



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

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Executive summary

Implementation of Employment Directive 2000/78/EC

Directive 2000/78/EC (the employment non discrimination Directive) has been transposed into Greek law jointly with Directive 2000/43/EC, (the general non discrimination Directive), by Law 3304/05.

No substantial provision of the Law seems to be raising specific problems or questions directly related to discrimination based on sexual orientation. The main substantial issue is the limited scope of the law: it only covers discrimination in respect of employment and occupation conditions, but not in other fields.

The procedural arrangements of the Law, on the other hand, seem to be highly complex and inefficient. For one thing, the fact that victims may make use of the regular administrative law remedies does not allow for a proper examination of complaints. Further, the fact that there are three distinct (!) equality bodies, each competent to hear and to deal with different kinds of complaints, further complicates the situation. Finally, the inactivity of the equality bodies concerning the dissemination of the Law and of rights thereby accruing to individuals has been proverbial.

The irrefutable proof that the system is badly set up and inefficiently operating, is that there has not been any complaint successfully dealt with by any of the equality bodies. Neither has there been any judicial decision, by any court or tribunal, applying the Law. In the last few years, in a couple of occasions, the discriminatory refusal to provide services on the basis of sexual orientation has been condemned, but on bases other than the “Non discrimination Law”.

Freedom of movement

Under Greek law, ‘free’ partnerships between non married persons have only been recognised by Law 3719/2008, only in respect of opposite-sex couples. Further, a couple of same sex marriages celebrated by a progressive Mayor have been annulled by the Courts. Therefore, EU LGBT citizens may gain the right to stay in Greece on their own right, provided they fulfil the relevant conditions, but not as family members. LGBTs who are not EU citizens, have no right to enter and stay in Greece as family members neither of Greek nor of other EU citizens. The same is true for their children.

Asylum and Subsidiary Protection

Greece has a surprisingly low percentage of recognition of refugee status, under the Geneva Convention or else. No official statistics exist on the grounds on which a) protection claims are being submitted or b) refugee status is being granted. Even if such statistics did exist, sexual orientation would not figure as a category of its own, but would come as a sub-category of ‘persons persecuted for reasons of membership of a particular social group’.

There are no binding or else clear rules on whether LGBT are considered as belonging in a particular social group. In practice, however, there have been some cases where asylum has been granted to people who have been persecuted because of their sexual orientation. These are very few, nonetheless, compared to the total number of the relevant claims, given that the vast majority of people seeking asylum in Greece come from Iraq and Iran, countries particularly hostile to LGBTs.

In view of the findings above and those exposed under ‘Freedom of Movement’ it comes as no surprise that ‘Family reunification’ for the same-sex partner of an individual having obtained refugee status in Greece is not an issue.

Family Reunification

The ‘Family Reunification’ Directive 2003/86/EC has been transposed into Greek law by Presidential Decree (PD) 131/2006. Like in all other instances where giving rights to same-sex partners is at stake, the legislator’s response is outright negative. The law makes no mention whatsoever of non married partners, regardless of whether they are of the same or opposite sex from the sponsor. Therefore, no LGBT partners of third country nationals residing in Greece are admitted for family reunification.

Freedom of Assembly

Pride Parades’ have been continuously held in downtown Athens from 2005 onwards. Several ‘Pride Assemblies’ had been publicly held before 2005 in parks and squares of Athens. All necessary permissions have always been obtained without any major hurdle or delay. No homophobic demonstration or other collective manifestation has ever taken place in Greece. The recent Pride Parades attract an increasing number of attendees: an estimated number of 5.000 people attended the 2009 Pride Parade, compared to an estimate of 2000 in 2007. Police has readily offered its protection to the events, but had never had to intervene in incidents openly driven by homophobia. Athens Pride has a dedicated website with a wealth of relevant information (<http://www.athenspride.eu/v2/>).

Criminal Law – Hate speech

Hate speech in Greece is regulated exclusively by Law 927/1979. This law, however, only incriminates hate speech based on racial origin, nationality and religion. Sexual orientation does not figure among the grounds on which hate speech is prohibited and, therefore, no specific protection is offered to LGBTs. Moreover, Law 927/1979 has been idle for many years and has only been applied in the last years, only in cases involving Jews and Romas. Therefore, an extensive application of the law to cover sexual orientation is not a likely development. Victims of hate speech may use the Civil Code remedies if their name, personality, right to family life etc are being violated. These remedies, however, are of limited interest to LGBTs.

In the Penal Code homophobia has become a general aggravating factor following a 2008 modification of the Penal Code, concerning the calculation of the penalty; to date, however, no judicial application of this new piece of legislation may be identified. On the opposite, however, Article 347 of the Penal Code incriminates some homosexual practices, clearly distinguishing them from heterosexual ones. This clearly discriminatory provision has been denounced time and again by LGBTs, their associations and several NGOs and its abolition is expected some time in the foreseeable future. However, no general ‘Lithuania-like’ law exists in Greece.

Transgender issues

Trans people under the Greek legal system are a non issue, since there is not a single legal text or judicial decision dealing with them. It is not clear whether trans people are covered by legislation prohibiting discrimination on the basis of sexual orientation or on the basis of sex.

This notwithstanding, sex reassignment is practiced in Greece and has, at least once, been covered by the general healthcare and pension fund (IKA). After sex modification is successfully operated, the person has the right to change his/her name following a relatively straight forward procedure. Marriage is also possible with a person of the opposite sex – post surgery.

Miscellaneous

Homophobia within the Greek society is existent but dormant. One may observe a) indifference on the part of non concerned parties and b) deception and lack of trust on the part of parties directly concerned (LGBTs and their organisations). This tacit acquiescence to homophobia is nurtured by a number of factors which are peculiar within Greek society. At least six factors may be pointed out: a) the dominant role of the Greek Orthodox Church in Greek society and its openly homophobic stance, b) the macho and/or homophobic discourse of the vast majority of politicians, c) the negative imagery

put forward by the media, d) the role of the police, e) the absence of sexual education in schools and f) the unwillingness of all the governments to pay attention to substantiated LGBT claims and to legislate in accordance.

Good Practices

Almost non-existent.

Conclusions

Homophobia and discrimination on the basis of sexual orientation remain, to a large extent, 'unspoken' legal issues under the Greek legal system. While the social realities are there, the legal system is catching up with great delay and, often, in a (willingly?) inefficient manner.

For one thing, in Greece discrimination on the basis of sexual orientation is dealt with together with all other forms of prohibited discriminations, if at all. Second, Greece has fulfilled its obligations under the relevant EC directives in a 'minimalistic' and procedurally cumbersome manner. Third, Greece does not recognise family outside marriage, nor does it pay attention to trans issues. Finally, the institution of asylum has been severely suffering in the country which invented it.

Therefore, there has been no judgment by any court or tribunal concerning specifically discrimination on the basis of sexual orientation. There have been virtually no claims before the equality bodies either. This shows a fundamental distrust for the procedures and bodies involved – which may be justified in view of the very poor visibility, let alone effectiveness, of these bodies. A further reason, which may partly explain the fact that the organisations involved are not as active as one would expect, is that they often are 'one door, many doorbells', i.e. the same persons bear various labels and are charged with all sorts of responsibilities and functions.

The lack of any statistical data, official or other, is a striking feature of the Greek situation concerning homophobia. Efforts to make up for this lack of information, through direct contacts with stakeholders and competent bodies, have failed to bear fruits. This is presented in Annex III of the present study, where all the bodies contacted and their responses are being presented.

A. Implementation of Employment Directive 2000/78/EC

Directive 2000/78/EC (the employment non discrimination Directive) has been transposed into Greek law jointly with Directive 2000/43/EC, (the general non discrimination Directive), by Law 3304/05 {Official Gazette (FEK) A 16, 27/01/05, p. 67-72, hereinafter ‘the Law’}. The choice of a formal law for the implementation of the above Directives is significant, in view of the fact that the vast proportion of EC Directives is being transposed into Greek law by presidential decrees (PDs). This choice has been dictated by legal considerations, as the Directives touch upon both labour and criminal law. Moreover, this choice carries a clear political statement as it shows the importance that the Greek government attaches to the principle of non discrimination, compared to other more ‘functional’ rules of EC law. An undesired effect of this choice, however, has been that the Supreme Administrative Jurisdiction has been deprived of the opportunity to exercise its preventive control of legality over the transposition text, as the Jurisdiction’s competence only covers PDs – not formal laws.

The Law counts six Chapters: **Chapter 1** describes the objective of the Law and defines the concept of equality of treatment. **Chapter 2** transposes the substantial provisions of Directive 2000/43/EC (general prohibition of discrimination on the basis of race or ethnic origin). **Chapter 3** transposes the substantial provisions of Directive 2000/78/EC (prohibition of discrimination at the work place, based i.a. on sexual orientation). **Chapter 4** bears the title ‘Protection’. It sets civil, administrative and criminal rules and procedures for the protection of individuals against discrimination. Further, it transposes the principles a) of reversal of the burden of proof and b) that plaintiffs may be represented by other ‘legal persons’, provided that their consent is unequivocally given. **Chapter 5** concerns the ‘Promotion of equal treatment’ which is to be achieved in two ways: a) through social dialogue with representative associations of the various categories of protected persons, conducted by the Economic and Social Committee and b) the nomination of three different bodies responsible for the extra-judicial examination of allegations of discrimination. **Chapter 6** contains final and transitional provisions.

Several commentators have underlined the pros and cons of the Law, but none has ever focused on the issue of discrimination on the basis of sexual orientation.

No substantial provision of the Law (contained in Chapters 1-3) seems to be raising specific problems or questions directly related to discrimination based on sexual orientation. The only issue, raised by the National Committee for Human Rights (NCHR – Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου) and by Amnesty International and taken over by the Greek Economic and Social Committee (ECOSOC, Οικονομική και

Κοινωνική Επιτροπή) in its first report for the implementation of the law,¹ is a translation problem. The word ‘sexual’ has two translations in Greek: one, more formal and etymologically linked to procreation (γενετήσιος) and another one more colloquial and closer semantically to pleasure (σεξουαλικός). In the Law the former is being used and this could entail some bias against persons who do not aim in procreating.

The second observation concerning the substantial content of the Law is its limited scope. The Law prohibits discrimination on the basis of religion, other convictions, handicap, age and sexual orientation only in respect of employment and occupation conditions. The Law itself does not cover discrimination in other fields, such as education, public goods and services etc. What the Law does, however, is that it foresees the extension of its own scope by means of a PD (Article 27). The adoption of a PD should be easier and more fast-track than the amendment of the Law itself, despite the fact that the initiative for the adoption of the relevant decree is shared between three Ministers: Economy and Finance, Employment and Social Protection and Justice. To date no such decree has been adopted and we are not aware of any motion in this direction. This affirmation still holds true three years later, in February 2010.

The procedural arrangements of the Law, on the other hand, require some more extensive commentaries. The Law provides (quasi-)separate remedies for discriminations occurring in three distinct situations: a) by the public administration and subordinate or attached bodies, b) by private persons in general, c) by employers in particular. For each one of these categories the Law provides for a ‘general’ remedy, borrowed from other fields of law, and for a ‘specific’ body responsible for mediating and monitoring the application of the principles of the Law. The procedural arrangements described below cover any form of discrimination, irrespective of the ground(s) on which it is based.

For discriminations inflicted by the administration and its bodies, the Law (article 13) makes it possible to use the same means of administrative review available under general administrative procedure, in order to obtain the reformation or repeal of unfavourable individual administrative acts (Law 2690/99, Articles 24-26). The plaintiff has to submit his/her plea to the authority which adopted the act or to the hierarchically superior one, without any time limitation. The administrative authority has to respond within 30 days, and if it fails to do so (which is very common in practice) it is deemed to have rejected the plea. The refusal of the authority (express or implicit) may be challenged before the administrative courts and tribunals. The above system, however, has three important shortfalls. First, it is unclear whether the submission of the administrative review procedure suspends the 60-day time limitation for introducing annulment proceedings before the administrative courts and tribunals. Therefore, many plaintiffs prefer to go directly to the courts against the prejudicial act, or at least to initiate simultaneously both procedures. Second, the submission of the plea for administrative review has no suspensive effects, unless the authority expressly decides so – a possibility which materialises almost under no circumstances. Third, as stated above, administrative review proceedings may only be introduced against *individual* administrative acts – not

¹ According to Article 18 of the Law, the ECOSOC should lead the social dialogue on issues of discrimination, publish a yearly report, make recommendations to the Government etc. For its first (2005) report see http://www.oke.gr/gnomes/gnomes%202006/T_157.pdf.

regulatory ones. This may be specifically relevant for LGBT people: one of the objectives of the EC Directive is to open up the categories of persons having the right to raise a discrimination plea, even if they are not directly and individually concerned – an objective which may not be served by the general rules on admissibility.

For discriminations inflicted by the administration and its bodies the Law names as equality body the Greek Ombudsman (Συνήγορος του Πολίτη). According to the Law, the Ombudsman has the power to investigate cases of discrimination and, where an actual problem is identified, to undertake mediation. Mediation takes the form of informal contacts and of a written ‘opinion’ which is sent to the failing administration and is also made public. However, there is no way in which the Ombudsman may oblige the administration to change its decisions or practices, or to offer compensation or other relief to the aggrieved party. The activities of the Ombudsman are being regularly publicised in its website and through its Annual Report to the Parliament. Despite the fact that no such clear obligation stems from the Law, the Ombudsman has developed the habit of including its special report as an equality body (obligation created by the Law) in its Annual Report.

In its 2005 annual report as an equality body the Ombudsman had dealt with only one case of discrimination on the basis of sexual orientation. In (Ombudsman) case 2967/2005 a non-Greek post-graduate student of the University of Athens complained that the expulsion measures taken against him by the University authorities were grounded on his sexual orientation. The Ombudsman dismissed the claim and found that the measures were based on the personal conduct of the complainant and that, in any event, this case could not come under the Law, since the alleged discrimination concerned access to education, not to employment or occupation. In its 2006 annual report the Ombudsman observes that its new functions as an equality body have been better disseminated with the result that the total number of claims under the Law 3304/05 (all types of discrimination) has doubled to 51. However, in 2006, not a single case referred to the Ombudsman concerned discrimination based on sexual orientation! The same is true for the 2007 and 2008.

Discrimination in the workplace is being dealt with under labour law and is liable to administrative fines ranging from 1,000 to 30,000 euros. The role of ‘equality body’ in the field of employment is entrusted to the Employment Inspection Body (Σώμα Επιθεώρησης Εργασίας). This (like the Ombudsman) is a pre-existing body, enjoying extensive inspection powers. Its task is to make sure that the main rules of labour law are actually applied. Through ‘down raids’, document inspections, investigations, cross-examinations etc, the Employment Inspection Body makes sure that all employment is duly declared, paid leaves are respected, overtime work is paid for etc. By virtue of the Law, this Body is also empowered to check for the existence/occurrence of discriminations in the workplace. As an ‘equality body’ the Body may a) participate in any conciliation effort between the parties, b) emit a summary report on the reasons due to which such a conciliatory effort failed, c) give its opinion, on its own motion or on probe by the Minister of Justice, on the interpretation of the Law, d) draw reports on the application and promotion of equal treatment. However, this body has no website were it could publicise its actions and its findings and has never published a report under its

capacity as an equality body. However, the Employment Inspection Body has responded to the requests for information by the ECOSOC, both in 2005 and in 2006, and has stated that no cases of discrimination under Law 3304/05 have ever been reported to it. The same information was provided in a written reply to our request for information, in the beginning of 2008 – covering thus the year 2007. This finding is somehow contradicted by the information given to the ECOSOC for its 2006 annual report by the Department of Equal Opportunities of the Ministry of Employment and Social Protection.² This Department, entrusted by the Law with the obligation to offer operational support to the Employment Inspection Body for the application of Law 3304/05, has responded that six cases of discrimination had been reported to it. However, the Department did not specify the grounds of the alleged discriminations, nor did it state how it actually dealt with each one of these cases.

For all other cases of discrimination (i.e. when the source of discrimination is not a public authority or an employer), the Law establishes a new ‘equality body’, the ‘Equal Treatment Committee’ (Επιτροπή Ίσης Μεταχείρισης). This is a body created within the Ministry of Justice, its members are named by the Minister, it is presided by the Secretary General for Justice, its operations are manned and its logistics supported by services of the same Ministry. The fact that the Equal Treatment Committee has limited independence has been highlighted,³ but this may not be dramatic in itself⁴ to the extent that the Committee only takes care of disputes arising between individuals – no administration is involved. The Equal Treatment Committee has the same powers (investigative etc) and functions (mediation, reporting etc) as the Employment Inspection Body (above para. 0). It would seem, however, that the Equal Treatment Committee has been pretty much idle since its setup, one of the reasons being that it is understaffed. The fact is that the Committee has no webpage (not even as part of the webpage of the Ministry of Justice) and has not yet published any yearly report. More importantly still, it has even failed to respond to the request for information addressed to it by the ECOSOC for every single year since 2005. This notwithstanding, the Equal Treatment Committee has responded to our request for information (in January 2008) and has stated that no case of discrimination on the basis of sexual orientation has ever been reported to it. The Ombudsman in its 2006 annual report states that the members of this Committee have occasionally met merely for coordination purposes, but this may just be a decent way to cover the Committee’s idleness.

Nothing has changed in the last three years: the Equal Treatment Committee still has no dedicated website, nor does it have any presence within the parent Ministry’s website – despite the fact that the latter (Ministry) has been renamed to “Ministry of Justice, Transparency and Human Rights”. Similarly, the Committee has failed to provide any data to the ECOSOC for the years 2007

² For the 2006 ECOSOC report see.
http://www.oke.gr/gnomes/gnomes%202007/GNOMH_183.pdf.

³ Among others by the Ombudsman in its Annual Report as an equality body for 2005, p. 14 and by the ECOSOC in its 2005 Annual Report, p. 28, see
http://www.oke.gr/gnomes/gnomes%202006/T_157.pdf.

⁴ The developments which follow, however, make clear that the lack of independence does indeed impair the functioning of the Committee.

and 2008 (see To Vima Newspaper, 4-11-09). In its 2008 Yearly Report on Equal Treatment, the ECOSOC goes as far as to hold that the Equal Treatment Committee ‘only exists in paper, in violation of both national and EU law’.⁵

Last but not least, the Law institutes penal sanctions for those who discriminate in the course of their commerce and/or the delivery of goods or services: imprisonment, 6 months to 3 years and fines, 1,000 to 5,000 euros. It is not clear whether this possibility also covers public goods or services. In any event, if the author of the discrimination is a public administration, only its employees (civil servants) are liable to be prosecuted, but actions of that kind are only exceptionally successful. A further uncertainty – and an important one – is whether proceedings may only be initiated by the victim of discrimination or, on the contrary, by the magistrature itself. The Law repeals and replaces the equivalent provision of Law 927/1979 (for this law see below under F) which, (since a modification introduced in 2001) opened up the way for the magistrature to pursue perpetrators of discriminations on its own motion. The Law, however, as it now stands, is silent on this issue.

In court hearings, whether criminal or administrative, none of the three ‘equality bodies’ may constitute parties, for lack of legal personality and of the necessary empowering provisions in their constitutional acts. The best way in which they can assist the plaintiffs in judicial proceedings, is through issuing their reports, for each individual case, in time for them to be taken into account by the competent court or tribunal. Most magistrates would pay the utmost attention to the findings of any of the ‘equality bodies’ and would act in accordance. A further way in which the ‘equality bodies’ could be of help, would be by allowing their members/personnel who have dealt with any particular case, to testify before the court or tribunal hearing the same case – this, however, does not seem to be the current practice.

Article 9(2) of the Directive is transposed through Article 13(3) of the Law. The scope of the latter, however, is more restrictive than the former, in several ways. First, contrary to the Directive which opens up the right of action to ‘associations, organisations or moral persons’, the Law only speaks of ‘legal persons’. Despite the fact that associations under the Civil Code do have legal personality and that the same is true for most organisations, legal personality is always conditional upon the fulfilment of specific formalities. It would seem that the more general formulation of the Directive was intended to open up the right of action to any interested party, rather than to impose formal requirements. Second, the Law makes admissibility of legal persons conditional upon the fact that their constitutive acts specifically provide for such procedural interventions to be carried out by them – a more general *locus standi* based on their general aim being insufficient. Third, while the Directive allows such third parties to act ‘on the behalf *or* in support’ of the victim, the Law opens up only the former possibility. Fourth, the Law states that such representation is only possible provided the victims have given their express consent through a notary act (power of attorney) or an authorisation signed before a public authority. This is not a direct limitation of the scope of protection wanted by the

⁵ ECOSOC Report on The application of the Principle of Equal Treatment, 2008, available at http://www.oke.gr/opinion/op_223_09.pdf p. 16.

Directive, but in practice it may prove an important ‘filtering device’, especially for LGBTs who may shy away from such formalities.

In Greece there are several bodies representative of LGBT people, most of them run on a ‘personal basis’ by one or several activist members, having very limited resources and, often, limited territorial scope. There are few bodies assuring wider representation and having legal personality. These are:

- a) Homosexual and Lesbian Community of Greece (Ομοφυλοφιλική και Λεσβιακή Κοινότητα Ελλάδας – ΟΛΚΕ), an association created in 2004 (<http://www.olke.org>),
- b) Hellenic Community of Homosexuals (Ελληνική Ομοφυλοφιλική Κοινότητα – ΕΟΚ), a non profit company created in 1988 (<http://www.gayhomes.net/eok/>),
- c) Sympraxis (Σύμπραξη κατά της Ομοφυλοφοβίας), an association created in 1995 and based in Thessaloniki (<http://www.geocities.com/sympraxis/>) and
- d) Solidarity Association of Greek Transgender and Transexuals (Σωματείο Αλληλεγγύης Τραβεστί – Τρανσέξουαλ Ελλάδος), an association created in 2003 (<http://www.satte.gr/>).

To date, however, most representative organisations have used petitions on line, letters to members of the Greek and/or European Parliament, letters to Ministers, press releases and other ‘political’ means of intervention, rather than their procedural rights under the Law.⁶

Other organisations having a legal personality and an expressed purpose to monitor and combat discrimination – though not specifically related to sexual orientation – are, the Greek Helsinki Monitor (<http://www.greekhelsinki.gr>), Amnesty International Greece (<http://www.amnesty.org.gr>) and Antigone Information and documentation centre on racism, ecology, peace and non violence (<http://antigone.gr>).

Law 3304/05 simultaneously transposing into Greek law both Directives 2000/78/EC and 2000/43/EC has never been applied by any Greek court or tribunal. More precisely, by the end of 2007, no judgment or decision applying any of the law’s provisions had been published.⁷ This may be due to the fact that the law only came into force a couple of years ago and that legal proceedings before most jurisdictions would take longer before a final judgment is published – while it is difficult to grant interim measures on the basis of the Law. A further reason is that – contrary to Law 3304/05 – most laws in Greece contain various provisions unrelated to one another, and few people, but directly interested parties, follow regularly the legislative production. Therefore, the lack of awareness of

⁶ For an example of this kind of intervention, see below, under C, for the case of the Iranian asylum seeker known as ‘Alex’.

⁷ Research based on ‘NOMOS’, the most reliable and complete legal database on Greek law and on reviewing all the legal periodicals and journals active on ‘rights’ literature.

the possibilities opened up by the Law, may constitute an important drawback to its application.

Since the previous report few cases have indeed been decided by the Greek Courts on the basis of Law 3304/05, only in relation to discriminations based on ethnic origin and age. No case concerning discrimination on the basis of sexual orientation has been decided. In one case the owner of a Café-Restaurant has been condemned for excluding from its premises two men wishing to be served, but judgment in this case was based only on the Civil Code provisions protecting personality (Articles 57-59) and not on Law 3304/05.⁸ Yet another means of protecting LGBTs from discriminatory treatment has been devised by the Data Protection Authority. In its decision n. 3/2008 (<http://www.dpa.gr>) the Authority fined a private insurance company for using the military records of a person who had refused service for reason of homosexuality, in order to deny insurance coverage. The authority found that the mere fact that the person had declared to be homosexual did not classify him as high risk for insurance purposes and, therefore, held that the company lacked the right to process the relevant data.

On a more positive note, Directive 2002/73/EC 'amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions' has been transposed into Greek law by Law 3488/2006 (FEK A 191, 11/09/06). This Law contains many concepts and uses many of the procedural arrangements in common with Law 3304/05. The more recent law, however, is better drafted than Law 3304/05, not least because a) it uses the term 'sexual' orientation as in 'having sex' rather than in 'procreating', b) it allows for greater intervention of organisations and unions in the various procedures and c) it names a single equality body, both for publicly and privately inflicted discriminations: the Ombudsman. It is to be hoped that in the forthcoming future – and following the Ombudsman's suggestion to that effect⁹ – the two protection systems will merge on the line of the one instituted by the most recent law. Such hope, however, remains as yet unaccomplished.

⁸ Case CFI Thessaloniki, 23238/2006, Armenopoulos (2006) 1402, NOMOS.

⁹ Ombudsman's annual report for 2006, p. 250.

B. Freedom of movement

Under Greek law, ‘free’ partnerships between non married people are not recognised for any purpose. This is true for couples of different sex and, a fortiori, for couples of the same sex. The legislator has failed to respond to evolving social realities, possibly because of the important role the Orthodox church has been playing in Greek politics, especially during this last decade.

More alarmingly still, as recently as 2005 and 2006 the Highest Civil Jurisdiction, the Hareios Pagos (Άρειος Πάγος) has held that, after many years of common life and after growing their common children together, the unmarried opposite-sex partner of a deceased man, could claim no damages whatsoever for the death of her partner (cases 343/05 and 1735/06). In the same vein the same Court avoided, as contrary to public morals, the testament of a homosexual man who left a considerable part of his fortune to his lovers (who also happened to be Albanians) rather than to his family (case 981/2006).

Accordingly, PD 106/2007 (FEK A 135, 21/6/07) which transposes into Greek law Directive 2004/38/EC, uses an extremely restrictive definition of family members and only refers to spouses. In the light of the jurisprudence referred to in the previous paragraph, there is no way in which this extremely restrictive definition of family, contained in a legal act as recent as the PD 106/2007, may be interpreted to cover same sex partners in the foreseeable future.

It is also worth noting that a draft law put forward by the current government for the recognition of registered partnerships (cohabitation pact) specifically excludes from its scope same sex couples. Despite vivid reactions from several NGOs, legal organisations and the left-of-the-centre political parties, and despite a government change from a conservative to a socialist one, this draft has now become Law 3719/2008 and still excludes from its scope same sex unions. Asked on the compatibility of that law with the obligations arising under EU law, and more specifically under Directive 2004/38/EC, the Greek Ombudsman reasoned that no violation could be identified as long as it is for every member state individually to determine “family members” and to award them the rights stemming from the Directive in a non-discriminatory way (Ombudsman case 20914/2008)¹⁰.

In the meantime, and as means of putting pressure on the legislature, two homosexual couples managed to have their civil marriages celebrated by the Mayor of Tilos, a small island in the Dodecanese. Following an action in nullity introduced by the Public Prosecutor, the two acts have been set aside (Rhodes Court of First Instance Cases 114/2009 and 115/2009 (Chronika Idiotikou Dikaiou (2009) 617). The Prosecutor’s action against the Mayor has, nonetheless, been dismissed.

¹⁰ http://www.synigoros.gr/diakriseis/pdfs/7379_1_perilipsi_sumfono_simviosis_7.1.pdf

Therefore, EU citizens may gain the right to stay in Greece on their own right, as direct beneficiaries of Directive 2004/38/EC, but not as family members of other EU citizens of the same sex already residing in Greece. No relevant statistics are available.

LGBTs who are not EU citizens, have no right to enter and stay in Greece as family members neither of Greek nor of other EU citizens. The same is true for their children. Again, no statistics are available.

The lack of statistics may be alleviated by the fact that from direct contacts we undertook with the Department of the Interior Ministry responsible for legislative coordination in the field of immigration, we learnt two things. First, that a 33-page long Circular (n. 4174/28-2-08) has been issued explaining how family rights of EU citizens should be implemented and nowhere in this lengthy document is there a mention to the eventuality of same-sex spouses, registered partners or, else, couples. Second, that until now no such cases have been faced.

C. Asylum and Subsidiary protection

Greece clearly lags behind most other Member States in the way it implements the asylum directives. From the various EC directives in this field of law, only Directive 2001/55/EC on massive influx of asylum seekers has been transposed timely. The only other EC text to be implemented is the ‘procedures’ Directive 2003/9/EC, which was transposed as late as the end of 2007 (by PD 220/07, FEK A 251, 13.11.07) only after the condemnation of Greece by the ECJ in case C-72/06, *Commission v. Greece*, of 19 April 2007. On the contrary, implementation of the ‘qualification’ Directive 2004/83/EC is still pending. This Directive has eventually been transposed into Greek law by P.D. 96/2008 (FEK A 152, 30.7.08), almost simultaneously with the ‘procedures’ Directive 2005/85, which was transposed by P.D. 90/2008 (FEK A 138, 11.7.08). The former text (P.D. 96/2008) lists sexual orientation among the ‘reasons of persecution’ opening right to protection – in so doing it does no more than copying the relevant Directive provision (Article 10). P.D. 90/2008, on the other hand is mute on this issue.

Moreover, Greece is fully bound by the 1951 Geneva Convention and the 1967 New York protocol on the protection of refugees – and, of course, by the 1950 European Convention of Human Rights. Therefore, protection is being offered to people reasonably fearing persecution ‘for reasons of membership of a particular social group’. LGBTs who are being persecuted in their home countries do, in principle, come within this definition.

Greece, however, has a surprisingly low percentage of recognition of refugee status, under the Convention or else. According to the statistics posted on the official website of the Greek UNHCR,¹¹ the overall (Convention and complementary protection) recognition rate was of 20.15 per cent in 2000, 22.48 per cent in 2001, but then dropped to 1.07 per cent in 2002, 0.62 per cent in 2003, 0.88 per cent in 2004, 1.90 per cent in 2005 and 1.53 in 2006. In absolute numbers, this means that in 2005 (the last year for which statistical data is fully available) out of 9.050 applications, only 88 individuals got some protection status (39 under the Convention and 49 complementary protection). Against this bad news, there are some good ones: from all the remaining applicants few are actually being sent back to their or to third countries, but most remain on the ground (and hope for the next regularisation campaign).

It remains, however, that as far as ‘protection’ is concerned, Greece is not a hospitable country for any kind of claim. It is clear that out of the very few successful claims, extremely few, if any, would be based on persecutions based on sexual orientation. No official statistics exist on the grounds on which a) protection claims are being submitted

¹¹ www.unhcr.gr, last visited on 3-1-08.

or b) refugee status is being granted.¹² Even if such statistics did exist, sexual orientation would not be a category of its own, but would come as a sub-category of ‘persons persecuted for reasons of membership of a particular social group’. Moreover, the research of the relevant case law of the Greek Supreme Administrative Jurisdiction (Συμβούλιο της Επικρατείας – which controls the legality of expulsion orders of asylum seekers) gives no hits on cases concerning LGBTs.

All official statistics distinguish on the basis of nationality of the claimants/refugees. The main nationality seeking asylum in Greece are Iraqis: they represented 87.02 per cent of total asylum claims in 1997, 73.35 per cent in 1998, 59.29 per cent in 1999, 43.27 per cent in 2000, 35.86 per cent in 2001, 45.32 per cent in 2002, 35.20 per cent in 2003, 19.33 per cent in 2004, 10.73 per cent in 2005 and 18.39 per cent in 2006. Other nationalities follow (in descending order, based on 2006 data): Bangladesh, Afghanistan, Pakistan, Georgia, Iran, Nigeria, Sudan, Turkey, Somalia, Myanmar. Among these countries, Iran, Iraq (especially after the latest US invasion),¹³ and (to a lesser extent) Afghanistan, are countries openly hostile to LGBTs. On the basis of this data it may be reasonable to infer that several of the asylum seekers and of the refugees are in Greece because of their being LGBTs. According to unofficial information, gathered for the purposes of the present report, there are at least two occasions in which refugee status was given to Iranian people fearing prosecution because of their sexual orientation.

Moreover, there is currently an ongoing saga about an Iranian LGBT asylum seeker, known as Alex. It is not clear whether he invoked sexual orientation (and at which stage) or only political opinion as grounds for his (already suffered) prosecution, but the fact is that at some point a Greek man testified to be his partner. Despite this, the applicant’s claim was rejected at all administrative instances and an appeal is now pending before the Greek Supreme Administrative Jurisdiction, the hearing being due for March 11, 2008. While dealing with this case, the Greek Ombudsman issued a document classified as ‘confidential’ (because of the sensible personal data contained), dated February 13, 2008 and addressed it to the Police Commander. In this document the Ombudsman made plain that in its view prosecution for sexual orientation reasons does justify the recognition of refugee status. This case was brought up by the Greek Homosexual Community, who addressed letters to members of the Greek and European Parliament, to the Ombudsman, to the Deputy Minister for Public Order and circulated an electronic press release.¹⁴ However, no further action has been taken, as the Iranian in question was granted asylum by the authorities.

In view of the above, of the statistical data concerning the low admission rate of asylum claims and of the developments mentioned in part B of the present (concerning Free Movement), it becomes apparent that recognising refugee status to the LGBT partner of a person already having the status of refugee is not an issue in Greece. The fact that the

¹² This stems a) from the official statistics published at the Greek UNHCR website, b) the written reply by the Greek UNHCR, c) the written reply by the Greek Ministry of Interior and Public Order.

¹³ See <http://web.vivodi.gr/www.unhcr.gr/protect/coi/IRAQ%202007.pdf>.

¹⁴ See http://www.gayhomes.net/eok/press_release1.html.

persons concerned may be married or in a registered partnership in their state of origin does not affect their (absence of) rights as a couple.

D. Family reunification

The 'Family Reunification' Directive 2003/86/EC has been transposed into Greek law by PD 131/2006 (FEK A 143, 13/07/06). Like in all other instances where giving rights to non-married partners is at stake, the legislator's response is outright negative. Article 4 of the PD, entitled 'Family members' restricts the right of family reunification to the adult spouse of the sponsor. No mention whatsoever is made of non married partners, regardless of whether they are the same or opposite sex from the sponsor. The only provision which deviates from the traditional definition of the nuclear family is paragraph 3 of the same Article, which restricts the reunification rights of polygamous men.

Under these circumstances it comes as no surprise that no LGBT partners or spouses of third country nationals residing in Greece are admitted for family reunification – and that no statistics are available. Similarly, no judgment by the courts or tribunals may be identified. As above (under section A), the fact that the PD is very recent and that the Greek justice system is not very expedient – but for interim measures which, are extremely difficult to envisage under this PD – may be part of the explanation. More importantly, however, even though the Family Reunification Directive allows Member States to recognise as family members unmarried partners, it may not impose such an obligation to States the legal systems of which do not recognise legal effects to unmarried couples. Therefore, unmarried partners of sponsors established in Greece would have no case under either Greek or EC law. Similarly, same-sex married couples would not be recognised in Greece, under Article 45 EC, as countering public order.

E. Freedom of assembly

Freedom of assembly is guaranteed by Article 11 of the Greek Constitution. It is provided that ‘all the Greek citizens have the right to assemble peaceably and unarmed’. Paragraph two of the same provision provides for restrictions, as follows: ‘the police may be present only at outdoor public assemblies. Outdoor assemblies may be prohibited by a reasoned police authority decision, in general if a serious threat to public security is imminent, and in a specific area, if a serious disturbance of social and economic life is threatened, as specified by law’ (‘official’ translation generally available on the internet, see e.g. <http://www.hri.org/docs/syntagma/>).

Despite the fact that this constitutional provision has not been subject to any revision since the Constitution was first put into force, in 1975, the executing law provided for in the last phrase of Article 11 has not been enacted as yet. Therefore, two legislative acts enacted under the previous colonel regime still regulate this area: legislative decree 794/1971 which regulates public assemblies (Περί δημοσίων συναθροίσεων, Official Gazette, FEK A 1, 01/01/1971) and the royal decree 269/1972 which regulates the conditions under which a public assembly can be dispersed (Περί εγκρίσεως του κανονισμού διαλύσεως δημοσίων συναθροίσεων, Official Gazette, FEK A 59, 29/04/1972). The former text recognises the ‘...possibility of the police to be constantly present’ (Article 4) and regulates the reasons for which a public assembly can be dispersed (Article 7): this may happen in cases of violence, especially when there is a direct threat to life or to the physical integrity of the participants or a threat to public security and public order, as well as in cases where the participants are breaking the Law.

The fact that legislative acts which have been adopted by a non-democratic government may not be compatible with the values of a democratic Constitution has been underlined by several authors. Most importantly the Public Prosecutor of the Supreme Court (Hareios Pagos) in his consultative Opinion No 4/1999 has held several provisions of the said acts to be anti-constitutional. The main ground of anti-constitutionality would be that that, contrary to the Constitution which foresees only public security as a ground for restricting the right of assembly, the legislative acts also add a second ground, that of public order. Public order is a much broader concept, to the extent that it includes the respect of ‘...continued and undisturbed operation of public services, public transport etc’ (Supreme Administrative Court – Συμβούλιο Επικρατείας – decision 957/78). The Opinion also deems the legislative acts to be contrary to the European Convention on Human Rights.

The tentative legal vacuum may explain the fact that the police is reluctant to prohibit or restrict public assemblies, but for extreme situations. On the flip side, the legislative acts that the police is supposed to apply are outdated and over-restrictive, thus allowing for the exercise of important discretion. The fact that the Supreme Administrative Court (Συμβούλιο Επικρατείας) has not as yet had the opportunity to judge of their

constitutionality may be explained by the fact that a) police has made a sensibly reasonable use of the powers conferred to it and b) judicial review is not an appropriate means of redress against public assembly restrictions.

Before 2005, several 'Pride Assemblies' had been sporadically held in public parks and squares of Athens. For the organisation of events in parks, squares etc permission has to be given by the municipal authorities. In order to occupy public streets, permission by the police is required. All necessary permissions have always been obtained without any major hurdle or delay. During the parades and as required by the law, the police provided security forces: more numerous the first year, less strong the following ones. Annually held 'Pride Parades' have been held continuously in downtown Athens from 2005 onwards. No homophobic demonstration or other collective manifestation has ever taken place in Greece. The recent Pride Parades attract an increasing number of attendees: an estimated number of 5.000 people attended the 2009 Pride Parade, compared to an estimate of 2000 in 2007. Police has readily offered its protection to the events, but had never had to intervene in incidents openly driven by homophobia. Athens Pride has a dedicated website with a wealth of relevant information (<http://www.athenspride.eu/v2/>).

No homophobic demonstration or other collective manifestation has ever taken place in Greece (for individual statements by clergymen, statesmen etc see below, section H). The only organised manifestation of homophobia was the distribution of flyers against the 'Pride Parades' in 2005 and 2007. This was organised by the (ultra) extreme right nationalistic party 'Golden Dawn' (Χρυσή Αυγή). No menace or other open call for animosity has ever been launched against LGBT organisations or their representatives. Police had never had to intervene in incidents openly driven by homophobia, neither at the prevention nor at the suppression stage.

F. Criminal law, hate speech

Hate speech in Greece is regulated exclusively by Law 927/1979 (FEK A 139, 28/06/1979). Those breaking the law are liable to imprisonment up to two years and/or to fines. This law, however, only incriminates hate speech based on racial origin, nationality and (since a modification introduced in 1984) religion. Sexual orientation does not figure among the grounds on which hate speech is prohibited and, therefore, no specific protection is offered to LGBTs.

Moreover, Law 927/1979 has been idle for many years and no cases have been brought under this law. The main reason for this was that, in its original form, the law provided that prosecution could only be initiated by an official complaint by the victim – addressee of hate speech. This requirement has been dropped in 2001 and now the magistrature may initiate proceedings on its own motion. This, however, has not produced the expected effects: by the end of 2007 still no judgment was published by any court or tribunal on the basis of Law 927/1979. Interestingly enough, in the most extreme case of racial violence in Greece, where the perpetrator shot a number of foreign migrants killing two and injuring seven ‘because he hated foreigners’, he was convicted to double life imprisonment plus 25 years in prison. However, despite the prosecution describing him as a ‘racist murderer’, he was not charged with violation of the hate speech Law 927/79.¹⁵ The only application of this law known by the author is a high profile case against an (ex) politician who authored a strongly anti-Semitic book; he was condemned in a judgment delivered late November 2007, the publication of which is still pending (and hence is not available).¹⁶ The 2007 judgment has been quashed on appeal, by judgment of the Athens Court of Appeal of 27 March 2009, on the ground that it expressed the author’s ‘scientific position’.¹⁷ Since this first ‘application’ of the law another two cases have been decided on its basis,¹⁸ but none of them bore on sexual orientation. In view of the above, it becomes clear that the chances for the existing law to be construed extensively by the judiciary in order to cover discrimination on the basis of sexual orientation are quite slim, if non-existent.

¹⁵ This has been pointed out, among others, by the NGO Antigone, on <http://fra.europa.eu/fra/material/pub/RAXEN/4/RV/CS-RV-NR-EL.pdf>.

¹⁶ It has to be noted that, despite the book being openly racist and pregnant with hate speech, as it denied the holocaust and treated Jews as sub-humans worth the execution squad, judgment against the author was delivered on a tight vote (three against two) among the members of the tribunal.

¹⁷ None of these judgments has been published in print or electronically in a way accessible to parties other than the ones involved.

¹⁸ Case 185/2009 of the Criminal Court of First Instance of Athens (3-member), concerning an anti-semitic publication on a daily newspaper; a further case, as yet unreported, concerned the maltreatment of Roma people.

As stated in Section A above, Law 3304/05 does foresee penal sanctions for those who discriminate in the course of the provision of goods or services. This, however, requires a material act of discrimination and does not cover pure hate speech.

Victims of hate speech may use the Civil Code remedies if their name, personality, right to family life etc are being violated. Civil actions, however, have as their object either to force the perpetrators to stop their prejudicial actions (in the future), or to award the victim damages (for prejudice already suffered). The former remedy has no preventive effect whatsoever, while the latter is of limited efficacy, as it requires the proof of effective damage suffered by the claimant, as a consequence of the acts of the defendant. Therefore, civil law actions are only of limited interest for the protection of LGBTs. Moreover, it is virtually impossible to identify the cases decided on the above provisions of the Civil Code which concerned specifically LGBTs.

In the Penal Code homophobia has become a general aggravating factor following Law n. 3719/08 (article 23), which modifies article 79(3) of the penal code, concerning the calculation of the penalty. According to the newly introduced provision 'any [illegal] act motivated by hatred national, racial, religious, or hatred due to the differing sexual orientation against the victim constitutes an aggravating factor'. The above aggravating factors are to be taken into account in addition to the basic criteria used for assessing the perpetrators personality, namely, a) the causes and the objectives of their action, b) the degree of development of their character, c) their individual and social circumstances and prior life, and d) their conduct during and after the perpetration of the act. Being an aggravating factor, the existence of sexually-related motivation needs to be positively proven by the complainant or the attorney in charge. An overview of the two major legal data bases in Greece shows no hits concerning the application of this new provision.

Moreover, there is nothing in the Greek legal order which could possibly compare to the Lithuanian law recently adopted. If a comparable law has ever existed in Greece, it should date back to the Colonels' regime (toppled in 1974) and has long been forgotten.

G. Transgender issues

Trans people under the Greek legal system are not specifically legislated upon. A research in the electronic legal databases using the words ‘transgender’ or ‘transexual’ gives no hits, but for the occasional reference to extra-conjugal relationships in the course of divorce and child custody proceedings. Not a single presidential decree or ministerial decision has ever been issued concerning the status of trans people. It is not clear whether trans people are covered by legislation prohibiting discrimination on the basis of sexual orientation or on the basis of sex. What seems certain, however, is that no judicial or other equality body decision has ever been issued concerning trans issues.

This notwithstanding, gender reassignment surgery is a tangible reality. Some plastic surgeons do operate in Greece, but most trans people would rather go to the UK, Canada or the Russian Federation. In 2006 the Agency of Social Security (Ιδρυμα Κοινωνικών Ασφαλίσεων, IKA), the biggest pension and healthcare fund in terms of affiliates, was reported to have paid for a sex reassignment surgery carried out in the Netherlands. This has raised severe criticism among the vast majority of the population, given that the IKA – and all other funds – tend to be quite tight-handed with most mainstream treatments.¹⁹ This negative reception together with the fact that this was an isolated case, may explain that, despite our best efforts, we were unable to gather any more information concerning this case, neither from IKA itself nor from LGBT associations. It is also worth noting that the website of the trans association (Solidarity Association of Greek Transgender and Transexuals) bears no mention of the event or of the conditions pertaining to it.

Once gender modification has been carried out, then it is possible to ‘correct’²⁰ names. This is relatively straightforward and requires a judicial decision rendered by a one-judge tribunal, following a single-party (non-adversarial) procedure. For this it is necessary a) to have undergone a successful sex reassignment surgery, b) to submit a medical report by a gynaecologist testifying of the modification and c) to present two testimonies of the previous gender situation of the person. No statistics are available, as these are judicial decisions which never get published.

After the identity of the person (gender and name) has been changed, then s/he may get married to someone of the (now) opposite sex. Again, no statistics are available, as these are celebrated and registered as ‘normal’ weddings between heterosexuals.

¹⁹ See e.g. http://neoellinas.blogspot.com/2006/10/blog-post_12.html;
<http://www.freestuff.gr/forums/viewtopic.php?t=24796&start=0&postdays=0&postorder=asc&highlight=> ;

²⁰ ‘Correct’ is the actual term used in the decisions, rather than ‘change’ or ‘modify’.

H. Miscellaneous

From the analysis above it becomes clear that homophobia and discrimination on the basis of sexual orientation are still issues which are only marginally dealt with by the Greek legal system. Greece has fulfilled its obligations under the relevant EC directives in a 'minimalistic' and procedurally cumbersome manner. The questions raised and the statistics required by the present study are already extremely far-reaching for the Greek legal system.

The Ombudsman regularly observes in its annual reports as an equality body that the non-existence of declared incidents of discrimination (based on sexual orientation) should not be misinterpreted: it is more a sign that the society is not aware of the problem of homophobia and of the ways to face it, rather than that the problem does not exist. Moreover, it shows a) indifference on the part of non concerned parties and b) deception and lack of trust on the part of parties directly concerned (LGBTs and their organisations). This tacit acquiescence to homophobia is nurtured by a number of factors which are peculiar within Greek society.

First, one has to underline the important role the Christian Orthodox Church plays in Greek society and – regrettably – in Greek politics. It is reminded that when the socialist government, complying with basic data protection principles, decided to issue new ID cards omitting the religion of individuals, the Church managed to collect over one million signatures and to organise massive demonstrations against the measure. The (until recently) head of the Greek Church, Mr. Christodoulos, had repeatedly expressed himself in an openly homophobic way.²¹ Other clergymen have done so even more radically. Therefore, people who do follow the teaching of the Greek Orthodox Church are prone to adopt some kind of homophobic stance. Mr. Christodoulos has passed away in February 2008. His successor Mr. Jeronimos has a reputation of being more progressive, but this remains to be ascertained by the facts.

Second, many high-profile politicians, among them serving Ministers, have openly expressed disdain towards LGBT people and their claims. An ex-deputy Minister of

²¹ Hence, for instance, after Mr. Rocco Buttiglione had been definitively rejected by the European Parliament as a nominee EC Commission member, Mr. Christodoulos openly defended the Christian integrity of the Italian candidate and stated, among other things, that 'it may be true that homosexuality is no more a criminal offense, but it still is a sin ...people need not be afraid of death or of the truth, but they should fear sin' (see, http://www.bbc.co.uk/greek/domesticnews/story/2004/10/041031_christodoulosbuttiglione.shtml and <http://www.in.gr/news/article.asp?lngEntityID=576669>). Similarly, in a welcoming speech given to the 35th annual conference of the French 'Mouvement Jeune Notariat' on October 18, 2006, on the Role of the Notary in the Third Millennium Family, he vehemently opposed the idea of any kind of civil union, especially between same sex partners (see http://www.ecclesia.gr/greek/archbishop/default.asp?id=547&what_main=1&what_sub=5&lang=gr&archbishop_heading=Ευρώπη).

Employment (the Ministry charged with the application of Directive 2000/48) has been reported to dismiss the idea of civil wedding for same-sex partners with the words: ‘I adore talking romantically to a woman, why should I have to talk to the god-damn gay electrician?’ and that ‘I oppose same-sex marriage unto my death’.²² It comes as no surprise, therefore, that in a survey conducted by ELEFTHEROTYPIA, a left-wing newspaper, with politicians from the main political parties of all ages, at the occasion of the same-sex marriage of the Norwegian Minister of economics (in January 2002), they unanimously conceded that such a move would qualify as a political suicide in Greece.²³ It may be that their opinion was not based only on personal judgment, but also on a factual precedent: in 2000 a member of the (then) opposition party was allegedly involved in some same sex sexual relationship and, despite the party leader’s statements to the contrary, was forced to resign.²⁴

Third, the media often promote a homophobic imagery. In every TV serial, contest or other TV show, there is always an exaggerated and ridiculous LGBT character. In the news and related programmes, more often than not LGBT issues are being discussed without the participation of LGBT representatives. The National Radio-Television Council (Εθνικό Συμβούλιο Ραδιοτηλεόρασης), an independent authority, charged with monitoring the quality of radio and TV broadcasts, has fined programmes which had vaguely homosexual content, but has never intervened against ridiculous gay characters or indirect or concealed homophobic speech.²⁵ The most controversial of these decisions, however, whereby a broadcaster was fined for showing a homosexual kiss, has been quashed by the Highest Administrative Court (Συμβούλιο Επικρατείας) in its judgment 3490/2006 (Nomiko Vima (2007) 1676), whereby it has been held that ‘the representation of an existing social reality, representative of a social group which, together with many other, form part of an open and modern democratic society [...] needs to be fully protected’. Such a finding, however, has not prevented the employees (orchestra) of the National Lyric Theatre to go on strike requiring the elimination of a homosexual kiss from the Opera play ‘Rousalka’ performed by them. Against this action, a complaint was made to the Greek Ombudsman (5027/13.3.2009) who duly condemned it. More anecdotal, but revealing of the dormant homophobia existing in Greece, is the case brought by some inhabitants of the island of Lesbos against Lesbian organisations for the use of the term Lesbian. The claimed that their historical and regional identity and personality are illegally offended by such a use. The Athens Court of first instance, however, dismissed the action for lack of standing of the plaintiffs, since the term lesbian is not connected to the personality of any of them (Athens CFI 6310/2008, Chronika Idiotikou Dikaiou (2008) 887).

Fourth, homophobia is institutionalised in the Penal Code. Article 347 of the Penal Code incriminates anal intercourse between men a) when induced by an abuse of a relation of

²² Press releases followed by at least two Electricians’ Associations stating that there are no gay electricians (!); see <http://cm.greekhelsinki.gr/index.php?cid=2859&sec=194>.

²³ http://p29332.typo3server.info/uploads/media/country_sheet_el_en_19.pdf.

²⁴ See e.g. http://www.tovima.gr/print_article.php?e=B&f=14653&m=A10&aa=1

²⁵ See e.g. Decisions 371/11.11.2003 and 44/29.01.07, each imposing a 100.000 euro fine for the same TV serial, which showed two men kissing, available at <http://www.esr.gr/apofaseis.php>.

dependency, b) when one party is under the age of 17 or when it serves to generate profit and c) when practised on a professional basis. All three provisions merit a brief comment (cases a, b and c correspond to the three paragraphs of Article 347).

(a) There is no obvious reason why the abuse of a relation of dependency should be treated differently depending on whether it ends up in ‘anal intercourse between men’ or to any other kind of sexual harassment – homosexual or heterosexual. Moreover, this is clearly a violation of both Directive 78/2000 (and Law 3304/05) and of Directive 72/207/EEC, as modified by Directive 2002/73/EC.

(b) The age of consent for heterosexual sexual acts is 16 years. Therefore, the requirement that the parties in a homosexual relationship should be over the age of 17 violates the principle of non discrimination, as recognised by the Commission of the European Court of Human Rights in its report of July 1st, 1997, in Case *Sutherland v. UK* (Articles 8 and 14 of the Convention).

(c) The prohibition of homosexual intercourse for profit or on a professional basis is contrary to Directive 78/2000 (and Law 3304/05) and to Law 2734/99 regulating prostitution.

The Greek Homosexual Community (EOK) has taken action against this provision and in 2006 it has posted on its website an on-line petition for its abolition. The outcome of this initiative remains to be ascertained.

Fifth, homophobia is being cultivated within police forces, in several ways. For one thing, ‘manhood’ is idealised as an absolute virtue among police officers. More alarmingly, however, several police manuals, dating back to the pre-WWII era, still present homosexuality either as a mental disorder or as an attribute linked with criminality.²⁶ At this level, some ‘subtleties’ allowed by Greek language come to the fore. Active gay men (κωλομπάρδες) are much more tolerated (and at times respected) than passive gay men (κίναιδι, πούστηδες, πουστάκια).

Sixth, sexual orientation is completely absent from public (and private) schools, colleges etc. Information about sexual practices, sexual health etc is basically available on a peer to peer basis and through the television (for which see the previous paragraphs) and, increasingly, the internet. Also, parents (especially fathers) of boys at the age of puberty, regularly cultivate aversion and disdain, verbally or else, towards homosexual practices.

Last but not least, the Government is turning a blind eye to substantiated claims by LGBT and other organisations and parties. Therefore, the 1997 petition to the Minister of Justice for several legislative changes aimed at fostering equal treatment, has received no response. This, notwithstanding the fact the claims were endorsed by Amnesty International and, more importantly, by the National Commission for Human Rights (Εθνική Επιτροπή Δικαιωμάτων του Ανθρώπου). Some of these issues (notably the right of same-sex marriage) have been put forward by a left-wing political party with a question in the Parliament (16-12-05), to which the (then) Minister of Justice swiftly

²⁶ See <http://www.iospress.gr/ios2001/ios20010408a.htm>.

replied that 'social conditions are not yet mature for the legal recognition of same-sex couples'.²⁷

It may be that society is not yet mature and shies away from recognising sexual orientation as a factor of discrimination. According to the results of the EU survey on discrimination for the year 2007, Greeks do recognise that LGBTs are vulnerable to discrimination, but few Greeks admit being friends with LGBTs and few believe that measures are necessary for tackling such existing discrimination.²⁸ Yet, all the factors briefly mentioned in the previous paragraphs act as impediments to the maturing of the society and lock LGBT people in a situation of unspoken and widely tolerated discrimination.

²⁷ See e.g. http://www.tovima.gr/print_article.php?e=B&f=14653&m=A10&aa=1.

²⁸ See http://p29332.typo3server.info/uploads/media/country_sheet_el_en_19.pdf.

I. Good Practices

Despite the stagnant situation described above, it is possible to identify few practices which do show some openness and which allow for some optimism.

The first such practice is the one introduced by the Agency of Social Security (IKA) which, under certain conditions, authorises and pays for gender reassignment surgery (see above para. 0). IKA is by far the biggest social security and health fund in Greece and its practices are likely to be followed by all other funds when a similar case arises.

Another fact which shows some openness is the fact that, under the auspices of the 2007 European Year for Equal Opportunities for All, each country had to indicate two 'persons of the year'. For Greece, one of the two persons chosen was Ms Betty Vakalidou, a transsexual businesswoman and writer, who has been prostituting herself for many years.²⁹

²⁹ See http://ec.europa.eu/employment_social/eyeq/index.cfm?cat_id=FY.

Conclusions

Homophobia and discrimination on the basis of sexual orientation remain, to a large extent, ‘unspoken’ legal issues under the Greek legal system. While the social realities are there, the legal system is catching up with great delay and, often, in a (willingly?) inefficient manner.

For one thing, in Greece discrimination on the basis of sexual orientation is dealt with together with all other forms of prohibited discriminations, if at all.

Second, Greece has fulfilled its obligations under the relevant EC directives in a ‘minimalistic’ and procedurally cumbersome manner. The law transposing the equality directives into Greek law provides for three (!) different equality bodies with pretty much the same powers, but clearly different standing: the Greek Ombudsman is a well respected independent body, active for several years in most fields of public life in Greece,³⁰ while the Equal Treatment Committee is an underperforming ‘sub-department’ of the Ministry of Justice virtually unknown to everybody. The Employment Inspection Body, on the other hand is more of a ‘police’ body charged with negative overtones, thus making recourse to it quite prohibitive for employees who do not wish to open an open war with their employers. Moreover, the existence of three different bodies, procedures, sets of requirements etc, negatively affects transparency and accessibility. The legal actions provided for by the law are pregnant with procedural hurdles and uncertainties.

Third, under Greek law no ‘family’ exists outside formal marriage. This is true both for same-sex and for opposite-sex couples. Therefore, any perspective of recognising residence or reunification rights to same sex partners of LGBTs is formally excluded, until family law is reviewed. This is so irrespective of whether the sponsor is Greek, an EU citizen or a third country national.

Fourth, transgender and transsexual people are a legal ‘non-issue’: no legal text directly refers to any of the aspects of their condition. This notwithstanding, when several conditions are met, gender reassignment and name modification are possible.

Fifth, during the last five years asylum, as an institution, has been severely suffering in Greece. Therefore, cases of protection offered on the grounds of prosecutions based of sexual orientation, should be extremely rare, if non-existent.

Sixth, Law 927/79 on hate speech, does not cover discrimination on the basis of sexual orientation and – in any event – has never been used for any other ground of hate speech or discrimination, but once.

³⁰ It is worth noting though, that the current government pursues a policy of discrediting most Greek independent authorities, i.a. by refusing to renew the mandates of their members, thus exposing all their decisions to annulment proceedings.

All the above do find an explanation, though, by no means a justification. Despite Greece having a non-negligible number of LGBT people,³¹ the society is quite unaware of, or indifferent about, discriminations and harassment, verbal or material, suffered by these people. Many LGBTs prefer either to dissimulate their sexual preferences or to endure solemnly maltreatment. In a country where young unemployment is almost as high as 20 per cent, few LGBT workers are willing to take the risk of actively projecting their sexual preferences in their workplace. From the many undesirable or suboptimal situations that people are required to cope with in Greece, mistreatment of LGBTs is one. As the Ombudsman has put it in its 2005 Annual Report as an equality body

‘most of the complaints which reached the Greek Ombudsman concern discrimination based on reasons, the publicizing of which, would not usually cause additional social distress to the offended parties (as for example age or disability). The relative ignorance, the fear of social exposure or other suffering caused by unofficial sanctions or social pressure in cases where a complaint for unjustified discrimination is filed (e.g. by a teacher of a public school on grounds of sexual orientation), in addition to the relatively low representation of persons from visible minorities on the staff of the Greek administration may explain the reduced flow of serious complaints. The smaller number of complaints itself cannot however be seen as proof of the non-existence of serious phenomena of illegal discrimination’.³²

Therefore, there has been no judgment by any court or tribunal concerning specifically discrimination on the basis of sexual orientation. More strikingly, despite the existence of several protection mechanisms and bodies, extremely few cases actually reach the specialised ‘equality bodies’ or courts. Even when this does happen, it is difficult to follow up the outcome of each case, with the exception of cases dealt by the Ombudsman.

The virtually non-existent number of cases brought before the bodies set up by Law 3304/05 may be explained by two factors. First, the very existence of the Law (and its bodies) has been to a large extent unnoticed by an important proportion of the population. This means that, three years after the adoption of the law, the three equality bodies and the ECOSOC,³³ all charged with disseminating the law, as well as the NGOs involved, are doing poorly. Second, in many occasions people (or organisations) who do know about the Law, prefer to invoke it before European Institutions (the Commission and/or the Parliament) or to use as a means of political pressure (high visibility – low cost),

³¹ According to a survey run by the NGO ‘Woman and Health’ and published by the Greek Homosexual Community, eight per cent of the population admits non-heterosexual sexual preferences, see http://www.gayhomes.net/eok/press_release1.html. It is suggested, however, that there may be an underestimation in the results, due to the social reservation/unwillingness of many LGBTs to make public their sexual choices.

³² Annual Report of the Ombudsman (2005), p. 16.

³³ ECOSOC is specifically charged by Art. 18 of Law 3304/05 to disseminate into society the precise content of ‘equal treatment’ and the possibilities opened up by the Law for safeguarding such treatment. The ECOSOC, however, has been only moderately active in this direction and, judging from the effects, quite ineffective.

rather than making use of the procedural rights recognised by the Law. This shows a fundamental distrust for the procedures and bodies involved – which may be justified in view of the very poor visibility, let alone effectiveness, of these bodies (again, the Ombudsman may be the only exception).

A further observation, which in part explains the fact that the organisations involved are not as active as one would expect, is that they often are ‘one door, many doorbells’, i.e. the same persons bear various labels and are charged with all sorts of responsibilities and functions.

Finally, the active role of the Greek Orthodox Church in social and political life acts as an important obstacle to opening up the debate about sexual orientation. This situation has been worsened after the 2007 parliamentary elections when, for the first time ever, an ultra-right populist/traditionalist party got several parliament seats, while the governing right-wing party has a mere one seat majority.

In the medium term, however, things could evolve. For one thing, the head of the Greek Orthodox Church has been replaced in the course of February 2008. Moreover, the socialist party, now in opposition, has put forward a draft law recognising free union between persons of both the same and opposite sex.³⁴ The moderate communist party has even called for an actual right to marriage, provoking a storm of reactions both from clergymen and conservative politicians.³⁵ As explained above, however, the law on Registered Partnerships actually adopted excludes from its scope same sex couples. Further dissemination of the antidiscrimination Law 3304/05 is expected to lead to some individual cases being decided. These could serve as benchmarks for future regulation.

³⁴ See their programmatic framework of 2007, p.77, available at <http://www.pasok.gr/portal/gr/000F4240/Data/Binder1.pdf>.

³⁵ See <http://openitnow.blogspot.com/2005/07/e.html>.

Annex 1 – Presentation of case law

Case title	CFI (big chamber) Rhodes, case 14/2009 (Hronika Idiotikou Dikaiou (2009) 617) Court declared legally non-existent the first same sex marriage in Greece
Decision date	30-4-2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Decision no. 114/2009; Πολυμελές Πρωτοδικείο Ρόδου (Multi-Member Court of First Instance of Rhodes)
Key facts of the case (max. 500 chars)	The Court accepted the civil action submitted by the Prosecutor of the Court of First Instance of Rhodes against a same-sex couple, requesting to declare as non-existing the civil marriage of the same-sex couple performed on 3/06/08 at the Mayor House of the island of Tilos. The Court rejected, however, the civil action of the Prosecutor against the Mayor of Tilos, due to lack of legal capacity to be made a defendant in the case (Art. 608 par. 2 of Code of Civil Procedure).
Main reasoning/argumentation (max. 500 chars)	Art. 12 of the ECHR and Art. 23 of the International Pact of New York (which was adopted by Law 2462/1997), make subsidiary references to the national law regarding the necessary conditions and qualifications in order to enjoy the right of marriage. The national legislation, however, does not permit the marriage of same-sex couples, as the difference of sex is regarded as a necessary precondition for the existence of marriage, as is comprehended by the Greek legislator. In addition, the will of the legislator for the treatment of such situation was recently expressed in Law 3719/2008 on “legal cohabitation”, which explicitly states in Art. 1 that it concerns only heterosexual couples.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A definition of the marriage, as provided by the Greek Civil Law, is given by this decision, according to which it is allowed only for heterosexual couples.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The marriage was declared legally non-existent; the couple/defendants declared that they were going to submit an appeal.
Proposal of key words for data base	Marriage of same-sex couples
Text in Greek in attachment	

Case title	Court imposes damages on Café/Restaurant owner for refusing entry to two men
Decision date	2006
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	ΜονΠρΘεσ 23238/2006 CFI (single member) Thessaloniki, case 23238/2006 (Armenopoulos (2006) 1402),
Key facts of the case (max. 500 chars)	Bouncer in Café/restaurant in Thessaloniki refuses entry to two men, without any reason linked to security or other. The acts of the bouncer are attributable to owner of the premises. However, since plaintiff in the proceedings before the Court was only one of the two people, the judgment reasons on the basis of this person – therefore the second person is completely absent from the judgment and no express reference to the fact that they could have been seen as a homosexual couple is made.
Main reasoning/argumentation (max. 500 chars)	Despite the judgment being delivered after the entry into force of “the anti-discrimination Law” 3304/2005, its reasoning is exclusively based on the provisions of the Civil Code protecting the personality, i.e. articles 57-59.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The protection of the personality, according to the Civil Code, also covers the esteem that others show to the person concerned. By refusing entry into the premises of the Café/Restaurant, without there being any objective reason, such as e.g. some private function or the fact that the premises were full, the owner has shown lack of esteem to the plaintiff.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Damages for moral injury: 1000 euros
Proposal of key words for data base	Personality Protection, refusal to provide goods or services, damages
Text in Greek in attachment	

Case title	Data protection Authority (Directive 95/46/EC – Law 2472/1997) imposes fine on insurance company for fiddling with sensitive personal data in order to refuse insurance coverage
Decision date	2008
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Data Protection Authority, Case 3/2008
Key facts of the case (max. 500 chars)	Insurance company refuses to extend already existing insurance contract to cover life, on the basis that the individual concerned had been exempted from his military service because he had declared to be homosexual
Main reasoning/argumentation (max. 500 chars)	The fact that the person is homosexual does not impinge on his general health condition and therefore cannot, on its own (i.e. without further medical examinations) justify a refusal to insure. Therefore, processing of such data is not justified by the needs of the processor and violates articles 4(1), 4(2) and 7(2) of Law 2472/1997
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The rules on data protection can be used to condemn the refusal to provide goods or services in cases this is done on account of sensitive data
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Fine (not damages) imposed 60.000 euros
Proposal of key words for data base	Refusal to provide goods or services, data protection, sensitive data, fine
Text in Greek in attachment	

Annex 2 - Statistics

Table A: Implementation of Employment Directive 2000/78/EC

	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.)	0	0	0	0	0	Ombudsman Case n 2967/2005	0	0	0	0
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	0	0	0	0	0	0	0	0	0	0
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.)	0	0	0	0	0	0	0	0	0	0
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.)	-	-	-	-	-	-	-	-	-	-

Table B: Freedom of Movement

	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, whether under Directive 2004/38/EC or under previous instruments)	0	0	0	0	0	0	0	0	0	0

<p>Number of LGBT partners who claimed their right to residence but were denied this right</p>	<p>Not available</p>									
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Table C: Asylum and subsidiary protection

	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 sexual orientation	Not available									

	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									

Table D: 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 denied the right to benefit from family reunification	Not available									

Table E: 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	1	1	1	1	1	1	1	1	1	1
Number of demonstrations against tolerance of LGBT people.	0	0	0	0	0	0	0	0	0	0

Table F: Criminal Law – Hate speech

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	0	0	0	0	0	0	0	0	0	0
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	0	0	0	0	0	0	0	0	0	0
Range of sanctions issued for homophobic hate speech	-	-	-	-	-	-	-	-	-	-
Number of non-criminal court cases initiated for homophobic statements	0	0	0	0	0	0	0	0	0	0
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 than symbolic were imposed)										

	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	0	0	0	0	0	0	0	0	0	0

Table G: Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of name changes effected due to change of gender	Not available									
Number of persons who changed their gender/sex in your country under the applicable legislation	Not available									

Annex 3 – Institutions consulted

Public services	Answers received	Institutional role	Cases of law enforcement
The Greek Ombudsman (Συνήγορος του Πολίτη)	√	N3304/05	One judged not founded
Labour Inspection Body S.E.P.E. (Σώμα Επιθεώρησης Εργασίας)	√	N3304/05	None
Equal Treatment Committee, Ministry of Justice (Επιτροπή Ίσης Μεταχείρισης, Υπουργείο Δικαιοσύνης)	√	N3304/05	None
Police Press Office (Γραφείο Τύπου Αστυνομίας)	√		
Police General department (Διεύθυνση Γενικής Αστυνόμευσης)	√		None
Asylum Department, Ministry of the Interior, Public Administration and Decentralization (Τμήμα Πολιτικού Ασύλου, Υπουργείο Εσωτερικών)	√		None
Department of civil and municipal Status, Ministry of the Interior, Public Administration and Decentralization (Διεύθυνση Αστικής και Δημοτικής Κατάστασης, Υπουργείο Εσωτερικών)	×		None
Department of Migration Policy, Ministry of the Interior, Public Administration and	√		None

Decentralization (Διεύθυνση
Μεταναστευτικής πολιτικής
Υπουργείο Εσωτερικών)

The United Nations High Commissioner for Refuges(UNHCR), The UN Refugee Agency, Greece (Υπατη Αρμοστεία του ΟΗΕ για τους Πρόσφυγες)	√	None
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General Secretariat for gender equality, Ministry of the Interior, Public Administration and Decentralization (Γενική Γραμματεία Ισότητας, Υπουργείο Εσωτερικών)	√	None
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Permanent Parliamentary Committee on equality and human rights (Ειδική μόνιμη Κοινοβουλευτική Επιτροπή για την Ισότητα και τα Δικαιώματα του Ανθρώπου)	√	None
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