

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

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Prague, Czech Republic
February 2010

Contents

Executive summary.....	3
A. Implementation of Employment Directive 2000/78/EC	7
B. Freedom of movement	13
C. Asylum and subsidiary protection	16
D. Family reunification.....	20
E. Freedom of assembly	22
F. Criminal law.....	24
G. Transgender issues	28
H. Miscellaneous	31
I. Good practices	33
Annex 1 – Case law	36
Annex 2 – Statistics.....	40

Executive summary

Implementation of Employment Directive 2000/78/EC

A general antidiscrimination legislation, Antidiscrimination Act, was adopted in 2009. The law is created as a general antidiscrimination instrument of the national legislation. It provides a necessary definition of the relevant terms found in the existing national legislation and ensures the remedies against discrimination (e.g. as provided in the Labour Code). It also frames the whole area of prohibition of discrimination. The Antidiscrimination Act transposes the relevant EU acquis into the Czech law. It transposes also the Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment on grounds of racial and ethnic origin and Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation.

There is also (as *lex specialis* to Antidiscrimination Act) prohibition of discrimination in labour law and employment. The Employment Act [Zákon o zaměstnanosti] defines the basic terms (direct and indirect discrimination), establishes certain remedies and explicitly prohibits both direct and indirect discrimination on the basis of sexual orientation. The Labour Code [Zákoník práce] is not detailed, but still prohibits discrimination in labour relations; employers are inter alia obliged to ensure equal treatment with all employees in terms of working conditions, remuneration for work and the provision of other financial benefits vocational training and opportunities for functional or other promotion in employment. The Employment Directive 2000/78/EC is also transposed in the Czech legal system with regard to the other areas mentioned in the Racial Equality Directive 2000/43/EC.

¹⁹ Czech Republic/Zákon č. 262/2006 Sb., zákoník práce (Act No. 262/2006 Coll., Labour Code), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=262%2F2006&number2=&name=&text= (Czech only) (opened on January 15, 2010).

Freedom of movement

As regards freedom of movement, there is no discrimination between heterosexual and lesbian, gay, bisexual and transgender (LGBT) people (EU citizens or third country nationals). The term 'spouse' as it is used in the Aliens' Act [Zákon o pobytu cizinců] also covers people who are registered partners within the meaning of the Act on Registered Partnership [Zákon o registrovaném partnerství], i.e. same-sex partners (the law provides that the sections of the Aliens' Act which apply to 'marriage', 'spouse', 'child' also apply to people who have contracted a registered partnership). There is no obstacle in the issuing of visas or residence permits to registered partners whose registered partnership was concluded (validly) abroad (no procedure is stipulated for the recognition of registered partnerships, the Aliens' Act is applied to partners in a registered partnership and a marriage in the same way).

Asylum and subsidiary protection

Czech law provides for persecution on the grounds of sexual orientation as a ground for obtaining refugee status. The definition of refugee also covers persecution by non-state agents, combined with *de facto* state unwillingness, indifference or inability to protect an individual from non-state persecution.

If an individual seeks international protection, the procedure on international protection is always followed (regardless of the illegality of his/her stay in the country etc.; the application is inadmissible if the individual is an EU citizen or where provisions of the Dublin Regulation apply). If there are reasons for granting protection pursuant to the Asylum Act [Azylový zákon] then protection is granted (in the form of either asylum or subsidiary protection).

Czech law provides for the possibility of family reunification for the spouses and registered partners of individuals granted asylum or subsidiary protection (i.e. includes registered same-sex partners)

Family reunification

Family reunification is ensured for same-sex registered partners and spouses of third country nationals (where both partners/spouses are third country nationals). The registered partnership is recognised by the Aliens' Act only if there is a certificate testifying to the registered partnership. Partners who live in a stable and durable relationship without registering it are not recognised as partners for the purpose of the Aliens' Act. The right to family reunification is connected to the long-term residence permit (national temporary status) or higher status (national permanent residence status) of the sponsor. The law

stipulates the period necessary for the exercise of the right to family reunification as being 15 months from the beginning of the stay in the country. Partners (same-sex or different sex) who live in a stable and durable relationship without registering it or marrying would nevertheless most probably be granted a different type of visa pursuant to the provisions of the Aliens' Act (which allows for a visa for 'another reason').

Freedom of assembly

Freedom of assembly is guaranteed for all people irrespective of their sexual orientation. Homophobic demonstrations may be banned by law.

Hate speech and criminal law

There is no crime of hate speech as such in the Criminal Code [Trestní zákon] of the Czech Republic. In contrast to crimes committed on the grounds of race, ethnic group, nationality, political opinion, religion, etc., the Criminal Code does not impose higher punishment for crimes committed for homophobic motives, which are not an aggravating circumstance. There are several crimes which are highly relevant for the protection of LGBT minority.

Transgender issues

The Antidiscrimination Act covers the issue of discrimination in transgender issues. It explicitly stipulates that discrimination for the reason of gender also includes discrimination for the reason of gender identification. Also, generally speaking, if there is a situation which may not be dealt with by the Antidiscrimination Act, but is solved by another law, then the discrimination of transgender people may be dealt with as discrimination on the grounds of gender, i.e. the prohibition of discrimination against trans people (especially transsexuals) may be covered by the prohibition of discrimination on the ground of 'gender' in the relevant laws.

The law provides for the possibility of sex change. Surgery is performed on transsexuals at the request of the individual concerned, following approval by a commission. The activity of these commissions is not regulated by law, or even by any standards. There is no possibility of appeal against the decision of the commission.

Miscellaneous

Civic society, mainly NGOs, is active and there are also a number of websites which provide information by and to the LGBT community.

The issue of adoption of children by gay and lesbians couples is now being discussed. The issue of discrimination of gay and lesbian couples in the issue of adoption of children was raised by the Committee for Sexual Minorities of the Government Council for Human Rights in 2009 in connection with the judgment of European Court of Human Rights *E.B. v France* and stated that the Czech Act on Registered Partnership is now in its part which prohibits the adoption of children discriminatory for the reason of sexual orientation, The Government Council for Human Rights then called on the Minister for Human Rights to change the respective law.

An interesting judgment of Supreme Administrative Court was adopted on February 17, 2010. The Court dissolved an extremist right wing party *Dělnická strana* [Worker's Party], which was inter alia homophobic.

Good practices

A Committee for Sexual Minorities (Výbor pro sexuální menšiny) was established as a part of Government Council for Human Rights in 2009. The Committee deals with the issues relevant for the rights of LGBT persons and continues the work of the Working Group on the Issue of Sexual Minorities.

The Working Group on the Issue of Sexual Minorities [Pracovní skupina pro otázky sexuálních menšin] which was established by the Minister of Human Rights and Minorities [Ministryně pro lidská práva a národnostní menšiny] on the occasion of the European Year of Equal Opportunities made a detailed analysis of the situation of lesbian, gay, bisexual and transgender minorities in the Czech Republic. The report gives recommendations which are structured according to the relevant laws and may be used easily by politicians.

Czech legislation on freedom of movement and family reunification provides for full equality of treatment of LGBT and other people.

Information regarding laws similar or comparable to those in Lithuania

There are no laws similar to those in Lithuania.

A. Implementation of Employment Directive 2000/78/EC

The Employment Directive 2000/78/EC was transposed into the Czech legislation by several laws, mainly the Labour Code [Zákoník práce],⁹ Employment Act [Zákon o zaměstnanosti]¹⁰ and the Antidiscrimination Act [Antidiskriminační zákon].¹¹

A general antidiscrimination legislation, Antidiscrimination Act, was adopted in 2009. The Chamber of Deputies (lower chamber) of the Czech Parliament outvoted a presidential veto of the bill on its session on June 17, 2009. The law was published under No. 198/2009 Coll.¹² The adoption of this act was connected to lively debates since it was submitted to the Parliament in 2007; one of the topics which were discussed was possible favouritism of one group of people against another (objections against the use of affirmative action). The law is created as a general antidiscrimination instrument of the national legislation. The Act stipulates that the discriminatory conduct may be done also by direct conduct or omission of conduct for the reason of sexual orientation. It provides a necessary definition of the relevant terms found in the existing national legislation and ensures the remedies against discrimination (e.g. as provided in the Labour Code). It also frames the whole area of prohibition of discrimination. The Antidiscrimination Act transposes the relevant EU acquis into the Czech law. It transposes also the Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment on grounds of racial and ethnic origin and Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation.

The Antidiscrimination Act bans discrimination in: (a) right on employment and access to employment, (b) access to occupation or self-employment, (c) in

¹⁰ Czech Republic/Zákon č. 435/2004 Sb., o zaměstnanosti (Act No. 435/2004 Coll., Employment Act), available at

http://portal.gov.cz/wps/portal/_s.155/701?number1=435%2F2004&number2=&name=&text= (Czech only) (opened on January 15, 2010).

¹¹ Czech Republic/Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon) [Act No. 198/2009 Coll, on equal treatment and on legal means for protection against discrimination and on change of certain acts (Antidiscrimination Act)], available at

http://portal.gov.cz/wps/portal/_s.155/701?number1=198%2F2009&number2=&name=&text= (in Czech only, accessed on January 15, 2010).

¹² Czech Republic/Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon) [Act No. 198/2009 Coll, on equal treatment and on legal means for protection against discrimination and on change of certain acts (Antidiscrimination Act)], available at

http://portal.gov.cz/wps/portal/_s.155/701?number1=198%2F2009&number2=&name=&text= (in Czech only, accessed on January 15, 2010).

employment, public service or other dependent activity including remuneration, (d) membership of, and involvement in, an organisation of workers or employers, including the benefits provided for by such organisations, (e) membership of, and involvement in, an organization whose members carry on a particular profession, including the benefits provided for by such organizations, (f) state social security, (g) granting and providing of social protection on the basis of social protection schemes, (h) access to health care, (i) access to education, (k) access to goods and services, including housing. The prohibition of discrimination for the reason of sexual orientation under the new Antidiscrimination Act applies to all areas mentioned above.

A general possibility to seek a remedy against discrimination is now ensured by the provisions of the Antidiscrimination Act. It provides for special legal consequences of discriminatory conduct (a person may request suspension of the discriminatory conduct or may ask an appropriate compensation).

The prohibition of discrimination in labour and employment law is also ensured by the Labour Code and Employment Act and is quite detailed. The basic provisions are stipulated by a new Labour Code which was adopted in 2006. According to the provisions of the Labour Code, employers are obliged to ensure equal treatment for all employees regarding working conditions, remuneration for work and the provision of other financial benefits vocational training and opportunities for functional or other promotion in employment (Sec. 16 (1) Labour Code). The Code explicitly prohibits discrimination (any discrimination in labour relations is prohibited, Sec. 16 (2) Labour Code) and stipulates that the relevant terms, such as direct and indirect discrimination, victimisation, inciting discrimination, harassment or sexual harassment, are defined by a special law, the Anti-discrimination Act. The Labour Code also permits reverse discrimination under the condition that the reverse discrimination is aimed at compensation of disadvantage of persons (as it is defined in the Antidiscrimination Act; Sec. 16 (3) Labour Code). Legal remedies against discrimination in labour relations are defined by the Antidiscrimination Act.

Very detailed provision on non-discrimination can also be found in the Employment Act. Sec. 4 stipulates an obligation to treat individuals exercising the right of employment equally, it prohibits both direct and indirect discrimination on the grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, language, health, age, religion, matrimony or marital status or obligations to a family, membership of political parties or movements, trade unions or unions of employers. The Employment Act defines direct and indirect discrimination and also stipulates what the person who was discriminated against may claim. It also defines the relevant terms such as direct or indirect discrimination, harassment and also stipulates when the conduct will not be counted as discrimination (e.g. reverse discrimination under the conditions stipulated by the law). Sec. 12 of the Employment Act prohibits the

employer from asking employees for information on *inter alia* sexual orientation.

There are several laws which stipulate the prohibition of discrimination, e.g. the Consumer Protection Act [Zákon o ochraně spotřebitele],¹³ which prohibits discrimination as such, but does not list the grounds for discrimination, the Education Act [Školský zákon],¹⁴ which prohibits discrimination on a number of grounds, but does not include sexual orientation, The Act on Professional Soldiers [Zákon o vojácích z povolání]¹⁵, the Act on the Service Relationship of Members of the Security Corps [Zákon o služebním poměru bezpečnostních sborů]¹⁶ and the Act on the Service of Public Servants [Služební zákon]¹⁷ explicitly prohibit discrimination *inter alia* on the grounds of sexual orientation. The issues which are covered by those laws are now also covered by the above mentioned Antidiscrimination Act which gives the person who was discriminated against also the possibility to seek a remedy against the discriminatory treatment.

There is a shift in the burden of proof in civil cases where a party alleges discrimination on the grounds of sexual orientation (Sec. 133a (1) of the Civil Procedure Code [Občanský soudní řád].¹⁸ The provision was reformulated by the Antidiscrimination Act. Even though the intent remains the same, the wording is different. The idea that if a person declares that he/she was directly or indirectly discriminated is considered as proved unless proven otherwise remained in this provision, only with different wording: the alleged perpetrator of such discrimination is obliged to prove that he/she did not act in a discriminatory manner. The burden of proof in the cases on the grounds sexual

¹³ Czech Republic/Zák. č. 634/1992 Sb., o ochraně spotřebitele (Act No. 634/1992 Coll., Consumer Protection Act (Sec. 6), available on http://portal.gov.cz/wps/portal/_s.155/701?number1=634%2F1992&number2=&name=&text= (Czech only) (opened at January 15, 2010).

¹⁴ Czech Republic/Zák. č. 561/2004 Sb., školský zákon (Act No. 561/2004 Coll., Education Act (Sec. 2), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=561%2F2004&number2=&name=&text= (Czech only) (opened on January 15, 2010)

¹⁵ Czech Republic/Zák. č. 221/1999 Sb., o vojácích z povolání (Act No. 221/1999 Coll., Act on Professional Soldiers) (Sec. 2), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=221%2F1999&number2=&name=&text= (Czech only) (opened on January 15, 2010).

¹⁶ Czech Republic/Zák. č. 361/2003 Sb., o služebním poměru bezpečnostních sborů (Act no. 361/2003 Coll., Act on Service Relationships of Members of the Service Corps) (Sec. 16), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=361%2F2003&number2=&name=&text= (Czech only) (opened on January 15, 2010).

¹⁷ Czech Republic/Zák. č. 218/2002 Sb., Služební zákon (Act no. 218/2002 Coll., Act on Service of Public Servants) (Sec. 80), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=218%2F2002&number2=&name=&text= (Czech only) (opened on January 15, 2010).

¹⁸ Czech Republic/Zákon č. 99/1963 Sb., Občanský soudní řád (Act No. 99/1963 Coll., Civil Procedural Code), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=&number2=&name=ob%C4%8Dansk%C3%BD+soudn%C3%AD+%C5%99%C3%A1d&text= (Czech only) (opened on January 15, 2010).

orientation is stipulated for the area of direct or indirect discrimination in the labour relations, access to employment, to self-employment or to occupation, membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession. The shifting of the burden of proof was challenged before the Constitutional Court [Ústavní soud] as a principle which contravenes the principle of equality of the parties. The finding of the Constitutional Court was published under No. 419/2006 Coll., the court stated that the principle of reversing the burden of proof does not contravene the principle of equality of the parties, because the unequal position of the parties is objectively and reasonably justified.¹⁹ Even if the old wording of the provision was challenged, the findings are still relevant.

A person who claims that he/she was discriminated on the grounds of (*inter alia*) his/her sexual orientation can also be represented before a court by a civil society organisation (pursuant to the provisions of the Code of Administrative Procedure, [Soudní řád správní]²⁰ Sec. 35 (4) and the Civil Procedure Code [Občanský soudní řád], Sec. 26 (3)); the civil society organisation must have the possibility of representing a person before a court stipulated in its statutes. The transposition of Art. 9 (2) of the Employment Directive is ensured by these provisions. The possibility of representing a person before a court is basically limited (only attorneys – and notaries and patent attorneys to some extent – can act without limits), so this is why the exception was stipulated explicitly. The possibility to be engaged by or to act on behalf of an individual in proceedings predating the court proceedings is not limited, therefore there was no need to stipulate that possibility explicitly. The transposition is in compliance with the Directive; there is no information available about problems with the implementation of this article.

The central register of civil society organisations does not include the area of specialisation of the organisation and it is therefore not possible to give the number of organisations which deal with the issue of discrimination. There is no need for authorisation (e.g. from the state) in order to act on behalf of an individual, the only requirement is the explicit establishment in the organisation's statutes of the possibility to act in the matter of discrimination. There are at least two organisations which can act in the matter of discrimination on grounds of sexual orientation.

The available statistics do not contain many cases of discrimination in the labour market on grounds of sexual orientation. Most of the statistical data are also not available publicly; the author of the report submitted a request for

¹⁹ See also

http://www.vlada.cz/assets/cs/rvk/rlp/dokumenty/zpravy/Report_on_the_State_of_Human_Rights_in_the_CZ_in_2006_EN.pdf (opened on February 19, 2008)..

²⁰ Czech Republic/Zákon č. 150/2002 Sb., Soudní řád správní (Act. No. 150/2002 Coll., Code of Administrative Procedure), available on http://portal.gov.cz/wps/portal/_s.155/701?number1=150%2F2002&number2=&name=&text= (Czech only) (opened on January 15, 2010).

statistics to the Office of the Public Defender of Rights [Kancelář Veřejného ochránce práv]. According to the information provided by the Office of the Public Defender of Rights (via email on February 14, 2010) there were no cases of discrimination for the reason of sexual orientation held by the Office. The Ministry does not keep statistics. There was one case of discrimination on the grounds of sexual orientation (beginning of 2007). The Report on the State of Human Rights in the Czech Republic in 2006 reports a case of discrimination at work on the grounds of sexual orientation: ‘In 2006, Czech courts dealt with the first case of discrimination on the grounds of sexual orientation. The plaintiff, Mr. L.S., alleged that he had been discriminated against due to his sexual orientation when he was not hired as a masseur. The court upheld his case in January 2007 and ordered the defendant to issue an apology and to pay CZK 70,000 in damages (approx. 2,700 Euro).’²¹

The situation can be illustrated by the findings of research conducted by Ivo Procházka in 2003: *Discrimination against lesbian women, gay men and bisexuals in the Czech Republic*.²² Of 267 respondents, 31 (12 per cent of the sample) stated they were seriously discriminated in their jobs because of their sexual orientation, or they at least considered it probable. Ten respondents (four per cent of the sample) stated that they were refused a job because of their sexual orientation. Another eight (three per cent) stated it was very probable. Thirteen respondents (five per cent of the sample) claimed they were fired because of their sexual orientation. Almost one third of the respondents always hide their sexual orientation in matters relating to their employment. Another research was conducted in 2008 by Olga Pechová from Palackého University.²³ Out of 497 respondents 9 % stated that were discriminated in employment because of their sexual orientation. E.g. 4 % respondents were refused when applied for a job, the same number was bounced from the job, 5 % mentioned other discrimination in the labour relations. Pechová does not state whether the respondents lodged a complaint against the discrimination in the labour relation to a court.

²¹ Available at http://www.vlada.cz/assets/cs/rvk/rjp/dokumenty/zpravy/Report_on_the_State_of_Human_Rights_in_the_CZ_in_2006_EN.pdf (opened on February 19, 2008).

²² Available at http://gay.iniciativa.cz/download/diskriminace_en.pdf (opened on February 19, 2008).

²³ See Findings of a research *Diskriminace na základě sexuální orientace* (Discrimination for the reason of sexual orientation), available on <http://e-psycholog.eu/pdf/pechova.pdf> (Czech only) (accessed January 15, 2010).

There is no equality body or special Ombudsman against Discrimination on the grounds of Sexual Orientation. But the Public Defender of Rights , a general ombudsman, was given powers by the newly adopted Antidiscrimination Act to act in the cases of discrimination. The Office of Ombudsman was established in January 2001 by the Statute of the Public Defender of Rights [Statut kanceláře Veřejného ochránce práv]. The Statute is based on the Act on the Public Defender of Rights [Zákon o Veřejném ochránci práv].²⁹ The main role of the ombudsman is to ensure the protection of rights and legitimate interests mainly in the areas in which citizens and other entities encounter the offices of state administration. There are no direct means or mechanisms for enforcement at the Ombudsman's disposal. The Ombudsman requests that the state administration body responsible for malpractice or error to remedy the situation and ultimately passes the matter on to government if the remedy is not provided. The Ombudsman cannot change or replace the decision of the state administration body concerned, but it can instruct the supervisory bodies to apply their power to ensure remedy of the situation. The newly given powers in the area of protection against discrimination are aimed at helping to victims of discrimination if they decide to lodge a complaint against discrimination (but the Ombudsman cannot pay for the court expense, the help is of methodical character), at the possibility to conduct research, and the Ombudsman may issue recommendations. The author of the report submitted a request for statistics to the Office of the Public Defender of Rights but, according to the information provided, no cases of discrimination on grounds of sexual orientation are held by the Office (email from the Office of Ombudsman from February 24, 2010).

²⁹ Czech Republic/Zák. č. 349/1999 Sb., o Veřejném ochránci práv (Act No. 349/1999 Coll., on the Public Defender of Rights), available at <http://www.ochrance.cz/en/ombudsman/obecne.php>. (opened on January 15, 2010).

B. Freedom of movement

Directive 2004/38/EC of 29.04.2004 was transposed into Czech law mainly by the amendments to the Aliens' Act [Zákon o pobytu cizinců].³⁰ Most of the provisions of Directive 2004/38/EC were covered by Act No. 161/2006 Coll. amending the Aliens' Act and other transposing laws were adopted in 2007. The Aliens' Act focuses on the position of foreigners in general; it provides for the legal position of third country nationals and also for the legal position of EU citizens. The law is divided into sections on entry, residence and departure. One part of the law contains provisions only on the residence of EU citizens and their family members (Secs. 87a – 87aa), but their position is also reflected in other provisions of the law. The Act on Registered Partnership [Zákon o registrovaném partnerství] was adopted in 2006 and the relevant changes in the Aliens' Act were made in December 2007 (in force since January 2008).

Section 180f of the Aliens' Act provides that the norms which apply to 'marriage', 'spouse' and 'child' also apply to partners who have contracted a registered partnership. Therefore wherever the law uses the term 'marriage', 'spouse' or 'child', it applies non-discriminatorily also to registered partnerships. The registration of a partnership is restricted to same-sex partners. The registered partnership is recognised by the Aliens' Act only if there is a certificate of registered partnership. Partners who live in a stable and durable relationship without registering are not recognised as partners for the purpose of the Aliens' Act. Family reunification³¹ of registered partners is therefore possible for the spouse, children (including children of the spouse) and certain other people as defined by the Aliens' Act (essentially the nuclear family).

The legal definition of a family member of an EU citizen is established in the Alien's Act in Sec. 15a. For the purposes of the Alien's Act, a 'family member of an EU citizen' is (1) a spouse, (2) a parent, if the EU citizen is younger than 21 years of age and dependent on his/her parent, and lives in the same household, (3) a child under 21 years of age or such a child of a spouse of an EU citizen, (4) a dependent direct relative in the ascending or descending line, or such a relative of the spouse of the EU citizen. (5) If the purpose of the stay in the Czech Republic is to study then only the spouse and dependent children are taken into account. The provisions on family members also apply to (6) a foreigner who is a relative of an EU citizen and fulfils certain criteria (condition of living with the EU citizen, health reasons etc.), (7) a person who is living in a stable relationship similar to a family relationship with an EU citizen and lives

³⁰ Zákon č. 326/1999 Sb., o pobytu cizinců (Act No. 326/1999 Coll., Aliens Act), available at <http://portal.gov.cz/wps/portal/s.155/701?number1=326%2F1999&number2=&name=&text=> (Czech only) (opened on February 10, 2010).

³¹ The Alien's Act by the term spouse, family or child of a spouse understands also partner, partnership and a child of a partner (or a child in his/her custody); see Sec. 180f of the Alien's Act. The term family reunification is used in this context by this act.

in the same household, (8) a family member of the Czech citizen. Family reunification is therefore possible for a spouse, children of the EU citizen under 21 years of age and also such children of the partner and for others if the conditions of the law are fulfilled.

Family members who are registered partners of EU citizens do benefit from the right to move and reside within the territory of the Member States.

Family members of EU citizens who are themselves EU citizens have the right of entry under the same conditions as EU citizens; entry can be denied under certain circumstances. The family member also has the right of residence; if he/she intends to reside in the Czech Republic with the EU citizen for more than three months he/she may apply for a temporary residence permit (right of residence for more than three months in accordance with Directive 2004/38/EC). The request for a temporary residence permit can be rejected or withdrawn under certain conditions; the law also contains provisions on retention of the right of residence by family members in the event of death, departure or divorce). Permanent residence permits (right of permanent residence in accordance with Directive 2004/38/EC) are issued by the Alien's Police departments (which is a department of the Police of the Czech Republic with state wide scope which deals with aliens) to the family member of an EU citizen under certain circumstances (length of the stay etc.). The law also contains provisions on marriages of convenience (refusal to issue or termination of the residence permit in such a case). The family member can be subject to expulsion under very special conditions of the Aliens' Act. A decision on expulsion can be issued only if its consequence does not have a negative impact on the private or family life of the person concerned; protection against expulsion is in compliance with Art. 28 of Directive 2004/38/EC. No exit visa or equivalent formality is imposed on foreigners. According to the Employment Act, citizens of other EU Member States and their family members have an equal position with Czech citizens in access to employment and access to public employment services, including registration in order to seek work etc.

The family member of an EU citizen who is himself/herself a third country national has the same rights as described above; there are only small differences in accordance with the relevant *acquis*. The right of entry for third country nationals may be subject to visa obligations (if the partner who is a third country national needs a visa and does not possess one, he/she can also apply for the visa on entering the Czech Republic). Another difference between the position of the family members who are third country nationals and family members who are EU citizens is the obligation to apply for a temporary residence permit if the third country family member intends to reside in the Czech Republic with the EU citizen for more than three months. Some problems appear in non-existence of possibility to appeal against the decision by which a visa is not granted to a person (third country national). Another questionable thing is a length of a procedure of issue of a visa at the borders for TCN family members of EU citizens in case that it is required to have one as is

presumed in the Art. 5 (2) of the Directive; the law stipulates the time limit of up to 14 days.

The temporary residence permits and permanent residence permits for family members are issued by the Aliens' Police, a department of the Police of the Czech Republic, which deals with aliens, in an administrative procedure; the Administrative Code [Správní řád] is applied. Appeal to a court is possible. The law does not provide for free legal aid for the administrative procedure; free legal aid is available for court proceedings under certain circumstances defined in the law (means tests etc.).

The number of family members who were themselves EU citizens was 6,181 in 2004 and there were 2,955 family members of citizens of the Czech Republic. The number of EU citizens residing in the Czech Republic in 2004 was 82,714 and there were also 168,435 third country nationals. In 2005 the number of family members who were EU citizens was 7,827 and there were 13,841 family members of citizens of the Czech Republic. The number of EU citizens residing in the Czech Republic in 2005 was 82,574 and there were 185,517 third country nationals. In 2006 the number of family members who were EU citizens was 8,416 and there were 23,216 family members of citizens of the Czech Republic. The number of EU citizens residing in the Czech Republic in 2006 was 94,032 and there were 212,857 third country nationals. However, the statistics does not differentiate between applications for a residence permit for the reason of family reunification for registered partners and for married partners, nor does it distinguish between residence permits granted for the reason of family reunification for registered partners and for married partners. The requested statistical data are not available. The author of the report (1) looked at the website of the *Český statistický úřad* [Czech Statistical Office] (www.czso.cz, opened on January 18, 2010), then (2) submitted a request to the Statistical Office and (3) submitted a request to the Aliens Police. The Statistical Office responded by an email from 10 and 16 of February, 2010, the Aliens Police by phone and by an email from February 22 2010. No such data are available.

There is no case law on this matter available possibly because the change in the law in favour of registered partnership was only implemented relatively recently. Also only decisions of high courts are available publicly.

C. Asylum and subsidiary protection

The Czech Republic ratified the Geneva Convention relating to the Status of Refugees in 1991. The Convention is incorporated into the Asylum Act, [Zákon o azylu],³² which regulates the conditions for providing international protection (asylum and subsidiary protection), the procedure on international protection, the rights and duties of those seeking international protection and the rights and duties of recognised refugees (persons granted asylum) and those granted subsidiary protection. The Asylum Act provides for international protection in the form of asylum for the reasons given by the Geneva Convention, i.e. a well-founded fear of being persecuted on the grounds of race, sex, religion, nationality, membership of a particular social group or for holding a certain political opinion (Sec. 12, this provision also embodies the right to asylum formulated at the constitutional level and also provides for one more ground not included in the Geneva Convention but stipulated in Directive 2004/83/EC: the ground of ‘gender’) and also for other reasons, such as family reunification (Sec. 13) and humanitarian reasons (Sec. 14). The Act also provides for international protection in the form of subsidiary protection, generally on the grounds contained in Directive 2004/83/EC; subsidiary protection can also be issued to family members. The ‘qualification’ Directive (2004/83/EC) was transposed into Czech law by Act No. 165/2006, which amended the Asylum Act. The term ‘registered partnership’ was amended by Act No. 379/2007 Coll., and has been in force since January 2008.

The definition of persecution covers non-state persecution, combined with state unwillingness, indifference or inability to protect a person from non-state persecution. Persecution means serious violation of human rights as well as any measures resulting in mental constraint or other similar treatment if carried out, supported or tolerated by state authorities or parties or organisations controlling the state or a considerable part of its territory; the notion of persecution thus includes acts by private individuals if the state, parties or organisations – including international organisations – controlling the state or a considerable part of its territory are unable to ensure protection. The law also uses the term internal flight alternative, a person then may not be counted as a victim of persecution if he/she had the possibility of the internal flight alternative (Art. 8 of the Directive 2004/83/EC) (Sec. 2 (8) Asylum Act).

Persecution on grounds of sexual orientation is accepted as a ground for obtaining asylum. The Asylum Act itself does not define the terms of the definition of refugee; therefore the definition of the term ‘particular social group’ cannot be found there. The key is in the interpretation by the Ministry of

³² Czech Republic/Zákon č. 325/1999 Sb., o azylu (Act No. 325/1999 Coll., Asylum Act), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=325%2F1999&number2=&name=&text= (Czech only) (opened on February 10, 2010).

Interior [Ministerstvo vnitra] (adjudicating body) and the interpretation in the courts of appeal decisions (Supreme Administrative Court [Nejvyšší správní soud]). The Ministry of Interior has issued several decisions since 2005 where the well-founded fear of being persecuted on the grounds of sexual orientation was recognised as a reason for granting asylum and several applicants were granted asylum. The Supreme Administrative Court also accepts the sexual orientation as a reason for obtaining asylum and applies it as such in its decisions.³³ Relevant case law from the Ministry of Interior is not publicly available, only decisions by the Supreme Administrative Court, the highest court of appeal for administrative issues, are available on the website of the court.³⁴

If an individual seeks international protection, the procedure on international protection is always followed (regardless of the illegality of his/her stay in the country etc.; the application is inadmissible if the individual is an EU citizen or where provisions of the Dublin Regulation apply). If there are grounds for granting protection pursuant to the Asylum Act then protection is granted (in the form of either asylum or subsidiary protection).

No statistics are available. The statistics show only the number of persons granted asylum for the reason of membership of a particular social group in general, the reason of sexual orientation is not disaggregated. The author of the report (1) looked at the website of the Ministry of Interior (www.mvcr.cz), then (2) submitted (via phone and via email) a request to the Ministry of Interior which deals with asylum cases. The relevant department of the Ministry of Interior provided the requested information by phone and also replied via email on February 25, 2010. The author of the report is aware of at least two people who were granted asylum for the reason of sexual orientation from her former practice; but as it is not an official source, nor even an informal source, the number is not mentioned in the statistics in the Annex of this report as official data.

The Asylum Act provides for family reunification (asylum for the purpose of family reunification, Sec. 13 and subsidiary protection for the purpose of family reunification, Sec. 14b). Both provisions are discretionary, the adjudicating body has the discretion to issue the decision or not. Protection may be granted in case of special consideration even if the criteria of Sec. 12 of the Asylum Act are not fulfilled. The legal definition of a family member of a recognised refugee or person with subsidiary protection is provided by the Asylum Act in Sec. 13 (14b). The definition of the term ‘family members’ encompasses: (1) a spouse or a partner; (2) an unmarried child under 18 years of age; (3) a parent of a refugee under 18 years of age; and (4) an adult person responsible for a child under 18 years of age who is not accompanied by a statutory representative (i.e.

³³ Judgment of Supreme Administrative Court of 05 October, 2006, No. 2 Azs 66/2006-52, www.nssoud.cz, Judgment of Supreme Administrative Court of 23 November, 2007, No. 5 Azs 50/2007-71, www.nssoud.cz, (opened at January 20, 2010).

³⁴ See <http://www.nssoud.cz/main.aspx?cls=AnonymZneniList&menuactive=:ml119>.

by a parent etc.). The law requires a pre-existing partnership (prior to the granting of asylum or subsidiary protection status by the Czech Republic, not prior to entry to the Czech Republic).

The term ‘partner’ is defined in the Asylum Act in Sec. 2 (13) as a person who can prove that he/she entered into a registered partnership; registered partnership is a certified stable relationship of same-sex partners.

The decision on international protection is issued in an administrative procedure by the department [odbor azylové a migrační politiky, the Department of Asylum and Migration Policy, a special department which deals with the issue of asylum/international protection) of the Ministry of Interior; remedy at a regional court is possible. A person can also express a preference for a female or male interviewer and interpreter; the Ministry will provide a same sex interviewer upon request and may provide a same sex interpreter if possible (Sec. 23 (3) Asylum Act).

The family members of refugees are also entitled to family reunification under the Aliens’ Act (i.e. if they do not lodge an application in accordance with the Asylum Act). (1) a child of a refugee who is under 18 and (2) a spouse or a partner of a refugee (the condition of the existence of the marriage/partnership before entry into the Czech Republic is applied here) are entitled to a long-term residence permit (Sec. 42a (5) (b, c) Aliens’ Act) or a permanent residence permit (Sec. 66 (1) (a) subs. 1, 2 Aliens’ Act). There is no discretion in the decision-making process in this case.

Relevant case law of the Ministry of Interior is not publicly available, only decisions by the Supreme Administrative Court, the highest court of appeal for administrative issues, are available on the website of the court.³⁵ There is no case law available regarding the family reunification of partners in registered partnerships, as registered partnership has only recently been implemented into the respective law.

There are no statistics available; the above-mentioned efforts to obtain statistics on the number of people granted asylum or subsidiary protection also apply to the statistics on family members of those people.

A phallometric testing may be required as a proof of homosexuality, e.g. when there are inconsistencies in his/her interview (testimony). A phallometric test may be a part of an examination held by professional doctor – sexologist. It is an examination of physical reactions on visual stimulations (pictures). The examination is an expertise which is used as evidence in the procedure. If the international protection seeker refuses to undergo the test, the credibility of his/her testimony may be doubted (in case that there are some inconsistencies).

³⁵ See

<http://www.nssoud.cz/main.aspx?cls=AnonymZneniList&menuactive=:ml119;ml120;&menuactive=:ml119;> (opened at February 10, 2010).

According to the response from the Ministry of Interior February 25, 2010, the examination is used only in cases where the credibility of person's statement is doubted or when the evidence is not sufficient. It is not used in every case. The examination is only possible with the person's consent (written consent, person is informed about the technique of the examination). It is held without the presence of the Ministry of Interior, only the physician is present. The Ministry also stated that if the person underwent the examination, his/her testimony was proven, but that there were cases of people, who claimed homosexual orientation and finally did not want to undergo the test and said that they lied in their statement. The Ministry also stated that the examination was done in approx. less than 10 cases. The NGO Organization for Aid to Refugees [Organizace pro pomoc uprchlíkům] said (phone interview February 2, 2010), that according to their opinion it is questionable whether the international protection seeker is informed about the procedure itself in a way that is understandable for him/her (he/she may agree, but the question is whether it is an informed consent). The consistency with human rights standards was never questioned.

Persons who were granted international protection in the form of asylum or subsidiary protection may enter into a registered partnership with a Czech citizen (there is a condition given by the Act on Registered Partnership that one of the persons who want to enter the registered partnership must be a Czech citizen, Sec. 4 of the act on Registered Partnership). To enter into the partnership, several documents must be submitted (Sec. 25). Submission of most of them can be waived if the person was granted asylum (and thus has a limited access to documents from his/her country of origin). As the subsidiary protection was added into the legislation later, the Act on Registered Partnership does not give this possibility to waive those conditions to persons with subsidiary protection. This issue was raised by the Committee on Rights of Sexual Minorities on its meeting in November 2009.³⁶

³⁶ See record from the meeting of the Committee on the Rights of Sexual Minorities <http://www.vlada.cz/assets/ppov/rp/vyborv/sexualni-mensiny/zapis-2009-11-03.pdf> (Czech only, opened at February 10, 2010)

D. Family reunification

Family reunification according to Council Directive 2003/86/EC is transposed by the Aliens' Act. Section 180f of the Aliens' Act stipulates that the norms which apply to 'marriage', 'spouse' and 'child' also apply to the partners who have contracted a registered partnership. Therefore wherever the law uses the term 'marriage', 'spouse' and 'child', it also applies non-discriminatorily to registered partnerships. The registration of a partnership is restricted to same-sex partners. The registered partnership of third country nationals is recognised by the Aliens' Act only if there is a certificate testifying to the registered partnership. Partners who live in a stable and durable relationship without registering their partnership are not recognised as partners for the purpose of the Aliens' Act. Partners (same sex or different sex) who live in a stable and durable relationship without registering/marriage would nevertheless obtain a different type of visa pursuant to the provisions of the Aliens' Act (which allows for a visa for 'another reason').

If both partners are third country nationals they cannot register pursuant to the provisions of the Act on Registered Partnership. The Act limits the possibility of registering partnerships to those where at least one of the partners is a citizen of the Czech Republic. However, if the partnership is registered in another country, the law allows them to benefit from the right to family reunification.

The right to family reunification is connected to the long-term residence permit (national temporary status) or higher status (national permanent residence status) of the sponsor. The law stipulates the period necessary for exercise of the right to family reunification as being 15 months from the beginning of the stay in the country. The family members who can be issued a long term residence permit for the reason of family reunification are: (1) the spouse of the sponsor (including same-sex sponsor); there is an age requirement of 20 years of age for both spouses set out in the Act, (2) the minor children of the sponsor and the minor children of the spouse of the sponsor, (3) the adult children of the sponsor or of the spouse of the sponsor, but adults are granted a residence permit only under the condition of dependency on the sponsor, (4) the minor children adopted by the sponsor and by his/her spouse, (5) a third country national who is a single person older than 65 years or (6) a third country national who is unable to provide for his/her own needs on account of his/her state of health.

The right to family reunification is guaranteed provided that the sponsor has been resident in the Czech Republic for at least 15 months. The sponsor must hold a long-term or permanent residence permit at the time of submitting the application for family reunification. Prior residence is not required for the family members listed above in (4), (5) and (6).

The law also recognises the possibility of issuing a permanent residence permit without the partner's or even the sponsor's prior residence in the Czech Republic. This is the so-called permanent residence permit for humanitarian purposes; or for other reasons that are worthy of consideration; or if the residence of the alien concerned is in the interests of the Czech Republic, but it is not *stricto sensu* family reunification in accordance with the Directive.

There is no case law available on family reunification for registered partners; the Police do not keep such statistics.

E. Freedom of assembly

Freedom of assembly is guaranteed for all people irrespective of their sexual orientation. Demonstrations aiming to deny or limit rights of the others may be banned or dismissed by the local authority (i.e. homophobic demonstrations may be banned or dismissed).

Freedom of assembly is guaranteed at the constitutional level. The Constitution [Ústava ČR] guarantees the right to peaceful assembly (Art. 19). It also stipulates that the right may be limited by law in the case of assemblies held in public places, if measures are involved which are essential in a democratic society to protect the rights and freedoms of others, public order, health, morality, property or the security of the State. However, an assembly shall not be made dependent on permission by an organ of public administration. There are no limitations on freedom of assembly for lesbian, gay, bisexual and transgender (LGBT) people; the law does not differentiate between the reasons for assembly, nor does it make any distinction between the people who announce or notify an assembly.

The freedom of assembly is implemented by the Assembly Act.³⁷ The state may legally restrict meetings that promote hatred and intolerance, advocate the suppression of individual or political rights or jeopardise the safety of participants. The law requires an announcement or notification (not a permit) for demonstrations.

The law stipulates that an assembly may be banned (1) before it lawfully begins, once the assembly has been notified, if it is obvious from the notification to the authorities that: the reason for the assembly is to deny or restrict the political or personal rights of citizens for *inter alia* the reason of their nationality, gender, race, social status (Sec. 10 (1) a) Assembly Act); the reason of an assembly is to violate laws or the Constitution (Sec. 10 (1) c) Assembly Act), or for other reasons stipulated by the law; the two above-mentioned reasons may be used for restricting homophobic demonstrations. The reason of sexual orientation is not explicitly mentioned by the law, therefore the reason must be found by an interpretation of the laws, e.g. the reason of human dignity stipulated in the Constitution (Art. 10 (1) in connection with Sec. 10 (1) c) Assembly Act. As there have not been any homophobic demonstrations, the possibility of banning a demonstration/assembly has never been used and it is hard to predict what reason the authorities would use. The assembly may also be banned (2) after it has already lawfully begun if the assembly departs significantly from the reasons which the organiser notified to the authorities and

³⁷ Zák. č. 84/1990 Sb., o právu shromažďovacím (Act No. 84/1990 Coll., On the Right of Assembly), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=84%2F1990&number2=&name=&text= (Czech only) (opened on February 19, 2008).

there are at the same time circumstances which justify a ban pursuant to the provisions of Sec. 10 (1) Assembly Act, as mentioned above. Again, as there have not been any homophobic demonstrations, the possibility of banning a demonstration/assembly has never been used and it is hard to predict what reason the authorities would use. The ban is imposed either by the respective municipal authority or by the Police.

There are no homophobic demonstrations as such. The author of the report also asked a civil society organisation which monitors neo-Nazi demonstrations (Toleration and Civil Society) [Tolerance a občanská společnost], but it was also unaware of any homophobic demonstrations. There probably were demonstrations which focused, for example, on the issue of 'protection of the family' (but it might have been found from the speeches of speakers that their motivation for the demonstration was homophobic, but they did not want to summon the demonstration with its real purpose because they would risk that it might have been banned), mainly when the law on registered partnership was in the process of adoption, but none of them was openly homophobic. If demonstrations are disturbed by third parties, the police protect the demonstrators (if the demonstration is peaceful and does not disrupt or threaten public order, health, morality etc.). There have been problems with neo-Nazi demonstrations because the organisers did not notify the real purpose of the demonstration (such a demonstration may be dissolved) and there have also been some counter-demonstrations. E.g. there was a demonstration of Dělnická strana [Worker's Party] on June 18, 2009 in Tábor (South Bohemia), which was announced as a demonstration to thank to its voters, but the main aim was to protest against the Queer Parade in Tábor, which was held in two days. The Worker's Party was dissolved on February 17, 2010 (see Decision of Supreme Administrative Court No. Pst 1/2009-348 from February 17, 2010, more information below under K). The police do not interfere with spontaneous, peaceful demonstrations.

First Queer parades were held in last two years. The first Queer pride was held in Brno (largest city in Moravian part of the Czech Republic) on June 28, 2008. The parade was violated by extremists (already before the official beginning); the Police detained several extremists. Some of the extremists were members of Národní odpor [National Resistance], a neo-nazi movement. Second Queer pride was held in Tabor (city in south Bohemian part of the Czech Republic) on June 20, 2009.

F. Criminal law

A new Criminal Code was adopted in 2009 (in force since January 1, 2010). There are no hate crimes on the grounds of sexual orientation as such defined by the Criminal Code [Trestní zákon] of the Czech Republic.³⁸ Also, in contrast to crimes committed on the grounds of race, ethnic group, nationality, political opinion, religion etc. the Criminal Code does not recognize homophobic motives explicitly as an aggravating circumstance for sentencing. Crimes motivated by LGBT bias are going to be punished as common crimes, so the sentence and penalty will not be shifted. Several provisions of the Criminal Code also deal with a term “group of people”. The term may be interpreted on behalf of LGBT community as LGBT may be qualified as a group of people, but the interpretation is not clear. The explanatory report for the bill did not define the term and because the Code has been in force since January 1, 2010, there is no case law to interpret the term.

The new Criminal Code also contains several relevant provisions. The crimes of incitement to hatred against a group of people or to restrict their rights and freedoms (Sec. 356), attack against humanity (Sec. 401), apartheid and discrimination against a group of people (Sec. 402), foundation, propagation and support of a movement aimed at oppressing of rights and freedoms of a person (Sec. 403) and declaration of support of a movement aimed at oppression of rights and freedoms of a person (Sec. 404) all mention a term group of people. So they may be relevant for LGBT persons.

Regarding the crime of Incitement to hatred against a group of people or to restrict their rights and freedoms, the provision stipulates that a person who publicly incites hatred of another nation, ethnic group, race, religion, class or another group of people or publicly incites the restriction of their rights and freedoms shall be sentenced to a term of imprisonment of up to two years. The punishment is higher if the crime is committed through use of the press, film, radio or TV broadcasting, a publicly accessible computer network or a similarly effective method or if the person actively participates in activities of groups, organisations or associations which promote discrimination, violence or racial, ethnic or religious hatred.

The crime of attack against humanity punishes extensive and systematic attack against a civil population by which a person e.g. excinds, enslaves, deports, rapes, tortures, murders, persecutes for the reason of race, gender or other similar reason etc., or commits a forced sterilization, forced pregnancy etc. Such person shall be sentenced to a term of imprisonment of 12 to 20 years or exceptional punishment.

³⁸ Czech Republic/ Zákon č. 40/2009 Sb., trestní zákon (Act. No. 40/2009 Coll., Criminal Code), available at <http://portal.gov.cz/wps/portal/s.155/702/s.155/701?l=40/2009> (Czech only, accessed on February 12, 2009).

The crime of Apartheid and discrimination against a group of people is aimed at a person who applies apartheid or racial, ethnic, national, religious or class segregation or similar discrimination of a group of people shall be sentenced to a term of imprisonment of 5 to 12 years. With a sentence of a term of imprisonment of 10 to 20 years or by exceptional punishment will be punished a person who immerses the group of people into difficult living conditions submits the group to inhuman or degrading treatment.

The crime of Foundation, support and propagation of a movement aimed at oppressing of rights and freedoms of a person punishes a person who founds, supports or propagates a movement which aims to suppress the rights and freedoms of individuals, or which promotes national, racial, class or religious hatred or hatred of another group. Such a person will be sentenced to a term of imprisonment of one to five years; the law stipulates aggravating circumstances such as perpetration of the crime through use of the press (print), film, radio or TV broadcasting, or some other similarly efficient means; membership of an organised group; perpetration of such an act during a state of emergency or a state of war.

If someone publicly declares a support of a movement aimed at oppression of rights and freedoms, he/she shall be sentenced to a term of imprisonment of six month to three years.

The Criminal Code also punishes preparation of a crime, the attempt to commit a crime, the organising of a crime and instigating/abetting and assisting/aiding a crime.

One of the recommendations given by the Working Group on the Issue of Sexual Minorities [Pracovní skupina pro otázky sexuálních menšin]³⁹ in its report *Analysis of the situation of lesbian, gay, bisexual and transgender minorities in the Czech Republic* stipulates that the Minister of Justice should make an amendment to the Criminal Code which would explicitly cover hate crimes on the grounds of sexual orientation. This recommendation was not taken into account when the new Code was being adopted.

Even though the Criminal Code does not explicitly include hate crimes, this does not mean that conduct aimed at the LGBT community remains unpunished. There are crimes which, for example, cover the issue of violence against persons etc. and these provisions are used to punish the perpetrators. However, the ground of sexual orientation is not explicitly mentioned by the law nor is it counted as an aggravating circumstance. As there are no hate crimes recognised by the law, there are no statistics available on hate crimes as such. There are cases in which the sexual orientation was a reason for committing a crime (where a victim of the attack was attacked for the reason of

³⁹ The working group does no longer exist, it was replaced by the Committee for Sexual Minorities [Výbor pro sexuální menšiny] which was established as a part of Government Council for Human Rights in 2009. The composition remains similar.

his/her sexual orientation), but the statistical data are not demonstrative, as only a minority of crimes is in fact reported to the Police. The situation may be illustrated by the findings of research conducted by Ivo Procházka in 2003, *Discrimination of lesbian women, gay men and bisexuals in the Czech Republic*, where some respondents experienced physical violence or verbal abuse or harassment on the grounds of their sexual orientation (they did not report it to the police in most cases).⁴⁰ Accordingly Olga Pechová, in her report on research conducted in 2008 (already above mentioned research *Discrimination on the basis of sexual orientation*).

There is a minor offence which is defined as an act against a person on the grounds of sexual orientation in the Minor Offences Act [Zákon o přestupcích]:⁴¹ a minor offence against civil coexistence (*Sec. 49*). *A person, who harms/damages someone on the grounds of (...) sexual orientation can be punished by a fine of up to 20,000 CZK (approx. 770 Euro)*. This section is used only in cases of very low severity; more serious crimes are generally punishable pursuant to the provisions of the Criminal Code.

The statistical data regarding crimes committed for the reason of sexual orientation are not publicly available. The rapporteur therefore contacted the institution which may have the data which are requested by the report. The Ministry of Interior in its comments to the Report on Homophobia which was prepared in 2008, stated for partial clarification that “as part of the criminal statistics output prepared by the Presidium of the Police of Czech Republic, it is now possible to monitor entries for “person's sexual orientation,” which, among other things, monitors the indicator “homosexual.” The item “person's sexual orientation” is part of the recordkeeping related to victims of criminal activity (the subject of an attack). This entry is freely combinable with other monitored entries in connection with victims of criminal activities (such as gender, age, social status)”. The rapporteur therefore contacted Policejní prezidium ČR [Presidium of the Police of the Czech Republic] by phone to find out where the sources are available. The response was that no such statistics are available and that the institution which may have such statistics is Ministerstvo spravedlnosti ČR [Ministry of Justice]. The rapporteur therefore sent an email request (email from February 17, 2010) in which she asked the Presidium of the Police of the Czech Republic for the relevant statistics. The Presidium responded by phone, that no such statistics are available. The rapporteur asked also for a written statement of this information, and got the email answer on April 27, 2010. The rapporteur than asked Ministerstvo spravedlnosti ČR [Ministry of Justice], which responded by email on February 23, 2010. According to their information no such statistics are available. The statistics shows only general number of

⁴⁰ http://gay.iniciativa.cz/download/diskriminace_en.pdf, (opened on February 19, 2008), pp. 18-20.

⁴¹ Czech Republic/Zák. č. 200/1990 Sb., o přestupcích (Act. No. 200/1990 Coll., Minor Offences Act), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=200%2F1990&number2=&name=&text= (Czech only), (opened on February 10, 2010).

crimes which were committed; the statistics are divided by sections of the law (e.g. it is possible to find out how many crimes of “incitement to national and racial hatred” were committed, so it can be found how many “persons who publicly incite hatred of another nation, ethnic group, race, religion, class or another group of people or publicly incite the restriction of their rights and freedoms” were sentenced, but the sexual orientation as a reason for committing the crime cannot be confirmed.

G. Transgender issues

The Antidiscrimination Act covers the issue of discrimination in transgender issues. It explicitly stipulates that discrimination for the reason of gender also includes discrimination for the reason of gender identification. Also, generally speaking, if there is a situation which may not be dealt with by the Antidiscrimination Act, but is solved by another law, then the discrimination of transgender people may be dealt with as discrimination on the grounds of gender, i.e. the prohibition of discrimination against trans people (especially transsexuals) may be covered by the prohibition of discrimination on the ground of 'gender' in the relevant laws (as ruled by the European Court of Justice (ECJ) in *P v. S and Cornwall County Council* for transsexual people). There is also the possibility of subsuming discrimination against transgender people under the provisions on discrimination on the grounds of 'sexual orientation'. The provisions in the laws mentioned in Part A of the report define the prohibition of discrimination as prohibition of discrimination for several grounds and the grounds are explicitly stipulated there: the ground of 'gender' always appears in the same provision as the ground of 'sexual orientation'. The notions of 'gender' and 'sexual orientation' also cover the category of transpersons. As there is no case law on the matter nor are the terms defined in the laws it is not possible to say whether transgender discrimination is classified as discrimination on the grounds of gender or of sexual orientation.

All the legislation discussed in this report is also applicable to transgender people. The legislation described above is either based on the principle of non-discrimination on the grounds of sexual orientation or applicable to same-sex partnership or opposite-sex marriage (e.g. family reunification). Czech legislation does not differentiate between LGBT people and is most probably applied to all of them (there is, unfortunately, no definition of LGBT people in the laws and there is no case law to support or disprove this opinion). The gaps described above in relation to the situation of the LGBT community in general also apply to transgender people.

The law provides for the possibility of sex reassignment surgery. The Health Care Act⁴² stipulates that surgery on transsexuals is performed at the request of the individual concerned, following approval by a commission. The commission is composed of five people: a lawyer, two physicians specialising in this field and two physicians who do not participate in the surgery (Sec. 27a). The activity of these commissions is not regulated by law, or even by any standards. There is no possibility of appeal against the decisions of these commissions.

⁴² Czech Republic/Zák. č. 20/1966 Sb., o péči o zdraví lidu (Act. No. 20/1966 Coll., Health Care Act), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=20%2F1966&number2=&name=&text= (Czech only), (opened on February 10, 2010).

The commissions do work satisfactorily according to the available information.⁴³

A transgender person may change his/her name in accordance with the Act on the Registry Office⁴⁴. The Registry Office allows for a name change upon the request of the person concerned and upon provision of a certificate from the medical centre where the surgery takes place. The law stipulates that the office shall allow a 'neutral' name and surname (Sec. 72). The law stipulates the condition of either citizenship or permanent residence for the possibility of a name change. There is also a general clause about the possibility of a name change for serious reasons.

There are no problems with new documents (birth certificate etc.), but there could be problems with the continuation of the legal identity of a person who undergoes sex-change surgery.⁴⁵ A number of laws use a 'birth number', a number which identifies the person to whom it was assigned. The birth number consists of nine or ten numbers (e.g. 885713/xxxx), where the first pair of numbers denotes the year of birth, the second pair denotes the month and the gender and the third pair the day of birth; the four 'x's are numbers which identify the individual. The Act on Inhabitancies Evidence⁴⁶ allows for a change of the birth number (Sec. 17 (2) only if the individual's gender has changed). However, as the number is often used for loans and mortgages and also by some institutions to identify an individual, he/she must prove the continuity of his/her legal identity (and disclose his/her sensitive personal data). The possibility of the introduction of a neutral resident's identifier was discussed by the government in 2005 (Government Decision No. 340 of 23.03.2005), but there has not yet been any follow-up. Official statistics on people who have changed sex are not available.

Transsexuals are accorded the right to marry a person of their previous sex. Their legal status is determined on the basis of their new sex.

There is no case law on this matter. There was a case which was made public of a woman (MtF) who was refused a job in the Czech Army for the reason of her changed sex, but she did not take the claim to court.⁴⁷ The author of the report looked for case law on the relevant websites of the higher courts (Supreme

⁴³ See *Analýza situace lesbické, gay, bisexuální a transgender menšiny v ČR* [Analysis of the situation of the lesbian, gay, bisexual and transgender minority in the Czech Republic]

⁴⁴ Czech Republic/Zák. č. 301/2000 Sb., o matrikách, jménu a příjmení (Act. No. 301/2000 Coll., Act on Registry Office), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=301%2F2000&number2=&name=&text= (Czech only), (opened on February 19, 2008).

⁴⁵ Further information is available at http://www.vlada.cz/assets/ppov/rlp/sexualni-mensiny/ANALYZA_final.pdf, (Czech only) (opened on February 10, 2010)..

⁴⁶ Zák. č. 133/2000 Sb., o evidence občanů a rodných číslech (Act. No. 133/2000 Coll., Act on Inhabitancies Evidence), available at http://portal.gov.cz/wps/portal/_s.155/701?number1=133%2F2000&number2=&name=&text= (Czech only), (opened on February 19, 2008)

⁴⁷ <http://www.translide.cz/translide-a-verejna-sprava> (opened on February 19, 2008).

Court [Nejvyšší soud], Supreme Administrative Court and Constitutional Court [Ústavní soud]). Similar requests had been made to obtain statistical data, but transgender people do not figure in any available statistics.

H. Miscellaneous

A new legal institution of registered partnership was introduced in 2006 by the Act on Registered Partnership.⁴⁸ The partners in the registered partnerships have been granted some rights that are comparable to the rights of spouses, i.e. representation in ordinary matters and mutual maintenance /subsistence obligation, the right to refuse to give testimony in criminal proceedings and the possibility of choosing a defending counsel for the partner. There is a different position with regard to the family life of registered partners in comparison with the family life of spouses. The law does not allow for the adoption of children by partners and partners are also not given the possibility of adopting the children of their partners (Sec. 13(2): continuing [registered] partnership prevents the adoption of a child by one of the partners). But if a person is not living in a registered partnership than he/she may adopt a child. The partners in the registered partnerships do not have access to artificial insemination, only heterosexual couples have this right (the entry into marriage as such is not required). The law also does not allow the constitution of joint ownership by the partners and does not grant the right to inherit which married couples have (their position is not equal to the married couples), the right to use a common surname or the right to a widow's pension etc. The issue of adoption of children by gay and lesbians couples is now being discussed. The issue of discrimination of gay and lesbian couples in the issue of adoption of children was raised by the Committee for Sexual Minorities in 2009 in connection with the judgment of European Court of Human Rights *E.B. v France* and stated that the Czech Act on Registered Partnership is now in its part which prohibits the adoption of children discriminatory. The Government Council for Human Rights then called on the Minister for Human Rights to change the respective law. The draft is now being discussed at the Government, then it should be delivered to the Parliament. The draft is not available publicly yet.

Although the registered partnership is not treated as a marriage, generally, it has been given an equivalent position to marriage for the purpose of the provisions of e.g. the Aliens' Act (see Sec. 180f AA). A partnership can only be registered in the Czech Republic if one of the partners is a citizen of the Czech Republic, but there are no limits for partners (EU citizens or third country nationals) whose partnerships are registered outside the Czech Republic.

A total number of 841 couples entered into registered partnership (between 01.07.2006 and 31.08.2009).⁴⁹ Of the 487 registered partnerships there were

⁴⁸ Czech Republic/Zákon č. 115/2006 Sb., o registrovaném partnerství (Act. No. 115/2006 Coll., on Registered Partnership), available at <http://portal.gov.cz/wps/portal/s.155/701?number1=115%2F2006&number2=&name=&text=> (Czech only) (opened on February 10, 2010).

⁴⁹ Source: Novinky (media source) <http://www.novinky.cz/domaci/178697-registrovane-partnerstvi-v-cesku-uzavrelo-uz-pres-1-600-homosexuvalu.html> (opened on February 10, 2010).

596 gay partnerships and 245 lesbian partnerships; 17 registered partnerships were dissolved.

There are many media information sources.⁵⁰ There are also civic society organisations (e.g.): STUD, Gay and Lesbian League [Gay a lesbická liga], Lambda, eLnadruhou which represent the interests of the LGBT community.

In April 2007 the Working Group on the Issue of Sexual Minorities [Pracovní skupina pro otázky sexuálních menšin] was set up by the Minister for Human Rights and Minorities [Ministryně pro lidská práva a národnostní menšiny] Džamila Stehlíková, on the occasion of the European Year of Equal Opportunities. The working group published a report, *Analysis of the situation of lesbian, gay, bisexual and transgender minorities in the Czech Republic*.⁵¹ A Committee for Sexual Minorities [Výbor pro sexuální menšiny] was established as a part of Government Council for Human Rights in 2009. The Committee deals with the issues relevant for the rights of LGBT persons and continues the work of the Working Group on the Issue of Sexual Minorities.

The National Strategy for the European Year of Equal Opportunities [Národní strategie pro evropský rok rovných příležitostí] prepared by the Government of the Czech Republic deals with the position of partners in registered partnerships.⁵² Part 3 of the Strategy describes the efforts to combat discrimination on grounds of sexual orientation. The Strategy notes the challenges for society: more information which would lead to a public debate on the elimination of stereotypes in society, more information about discrimination on grounds of sexual orientation and the possibilities for protection from discrimination. A very fundamental judgment of the Supreme Administrative Court was adopted on February 17, 2010. The Court dissolved an extremist right wing party Dělnická strana [Worker's Party]. The Worker's Party was acting as openly racist, homophobic, xenophobic and anti-Semitic. The Court stated that the program and speeches of the members of the party would not be enough to dissolve the party, but if the party started to harm the rights of other persons also by its acts and started to be a real danger for the democracy, it must be dissolved. The Court already previously gave rules which must be accomplished if such an extreme instrument, such as dissolution of a political party, is applied. This party was homophobic in its political program and its members also took part in demonstrations which, even if they were not announced homophobic, contained homophobic undertone. Website of the party was openly homophobic. The judgment is very important as it deals with the conflict of the right to associate and other rights.

⁵⁰ TV programme 'Q', Film festivals on LGBT issues Mezipatra, eLnadruhou, websites www.stud.cz, www.bengales.cz, www.lesba.cz, www.glliga.cz, <http://www.translide.cz/>, <http://www.transforum.cz/tf/> (not updated).

⁵¹ Available at http://www.vlada.cz/assets/cs/rvk/rlp/PracSk_sex_mensin/Analysis_EN.pdf (opened on February 19, 2008)

⁵² Available at http://www.vlada.cz/cs/vlada/stehlikova/errp/narodni_strategie.html (Czech only) (opened on February 19, 2008).

I. Good practices

A Committee for Sexual Minorities [Výbor pro sexuální menšiny] was established as a part of Government Council for Human Rights in 2009. The Committee deals with the issues relevant for the rights of LGBT persons and continues the work of the Working Group on the Issue of Sexual Minorities. The Working Group on the Issue of Sexual Minorities which was established by the Minister for Human Rights and Minorities on the occasion of the European Year of Equal Opportunities published a detailed report, *Analysis of the situation of lesbian, gay, bisexual and transgender minorities in the Czech Republic*. The report gives recommendations which are structured according to the relevant laws and may be used easily by politicians. The Government is involved (mainly through Minister for Human Rights) in the issue of the rights of LGBT persons and in the fight against homophobia. Apart from the existence of the Committee for Sexual Minorities e.g. publication *Homophobia at schools* was published by Ministry of Education in cooperation with the Office of the Government (mainly the Minister for Human Rights).⁵³

Czech legislation on freedom of movement and family reunification provides for full equality of treatment for LGBT and other people.

The National Strategy for the European Year of Equal Opportunities prepared by the Government of the Czech Republic deals with the position of partners in registered partnerships.⁵⁴ Part 3 of the Strategy describes the efforts to combat discrimination on grounds of sexual orientation. The Strategy notes the challenges for society: more information which would lead to a public debate on the elimination of stereotypes in the society, more information about discrimination on grounds of sexual orientation and the possibilities for protection from discrimination.

Since 2008 an NGO Counselling Center for Citizenship/Civic and Human Rights [Poradna pro občanství občanská a lidská práva] provides legal help to those who were discriminated against based on the grounds of their sexual orientation, identity or gender. Also NGO In IUSTITIA, founded in 2009, provides legal help to victims of hate violence based on these grounds (this NGO provides help to all victims of hate violence, not solely to LGBT community). Several projects aimed at the issues of LGBT persons are run by the NGOs. E.g. a project *Through Diversity against Bullying* is realized by NGOs Counselling Center for Citizenship/Civic and Human Rights, Gender Studies and Stud. The project is aimed at public education in the issue of fight with homophobia.

⁵³ See http://lgbt.poradna-prava.cz/folder02/homofobie_web.pdf, (Czech only) (opened on February 12, 2010).

⁵⁴ Available at http://www.vlada.cz/cs/vlada/stehlikova/errp/narodni_strategie.html (Czech only) (opened on February 19, 2008).

The Czech Republic participates as member of the “Network of national focal points on LGBT equality policies”.

J. Information regarding laws similar or comparable to those in Lithuania

There is no law which would impose a ban on materials about homosexual relations.

There is no law which would impose a ban on materials that agitate for homosexual relations specifically conceived for the protection of minors.

There is no ban promotion of homosexual relations in public places.

The crime of diffusion of pornography applies on the conduct of a person who exhibits or otherwise makes accessible a pornographic work to children (Sec. 191 Criminal Code).

Annex 1 – Case law

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1

Case title	Decision of the Supreme Administrative Court of 05.10. 2006, No. 2 Azs 66/2006-52
Decision date	October 5, 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Rozsudek Nejvyššího správního soudu z 5. října 2006, Azs 66/2006-52</i> [Decision of the Supreme Administrative Court of 05.10. 2006, No. 2 Azs 66/2006-52]
Key facts of the case (max. 500 chars)	A person claimed asylum for the reason of well-founded fear of being persecuted for the reason of his sexual orientation. He claimed that he faced problems in his country of origin when he attended the military service. He was beaten and maltreated by his fellow soldiers; they also often took away his food, so he stayed hungry. His parents helped him by arranging his replacement. His brother was beaten because of sexual orientation of the asylum seeker. He did not know whether his conduct is counted as criminal in his country of origin, he did not try to ask for help the state authorities. His request was denied.
Main reasoning/argumentation (max. 500 chars)	The forms of reactions to the person who claims asylum were of not such a high intensity to be considered as measures which inflict psychological constraint as stipulated in Sec. 2 (6) Asylum Act [definition of persecution]. The Supreme Administrative Court stipulated that the intensity of psychological constraint certainly need not to be accordingly serious as other duress which is relevant in the asylum proceedings, such as endanger of life or freedom of the person, but it must be comparable in type. Series of spurns, even if individually and as a whole intensive, is not enough if they as a whole are not intensive and systematic enough to restrain a quality of life and a withdraw life perspective fundamentally and evoke intense feeling of inconclusiveness and hopeless of the person's situation. The intensity of those spurns must be "objective" – also other persons in a similar situation in the country of origin of the person would be influenced by the negative feelings. The Supreme Administrative Court also stipulated that the psychological constraint would be relevant for the asylum

	claim only if it is accountable to the authorities of the country of origin.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The reason of sexual orientation is certainly a reason for application of the concept of social group in asylum cases.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The asylum was denied in this particular case (the Supreme Administrative Court rejected the appeal).

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 2

Case title	
Decision date	23.11.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Decision of the Supreme Administrative Court of 23.11.2007, No. 5 Azs 50/2007-71
Key facts of the case (max. 500 chars)	An asylum seeker from Morocco claimed that he was persecuted while in the army.
Main reasoning/argumentation (max. 500 chars)	The Supreme Administrative Court found out that the forms of reactions to the person who claims asylum were of not such a high intensity to be considered as measures which inflict psychological constraint as stipulated in Sec. 2 (6) Asylum Act [definition of persecution]. Homosexuality is punishable by the criminal law in the country of origin, but the court stipulated that the level of punishment (6 months to 3 years of confinement) cannot be counted as sufficient for existence of persecution, and thus to grant asylum. The Supreme Administrative Court also emphasized that homosexuality is a characteristic which (even in the most tolerant and liberal West countries) complicates a person's life already for the simple fact that it is a minority sexual orientation. It is then perceived as different by the society. In that sense is the minority sexual orientation always, in all societies, a "burden"; although in many areas (relationships etc.) it may be enriching for the person in comparison with the majority.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The reason of sexual orientation as being a reason for application for the concept of social group was confirmed.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The asylum was denied in this particular case (the Supreme Administrative Court rejected the appeal).

Annex 2 – Statistics

Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	1 (employment)	Not available	Not available						
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of	Not available	1 (employment)	Not available	Not available						

discrimination (employment, education, housing, goods and services etc.)											
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	1 compensation payment: CZK 70,000 (approx. 2700 Euro).	Not available	Not available							
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	Only the above-mentioned information is available	Not available	Not available							

Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens,	Not available									

whether under Directive 2004/38/EC or under previous instruments)											
Number of LGBT partners who claimed their right to residence but were denied this right	Not available										

Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	Not available									
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of	Not available									

sexual orientation										
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Chapter C, Asylum and subsidiary protection, protection of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	Not available									
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner	Not available									

Chapter D, LGBT partners benefiting family reunification

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	Not available									
Number of LGBT partners of third country nationals residing in your country who were	Not available									

denied the right to benefit from family reunification											
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Chapter E, LGBT people enjoyment of freedom of assembly

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	None, according to the information available	1	1							
Number of demonstrations against tolerance of LGBT people.	None, according to the information available									

Chapter F, Homophobic hate speech

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of criminal court cases regarding homophobic hate speech initiated (number of	None, according to the information available									

prosecutions)										
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	None, according to the information available									
Range of sanctions issued for homophobic hate speech	----	----	----	----	----	----	----	----	----	----
Number of non-criminal court cases initiated for homophobic statements	None, according to the information available									
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other	None, according to the information available									

than symbolic were imposed)										
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Chapter F, Homophobic motivation of crimes as aggravating factor

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	None, according to the information available									

Chapter G, Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of name changes effected due to change of gender										
Number of persons who changed their gender/sex in your country under the applicable legislation										

Chapter I, Statistics relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation