



DANISH INSTITUTE FOR
HUMAN RIGHTS

COWI

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

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A. A Summary of the Overall Situation of LGBT Persons

- [1]. As in many other EU Member States there has been a politically active LGBT community in Luxembourg since the 1970s. Today, *CIGALE*, part of the only LGBT NGO *Rosa Lëtzebeurg*, describes Luxembourg as a quiet, peaceful country with little visible discrimination. While the age of sexual consent was not made uniform in Luxembourg until 1992, same-sex partnerships are now recognised. However, there are still some limitations regarding, for example, adoption and inheritance rights.
- [2]. Luxembourg has incorporated both the Employment Directive and the Racial Equality Directive into one piece of national legislation. The law covers sexual orientation, thus broadening the Employment Directive's scope of application. An equality body has just recently been established. So far, although it is covered in its mandate, the new body has not yet handled any cases regarding LGBT persons.
- [3]. Although several initiatives have been carried out during the last ten years, LGBT persons remain largely invisible in society. There is limited research in this area, yet experiences of discrimination in schools and on the labour market have occurred. The absence of legal regulations regarding LGBT issues and rights is particularly urgent regarding transgender persons rights in relation to sex reassignment processes - including the change of name and documents.

B. The Collection of Data

- [4]. The content of this report is drawn from four main sources:
 - A legal country report carried out for this study, written by Attorney Francoise Moyse, Di Stefano, Sedlo & Moyse.¹
 - A sociological country report that was carried out as part of this study that reviewed available data on the situation concerning homophobia and discrimination on grounds of sexual orientation, written by Ass. Prof. Dr. Christel Baltes-Loehr and a team consisting of Roby Antony, Pia Back, Marion Huss, Adrienne Ouafu and Sandy Vitali.²

¹ F. Moyse (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

² C. Baltes-Loehr (2008) *The Situation concerning homophobia and discrimination on grounds of sexual orientation in Luxembourg*, Sociological Country Report.

- Data collected through interviews held in Luxembourg with the LGB NGO *Centre d'Information GAY et LESBIEN, CIGALE*, and the *Commissariat du Gouvernement aux Etrangers* [the Government Commission for Foreigners].
- Data collected through an online questionnaire that was sent out to the stakeholders mentioned above.

[5]. The aforementioned sociological researchers stated that, until now, no research has been conducted into the situation regarding homophobia or the conditions for LGBT persons and their daily lives in Luxembourg. Hence, there is no existing research data in several areas. Thus, the data available are largely from smaller surveys or knowledge from LGBT organisations.

C. Key Findings

C.1. Attitudes toward LGBT persons

- [6]. Surveys examining acceptance and attitudes toward homosexuality were carried out across all EU Members States, both in 2006 and again in 2008.
- [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 Luxembourg was 9.2, compared with an EU average of 7.9. Romania was the lowest with 4.8.³
- [8]. In answer to questions asked as part of the 2006 Eurobarometer survey, 42 per cent of EU citizens responded in agreement that same-sex marriages should be allowed throughout Europe. The figure was 58 per cent in Luxembourg (Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent). With regard to adoption by same-sex couples, the level of acceptance decreased in all Member States (31%), including Luxembourg (39%). The Netherlands scored highest with 69 per cent, while Poland and Malta recorded the equal lowest score of 7 per cent.⁴
- [9]. In a small study carried out by *CIGALE*, 46.6 per cent (of 74 LGB persons interviewed over the internet) stated that they at some point had experienced discrimination because of their sexual orientation. Problems most often arise from family and friends. Another small study (with 100 interviews carried out at both educational institutions

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.

and with members of the general public) found that men are more negative towards homosexuality than women, quite a large minority considered homosexuality an illness and that many stated that they would not accept it if their child was homosexual. These results to some extent correspond with the results of the studies carried out on the European Values Study in 2002.⁵ Furthermore, these results show that social class plays a significant role with regards to attitudes toward homosexuality: Thirty four per cent of respondents from working classes consider homosexuality as unacceptable, whereas only 14 per cent of freelancers and graduates, among others, expressed themselves against homosexuality.⁶

C.2. Criminal Law - Hate Crime

- [10]. Luxembourg's Criminal Code provides for sanctions for inciting discrimination, hate or violence against a natural or legal person, or a group or community of persons, on the basis of their sexual orientation. The Criminal Code neither specifically includes nor excludes homophobic hate crimes, thus the issue would be left to the court's interpretation.
- [11]. Luxembourg has no legal provisions specifically providing for homophobic discrimination as an aggravating factor for consideration in the sentencing of a crime
- [12]. There are no statistics from the legal area or any case law on the topic at this time. However, there are unofficial accounts of assaults occurring at cruising areas.⁷ However, due to a decrease in the trend within the homosexual community to frequent public areas at night, such as parks, correspondingly there are less public homophobic-motivated assaults in these areas. Overall, younger generations of gay and bisexual men are more likely to engage in activities in places other than public areas.⁸

C.3. Freedom of Assembly

- [13]. Article 25 of the Luxembourg Constitution guarantees the right to peaceful, unarmed assembly that respects the laws governing the exercise of that right, without being subject to prior authorisation. However, that constitutional provision does not apply to outdoor, political, religious or other gatherings. Those gatherings remain entirely subject to the laws and regulations of the police.⁹ The

⁵ C. Baltes-Loehr (2008) *The Situation concerning homophobia and discrimination on grounds of sexual orientation in Luxembourg*, Sociological Country Report.

⁶ M. Legrand (2002) *Les valeurs au Luxembourg. Portrait d'une société au tournant du 3e millénaire*, Luxembourg.

⁷ Field trip meeting with CIGALE (Luxembourg, 7 April 2008).

⁸ F. Moyse (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

⁹ Luxembourg/*Constitution du Grand-Duché du Luxembourg, texte à jour au 1^{er} septembre 2006*, Service Central de Législation, Art. 25 (01.09.2006)

Luxembourg LGBT community has had no problems obtaining the necessary governmental authorisations for holding LGBT events.¹⁰

C.4. Family and Other Social Issues

- [14]. The Partnership Contract accessible to same-sex couples differs from marriage in the sense that certain rights do not accompany the former that exist with the latter. For example persons within a Partnership Contract do not have access to adoption nor inheritance rights. However, non-married couples and lesbian couples do have access to assisted insemination.¹¹
- [15]. Directive 2004/38/EC will be fully incorporated into Luxembourg Law once the draft bill on the free movement of citizens and immigration comes into effect. In the meantime, Luxembourg uses the Grand-Ducal Regulation of 28 March 1972, as amended on 21 December 2007, to regulate conditions of entry, stay and the freedom of movement of EU Member State citizens and third-country nationals (the ‘Temporary Regulation’).¹² However, the Temporary Regulation’s provisions are limiting in that they make no allowance for countries that do not recognise any civil union or registered partnership. Thus, in practice there is no legal mechanism for a same-sex couple from these countries to substantiate any long-standing relationship.¹³

C.5. The Labour Market

- [16]. The Employment Directive was incorporated into the Luxembourg Law of 28 November 2006 on equal treatment (the “Law”).¹⁴ It introduced into law concepts of direct and indirect discrimination, as well as that of harassment with respect to sexual orientation. This law amends the Labour and Criminal Codes, following very closely the provisions of the Employment Directive. By incorporating both the Employment Directive and the Racial Equality Directive in the same piece of legislation, the law significantly broadens the Employment Directive’s scope of application.¹⁵

¹⁰ F. Moyse (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

¹¹ C. Baltes-Loehr (2008) *The Situation concerning homophobia and discrimination on grounds of sexual orientation in Luxembourg*, Sociological Country Report.

¹² Luxembourg/Règlement grand ducal du 28 mars 1972 relatif aux conditions d’entrée et de séjour de certaines catégories d’étrangers faisant l’objet de conventions internationales (RGD 28.03.1972), as last amended on 21 December 2007

¹³ F. Moyse (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

¹⁴ Luxembourg/Loi du 28 novembre 2006 sur l’égalité de traitement (28.11.2006).

¹⁵ F. Moyse (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

- [17]. A study carried out on behalf of *the Government Commission for Foreigners* on discrimination at work (2005)¹⁶ reveals that there is reportedly little sexual orientation discrimination in Luxembourg.
- [18]. Only 19 of 505 companies that were interviewed during the study report cases of discrimination because of sexual orientation, harassment being the most frequent. The study further shows that although homosexuals occupy different positions in different sectors on the labour market, there are areas where homosexuals are over represented. This is partly explained by the fact that young homosexuals, not least from working class backgrounds, face problems such as harassment in schools that make them prefer a short education in "creative" or service areas.
- [19]. The low number of discrimination cases is further explained by the fact that the labour market is largely 'blind' to non-heterosexual sexual orientation among workers.¹⁷
- [20]. Some companies have established good practices in terms of diversity policies. However, *CIGALE*-representatives report scepticism towards these initiatives because they regularly have employees individually approaching them to express problems they have with these types of company policies.¹⁸

C.6. Education

- [21]. Sexual education is provided for pupils and secondary school students.¹⁹
- [22]. There is a lack of available data on discrimination or bullying at schools. However, *CIGALE* expresses a need for awareness raising in schools since they receive accounts from LGBT youth experiencing bullying and a lack of support in school settings. They attribute this to students not being taught a broad understanding of the diverse range of LGBT issues and identities. In fact, LGBT issues are non-existent in educational materials.²⁰

C.7. Health Service

- [23]. There is no research or official data available with relating to the interaction of the health service and LGBT persons and issues.

¹⁶ The Government Commission for Foreigners (2005) *Discrimination at work*.

¹⁷ Field trip meeting with *the Government Commission for Foreigners* (Luxembourg, 8 April 2008).

¹⁸ Field trip meeting with *CIGALE* (Luxembourg, 7 April 2008).

¹⁹ C. Baltes-Loehr (2008) *The Situation concerning homophobia and discrimination on grounds of sexual orientation in Luxembourg*, Sociological Country Report.

²⁰ Field trip meeting with *CIGALE* (Luxembourg, 7 April 2008).

- [24]. Although application forms for services such as assisted insemination do not recognise the need for such services for same-sex couples (they are to be filled in as "Mr" and "Mrs"), *CIGALE* states that there have been positive changes in recent years. For example they cite the development that there are usually no problems now with recognition of same-sex partners as next of kin.²¹

C.8. Religion

- [25]. There is a lack of research data on LGBT issues and religion.
- [26]. The Christian political party that is currently in power is reluctant to grant any further rights to LGBT persons.²²

C.9. Sports

- [27]. There is a lack of available data on LGBT persons and sports.

C.10. Media

- [28]. The media rarely report on LGBT issues. Debates arise, albeit usually with a negative focus on LGBT persons, primarily in relation to changes in legislation affecting LGBT persons.²³
- [29]. *CIGALE* expresses the view that the media is not as stereotypical with regards to the representation of LGBT persons as a few years ago. However, they have experienced difficulties contributing serious or complex viewpoints about LGBT issues since the media tend to focus on superficial issues such as the appearance and clothing of LGBT persons at public gatherings.²⁴

C.11. Asylum and Subsidiary Protection

- [30]. Luxembourg's law of 5 May 2006, on the right to asylum and complementary forms of protection, (the 'Asylum Law'), provides for the granting of refugee status to any third-country national or stateless person.²⁵ Under the Asylum Law, persecution on the grounds of sexual orientation may in theory lead Luxembourg to grant asylum. Moreover, the Luxembourg legal system appears to accept LGBT persons as family members in the context of asylum and/or subsidiary protection because the Asylum Law defines as a family member the

²¹ Field trip meeting with *CIGALE* (Luxembourg, 7 April 2008).

²² Field trip meeting with *CIGALE* (Luxembourg, 7 April 2008).

²³ C. Baltes-Loehr (2008) *The Situation concerning homophobia and discrimination on grounds of sexual orientation in Luxembourg*, Sociological Country Report.

²⁴ Field trip meeting with *CIGALE* (Luxembourg, 7 April 2008).

²⁵ Luxembourg/*Loi du 5 mai relative au droit d'asile et à des formes complémentaires de protection* (05.05.2006), as last amended on 17.07.2007.

unmarried partner of the beneficiary, when that partner is engaged in a relationship recognised by the country of origin of one of the partners. But the Asylum Law does not recognise that some countries do not recognise any civil union or registered partnership, thus, a same-sex couple, from a country not recognising such partnerships, would fail to meet the legal requirements necessary to avail themselves of the Asylum protections contained in the Asylum Law.²⁶

- [31]. There is one known case of a gay man being granted asylum in Luxembourg.²⁷

C.12. Family Reunification

- [32]. Until Luxembourg's law on the free movement of people and immigration enters into force, the principle of family reunification in Luxembourg is governed by the Temporary Regulation together with the Council Directive 2003/86/EC of 22 September 2003. Problems associated with the definition of a family member are the same in the context of 'family reunification' as they are with respect to the Asylum Law, as described above. As such, law in this area does not account for the fact that some countries do not recognise any civil union or registered partnership, thus, in this situation a couple would not have their relationship officially recognised under these laws of Luxembourg.²⁸

- [33]. There is no available data on same-sex couples having applied for family reunification.

C.13. Transgender Issues

- [34]. Transgender issues are not specifically mentioned under the law of Luxembourg. If they are interpreted to be included in the Employment Directive's broad definition of sexual orientation, or regarded as a gender issue, they would be effectively dealt with. If not, then only the criminal law provisions would apply, as transgender individuals would be considered as belonging to a particular 'social group'. Presently there are neither statistics nor is there any case law to provide further substantive guidance on this issue.²⁹

- [35]. There are no doctors in Luxembourg with specialised training or experienced which would qualify them to undertake gender reassignment surgery. Thus, a Luxembourg national seeking this operation must to seek to have it undertaken abroad. However, should

²⁶ F. Moyse (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

²⁷ Field trip meeting with the *Government Commission for Foreigners*, April 8, 2008.

²⁸ F. Moyse (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

²⁹ F. Moyse (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

the individual seek to have the state pay for such surgery this person is required to undergo psychiatric treatment. Once an affirmative response is received, the individual would then be allowed to conduct the surgery abroad, usually this takes place in Belgium or Germany, but also sometimes in France. Following the surgery, the individual would undergo psychological treatment with the foreign medical team as to assist them with their adjustment to the newly-assigned sex.³⁰

- [36]. In addition, individual would be required to change his/her identity under Luxembourg law. However, there are no legal provisions to accommodate this in the *Etat civil et population du Luxembourg* [the Luxembourg Civil Status and Population Administration]. The most urgently needed provisions are those allowing a change of sex and name on public records.³¹
- [37]. Due to no standard procedure concerning change of name and documents, the procedure may take years, causing immense psychological and social pressure on the individual. The lack of accordance between physical appearance and one's official name can create serious difficulties and negative social consequences. For example, such individuals have trouble acquiring necessary documents and obtaining things like credit cards.³²

C.14. Multiple discrimination

- [38]. There is a lack of available data regarding multiple discrimination and LGBT persons. However, *CIGALE* identifies a need to work on broader issues that address questions of diversity and marginalization, including persons with migrant backgrounds and disabled persons.³³
- [39]. At the end of December 2007, a bill relating to the reception and integration of foreigners to the Grand Duchy of Luxembourg was put before the Chamber of Deputies. Among other things, the bill's purpose is to promote the fight against discrimination. In its introductory paragraphs the bill expressly makes reference to the need to prevent and combat the refusal of equal treatment to individuals on the basis of sexual orientation.³⁴ This indicates an ambition at policy level to take an inclusive approach toward LGBT individuals, particularly non-Luxembourg nationals that are members of the LGBT community. This position is consistent with the work done by *CIGALE* and the *Government Commission for Foreigners*.³⁵

³⁰ F. Moyses (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

³¹ F. Moyses (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

³² Field trip meeting with *CIGALE* (Luxembourg, 7 April 2008).

³³ Field trip meeting with *CIGALE* (Luxembourg, 7 April 2008).

³⁴ Luxembourg/*Projet de Loi concernant l'accueil et l'intégration des étrangers au Grand-Duché du Luxembourg* (31.12.2007)

³⁵ F. Moyses (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Luxembourg*. FRALEX.

D. Good Practice

[40]. Good practices are described in Annex 1.