.).

During the practical training, students can master the practical skills of police conduct in the use of their powers.

Within the course for police mentors, students are introduced to the curriculum of the Basic Police Training Centre in Sremska Kamenica, including the course of "Human Rights and Code of Police Ethics", and to the correlation of this topic with other courses and expert modules. This course has been organised in COPO since 2007, and it is organized according to the needs of local police departments for training of mentors coordinators and police mentors. The course participants are police officers from all over Serbia.

In 2006, in the Basic Police Training Centre, Council of Europe Police and the Human Rights Programme and the Ministry of the Interior of the Republic of Serbia organised a seminar on "Human Rights in the Curricula". The Speakers were Martin Zema), Programme Advisor and Louise Larkin, Council of Europe expert. The seminar was attended by nine employees of the Basic Police Training Centre dealing with developing curriculum for vocational training of the students in basic police training.

Also, as a form of professional development of trainers, in October 2011, in the Centre, a workshop was held on the theme: "The safer detention and handling of persons in police custody", organized by the Organization for Security and Cooperation in Europe (OSCE), in cooperation with the Commission for monitoring the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the RS Mol. The trainers in charge for conducting the training were trainers Christopher Tompkins and Robert Foreman, members of the Kent police, UK. Apart from 18 members of various organizational units of the Mol, the participants were also three employees of the Centre. It was noted that the laws and bylaws in the Republic of Serbia, related to the protection of human rights and freedoms, prevention of torture and other inhuman or degrading treatment, fully comply with the legal and sub-legal solutions in UK.

In October 2007, in Novi Sad, the Ministry of Interior of the Republic of Serbia and the British Council organized a round table discussion on "Work of Police with minority and socially vulnerable groups." The Ministry of Interior of the Republic of Serbia, the OSCE Mission to Serbia and the British Council organised a training course on "Work of Police with minority and socially vulnerable groups." Lecturers on the course were Chris Collins and David Butterworth, police officers from Kent, United Kingdom. Theme of the course was combating all forms of discrimination, prejudice and stereotypes that are manifested in the local communities, but also in the work and conduct of police officers. A participant in this course was also a trainer from the Basic Police Training Centre.

In cooperation with the Hanns Seidel Foundation, our coaches had the opportunity to participate in seminars: "Police in Local Community" in June 2009, "Crime among youth" in October 2009, "Police and Democracy", in November 2009.

In September 2012, the Women Police Officers Network in South Eastern Europe organized presentation of Guidelines for Gender-Sensitive Police Practice. Within the project of Gender Mainstreaming in Security Sector Reform, the OSCE Mission, in cooperation with the Belgrade Fund for Political Excellence, organized three seminars in total (one in 2010 and two in 2011) in which one female employee of the Centre took part.

### **Activities of the Specialized Police Training and Advancement Centre**

Training courses for active police officers with experience, that are prepared, organized and carried out by Specialized Police Training Centre CSOUP, include also topics dealing with discrimination on any grounds, including on grounds of sexual orientation and gender identity, in the following ways:

1. Police officers of CSOUP organize and conduct specialized courses and seminars relating to the conduct of police officers and policing, which according to Article 12 of the Law on Police include: duty to serve the public, to follow the law and combat unlawful activities; to actively respect human rights; to proceed without discrimination in the performance of police functions; to practice restraint in the means of enforcement; to prohibit torture and inhuman or degrading treatment; to assist victims; to safeguard confidential information; to disobey unlawful orders, and to resist bribery and corruption. This article also says "The police shall ensure that the conduct of law enforcement officers does not violate or fall short of European standards of police procedure." Article 35 of the Law on Police says "In exercising the police powers, authorised officers shall act impartially, extending the same protection under the law to all, without bias or discrimination on any grounds." Also, the same article says, " In exercising the police powers, authorised officers shall proceed humanely and with respect for the dignity, honour and good name of all, and other fundamental human rights and freedoms favouring the rights of the endangered person over those of the person violating such rights, and mindful of the rights of third parties."

2. In accordance with the programs of in-service training for police officers, aimed at permanent refreshment of knowledge, especially on topic of the use of powers and conduct of police officers, in 2011 and 2012, CSOUP held several seminars of which we wish to highlight the following topics:

- Constitutional protection of human and minority rights (9 seminars)
- Police work with marginalized, minority and socially vulnerable groups (9 seminars)
- Torture in police (11 seminars)
- Law on the Prevention of Harassment at Work - a new challenge in the protection of dignity (11 seminars) etc.

These in-service training programmes include also seminars on the topic of Gender Equality.

Since November 2012, the Ministry of the Interior has been included in the Council of Europe regional project on "Combating discrimination on grounds of sexual orientation or gender identity." Police officer from the MoI was a speaker at the seminar that was held in Belgrade in December 2012, in which he spoke about the importance of normative documents, procedures, and training when it comes to work and conduct of the police in cases with an element of discrimination on these grounds. Police officer of the Police Department participated in a police training seminar on LGBT issues, which was held in Montenegro, in December 2012. MoI was invited to submit its proposals for training courses for police officers in the field of human rights, with a special review of the rights of LGBT people.

3. The Specialized Police Training and Advancement Centre of the Ministry of the Interior of the Republic of Serbia is engaged in the production of various manuals for police officers. The Manual on Police Ethics, which deals with the topics related to ethical conduct also in situations relating to respect for sexual orientation and gender identity, is under preparation.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is a training program for judges and prosecutors from the Judicial Academy regarding the promotion and protection of human and minority rights, and international and regional standards in this area.



The Administration for the Execution of Criminal Sanctions provides continuous training of employees in all services, with special emphasis on the training of Security Service, according to the established programmes at the Centre for In-Service Training. The training programme includes, as an integral part, a part relating to the prevention of discrimination on any grounds, and respect for all statutory rights and human rights of persons deprived of their liberty. This includes raising awareness of employees about the need to respect the persons deprived of their liberty regardless of their religious, ethnic, political or sexual orientation.

By the end of 2012, the Administration for Gender Equality, completed in-service training for more than 300 male/female police officers (15 seminars at the Judicial/Police Academy) and more than 300 male/female judges and prosecutors (15 seminars at the Judicial Academy) within the specialized teaching programmes on the contents close on gender equality and held 3 training courses for civil servants in the Human Resources Management Service of the Government of the Republic of Serbia. Furthermore, by September 2012, the Administration for Gender Equality completed the process of creating a database intended for domestic violence protection providers in local communities in the territory of the Republic of Serbia. A study of best practices and international experience in developing and implementing programmes for the rehabilitation of male/female perpetrators of sexual and gender-based violence was published with starting a pilot programme for working with perpetrators of domestic violence and intimate partner violence. In this regard, in September 2011, a conference Introduction of Domestic Violence Perpetrator Programme was held (where, with the support of the Kingdom of Norway, more than 100 male/female participants and representatives of the academia were introduced to the basics of work with male/female perpetrators). In the period from June 2009 to December 2011, 32 male/female students conducted the three-month internship at selected institutions dealing with combating sexual and gender-based violence (Administration for Gender Equality, National Institute for Social Protection, Ministry of Labour and Social Affairs, Provincial Secretariat for Labour, Employment and Gender Equality, Centre for Social Work Pancevo, civil society organizations dealing with combating domestic violence).

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Institutions for enforcement of penal sanctions against persons belonging to especially vulnerable categories (including the people of different sexual orientation or gender identity) apply measures that enable safe enforcement of penal sanctions which is primarily reflected in a separate housing. Along with this measure, all the other conditions envisaged for the majority of prisoners in terms of access to health care, information, culture, visits, etc. are provided.

Law on Enforcement of Penal Sanctions prohibits any form of discrimination on any grounds. For employees, disciplinary and criminal liability is anticipated in case of misconduct. Until now, there were no cases of discrimination or abuse of persons deprived of liberty, on grounds of sexual orientation or gender identity.

Law on Enforcement of Penal Sanctions stipulates that any form of hate speech of any grounds by persons deprived of liberty to other persons be treated as a disciplinary offense and punished. Any attack or injury is a serious disciplinary offense and the procedure will be initiated, informing the territorially competent police department at the same time.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Criminal Code of the Republic of Serbia, in Chapter Seventeen provides for a group of criminal offenses against honour and reputation. Among the others, there is a criminal offence of ruining the reputation for racial, religious, ethnic or other affiliation under Article 174 CC.

**Ruining the Reputation for Racial, Religious, Ethnic or other Affiliation**

**Article 174**

Whoever publicly ridicules a person or group because of a particular race, color, religion, nationality, ethnic origin or other personal characteristics, shall be punished with a fine or imprisonment up to one year.

The Criminal Code of the Republic of Serbia, in Chapter Seventeen provides for a group of criminal offenses against humanity and other goods protected by international law. Among the others, there is a criminal offence of racial and other discrimination under Article 387 CC.

**Racial and Other Discrimination**

**Article 387**

(1) Whoever on grounds of race, colour, religion, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by the universally accepted rules of international law and international treaties ratified by Serbia, shall be punished by imprisonment of six months to five years.

(2) The penalty specified in paragraph 1 of this Article shall be imposed on whoever persecutes organizations or individuals due to their commitment for equality of people.

(3) Whoever propagates ideas of superiority of one race over another or propagates racial intolerance or instigates racial discrimination, shall be punished by imprisonment of three months to three years.

(4) Who spread or otherwise make publicly available texts, images or any other representation of ideas or theories advocated or encourages hatred, discrimination or violence against any person or group of persons based on race, color, religious affiliation, nationality, ethnic origin or other personal property, shall be punished by imprisonment from three months to three years.

(5) Whoever publicly threatened that, against a person or group of persons because of a particular race, color, religion, nationality, ethnic origin or because of other personal property, committed a criminal offense punishable by imprisonment of four and more years, shall be punished by imprisonment from three months to three years.

In accordance with its responsibilities in the field of public information, the Ministry of Culture and Media supervises the enforcement of the Law on Public Information ("Official Gazette of RS" Nos. 43/03, 61/05, 71/09 and 89/10-amended by the Decision of the Constitutional Court and 41/11-amended by the Decision of the Constitutional Court). According to Article 38 hereof ("The prohibition of hate speech"), "it is forbidden to publish ideas, information and opinions that incite discrimination, hatred or violence against a person or group of persons because of their belonging to a race, religion, nation, ethnic group, gender or on grounds of their sexual orientation, regardless of whether the publication at stake constitutes a criminal offence or not."

Another law governing the field of public information is the Law on Broadcasting ("Official Gazette of RS" No.42/2002, 97/2004, 76/2005, 79/2005 – as amended, 62/2006, 85/2006, 86 / 2006 - corr., and 41/2009), and the National Broadcasting Agency is in charge of supervising its enforcement. In accordance with Article 8, paragraph 3 of this Law, the Agency has the authority to "prevent the broadcast of programmes that contain information inciting discrimination, hatred or violence against an individual or a group of individuals on grounds of their belonging or not belonging to a particular race, religion, nationality, ethnic group or gender", and in accordance with Article 21 of the same law, "The Agency shall ensure that the broadcasters' programmes do not contain information inciting discrimination, hatred or violence against an individual or a group of individuals on grounds of their different political affiliation or belonging or not belonging to a particular race, religion, nationality, ethnicity, gender or sexual orientation ". In the part regulating the broadcasting sector, Article 79 of the Law stipulates that "Public broadcasting service carriers shall in their news programme production and broadcasting abide by the principles of impartiality and fairness in treating different political interests and different persons, uphold the freedom and pluralism of the public expression of opinions, and prevent any form of racial, religious, national, ethnic or other intolerance or hatred, or intolerance on the grounds of sexual affiliation. "

The Law on the Prohibition of Discrimination, among others, stipulates that hate speech is also a form of discrimination. Article 11 of the Law on the Prohibition of Discrimination stipulates that it is forbidden to express ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways. The Commissioner for Protection of Equality, within the scope of their competence, trains civil servants, through Human Resources Management Service, about the prohibition of-discrimination and responsibilities of the Commissioner for Protection of Equality. An important part of the training courses is devoted to prohibition of discrimination on grounds of sexual orientation.

The Ombudsman has consistently supported the right of LGBT people to gather and express their identity and opinions. During 2012, on the occasion of the International Day Against Homophobia and International Day of Pride, the Ombudsman in his statements emphasized the need for respecting diversity and protecting the rights of LGBT people and on the occasion of marking these international human rights feasts along with the representatives of LGBT NGOs he put up a flag in colours of rainbow on the building of the seat of the Ombudsman in Belgrade. In 2011, for the same activity, the windows were broken down on the building where the office of the Ombudsman is

seated, but that did not discourage the Ombudsman to give his support also in the subsequent years and on two occasions, as stated above.

To mark the International Day of Pride in June 2011, the fabric in the colours of the rainbow was also lowered from the Ministry for Human and Minority Rights, Public Administration and Local Government, in the presence of LGBT civil society organizations.

Deputy Ombudsman in charge of gender equality and the rights of LGBT people in her public appearances (author articles, interviews), especially speaks about the importance of education system that would alleviate the existing highly expressed hostility among children and adolescents against LGBT people, pointing to the need for adequate addressing of that topic through teaching programmes and textbooks.

Over the last years, the Ombudsman took all available measures and actions aimed at raising awareness of the importance and responsibilities of this body, and in order to approach citizens (accessibility). Although media regularly monitor activities, results but also problems in the work, the Ombudsman has established as a regular practice visits to local government authorities (Days of the Ombudsman). On this occasion, besides the talks with representatives of local authorities, the talks with non-governmental organizations and other institutions in the field of human and minority rights are also organized. In accordance with their main competencies, the personnel employed in the Expert Service in the field receive complaints from the citizens. In public libraries in 10 cities and towns across the country, citizens can contact the reception service of the Ombudsman through an audio-visual internet connection. In the next two years the number of such libraries (the Ombudsman calls them virtual offices) will increase to 25.

In 2010, the Provincial Ombudsman and the Parliament of the Autonomous Province of Vojvodina implemented the project "Together against discrimination" in which the President, Vice-Presidents and Members of Parliament, as well as deputies of the Provincial Ombudsman took part. In panel discussions in several municipalities, they spoke about the prohibition of discrimination, including on grounds of sex, gender, examples of discrimination and accountability of state institutions to refrain from making statements that could be interpreted as a legitimization of hate or discrimination against LGBT people. Participants in the panel were representatives of local authorities (councillors, administrative bodies, civil society organizations and citizens).

Institution of the Provincial Ombudsman, with the help of Labris organization, realized education for the Provincial Ombudsman, the Deputy Ombudsman and all the employees in 2007.

Provincial Ombudsman and Minority Rights Centre organisation, supported by the Helsinki Committee for Human Rights, organized and conducted the training of local ombudsmen in 2007.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

There are no restrictions or exclusions of warranties contained in the Appendix to the Recommendation.

Measures to ensure freedom of association are:

Constitution of the Republic of Serbia ("Official Gazette of RS ", No. 98/06) as one of the human rights and freedoms guarantees the freedom of association. Specifically, Article 55 of the Constitution, among other things, guarantees freedom of political, union or any other form of association and the right to stay out of any association, and the association formed without prior approval and entered in the register kept by a state body in accordance with the law.

Establishment and legal status of associations, registration and removal from the register, membership and organs, status changes and termination of the association, as well as other issues relevant to the work of the association are governed by the Law on Associations ("RS Official Gazette", No. 51/09). This law regulates the status and activities of foreign organizations in the Republic of Serbia.

The association, in terms of this Act, is a voluntary and non-governmental non-profit organization based on the freedom of association of several natural or legal persons, established in order to pursue and promote a particular shared or general goal and interest, which are not prohibited by the Constitution or the law.

Law on Associations stipulates that associations are established prior to entry into the register, but only with their entry into the register they acquire status of a legal entity. Practically, it is possible that the associations themselves decide whether to enrol in the registry or not. To the associations that are not entered in the Register, in which case do not have status of a legal entity, legal rules on civil partnership shall apply. However, it is important to point out that this Law provides a number of benefits to associations that are registered in the Register of Associations (to act independently in the legal system, to carry out economic and other activities in accordance with the law, to apply for funds from the budget of the Republic of Serbia, autonomous region or a unit of local government provided for funding certain projects of public interest, etc.).

In addition to this, the Law on Associations stipulates that the goals and operations of the association may not be aimed at violent overthrow of the constitutional order, breach of the territorial integrity of the Republic of Serbia, violation of the guaranteed human and minority rights or incitement and instigation of inequality, hatred and intolerance based on racial, ethnic, religious or other affiliation or commitment, as well as on gender, race, physical, mental or other characteristics and abilities. Also, secret and paramilitary associations are prohibited.

In this regard, it should be pointed out that the banning of associations whose goals or operations are contrary to the mentioned prohibition is to be decided by the Constitutional Court. The procedure to ban the work of an association is initiated upon the proposal of the Government, the Republic Public Prosecutor, the ministry in charge of administration, and the ministry responsible for the area in which the association achieves its goals or the Registrar for the associations.

The Government or the ministry responsible for the area in which the association achieves its basic goals assigns the funds for promoting programs or the missing share of the (financial) means for funding programs that the associations are carrying out and are of public interest, on the basis of the completed open competition and shall conclude contracts for the implementation of the approved programs.

The programme of public interest in accordance with this law particularly refers to programmes in the following fields: social security; disabled war veterans' security, security of internally displaced persons from Kosovo-Metohija and refugees; promotion of birth-rate; assistance to senior citizens; health care, protection and promotion of human and minority rights, education, science, culture, information dissemination; environmental protection; sustainable development; animal protection; consumer protection; combating corruption; as well as humanitarian aid programs and other programs whereby the association pursues public needs exclusively and directly.

Pursuant to the authority given, the Regulation on the means for promoting programmes or the missing share of the funds for financing programmes of public interest implemented by associations ("Official Gazette of RS ", No. 8/12). This Regulation prescribes transparent relations and clear rules in financing the associations' programmes of public interest from the budget. Among other things, it specifies the criteria by which to make a selection of programmes to be financed from the budget of the Republic of Serbia (reference programme, goals that are achieved, co-financing of the programmes from other sources, and the legality and efficiency of use of resources and the sustainability of past programs), with giving possibility to the public administration body whose scope of competence covers the area in which the public interest is achieved to determine closer criteria for the selection of the programme, as well as additional criteria that are specific to a particular area. Then it regulates the methods and procedures for assigning the funds for promoting programmes or the missing share of the funds for financing the programmes (mandatory contents of the public announcement, the way to invite to open competition, applications for the competition, competition commission, the decision on the selection of the programme, the legal instruments that may be used by the association - participant in the competition). As for the using of the funds approved for the programme, it is stipulated that these funds are earmarked for specific purpose and that they can only be used for the implementation of the specific program and in accordance with the contract concluded between the competent authorities and the association. Monitoring of the programme implementation and control of its implementation, as well as the manner and process of returning funds to promote programmes or the missing share of the funds for financing the programme in the event of improper use of funds is also governed by this regulation. Regulation introduces transparency and the public in the process of allocating funds for financing of these programmes, including by prescribing that the competent authority shall on its official website publish the public tender, evaluation and ranking list of the filed programmes, the decision on the selection of the programme, as well as other data and documents that are published in accordance with this regulation.

The Criminal Code of the Republic of Serbia, under Chapter Fourteen lists a group of criminal offences against freedoms and rights of man and citizen. Among others, there is a criminal offence of prevention of political, trade union or other organising and activity by which all citizens, including the advocates of human rights of lesbian, gay, bisexual and transgender people are effectively protected from hostility and aggression. It is particularly significant that the more severe form of this offence is if this criminal offence is committed by an official in discharge of duty.

In August 2011, Ministry for Human and Minority Rights, Public Administration and Local Government, Department of Human and Minority Rights, based on an open competition for the allocation of funds to the associations for projects aimed at the promotion and protection of human rights in the Republic of Serbia or encouraging positive behaviour and actions of a wider social community towards vulnerable groups of citizens (persons with disabilities, children and youth, vulnerable groups on grounds of gender, gender identity and sexual orientation, and other vulnerable groups of citizens) allocated funds for projects of 11 civil society organizations, in the amount of EUR 50,000. One of the projects for which realisation the funds were allocated then is the project "Tolerance, the foundation of a stable family", aimed at introducing the officers of the Centre for Social Work to characteristics of LGBT population, the development of tolerance within the family towards the members of the LGBT population, in the territory of the five districts in the Republic of Serbia. Within this project, the guidelines for working with lesbian, gay, bisexual, and transgender people and members/ members of their families, and are intended for personnel of the centres for social work.

Department of Human and Minority Rights conducted a public tender for the projects of the Association in order to promote and protect human rights in the Republic of Serbia, for the "Calendar of Human Rights 2012". The basic concept of the Calendar means that every month of the year is devoted to, or marked by, a series of activities realised by civil society organizations, whose projects were selected as the best ones through open competition. The aforementioned activities will contribute to improving the status and rights of certain groups or minorities, promotion of desirable models of behaviour and values, as well as combating discrimination. Selection of the field/topics follows UN international holidays as well as other holidays that are marked at the international level. In the "Calendar of Human Rights," June is dedicated to the rights of the LGBT people and marking the Pride Day on 27 June. On the basis of open competition, projects of the following associations were selected as the best for the month of June:

LABRIS - organization for Lesbian Human Rights - "LGBT youth." Project activities included the development of promotional materials and training for young activists on the topic of "LGBT youth", projections of films in 5 cities in Serbia. The Pride Day, among other things, was marked by lowering the fabric in the colours of rainbow from the windows of the government institutions in Serbia.

Gay-Straight Alliance - "Together for LGBT equality". Within the project the following activities were conducted: demonstration of LGBT cardboard dolls and other street performances in order to reduce prejudice against LGBT people, promotion of LGBT culture and creativity at the Exit music festival, showing LGBT films, conducting sweepstake about the Pride Day throughout Serbia, as well as marking the Pride Day.

Through an open competition conducted by the Office for Human and Minority Rights, the following projects of civil society organisations were selected within the "Calendar of Human Rights 2012" as the best ones for the month of December, which is dedicated to the celebration of Human Rights Day:

Regional Info Centre – "The right to love". It was planned within this project to organize throughout Serbia projections of films, distribution of brochures, magazines, organizing panel discussions and presentations to encourage positive action of the broader society towards LGBT people, promotion of LGBT rights and LGBT culture and creativity, as well as marking 1<sup>st</sup> December, the International HIV/AIDS Day.

Duga Sabac Association – “10 December - Day for all of us”. The project envisages holding of a series of interactive workshops, organizations, “Live libraries” as separate methods to combat discrimination against vulnerable social groups, street events in 9 cities in Serbia with young people from the LGBT and Roma populations, populations of people living with HIV and people with disabilities.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In November 2011, in Belgrade, the UN and the OSCE Mission, under the auspices of the Human and Minority Rights, the Conference "Towards the national policy of male/female defenders of human rights" was organised. The aim of this paper was to analyze the position of male/female defenders of human rights in the Republic of Serbia, as well as improving the implementation of the standards contained in the UN Declaration on the male/female defenders of human rights.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

This issue is most addressed by independent institutions, and the Provincial Ombudsman provides information in direct communication with the activists of civil society organisations, active participation in panel discussions and round tables which he organized alone or in cooperation with civil society organizations, as well as seminars intended for the local and provincial administration bodies, participants and students, as well as in communication with citizens who file complaints to the Provincial Ombudsman.

In November 2011, in Belgrade, the Conference "Towards the national policy of male/female defenders of human rights" was held. The aim of the gathering was to analyze the position of male/female defenders of human rights in the Republic of Serbia, as well as improving the implementation of the standards contained in the UN Declaration on male/female defenders of human rights.

In November 2012, in the Office for Human and Minority Rights and the Commissioner for Protection of Equality, the implementation of the European Commission IPA 2011 project "Implementation of anti-discrimination policies" started. In order to improve the capacity of civil society organizations to provide support to victims of discrimination, the following activities will be undertaken:

Development of mechanism for providing information to civil society organizations and feedback to support the victims of discrimination. Preparation of an information package and holding



information sessions/meetings with representatives of civil society organisations. Preparation of the evaluation report with appropriate recommendations on the involvement of civil society in the monitoring of the implementation of the Law on Prohibition of Discrimination.

Production, within the consultative process, of the training manual for civil society organizations to provide training for rendering support to vulnerable groups and legal assistance in cases of discrimination, including the manual for TOT (Training of Trainers) and manual for training courses. The design and implementation of training courses based on the ToT (training of trainers) manual and training manual. The design and implementation of training courses based on ToT manuals.

Support to civil society organizations that have completed ToT to organize the next training courses with other civil society organizations working at the local level. Providing adequate evaluation of the training results.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

The applicable Law on a Free Access to Information of Public Importance was passed in 2004 (Official Gazette of the Republic of Serbia, Nos 120/2004, 54/2007, 104/2009 and 36/2010). The rights in this law belong to everybody under equal conditions, notwithstanding their citizenship, temporary or permanent residence, i.e. sex, or personal attribute such as race, confession, nationality, ethnicity, gender, et al. (Article 6 the Law on a Free Access to Information of Public Importance). That also refers to sexual or gender identity minorities, as well as organisations dealing with the protection of the human rights, related activities and the like. Information of public importance, within the meaning of this Law, is information held by a public authority body, created during work or related to the work of the public authority body, contained in a document, and related to everything that the public has a justified interest to know. This also implies issues related to sexual orientation or gender identity. As for the provision of Information of public importance, Article 14 of the Law on a Free Access to Information of Public Importance stipulates the possibility of limiting the exercise of the right of free access to information of public importance for the purpose of protecting a prevailing interest, i.e. the right to privacy implying also the information on a person's sexual orientation or gender identity.

Ministry of Culture and Media invites for tenders in the area of public information on an annual basis. The right to participate in a competition is given to media and production companies, and one of the assessment criteria is informing and the improvement of the status and equality of all society segments. In this manner, the Ministry of Culture and Media supports the projects that contribute to better informing of marginalised and vulnerable society groups as well as to raising public awareness with a view to overcoming prejudices and stereotypes related to the members of these groups.

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

The freedom of assembly is not an absolute right, but may be limited in certain cases as stipulated by Article 54 of the Constitution.

The provision of Article 54, paragraph 4, of the Constitution sets forth that the freedom of assembly may be restricted by the law only if necessary to protect public health, morals, rights of others or the security of the Republic of Serbia.

The first restriction on the freedom of assembly refers to the requirement that a gathering should be peaceful implying the way of organising an assembly where certain view, ideas and positions are expressed. A peaceful assembly does not imply the contents of the opinion stated. If during a gathering, an opinion representing hate speech or calling for war or discrimination, a clear distinctive line should be drawn between the right to freedom of assembly and the right of freedom of expression.

Other restrictions to the freedom of assembly refer to the need to protect public health, morals, rights of others or the security of the Republic of Serbia.

The provision of Article 11 of the Law on the Public Assembly of Citizens stipulates that the authorized body may ban the holding of the public assembly on the grounds of preventing obstruction of public transport, threat to health, public moral or safety of persons and property.

Article 9 of the Law on the Public Assembly of Citizens provides that the authorised body shall temporarily ban the organisation of a public assembly that is directed toward violent changes of the constitutional order, violation of territorial integrity and autonomy of the Republic of Serbia, breach of human and civil rights and freedoms guaranteed by the Constitution, provoking and inciting national, racial and religious animosity and hatred.

Pursuant to the Law on the Public Assembly of Citizens, activities to ensure protection of safety of person and property of participants of the public assembly and other citizens, maintaining public order and peace, safety of traffic and other activities related to securing the public assembly, are to be conducted by the Ministry of Interior.

Guided by the principle of impartiality, in discharging their duties, police officers serve to the community and protect all persons against unlawful actions, and they are obliged to always act professionally, responsibly and humanely, and to respect human dignity, the honour and reputation of each person and his/her other rights and freedoms.

Having in mind the provisions of the Law on Police, the police perform their activities so as to protect the safety, rights and freedoms of all, to enforce the law and uphold the rule of law.

Within the activities of the security protection of citizens and property, in accordance with security assessments, the police also take measures to protect the members of the LGBT population, visit them directly and establish communication with them. For example, during the 2008 *Eurosong* event, appropriate steps were taken in order to ensure the security protection of LGBT persons, particularly in the places where they assembled.

On 10<sup>th</sup> October 2012, the public gathering *Pride 2010* was held in Belgrade, with an attendance of about 1000 citizens, mostly the members of LGBT organisations, during which efficient security protection for all the participants in the said gathering was ensured. Prior to and during this public gathering, the Ministry of the Interior established active cooperation with the members of the Organising Committee of the public gathering and representatives of LGBT organisations with a view

to providing efficient security for the participants therein, improving communication and establishing cooperation.

By way of its Ruling *Už-1918/2009* dated 21<sup>st</sup> December 2011, the Constitutional Court established a violation of the right to freedom of assembly and violation of the right to legal remedy and *inter alia* underlined the following: *The Pride* was scheduled for September 2009, but one day prior to its commencement, the Organising Committee was delivered the Decision by the Police Directorate of the Ministry of the Interior of the Republic of Serbia 03 N° 8988/09-20 dated 19<sup>th</sup> September 2009 on changing the venue of the gathering, but the organisers thereof did not agree to this, and the gathering did not take place. Thus the disputed Decision by the Ministry of the Interior changed the location of *the Pride Parade*, which did not explicitly render the holding of the peaceful gathering of the LGBT population impossible. However, the Constitutional Court assessed that the disputed Decision, which was made only one day prior to the scheduled gathering, actually limited the right to peaceful assembly of the participants in the registered gathering. By making the disputed Decision on relocating the gathering, which had no legal foundation in the positive legislation, the Ministry of the Interior actually made it impossible for the participants in the event to gather in the place where they wanted to do that and which is envisaged and allowed in compliance with the Decision on determining the space for public assembly of citizens in Belgrade. In spite of the fact that a violation of the discrimination prohibition principle was not established in this particular case, the Constitutional Court points out that all competent governmental authorities, primarily the Ministry of the Interior, the Government and the judicial bodies, are obliged to prevent discrimination on grounds of sexual orientation demonstrated by third parties and to take all necessary measures within their areas of competence to avoid the occurrence of this form of discrimination thus defending and promoting the democratic society values, such as pluralism, tolerance and the right to diversity

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do 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?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On 10th October 2012, the public gathering *Pride 2010* was held in Belgrade, with an attendance of about 1000 citizens, mostly the members of LGBT organisations, during which efficient security protection for all the participants in the said gathering was ensured. Prior to and during this public gathering, the Ministry of the Interior established active cooperation with the members of the Organising Committee of the public gathering and representatives of LGBT organisations with a view to providing efficient security for the participants therein, improving communication and establishing cooperation.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

In the Criminal Code of the Republic of Serbia, in Chapter Fourteen, there is a group of criminal offences against the freedoms and rights of man and a citizen. There is, *inter alia*, unauthorised collection of personal data. What is particularly important is the fact that a more serious form of this criminal offence occurs if such an offence is committed by an official in discharge of duty.

The Law on Personal Data Protection ("The Official Gazette of the Republic of Serbia, issues N° 97/08 and 104/09 –as amended, 68/2012 – the Constitutional Court's Decision and 107/2012) was passed in 2008, and started to take effect on 1<sup>st</sup> January 2009. Personal data protection in the Republic of Serbia is provided for each natural person, regardless of his/her nationality, residence, race, age, sex, language, religious, political and other belief, national or social origin, property, birth, education, social status and other personal characteristics (Article 1, paragraph 2, The Law on Personal Data Protection). This means that personal data protection has to be provided for the sexual and gender minorities as well without discrimination.

Pursuant to Article 16 of the Law on Personal Data Protection, the data related to gender and sexual life *inter alia* are considered as particularly sensitive. What arises from this provision is that the data on sexual orientation (since they speak of a person's sexual life) and the transgender data shall be considered and treated as particularly sensitive data (which implies that the processing of such data is subject to stricter conditions and taking higher-level measures for the protection of such data). The particularly sensitive personal data may be processed only upon a freely given consent of the person concerned, in writing, except in case the processing of such data is forbidden by the law even if the consent is given.

The Commissioner has not in his practice hitherto encountered the case of a data handler having collected and processed the data on a person's sexual orientation or gender identity without any basis in law and contrary to the Law on Personal Data Protection. Of course, should the personal data on sexual orientation and gender identity be collected, safeguarded or otherwise used (except when it is necessary for certain legal and legitimate purposes such as the replacement of the documents of transgender persons), the Commissioner would exert all his authority arising from the law to prevent the unlawful processing of such data and protect the rights of the sexual and gender minorities.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

By its Decision UŽ-3238/2011 dated 8<sup>th</sup> March 2012 (the Official Gazette of the Republic of Serbia, issue N° 25/2012), the Constitutional Court accepted the constitutional appeal and established that the Local Government of a Serbian municipality, by means of passing a resolution on not being actually responsible, failed to decide on the request of the constitutional appeal submitter for changing the gender-related data in the registry books, thus violating this person's right to dignity and free development of personality guaranteed by Article 23 of the Constitution of the Republic of Serbia as well as the right to respect for private life guaranteed by Article 8 of the European Convention on the protection of human rights and fundamental freedoms. The Court ascertained that the authorities referred to in Article 6, paragraphs 2 and 4, of the Law on Registry Books are actually responsible for deciding on a request for entering altered gender-related data in registry books and therefore instructed the Local Government of this municipality to make a decision on the request of the constitutional appeal submitter for changing the gender-related data in the registry of births within 30 days as of the delivery of the Constitutional Court's ruling.

In dealing with complaints, the Office of the Provincial Ombudsman of the Autonomous Province of Vojvodina has found out that the Law on Registry Books has been arbitrarily interpreted in the part related to the Registrar's Service procedures for issuing the certificate on free marital status.

Acting within his mandate, the Commissioner for the Protection of Equality has recommended all the universities in Serbia that they should without delay take all necessary measures in order that the faculties within the University could issue the persons, who after graduation have changed their names due to sex change (transgender persons), at their request, with new diplomas and other public documents whose issuance the faculties are responsible for, stating their new names, in an efficient, transparent and easy way, by complying with national and international standards in the area of the protection of transgender persons against all forms of discrimination

In May 2012, the Ombudsman and the Commissioner for the Protection of Equality set up a joint working group tasked with producing draft amendments to the regulations related to the legal recognition of the consequences of sex change. During the previous 8 months, the working group was working on the identification and analysis of the relevant national, regional and international regulations and standards that govern this area, and on collecting and analysing good practice examples from the countries in the region, and on the social and cultural contextualisation of the status of the transgender persons in Serbia.

This WG has proposed that with a view to achieving real transgender equality, the best solution would be to enact a brand new, comprehensive law to govern the rights of transgender persons in whole, instead of the amendments to a larger number of applicable regulations in all the areas of their personal, professional and public life.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

The national legislation of the Republic of Serbia does not recognise registered partnership.

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the national legislation, i.e. the Family Law of the Republic of Serbia, there are mechanisms established to guarantee that decisions related to the protection of all the rights of underage children and the adoption of children are to be made in their best interest.

However, the national legislation does not provide for the adoption of underage children by same-sex partners, and as for the protection of the rights of underage children, the Family Law does not contain provisions that would discriminate parents on grounds of sexual orientation or gender identity (Family Law, Articles 59 through 78 and 88 through 109).

#### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on the Prohibition of Discrimination (The Official Gazette of the Republic of Serbia, No 22/09) forbids any kind of discrimination in the sphere of labour (the violation of the principle of equal opportunity for gaining employment or equal conditions for enjoying all the rights pertaining to the sphere of labour, such as the right to employment, free choice of employment, promotion, professional training and professional rehabilitation, equal pay for work of equal value, fair and satisfactory working conditions, paid vacation, education, joining a trade union and protection from unemployment).

The right to protection from discrimination referred to in paragraph 1 of this Article shall be enjoyed by a person who is employed, a person doing temporary or occasional work, or working on the basis of a contract of service or some other kind of contract, a person doing additional work, a person performing a public function, a member of the army, a person seeking employment, a student or pupil doing work practice and undergoing training without concluding a contract of employment, a person undergoing professional training and advanced training without concluding a contract of employment, a volunteer or any other person who works on any grounds whatsoever.

Article 18 of the Labour Law (The Official Gazette of the Republic of Serbia, issues N° 24/05, 61/05 and 54/09), which in accordance with Article 4, paragraphs 1 and 3, of the Law on Civil Servants applies to the rights and obligations of civil servants and government employees that are not covered by this one or any separate law or regulation stipulates that both direct and indirect discriminations are prohibited against persons seeking employment and employees in respect to their sex, origin, language, race, colour of skin, age, pregnancy, health status or disability, nationality, religion, marital status, familial commitments, sexual orientation, political or other belief, social background, financial status, membership in political organizations, trade unions or any other personal quality.

The Law on Civil Servants (The Official Gazette of the Republic of Serbia, Nos 79 of 16<sup>th</sup> September 2005, 81 of 23<sup>rd</sup> September 2005 - correction, 83 of 30<sup>th</sup> September 2005 - correction, 64 of 13<sup>th</sup> July 2007, 67 of 20<sup>th</sup> July 2007 - correction, 116 of 22<sup>nd</sup> December 2008, 104 of 16<sup>th</sup> December 2009) in Article 9, provides for equal access to job positions for all persons, i.e. that during the employment of civil servants in state authorities, all job positions shall be accessible under equal conditions to candidates, whereas a choice between candidates shall be made according to the professional qualifications of the candidates' knowledge and skills. The factors that are taken into consideration

when employing people in state authorities are ethnic composition, gender representation and the number of disabled persons in terms that they mirror the structure of the population to the greatest possible extent.

The penal provisions of the Labour Law determine the penal liability of an employer for violating the provisions pertaining to the prohibition of discrimination. In addition, there is another form of protection prescribed - in cases of discrimination, a person seeking employment or an employee may file for compensation of damage before the competent court, pursuant to the law.

In addition to the Labour Law, the Law on Gender Equality (The Official Gazette of the Republic of Serbia, issue N°104/09) also covers the issues pertaining to the exercise of rights and obligations of both employers and employees on grounds of gender equality referring to employment.

The Law on Employment and Unemployment Insurance (The Official Gazette of the Republic of Serbia, Nos 36/09 and 88/10) rests on the principle of the prohibition of discrimination in compliance with the Law on the Prohibition of Discrimination (The Official Gazette of the Republic of Serbia, No 22/09). Following the provisions of the Law on Employment and Unemployment Insurance, each person between 15 years of age and the age eligible for retirement, or 65 years of age at the most, capable and ready to start working, who has not entered into a contract of employment or exercised the right to work in any other way, and who is on the unemployment register and is looking for employment actively is entitled to be included into the active employment policy measures on an equal footing.

The Law on the Prevention of Abuse at Work (The Official Gazette of the Republic of Serbia, issue N°36/10) regulates the prohibition of abuse at work and in connection with work, the measures for preventing abuse and improvement of relations at work, the procedure for protecting the persons affected by abuse at work or in connection with work, and other issues relevant for the prevention and protection against abuse at work and in connection with work.

The Labour Inspectorate, *inter alia*, performs oversight of the implementation of the Labour Law, the Law on Gender Equality and the Law on the Prevention of Abuse at Work.

In compliance with the aforementioned, the Labour Inspectorate pays special attention to the provisions of the said laws pertaining to the prohibition of discrimination on any grounds.

In exercising its mandate, the Labour Inspectorate performs oversight at the employers' in all lines of activity.

The Labour Inspectorate supervises the implementation of the abovementioned laws by means of oversight procedures conducted *ex officio* through regular inspections in the area of health and safety at work, full inspections in the area of work relations, and by means of the procedures of integrated oversight inspections.

It is important to point out that the Labour Inspectorate is not responsible for performing oversight of the implementation of the Law on the Prohibition of Discrimination.

Discrimination at work, which particularly exists in the case of women, elderly employees, disabled persons, members of national minorities, persons having a different sexual orientation, is demonstrated though making it more difficult for such persons to get a job, unequal pay for the same



work done, inappropriate maternity protection, slower promotion at work, making employees redundant, unequal opportunities for professional development, and the like.

The Labour Inspectorate has been receiving requests related to employment discrimination on grounds of the age of applicants (up to 30 years of age), the language of vacancy announcements (written in the English language), and in connection with employing exclusively a female person, which represents discrimination on grounds of gender and is furthermore in conflict with the provisions of the Law on Gender Equality.

Complaints pertaining to discrimination submitted to the Labour Inspectorate so far are rather few; however, if a labour inspector unequivocally establishes the existence of discrimination, the only available legal remedy implies filing a legal action.

Pursuant to Article 273, paragraph 1, of the Labour Law, an employer in the capacity of legal entity shall be fined in the amount of CSD 800,000 to 1,000,000, if he/she violates the prohibition of discrimination, and an entrepreneur shall be fined in the amount of CSD 400,000 to 500,000 for an offence referred to in paragraph 1 of this Article.

The cases of employees complaining to the Labour Inspectorate about discrimination they are experiencing are very rare, particularly of those in the private sector.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Article 81 of the Constitution of the Republic of Serbia, developing the spirit of tolerance represents a basic substance of anti-discriminatory behaviour in public life:

- In the field of education, culture and information Serbia shall give impetus to the spirit of tolerance and intercultural dialogue and undertakes efficient measures for enhancement of mutual respect,

understanding and cooperation among all people living in its territory regardless of their ethnic, sexual and cultural, linguistic or religious identity.

Laws and by-laws and strategic documents which directly or indirectly deal with education and upbringing completely integrate and, in accordance with the purpose, elaborate the contents of aforementioned constitutional regulations from different aspects.

Since the Republic of Serbia adopted the Law on the Prohibition of Discrimination on 26 March 2009 a key legal framework for improving the protection of the rights of minority groups was established. Article 19 of the Law on the Prohibition of Discrimination, regulates a special case of discrimination, the discrimination in the sphere of education and professional training.

In the Law on Textbooks and Other Teaching Aids (Official Gazette of the Republic of Serbia No. 72/09) and the Regulations on Low-Circulation Textbooks forbids discrimination regarding the textbooks contents on grounds of racial, national, ethnical, language, religious or sexual affiliation, developmental disorders, disability, physical and mental characteristics, health condition, age, social and cultural background, economic status, political affiliation, as well as on some other grounds.

The education on human rights is incorporated through compulsory or optional school subjects as well. A compulsory elective subject is Civics which is taught in all classes in primary and secondary schools. This subject offers wide possibilities for intercultural upbringing and education through the processes of building, respect and strengthening of cultural pluralism and tolerance. The contents of the Civics, as well as the reference books for teachers and pupils are being prepared in cooperation with the experts from the European Council responsible for education, but also with the most successful teachers in the region, and they are available to all the teachers on the site of the Ministry of Education, Science and Technological Development. Previous experiences in the realization of teaching this subject have shown that during the educational process pupils acquire knowledge and crucial competencies necessary for living together with different individuals, with a complete self-respect. They are: ability to communicate constructively in different social situations, awareness and understanding of national and cultural identity in the interaction with cultural identity of Europe and the rest of the world as well as the ability to realize and understand different points of view caused by differences.

Education in the field of human rights is conducted in authorized republic and provincial government agencies and independent state bodies for the protection of human rights within the scope of their regular activities. For example, at the Faculty of Political Sciences of the University of Belgrade, the Specialist Studies on Humanitarian Law and Human Rights are being organized. Specialist studies are intended for the employees in state and judiciary organs, as well as for journalists, employees in civil sector and international organizations. The training is conducted through seminars, conferences and lectures as well.

Provincial Secretariat for Education, Administration and National Communities is responsible for implementation of the project called Promotion of Multiculturalism and Tolerance in Vojvodina. The Project is conceptualized as a complex multidisciplinary and multicultural programme, directed towards the idea of strengthening multinational confidence in the young in the Autonomous Province of Vojvodina. It involves a number of sub-projects while through the activities realized in the territory of a whole Autonomous Province of Vojvodina it includes several thousand young people, the pupils attending primary and secondary schools in Vojvodina. A principal goal of this project is a long-term development of the spirit of tolerance, mutual respect and confidence in citizens.

Besides that, the Ministry of Education, Science and Technological Development is also conducting some other international and national projects and programmes concerning combating racism and discrimination intended for pupils, teachers, local communities, and/or other line ministries, in order to create safer and more encouraging environment for all the children and to inform the majority of population with the problems they face. Some of the projects are:

- The Application of General and Special Protocol for the Protection of children and pupils against violence, mistreating and neglect, concerning preventive activities and defining the procedures to protect children against violence
- The School Without Violence Programme which is related to the realization of systemic action plan for the prevention of violence in educational institutions and creating safe and stimulating environment for children
- The indicators of the forms of discrimination in educational institutions that are related to the implementation of measures for addressing and monitoring the forms of discrimination in the life and work of school
- The School Without Violence Programme which is at present being conducted in 196 primary and 9 secondary schools throughout Serbia. It encompasses more than 135.600 pupils and more than 12.500 adults from 64 places in Serbia. Public announcement for schools which would like to join the programme is constantly open while the joining of new schools takes place in each term depending on their financial means
- Programme Safe childhood – development of safety culture of the young has been realized for three successive years in cooperation with the Ministry of the Interior. It includes all primary schools. It is conducted during the lessons held by a headmaster (3 lessons) in all classes of the fifth grade. Police officers perform the programme in cooperation with educational advisers in school boards, homeroom teachers and school expert associates. The topics regard the children traffic safety, children and family violence and other. A developing of the filed of action in the third and sixth form is being prepared along with the developing of subjects (cyber violence).
- SOS phone line was opened (2012) at the Ministry and it has been operating for a year. The volunteers, associates from schools and advisers from school boards have been trained.
- In cooperation with UNICEF an organizational Unit for violence prevention was formed (2011). The trainings for crisis situation dealing are underway for those employed in schools and school boards. By the National Strategy for Improving the Position of Women and Promotion of Gender Equality of 2009 and the Action Plan (2010-2015) along with this Strategy of 2010 ("Official Gazette of RS" No.67/10), within the Chapter the Realization of gender equality in education – it was planned: 1) establishing of gender equality and integrating of gender perspective into education (especially young girls, multiple discriminated groups, Roma women, the poor in relation to: eliminating the stereotypes and prejudices), 2) developing of gender sensitive, anti-discriminatory and secular programme contents and gender sensitive language at all levels of education including the gender studies, 3) programmes of continual training of educational staff for implementing gender perspective into education, 4) building and introduction of standards of anti-discriminatory and gender sensitive procedures in educational process and prevention and control of sexual behaviour in educational institutions. (National strategy and Action plan are available at the Internet presentation of the Department for gender equality – [www.gendernet.rs](http://www.gendernet.rs))

Deputy Ombudsman in charge of gender equality and the rights of LGBT people in her public appearances (author articles, interviews), especially speaks about the importance of education system that would alleviate the existing highly expressed hostility among children and adolescents against LGBT people, pointing to the need for adequate addressing of that topic through teaching programmes and textbooks.

As an example of good practice (although only at the beginning), Croatia has been pointed out as introducing into curricula, from the first to the last class of secondary school, into various subjects, topics which in accordance with the age give the children timely and understandable information about LGBT persons in order to control the existing discrimination and violence towards them.

The Ombudsman deems it also necessary in Serbia to address systematically and continually the topic of LGBT people across all levels of education.

The Ombudsman is currently conducting a procedure against a secondary school, on grounds of the complaint of a young man who publicly declared himself as gay, thereafter suffering violence, insults and humiliations not only from children but from educational staff as well. The procedure is under way and a detailed explanation of the principal about all measures and actions taken for the protection of a pupil has been demanded.

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

By the Article 25 of the **Law on Health Insurance** regarding human rights and values in the health care system prescribes that: Every citizen has the right to health care with respecting the highest possible standard of human rights and values, that is, he has the right on physical and psychical integrity and on the safety of his person, as well as on respecting his moral, cultural, religious and philosophical convictions.

**The Law on the Prohibition of Discrimination**, in the Article 17 sets forth discrimination in the provision of public services and using of objects and public spaces as a special case of discrimination, while paragraph 2 of the same Article prescribes that everyone shall have the right to equal access to objects in public use (objects where the head offices of public administration organs are located, objects used in the sphere of education, health care, social welfare, culture, sports, tourism and the like), as well as public spaces, in accordance with the Law.

29. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

By the Law on Health Insurance and amendments thereof having been passed on 1 January 2012, regarding the realization of the right to health protection out of the obligatory health insurance,

insured persons are provided with: at least 65% cost covered by health service out of the means of obligatory health insurance for gender reassignment for medical reasons. Procedure of gender reassignment for medical reasons has been defined by the Regulation on amendments to the Regulation on the way and procedure of exercising the right out of obligatory health insurance that entered into effect on 12. 01.2013

The Regulation sets down that criteria and standards for gender reassignment for medical reasons are established by republic expert board while expert opinion on the fulfilling those criteria as a condition for including the insured person into the process of gender reassignment for medical reasons is given by the Commission for treatment of transgender disorders founded by the Republic fund. The Commission for treatment of transgender disorders gives its opinion at the demand of insured person on the grounds of medical documentation of the person, and on the grounds of this opinion thereafter a chosen physician sends the insured person to chosen tertiary level institution for the gender reassignment service for medical reasons.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The services of social protection regulated by the Law on Social Protection are available for all citizens under the same conditions and in the same volume and content regardless the race, sex, age, national belonging, social origin, sexual orientation, religion, political or other choice, culture, language, disability or some other personal feature (article 25 of the Law on Social Protection).

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Article 344-a of the Criminal Law provides for a criminal offense of "Violent behaviour during sports event or public assembling". The legislator defined one of the ways of doing this as follows: "whoever by their behaviour or slogans on sports events or public assembly causing national, religious or any other hatred or intolerance based on some discriminatory grounds causing thereof violence or physical fight".

The Law on Prevention of Violence and Misbehaviour at sports events in Article 4 paragraph 1 point 3 states that by the violence and unbecoming behaviour at sports manifestation it is especially meant bringing into a sports object insignia which insult national, race, religious or other feelings or in some other way instigate hatred or intolerance what can lead to physical conflicts.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Ministry of the Young and Sport will in 2013 commence the implementation of the project „Fair play is victory“ whose aim is to raise the awareness of public about the importance of fair play and tolerance both in sport and life. The organization of public lessons in coordination with local community intended primarily for children and the young, based on the document of UNESCO and on the Declaration of International Committee of fair play, workshops, research and fair play caravans has been planned

The involving of wider social community and the state, national sports associations, sports clubs, sports workers, sportsmen and media has been envisaged.

#### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on Asylum in the article 2 paragraph 7, sets down that the "refugee is a person who, on account of well founded fear of persecution on grounds of race, sex, language, religion, nationality membership of a particular social group or political beliefs is not in the country of his/her origin and is unable or unwilling, owing to such fear, to avail him/herself to the protection of that country, as well as a stateless person who is outside the country of his/her previous habitual residence, and who is unable or unwilling, owing to such fear, to return to that country". If the foreigner should come to the Republic of Serbia, and then and there submit a request for asylum saying that in the country of origin he was persecuted on the grounds of his sexual orientation or gender identity, and in the procedure of investigation of justifying the request for asylum he succeeded to prove the existence of persecution, that foreigner's request for asylum shall be accepted, i.e. he shall be granted refuge on the grounds of belonging to special social group exposed to persecution (the concept which the Law on Asylum took over from the Convention on the refugees status in 1951). Since now the request with such an explanation has not been submitted.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on Asylum by the article 6 regulates the prohibition to expel or return, that is the principle of non-refoulement, which is practically taken over from the article 33 of the Convention on the refugees' status from 1951. Article 6 says that "(1) No person shall be expelled or returned against his/her will to a territory where his/her life or freedom would be threatened on grounds of his/her race, sex, language, religion, nationality, membership of a particular social group or political opinions. (2) The provisions of paragraph 1 of this Article shall not apply to a person with respect to whom there are reasonable grounds to believe that he/she constitutes a threat to national security or who has been convicted of a serious crime by a final court judgment, for which reason he/she constitutes a danger to public order. (3) Notwithstanding the provisions of paragraph 2 of this Article, no person shall be expelled or returned against his/her will to a territory where there is a risk of his/her being subjected to torture, inhumane or degrading treatment or punishment". In this way the law of the Republic of Serbia protects the persecuted persons by a general norm which encompasses all cases of persecution.

#### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Commissioner for Protection of Equality is an independent state authority, autonomous in performing duties established by the Law on the Prohibition of Discrimination.

On the grounds of the Law on the Prohibition of Discrimination, a complaint for discrimination could be lodged to this body, upon which the Commissioner conducts the procedure regulated by the Law and gives an opinion confirming whether discrimination occurred in the actual case. If he confirms the existence of discrimination the Commissioner advises the person against whom the complaint has been submitted of the way to remove the violation of the right. Also, the victim of discrimination and the Commissioner for the equality protection, with the victim's agreement, can submit the complaint to the court. Procedure based on such complaints is urgent, whereby the procedure in front of the Commissioner and at court does not exclude one another.

The Ombudsman, on the grounds of the Constitution and the Law on the Ombudsman, acts after all legal means have been exhausted or exceptionally, before they have been exhausted according to the judgment of the Ombudsman about the justification and need (opportunism) of such an exception. The is obliged to regard the complaint to the Commissioner for Protection of Equality as an available legal means which citizen should use before he turns to the Ombudsman.

Exceptionally, the Ombudsman might decide to act upon the complaint even before the procedure has been completed or brought in front of the Commissioner (or any other legal medicine been spent), if he finds it necessary due to the danger of unavoidable harmful consequences, especially improper behaviour of authorities towards complainer, violating of the principles of proper administration, non-ethical or untimely procedure. Upon the choice of the Commissioner for the Equality Protection, the Ombudsman, as a rule, does not bring the procedures based on the citizens complaints about a discriminatory relation of the organs of public administration if previously, in accordance with the Law on the Prohibition of Discrimination they have not used an available legal means and turned to the Commissioner for the equality protection. Due to the reasons envisaged by the Law on Ombudsman, the Ombudsman might decide to start procedure for the complaints for the discrimination by the organs of public administration even before available legal means have been used. About such exceptional cases the Ombudsman, in general spirit of cooperation among state organs, informs the Commissioner for Protection of Equality.

The Ombudsman brings no decision about the right of the complainer but gives its legally non-compulsory opinion about the existing of omission in legality and regularity in the work of the government organs to the detriment of these rights.

By the Law on Ministries, passed on 26 July 2012 („Official Gazette of RS” No. 72/12), which preceded the forming of the new Government of Serbia – for the central executive organ of the Republic of Serbia responsible for the activities related to gender equality the Department for Gender Equality of the Ministry of Labor, Employment and Social Policy was appointed with identically regulated legal competence as in previous Law on Ministries („Official Regulation of RS” no 16/11). In this way the Department for Gender Equality of the aforementioned Ministry has kept the continuity in activities related to: the analysis of the situation suggesting of measures in the field of improving gender equality; drafting and implementing the National Strategy for improving the women position and improving gender equality; coordinating activities and providing expert and administrative-technical support to the Council for gender equality; improving the women position and promotion of gender equality and politics of equal opportunities; integrating the principles of gender equality into the all operating fields of the system institutions; implementing the recommendations of the Committee of the United Nations for the eliminating the women discrimination, as well as other activities envisaged by the law

Besides that, on the grounds of the article 39 of the Law on Gender Equality, in the organs of the units of local self-management permanent working bodies are organized or the employees for gender equality appointed along with the realization of attaining equal possibilities. In the Republic of Serbia today there are more than hundreds of local bodies for gender equality (councils, commissions and so on), as well as 20 persons employed for gender equality. In some local self-managements there are parallel bodies for gender equality and the person responsible for the issues of gender equality. Department for gender equality regularly updates and publishes data about local mechanisms on its Web site [www.gendernet.rs](http://www.gendernet.rs) in the section „Mechanisms-Local mechanisms”. In order to support its work the Department for gender equality organized in April 2011 a Round table Local bodies for gender equality with the aim to inform the representatives of local self-management with their obligations in forming the bodies for gender equality in their environments (towns and municipalities). In December 2011 the national conference Equality starts in local environment was held, and a network of he-trainers and she-trainers for gender equality coming from the units of local self-management, that is, local mechanisms was established.



The Office for Human and Minority Rights in accordance with the article 37 of the Law on Ministries ("Official Register of RS", no 72/2012) and the Decree on the Office for human and minority rights ("Official Register of RS", no. 75/2012), provides expertise for the needs of Government and competent ministries related to: protection and improvement of human and minority rights, supervising the conformity of domestic circumstances with international agreements and other international-legal records on human and minority rights and initiating the amendments of domestic regulations, general issues regarding the position of the members of national minorities, supervising the position of the members of national minorities living in the territory of the Republic of Serbia and realization of minority rights, as well as realization of the connections of national minorities with home countries.

The Council for Gender Equality is an expert and advisory body of the Republic of Serbia whose tasks are: inspect and suggest the measures for improving the politics of the realization of gender equality from the aspect of inter-resources cooperation, initiate the undertaking of short-term measures contributing to the realization of gender equality and making the programmes for collecting, processing and publishing statistical data on the basis of which equal way of treating genders would be further provided and encourage the women qualifying for the participation in public and political life. The Council, also, examines the suggestions for improving the politics of gender equality, whilst expert and administrative-technical support for it is provided by the Department for gender equality of the Ministry for Labor, Employment and Social Policy. The Council has been in continual operation since 2003 and regularly holds meetings, operating in the terrain as well, such as participation in conducting the project Combating sexual and gender based violence which has been implemented since 2009 with the support of the Kingdom of Norway. Male and female-members of the Council come from relevant ministries and other institutions, civil sector and academical circles.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

It is necessary to formulate the indicators for sensitive groups, further work on improving the gender sensitive statistics and generally increase capacities of the Republic Statistical Institute for supervising of the same, and of the budget means allotted for these purposes.

It is necessary to further improve the position of sensitive groups of population:

- establishing the programmes of beneficial and functional system of free of charge legal assistance,
- through the programmes of improving the position of sensitive groups,
- solving the status and further integration of refugees and internally displaced persons,

- solving the status of asylum claimers and returnees as on the grounds of the agreement on readmission,
- integrating the concept of gender equality in all politics and all fields of activities,
- system of collecting and controlling the data in relation to sensitive groups of population.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Encouraging the victims to report criminal offences and incidents  
Training of competent institutions and Judiciary  
Collecting and analysis of relevant data on dissemination and nature of discrimination and intolerance

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

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**SPAIN**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☒ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

The Spanish Constitution and the rest of the Spanish legal system guarantee equal treatment and non-discrimination of individuals. Consequently, generally speaking, the content of the Recommendation may be considered to be satisfactorily implemented.

Given that Second Section 29 of the Questionnaire raises questions about the implementation of specific provisions (replied to below), it is necessary to first briefly examine the clauses in the Spanish Constitution that fight discrimination and protect LGBT rights.

Article **1.1** of the **Constitution** refers to the primary values on which social co-existence should rest: freedom, justice, equality and political pluralism.

**Article 14** of the Constitution proclaims the equality of all Spanish citizens in law, “*without any discrimination whatsoever prevailing on the grounds of birth, race, sex, opinion or other personal or social condition or circumstance*”. This non-discrimination clause does not contain an exhaustive list of discrimination causes, which is why it has been interpreted as indirectly including discrimination on the grounds of sexual orientation and discrimination on the grounds of gender identity.

As regards discrimination on the grounds of sexual orientation, it is unanimously believed to be covered by the terms “*personal condition or circumstance*”. The foregoing was upheld by the Spanish Constitutional Court (**Constitutional Court Judgment 41/2006**, of 13 February), along the lines of Strasbourg case-law (amongst others, Judgment of the European Court of Human Rights in case *L. and V. v. Austria*, of 9 January 2003). Furthermore, the principle of non-discrimination on the grounds of sexual orientation has been incorporated into several provisions of Spanish law.

On the other hand, as will be seen, it is less common for these provisions to explicitly refer to discrimination on the grounds of gender identity.

Furthermore, **Article 18.1** guarantees “*the right to one’s honour, privacy and family life and self-image*” and, therefore, protects all private and consented sexual acts, as derived from the case-law laid down by the European Court of Human Rights (*Smith and Grady v. United Kingdom*, of 27 December 1999).

In turn, non-discrimination is linked to personal dignity which, according to **Article 10.1** of the Constitution, is one of the pillars of political order and social peace. In this regard personal dignity,

as defined by the Constitutional Court in **Judgment 53/1985**, of 11 April, must be interpreted as “*a spiritual and moral value inherent to an individual, specifically manifested in a conscious and responsible self-determination of one’s life, entailing an expected respect from others*”, as well as the rights to a free development of one’s personality, health, psycho-physical integrity, intimacy and self-image, amongst others.

Finally, according to **Article 9.2**, “*the public powers must promote the necessary conditions to ensure that individual and collective freedom and equality are real and effective; to remove any obstacles that prevent or hinder their effectiveness and ensure the participation of all citizens in political, cultural and social life*”. This precept has triggered positive actions, directed at offsetting any specific disadvantageous situation suffered by a certain group. In fact, this precept has constituted the grounds for designing and implementing non-discrimination policies and actions by the Spanish public administration, in order to guarantee the effective enjoyment of human rights by everyone irrespective of their sexual orientation or gender identity.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

As analysed in point one, the public powers are subject to a constitutional mandate to promote equality and non-discrimination amongst individuals. This necessarily means that any legislative or other measure should remove any discrimination based on sexual orientation or gender identity.

In this regard, the Spanish Government has shown a commitment towards upholding Human Rights held by lesbians, gays, bisexuals and transsexuals, as declared in the recent Resolution adopted by the Council of Ministers on 11 May 2012, which approved the “**Government Declaration on the International Day against Homophobia and Transphobia**”, to be held next 17 May”.

This institutional declaration has confirmed the Government’s total commitment “*to defend equality as a fundamental human right and capital democratic value*”, gathered in the Universal Declaration of Human Rights, International Covenant of Civil and Political Rights, International Covenants of Economic, Social and Cultural Rights, and Article 14 of the Spanish Constitution.

Said Declaration refers to homophobia and transphobia as two absolutely intolerable forms of discrimination, which demand increased effort to uphold equality.

It also points out that “*aware of the need to continue making progress in this field, the Government will continue to adopt the necessary measures to guarantee that everybody is able to effectively enjoy Human Rights in conditions of equality and non-discrimination, providing prevention and protection against homophobia and transphobia, to defend equality and personal dignity as primary assets to be safeguarded in any society*”.

- Are there measures in place to redress any such discrimination?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Within the General State Administration there is no specific management centre to promote equal treatment and non-discrimination of individuals on the grounds of sexual orientation or gender identity only; the fight against LGBT discrimination is promoted with integral and transversal policies for equal treatment and non-discrimination on any discriminatory grounds, in which various management centres are involved.

In particular, the **General Directorate for Equal Opportunities**, Ministry of Health, Social Services and Equality, is entrusted with the following tasks, without prejudice to the competences of other bodies:

1. Promoting and developing the transversal application of the principle of equal treatment and non-discrimination.
2. Designing, planning and coordinating, in each case, any steps and measures which, within the scope of the General State Administration, help promote equal treatment and non-discrimination, collaborating in the matter with autonomous communities and other public and private entities.
3. Drafting reports and studies, analysing and appraising statistics, in matters affecting equal treatment and non-discrimination, as well as their distribution and exchange with other ministerial departments and public or private bodies, whether international, national, autonomous or local.
4. Drawing up initiatives and activities for social awareness, information, education, participation and any others required to promote equal treatment and non-discrimination.
5. Promoting measures aimed at assisting and protecting the victims of discrimination, without prejudice to the competences of other ministerial departments.
6. Proposing cooperation instruments when designing the content of courses to train Administration staff in charge of areas related to equal treatment and non-discrimination.
7. Promoting, preparing and participating in regulatory measures in matters entrusted to the General Directorate.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

**The Spanish legal system has not needed significant reforms** to conform to the content of the Recommendation as most of the provisions that guarantee non-discrimination on the grounds of sexual orientation or gender identity existed prior to the Recommendation of reference.

Nevertheless, as indicated in the foregoing point, the **General Directorate for Equal Opportunities**, without prejudice to the competences of other management centres, encourages, prepares and participates in new regulatory and other measures in order to guarantee non-discrimination on the grounds of sexual orientation or gender identity.

The latest instruments for public policy planning, which integrate principles, actions or measures to promote equal treatment and non-discrimination on the grounds of sexual orientation or gender, include an **Integral Strategy against Racism, Racial Discrimination, Xenophobia and other related forms of Intolerance** and the **2013-2016 Master Plan for Spanish Cooperation**.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The General Directorate for Equal Opportunities is working on a project entitled “**Spain’s Discrimination Map**”, the general objective of which is to discover the perceptions of society and any victims of discrimination, as well as making progress in the systematic collection of official data on the application of legal non-discrimination provisions, in the criminal, civil, employment and administrative fields. This project covers the main reasons for discrimination, including sexual orientation and gender identity.

The initial outcome of this project is a **Secondary Source Study**, co-financed by the European Social Fund, which diagnoses the current status of discrimination based on a critical analysis of studies on the case, published to date. Furthermore, it proposes recommendations to improve awareness of discrimination as a phenomenon in Spain.

On the other hand, an example of good practice is the creation in October 2009 of a Special Service for Hate Crimes and Discrimination, at the Provincial Prosecution Office of Barcelona, followed by the Provincial Prosecution Offices of Madrid, Valencia and Málaga. The **2010 Annual Report of the Service for Hate Crimes and Discrimination, Provincial Prosecution Office of Barcelona**, provides information on hate crimes and homophobic and transphobic incidents in Catalonia.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Organic Act of 23 November 1995, of the **Criminal Code**, introduces in **Articles 510-512** a series of offences to offer protection against the most serious forms of discrimination (enticed hatred, refusal of public and private benefits and services) for various reasons, to include sexual orientation. Furthermore, Article **22.4** foresees as an aggravating circumstance if crimes are committed due to sexual orientation or identity.

In turn, **Act 62/2003, of 30 December, on Fiscal, Administrative and Social Measures**, explicitly introduced in labour laws a worker's right to not be discriminated on the grounds of sexual orientation, in employment and occupation matters.

Likewise, of interest is **Royal Legislative Decree 5/2000, of 4 August, on infractions and sanctions in social matters**. This information is examined further in point 26 below.

Finally, reference should be made to the sanctioning regime foreseen in **Act 19/2007, of 11 July, to fight violence, racism, xenophobia and intolerance in sports**. This information is examined further in point 33 below.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ X b. ☐ c. ☐ d. ☐ e. ☐

The Recommendation has been translated into (Castilian) Spanish, the official State language. It is available on the Council of Europe website:

[http://www.coe.int/t/dg4/lgbt/default\\_en.asp](http://www.coe.int/t/dg4/lgbt/default_en.asp)

We are not aware of its translation into other co-official languages in certain Autonomous Communities.

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?
- a. ☒ X b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In October 2009, the Provincial Prosecution Office of Barcelona created a **Special Service for Hate Crimes and Discrimination**, followed by the Provincial Prosecution Offices of Madrid, Valencia and Málaga. The purpose of these Offices is to coordinate the activity of member prosecutors of the Prosecution Office in any criminal facts committed for discriminatory reasons, in order to guarantee that the State Prosecution Office acts consistently when interpreting and applying the law. Prosecutors are also provided with greater doctrinal and case-law tools with which to fight discrimination, gathering and providing any information, documentation and recommendations issued by international pro-human rights bodies, as well as case-law on the principle of equal treatment and non-discrimination.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article **22.4** of the 1995 **Criminal Code** contemplates an aggravating factor based on discrimination, applicable to crimes committed on the grounds of sexual orientation or identity, amongst other reasons.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As indicated in point 9 above, in October 2009 the Provincial Prosecution Office of Barcelona created a **Special Service for Hate Crimes and Discrimination**, followed by the Provincial Prosecution Offices of Madrid, Valencia and Málaga. Their tasks include the provision to prosecutors of greater doctrinal and case-law tools to fight discrimination, by gathering and making available any information, documentation and recommendations issued by international pro-human rights bodies, as well as case-law on the principle of equal treatment and non-discrimination.

Furthermore, other formative actions have been implemented by the **General Directorate for Equal Opportunities** and the Spanish Observatory for Racism and Xenophobia (**OBERAXE**), pertaining to the Ministry of Employment and Social Security.

The activities in which the former has participated include the “Plural society and pro-active policy” Seminar (2012), taught to local police agents in Madrid.

In turn, OBERAXE’s formative actions include a training course for police agents entitled “Training to identify and record racist incidents”, further to the European FIRIR project, and publication of the “Support manual for the training of security forces and corps when identifying and recording racist or xenophobic incidents”.



13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Without prejudice to any better opinion reached by the General Secretariat for Penitentiaries of the Home Office, you are hereby informed as follows:**

**Article 4** of Royal Decree 190/1996, of 9 February, which approves the **Penitentiary Regulations** that develop and implement General Penitentiary Organic Act 1/1979, of 26 September (LOGP), provides that *“all penitentiary activity will be exercised with respect for a prisoner’s individual personality and legitimate rights and interests, not affected by the relevant punishment, to the exclusion of any discrimination whatsoever on the grounds of race, sex, religion, opinion, nationality or other personal or social condition or circumstance”*. In this respect, as analysed in point 1 above, sexual orientation and gender identity may amount to grounds of discrimination forbidden by the terms *“any other personal or social condition or circumstance”*.

In fact, the special vulnerability of transsexual women in penitentiaries has encouraged the adoption of specific protection measures. Thus, **Instruction 7/2006, of 9 March, issued by the General Directorate of Penitentiaries on the penitentiary integration of transsexual women** establishes certain positive actions to arrange the imprisonment of transsexual interns, further to an internal separation which, on the grounds of sex, is established in Article 16 of General Penitentiary Organic Act 1/1979, of 26 September. In this respect, according to the provisions established in section one of Instruction One, *“transsexuals whose official sex identity does not match their psycho-social gender identity, may apply for acknowledgement by the Penitentiary Administration for the purpose of internal separation referred to in Article 16 of Organic Act 1/1979, of 26 September.”*

This procedure is a result of the particular risks to which transsexual women are specifically exposed, when sharing private spaces with other female interns subject to imprisonment.

Other good practices include the publication in 2010 of the **Code of Ethics of the General Secretariat of Penitentiaries and Autonomous Body for Penitentiary Work and Training for Employment** ([http://www.institucionpenitenciaria.es/web/portal/datos/descargables/publicaciones/Codigo\\_Deontologico.pdf](http://www.institucionpenitenciaria.es/web/portal/datos/descargables/publicaciones/Codigo_Deontologico.pdf)). Article 3 states that the conduct of all penitentiary staff should conform to the following governing principles, amongst others: *“fairness, non-discrimination on the grounds of birth, racial or ethnic origin, gender, sex, sexual orientation, religion or convictions, opinions, disability, age, or other personal or social circumstance”*. Furthermore, Article 13 indicates that *“in employment relations, penitentiary staff will treat all persons in a civil, adequate and respectful manner, and will avoid any conduct that may cause discrimination, contempt, humiliation or harassment. In particular, all discrimination will be avoided on the grounds of birth, racial or ethnic origin, gender, sex, sexual orientation, religion or convictions, opinions, disability, age or other personal or social circumstance, including ultra vires conduct and the use of expressions or behaviour that are degrading or have a sexual connotation.”*

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Amongst other discriminatory offences the 1995 **Criminal Code** contemplates enticed discrimination, hatred or violence against groups. Thus, in accordance with **Article 510.1**, *“any persons enticing discrimination, hatred or violence against groups or associations, for racist or anti-Semitic reasons or others related to ideology, religion or beliefs, family situation, membership to an ethnic group or race, national origin, sex, sexual orientation, illness or disability, will be punished with one to three years’ imprisonment and a fine of between six and twelve months.”*

In accordance with **Article 510.2** *“the same punishment will be imposed on those persons who, aware of its falsehood or reckless disrespect for the truth, were to disseminate slanderous information about groups or associations in relation to ideology, religion or beliefs, membership to an ethnic group or race, national origin, sex, sexual orientation, illness or disability.”*

K. Other good practices include the creation, at the Provincial Prosecution Office of Barcelona, in October 2009, of a **Special Service for Hate Crimes and Discrimination**, followed by the Provincial Prosecution Offices of Madrid, Valencia and Málaga.

L. Reference may also be made to other actions for education and information, discussion and participation, launched by the General Directorate for Equal Opportunities (and the former General Directorate for Equal Treatment of Workers and to Fight Discrimination). Of interest is the **Local Comprehensive Action Plan to Fight Discrimination** (2010-2011), fruit of the joint effort made with the Spanish Federation of Municipalities and Provinces (FEMP), which has concluded with the publication of a “Methodological proposal to fight discrimination at a local level” (2012).

M. Likewise, we should mention the “todoimas: 2012 Forum for Equal Treatment and Non-Discrimination” project, co-financed by the European Commission as part of the PROGRESS 2010 plan. “todoimas” provided a forum for debate and participation of various public administrations and third sector entities in order to distribute awareness of anti-discriminatory regulations, and to locate and promote good practices.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

**Article 22.1 of the Spanish Constitution** acknowledges a right of free association. Following recognition of this right, this same article specifies some components of its legal regime: any associations incorporated further to this article should be recorded at a Registry for publicity purposes only; secret and para-military associations will be forbidden; any associations that pursue objectives or that use means classified as crimes will be illegal; and, finally, associations may only be dissolved or their activity suspended by virtue of a reasoned court resolution.

This right of free association enjoys **special protection under the Constitution**; apart from being protected by regulatory guarantees to ensure constitutionality, direct effectiveness and respect for its essential content, it is also protected by the reservation of certain matters to the law and the unchangeable nature of the Constitution, subject to a particularity: the reservation established for implementation is made in favour of organic laws, and any reform involves the stricter review procedure foreseen in Article 168. Furthermore, as regards the jurisdictional defence regime, it is protected under Article 53.2 by a remedy of judicial review and appeal to uphold fundamental human rights, brought before the Constitutional Court. In turn, the Ombudsman also ensures that this particularly protected fundamental right is upheld and fulfilled.

Article 4.5 of **Organic Act 1/2002, of 22 March, regulating the Right of Association**, provides that *“the public powers will not provide any type of help to associations entailing an admission process or operating system that discriminates members on the grounds of birth, race, sex, religion, opinion or other personal or social condition or circumstance.”*

Furthermore, amongst other sources of public funding available for non-governmental social entities and organisations, the Ministry of Health, Social Services and Equality makes a yearly announcement for the granting of **subsidies to entities that launch cooperation and social volunteership plans, charged to applicable Personal Income Tax (I.R.P.F.)**.

Furthermore, the Ministry each year announces the granting of **General Regime subsidies** related to the Area of Social Services, Family and Childhood, in order to support state activity as regards associations and foundations, bearing the cost of maintaining and operating the relevant entities in order to ensure that they have the necessary means to achieve their objectives.

Several LGBT pro-human rights entities and organisations have received subsidies as a result of these announcements, including other subsidies announced by various ministerial departments and other public administrations.

In this regard, please note that pursuant to the provisions established in **General Subsidy Act 38/2003, of November 17, and Royal Decree 887/2006, of 21 July, approving the Regulations** of said Act, these announcements and other subsidies must conform to the principles of equality and non-discrimination, amongst others.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Article 22.4** of the 1995 **Criminal Code** foresees a discriminatory aggravating factor applicable to any crimes committed for racist or anti-Semitic reasons, or other discrimination related to the victim's ideology, religion or beliefs, ethnic origin, race or nation to which he/she belongs, sex, sexual orientation or identity, illness or disability.

Apart from this generic aggravating factor, there are a series of "specific" crimes that classify the most serious forms of discrimination:

- Evil threats to a group amounting to a crime if aimed at frightening an ethnic, cultural or religious group or certain social groups (**Art. 170.1**).
- Torture, if committed for any reason based on any form of discrimination (**Art. 174**).
- A discrimination offence in a working environment (**Art. 314**).
- The aforementioned crime to entice hatred, violence and discrimination (**Art. 510**).
- Offences based on a refusal of benefits, either from public services or professional/business activities, on the grounds of discrimination related to one's ideology, religion or beliefs, membership of an ethnic group or race, national origin, sex, sexual orientation, family situation, illness or disability (**Arts. 511 and 512**).

**-Article 515.5** of the Criminal Code punishes illegal associations *"that encourage discrimination, hatred or violence against persons, groups or associations on the grounds of ideology, religion or beliefs, membership of all or some of its associates to an ethnic group, race or nation, sex, sexual orientation, family situation, illness or disability, or that entice the foregoing."*

17. Have measures been taken to ensure that non-governmental organisations defending the rights of 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

First of all, please note that **Article 105** of the **Constitution** guarantees the hearing of all citizens, either directly or through organisations and associations recognised by law, when drawing up administrative provisions that affect them.

Furthermore, an example of good practice is the **State Council of Non-Governmental Organisations for Social Action**. This consultative body, ascribed to the General State Administration through the Ministry of Health, Social Services and Equality, has been established as a meeting point and centre for advice, participation and dialogue between association movements and the General State Administration.

Its main objective is to encourage the participation of non-profit organisations in the drafting of social policies. In order to achieve this purpose, the Council provides advice and proposes measures in favour of society's most vulnerable groups.

As a result, apart from member representatives of the General State Administration, it has representatives of various social entities, including the State Federation of Lesbians, Gays, Transsexuals and Bisexuals (FELGTB).

**III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

**Article 20.1** of the **Constitution** acknowledges and protects the right to express and freely broadcast one's thoughts, ideas and opinions by mouth, in writing or other means of reproduction. This article foresees both a guarantee and a limit: the exercise of this right may not be restricted by any type of prior censure (**Article 20.2**), and must in any case uphold the rights recognised in Title I of the Constitution, to particularly include the right to one's honour, privacy, self-image and protection of adolescents and children (**Article 20.4**). The article ends with a specific guarantee of the right to information, given that publications, recordings and other means of information may only be confiscated by virtue of a court resolution (**Article 20.5**), and a reservation in favour of the law to regulate the structure and parliamentary control of all media dependent on the State; this law will, in any case, guarantee access thereto by significant social and political groups and must respect Spain's social and linguistic pluralism (**Art. 20.3**).

In turn, **Article 21.1** acknowledges a right of peaceful and unarmed assembly, and provides that the exercise of this right will not require any prior authorisation, except in the event of a meeting held in public thoroughfares and demonstrations, in which case the relevant authorities must be previously notified; the latter may only forbid this if there are founded reasons of disruption of the public order, endangering persons or goods.

In the same way as the right to free association, analysed in point 15 above, the rights of expression and peaceful assembly enjoy **special protection under the Constitution**; apart from being protected by regulatory guarantees to ensure their constitutionality, direct effectiveness and respect for their essential content, they are also subject to a reservation in favour of the law and the unchangeable nature of the Constitution, albeit subject to a particularity: this reservation for their implementation must be executed through organic law and any reform must follow the stricter review procedure foreseen in Article 168. Moreover, as regards jurisdictional defence, Article 53.2 provides protection under the remedy of judicial review and appeals to uphold fundamental human rights brought before the Constitutional Court. In turn, the Ombudsman will also ensure that both fundamental and particularly protected rights are upheld and fulfilled.

As regards the freedom to receive and distribute information, **Article 18 of General Act 7/2010, of 31 March, on Audiovisual Communication** forbids "*any commercial communication that hinders human dignity or encourages discrimination on the grounds of sex, race or ethnic origin, nationality, religion or beliefs, disability, age or sexual orientation*". Furthermore, **Article 4.2** provides that "*audiovisual communication may never entice hatred or discrimination on the grounds of gender or other personal or social circumstance and must uphold human dignity and constitutional values, focusing in particular on the eradication of conduct that is conducive to unequal conditions for women.*"

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Yes, according to the provisions established in **Organic Act 2/86, of 13 March, on State Security Forces and Corps**, and as explained in points 1 and 2 above.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Spanish law, and the Spanish Criminal Code in particular, forbids any such discriminatory provisions or practice, as analysed in points 1, 2 and 16 above.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

**Article 7 of Act 15/1999, of 13 December, on Data Protection**, foresees a reinforced protection regime for "specially protected data". In this regard, any personal data that refer to one's sex life may only be collected, processed and assigned, for general interest reasons, if so established by law or if the affected party expressly agrees.

Notwithstanding the foregoing, said data may be processed if such processing is necessary for medical prevention or diagnosis, the provision of medical care or treatments, or the management of health care services, as long as such data processing is carried out by a health care professional who is subject to a duty of professional secrecy or by another person likewise subject to an equivalent duty of confidentiality.

Likewise, any files created solely to store personal data on one's sex life are forbidden.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Act 3/2007, of 15 March, regulating changes in registry records as regards gender** regulates the necessary requirement to be eligible for a registration change as to one's sex at the Registry Office, as well as a change of name in order to be consistent with the gender claimed.

**Article 4** regulates the necessary requirements to proceed with a registration change:

*"1. A registration change in one's gender will be agreed once the applicant has accredited:*

*a) A diagnosed gender dysphoria.*

*N. Compliance with this requirement will be ascertained with a report issued by a doctor or clinical psychologist, licensed in Spain or whose qualifications have been recognised or certified in Spain, including a reference to:*

*1. The existence of discordance between the morphological sex or physiological gender initially registered and the gender identity felt by the applicant or his/her psychosocial sex; such discordance must be constant and persistent.*

*2. The absence of any personality disorders that could have a determining effect on the existence of the discordance indicated above.*

*O. b) The applicant has received medical treatment for at least two years in order to adjust his/her physical characteristics to those of the sex claimed. Accreditation of compliance with this requirement will be made with a report issued by an associate doctor, in charge of the treatment, or, otherwise, with a report issued by a specialised forensic doctor.*

*2. In order to grant a registration change as regards a person's sex it will not be necessary for the medical treatment received to have included gender reassignment surgery. The medical treatment referred to in b) above will not be a necessary requirement for the granting of a registration change if there are health or age-based reasons that prevent a follow-up thereof and a medical certificate to confirm this."*

Consequently, it will not be previously necessary to have undergone sexual reassignment surgery, which would entail forced sterilization. Nor is it necessary for the interested party to be unmarried.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Upon the registration change of a person's sex, the person in question may adjust this gender reference to his/her real situation in all official documents and, therefore, exercise all rights inherent to his/her new status. Nevertheless, the foregoing has limited effects on marriage given that, irrespective of completion of the gender reassignment process, an application may be made for a sex registration change and, furthermore, if this sex registration change application is not made, Spain acknowledges the right to marry between persons of the same sex.

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

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

**Act 13/2005, of 1 July, amending the Civil Code as regards the right to marry**, allows persons of the same or different sex to marry, with full equality in relation to all rights and obligations. Question two is not considered relevant.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Act 13/2005, of 1 July, amending the Civil Code as regards the right to marry**, foresees single marital effects in all fields, irrespective of the spouses' sex, including the possibility of participating in adoption proceedings.

The single article of Act 13/2005, section seven, rewords **Article 175.4 of the Civil Code**, which hereinafter reads as follows: *"nobody may be adopted by more than one person, unless the adoption is carried out jointly or successively by both spouses. A marriage held subsequent to an adoption will entitle the spouse to adopt his/her consort's children. If the adopting parent dies, or if the adopting parent is subject to the exclusion foreseen in Article 179, the adoptee may be readopted"*.

The interest of a minor adoptee by a same-sex or different-sex married couple is upheld further to the provisions established in Article 39.2 of the Constitution: *"likewise, the public powers will guarantee the integral protection of all children, who will be equal in law irrespective of their fathers or mothers, regardless of their civil status. The law will allow fatherhood investigation"*.

As indicated in **Constitutional Court Judgment 198/2012**, this interest is protected in each specific case depending on the examination conducted on potential adopting parents, irrespective of their sexual orientation; therefore, the duty to provide integral protection to children, derived from Article 39.2 of the Constitution, is not affected by the fact that homosexuals are allowed or prevented from adopting, either individually or jointly along with their spouse.

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?



- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Act 62/2003, of 30 December, on Tax, Administrative and Social Measures**, which implemented into Spanish law Directive 2000/78 EC, expressly introduced, in **Article 34**, a worker's right to not be discriminated on the grounds of sexual orientation in a job application, membership, participation in trade union and employer organisations, working conditions, professional promotion, constant and occupational professional training, access to freelance work and professional practice, and incorporation and participation in any organisation whose members practice a certain job.

In turn, **Article 35** allows specific measures to be adopted aimed at preventing or offsetting the disadvantages suffered by certain groups in employment situations to ensure full equality on the grounds of sexual orientation.

Furthermore, **Article 36** provides that in all civil jurisdiction and contentious-administrative proceedings where the applicant's allegations indicate the existence of founded signs of discrimination on the grounds of sexual orientation, in employment situations, the respondent must provide a sufficiently proven, objective and reasonable justification of the measures adopted and their proportionality.

The principle of workers' equality and non-discrimination on the grounds of sexual orientation or gender identity is currently embodied as a worker's right in Royal Legislative Decree 1/1995, of 24 March, approving the consolidated version of the **Workers Statute**.

**Article 4.2.c)** of the Workers Statute foresees a worker's right to not be directly or indirectly discriminated when applying for a job or, once employed, for reasons, amongst others, of sexual orientation, gender or sexual condition. Furthermore, **point e)** foresees a right to one's privacy and due respect to a worker's dignity, including protection against harassment on the grounds of sexual orientation, sexual harassment and gender-based harassment.

In turn, **Article 16.2** provides that all public or private employment agencies should guarantee, in their scope of action, the principle of equality in job applications, without any direct or indirect discrimination on the grounds of sex, sexual orientation or sexual condition, amongst other reasons.

Furthermore, **Article 17** foresees the principle of non-discrimination in employment relations. **Section 1** provides that all regulatory precepts, CBA clauses, individual agreements and unilateral decisions taken by an employer will be deemed null and void, including remuneration, working hours and other

employment conditions, if they entail direct or indirect unfavourable discrimination in the work place on the grounds of sex, social status, sexual orientation or condition, amongst other reasons. Likewise, all discrimination orders will be null and void, including any employer decisions that entail unfavourable treatment for workers in reaction to a claim made in the company or in relation to an administrative or judicial action to demand compliance with the principle of equal treatment and non-discrimination.

Moreover, **Article 54.2.g)** provides that sexual harassment, or based on the grounds of sex or sexual orientation, suffered by an employer or persons working in the company will amount to a contractual breach.

Consistent with the foregoing, **Royal Legislative Decree 5/2000, of 4 August, on infractions and sanctions in social matters** foresees a very serious infraction in the case of any direct or indirect discrimination on the grounds of sex, social condition or sexual orientation, sexual harassment or harassment on the grounds of sex or sexual orientation (**Article 8, sections 12, 13 and 13.bis**)); any decisions adopted further to the Act, regarding workers' involvement in European corporations and cooperatives, which contain or entail any type of unfavourable direct or indirect discrimination on the grounds of age or disability, or which are favourable or unfavourable on the grounds of sex or sexual orientation (**Article 10.bis).2.d)**); the request for personal data in any selection process or imposing conditions, through advertising, distribution or otherwise, constituting favourable or unfavourable discrimination when applying for a job on the grounds of sex, sexual orientation or sexual condition (**Article 16.2**). In addition to the sanctions foreseen in these infractions (the amount of which is defined in **Article 40**), the Act includes a set of accessory sanctions (**Articles 46 and 46.bis**)).

In relation to the specific field of public employment, **Act 7/2007, of 12 April, on the Basic Statute of Civil Servants** provides, in **Article 14**, that a civil servant will be entitled to respect for his/her privacy, sexual orientation, self-image and dignity at work, particularly against any sexual harassment or on the grounds of sex, or moral and labour harassment (**section h**)), and the right to not be discriminated on the grounds of sexual orientation or other personal or social condition or circumstance (**section j**)).

Moreover, in accordance with **Article 53.4**, the conduct of civil servants will be based on their respect for fundamental human rights and public freedoms, avoiding any activity that could entail discrimination on the grounds of sex, sexual orientation or other personal or social condition or circumstance.

In turn, **Article 95** provides that any action entailing discrimination on the grounds of sexual orientation, sex or other personal or social condition or circumstance, including harassment on the grounds of sexual orientation and moral, sexual and sex-related harassment, will amount to very serious disciplinary offences.

In relation to effective protection of the right to privacy of transsexuals in employment situations, this is guaranteed by **Act 15/1999, of 13 December, on Data Protection**, in the terms described in point 21 above.

Good practices in employment and occupational matters include the fact that the Ministry of Health, Social Services and Equality, through the State Secretariat for Social Services and Equality, and the Foundation for Diversity (FpD), intend to sign on 5 February 2013 a Collaboration Agreement in order

to promote, broadcast and implement **Spain's Diversity Charter** and other initiatives related to diversity management.

The Diversity Charter, promoted by the European Commission, represents a commitment text (charter/code) that is voluntarily signed by companies and institutions to encourage adhesion to fundamental principles of equality and respect to everyone's right to be included, irrespective of sexual orientation, in work situations and society, amongst others. These companies and institutions acknowledge the benefits derived from the inclusion of cultural, demographic and social diversity in their organisation and undertake to implement specific policies to encourage prejudice-free work surroundings as regards employment, training and promotion, including non-discrimination against vulnerable groups.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

P. Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Without prejudice to any better opinion reached by the competent bodies of the Ministry of Education, Culture and Sports, you are hereby informed as follows:**

Article 84 of Organic Act 2/2006, of 3 May, on Education, regarding student admittance, provides that: "In no event will discrimination exist on the grounds of birth, race, sex, religion, opinion or other personal or social condition or circumstance."

Good practices include the creation, by means of Royal Decree 2757/2007, of 23 February, of the **State Observatory for School Life**, in order to improve coexistence at educational centres.

Likewise, reference should be made to the **Master Plan for school life and improved safety (2007-2012)**, the object of which is to improve school life and safety in prevention terms. To do this, members of the National Police Corps, Civil Guard and local police forces hold meetings at schools with principals, teachers and parents and chat with the students about relevant safety issues as a group, including the risk to school life derived from racist and xenophobic conduct and bullying.

**VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Without prejudice to any better opinion reached by the General Secretariat for Health and Consumers, you are hereby informed as follows:**

**Article 10 of General Health Act 14/1986, of 25 April**, foresees patients' rights, to include the following amongst others:

*"Everybody holds the following rights before different public health administrations:*

- 1. Respect for one's personality, human dignity and privacy, without discrimination on the grounds of race or ethnic origin, on the grounds of gender and sexual orientation, disability or other personal or social circumstance.*
- 2. To receive information on eligible health services and the necessary requirements to use the same. This information must be provided in adequate form, following the rules inherent to a friendly-design principle, in order to be accessible and understood by handicapped persons.*
- 3. That all information remain confidential, related to his/her procedure and hospitalization at public and private health institutions that collaborate with the public system."*

In turn, **Basic Act 41/2002, of 14 November, regulating patient autonomy and rights and obligations as regards information and clinical documentation** also includes patients' rights in **Article 2**. Amongst other basic principles, it includes: *"1. Human dignity, respect for free autonomy and intimacy will guide any activity aimed at obtaining, using, filing, safeguarding and transferring information and clinical documentation".* In addition, it provides that *"2. Any activity in the field of health will generally require the prior consent of all patients or users. This consent, obtained after the patient has been adequately informed, will be provided in writing in the events foreseen in the Act."*

Consequently, both rules start off with respect for personal dignity, as well as a non-discrimination principle. No express reference is made amongst non-discrimination grounds to sexual orientation. However, as analysed in point 1 above, we presume that this non-discrimination cause is subsumed in Article 10 of the General Health Act.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

**Without prejudice to any better opinion reached by the General Secretariat for Health and Consumers, you are hereby informed as follows:**

This management centre is aware that gender identity units exist in four Autonomous Communities, which provide comprehensive gender reassignment treatment in Spain: Catalonia (Hospital Clínic -

Barcelona), the Basque Country (Hospital de Cruces - Bilbao), Autonomous Community of Madrid (Hospital Ramón y Cajal - Madrid) and Andalusia (Hospital Carlos Haya - Málaga). Furthermore, there are gender units that provide multi-task non-surgical gender reassignment treatment in other Autonomous Communities, which redirect patients to the four units indicated in order to receive this surgery.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Without prejudice to any better opinion reached by the State Secretariat for Infrastructures, Transport and Housing (Ministry of Development), you are hereby informed as follows:**

**Royal Legislative Decree 2/2008, of 20 June, approving the consolidated version of the Land Act,** provides in **Article 4** that all citizens will be entitled to the following, amongst others: *“to enjoy decent, adequate and accessible housing, conceived further to a friendly-design principle, to act as a home, free of noise or any other polluting immissions whatsoever that exceed the maximum thresholds foreseen in applicable law, in an adequate environment and landscape”,* and to *“access, in non-discriminatory conditions with universal accessibility, the use of all public services and collective equipment open to public use, in accordance with the law regulating the activity in question”*.  
Please see points 1 and 2 above.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Please see point 1 and 2 above.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Without prejudice to any better opinion reached by the Higher Sports Council, the following relevant regulations are significant:  
**Article 2 of Act 19/2007, of 11 July, to fight violence, racism, xenophobia and intolerance in sports** classifies the following as racist, xenophobic or intolerant acts in sports:

- *“in any acts which, publicly or intended to be broadly distributed, as a result of holding a race, competition or sports event, or in a forthcoming event, an individual or legal entity issues declarations or transfers information whereby a person or group is threatened, insulted or humiliated on the grounds of racial, ethnic, geographical or social origin, or on the grounds of religion, convictions, disability, age or sexual orientation”,*
- *“any acts which, as a result of holding a race, competition or sports event, or in a forthcoming event, or on sports grounds, their surroundings or means of public transport that may be used to travel thereto, entail harassment, this referring to any unwanted conduct related to racial or ethnic, geographical or social origin, as well as religion or convictions, disability, age or a person’s sexual orientation, aimed at or resulting in an affront against his/her dignity and an intimidating, humiliating or offensive situation”,*
- *“any declarations, gestures or insults made on sports grounds as a result of holding sports events, their surroundings or means of public transport that may be used to travel thereto, entailing manifestly degrading treatment of any person on the grounds of racial, ethnic, geographical or social origin, as well as on the grounds of religion, convictions, disability, age, sex or sexual orientation, including any that entice hatred amongst persons and groups or are seriously detrimental to the rights, freedoms and values proclaimed in the Constitution.”*
- *“the playing, on sports grounds further to sports events, their surroundings or means of public transport that may be used to travel thereto, of chants, sounds or messages, and the exhibition of signs, flags, symbols or others, containing degrading or intimidating messages for any person on the grounds of racial, ethnic, geographical or social origin, religion, convictions, disability, age, sex or sexual orientation, as well as any that entice hatred amongst persons and groups or are seriously detrimental to the rights, freedoms and values proclaimed in the Constitution.”*

In turn, **Article 6** prevents at the entrance to sports grounds *“the entry, exhibition or creation of signs, flags, symbols or other messages that entice violence or whereby a person or group may feel threatened, insulted or humiliated on the grounds of racial or ethnic origin, religion or convictions, disability, age, sex or sexual orientation”*.

Moreover, according to **Article 23.1.c)**, a very serious infraction will arise in the event of *“broadcasting by technical, material, computer or technological means, related to sports information or activities, contents that encourage or back up violence, or that entice, encourage or support violent or terrorist, xenophobic or intolerant conduct on the grounds of religion, ideology, sexual orientation or other personal or social circumstance, or which amount to manifest contempt for the participants of the competition or sports event or the victims of terrorism and their relatives”*; according to **Article 34.1.c)** *“any active participation in violent, racist, xenophobic or intolerant acts, or which encourage this type of behaviour in sports. For the purposes of this article, active participation will exist in any case in the event of declarations, gestures, insults and other conduct entailing humiliation of a person or group on the grounds of racial or ethnic origin, religion, convictions, disability, age, sex or sexual orientation.”*

Furthermore, according to **Article 35.a)**, a serious infraction will arise in the event of *“conduct and acts of contempt or disregard of a person or group in relation to racial or ethnic origin, religion, convictions, disability, age, sex or sexual orientation, as well as any other personal or social condition or circumstance”*.

As a result of committing these infractions, the economic sanctions foreseen in **Article 24** of the Act may be imposed, including a prohibition to access sports grounds (**Article 25**).

In addition, **Article 20** foresees the creation of a State Commission to fight Violence, Racism, Xenophobia and Intolerance in Sports. This is a collegiate body in charge of drawing up and implementing active policies to fight violence and intolerance and to avoid racist and xenophobic practice in sports. The Commission is regulated by **Royal Decree 748/2008, of 9 May, regulating the State Commission to fight violence, racism, xenophobia and intolerance in sports**.

Finally, we refer to **Royal Decree 203/2010, of 26 February, approving Regulations to prevent violence, racism, xenophobia and intolerance in sports**.

#### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Article 3 of Act 12/2009, of 30 October, regulating the right of asylum and subsidiary protection** provides that refugee status will be may be recognised in favour of any individual if based on founded fears of being prosecuted, amongst other reasons, for belonging to a certain social group, gender or sexual orientation.

According to **Article 7.1.e)**, when appraising the reasons for prosecution, the term "certain social group" will include "a group based on a common sexual orientation or identity characteristic, and/or age, without this alone entailing the application of this article".

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

#### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

There is no independent equality body that specifically assists discrimination victims on the grounds of sexual orientation or gender identity.

Nevertheless, the **Ombudsman**, high commissioner of Parliament, foreseen in **Article 54 of the Constitution**, implementing **Organic Act 3/1981**, is entrusted with the protection and defence of fundamental human citizen rights and public freedoms. He also ensures that the Public Administration acts in accordance with the provisions of Article 103.1 of the Constitution, i.e. to objectively serve the general interests and act in accordance with the principles of effectiveness, hierarchy, deconcentration and coordination, with full subjection to regulations and the law, expressly forbidding any arbitrariness.

The Ombudsman will be competent over all bodies and authorities of the General State Administration, Administrations of Autonomous Communities and of Local Administrations. He may also act in relation to any parties acting as agents or collaborators of any of these Administrations to fulfil or execute public purposes or services.

The Ombudsman is entitled to file appeals of unconstitutionality and to protect fundamental human rights, in accordance with the provisions established in the Constitution and in Organic Act of the Constitutional Court 2/1979, of 3 October.

Likewise, he will exercise the competences inherent to the National Device to Prevent Torture (MNP) in Spain, pursuant to the Single Final Provision introduced into Organic Act 3/1981 of the Ombudsman by Organic Act 1/2009, of 3 November.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

The Preamble of **Organic Act 3/2007, of 22 March, on the effective equality of men and women** pays particular attention to double-discrimination situations and the unique difficulties suffered by women in particularly vulnerable situations, to include lesbians or transsexual women. Specifically, Article 20, in order to render effective the provisions contained in the Act and to ensure the effective integration, from a gender perspective, in ordinary activity, states that all public powers, when drawing up their studies and statistics, will *“design and introduce the necessary indicators and devices to provide awareness of the effects of other variables that may generate multiple discrimination situations in their various fields of activity.”*

Furthermore, discrimination on multiple grounds also includes certain relevant instruments for public policy planning, such as an **Integral Strategy against Racism, Racial Discrimination, Xenophobia and other related forms of Intolerance** and the **2013-2016 Master Plan for Spanish Cooperation**.



### Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix?

New periodic examinations on the extent to which the Recommendation has been implemented; the adoption of new recommendations on specific topics (e.g. those indicated in point 39); the issue of new publications or studies, such as the Council of Europe's "Discrimination on the grounds of sex and gender identity in Europe" report (2011); and the exchange of good practices.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Spain is fulfilling its constitutional mandate, the Recommendation of reference and other provisions and recommendations issued by the EU and other international bodies in non-discrimination matters on the grounds of sexual orientation and gender identity. At the present time, Spain has become one of the most law-abiding countries in relation to effective enjoyment of human rights by LGBTs, and its laws are some of the world's most advanced.

Notwithstanding the foregoing, we think it is necessary for this Recommendation to continue to be implemented by all the States belonging to the Council of Europe. We would suggest the following topics as the most relevant:

- specific discrimination of transsexuals;
- enticement to hatred and discrimination, particularly through means of communication and the Internet;
- respect for one's private and family life to include, in particular, a legal recognition of gender reassignment and civil unions or marriage between same-sex couples, as well as non-discrimination on the grounds of sexual orientation or identity in adoption procedures;
- discrimination in the field of education, to particularly include LGBT bullying at school, which directly increases suicide rates amongst LGBT adolescents.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

It could be stricter on the matters indicated in point 39.

**SLOVAK REPUBLIC**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐

Please explain your reply.

Even though the Slovak Republic supported the adoption of the Council of Europe Recommendation CM/Rec(2010)5, its implementation has not been formally delegated to any government agency due to its non-binding nature. The former Office of the Deputy Prime Minister for Human Rights and National Minorities, which had the competence to handle human rights issues in general, did not, to our knowledge, make any decisions regarding the implementation of this recommendation. The Ministry of Justice, which has become the coordinator of the newly established Committee on the Rights of Lesbian, Gay, Bisexual, Transgender and Intersexual persons under the authority of the Council for Human Rights, National Minorities and Gender Equality (main advisory body to the Government in human rights issues) since October 2012, shall convey the call to implement this recommendation to the government representatives nominated in the Committee at its first session. The Ministry of Justice itself has insufficient competence that would allow the implementation of all articles of the Recommendation. For this reason, we welcome the establishment of this Committee, opening the opportunity to implement the Recommendation in cooperation with various state authorities and NGOs.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

At this point there are no plans in place to carry out a review of the existing legislature and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination.

Are there measures in place to redress any such discrimination?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Anti-discrimination Act prohibits discrimination on grounds of sexual orientation and gender identity since 2004 (the Act explicitly mentions sexual orientation and subsumes the discrimination based on gender identity under gender discrimination). The scope of the Act includes the areas of employment, social protection and welfare, education, healthcare and access to and supply of goods and services which are available to the public, including housing. Article 12 of the Constitution of the Slovak Republic provides a general equality clause prohibiting discrimination

with an open list of grounds (the text is almost identical to Article 14 of the ECHR). Several other acts provide additional clauses prohibiting discrimination.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

In October 2012, the Government approved the establishment of the Committee on the Rights of Lesbian, Gay, Bisexual, Transgender and Intersexual persons under the authority of the Council for Human Rights, National Minorities and Gender Equality. The main role of the Committee in accordance with its statute will be to submit suggestions and recommendations to improve the level of support and protection of the rights of LGBTI persons and the right to equal treatment on grounds of sexual orientation and gender identity, as well as to prepare analyses, expert opinions and take part in strategic decision-making within its scope. The Committee will also annually submit an assessment report on the current state of discrimination based on sexual orientation and gender identity. Composition of the Committee is based on the principle of parity with 12 representatives of the relevant state authorities and 12 representatives of non-governmental organisations.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☒ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Slovak Republic has not as of yet established a system to collect and analyse data on direct or indirect discrimination based on sexual orientation or gender identity, or under any other discriminatory grounds. This issue has long been a subject of expert discussions, including the Multidisciplinary Working Group for the Development of Methodology for Collecting Data on Age, Sex, Nationality, membership of a National Minority or Ethnic group or other characteristics of the Government Council for Human Rights, National Minorities and Gender Equality as well as in the PROGRESS project of the Office of the Government and the European Commission in 2012, in which an analysis of existing systems for data collection and proposed solutions for the future were made.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Slovak National Centre for Human Rights is by law committed to provide assistance to victims of discrimination and is also authorized, under its own discretion, to provide legal services. Awareness-raising activities are facilitated indirectly through financial grants of the Office of the Government of the Slovak Republic (Ministry of Foreign and European Affairs from 2013) to NGO-run awareness-raising activities. Most notably by the continuous financial support of the first LGBT community and assistance centre in Bratislava.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Due to a general absence of political will in the previous governments to address LGBTI issues, the recommendation has not yet been implemented to full extent.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

-

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The definition of special motives in the Criminal Code does not include sexual orientation or gender identity bias.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Code of Ethics of the Association of Slovak Judges nor the Code of Ethics of the Police of the Ministry of Interior do not particularly mention LGBTI people. Further training of judges, prosecutors and court officials is handled by an independent institution by law - the Judicial Academy. Its educational programs do include human rights training, but not specifically on LGBTI issues as these are as of yet not specifically covered by international human rights conventions or any other major binding documents.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

Only if the aim of the assembly is to deny or restrict personal, political or other rights of citizens due to their nationality, sex, race, origin, political or other opinions, religion, social status or to incite hatred.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures have been adopted in this respect.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

The municipality may issue a ban for an assembly if the reported purpose of the assembly is to call for denial or restriction of personal, political or other rights of citizens due to their nationality, sex, race, origin, political or other opinions, religion, social status or incitement to hatred.

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Police forces ensure peaceful conduct of the Rainbow Pride Parade in Bratislava each year. They also monitor people who might disrupt the demonstration.

**IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures have been adopted in this respect, since these would first require a complaint from the LGBTI community as to such possible effect of the criminal law provisions and which has not yet been submitted.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, membership in political parties or political movements, trade union membership and data concerning health or sex life, is strictly prohibited by the Act on Protection of Personal Data to the extent that it has become one of the greatest obstacles for the attempts to collect equality data for government purposes (question 4.).

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The current legislation contains provisions relating only to the change of name and identification number based on submission of a medical report confirming the person's gender reassignment. Gender reassignment after full indication is entered in the Birth Register. A new birth certificate is issued, including first name and surname based on the request of given person.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Family Act does not include any mention of transgender persons and therefore does not guarantee or effectively preclude the entry into a marriage with a person who has the opposite gender to their reassigned sex. The same situation arises in the case of divorce. According to the Family Act, marriage is a union of man and woman, and therefore gender reassignment should require a subsequent divorce. However, the Family Act has no provisions for these situations. As a result, the transgender person can marry the person of the opposite sex. The transgender person must have a valid ID.

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

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please provide examples:

The Slovak legal system does not provide for specific rights and obligations of unmarried couples, same-sex or heterosexual. Some areas provide common rights and duties applicable to these cases, such as joint apartment lease (article 700 paragraph. 1 and 2 of the Civil Code), where an apartment can be rented by several persons (with the exception of cooperative housing where only married couples may have a joint lease). This relationship must be established by contract. Similarly, following the death of a tenant the Civil Code allows the transition of the lease to a person who lived with the deceased in the same household for at least three years prior to his death.

For inheritance, if there is no will or children, the Civil Code provides for the inheritance of the spouse, parents and those who lived with the deceased at least one year before the person's death in the same household and who therefore took care of the household or was dependent on the deceased.

In general, where an Act provides certain rights to persons who live together outside of marriage, this relationship is not defined. The only requirement is to be living in a common household.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Family Act the parental responsibility is given to both parents. Sexual orientation is irrelevant in this case. The same is true when parental duties are performed by a single parent. Parental responsibility and rights are given to a single parent when the other parent is unknown or has legal incapacity. Other instances are when the parental responsibility and rights have been denied by court or when a court in any other way reduces the parent's rights and responsibilities. Sexual orientation is not relevant in this context.



In cases of legal guardianship, the guardian is required by law to perform his duties properly and in the best interest of the child. Guardian's responsibility is to the court which also has to approve all important decisions regarding the minor.

Family Act or the Code of Civil Procedure (governing adoption proceedings) do not contain the condition of adherence to the principle of equal treatment when taking decisions related to adoption. However, state authorities under the Constitution can only act on the basis of the Constitution, within its limits, and to the extent and in the manner provided by law. Constitution in the aforementioned Article 12 states that the fundamental rights and freedoms are guaranteed without discrimination.

Information as to whether in practice decisions regarding the adoption by a single person are adopted without discrimination on grounds of sexual orientation or gender identity is not available.

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Department of Gender Equality and Equality of Opportunities of the Ministry of Labour, social Affairs and Family deals with activities related to: discrimination, harassment at both public and private workplace. It oversees, evaluates and updates the creation of government materials and the state policy in the field of anti-discrimination and it cooperates on the application of the principle of equal treatment related to sex, age, disabilities, race, ethnic or national origin, religion and sex orientation within the scope of the Ministry in collaboration with other government bodies. Besides, it provides training of new employees concerning the protection against discrimination.

### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Everyone has the right to health care. Discrimination is prohibited in accordance with the principle of equal treatment. Everyone has the right to dignity and respect for their physical and mental integrity.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

Transgender persons have effective access to appropriate medical care in the health sector. Health care services are not reimbursed or partially reimbursed on the basis of public health insurance.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Anti-discrimination act prohibits discrimination based on sexual orientation or gender identity in access to and supply of goods and services which are available to the public, including housing.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Granting of asylum is governed under Act on Asylum No. 480/2002 Coll. of 20 June 2002. If after individual assessment of the asylum application and based on the situation and circumstances in the country of origin the authorities become aware that an applicant for asylum has a well-founded fear of persecution on grounds of sexual orientation or gender identity, such well-founded fear of persecution can be recognized as a valid reason for asylum.

A group shall be considered to form a particular social group when particular members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and it is perceived as being different by the surrounding society; depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation, while this orientation cannot be understood to include acts considered to be criminal in accordance with a separate regulation.

Well-founded fear/ of persecution on grounds of sexual orientation has already been the reason for granting the asylum in Slovakia but it occurs sporadically.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Applicants for asylum during the procedure of asylum authorization are allowed to reside in the territory of the Slovak Republic, if the Act on Asylum or other regulation does not provide otherwise. Asylum seekers who have been granted asylum because of persecution or granted subsidiary protection on the basis of serious injustice are protected from involuntary return to the country where they were at risk on account of their sexual orientation or gender identity.

For instance, employees of the Migration Office of the Ministry of Interior participated in an international seminar concerning applications based on sexual orientation and gender identity in 2012 in Prague. Experts from the Office of the UN High Commissioner for Refugees, the United Kingdom of Great Britain and Northern Ireland and other European Union countries were present. Experience gained in this seminar employees continuously apply in their practice.

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Slovak National Centre for Human Rights in particular monitors and evaluates adherence to the principle of equal treatment according to the Antidiscrimination Law. It provides legal assistance for victims of discrimination and intolerance. In addition, the Slovak National Centre for Human Rights issues its own expert opinions and carries out independent reviews related to discrimination. The Centre also releases reports and recommendations related to discrimination.

### **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

Previous good practice in human-rights issues in the Slovak Republic indicates that any strong compliance with human rights documents requires strong cooperation with the non-governmental sector, which mainly provides information on possible infringements and important issues facing the persons in question. To this end we believe that the long awaited establishment of the governmental Committee on the Rights of Lesbian, Gay, Bisexual, Transgender and Intersexual persons will provide the necessary forum for such cooperation and basis for future improvements in the LGBT rights area.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Further measures should be considered after the first evaluation of the implementation of the CM Recommendation is finalized.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

-

**SLOVENIA**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country? **(MDDSZ)**

Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent • ☐

Please explain your reply.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination? **(MDDSZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please explain and, if appropriate, provide examples of any such measures found:

There were no reviews of legislations carried out dealing specifically with the question of sexual orientation or gender identity. However the Implementation of the principal of equality act, the Equal Opportunities for Woman and Men Act and the Criminal Code were all reviewed recently so new legislation is being prepared at the moment with an aim also to better implement the principle of equal treatment on the grounds of sexual orientation and gender identity.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)? **(MDDSZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If appropriate, please provide examples of measures adopted or in preparation.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation? **(MDDSZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

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5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)? **(MPJU in MDDSZ)**

a. x☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☐ c. ☐ d. ☐ e. x☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the general provisions of Code of obligations civil claim can be filed for just monetary compensation independent of the reimbursement of material damage if the injured party among others suffered for mental distress owing to a defamation of good name or reputation and for truncation of a personal right if the circumstances of the case, particularly the level and duration of distress and fear so justify, even if there was no material damage. The amount of compensation for immaterial damage depends on the importance of the good affected and the purpose of the compensation, and may not support tendencies that are not compatible with the nature and purpose thereof (Article 179, Code of obligations).

If discrimination can be regarded as a criminal offence (such as for example Violation of the right to equality under Article 131 of Criminal Code, Workplace Mobbing under Article 197 Criminal Code, Public Incitement to hatred, violence or intolerance under Article 297 of Criminal Code) victim can according to Criminal Procedure Act file for indemnification claim arising out of the commission of a criminal offence within criminal procedure, provided that the determination of this claims does not significantly protract criminal procedure. The court may in returning a verdict of guilty grant the indemnification claim of the injured party in full or it may grant the claim in part and direct the injured party to sue for the balance in civil proceedings. If the data collected in criminal procedure do not provide a reliable basis to award either full or partial indemnification, the court shall instruct the injured party that he may seek full satisfaction in civil proceedings. If the court passes a judgement by which the accused is acquitted of charges or the charges are rejected, or if it renders a ruling by which criminal proceeding is stopped or the charge sheet is dismissed, the court shall instruct the injured party that he may seek to satisfy his indemnification claim in a civil action.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation? **(MDDSZ)**

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7. Has the Recommendation, including its Appendix, been translated in all your national languages? **(MDDSZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible? **(MDDSZ)**

None.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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? **(MNZ)**

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The police intensely and consistently investigates the following criminal offences:

- Article 131 – Violation of Right to Equality (including differences in respect of gender and sexual orientation),
- Article 197 – Workplace Mobbing (whoever degrades or frightens another person at the workplace or in relation to work with sexual harassment), and
- Article 297 – Public Incitement to Hatred, Violence or Intolerance (i.e. incitement to hatred, violence or intolerance based, among other things, on gender or sexual orientation).

The police carry out activities in order to track down the perpetrator of a criminal offence and to discover and secure evidence for successful criminal proceedings. Based on the information gathered the police put together a crime report and send it to the competent state prosecutor's office. If there is no basis for a crime report to be filed, the police inform the competent state prosecutor's office thereof with a report there is no basis of office. r a crime report and send it to the competne. The police treat the prevention, detection and investigation of offences with elements of xenophobia, racism, or intolerance on account of sexual orientation without any bias regardless of their manifestation or modus operandi. They deal with all types of attacks with racist or discriminatory motives and other kinds of discrimination that can be understood as such based on the circumstances. They include written or oral threats or insults on account of somebody being different, damage to property of a target group, offensive graffiti, posters, leaflets or other messages, including those posted in the electronic media such as the Internet and other public media.

The police follow and keep abreast of the changing trends both as regards the modi operandi as well as the tactics and methods of detecting deviant conduct and its prevention. As soon as a new trend is picked up, the police immediately inform the state prosecutor's office thereof, in the attempt to form an effective approach to restrict such trends and new manifestations. Not all acts of discrimination are criminal offences, some are minor offences under the Protection of Public Order Act.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance? **(MPJU)**

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐



Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the general provision of Article 49, paragraph 2 of Criminal Code in fixing the sentence, the court shall consider all circumstances, which have an influence on the grading of the sentence (mitigating and aggravating circumstances), in particular: the degree of the perpetrator's guilt; **the motives, for which the offence was committed**; the intensity of the danger or injury caused to the property protected by law; **the circumstances, in which the offence was committed**; the perpetrator's past behaviour; his personal and pecuniary circumstances; his conduct after the committing the offence and especially, whether he recovered the damages caused by the committing of the criminal offence; and other circumstances referring to the personality of the perpetrator and to the expected effect of the punishment on the future life of the perpetrator in the social environment.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them? **(MNZ in MPJU)**

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the general provision of the Criminal procedure Act, any person may report a criminal offence which is liable to public prosecution. Crime reports shall be submitted to the competent public prosecutor in writing or orally. Crime reports submitted to the court, the police or unauthorised public prosecutor shall be accepted and forwarded to the competent public prosecutor. In addition all state agencies and organisations having public authority are bound to report criminal offences liable to public prosecution of which they have been informed or which were brought to their notice in some other way.

There are different ways of reporting criminal offences, including report via an anonymous phone number, which ensures full anonymity. In 2010/11 the police organised a lecture at the national level, where very good cooperation between the police and Legebitra Information Centre (an association of lesbian, gay, bisexual and transsexual individuals) was established. As part of this cooperation several lectures on the fight against homophobia were delivered by Legebitra representatives. The police endeavour to approach homophobic incidents competently and professionally. They encourage reporting of violent acts and make sure the officers display an adequate level of sensitivity as regards discrimination on account of sexual orientation.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support? **(MNZ in MPJU)**

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Judicial training center, organised under Ministry of Justice and Public administration, responsible for continuous training of judges, state prosecutors, state attorneys as well as for training of other court

personnel has in the year 2009 organised a lecture regarding legal institutions in the field of non-discrimination and analysis of the Criminal Code in terms of non-discrimination and review of the case law.

The police carry out different training programmes to acquaint officers with topics in the field of human rights protection and knowledge and skills needed to identify criminal offences and incidents caused by sexual orientation. A very important training course with a large impact on the treatment of criminal offences and incidents is the project "Strengthening Integrity within the Police". Also very important for police work is the new Code of Police Ethics. As part of the fundamental principle of respect for equality before the law, the Code determines that police officers have a duty to make sure in police procedures that equal human rights and fundamental freedoms are guaranteed to all, regardless of their ethnic origin, race, gender, language, religion, political or other conviction, financial situation, education level, social status or any other circumstance

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation? **(UIKS)**

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

We provide special lectures for new prison officers, who start to work in our prison system. We also provide distribution of condoms for all prisoners. We take measures (for example: counselling) to ensure the safety and dignity of all persons in prisons or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons. We also take protective measures against physical assault, rape and other forms of sexual abuse, if detected.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ? **(MPJU)**

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Hate speech is criminalised in Article 297 of Criminal Code (Public Incitement to Hatred, Violence or Intolerance). Article 297 reads as follows (please note that English translation is unofficial):

- 1) Whoever publicly promotes or propagates hatred, violence or intolerance based on national, racial, religious, or ethnic origin, sex, color, origin, property status, education, social status, political or other belief, disability, sexual orientation or any other personal circumstance and the offence is committed in a manner that may endanger or disturb public order and peace, or with the use of a threat, verbal abuse or an insult, is punished with imprisonment up to two years.
- 2) The same sentence shall be imposed on a person who in the manner specified in the preceding paragraph publicly disseminates ideas on the supremacy of one race over another, or provides aid in any manner for racist activity or denies, diminishes the significance of, approves, justifies,

makes fun of, or advocates genocide, holocaust, crimes against humanity, war crime, aggression, or other criminal offences against humanity, as defined in the legal order of the Republic of Slovenia.

- 3) If the offence under preceding paragraphs has been committed by publication in mass media or on web pages, the responsible editor or the person acting as responsible editor shall be sentenced to the punishment, by imposing the punishment referred to in paragraphs 1 or 2 of this Article, except if it was a live broadcast and he was not able to prevent the actions referred to in the preceding paragraphs or if it was published on the web pages, which allow users to post content in real time or as the case may be without prior control.
- 4) If the offence under paragraphs 1 or 2 of this Article has been committed by coercion, maltreatment, endangering of security, desecration of ethnic, national, nationality or religious symbols, damaging the movable property of another, desecration of monuments or memorial stones or graves, the perpetrator shall be punished by imprisonment of up to three years.
- 5) If the acts under paragraphs 1 or 2 of this Article have been committed by an official by abusing their official position or rights, he shall be punished by imprisonment of up to five years.
- 6) Material and objects bearing messages from paragraph 1 and 2 of this Article, and all devices intended for their manufacture, multiplication and distribution, shall be confiscated, or their use disabled in an appropriate manner.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity? **(MNZ)**

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

The Public Gathering Act provides for the constitutional right to peaceful assembly. Anybody has the right to organise public gathering and events and nobody can be prevented from attending them, except in cases laid down in the aforementioned Act.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

We do not have any special legislative or constitutional measures (with the exception of Article 131, paragraph 2 of Criminal Code) dealing explicitly with human right defenders. However, human rights and liberties, including freedom of expression, protection of personal liberty, right to personal dignity and security, laid down in the Constitution apply equally to them as well. Slovenia has a Witness Protection Act which regulates the conditions and procedures for the protection of witnesses and other persons who are endangered due to co-operation in criminal procedures.

Furthermore, we have a special criminal offence (Article 131 of Criminal Code OJ 55/08, 39/09) covering violation of right to equality and second paragraph of Article 131 to a certain extent criminalises prosecution against human right defenders advocating the quality of people.

Violation of Right to Equality (Article 131 of Criminal Code<sup>37</sup>)

- 1) Whoever due to differences in respect of nationality, race, skin colour, religion, ethnic roots, gender, language, political or other beliefs, sexual orientation, financial situation, birth, genetic heritage, education, social position or any other circumstance deprives or restrains another person of any human right or liberty recognised by the international community or laid down by the Constitution or the statute, or grants another person a special privilege or advantage on the basis of such discrimination shall be punished by a fine or sentenced to imprisonment for not more than one year.
- 2) Whoever prosecutes an individual or an organisation due to his or its advocacy of the equality of people shall be punished under the provision of the preceding paragraph.
- 3) In the event of the offence under paragraphs 1 or 2 of this Article being committed by an official through the abuse of office or official authority, such an official shall be sentenced to imprisonment for not more than three years.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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? **(MNZ)**

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity? **(MNZ)**

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

<sup>37</sup> Please note that this is unofficial translation.

19. Do 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?

(MNZ)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

During the Gay Pride Parade the police physically accompany the participants, thus ensuring their safety.

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination? (MPJU)

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

It is stated in the general provision of Criminal code (Article 3, paragraph 2)<sup>38</sup> that the imposition of a sentence shall be prescribed for the perpetration of any criminal offence, which shall be imposed on the perpetrator (feminin form) or perpetrator (masculin form) (**hereinafter, <0> {0>storilec) v sorazmerju s težo dejanja in njegovo krivdo.<0> {0>the perpetrator**) in proportion to the weight of the committed act and his guilt...<0>

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed? (MPJU)

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

According to the Personal Data Protection Act of the Republic of Slovenia of 2004 (with amendments up to 2007; published in: Official Gazette of the RS, No. 94/07 - Officially Consolidated Text, No. 1) personal data on individual's sexual life and also philosophical belief are for example regarded as sensitive personal data (Article 6, item 19 of the Personal Data Protection Act of the Republic of Slovenia). Therefore sexual orientation comes directly under the term "sexual life" of the wide definition of sensitive personal data. Also, Article 4 of the Act provides for "Prohibition of discrimination" and it states:

"Protection of personal data shall be guaranteed to every individual irrespective of nationality , race, colour, religious belief, ethnicity, sex, language, political or other belief, sexual orientation, material standing, birth, education, social position, citizenship, place or type of residence or any other personal circumstance."

Which would mean, that if the "gender data" do not come directly under the term of "sexual life" of the definition of sensitive personal data, they do come at least under the combination of "sexual life", "philosophical belief" and general prohibition of discrimination (from Article 4 of the aforesaid Act).

<sup>38</sup> Please note that translation is not official.

Sensitive personal data can only be processed in the following cases (Article 13 of the aforesaid Act):

1. if the individual has given explicit personal consent for this, such consent as a rule being in writing, and in the public sector provided by statute;
2. if the processing is necessary in order to fulfil the obligations and special rights of a data controller in the area of employment in accordance with statute, which also provides appropriate guarantees for the rights of the individual;
3. if the processing is necessarily required to protect the life or body of an individual to whom the personal data relate, or of another person, where the individual to whom the personal data relate is physically or contractually incapable of giving his consent pursuant to subparagraph 1 of this Article;
4. if they are processed for the purposes of lawful activities by institutions, societies, associations, religious communities, trade unions or other non-profit organisations with political, philosophical, religious or trade-union aim, but only if the processing concerns their members or individuals in regular contact with them in connection with such aims, and if they do not supply such data to other individuals or persons of public or private sector without the written consent of the individual to whom they relate;
5. if the individual to whom the sensitive personal data relate publicly announces them without any evident or explicit purpose of restricting their use;
6. if they are processed by health-care workers and health-care staff in compliance with statute for the purposes of protecting the health of the public and individuals and the management or operation of health services;
7. if this is necessary in order to assert or oppose a legal claim;
8. if so provided by another statute in order to implement the public interest.

In addition the Personal Data Protection Act of the Republic of Slovenia regulates in its Article 32 and 33 the procedure for supplementation, correction, objecting to, blocking or erasure of personal data on the request of an individual to whom personal data relate if personal data prove to be incomplete, inaccurate or not up to date, or if they were collected or processed contrary to statute (the term statute meaning: the Act of the National Assembly of the Republic of Slovenia)."

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation? **(MDDSZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed? **(MDDSZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation? **(MDDSZ)**

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

--

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity? **(MDDSZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

#### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation? **(MDDSZ)**

a. x☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. x☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

a. x☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

a. x☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

a. x☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. x☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

--

#### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children? **(MIZKS)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

i) Anti-discrimination training or support and teaching aids:

The Organisation and Financing of Education Act sets the goals on which human rights education in all aspects of primary (ISCED 1), lower (ISCED 2) and upper secondary (ISCED 3) education is based. They include education conducive to mutual tolerance, developing awareness of gender equality, democratic and active citizenship, respect for differences, cooperation, respect for children and human rights and basic liberties, and equal opportunities for both sexes, also with a view to developing the ability needed to live in a democratic society. Further goals are to secure equal educational opportunities in areas dealing with special development problems, children from socially disadvantaged backgrounds, and children, young people and adults with special needs (Article 2).

The amendment to this Act, adopted in March 2008, is aimed at the following newly set goal: guaranteeing optimum development to individuals regardless of their sex, social and cultural background, religion, race, ethnic and national origin, and physical and mental constitution or handicaps.

Anti-discrimination training and education for human rights for teachers is provided by educational institutions, such as National Educational Institute, The Educational Research Institute etc.

There is no good practice on teaching aids related specifically to the sexual orientation or gender identity issues, although certain initiatives for good projects and teaching aids are being discussed with The Ministry of Health.

ii. Information, protection and support for pupils and students

In schools the work of counseling services, that employ professional counselors, is of great importance. School counselors are psychologists, pedagogues and social workers, social pedagogues and SEN teachers. Larger kindergartens and schools have several counselors; the smaller ones have at least one. School counselors perform pedagogical, psychological and/or social counseling work especially with children (and also with parents and teachers, if needed).

There are also 4 counseling centres in Slovenia for children and youth, which counsel children, youth and their children, offer proper information and support.

NGOs are also very active actors in this field.

iii) Curricula



Curricula is based on the above presented educational goals. While anti-discrimination and HRE is incorporated in all of the curricula, pupils/students get additional information on sexual orientation and gender identity particularly as a part of obligatory subject Citizenship education in elementary school, and as a part of Sociology, Psychology and Obligatory selected contents in secondary school (these are contents that every student has to be taught in the time of duration of secondary school).

iv) Good practice – Safety policies

An important step in the field of combating domestic violence is the adoption of Family Violence Prevention Act. The Act was drawn up in collaboration with the academia and the civil society. The act makes a distinction among physical, sexual, psychological and economic violence and the negligence of due care for a family member. Special protection against violence is provided for children, elderly people and people with disabilities. To effectively implement the Act, the National Assembly of the RS adopted the Resolution on the 2009–2014 National Programme on Prevention of Family Violence which set out the goals, actions and key deliverers of policies for the prevention and reduction of family violence in Slovenia by 2014. The Government has also drawn up a 2 two-year action plan for 2010 and 2011 and for 2012 and 2013 for the prevention of family violence. The field of education is of great importance in both Resolution and Action plan. In 2009, the Ministry of Education and Sport adopted Rules on the Treatment of Domestic Violence for Educational Institutions in accordance with the Family Violence Act. The Rules aimed at professional staff, and sets out a course of action in educational institutions in case of children experiencing violence: identifying and reporting violence, work at educational institutions after a report has been filed, membership of a professional worker in a multi-disciplinary team at Social Work Centres, etc. School principals shall be responsible for the implementation of rules. In accordance with the Family Violence Act and the Protocol proposal, professional staff should have been trained to work with children undergoing domestic violence.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation? **(M2)**
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Slovenia adopted appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without any discrimination, including discrimination on grounds of sexual orientation or gender identity (Implementation of the Principle of Equal Treatment Act, Official Gazette of the Republic of Slovenia, No. 93/07; Patient Rights Act, Official Gazette of the Republic of Slovenia, No. 15/08; Resolution on the National Plan of Health Care 2008-2013 "Satisfied users and performers of medical services", Official Gazette of the Republic of Slovenia, No. 72/08; and other health legislation). Specific health programmes are part of the Periodic Plans of the Resolution on the National Programme for Equal Opportunities for Women and Men, 2005-2013. On the implementation of these periodically planned activities the Ministry of Health reports to the National Assembly on a two year basis. Within the legislative framework of the Mental Health Act (Official Gazette of the Republic of Slovenia, No. 77/08) the National Mental Health Program, i.e. the Resolution on the National Mental Health Protection Programme, is being developed since January 2009, thus establishing a national strategy to eliminate the shortcomings in the existing system of mental health promotion and protection. After the third public consultation

carried out in 2013, it will be ready for the legislative procedure. The new draft National Mental Health Programme, along with its action plan, recognises the approaches set out in European strategies, in particular the European Pact for Mental Health and Well-being. Among other measures, the action plan sets out education and training of professional and non-professional groups to raise awareness about good mental health and to acquire appropriate skills to cope with these problems. It also includes a strategy for development and implementation of activities for prevention of mental disorders and suicidal behaviour in different environments and different target groups.

In 2008 the European Union Agency for Fundamental Rights commissioned a comparative study on the situation concerning homophobia and discrimination on grounds of sexual orientation in the 27 EU member states, conducted by the Danish Institute for Human Rights and the international consultancy company COWI. The Ministry of Health assessed the situation, carefully looked into data that would support discrimination on grounds of sexual orientation or gender identity or stigmatisation, including HIV positive persons in the health sector, and didn't detect complaints. Within preventive programmes to fight AIDS the Ministry of Health is financing NGOs that are active in the field in order to fight stigma and discrimination of homosexuality and to promote anonymous testing and counselling that is free of charge and financed by the State. Information and education of the public and health professionals in order to fight stigma and discrimination and to provide services responding to specific health care needs are considered important activities of the Ministry and the NGOs.

29. Has homosexuality been removed from the national classification of diseases? **(MZ)**

Slovenia currently uses WHO International Classification of Diseases, ICD-10-AM version 6.0 (no coding for homosexuality). Under Chapter XXI it allows for coding of counselling related to sexual behaviour and orientation; therefore, counselling, when requested, is covered by the National Health Insurance Institute.

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services? **(MZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

If requested, appropriate counselling and treatment for transgender patients is available free of charge as well as reassignment surgery, if indicated. The primary care physician (GP) is the first contact and makes a referral to specialists that take the final decision, taking into account various aspects of the individual situation.

**VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,? **(MDDSZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity? **(MDDSZ)**

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Discrimination on grounds of sexual orientation in providing services is prohibited by the law.

Social services provided by the social work centres and public providers are accessible to everybody regardless her/his sexual orientation or gender identity. No complains on social services providers have been addressed to the Ministry of Labour, Family and Social Affairs yet.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events? **(MIZKS)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law? **(MNZ)**

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In those cases Refugee Status Determination is based on the examination of being a member of a particular social group.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity? **(MNZ)**

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the Republic of Slovenia (in legislation and in practice) the principle of *non-refoulement* is strictly observed.

**XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation? **(MDDSZ)**

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

In case of discrimination on the ground of sexual orientation or gender identity complaint can be filled to the Advocate of the Principle of Equality (national equality body), Ombudsman, Criminal, Civil or Administrative court. The mandates of the named bodies vary in regard to the type and severance of discrimination and in regarding the area of life in witch discrimination occurred. Advocate of the Principle of Equality examines petitions or complaints concerning alleged cases of discrimination, including discrimination on the ground of sexual orientation and gender identity. He/she issues non-binding opinions on whether discrimination occurred in a certain situation. The opinion of the Advocate contains a recommendation to the offender on ways to eliminate the violation, its causes and consequences. Through such non-formal intervention, the Advocate tries to eliminate the violation and provides help to improve future practice. When an issue cannot be resolved in this way, the Advocate may ask inspection authorities to prosecute the minor-offences and to impose fines. The Advocate also provides assistance to discriminated persons in legal and other proceedings, i.e. by giving advise on legal remedies and how to use them before other national authorities.

In case of violation of the principle of equality that occurred in public sector, The Ombudsman can also interfere. The Ombudsman can caution violators that they should put right their violation or eliminate irregularities committed, or can even propose compensation. He/she can lodge with the Constitutional Court a request for assessment of the constitutionality and legality of regulations or official documents, or he/she may submit a constitutional complaint owing to the violation of some right. He/she may submit to the government or parliament initiatives for the amendment of laws and other regulations. He/she may also suggest to all bodies that fall within his competence that they improve their dealings and relations with clients.

The Ombudsman may also communicate his opinion to anyone regarding cases that are linked to the violation of rights and freedoms.

**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity? **(MDDSZ)**

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

### Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ? **(MDDSZ)**

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39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case? **(MDDSZ)**

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40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them. **(MDDSZ)**

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**SWEDEN**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
 Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

In many aspects Sweden had already prior to 2010 taken important measures to secure equal rights and opportunities for LGBT-persons. For example Sweden already had an extensive law against discrimination on grounds of sexual orientation and gender identity in place. Swedish legislation also provides protection against hate motivated crimes. Efforts to secure the human rights of LGBT-persons in Sweden have been, and are being, carried out through a number of different initiatives in various sectors of society.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
 a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The Swedish Government Offices have carried out a mapping exercise in order to identify remaining barriers that prevent LGBT-persons from enjoying equal rights and opportunities in Sweden. In relation to this exercise Swedish LGBT-organizations have been invited to give their view on the existence of such barriers and specifically how they perceive Sweden's compliance with the Council of Europe Recommendation CM/Rec(2010)5.

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Discrimination Act (2008:567) prohibits discrimination on grounds of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

Under Chapter 1 Section 2 of the Instrument of Government, public institutions are to "combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the private person". According to Chapter 2, Section 12 of the Instrument of Government, no act of law or other provision may imply the unfavourable treatment of anyone because they belong to a minority group by reason of ethnic origin, colour or other similar circumstances or on account of their sexual orientation. Also, the European Convention for the Protection of Human Rights and Fundamental Freedoms is legally binding in Sweden.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

An interdepartmental working group was set up in November 2011 and assigned to review the situation of LGBT-persons in Sweden and to propose measures to further strengthen equal rights and opportunities for LGBT-persons in Sweden. The Recommendation CM/Rec (2010)5 is referred to in the task assigned to the working group and has been used as a tool for assessment.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Equality Ombudsman collects and analyses complaints made to the Ombudsman on discrimination on grounds of sexual orientation and gender identity. However, according to the Equality Ombudsman the number of complaints does not reflect the prevalence of discrimination. The majority of people who have experienced discrimination do not file a complaint.

The Swedish National Institute of Public Health collects statistics on experiences of degrading treatment based on sexual orientation through their national public health survey, "Health on Equal Terms", which is conducted on a yearly basis. During 2013 the Government has assigned the Institute to collect and analyze how health and health determinants for LGBT-persons have developed in recent years. Exposure to violence and discrimination are among the aspects that should be included in the report. The report shall be presented 1 December 2013.

The Swedish National Council for Crime Prevention collects and presents annual statistics based on police reports including where a homophobic or transphobic motive has been identified. Details on homophobic hate crime such as type of offence committed, method used, location of the crime, relationship between victim and offender and number of solved crimes are included in the report from the Council. Self-reported exposure to homophobic or transphobic hate crimes and harassment through the Swedish crime survey is also presented in the statistics.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Equality Ombudsman does not only handle complaints regarding discrimination. The Ombudsman is also assigned to raise awareness and disseminate knowledge and information about discrimination and the prohibition against discrimination, both among those who risk discriminating against others and those who risk being discriminated against. The Swedish Government also provides specific funding for organisations working against discrimination. Currently there are 16 organisations spread throughout the country that receive such funding.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

None.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation and its appendix are available both in English and in Swedish at the Swedish Government's website on human rights (<http://www.manskligarattigheter.se/en/human-rights/what-rights-are-there/enjoyment-of-human-rights-by-lgbt-persons>). The Swedish Government Offices distributed the Recommendation during the Stockholm Pride Festival and it has been sent out to LGBT-organisations.

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In 2007 the Government's appropriation direction stated that the National Police Board, together with the Prosecution Authority, should ensure that possible motives for hate crime are identified and investigated as early as possible in the criminal investigation. As a result the police have introduced a new field in the police computer system for registering reported hate crime, with the aim of improving the possibility to solve such crimes. The reporting system, which was introduced at



police authorities nationwide, is mandatory and means that the police report must include information as to whether the crime in question is a suspected hate crime or not.

The Stockholm County Police have established a special police unit focused on investigating hate crimes. In 2012, the police authority in Malmö has established a similar unit.

Within the Police's basic training more focus is devoted to the subject hate crime and in particular how to identify hate crimes.

The National Police Board has decided to carry out an inspection of the police's ability to detect and investigate hate crimes. Results will be released in March 2013 and as a consequence necessary measures might be adopted.

The Prosecutor General has stated guidelines for action against hate crimes. According to the guidelines all crimes where there may be a hate crime motive should be investigated and given priority. Preliminary investigation on hate crimes should not be considered to be of a simple nature and should always be led by a prosecutor as soon as anyone reasonably suspected of the crime has been identified.

To support the prosecutors in their work, there is a page on the Prosecution Authority's intranet with information on hate crimes and a compilation of court decisions regarding hate crimes. This page is continuously updated.

The Prosecution Authority's basic training for all prosecutors includes a section regarding hate crimes.

Each public prosecution office has a prosecutor who is specialized in dealing with hate crime-related cases.

At three places in the country there are prosecution development centres. Their task is to conduct methodological and legal development within different criminal areas and to be responsible for the overall knowledge within their areas of responsibility. Legal follow-up and inspections are also conducted in these places. One example of this is the fact that all appeals made against prosecution decisions are handled by the development centres.

The prosecution development centre in Malmö (UC Malmö) has special responsibility for judicial monitoring and supervision of hate crimes. The prosecution development centre is also responsible for method development in the area.

Furthermore, it is noted that the public prosecution office is planning for a conference on hate crimes in 2013.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Penal Code, it is to be considered an aggravating circumstance when assessing penal value if the motive of a crime was to aggrieve a person, an ethnic group, or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief, sexual orientation or other similar circumstance. The phrase "other similar circumstance" is intended to cover e.g. gender identity.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The overall aim of the Swedish Crime Victim Compensation and Support Authority is to look after the rights of all victims of crime and to draw public attention to their needs and interests. For good practise regarding this, see answer to question 12. The Swedish police are improving the information to crime victims in general to clarify their rights to assistance and support from authorities and other organizations.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Swedish Crime Victim Compensation and Support Authority is responsible for issues concerning victims of crime in general and the Government has assigned the authority with different tasks targeting the treatment of crime victims in general. The training that the authority provides is specifically addressed to lawyers and staff in the criminal justice system. There are different programs that all substantially focus on the treatment of particular vulnerable victims. The programs that are developed are also applicable to the treatment of LGBT-persons.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The basic training for prison and probation officers within the Swedish Prison and Probation Service contains education on discrimination and diversity issues, the laws and regulations on human rights as well as theories of the mechanisms of discrimination.

According to the new Act on Imprisonment (Swedish Code of Statutes 2010:610) every prisoner shall be treated with respect for his or her human dignity and with understanding for the special difficulties associated with the deprivation of liberty.

According to Chapter 6, Section 7 of the Act, a prisoner may be held separately from other prisoners if this is necessary for example in order to prevent the prisoner from seriously molesting another prisoner. Molestation refers to reckless conduct directed toward another person, including sexual molestation or repeated insults.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A person who, in a disseminated statement or communication, threatens or expresses contempt for a national, ethnic or other such group of persons with allusion to race, colour, national or ethnic origin, religious belief or sexual orientation shall be sentenced for *agitation against a national or ethnic group* to imprisonment for at most two years or, if the crime is petty, to a fine. If the crime is gross, imprisonment for at least six months and at most four years shall be imposed. In assessing whether the crime is gross, special consideration shall be given to whether the message had a particularly threatening or offensive content and was disseminated to a large number of people in a way that was intended to arouse considerable attention.

A person who orally, before a crowd or congregation of people, or in a publication distributed or issued for distribution, or in other message to the public, urges or otherwise attempts to entice people to commit a criminal act, evade a civic duty or disobey public authority, shall be sentenced for *inciting rebellion* to a fine or imprisonment for at most six months. A sentence for inciting rebellion shall also be imposed upon any person who orally before a gathering of members of the armed forces or by other communication with members of the armed forces urges or otherwise attempts to entice them to an act or omission in dereliction of their service duty. Punishment shall not be imposed in petty cases. In assessing whether the crime is petty, special consideration shall be given to whether there was only an insignificant risk that the enticement or attempted enticement would in fact have effect. If the crime, in view of the fact that the offender attempted to instigate the commission of a serious crime or in view of other circumstances, must be regarded as gross, imprisonment for at most four years shall be imposed.

A person who raises a weapon against another or otherwise threatens to commit a criminal act, in such a manner that the nature thereof evokes in the threatened person a serious fear for the safety of his own or someone else's person or property, shall be sentenced for *unlawful threat* to a fine or imprisonment for at most one year. If the crime is gross, imprisonment for at least six months and at most four years shall be imposed.

A businessman who in the conduct of his or her business discriminates against a person on grounds of that person's race, colour, national or ethnic origin or religious belief by not dealing with that person under the terms and conditions normally applied by the businessman in the course of his or her business with other persons, shall be sentenced for *unlawful discrimination* to a fine or imprisonment for at most one year. The provisions relating to discrimination by a businessman shall also apply to a person employed in a business or otherwise acting on behalf of a businessman and to a person employed in public service or having a public duty. A sentence for unlawful discrimination shall also be imposed on any organiser of a public assembly or gathering, and on any collaborator of such organiser, who discriminates against a person on grounds of his or her race, colour, national or ethnic origin or religious belief by refusing him or her access to the public assembly or gathering under the terms and conditions normally applied to other persons. A sentence for unlawful discrimination shall also be imposed on any person designated above who, in the manner there indicated, discriminates against another on grounds of that person's sexual orientation. A person who is not regarded as the perpetrator shall, if he induced another to commit the act, be sentenced for instigation of the crime.

One important part of the efforts made by the Police is the implementation of a nationwide policy and an action plan to promote diversity and equality adopted by the National Police Board. The policy document states that a zero tolerance approach should prevail and that no forms of discrimination or harassment are permitted in the organization or in contacts with the public. According to Chapter 2, Section 17 in the Discrimination Act discrimination is prohibited when a person, who is wholly or partly subject to the Public Employment Act, assists the public by providing

information, guidance, advice or other such help, or has other types of contacts with the public in the course of her or his employment.

The Swedish civil servants are to be guided by certain principles inter alia the principle of objectivity, impartiality and equal treatment. Public power should also be exercised with respect for the freedom and equality of all persons.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

Freedom of association is guaranteed in the Swedish Constitution (Chapter 2, Section 1 of the Instrument of Government), and the statute incorporating the European Convention for the Protection of Human Rights and Fundamental Freedoms into Swedish law. According to the Instrument of Government, freedom of association may be limited only in respect of organisations whose activities are of a military or quasi-military nature, or constitute persecution of a population group on grounds of ethnic origin, colour, or other such conditions. Furthermore, according to Chapter 2, Section 12 of the Instrument of Government, no act of law or other provision may imply the unfavourable treatment of anyone because they belong to a minority group by reason of ethnic origin, colour or other similar circumstances or on account of their sexual orientation. All courts and other public bodies are required, if called upon by the parties, to review statutes in the application of law. If such a body finds that a provision conflicts with a rule of fundamental law, for instance the prohibition against discrimination, of other superior statute, the provision shall not be applied (Chapter 11, Section 14 and Chapter 12, Section 10 of the Instrument of Government).

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See answer to question 19.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

LGBT-organisations are invited to give their view through government consultations on issues that might affect the rights and equal opportunities of LGBT-persons. For instance, LGBT-organizations are regularly consulted on bills or other proposals that might affect LGBT-rights. The Swedish Government provides specific funding for LGBTQ NGOs working with LGBTQ rights.

Good example: When The National Board for Youth affairs was assigned by the government to analyse the health situation among young lesbian, gay, bisexual and transgender persons, the Swedish Youth Federation for Lesbian, Gay, Bisexual, Transgender & Queer (LGBTQ) Rights was consulted and they contributed with different analyses to the report, for example about discrimination of young LGBTQ- persons in working life and by making a specific survey using the largest LGBTQ online community ([www.gruiser.com](http://www.gruiser.com)) in order to collect information about exposure to violence and sexual abuse. A summary of the whole report about young LGBTQ-persons is translated into English and available at this link:

<http://www2.ungdomsstyrelsen.se/butiksadmin/showDoc/ff8080813957d6510139dd835261001e/wwwOmUngaHbtqHALSAENG.pdf>

In 2010, The National board for Youth Affairs, got a new assignment to develop guidelines for leisure-time activities in how to work with inclusion and against discrimination of young LGBTQ-persons. In this assignment LGBTQ-NGOs were consulted and also used as trainers.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

Freedom of expression and freedom of information, as well as freedom of peaceful assembly, are all guaranteed in the Swedish Constitution. These freedoms are also covered by the law incorporating the European Convention for the Protection of Human Rights and Fundamental Freedoms into Swedish law. They may be limited only through a statute adopted by the Parliament. The limitations must satisfy a certain purpose acceptable in a democratic society and may never go beyond what is necessary with regard to that purpose, nor may it be carried so far as to constitute a threat to the free shaping of opinion.

The constitutional prohibition against discrimination naturally covers also the freedom of expression and information and the freedom of peaceful assembly.

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The police have the task to ensure that all citizens are able to access their constitutional rights. They maintain dialogues and communications with LGBT-organizations before, during and after an event. The police have developed a method employed at large gatherings of people, which focuses on dialogue, communication and transparency, rather than conflicts and the use of batons and riot shields. It is the local police authorities' task to protect participants in peaceful demonstrations. At major events, there is a national reinforcement organisation that can be deployed all over the country. It consists of police officers, divided among the three metropolitan counties, who have been specially trained in the new police tactics. The special police tactics comprises several individual components, of which the training of personnel is the most central. The training includes topics such as mental preparations, communication, law, spotting dangers and preventing injuries.

**IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Chapter 2, Section 12 of the Instrument of Government, no act of law or other provision may imply the unfavourable treatment of anyone because they belong to a minority group by reason of ethnic origin, colour or other similar circumstances or on account of their sexual orientation. In modern times, there has been no need to take measures to ensure that criminal law provisions do not lead to a discriminatory application. There are no known criminal provisions which may have such an effect.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

According to the Personal Data Act (SFS 1998:204) it is prohibited to process personal data relating to health and sexual life. There are some exceptions to this rule though. For example, this prohibition does not apply in the case of necessary processing in order to protect vital interests of the registered person or someone else and the registered person cannot provide his/her consent, or to establish, exercise or defend legal claims. Neither does it apply within health and hospital care, if it is necessary for preventive medicine, medical diagnosis, care or treatment, or the administration of health and hospital care. These types of personal data may also be processed for research and statistics provided that the treatment is necessary and provided the public interest in the project manifestly exceeds the risk of improper violation of personal integrity.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Swedish Gender Reassignment Act (1972:119) sterilization is a requirement for gender reassignment. The Government considers that the sterilization requirement must be regarded as outdated in the perspective of a modern society. Therefore a governmental proposal to abolish the present sterilization requirement will be presented to the Parliament this spring (2013). The proposal with changes in the Swedish Gender Reassignment Act is suggested to enter into force 1 July 2013. The Swedish Government has given The National Board of Health and Welfare the assignment of coordinating an inter-agency cooperation in order to reduce the administrative burden on persons who have changed gender and a report will be presented in late 2013.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

Since April 2009 it is no longer possible to register a partnership in Sweden. From that point of time same-sex couples may enter into marriage. Partners who registered before April 2009 may by a simple application to the Tax Authority transform their partnership into a marriage. It is a voluntary transformation, thus some same-sex couples in Sweden still live in registered partnerships.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Children and Parents Code, every decision regarding parental responsibility and adoption has to be taken primarily in the child's best interest and be advantageous to the child. In connection with the adoption of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption Sweden also adopted a special national act which states that the Convention is to be considered a national act of law. The law regulates different public actors' responsibility for the different articles and points out the central authority under the Convention. Since 1 February 2003 registered partners and married same-sex couples have the same possibility as married heterosexual couples to adopt. The authorized inter-country intermediation organizations must accept all persons who have obtained permission under Chap. 6 Section 12 of the Social Services Act (2001:453) to receive a foreign child into their home with a view to adoption, including same sex couple applicants. If the association has decided to refuse adoption intermediation in a particular case, the applicants shall be informed of their possibility of having the decision reviewed by the Swedish Inter-country Adoptions Authority (MIA).

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Chapter 2, Section 1 of the Swedish Discrimination Act (2008:567) prohibits an employer from discriminating against a person who is an employee, is enquiring about or applying for work, is applying for or carrying out a traineeship, is available to perform work or is performing work as temporary or borrowed labour. The preparatory work to the Discrimination Act clarifies that the prohibition covers all possible scenarios that can arise between an employer and an employee or someone enquiring about work.

In addition, Section 4 of the same Chapter stipulates that if a job applicant has not been employed or selected for an employment interview or if an employee has not been promoted or selected for training for promotion, the person in question is entitled upon request to receive written information from the employer on the merits of the person who was selected.



An employee is protected against harassment based on sexual orientation and transgender identity or expression when at work. An employer is obliged under Chapter 2, Section 3 of the Discrimination Act to investigate circumstances surrounding alleged harassment in connection with work. The failure to protect the privacy of an employee could amount to harassment under the Discrimination Act.

### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Discrimination Act (2008:567) explicitly bans discrimination in the educational system related to a person's sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. In addition to prohibiting discrimination the Discrimination Act also obliges pre-schools, schools and universities to actively prevent discrimination due to gender, ethnicity, religion or other belief, disability and sexual orientation. The Equality Ombudsman (DO) is a government agency that registers and investigates complaints based on the law's prohibition of discrimination and harassment.

In June 2011, the Government gave the National Agency for Education an assignment to undertake a renewed effort to strengthen the school's values and work against discrimination and degrading treatment. The National Agency is to compile and disseminate the best practices on preventive work and work procedures for reporting and following up cases of discrimination and other degrading treatment. The Authority shall also provide education for teachers. The education should emphasize knowledge about methods that do not work, the importance of a gender perspective in the choice of actions against bullying, and the situation for young LGBT-persons.

The National Agency for Education also has an assignment regarding gender equality that mandates the Agency to provide training for teachers and other staff in sex and relationships education and develop support materials in this area. The mandate clearly states that sex and relationship education should provide support and information to develop and strengthen pupils' self-esteem and identity, and respect for other people's bodily integrity. This applies to all children and young people regardless of their sexual orientation or gender identity. The Agency shall also provide training for school staff on honourary problems. Honour-related violence and oppression are suffered by girls and women and boys and men, including young LGBT-persons.

Sweden has a highly decentralized education system with a high level of school autonomy. Therefore, school policy and practices vary from school to school. Education in Sweden is steered by goals/learning outcomes defined at a central level. The Government has the overall responsibility for education and sets the framework for education at all levels, but the municipalities and independent schools (friskolor) are responsible for providing and operating schools. The measures mentioned in question ii and iv are the responsibility of municipalities and independent schools, although all schools must have an annual plan for the work against discrimination. Regarding question iii human sexuality and identity is for instance part of the syllabuses of biology and the curriculum clearly states that teaching should be objective. But the syllabuses do not state exactly what the education shall cover. This is instead up to the professionals to decide. According to the Swedish Discrimination Act an education provider is to conduct goal-oriented work in order to actively promote equal rights and opportunities for the students, so called active measures. In this regard an education provider has for instance to draw up a plan each year containing the measures needed to provide equal rights and opportunities for the students regardless of sex, ethnicity, religion or other belief, disability or sexual orientation and measures needed to prevent harassment. The government has appointed an inquiry with the remit of reviewing questions concerning active measures. The inquiry is to deliver its report no later than 1 November 2013.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Swedish Health and Medical Services Act (1982:763) states as follows: Health and medical services are aimed at guaranteeing the entire population good health and care on equal terms. Care shall be provided with due respect for the equal worth of all people and the dignity of the individual. Priority shall be given to those who are in the greatest need of health and medical care. Chapter 2, Section 13 of the Discrimination Act prohibits discrimination based on inter alia sexual orientation and transgender identity or expression with regard to health and medical care and other medical services.

Responsibility for health and medical care in the Swedish health system is divided between the central government, county councils and municipalities. The Health and Medical Services Act sets out the respective responsibilities of county councils and municipalities for health and medical care. The Act is designed to give county councils and municipalities considerable freedom with regard to the organisation of their health services. The state is responsible for the overall health and medical care policy.

The Government and its national agencies play an important role in policymaking and overseeing the functioning of the health care system. The Government is of the opinion that good health care should be given to all on equal terms. This applies to the population in general and irrespective of sexual orientation, gender identity or gender expression. The Government is undertaking several efforts in this field. One of these efforts is the work with open comparisons that openly accounts for differences within the health care and public health system. Another effort is the implementation of a national medical strategy. The Government also has, in order to improve the treatment in the health care system of groups that are at risk of being exposed to discrimination, commissioned the

Swedish National Board of Health and Welfare to produce a training programme on discrimination in the health care system and the importance of information that is adjusted to the needs of a specific group.

National studies have shown that LGBT-persons to a greater extent than the population at large suffer from mental illnesses. The risk of committing suicide and actual attempts to commit suicide are twice as common among LGBT-persons as compared to the population at large. Young LGBT-persons are particularly affected. The Government decided earlier this year a strategy (PRIO) for measures against mental ill-health. The plan contains several measures to bring about concrete and durable changes for persons with different types of mental illness and the Government intends to allocate some 870 MSEK during 2012-2016 for this purpose. A prioritized field is to reduce the incidence of suicide attempts and suicide among children and young people.

The Government has also identified a need for action to increase equality and the quality of care regarding gender reassignment procedure. Therefore, The National Board of Health and Welfare has been given the task to produce information both for transgender patients and health care professionals, and to coordinate an inter-agency cooperation in order to increase the awareness, equality and quality of care for people who have already, or will, change their gender.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

A person who applies for gender reassignment undergoes an assessment by a psychiatrist about the applicant's prerequisites for the actual treatment. Certain conditions also have to be fulfilled according to the Gender Reassignment Act (1972:119). These conditions include inter alia the requirement that the applicant has perceived since a long time that he or she belongs to the other sex. He/she also has to be 18 years old. If the applicant fulfils the conditions and is granted gender reassignment the costs, with the exception of plastic surgery for cosmetic reasons, are covered by the health insurance.

The Swedish Government has given The National Board of Health and Welfare the assignment of coordinating an inter-agency cooperation in order to reduce the administrative burden on persons who have changed gender. A report will be presented in late 2013.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Chapter 2, Section 12 of the Discrimination Act discrimination based inter alia on sexual orientation and transgender identity or expression is prohibited on the part of a natural or legal person who supplies goods, services and housing outside the private and family sphere.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Chapter 2, Section 13 of the Discrimination Act discrimination based inter alia on sexual orientation and transgender identity or expression is prohibited with regard to social services.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Sports in Sweden fall under the responsibility of the sports movement itself. All organised sport in Sweden is gathered under the umbrella organisation The Swedish Sports Confederation. The confederation has a specific policy on the fight against discrimination on grounds of sexual orientation or gender identity. An action plan is also attached to this policy.

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Swedish Aliens Act includes well-founded fear of persecution based on gender, sexual orientation or other membership of a particular social group as a ground for recognition of refugee status. The grounds for asylum are always assessed on an individual basis.

The Swedish Migration Board is the first instance for decisions on asylum applications. Decisions may be appealed to a migration court and subsequently to the Migration Court of Appeal.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Aliens Act includes general rules on impediments to enforcement of refusal-of-entry and expulsion (Chapter 12). Such decisions may never be enforced to a country where there is a fair reason to assume that the individual concerned would be in danger of suffering capital or corporal punishment, torture or other inhuman or degrading treatment or punishment.

The Government has instructed the Migration Board, in the yearly appropriation directions, to give special attention to LGBT issues. The Migration Board has reported on how it maintains and develops its competence in this area. Several projects and activities of the Migration Board are set to enhance the Board's competence in LGBT issues.

In 2009 and 2011, the Migration Board issued legal statements regarding the application of legislation in cases where grounds for asylum are related to LGBT issues.

In the appropriation direction for 2013, the Government instructed the Migration Board to develop and report on methods and tools for a systematic follow-up of the quality of the application of law at the Board and to report on how the Board ensures a uniform application of the law in cases where sexual orientation or gender identity are referred to as grounds for asylum. The Migration Board will report to the Government no later than 14 June 2013.

#### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Swedish Equality Ombudsman has been mandated through the Discrimination Act to supervise the compliance with the act. In this regard the Ombudsman can bring a court action on behalf of an individual who consents to this.

A natural or legal person who is subject to the prohibitions of discrimination is obliged, upon the request of the Ombudsman, to provide the Ombudsman with information about circumstances that are of importance for the supervision exercised by the Ombudsman. The Ombudsman should also be given access to workplaces and other premises for the purpose of investigations that may be of importance to the supervision exercised by the Ombudsman.

A natural or legal person who does not comply with such a request may be ordered by the Ombudsman to fulfil his or her obligation subject to financial penalty.

**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

**Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

The Council of Europe should continue to periodically examine the implementation of this Recommendation.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes. Lesbian, gay, bisexual and transgender persons are unfortunately still subject to homophobia, transphobia and other forms of intolerance and violence. Specific action is therefore still required in order to ensure the full enjoyment of human rights of these persons. Sweden welcomes a continued broad approach of future examination.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

No.

**SUISSE**

La plupart des questions appellent une réponse fondée sur la codification suivante :

a. Oui, c'est fait <input type="checkbox"/>	b. Oui, des travaux sont en cours <input type="checkbox"/>	c. Nous avons l'intention d'y travailler <input type="checkbox"/>	d. Rien n'est encore décidé <input type="checkbox"/>	e. Non <input type="checkbox"/>
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**Section I – Mise en œuvre et diffusion de la recommandation**

1. Comment évaluez-vous la mise en œuvre de la recommandation dans votre pays ?  
 Pleinement satisfaisant ☐ Satisfaisant X Insuffisant ☐ Absence d'impact ☐

Veuillez expliquer votre réponse.

Dans l'ensemble, comme il ressort des réponses ci-dessous, la situation en Suisse dans les domaines traités par la recommandation est bonne. La Suisse ne satisfait toutefois pas à tous les points de la recommandation.

2. A-t-il été procédé à un examen des mesures en vigueur, législatives ou autres, susceptibles d'avoir pour effet, directement ou indirectement, de créer une discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?  
 a. ☐ b. X c. ☐ d. ☐ e. ☐

Veuillez préciser et, le cas échéant, donner un exemple des mesures détectées :

La Confédération a mandaté le Centre suisse de compétence pour les droits humains (CSDH) afin qu'une étude soit réalisée sur le thème de l'accès à la justice en cas de discrimination. Cette étude va permettre de faire un état des lieux en matière de protection légale contre les discriminations (et notamment pour ce qui est de la discrimination fondée sur l'identité ou l'orientation sexuelle) et d'identifier les éventuelles lacunes de la législation actuelle.  
 De plus, le parlement helvétique doit se prononcer sur une motion visant à octroyer la possibilité aux couples de même sexe (partenaires enregistrés) de pouvoir adopter. En effet, actuellement, ce droit est réservé aux personnes seules ou aux couples mariés.

Y a-t-il des mesures en place en vue de remédier à une telle discrimination

- a. ☐ b. X c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques:

Les mesures en place sont décrites dans les réponses ci-dessous. Les études du Centre en cours de préparation permettront d'identifier d'éventuelles lacunes et de prendre, le cas échéant, des mesures appropriées.

3. Des mesures (législatives ou autres) de lutte contre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre ont-elles été adoptées et mises en œuvre depuis l'adoption de la Recommandation CM/Rec(2010)5 (y compris l'éventuelle mise en place de plans d'action nationaux, l'ajout de la Recommandation dans des plans existants ou la création de groupes de travail intersectoriels pour sa mise en œuvre)?  
 a. ☐ b. X c. ☐ d. ☐ e. ☐

Le cas échéant, veuillez donner des exemples de mesures adoptées ou en préparation.

Des mesures ont été mises en place ou sont en cours d'élaboration, sans toutefois qu'il s'agisse d'une conséquence directe de la recommandation.

Aucun plan d'action ou groupe de travail n'a été mis en place spécifiquement pour la mise en oeuvre de la recommandation.

En revanche, l'étude du Commissaire des droits de l'homme du Conseil de l'Europe a été présentée et discutée devant des représentants de différents services de l'administration et d'autres cercles intéressés.

4. Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives à la discrimination fondée sur l'orientation sexuelle?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives à la discrimination fondée sur l'identité de genre?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Y a-t-il des mesures en place afin de collecter et d'analyser les données pertinentes relatives aux crimes de haine et autres incidents motivés par la haine pour lesquels l'orientation sexuelle ou l'identité de genre de la victime peut être raisonnablement soupçonnée d'avoir été l'un des motifs de l'auteur de l'infraction ?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques:

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5. Existe-t-il des voies de recours effectives pour les victimes de discrimination fondée sur l'orientation sexuelle ou l'identité de genre (y compris des sanctions en cas d'infraction et des réparations adéquates pour les victimes) ?

a. ☐ b. X c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place pour informer les victimes des dispositifs existants et faciliter leur accès à ces voies de recours ?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

La discrimination fondée sur l'orientation sexuelle ou l'identité de genre n'est pas une infraction spécifique en droit pénal suisse. Lorsqu'une infraction générique, par exemple une lésion corporelle, est commise avec un motif lié à l'orientation sexuelle ou à l'identité de genre de la victime, des sanctions sont prévues et des voies de recours effectives existent.

Il existe également des voies de recours et des possibilités de réparations dans d'autres domaines juridiques (droit privé, égalité salariale, droit public ...).

Les articles 28 ss du Code civil suisse règlent la protection de la personnalité. Ces dispositions peuvent être invoquées en cas de discrimination fondées sur l'orientation sexuelle ou l'identité de genre. Le droit des contrats prévoit que les contrats doivent respecter le cadre de la loi (art. 19 s. du Code des obligations). Ce cadre inclut la protection générale contre la discrimination prévue à l'art. 80 par. 2 de la Constitution fédérale. Il s'applique au contenu, à la conclusion et au but du contrat.



Enfin, la loi fédérale sur l'égalité entre femmes et hommes peut être applicable en cas de discrimination fondée sur l'identité et les préférences sexuelles. En effet, ces formes de discriminations peuvent renvoyer à une vision stéréotypée des rôles des hommes et des femmes.

6. Des obstacles ont-ils été rencontrés dans la mise en œuvre de la recommandation ? Si oui, lesquels ?

7. La recommandation, y compris son annexe, a-t-elle été traduite dans toutes les langues nationales ?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

8. Quelles mesures ont été prises pour veiller à ce que la recommandation ainsi que son annexe soient diffusées aussi largement que possible ?

## Section II – Mise en œuvre des dispositions spécifiques énoncées en annexe

### I. Droit à la vie, à la sécurité et à la protection contre la violence

9. Y a-t-il des mesures garantissant qu'une enquête efficace, rapide et impartiale soit menée sur les allégations d'infractions pénales et autres incidents pour lesquels l'orientation sexuelle ou l'identité de genre de la victime peut être raisonnablement soupçonnée d'avoir été l'un des motifs de l'auteur de l'infraction ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Les règles générales du Code de procédure pénale (CPP) garantissent qu'une enquête efficace, rapide et impartiale soit menée. Elles établissent que l'instruction a lieu d'office (art. 6 CPP), que les autorités pénales sont soumises au principe de célérité (art. 5 CPP) et qu'elles sont indépendantes dans l'application du droit (art. 4 CPP).

10. Y a-t-il des mesures en place pour qu'un mobile fondé sur un préjugé lié à l'orientation sexuelle puisse être pris en compte en tant que circonstance aggravante ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Y a-t-il des mesures en place pour qu'un mobile fondé sur un préjugé lié à l'identité de genre puisse être pris en compte en tant que circonstance aggravante ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Un mobile fondé sur un préjugé lié à l'orientation sexuelle ou à l'identité de genre peut être pris en compte en tant que circonstance aggravante, en vertu des critères généraux de fixation de la peine, en particulier les motivations et les buts de l'auteur ainsi que le caractère répréhensible de l'acte (art. 47 du Code pénal suisse, CP).

L'absence particulière de scrupules, notamment si le mobile, le but ou la façon d'agir de l'auteur sont particulièrement odieux, constitue par ailleurs une circonstance aggravante spécifiquement prévue pour l'homicide (assassinat, art. 112 CP).

11. Des mesures appropriées ont-elles été prises pour s'assurer que les victimes et les témoins de « crimes de haine » ou d'autres incidents motivés par la haine fondée sur l'orientation sexuelle ou l'identité de genre soient encouragés à dénoncer ces crimes et incidents ?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

12. Existe-t-il des procédures et des programmes de formation pour que les membres des forces de l'ordre, de la magistrature et du personnel pénitentiaire disposent des connaissances et des compétences requises pour identifier de tels crimes et incidents et apporter une assistance et un soutien adéquats aux victimes et témoins ?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

13. Y a-t-il des mesures spécifiques visant à assurer la sécurité et la dignité des personnes lesbiennes, gays, bisexuelles et transgenres placées en prison ou se trouvant dans d'autres situations de privation de liberté, conformément au paragraphe 4 de l'annexe à la recommandation ?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Des mesures spécifiques ne sont pas nécessaires. Le respect de l'intégrité sexuelle de toutes les personnes détenues et surveillé par assuré par le personnel des centres de détention. Chaque détenu est informé, au début de la détention, de la possibilité de porter plainte en cas de violation de son intégrité sexuelle.

14. Des mesures appropriées ont-elles été prises afin de combattre toutes les formes de « discours de haine » à l'égard des personnes lesbiennes, gays, bisexuelles et transgenres, conformément à l'Article 10 de la Convention Européenne des droits de l'homme et au paragraphe 6 de l'annexe à la recommandation ?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Dans l'affirmative, des mesures spécifiques ont-elles été prises afin de sensibiliser les autorités et les organismes publics à leur responsabilité de s'abstenir de faire des déclarations pouvant raisonnablement être interprétées comme cautionnant de telles attitudes haineuses ou discriminatoires à l'égard des personnes lesbiennes, gays, bisexuelles et transgenres ?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

## **II. Liberté d'association**

15. Y a-t-il des mesures garantissant la jouissance du droit à la liberté d'association (y compris l'accès au financement public disponible pour les organisations non gouvernementales) sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. X   b. ☐   c. ☐   d. ☐   e. ☐

Le cas échéant, veuillez donner des exemples de restrictions ou exceptions aux garanties énoncées aux paragraphes 9 et 10 de l'annexe à la recommandation et indiquez si des mesures visant à revoir ou lever de telles restrictions ou exceptions sont en préparation.

16. Y a-t-il des mesures spécifiques en place pour protéger de manière effective les défenseurs des droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres contre les actes d'hostilité et les agressions auxquels ils peuvent être exposés, y compris lorsqu'ils sont censés avoir été commis par des agents de l'Etat, conformément à la Déclaration du Comité des Ministres sur l'action du Conseil de l'Europe pour améliorer la protection des défenseurs des droits de l'homme et promouvoir leurs activités ?

a. ☐   b. ☐   c. ☐   d. ☐   e. X

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

17. Des mesures ont-elles été prises pour veiller à ce que les organisations non gouvernementales défendant les droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres soient consultées, de manière appropriée, sur l'adoption et la mise en œuvre de mesures pouvant avoir un impact sur les droits de l'homme de ces personnes ?

a. X   b. ☐   c. ☐   d. ☐   e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Lors de la procédure de consultation, toute personne ou organisation peut participer à la consultation et exprimer un avis (art. 4 de la loi fédérale sur la procédure de consultation).

## **III. Liberté d'expression et de réunion pacifique**

18. Y a-t-il des mesures garantissant que la liberté d'expression, notamment la liberté de recevoir et de transmettre des informations concernant l'orientation sexuelle ou l'identité de genre, puisse être exercée sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. X   b. ☐   c. ☐   d. ☐   e. ☐

Y a-t-il des mesures garantissant que la liberté de réunion pacifique puisse être exercée sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. X   b. ☐   c. ☐   d. ☐   e. ☐

Si des exceptions ou des restrictions spécifiques sont en place à l'égard de ces libertés, veuillez donner des exemples et indiquer si des mesures visant à revoir ou lever ces dispositions sont en préparation :

19. Les services répressifs prennent-ils les mesures appropriées pour protéger les participants à des manifestations pacifiques en faveur des droits fondamentaux des personnes lesbiennes, gays, bisexuelles et transgenres ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

#### **IV. Droit au respect de la vie privée et familiale**

20. Des mesures ont-elles été prises pour veiller à ce que les dispositions de droit pénal pouvant se prêter, en raison de leur formulation ou de leur champ d'application, à une application discriminatoire s'agissant de l'orientation sexuelle ou l'identité de genre soient abrogées, amendées ou appliquées d'une manière compatible avec le principe de non-discrimination ?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Un examen global et systématique des dispositions pénales n'a pas eu lieu. Toutefois, les projets législatifs récents en matière de droit pénal ne font pas de distinction entre hommes et femmes ou entre homosexuels et hétérosexuels, conformément aux dispositions constitutionnelles sur la non-discrimination :

- Voir par exemple la loi du 18 juin 2004 sur le partenariat enregistré qui a révisé le CP (par exemple, art. 123, lésions corporelles simples, et art. 180, menaces), afin traiter sur un pied d'égalité le mariage et le partenariat enregistré homosexuel.
- Voir également la loi du 3 octobre 2003 (Poursuite des infractions entre conjoints ou partenaires), qui traite sur un pied d'égalité les homosexuels et les hétérosexuels (modification notamment de l'art. 123, lésions corporelles simples, de l'art. 126, voies de fait, et de l'art. 180, menaces) en matière de poursuite d'office des infractions de violence domestique.
- Voir aussi le nouveau Code de procédure pénale (CPP), par exemple concernant les motifs de récusation (art. 56) ou le droit de refuser de témoigner (art. 168)

Constituent en particulier des exceptions à ce principe général d'égalité de traitement dans la formulation des dispositions pénales:

- L'infraction de viol (art. 190 CP) qui ne peut être commise qu'à l'encontre d'une personne de sexe féminin et constitue une disposition spéciale par rapport à l'infraction générale de contrainte sexuelle (art. 189 CP), protégeant l'intégrité sexuelle des hommes et des femmes, que l'acte contraint soit homosexuel ou hétérosexuel. En pratique, cette dichotomie ne semble guère porter à conséquence, car la jurisprudence précise que ces deux dispositions doivent être appliquées de manière similaire lorsque les circonstances sont analogues (voir ATF 132 IV 120), le maximum de la peine étant d'ailleurs le même.
- La mutilation d'organes génitaux féminins (art. 124 CP), qui vient s'ajouter aux dispositions générales sur les lésions corporelles (art. 122-123 CP).

21. Y a-t-il des mesures visant à faire en sorte que les données à caractère personnel mentionnant l'orientation sexuelle ou l'identité de genre d'une personne ne soient ni collectées ni conservées ou

utilisées d'une autre manière, sauf si cela est nécessaire à des fins spécifiques, légales et légitimes, et que les enregistrements existants non conformes à ce principe soient détruits ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Veuillez donner des exemples d'exception à ce principe, le cas échéant :

22. Des mesures appropriées ont-elles été prises pour garantir la reconnaissance juridique intégrale du changement de genre d'une personne dans tous les domaines de la vie, conformément aux dispositions du paragraphe 21 de l'annexe à la recommandation?

a. ☐ b. X c. ☐ d. ☐ e. ☐

Les conditions préalables à la reconnaissance juridique d'un changement de genre ont-elles été réévaluées afin de lever celles qui seraient abusives ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Dans un avis de droit du 1er février 2012 à l'attention des autorités cantonales de surveillance de l'état civil, l'Office fédéral de l'état civil s'est prononcé contre l'exigence d'interventions chirurgicales visant la stérilisation ou la construction d'organes génitaux du sexe désiré comme préalable de la reconnaissance juridique du changement de sexe. L'Office a également retenu que la dissolution d'un mariage ou d'un partenariat enregistré ne serait être imposée comme préalable à la constatation judiciaire du changement de sexe si les partenaires ou époux souhaitent rester unis.

23. Une fois le changement de sexe accompli et juridiquement reconnu, le droit d'une personne transgenre d'épouser une personne du sexe opposé à son nouveau sexe est-il effectivement garanti ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

24. Lorsque la législation nationale reconnaît les partenariats enregistrés entre personnes de même sexe, leur statut juridique et leurs droits et obligations sont-ils équivalents à ceux des couples hétérosexuels dans une situation comparable ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Lorsque la législation nationale ne reconnaît ni confère aucun droit aux partenariats enregistrés entre personnes de même sexe et aux couples non-mariés, la possibilité de fournir aux couples de même sexe des moyens juridiques ou autres pour répondre aux problèmes pratiques liés à ce fait a-t-elle été considérée?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez donner des exemples :

25. Y a-t-il des mesures en place pour s'assurer que les décisions en matière de responsabilité parentale et d'adoption d'un enfant soient prises premièrement dans l'intérêt supérieur de l'enfant, ainsi que sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☐ b. X c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Conformément aux dispositions du Code civil suisse, seul un couple marié ou, dans des conditions restrictives, une personne seule peut adopter un enfant. Les couples de concubins homo- ou hétérosexuels n'ont ainsi pas la possibilité d'adopter un enfant en commun. Par ailleurs, la loi sur le partenariat enregistré exclut formellement l'adoption aux couples de même sexe aux couples de même sexe ayant conclu un tel partenariat (ainsi que le recours aux méthodes de procréation médicalement assistée). Le Parlement suisse examine actuellement une proposition de loi tendant à ouvrir l'adoption d'enfants aux couples, indépendamment de leur état civil (marié ou non) et de l'orientation sexuelle des parents. La loi sur la procréation médicale est également en cours de révision.

### **V. Emploi**

26. La législation prohibe-t-elle la discrimination en matière d'emploi dans le secteur public et dans le secteur privé pour des motifs d'orientation sexuelle?

a. ☐ b. X c. ☐ d. ☐ e. ☐

La législation prohibe-t-elle la discrimination en matière d'emploi dans le secteur public et dans le secteur privé pour des motifs d'identité de genre ?

a. ☐ b. X c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place concernant plus particulièrement :

Les conditions d'accès à l'emploi

a. ☐ b. X c. ☐ d. ☐ e. ☐

Promotions, licenciements, salaires et autres conditions de travail

a. ☐ b. X c. ☐ d. ☐ e. ☐

La prévention du harcèlement et les sanctions applicables

a. ☐ b. X c. ☐ d. ☐ e. ☐

La protection du droit à la vie privée des personnes transgenres

(conformément au paragraphe 30 de l'annexe à la recommandation)

a. ☐ b. X c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

La loi fédérale sur l'égalité entre femmes et hommes interdit les discriminations fondées sur l'identité sexuelle dans la vie professionnelle (art. 3 LEg). En outre, cette loi interdit le harcèlement sexuel entre personnes du même sexe sur le lieu de travail (art. 4 LEg). Les dispositions de droit du travail relatives à la protection de la personnalité (art. 28 CC, 328 CO) et au licenciement abusif (art. 336 CO) sont par ailleurs applicables en cas de discrimination fondée sur l'orientation sexuelle.

### **VI. Education**

27. Y a-t-il des mesures appropriées, législatives ou autres, visant le personnel enseignant et les élèves, afin de garantir la jouissance effective du droit à l'éducation sans discrimination fondée sur

l'orientation sexuelle ou l'identité de genre, en tenant dument compte de l'intérêt supérieur de l'enfant et des droits des parents concernant l'éducation de leurs enfants ?

a. ☐ b. X c. ☐ d. ☐ e. ☐

Dans l'affirmative, y a-t-il des mesures en place prévoyant plus particulièrement :

Formations, soutiens et outils pédagogiques anti-discrimination

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

L'information, la protection et le soutien des élèves et étudiants

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Des informations objectives concernant l'orientation sexuelle et l'identité de genre dans les programmes scolaires

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Politiques scolaires et plans d'action pour l'égalité et la sécurité

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

En Suisse, l'éducation relève du domaine des cantons, les mesures spécifiques relèvent ainsi de la compétence de ces derniers.

Les normes générales contre la discrimination sont applicables au système scolaire. Les enseignants sont protégés dans le cadre du droit du travail (cf. question 26 ci-dessus).

Les règles de déontologie de l'Association faîtière des enseignants en Suisse statuent qu'il n'est pas admissible de désavantager un élève en raison de son orientation sexuelle ou de son identité de genre.

## **VII. Santé**

28. Des mesures appropriées ont-elles été prises pour assurer la jouissance effective du plus haut niveau de santé réalisable, sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, conformément aux dispositions du paragraphe 33 de l'annexe à la recommandation ?

a. ☐ b. X c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Il existe aujourd'hui en Suisse des centres de type Checkpoint qui offrent aux hommes gays et autres hommes ayant des rapports sexuels avec des hommes, ainsi qu'aux personnes transgenres, des prestations en lien avec leur santé, notamment leur santé sexuelle. Il y a un Checkpoint à Genève, Lausanne, Bâle et Zürich. Les Checkpoints de Lausanne (Vaud) et Zürich ont une (petite) permanence destinée aux personnes transgenres. Ces centres Checkpoints sont soutenus par l'OFSP.

Les cantons restent toutefois souverains dans la promotion de la santé auprès des personnes LGBT. Par exemple, les cantons de Vaud et Genève développent des mesures pour lutter contre l'homophobie, notamment dans les écoles. <http://www.mosaic-info.ch/>. Finalement, des journées romandes de sensibilisation sur la santé des personnes LGBT ont été organisées en novembre 2011. Ces journées ont fait l'objet d'un rapport de recommandations pour améliorer l'accès aux soins des personnes LGBT, et lutter efficacement contre l'homophobie. (<http://preos.ch/>).

Les associations gays et lesbiennes locales sont aussi actives dans la promotion de la santé auprès de leur communauté. Il existe par exemple des listes de médecins gay-friendly et lesbian-friendly tenues par ces associations. En Suisse alémanique, le projet Du Bist Du, piloté par le Checkpoint Zürich (<http://du-bist-du.ch/>) vise à sensibiliser les jeunes gays et bisexuels à leur bien être. Enfin,

l'organisation LOS a développé un programme destiné aux femmes lesbiennes « Santé Purielle » (<http://www.los.ch>) .

La lutte contre la transphobie (discrimination des personnes transgenres) et la promotion de la santé des personnes transgenres ne font malheureusement pas encore l'objet d'une mobilisation nationale forte en Suisse. Néanmoins, la thématique transgenre se développe. En février 2012, l'OFEC a publié un avis de droit indiquant que les personnes transgenres n'avaient plus à subir d'interventions chirurgicales, ni de stérilisation, pour prétendre un changement d'état civil. L'association nationale Pink Cross a engagé une femme-trans\* à la tête de son secrétariat afin d'inclure dans son travail de lobby la dimension trans\*. Il existe en Suisse deux organisations traitant spécifiquement de la question transgenre. Ces organisations sont la Fondation Agnodice à Lausanne et Transgender Network Schweiz à Zürich.

De son côté, l'OFSP a mandaté l'Institut universitaire de médecine sociale et préventive de Lausanne pour mettre en œuvre un *rapid assessment* visant à évaluer les prises de risque à VIH et autres IST au sein de la population transgenre. L'outil d'évaluation des risques BerDa, installé gratuitement dans les centres de conseil et de dépistage volontaire VIH et IST, intègre dans sa nouvelle version la dimension trans\*. Cette version sera disponible dès le 1<sup>er</sup> janvier 2013.

29. L'homosexualité a-t-elle été retirée de la classification nationale des maladies ?

a. X   b. ☐   c. ☐   d. ☐   e. ☐

30. Y a-t-il des mesures visant à faire en sorte que les personnes transgenres aient un accès effectif aux services appropriés de changement de sexe ?

a. ☐   b. ☐   c. ☐   d. ☐   e. X

Note: Il n'existe pas en Suisse de stratégie proprement dite ou de recommandations sur la prise en charge ou l'accès à une procédure de changement de sexe. Les accès au changement de sexe varient d'un canton à l'autre, voire d'un établissement clinique à l'autre. A l'heure actuelle, les organisations Agnodice et Transgender Network Schweiz dénoncent un accès difficile et une prise en charge déficiente en Suisse des personnes entrant dans un processus de changement de sexe. En plus, la qualité des interventions en Suisse ne serait pas aussi bonne en comparaison internationale.

La couverture par l'assurance maladie des coûts d'une procédure de changement de sexe est-elle limitée ? Dans l'affirmative, veuillez donner des précisions :

Les assurances maladie prennent en charge en partie les coûts liés à un changement de sexe sous certaines conditions, notamment avoir suivi deux années de psychothérapie et avoir plus de 25 ans, et que les interventions se fassent dans des établissements publics. Le montant couvert par l'assurance maladie est insuffisant au regard des coûts réels d'une intervention. Les cantons prennent parfois en charge la différence.

### **VIII. Logement**

31. Des mesures ont-elles été prises afin de garantir la jouissance effective et égale par tous de l'accès à un logement convenable sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre, la protection contre les expulsions discriminatoires, et l'égalité des droits d'acquisition et de propriété de terres et autres biens?

a. ☐   b. X   c. ☐   d. ☐   e. X



Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Le contrat de bail a loyer est annulable s'il contrevient aux règles de la bonne foi, en particulier en raison de changements dans la situation familiale du locataire, sans qu'il en résulte des inconvénients majeurs pour le locataire (art. 271 du Code des obligations, CO). Une résiliation est abusive si elle est liée à l'orientation sexuelle ou à l'identité de genre de l'une des parties. Par ailleurs, le logement de la famille est protégé aussi bien pour les couples mariés que pour les partenaires neregistrés (art. 14 de la Loi sur le partenariat enregistré et art. 266n, 266m et 273a CO). Cette protection est également donnée en matière de droit foncier rural.

32. Par rapport aux risques encourus par les personnes lesbiennes, gays, bisexuelles et transgenres de se retrouver sans abri, des mesures ont-elles été prises pour faire en sorte que les services sociaux pertinents soient assurés sans discrimination fondée sur l'orientation sexuelle ou l'identité de genre ?

a. ☐ b. X c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

Comme tout service étatique, les services sociaux sont liés à l'interdiction de la discrimination garantie par la Constitution fédérale (art. 8). Des voies de droit sont disponibles en cas de non-respect de cette garantie.

### **IX. Sports**

33. Des mesures (notamment de sensibilisation) ont-elles été prises pour combattre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre (y compris les insultes discriminatoires) dans le sport ou dans le cadre de manifestations sportives ?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

### **X. Droit de demander l'asile**

34. Dans le cas votre Etat a des obligations internationales à cet égard, une crainte bien fondée de persécution motivée par l'orientation sexuelle ou l'identité de genre peut-elle être reconnue comme un motif valide d'octroi du statut de réfugié et de l'asile ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

35. Votre pays s'assure-t-il que les demandeurs d'asile ne sont pas envoyés dans un pays où leur vie ou leur liberté seraient menacées en raison de leur orientation sexuelle ou de leur identité de genre ?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Veuillez citer les mesures et, le cas échéant, donner des exemples de bonnes pratiques dans ce domaine :

**XI. Structures nationales des droits de l'homme**

36. Y a-t-il des structures nationales des droits de l'homme (organismes de promotion de l'égalité de traitement, médiateur, institutions nationales de protection des droits de l'homme) clairement mandatées pour examiner les discriminations fondées sur l'orientation sexuelle?

a. ☐ b. X c. ☐ d. ☐ e. ☐

Y a-t-il des structures nationales des droits de l'homme (organismes de promotion de l'égalité de traitement, médiateur, institutions nationales de protection des droits de l'homme) clairement mandatées pour examiner les discriminations fondées sur l'identité de genre ?

a. ☐ b. X c. ☐ d. ☐ e. ☐

Veuillez expliquer et indiquer en particulier, le cas échéant, les possibilités d'intervention prévues par leur mandat, notamment eu égard à la discrimination multiple :

Le Centre suisse de compétence pour les droits humains effectue actuellement une étude sur la mise en oeuvre de la recommandation en Suisse. Il a également le mandat de préparer une étude sur l'accès à la justice en cas de discrimination; le projet prévoit un volet sur la discrimination fondée sur l'orientation sexuelle et l'identité de genre.

**XII. Discrimination multiple**

37. Y a-t-il des mesures garantissant que les dispositions du droit national interdisant ou empêchant les discriminations protègent également contre les discriminations fondées sur des motifs multiples, y compris celles fondées sur l'orientation sexuelle ou l'identité de genre ?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

**Section III - Suivi**

38. Quelles mesures par le Conseil de l'Europe recommanderiez-vous pour garantir que les états membres s'inspirent, dans leur législation et dans leurs pratiques nationales, des principes énoncés dans la recommandation et dans son annexe ?

39. Le Conseil de l'Europe devrait-il continuer à examiner périodiquement la mise en œuvre de cette recommandation ? Si oui, cet examen devrait-il, à l'avenir, se concentrer sur des questions spécifiques ? En l'espèce, lesquelles recommanderiez-vous d'aborder ?

Consciente de l'importance de la thématique, la Suisse soutient les travaux du Conseil de l'Europe dans ce domaine. Elle estime toutefois qu'il serait utile de coordonner les efforts du Bureau du Commissaire des droits de l'homme et ceux relatifs à la mise en œuvre de la Recommandation.

40. Existe-t-il des questions sur lesquelles la recommandation et son annexe devraient être modifiées ou complétées ? Si oui, merci d'indiquer lesquelles.

**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

The contents of the Recommendation is being presented at seminars and training sessions organized for the purpose of more effective implementation of the Law on Prevention and Protection against Discrimination.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

As part of the preparatory activities for the development of the **Law on Prevention and Protection against Discrimination**, an analysis of the existing legal regulations was carried out.

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Gender as grounds for protection against discrimination is contained in Article 3 of the **Law on Prevention and Protection against Discrimination**. Sexual orientation is not explicitly mentioned but is covered with the wording of the same Article in the following manner: "and any other grounds provided by law or by a ratified international document".

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?  
a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The Republic of Macedonia has a number of laws containing provisions referring (one way or another) to (non) discrimination. These laws are in different areas, and can be divided into two groups. The first group consists of the laws which forbid discrimination in concrete areas, specifically: the Law on Labour Relations, the Law on Social Protection, the Law on Health

Protection, the Law on Health Insurance, the Law on Mental Health, the Law on Protection of Patients' Rights, the Law on Primary Education, the Law on Secondary Education, the Law on High Education, the Law on Volunteering, the Law on Public Health, the Law on Courts, the Law on Equal Opportunities for Women and Men, the Law on the Use of Languages, the Law on the Use of the Flags of the Communities in the Republic of Macedonia, etc. However, what is of extreme importance is that the Law on Prevention and Protection against Discrimination complements the legal solutions referring to prevention and protection against discrimination.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Translation was provided by an NGO.

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Under the Criminal Code, there are measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, but they are not specifically designed for crimes and incidents where sexual orientation or gender identity of the victim may have constituted a motive for the perpetrator.

The same applies for the Law on the Protection against Discrimination.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 39 of the Criminal Code contains general rules for determination of sentences. The general rule of paragraph 2 of this Article obliges the court to take into account all circumstances that may affect the sentence either to be milder or more severe (alleviating or aggravating circumstances) and in particular the level of criminal liability, motivation behind the act, circumstances of the act, previous life of the perpetrator, his/her personal situation and conduct following the perpetrated act, as well as other circumstances related to the personality of the perpetrator. The Law does not define alleviating or aggravating circumstances but leaves the court to make such an assessment. Special mention of certain alleviating or aggravating circumstances does not preclude the court from taking into consideration other circumstances including sexual orientation and gender identity. With the amendments to the Criminal Code of September 2009, a new paragraph 5 is added to this Article stating "When the determination of the sentence is being done, it will be taken into account whether the crime has been committed against a person or a group of persons, directly or indirectly, because of his/her or their ethnic and social origin, political or religious belief, property or social status, gender, race and colour of skin.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Academy for training of judges and prosecutors organizes training on non-discrimination on all grounds, including sexual orientation and gender identity.

At the Faculty of Security – Skopje, in the framework of the course Police and Human Rights, particular attention is being paid to vulnerable groups, including the discrimination on grounds of sexual orientation. The Faculty organized a series of workshops with NGOs on the relevant issues. In 2012 a new optional course was introduced entitled Non-discrimination and vulnerable groups, focussing among other issues on the protection against discrimination based on sexual orientation.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No special measures have been put in place for protection against assault, rape and other forms of sexual violence of LGBT persons in prison or in other ways deprived of liberty. These persons enjoy the same legal protection as other persons deprived of liberty. Last year in one of the prisons of Macedonia a case of rape of a homosexual was reported to the competent prison authorities. The criminal charges were brought against the perpetrators and the criminal proceedings is underway.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

Many associations of citizens advocating the rights of LGBT have been registered in the Republic of Macedonia. Sexual orientation and gender identity do not constitute grounds for restricting freedom of association under the Law on Associations of Citizens and Foundations. Public funding is available to all NGOs under equal conditions.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Criminal Code does not criminalize same-sex sexual acts. The age of consent is the same for heterosexual and homosexual relations. There are no criminal law provisions which may lead to a discriminatory application with respect to sexual orientation or gender identity.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐



If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

#### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

#### **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

"Education for life skills" for secondary school students deals with the issues of human rights and non-discrimination on various grounds, including sexual orientation and gender identity. The teacher's training manual has been developed.

### VII. Health

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on Rights of Patients stipulates that the protection of rights of patients is based on the principles of humanness and accessibility. The principle of humanness is based among other things on the right to self-identification. The principle of accessibility is based, among other things, on health service accessible to all patients equally and without discrimination. Patients have rights to enjoy the rights defined in the Law on Right of Patients without discrimination based on sex, race, colour of skin, language, religion, political or other opinion, national and social origin, affiliation with a national minority, material status, origin by birth, **sexual orientation** or any other status.

29. Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

**VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no specific legislation prohibiting discrimination on grounds of sexual orientation and gender identity in the area of housing.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A National coordination body for prevention of hostility on the sport field has been formed. It deals with all forms of discrimination, including on grounds of sexual orientation and gender identity.

**X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

There is a number of bodies mandated to deal with discrimination in general. None of them is specifically mandated to deal with discrimination on grounds of sexual orientation and gender identity. However, the Ombudsman and the Commission for Protection against Discrimination made decisions by which they have recognized discrimination based on sexual orientation.

**XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

**Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**TURKEY**

Most questions require a reply based on the following codification:

a. Yes, already done <input checked="" type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?  
Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐

Please explain your reply.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?  
a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Are there measures in place to redress any such discrimination?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The draft law on the Anti-discrimination and Equality was prepared with a view to providing effective protection against discriminatory actions.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?  
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The data can be obtained by the public upon request and if appropriate procedures are followed.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?
7. Has the Recommendation, including its Appendix, been translated in all your national languages?  
a. ☐ b. ☐ c. ☐ d. ☐ e. ☒
8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

## Section II – Implementation of the specific provisions in the Appendix

### **I. Right to life, security and protection from violence**

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Article 160 of the Turkish Criminal Procedure Code titled "The duties of the Public prosecutors informed of an offense", as soon as the public prosecutor is informed of a fact that creates an impression that a crime has been committed, either through a report of crime or any other way, the prosecutor shall immediately investigate the factual truth, in order to make a decision on whether to file public charges or not. That's to say, the prosecutors are obliged to carry out an effective investigation into the allegations of the crime.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?  
a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are not that kind of training programmes about discrimination on grounds of sex and sexual orientation for the members of judiciary. However, there is a project conducted by the Justice Academy in respect of raising awareness on the prevention of sexual discrimination in judiciary and it is planing to put into effect it by the end of 2014.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Article 6/1-f titled "Principles to be observed in the execution of prison sentences" of the The Law on the Execution of Penalties and Security Measures "In penal execution institutions, all measures must be taken to protect the convicts' right to life and their bodily and mental integrity.

The Article 69/1-e of "The Regulation on the Management of Penal Execution Institutions and the Execution of Security Measures" stipulates that the convicts having different sexual orientation are provided to stay different rooms from the others

In addition to these, on the trainings for convicts and staff they are included the subjects of respecting to different tendencies and choices and being tolerant of them.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Article 216/2 of the The Turkish Criminal Code titled "Provoking the Public to Hatred, Hostility or Degrading", " Any person who openly humiliates another person just because he belongs to different social class, religion, race, sect, or comes from another origin, is punished with imprisonment from six months to one year". It is considered that this provision may be applied to the persons giving a hate speech on the grounds of sexual discrimination

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

## **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?



- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do 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?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

#### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?
- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Promotion, dismissals, pay and other working conditions

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Article 5/1 titled "The principle of equal treatment" of the The Labour Law (No. 4857) "No discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons is permissible in the employment relationship.". Also, the Article 7 of the Civil Servant Law stipulates that civil servants could not make any discrimination on the grounds of language, race, gender, political view, philosophical beliefs, religion and sect etc. while fulfilling their duties.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Article 4 titled "Universality and Equality" of the The Basic Law of National Education, "Educational institutions are open to anyone regardless of language, race, gender and any discrimination of religion. It is not granted privilege to anyone, family, grup or social class." It is thus banded in our legislation to discriminate on the grounds of gender.

## **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Article 56/3 of the Constitution of the Turkish Republic, the State shall regulate central planning and functioning of the health services in order to ensure that everyone leads their lives in conditions of physical and mental health and to secure cooperation in terms of human and material resources through economy and increased productivity.

29. Has homosexuality been removed from the national classification of diseases?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

#### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

#### **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

### **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

**UNITED KINGDOM**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☒ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

The UK Government is strongly committed to advancing lesbian, gay, bisexual and transgender (LGB&T) equality and implementing Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity ('Recommendation CM/Rec (2010) 5').

Please note: paragraphs in this response that refer to the devolved nations have been directly submitted by that nation's respective executive (the Northern Ireland Executive, the Welsh Government or the Scottish Government).

The UK Government has achieved significant progress in a number of areas, such as:

- **Equal marriage.** The UK Government published its response to the public consultation on equal marriage and has now introduced legislation in Parliament. A proposal that same-sex couples should have the right to marry was debated by the Northern Ireland Assembly on 1 October 2012 but not carried.

- **Civil partnerships on religious premises.** In December 2011, the UK Government changed the law to allow same-sex couples to register their civil partnership on religious premises on a permissive basis: a step forward for both LGB equality and religious freedom. Similarly, the Scottish Government has also announced, on 25 July 2012, its intention to introduce legislation to allow same-sex marriage and the registration of religious civil partnerships following a consultation exercise in 2011.

- **Recognition of overseas same-sex partnerships.** The UK Government has updated Schedule 20 to the Civil Partnership Act 2004, which lists the overseas same-sex partnerships recognised by the UK as equivalent to UK civil partnerships. There are now 75 same-sex partnerships recognised, 50 more than when the 2004 Act was originally enacted.

- **Historic convictions for consensual gay sex.** The UK Government has delivered on its commitment to bring forward legislation to disregard consensual gay sex convictions, and those affected may now submit applications to have their criminal records amended.

- **Action plan on LGB&T equality** In March 2011, the UK Government published its first action plan to advance LGB&T equality in all areas of public policy, including workplaces, education, public services, asylum and hate crime.

- **Transgender equality.** In December 2011, the Government published the world's first transgender equality action plan which lays out real actions to address the specific challenges that trans people can face in their daily lives.

- **Sports:** The UK Government's charter on tackling homophobia and transphobia in sport, which was launched in 2011, goes from strength to strength with well over 40 of sport's National Governing Bodies, all professional football league teams and 3,700 individual sports fans signing up. The Olympic and Paralympic organising committee was one of the founding signatories, making sure that all athletes that came to London for the Olympics knew that the UK welcomes all athletes no matter what their sexual orientation or gender identity.

In the future the UK Government will continue to take the necessary steps to advance LGB&T equality. Important future actions include:

- **Equal Marriage.** The UK Government has introduced legislation to permit same-sex marriage and will work closely with interested parties, including religious organisations, to ensure the provisions built into legislation and processes are robust and meet their needs. The Scottish Government is currently undertaking a second consultation exercise, from 13 December 2012 to 20 March 2013, on the detail of the proposed legislation to introduce same sex marriage with the aim of introducing the Marriage and Civil Partnership (Scotland) Bill to the Scottish Parliament in 2013.

- **Making workplaces more LGBT-friendly.** The UK Government is publishing advice for employers on their rights and responsibilities in supporting LGB&T staff, tackling discrimination and removing the barriers to a more LGBT-friendly workplace.

- **Next steps for LGB&T equality.** The UK Government will launch a call for evidence to gauge the progress we are making and ascertain what else we need to do to improve the lives of LGB&T people in this country.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

A review will be carried out in 2015 to review the impact of the Equality Act 2010. A comprehensive review of discrimination law was carried out between 2005 and 2007 which led to the Equality Act 2010.

Are there measures in place to redress any such discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Equality Act 2010, whose main provisions came into force in October 2010, replaced previous anti-discrimination laws with a single Act to make the law simpler and to remove inconsistencies. The Act makes it unlawful to subject a person to direct discrimination, indirect discrimination, harassment, and victimisation where this is related to specific protected characteristics which include sexual orientation or gender reassignment. The Act applies to the workplace, when providing goods, facilities and services, when exercising public functions, in the disposal and

management of premises, in education and by associations (such as private clubs). The Act provides a legal remedy for people who are found to have been discriminated against by an employment tribunal or court.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

Please see response to section 2, question 2 above for further information.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

As part of the post-implementation review of the Equality Act the UK Government Equalities Office will use existing sources of evidence (such as Employment Tribunal statistics) to assess levels of discrimination. Some small-scale follow-up work may also be undertaken on this issue.

As part of the Public Sector Equality Duty public bodies are required to publish relevant, proportionate information showing compliance with the Equality Duty; this includes information about the equality data which underpin those decisions. It is up to each public body to decide for itself what information it publishes to show its compliance with the Equality Duty. This will vary greatly, depending on the size of the body, the range of functions it performs, and the extent to which those functions could affect equality. There is no prescribed format for this.

The Welsh Government was the first part of Great Britain to regulate to create specific duties under the Equality Act 2010. The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 were approved by the National Assembly for Wales and came into force on 6 April 2011. Public sector bodies in Wales, including the Welsh Government, have a statutory duty to publish Equality Objectives by 2 April 2012 and to have developed a Strategic Equality Plan as soon as possible thereafter. There is a statutory obligation to carry out Equality Impact Assessments on all policies, processes and practices. Engagement, involvement and consultation with stakeholders is a fundamental requirement of the duties, and the regulations require engagement with people with protected characteristics when considering and designing Equality Objectives.



The Equality Act 2010 does not apply in Northern Ireland. Legislation that addresses human rights, employment rights and equality for people with a minority sexual orientation includes: section 75 of the Northern Ireland Act 1998; Human Rights Act 1998; The Employment (Northern Ireland) Order 2002; Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003; the Criminal Justice (Northern Ireland) Order 2004; the Civil Partnership Act 2004; and the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The UK Government and the Equality and Human Rights Commission (EHRC) have published guidance on the application of the Equality Act 2010 and process for complaints under the Act. Where someone thinks they may have been discriminated against in the workplace, the government-funded Advisory, Conciliation and Arbitration Service (Acas) provides authoritative and impartial advice free to employees or employers via their website ([www.acas.org.uk](http://www.acas.org.uk)) and telephone helpline.

Where a person thinks they may have been discriminated against as a consumer of goods and services, or any other area (other than employment) covered by the Equality Act 2010 they can contact the government-funded Equality Advisory and Support Service which provides bespoke advice and in-depth support to individuals with discrimination problems. They can do this by visiting their website at <http://www.equalityadvisoryservice.com/> or by telephone. Alternatively they can contact their local Citizens Advice Bureau or law centre.

The Equality Commission for Northern Ireland can assist individuals in the preparation and presentation of their complaints under the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

N/A

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The UK Government disseminated the Recommendation to its large stakeholder database (which includes LGBT organisations and the voluntary sector) when it was published. Its implementation continues to form part of discussions with these groups. In March 2012 the UK Government hosted

a landmark conference on the implementation of the Recommendation as part of its Chairmanship of the Council of Europe, which many other Council of Europe member States attended.

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The United Kingdom has in place one of the strongest legislative frameworks in the world to protect communities from hostility, violence and bigotry and this includes specific offences and enhanced sentences for any crime which is motivated by hostility on the grounds of sexual orientation or gender identity.

The cross-Government hate crime action plan '*Challenge it, Report it, Stop it*' was published in March 2012. The plan brings together the work of a wide range of departments and agencies to prevent hate crime happening in the first place, increase reporting and victims' access to support, and improve the operational response to hate crimes.

The UK Government is committed to a criminal justice system that is joined-up in its approach to hate crime, and where ambitions are matched by practice on the ground. The action plan sets out how the UK Government and its agencies will work to better identify and manage cases, and deal with offenders, for example by:

- Hosting a national ACPO (Association of Chief Police Officers) Hate Crime Conference to bring together hate crime, anti-social behaviour and 'safeguarding' leads to find common approaches to benefit all victims of hate crime.

- Publishing a new hate crime manual for police officers which offers guidance for all police organisations and partners on handling cases of hate crime;

- Updating training for all police roles involved in tackling hate crime;

- Publishing risk assessment tools that allow police and other call handlers to identify victims of hate crime earlier in the reporting process; and

- Working with transgender communities to develop guidance for prosecutors and other support.

The Welsh Government is developing an All Wales Hate Crime Framework for Action across Wales, which will be consulted upon during Summer 2013. This will be an action-based framework which is built upon current evidence and is being delivered and taken forward through a cross Government Task and Finish Group, which consists of key policy leads and leading statutory and voluntary organisations across Wales.

The development of the framework also includes input from expert stakeholder groups across the protected characteristics of race, religion, disability, sexual orientation and gender identity. This has included working with Stonewall Cymru, Unique Cymru and LGBT Excellence Centre across Wales to form working groups and to feed in views to the development of the framework. There have recently been 167 responses to an on-line questionnaire through the Welsh Government to feed in views to the Framework development in order to tackle three key areas to prevent, to report and to respond to hate crime.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

'Hate crime' is not defined in a single UK law; however criminal justice agencies, including the police have adopted a common working definition to support them in monitoring hate crime cases:

*'Hate crimes and incidents are taken to mean any crime or incident where the perpetrator's hostility or prejudice against an identifiable group of people is a factor in determining who is victimised'*. The full definition can be viewed at [http://www.report-it.org.uk/hate\\_crime\\_data1](http://www.report-it.org.uk/hate_crime_data1).

The police are required to record criminal offences as hate crimes if the victim perceives the crime to have been targeted at them because of hostility towards their sexual orientation or gender identity.

Under section 146 of the Criminal Justice Act 2003, courts have an obligation to increase the sentence for any offence where it is proved that the offender demonstrated, or was motivated by, hostility based on the grounds of sexual orientation and transgender identity [as well as similar provisions for hostility on the grounds of a person's race, religion and disability].

One example of the application of the enhanced sentencing was in the killing of Ian Baynham, an openly gay man who was attacked in a street in London in 2009 and later died of his injuries.

One of the attackers, who was convicted of his manslaughter, had her sentence enhanced by Judge Richard Hawkins who increased the sentence from six years to seven because of the 'homophobic' nature of her actions. The sentence enhancement was welcomed by gay rights advocates, Stonewall who stated that it sent out *'a powerful deterrent message... that violence based on homophobic hate is as abhorrent as that based on racist hate.'*

In Scotland, the Scottish Parliament has legislated in recent times to ensure hate crimes are dealt with by the justice system equally. The Offences (Aggravation by Prejudice)(Scotland) Act 2009 came into force in March 2010. The 2009 Act does not create any new offences, but where it can be proven that an offence (this could be breach of the peace right through to murder) has been motivated by malice or ill-will based on the victim's actual or assumed sexual orientation, transgender identity or disability, the court can take that motivation into account when determining sentence. The 2009 Act ensures that it is made explicit at the point of sentence what impact the aggravation has had on the sentence. This makes clear to offenders and more widely that hate crimes will be punished accordingly. This helps prosecutors and courts to tackle hate crimes more effectively.

Similar legislation exists for Northern Ireland by way of the Criminal Justice (NI) Order 2004. The legislation provides that where an offence involves hostility based on race, religion, sexual orientation or disability, on conviction the Court must take this into account when sentencing. The Court's sentencing powers in relation to crimes of violence often connected with "hate crime" were increased. Where motivated by hatred, offences of "grievous bodily harm", "assault occasioning actual bodily harm" and "putting someone in fear of violence" had the maximum penalties increased from 5 to 7 years imprisonment; and criminal damage from 10 to 14 years. Common assault increased to two years imprisonment, a fine, or both. This "hate crime" law can be engaged when an incident is based on either *actual* or *presumed* race, religion, sexual orientation or disability; can be based both on hatred of a *group* or of an *individual*; and covers attacks on both *people* and *property*.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The UK Government is committed to increasing the reporting of hate crimes and making it easier for victims of hate crime to report what has happened to them, whether directly to the police or online through the True Vision website (a police-led resource) – or if they prefer – to another organisation that can pass on the report to the police.

The UK's focus on reporting is driven by the need to develop a better picture of the scale, severity and cause of the problem. Without that picture, the UK cannot ensure that resources are in the right place to tackle offenders, and provide victims the protection and support they need. The British Crime Survey (a national household survey) has demonstrated that many hate crimes are under-reported and the Government committed to reducing this gap in its manifesto.

The Government is working with local partnerships to increase reporting and victim's access to support by:

- Publishing police data on recorded hate crimes as National Statistics, which can be compared between local police forces.
- Identifying areas across the criminal justice system where the collection and dissemination of data could be improved, for example in the application of enhanced sentences.
- Engaging with communities affected by hate crime to raise awareness of the law of hate crime, and increase reporting.
- Supporting the work of True Vision ([www.report-it.org.uk](http://www.report-it.org.uk)) to ensure that more people are aware of the online hate crime reporting mechanism and their rights to protection, develop packages to support local delivery of services, and help provide the infrastructure for local and national voluntary sector groups to integrate into a national reporting system.
- Using True Vision to distribute information on hate crime to victims groups, including working with voluntary sector organisations to promote awareness raising materials for LGB&T, asylum, refugee and other new migrant communities.

- Working with police forces, councils and housing providers to improve handling of public calls about anti-social behaviour, to identify possible hate crime and victims at risk.

Across Scotland, all the police forces operate some form of third-party reporting. Strathclyde Police has an online hate crime reporting form which is on their internet page. This will be transferred onto the Police Service of Scotland web page on 1 April 2013, when the new single force comes into being.

There has been a positive project delivered in Wales through the '*It's No Joke*' project, launched in January 2012 by the national charity Stonewall Cymru, which has already helped a number of homophobic and transphobic hate crime victims to find the strength to move on with their lives. This has been a joint project with Victim Support through £50,000 funding from the Equality and Human Rights Commission, to specially-training a team of existing staff and volunteers to be able to provide support to victims and to increase reporting levels.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Policy guidance and training is provided within all criminal justice agencies. The Association of Chief Police Officers issued guidance on dealing with hate crime cases to police officers in 2005 ('Hate Crime Manual'). The Manual is currently being revised to make ensure it is current and up-to-date with emerging issues. It is expected that the refreshed Manual will be circulated to police forces in 2013. The Crown Prosecution Service have also issued similar guidance to prosecutors. In Scotland there is specific legislation in relation to sexual orientation hate crime, the Offences (Aggravation by Prejudice)(Scotland) Act 2009. ACPOS (Association of Chief Police Officers Scotland) also has a Diversity Manual and a Hate Crime Manual. All police officers undergo specific training in diversity awareness and hate crime.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The National Offender Management Service (NOMS) is an Executive Agency of the Ministry of Justice that commissions and provide offender management services in the community and in custody. Among the work carried out by NOMS is ensuring that all prisons have violence reduction strategies designed to promote a safe and healthy environment and foster a culture of non-violence.

Where a prisoner is found to have committed an offence against prison discipline, the procedures allow for more severe punishments to be imposed when it is found that the offence is motivated by hostility to the victim based on any of the protected characteristics in the Equality Act, including sexual orientation and gender reassignment. NOMS has worked with the charity NACRO (the largest crime reduction charity in the UK) to produce guidance on good practice for working with

LGBT prisoners. This has been issued to all prison establishments. It gives examples of good practice from across the prison estate and lists useful information and contacts relating to the care and management of LGBT prisoners.

NOMS has issued Prison Service Instruction 07/2011 on the *"Care and Management of Transsexual Prisoners"* which describes how we ensure that the needs of transsexual prisoners are met. It includes a specific requirement that *"any risks to and from a transsexual prisoner must be identified and managed appropriately, as would be the case with any other prisoner. Establishments must put in place measures to manage the risk of transphobic harassment and transphobic hate crime."* The Instruction can be found here

[http://home.hmps.noms.root/Intranet/ShowBinary?nodeId=/Repo/HQ/internal\\_communications/p/si/PSI\\_07-2011\\_The\\_care\\_and\\_management\\_of\\_transsexual\\_prisoners.doc](http://home.hmps.noms.root/Intranet/ShowBinary?nodeId=/Repo/HQ/internal_communications/p/si/PSI_07-2011_The_care_and_management_of_transsexual_prisoners.doc)

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?
- a. ☒ (relating to sexual orientation) b. ☒ (relating to transgender) c. ☐ d. ☐ e. ☐

Section 29 C (1) of the Public Order Act 1986 (as amended in 2008) makes it an offence to 'stir up hatred' against persons based on sexual orientation.

The first conviction under this offence was passed at Derby Crown Court in January 2012 when offenders were convicted for distributing material which included a statement saying that *"The death sentence is the only way this immoral crime can be erased from corrupting society and act as a deterrent for any other ill person who is remotely inclined in this bent way."*

In 2012 the Justice Secretary asked the Law Commission to examine hate crime legislation including whether there is a case to extend the above legislation to cover the grounds of disability and transgender. The Law Commission will consult and report back in 2014.

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

We have a long tradition of freedom of speech in the United Kingdom. However, the UK Government has been clear of the need to balance the right to freedom of speech with the need to prevent actions which intimidate, threaten violence or incite others to hatred and we continue to stand by this.

The Government hosts a cross-Government Hate Crime Strategy Board which brings all relevant parts of the State response together with criminal justice partners, academics and victims to coordinate activity. Members of the programme have made many presentations to academic institutions, professionals training and community events and the key messages of the importance of effective responses to hate crime have been delivered to over 18,000 individuals.

**II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

N/A

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Public Order Act 1986 makes it an offence to intentionally cause a person harassment, alarm or distress by using threatening, abusive or insulting words or behaviour, or disorderly behaviour, or by displaying any writing, sign or other visible representation which is threatening, abusive or insulting (section 4A). It is also an offence to use threatening, abusive or insulting words or behaviour, or disorderly behaviour, or to display any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress (section 5). Where such actions are motivated by racial or religious hatred, they would constitute a racially or religiously aggravated offence under Part II of the Crime Disorder Act 1998, with tougher penalties; and where such actions are motivated by other forms of prejudice – for example, against an individual's perceived disability or sexual orientation – the courts can also treat that as a general aggravating factor.

The Crime and Courts Bill currently before Parliament would remove the 'insulting' limb from section 5 but the remaining offences would continue to be available to the police.

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The UK Government will continue to engage actively with LGB&T organisations on policies that affect LGB&T people, for example the Government consultation on equal marriage and the two action plans on LGB&T.

The cross-Government Hate Crime Strategy Board (mentioned above) includes a number of national and local groups who exist to support and ensure the rights of LGB&T communities in order to introduce their views into policy decisions.

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

Peaceful protest is a vital part of a democratic society. It is a long-standing tradition in the UK that people are free to gather together and to demonstrate their view, provided that they do so within the law. There are no specific limitations or exceptions regarding such freedoms.

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Under the Human Rights Act 1998, which gives effect in domestic law to the European Convention on Human Rights, police have a positive obligation to protect individuals' right to peaceful protest. Police ensure that they have reasonable and practicable procedures in place to uphold this obligation in respect of all protestors.

Police forces in Scotland facilitate lawful peaceful protest. Local authorities decide on applications for public procession.

### **IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The UK Government has delivered on its commitment to bring forward legislation to disregard consensual gay sex convictions, and those affected may now submit applications to have their criminal records amended.



21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

The UK Government fully recognises that privacy issues can be of concern for LGB&T people. Public and private sector organisations are under strict obligations to treat information submitted in strict observance of the Data Protection Act 1998 and the Gender Recognition Act 2004 (GRA). Section 22 of the GRA provides that it is a criminal offence for a person to disclose to any other person information acquired in an official capacity about a transsexual person's application for legal recognition or, where the person is granted legal recognition, their gender history. There are some limited exceptions to section 22, for example, where the person has agreed to the disclosure or it is for the purpose of preventing or investigating a crime.

The Data Protection Act 1998 provides that personal data are treated in accordance with the data protection principles. The principles specify that personal data shall be obtained only for one or more specified and lawful purposes and that they shall be processed fairly and lawfully, and only where there is a valid condition for processing. Data referring to a person's sexual orientation or gender identity are categorised as 'sensitive personal data' for which the conditions for processing are more demanding than those for non-sensitive data. The Act also stipulates that personal data collected about individuals are necessary for the purpose they were collected and should not be kept for longer than necessary.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Gender Recognition Act 2004 enables transsexual people to obtain legal recognition of their acquired gender. Legal recognition follows from the issue of a full gender recognition certificate by the Gender Recognition Panel (a judicial body).

The Panel determines each case on an individual basis, and where an application meets the requirement of the Act it will issue a full Gender Recognition Certificate. While the Act requires applicants to have lived full-time in their acquired gender for the two years immediately preceding their application to the Panel, there is no requirement for people to have undergone any form of surgery or hormone treatment. However, where an applicant has undergone such treatment, or where such treatment has been prescribed or is planned, any medical report submitted in support of their application must include details.

The Panel is currently reviewing and updating its guidance for applicants to ensure its procedures and requirement are explained as clearly as possible to those who might wish to make applications.

In the year financial year 2011/12, of the 309 applications dealt with by the Panel, 85% were successful, 4% issued with an Interim Certificate and only 8% of applications were refused. (3% of applications were withdrawn).

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Following legal recognition a person can marry someone of the opposite legal gender to their acquired (legal) gender. However, those people who are already in an existing marriage (or civil partnership) in their birth gender at the time of their application for legal recognition to the Panel, must end that marriage or civil partnership before they can be granted full legal recognition.

Under the UK Government proposals on equal marriage (see section 1, question 1) those who change their legal gender will be able to remain in their marriage. However, this option will only apply to marriages and civil partnerships under the law of England and Wales.

The Scottish Government, as part of its proposals in the Marriage and Civil Partnerships (Scotland) Bill (as outlined in section 1), also intends to remove the requirement for transsexual people to end their marriage or civil partnership before receiving their full Gender Recognition Certificate.

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

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

N/A

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In England it is legal for lesbian, gay, bisexual and transgender people to both adopt and foster children. The Human Fertilisation and Embryology Act 2008 and the Civil Partnership Act 2004 have made it easier for lesbian couples to secure parental rights for any children they conceive through artificial insemination. These arrangements remain unchanged under the equal marriage proposals.

Legal provision governing adoption and parental responsibility in Northern Ireland is made within the Adoption (Northern Ireland) Order 1987 and the Children (Northern Ireland) Order 1995. Both Orders provide robust safeguards and provisions which place the child at the centre of the process in any decision relating to either parental responsibility or adoption. Under both Orders, those responsible for making adoption and parental responsibility decisions are required to give due regard to the welfare and best interests of the child in keeping with European conventions. The legislation is supported by guidance and operational policy and procedures to promote a high standard and consistency of practice, with a strong emphasis on the best interests of the child. There have been a number of initiatives brought forward in Northern Ireland, the aim of which is to further improve adoption practice. For example, a single Northern Ireland database containing information on all approved adopters and all children who need to be adopted has been established. The aim of the database is to facilitate better and quicker matching of children with approved adopters. In addition, it is intended to introduce new adoption and children legislation in the Northern Ireland Assembly in 2014 and modernise adoption services in Northern Ireland. By way of legislative reform, the aim is to:

- provide greater opportunities for children to experience permanence and stability;
- reduce drift and delay for young people who are unable to live at home; and
- provide better quality, consistent and responsive services for everyone affected by adoption.

Northern Ireland has both a Sexual Orientation Strategy and a Gender Equality Strategy. The Gender Equality Strategy, which spans the period 2006 to 2016, and is being implemented by way of cross-departmental gender equality action plans. The action plans illustrate how gender considerations have been mainstreamed into the business of Northern Ireland government departments. The Sexual Orientation Strategy was consulted on in 2006 and a strategic action plan was drafted to identify and tackle human rights and equality issues relating to sexual orientation. The strategy is currently being refreshed in light of a recent needs analysis study.

## **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 39 of the Equality Act 2010, taken together with other provisions in the Act, makes it unlawful for an employer to subject a person seeking work to discrimination relating to sexual orientation or gender reassignment a) in the arrangements they make for deciding to whom they offer employment; b) in the terms on which they offer employment; or by not offering a person the job. Under the Act, it is also unlawful for an employer to subject an employee to discrimination relating to sexual orientation or gender reassignment a) as regards terms of employment; b) in providing access to promotion, transfer or training opportunities, or to receiving any other benefit, facility or service; c) by dismissing the employee; or d) by subjecting them to any other detriment. Section 40(1), taken together with other provisions of the Equality Act, mean that it is unlawful for an employer to harass employees and people applying for employment.

## **VI. Education**

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

Anti-discrimination training or support and teaching aids

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Information, protection and support for pupils and students

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Objective information on sexual orientation and gender identity in school curricula ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

School equality and safety policies and action plans

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As part of the UK Government's drive to promote good behaviour in schools, we will ensure schools have access to sound and authoritative guidance, which empowers teachers to tackle bad behaviour and bullying in schools, including help to identify and tackle homophobic and transphobic bullying. The public sector Equality Duty, included in the Equality Act 2010 and which came into force on 6 April 2011, made it a statutory duty for schools to consider how to advance equality for LGB&T people. Every school must have a behaviour policy which sets out measures which aim to promote good behaviour, self-discipline and respect, and prevent all forms of bullying amongst pupils. Schools will be held accountable for their effectiveness in managing pupil behaviour and tackling bullying through the new Ofsted (the Government education inspectorate) inspection regime - behaviour and safety being one of the four judgement areas.

The Government has revised and republished its advice to schools on preventing and tackling bullying (May 2012). The revised advice summarises legal obligations and powers schools have to tackle bullying, outlines general principles used in the most successful schools, and signposts schools to key specialist organisations that can provide them with further help and support.

In Scotland the legislative framework provided by the Equality Act 2010 also applies and provides the framework for the prevention of, and addressing, discrimination. The Scottish Government in partnership with LGBT Youth Scotland has produced guidance to support schools in preventing and tackling homophobia and homophobic bullying. The guidance is focussed through curriculum for excellence and supports classroom discussion to raise awareness of the issues for young people in addition to supporting the development of school policies.

The Scottish Government has also supported Stonewall Scotland in the development and distribution of the FIT DVD which explores the attitudes which lead to homophobia and homophobic bullying through drama. The resource stimulates discussion and helps young people understand and challenge discriminatory behaviours, including homophobic bullying.

In addition, the Scottish Government provides funding to a partnership of the Scottish Association for Mental Health (SaMH) and LGBT Youth Scotland for the *respectme* national anti-bullying service. The service aims to build capacity in schools in tackling and dealing effectively with incidents of bullying, including homophobic bullying. The service provides advice, information and training to those working with children and young people in developing policies and strategies and also dealing with those involved in bullying behaviours.

This work is delivered in the context of our national approach to promoting positive behaviour and relationships, which promotes understanding of emotions and wellbeing and restorative approaches to resolving concerns.

The Health and Wellbeing outcomes of Curriculum for Excellence includes outcomes on relationships, sexual health and parenthood, including understanding the wide range of friendships and relationships that exist. However, the multi-disciplinary approach to learning, through Curriculum for Excellence, means that LGBT issues can be raised in a wide range of curricular areas.

The Welsh Government guidance circular 'Sex and relationships education in schools' 19/2010 provides definitive advice to schools about the teaching of all aspects of relationships and specific sexual health and well-being issues such as sexual orientation. Where sex education is provided, head teachers and governing bodies must have regard to Welsh Government guidance.

In terms of dealing with sexual orientation, to ensure the needs of the learner are met, schools should encourage open discussion, promote inclusion and challenge inequalities. Schools should offer support and guidance to all learners, particularly lesbian, gay, bisexual and transgender learners who feel uncertain about expressing their sexuality. However, the delivery of the curriculum is delegated to schools and they decide on the precise content of sex and relationships education (SRE) programmes and the strategies for learning adopted.

Head teachers and governors are also responsible for making decisions about resources. They must have regard to the advice given in the Welsh Government's guidance circular and ensure that the resources are inclusive, appropriate for the age and cultural background of pupils. There are no legal barriers to discussing issues around sexual orientation in the classroom and responding to, and preventing, homophobic bullying.

In Northern Ireland, section 75 of the Northern Ireland Act 1998 provides for the promotion of equality of opportunity between a number of groupings, including people of different sexual orientation.

Schools in Northern Ireland are required to have discipline policies and to include within them measures to address bullying. The Department of Education (DE) has issued guidance and in recent years the local Anti-bullying Forum, which DE funds, has produced guidance for schools around different types of bullying. Most recently a 'tool kit' has been issued and the Education and Library Boards are providing support training.

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The National Health Service (NHS) Equality Delivery System (EDS) was published in December 2011 and the team worked to ensure the impact of EDS on trans people is monitored as far as possible. Whilst take up of the EDS is not mandatory, it is hoped further good practice examples will emerge over time. An evaluation of EDS was published in November 2012 and included the following examples:

- South East Coast Ambulance Service NHS Trust has entered into formal partnership arrangements with organisations that represent Gypsies & Travellers, people with learning disabilities and general disabilities to ensure they are properly considering the needs of people in those groups. They plan to enter into a similar arrangement with a transgender organisation as they have identified a gap in their engagement with this group.

- The Royal Free Hampstead NHS Trust engaged transgender people through creating a safe, open forum where transgender people and staff could discuss issues around access to, and the quality of general care in the hospital. The group met regularly, set their own pace, their own agenda, shared their stories and developed key pieces of work.

- NHS Nottinghamshire developed a successful initiative to improve the engagement of Lesbian, Gay and Bisexual employees, patients and their families. LGB community groups were consulted on the priorities of their work and were represented in the project steering group. This enabled feedback to the community on project activity and achievements.

NHS Scotland works to implement the Scottish Public Sector Duties in order to advance equality and eliminate discrimination in the NHS. To this end, NHS Health Scotland works with NHS Boards to advance and mainstream equality in access to and outcomes from NHS services for all. For example, the Person-Centred Enquiry project aims to establish an understanding and sensitivity in frontline staff to different needs for equal access. Another example of a system-wide, whole population approach is Health Inequalities Impact Assessment (HIIA) which builds health inequalities and human rights onto a basic Equality Impact Assessment framework. A current programme of work aims to strengthen implementation of HIIA through providing better access to data and information about protected characteristics and other equality priorities. The focus at present is on mainstreaming equality measures although particular work is targeted when warranted.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

The Scottish Government issued guidance on a gender reassignment protocol CEL 26 (2012) in July 2012. The protocol incorporates recommendations from the 7th edition of The World Professional Association for Transgender Health (WPATH) Standards of Care 2011. Health Boards were asked to work to ensure that services are provided in keeping with the protocol. Multi-disciplinary collaboration should ensure equity of access and clinical effectiveness for all patients accessing the gender reassignment procedures.

The Scottish Government are currently in the process of undertaking an Audit of the progress made by NHS Boards in implementing the gender reassignment protocol. This will not only include an audit of the Boards implementation plans but will also include patient experience feedback.

### **VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The regulatory standards covering all registered providers of housing, require landlords' governance arrangements and approaches to management and service delivery to incorporate and demonstrate principles of equality and diversity, and apply them in a way that is relevant to their organisation's purpose and context. They also require landlords to demonstrate that they understand the different needs of their tenants, including in relation to the equality strands and tenants with additional support needs.

The Chartered Institute of Housing, the body representing housing professionals, has published and promoted good practice guidance which looks at how housing providers can deliver equal and accessible housing and homelessness services to lesbian, gay, bisexual and transgender. The guidance, which includes good practice examples, should help housing providers across the UK to recognise LGBT issues in relation to housing provision and to plan and provide appropriate services that match the differing needs and preferences of diverse customers. It also includes a section on initiatives to tackle hate incidents.

In Scotland, social landlords (generally local authorities and housing associations) are required by section 106 of the Housing (Scotland) Act 2001 to encourage equal opportunities and provide services in a way that promotes equality as well as the observance of equal opportunity requirements. These run alongside their requirements under the Equality Act 2010. To help Scottish social landlords understand their legislative requirements and the flexibilities they have in developing their allocations policies and

procedures, the Scottish Government published a practice guide to the allocation of social housing in March 2011. The guide directs landlords to two reports by Stonewall/Scottish Housing Regulator:

- Understanding the housing needs and homeless experiences of Lesbian, Gay, Bisexual and Transgender people in Scotland: a guide for social housing providers (published 2009); and
- Recognising and Addressing Homophobic and Transphobic Harassment: A Guide for Social Housing Providers and Homelessness Services (published 2009).

The Welsh Government has funded the development of 'Tackling Hate Crime Incidents – a Toolkit for Social Landlords in Wales' which was made available to all social landlords to enable them to develop a common approach to tackling hate incidents based on best practice. A study has been commissioned to understand how the toolkit has been used and to inform its use in future.

The Welsh Government's new Regulatory Framework for Housing Associations Registered in Wales sets out ten 'delivery outcomes' (standards of performance) that associations need to meet in relation to governance, financial management and landlord services. The outcomes relating to governance and landlord services include demonstrations that activities and services reflect the diversity of communities where associations operate, are free from discrimination and promote equality of opportunity.

The Department for Social Development has issued guidance to the Northern Ireland Housing Executive on dealing with anti-social behaviour which makes it clear that harassment connected with a person's perceived sexual orientation or gender identity is a hate crime and should be treated as grounds for possession of a secure tenancy of social housing.

Social housing in Northern Ireland is allocated via the Housing Selection Scheme under which points are awarded strictly on the basis of need. Intimidation points can be awarded under the Scheme where an applicant has been made homeless as a result of an attack motivated by hostility because of the applicant's sexual orientation.

Private landlords in Northern Ireland must follow a formal legal process in order to recover possession of their properties. Harassment of tenants and illegal eviction are offences under the Rent (Northern Ireland) Order 1978 and the Private Tenancies (Northern Ireland) Order 2006. The Department has published *Protection Against Harassment and Illegal Eviction- a Guide for Private Landlords and Tenants in Northern Ireland* which advises that abusive behaviour which is sexually motivated may be treated as illegal eviction.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above response. Additionally, statutory guidance for local housing authorities says that in the course of conducting a homelessness review authorities should consider the activities of all the various agencies and organisations, across all sectors, which are providing, or contributing to the provision of accommodation, support or relevant services in the District. This list includes lesbian, gay, bisexual and transgender organisations.



The Scottish homelessness legislation does not discriminate on grounds of sexual orientation or gender identity. The legislation ensures that all unintentionally homeless households are entitled to settled accommodation.

Northern Ireland's homelessness legislation does not discriminate on the grounds of sexual orientation or gender identity. The legislation ensures that accommodation is made available for all eligible persons who are unintentionally homeless and in priority need.

### **IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The UK Government's charter on tackling homophobia and transphobia in sport, which was launched in 2011, goes from strength to strength with well over 40 of sport's National Governing Bodies, all professional football league teams and 3,700 individual sports fans signing up. The Olympic and Paralympic organising committee, was one of the founding signatories, making sure that all athletes that came to London for the Olympics knew that the UK welcomes all athletes no matter what their sexual orientation or gender identity.

The Organising Committee for the Glasgow 2014 Commonwealth Games is engaging with both local and national LGBT organisations and networks to help promote Glasgow 2014 as the most inclusive Commonwealth Games yet.

Sport Wales in partnership with Stonewall Cymru launched research findings into Understanding Lesbian, Gay and Bisexual Participation in Sport on 6 December 2012. The report provided a glimpse into how LGB people living in Wales experience and view sport. The findings examined several key areas of the sport experience: current participation levels; what it is like to take part in club sports or team sports; school sport; stereotypes in sport; types of discrimination experienced by LGB individuals in sport; and LGB visibility in sport. This was also accompanied by a blog on the same subject and included participation from predominate Welsh athletes. The report contains a number of findings and concludes with recommendations for Governing Bodies, Clubs and Schools, as well as a recommendation for the Welsh Government: to develop a Sports Charter for Wales and encourage organisations to display their commitment to furthering equality.

The 29th January 2013 saw the first meeting of the LGBT Sport Network taking place. The meeting was attended by high profile Welsh Sporting Organisations, Supporters Trusts, Prison Services and individuals who wish to support work to tackle homophobia in Sport. The Network will identify areas of work that can make a fundamental difference to participation levels from community and grass root levels through to elite performance. The group will be supported through the first 12-18 months by Sport Wales, Stonewall and the Football Association of Wales, after which the group will become its own entity, with similar networks being established throughout Wales.

**X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Nobody at risk of persecution in their country of origin will be expected to return there. Following the UK Government's commitment to ending the removal of those at risk due to their sexual orientation, the UK Border Agency produced dedicated guidance on this issue to ensure that asylum claims brought on these grounds are handled sensitively and appropriately, and it backed this up by delivering training to all asylum case owners on handling sexuality based claims. The guidance and training were produced in consultation with corporate partners, including Stonewall, the UK Lesbian and Gay Immigration Group, and the UNHCR.

In addition to the scrutiny of the courts the UK Border Agency has stringent quality assurance processes in place to ensure that decisions are well reasoned and supported by evidence. Asylum applicants who are found to be in need of protection will be granted asylum.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

See above response.

**XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Equality and Human Rights Commission (EHRC) was established by the Equality Act 2006 and started operating in October 2007. The EHRC has a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The EHRC has a suite of powers contained within its legal remit which allows it to make interventions such as:

- conducting inquiries on equality and human rights matters
- conducting investigations [relating to breaches equality law]
- entering into formal agreements [in relation to breaches of equality law]
- seeking injunctions [in relation to breaches of equality law]
- providing legal assistance to fund strategic cases in relation to discrimination on any one (or more) of the grounds mentioned and to bring forward cases in its own name in relation to equality and Human Rights issues
- intervening as an interested party in the Courts cases relating to equality and human rights
- applying for a Judicial Review; and
- conducting assessments of processes and practices and if required issuing compliance notices in relation to equality law.

In addition, the EHRC monitors the UK's involvement with the following conventions:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Equality Commission for Northern Ireland works towards the elimination of discrimination and promotes equality of opportunity for people across nine different categories including sexual orientation.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

The Equality Act 2010 includes provisions which would make direct discrimination because of a combination of two protected characteristics unlawful. However, the Government has decided not to commence the dual discrimination provisions during the lifetime of this Parliament as the cost would be disproportionate to the scale of any problem that cannot already be addressed by the Act. Based on the impact assessment of the Equality Act published in April 2010 when the Act was given Royal Assent, it is estimated that this provision would cost business some £3 million each year. While these provisions remain uncommenced, business will not incur these costs.

People who experience discrimination because of a combination of protected characteristics, e.g. a black woman, a Muslim gay man, can continue to bring two or more separate claims for each characteristic.

Section 75 of the Northern Ireland Act 1998 places a duty on public authorities when carrying out their functions to have due regard to the need to promote equality of opportunity between people within nine different categories, including people with different sexual orientations.

### Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

The UK Government would suggest the Council of Europe mainstream awareness of the Recommendation and its Appendix amongst the Council of Europe Secretariat to ensure the provisions of the recommendation are taken into account in all Council of Europe activities. The UK Government also suggests periodic monitoring (see question 39) to promote and encourage member states to use the Recommendation to inform their national legislation and practice.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

The UK Government supports periodic examinations of the Recommendations implementation. Future examinations should focus upon the Recommendation as whole rather than specific issues. However, if a specific issue were to be focussed on our preference would be for hate crime. The UK Government believes that everyone should be free to live their lives without fear of abuse of attack on the basis of who they are. All crime is wrong, but crime that is motivated by hatred of the victim is particularly corrosive. Tackling hate crime matters because of the damage it causes to victims, their families, but also because of the negative impact it has on communities in relation to cohesion and integration. Making progress on this issue will lay a solid foundation on which other elements of the Recommendations can progress.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

We do not consider it necessary to revise any aspects of the Recommendation and its Appendix. The text of the Recommendation has been agreed through careful negotiation therefore the UK would not welcome any revision to its current, carefully negotiated, balance.

