



DANISH INSTITUTE FOR
HUMAN RIGHTS

COWI

The social situation concerning homophobia and discrimination on grounds of sexual orientation in Bulgaria

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A. A Summary of the Overall Situation of LGBT Persons

- [1]. A number of positive developments regarding attitudes toward LGBT persons have occurred in Bulgaria in recent years. However, research shows that negativity toward LGBT persons remains widespread. According to Eurobarometer, only 15 per cent of Bulgarians are in favour of homosexual marriage being legalised throughout Europe, and only 12 per cent would allow homosexual couples to adopt children. There is no possibility for marriage or civil partnerships for same-sex couples in Bulgaria.
- [2]. Discrimination on the grounds of sexual orientation is banned in all social spheres in Bulgaria, and *The Commission for Protection Against Discrimination* has a mandate to address discrimination on grounds of sexual orientation. However, pre-existing legislation has not been made consistent with this universal ban and a number of regulations, for example the Family Code, continue to contradict it. In general, the extensive anti-discrimination legislation is hindered by, among other things, police reluctance to report and prosecute cases of anti-LGBT violence.
- [3]. There is no statistical overview of the situation concerning discrimination at the labour market, but surveys indicate that about 50 per cent of the population would not like to work in the same room with a homosexual. More than two-thirds (68.3 per cent) said they would not enrol their child in a school if they knew one of the teachers was homosexual, and 45.5 per cent said that they would not hire a homosexual. Discrimination remains difficult to identify or address due to the general invisibility of LGBT persons.

B. The Collection of Data

- [4]. The material for this report has been collected from four sources:
 - A legal country report carried out for this study, written by Bulgarian Helsinki Committee researcher Slavka Kukova.¹
 - A sociological country report carried out for this study reviewing available data, written by Agency for Social and Market Research researcher Milena Dimitrova.²

¹ S. Kukova (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Bulgaria*. FRALEX.

² M. Dimitrova (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Bulgaria*. Sociological Country Report.

- Data collected through interviews held in Bulgaria with the LGBT NGO *Bulgarian Gay Organisation Gemini (BGO Gemini)*, and the National Equality Body *The Commission for Protection Against Discrimination*.
 - Data collected through an online questionnaire sent out to the stakeholders mentioned above.
- [5]. Regarding Bulgaria the sociological researchers stated the following: 'In many areas there is a lack of research. Particularly, lesbians are absent both as a subject of research and as participants in the gay life, history and culture of the country. Individual stories can be found but there is no study mentioning issues related to homosexual women, problems they face, the way they live their lives, both in the past and in the present.'

C. Key Findings

C.1. Attitudes Toward LGBT persons

- [6]. Surveys examining acceptance and attitudes toward homosexuality were carried out on a European level in 2008 and 2006.
- [7]. The 2008 *Eurobarometer* asked, 'How would you personally feel about having a homosexual (gay man or lesbian woman) as a neighbour?' (1 meaning 'very uncomfortable' and 10 meaning 'very comfortable'). The figure in Bulgaria was 5.3, compared with the EU average of 7.9 (Sweden was highest with 9.5 and Romania the lowest with 4.8).³
- [8]. In the 2006 *Eurobarometer*, attitudes toward same-sex marriage were examined in every Member State. Forty-two per cent of EU citizens agreed that such marriages should be allowed throughout Europe; the figure was 15 per cent in Bulgaria (Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent). With regard to adoption, the level of acceptance decreases in the EU and in Bulgaria. Thirty-one per cent of Europeans felt that homosexual couples should be allowed to adopt children throughout Europe; the figure was 12 per cent in Bulgaria (Netherlands scored highest with 69 per cent and Poland and Malta the lowest with 7 per cent).⁴
- [9]. While Bulgarians would not consider homosexuals discriminated against, about 60 per cent recognise that it is difficult for homosexuals to state their sexual orientation at the workplace or in the family. This is not surprising considering 42.4 per cent the respondents would not

³ European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

⁴ Eurobarometer 66 (2006), available at: http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf, pp. 43-46.

like to have a homosexual friend or colleague. Forty-six per cent would find it unacceptable if their child is homosexual.⁵

- [10]. Despite the fact that the majority of Bulgarians are hostile toward persons with non-normative sexualities, some positive developments have occurred over the past 18 years.
- [11]. Findings show that Bulgarians are *'the most prejudiced against transvestites, and respectively the least so toward lesbians.'*⁶

C.2. Criminal Law - Hate Crime

- [12]. The Bulgarian *Наказателен кодекс* [Criminal Code] provides for sanctioning of hate crimes but only on three grounds—race, religion and political affiliation. The Criminal Code does not apportion punishment for homophobic hate speech because it does not constitute a crime. However, it is possible to sanction homophobic hate speech within the framework of the system of 'administrative punishments' under the CPAD. Under the law it is possible to institute proceedings in civil courts to sanction homophobic hate speech.⁷ At present there is one such civil case pending before the courts.⁸
- [13]. Although Bulgarian criminal law apportions criminal sanctions for violent crimes, it does not specifically protect against homophobic violence. Legislation and jurisprudence fail to distinguish these offences from ordinary crimes.⁹
- [14]. Social stigma and prejudice often reduces the determination of LGBT persons to identify themselves. Because of this, as well as fear of publicity, cases of homophobic violence are rarely reported to the authorities or NGOs.¹⁰

⁵ Sociological Agency Skala (2007) *Attitude toward the minority groups and discriminatory mindsets in the Bulgarian society*, Sociological survey under the project *From antidiscrimination to equal opportunities – innovative methods and effective practices of the Commission for Protection Against Discrimination*, Sofia.

⁶ Sociological agency Skala (2007) *Attitude toward the minority groups and discriminatory mindsets in the Bulgarian society*, Sociological survey under the project *From antidiscrimination to equal opportunities – innovative methods and effective practices of the Commission for Protection Against Discrimination*, Sofia.

⁷ Bulgaria/PADA/Art. 71, para.1 in connection with Art.5 (in cases of homophobic hate speech) provides for protection of victims of discrimination who did not file a complaint before the Commission, allowing them to file a complaint before the civil courts.

⁸ Bulgaria/Софийски районен съд/Axinia Guencheva and others v Volen Siderov, case No 2014/06 (30.11.2006), pending before *Софийски градски съд* [Sofia Regional Court].

⁹ S. Kukova (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Bulgaria*. FRALEX.

¹⁰ S. Kukova (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Bulgaria*. FRALEX. According to field trip meeting with *BGO Gemini* (28 April 2008), *BGO Gemini* receives 1-2 reports pr. month - mostly about domestic violence (parents being the perpetrators) and harassment on the street.

- [15]. Between 2002 and 2004, organised attacks against LGBT venues and clubs were relatively common in Bulgaria.¹¹ In 2006, such attacks were not as prevalent and the few reported incidents were relatively small-scale. In 2007 there were no such incidents. In 2006, several cases of organised violence against individuals took place. In many of the 2006 cases, the perpetrators used the Internet to identify LGBT individuals and organise their attacks.¹²
- [16]. The reaction by the authorities to LGBT attacks is usually inadequate in the sense that they often don't accept or file complaints or are reluctant to believe in the existence of a homophobic motive for the crime.¹³

C.3. Freedom of Assembly

- [17]. Freedom of assembly is recognised as a basic citizen's right in the Bulgarian Constitution of 1992. Since 2005, *BGO Gemini* has organised an annual information booth (Pink Point) where they distribute informational materials on LGBT issues. In one case, the mayor banned the information centre in the city of Varna in 2005. *BGO Gemini* filed a complaint at the *Commission for Protection Against Discrimination* and Varna Municipality was found guilty of indirect discrimination. Due to appeal proceedings the case is still pending.¹⁴

C.4. Family and Other Social Issues

- [18]. Currently neither marriage nor civil partnerships are granted to same-sex couples. The latter does not exist for opposite-sex couples either. In March 2008 a new draft of the Family Code introduced prenuptial agreements and civil partnerships exclusively between a man and a woman. *BGO Gemini* and the *Centre for Human Rights* are lobbying to include same-sex partnerships.¹⁵
- [19]. The lack of recognition of same-sex partnerships means that second parents have no rights in regard to children. Same-sex partners are not recognised as next of kin in health services. Assisted insemination and adoption is possible for single parents but not same-sex couples (and adoption is only available for women).¹⁶

¹¹ ENAR (2006) *Shadow Report: Bulgaria 2006*. Also available at: http://cms.horus.be/files/99935/MediaArchive/national/Bulgaria_2006.pdf

¹² *BGO Gemini*, www.bgogemini.org

¹³ ENAR (2006) *Shadow Report: Bulgaria 2006*. Also available at: http://cms.horus.be/files/99935/MediaArchive/national/Bulgaria_2006.pdf

¹⁴ S. Kukova (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Bulgaria*. FRALEX.

¹⁵ M. Dimitrova (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Bulgaria*. Sociological Country Report.

¹⁶ Field trip meeting with *BGO Gemini* (Bulgaria 28 April 2008).

C.5. The Labour Market

- [20]. Discrimination on the grounds of sexual orientation is now banned in every part of the social sphere. The *Закон за защита от дискриминация (ЗЗД)* [Protection Against Discrimination Act (PADA)]¹⁷ is a single equality act transposing all EC equality directives, including the Employment Equality Directive (2000/78/EC). It bans discrimination uniformly on any ground mentioned under international law or domestic legislation, explicitly including sexual orientation.¹⁸ In a number of respects, the PADA goes beyond the provisions of the EC equality acquis, including Employment Equality Directive 2000/78/EC. Both its personal and material scopes are universal. Forms of discrimination explicitly banned and defined include direct and indirect discrimination, harassment, incitement to discrimination and victimisation.¹⁹ However, the definition of victimisation is not entirely compatible with that under the EC acquis, including Directive 2000/78/EC, as it requires a comparator.²⁰
- [21]. There is no statistical overview of the situation concerning discrimination at the labour market, but surveys indicate that about 50 per cent of the population would not like to work in the same room with a homosexual. More than two-thirds (68.3 per cent) said they would not enrol their child in a school if they knew one of the teachers was homosexual, and 45.5 per cent said that they would not hire a homosexual.
- [22]. *BGO Gemini* has identified cases where lesbians and bisexual women have experienced sexual harassment after coming out at their work place.²¹

C.6. Education

- [23]. ‘*There are no fags in my classroom; we are not going to talk about this.*’ These were the words of a high-school teacher quoted by the daily newspaper 24 Chasa when *BGO Gemini* initiated its project ‘*Deafening Silence*,’ which attempted to determine awareness of LGBT issues in high schools. Of the 144 schools invited to participate in the initial meeting in the summer of 2007, 15 responded to the invitation and representatives of only 7 actually came to the meeting.²²

¹⁷ Bulgaria/*Закон за защита от дискриминация (ЗЗД)* [Protection Against Discrimination Act (PADA)], (01.01.2004).

¹⁸ Bulgaria/PADA/ Art. 4.

¹⁹ Bulgaria/PADA/ Art. 4 and 5.

²⁰ ‘Less favourable treatment’ language is contained in the provision, rather than the neutral ‘adverse consequence or reaction’ of the Directives.

²¹ Field trip meeting with *BGO Gemini* (Bulgaria 28 April 2008).

²² M. Dimitrova (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Bulgaria*. Sociological Country Report.

- [24]. As a part of the same project, *BGO Gemini* did a content analysis of the textbooks for 9th to 12th grade (freshman to senior year). Eight textbooks were assessed:
- [25]. *‘The topics of sexual orientation, gender identity, human rights are presented although not extensively. They enclose though a definition of the term transsexuality. Apart from mentioning the existence of homo, bi and transsexual people, sexual orientation is barely mentioned...The history books are written in a traditional style of presenting mainly political and military events and mentioning in passing social problems like development of human rights...’*²³
- [26]. There is no research about conditions for LGBT students. However, *BGO Gemini* has received reports from students about discrimination and has not been able to receive public funding for awareness-raising activities.²⁴
- [27]. There are incidents of transgender persons facing discrimination.²⁵
- In 2000 a graduate of the sports academy in Sofia could not get his diploma because he had changed from a female to male name. Though he provided a legal document showing he was the same person, the administration refused to give him his diploma. As a result he cannot practice work in the field in which he majored.
 - In 2003 a student took an exam at the University of National and World Economy in Sofia and was removed by the police from the exam room because his ID contradicted his appearance.

C.7. Health Service

- [28]. The perception of homosexuality as a disease is shared by some doctors in Bulgaria. This is largely due to the fact that medical universities do not provide any training or education on this subject. Since persons in general do not receive any sexual education while in school, and given the lack of specialists who could consult LGBT persons, a major area for concern for LGBT community is sexual health and the lack of information on safe-sex practices.²⁶
- [29]. There is no existing research on conditions for LGBT persons in relation to health service. However, *BGO Gemini* has received two accounts of doctors refusing to give service to gay men and of gynaecologists using derogatory language toward lesbians. *BGO*

²³ BGO Gemini (2007) *Monitoring of the Textbooks from 9 to 12th grade.*

²⁴ Field trip meeting with *BGO Gemini* (Bulgaria 28 April 2008).

²⁵ M. Dimitrova (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Bulgaria.* Sociological Country Report.

²⁶ M. Dimitrova (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Bulgaria.* Sociological Country Report.

Gemini also points to lack of next of kin recognition as a problem faced by same-sex partners.²⁷

C.8. Religion

- [30]. The dominant religion in Bulgaria is Orthodox Christianity, and the church officially condemns homosexuality. However, church institutions do not play a significant role in politics or societal norms.²⁸

C.9. Sports

- [31]. There is a lack of research on LGBT issues in sport. There is a gay sports club but no out known gay athletes.²⁹

C.10. Media

- [32]. Two academic studies on homosexuality in media have been published in the Bulgarian Journal of Sociology, *Sociologicheski Problemi*. However, both are limited in scope since one deals with the portrayal of homosexuality in a liberal and tolerant newspaper, *Dnevnik*, and the second explores the public reaction to LGBT articles in internet media.
- [33]. A broader, non-scientific overview is provided by *BGO Gemini*, which carries out annual media monitoring of eight of the most popular Bulgarian newspapers. The first round of monitoring established an electronic portal introducing journalists to the LGBT vocabulary, enabling journalists to write more objective articles. Over the course of the next five years, a significant decrease in the number of negative articles was observed, even though homosexuality and paedophilia are often still used as synonyms.³⁰ *BGO Gemini* reports that, apart from a few newspapers with anti-gay editorial policies, they enjoy good relations with the media.³¹

C.11. Asylum and Subsidiary Protection

- [34]. According to Article 10(1)(d) of Council Directive 2004/83/EC (29.04.2004) on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection (the ‘Qualification

²⁷ Field trip meeting with *BGO Gemini* (Bulgaria 28 April 2008).

²⁸ M. Dimitrova (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Bulgaria*. Sociological Country Report.

²⁹ Field trip meeting with *BGO Gemini* (Bulgaria 28 April 2008).

³⁰ M. Dimitrova (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Bulgaria*. Sociological Country Report.

³¹ Field trip meeting with *BGO Gemini* (Bulgaria 28 April 2008).

Directive'), persecution of a group based on the common characteristic of sexual orientation might be considered persecution 'for reasons of membership of a particular social group' for the purpose of obtaining refugee status. According to Bulgarian legislation, it is unclear whether transgender persons could be recognised as belonging to a 'social group' and, if so, which.³²

- [35]. Since Bulgaria established a procedure to process claims for asylum there has been just one official case of an asylum seeker basing his application on the grounds of persecution on a common characteristic of sexual orientation. The application was rejected due to lack of credibility. The court accepted in principle that sexual orientation could constitute a ground for persecution under Article 1A of the 1951 Geneva Convention Related to the Status of Refugees (Decision N12294 of 30.12.2003 of the *Върховен административен съд* [Supreme Administrative Court]).³³
- [36]. Data regarding the number and outcome of cases is not conclusive. According to unofficial accounts of one of the leading experts in sexology in Bulgaria, in 2007 the State Agency for Refugees requested his services to determine whether two Iranian men were really gay and whether they should be given asylum. Leaving aside the issue of how one test for 'gayness', the end result was that the men were granted asylum.³⁴

C.12. Family Reunification

- [37]. Context Article 34, para.1 of the *Закон за убежището и бежанците* [Asylum and Refugees Act]³⁵ entitles the refugee or the person recognised as deserving a form of subsidiary protection the right to claim family reunification in Bulgaria granted by the asylum authority, the State Agency for the Refugees. Para. 1(3) of Additional Provisions of the same act defines as a family member '...the spouse or the person with whom s/he is in a proven stable and long-term relationship and their minor and non-married children'. If the applicant for family reunification cannot present official documents proving the matrimonial state of the relationship, he or she may provide evidence about the links to the joining family members through a written declaration or in another way. This seems to open up the possibility for cohabiting same-sex partners to benefit from family reunification.
- [38]. However, in 2005 a gay couple who were registered partners in Iceland sought recognition of their partnership before the Bulgarian

³² S. Kukova (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Bulgaria*. FRALEX.

³³ S. Kukova (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Bulgaria*. FRALEX.

³⁴ M. Dimitrova (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Bulgaria*, Sociological Country Report.

³⁵ Bulgaria/*Закон за убежището и бежанците* [Asylum and Refugees Act] (1.12.2002), last amendment in SG 52/07.

authorities.³⁶ One of the partners was a Bulgarian national, the other an Icelandic national. They first tried to report the marriage before the Bulgarian consulate abroad, but were unsuccessful. Later, the Icelandic partner obtained a short-term entry visa for Bulgaria on a different ground and the couple managed to enter the country. The Icelandic partner's attempt to prolong his stay in Bulgaria by obtaining a long-term permit on the basis of a registered partnership with a Bulgarian citizen failed. The migration authorities explained to the couple that it would be useless to accept the application and subsequently refused to register the attempt to submit the application..

C.13. Transgender Issues

- [39]. Domestic anti-discrimination legislation (the PADA, see above) bans discrimination on sexual orientation grounds and guarantees equal treatment for women and men. However, neither of these pieces of legislation mentions transgender persons. There are as yet no legal cases brought under anti-discrimination legislation and no case law to interpret the applicability of the legislation to transgender persons. Therefore, anti-discrimination law is unspecific concerning transgender persons, giving so far no indication whether discrimination against them is to be considered on sexual orientation grounds or on grounds of gender.³⁷
- [40]. There is no legal definition of the concept of transsexuality in any Bulgarian law. Bulgarian legislation also lacks any regulations or procedures concerning the establishment of the status of a person who wishes to undergo sex reassignment surgery or hormonal treatment to that effect. The sole document containing mention of this term is a regulation issued by the Ministry of Defence³⁸ identifying transsexuality as a sexual disorder making individuals unfit for military service.³⁹ Despite legislative gaps regarding medical interventions and follow-up activities concerning gender alteration, the Bulgarian law does not prohibit hormonal treatment and surgery with the aim of sex reassignment. However, it is highly expensive and not covered by health insurance.⁴⁰
- [41]. Gender and name alteration should be recognised by the court in two different procedures which are not specifically provided for in the legislation. Under the current legislation, gender reassignment and name change will have a number of consequences: Transsexual

³⁶ *Български хелзински комитет* [Bulgarian Helsinki Committee]: www.bghelsinki.org.

³⁷ S. Kukova (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Bulgaria*. FRALEX.

³⁸ Bulgaria/*Заповед № ОХ-217 за обявяване на разписание на болестите и физическите недостатъци, издадена от Министерството на отбраната* (08.06.1996).

[Regulation No. ОХ-217 on the announcement of a list of disorders and physical deficiencies issued by the Ministry of Defence (08.06.1996)].

³⁹ The Regulation stipulates that 'any disorders of a sexual nature are to be established in a military medical institution using Kinsey's 6-level scale and by gathering objective information'.

⁴⁰ Field trip meeting with *BGO Gemini* (Bulgaria 28 April 2008).

individuals will be expected to have employment contracts re-endorsed and obtain a new driving licence and passport.⁴¹ It is possible to change documents without surgery, but the process may take years.⁴²

C.14. Multiple Discrimination

There is a lack of research on multiple discrimination. However, as stated in the section on the labour market, cases where lesbians and bisexual women experience multiple discrimination in the form of sexual harassment at the workplace have been identified.

C.15. Other Areas of Concern

- [42]. Commission for Protection Against Discrimination has investigated two complaints by homosexuals about discrimination in prison.⁴³ The complaint regarded the behaviour of other inmates, denial of work and the surveillance and distribution of private correspondence.

D. Good Practice

- [43]. Good practices are described in Annex 1.

⁴¹ S. Kukova (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Bulgaria*. FRALEX.

⁴² Field trip meeting with *BGO Gemini* (Bulgaria, 28 April 2008).

⁴³ Field trip meeting with *The Commission for Protection Against Discrimination* (Bulgaria, 29 April 2008).