



DANISH INSTITUTE FOR
HUMAN RIGHTS

COWI

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

March 2009

Please note that summary reports of each Member State are published in the interests of transparency and for information purposes only. Any views or opinions expressed therein in no way represent those of the Fundamental Rights Agency (FRA). Summary reports constitute summaries of the background information used by the FRA when compiling its own studies. While the FRA provides guidelines to national contractors on data to gather, their reports include information gathered on their own initiative. Only the information, data, opinions and recommendations presented by the FRA in its own publications constitute the official views of the Agency.

Contents

A.	A Summary of the Overall Situation of LGBT Persons	3
B.	The Collection of Data.....	3
C.	Key Findings.....	4
C.1.	Attitudes toward LGBT persons.....	4
C.2.	Criminal Law - Hate Crime.....	5
C.3.	Freedom of Assembly	7
C.4.	Family and Other Social Issues	7
C.5.	The Labour Market.....	9
C.6.	Education.....	10
C.7.	Health Service	11
C.8.	Religion	11
C.9.	Sports	12
C.10.	Media	12
C.11.	Asylum and Subsidiary Protection	13
C.12.	Family Reunification.....	13
C.13.	Transgender Issues	14
C.14.	Multiple discrimination	14
D.	Good Practice.....	15

A. A Summary of the Overall Situation of LGBT Persons

- [1]. As a result of the Island's colonial history, the context of welfare and social issues generally in Malta is different to that of many other EU Member States. Most welfare services were, and many still are, run by the Church. Whilst there are now mainly state welfare agencies, the Church is still highly influential and active in Maltese society. With Malta being a strongly Catholic and traditional society, some suggestions for equal opportunity and non-discriminatory practice, including LGBT issues, are considered controversial. These issues are yet to be mainstreamed and are generally characterized by limited awareness. Whilst the general attitude is still not one of acceptance, there is now a certain visibility of LGBT issues developing, especially among the younger and more educated generations. Yet same-sex partnerships are not recognised in Maltese law.
- [2]. *The National Commission for the Promotion of Equality (NCPE)* works independently under the remit of *The Ministry for Social Policy*. The NCPE covers only gender and race (in all areas outside of employment) and not sexual orientation issues. Sexual orientation is handled by the *Department of Industrial and Employment Relations*.
- [3]. Studies show that a majority of the population supports the Catholic Church in its speaking out against homosexuality. In surveys, about 40 per cent of LGBT respondents state having experienced harassment at their work place. About the same number report having experienced discriminatory treatment from family members.

B. The Collection of Data

- [4]. The content of this report is drawn from four different sources:
- A legal country report carried out for this study that was written by Professor Ian Refalo from the Organisation for the Promotion of Human Rights and Therese Comodini Cachia.¹
 - A sociological country report reviewing available data on the situation concerning homophobia and discrimination on the grounds of sexual orientation, carried out for this study and written by Dr Marceline Naudi.²
 - Data collected through interviews held in Malta with the *Malta Gay Rights Movement (MGRM)*, *The Ministry of Family and*

¹ I. Refalo and T. Cachia (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*. FRALEX.

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

*Social Solidarity*³ and *The National Commission for the Promotion of Equality*.

- Data was collected from an online questionnaire that was sent to the stakeholders mentioned above.
- [5]. The sociological researcher that conducted the study to be used in this report has stated the following in relation to Malta:
- [6]. ‘There are many gaps and data which are not available because it is not recorded. This is due to several reasons. Firstly, if same sex partnerships are not legally recognised then official information relating to LGBT couples is almost impossible to collect; secondly, as long as the Maltese society remains hostile towards LGBT persons [these people] will tend not to disclose their sexual orientation, and hence remain ‘invisible’; thirdly, if incidents are not reported then data is not available. There is also, to date, no official central point to address these issues’.⁴

C. Key Findings

C.1. Attitudes toward LGBT persons

- [7]. Surveys examining acceptance and attitudes toward homosexuality were carried out across all EU Members States, both in 2006 and again in 2008.
- [8]. 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 Malta was 8.4. compared with an EU average of 7.9. Romania was the lowest with 4.8.⁵
- [9]. 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 18 per cent in Malta. The 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 in Malta (7%). This figure of 7% in Malta was, together with Poland, the equal lowest score of any Member State in the EU. The Netherlands scored highest with 69 per cent.⁶

³ After the March 2008 general elections: *Ministry for Social Policy*.

⁴ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

⁵ European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

⁶ Eurobarometer 66 (2006), available at: http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf, pp. 43-46.

- [10]. Malta is strongly Catholic which has a strong emphasis on the primacy of the family as the predominant unit of society. Abela, in his European values study,⁷ points out that by European standards the Maltese have retained a strict sexual and moral code. The upkeep of this stringent sexual and family morality is strongly related to the activity of the Church. In support of this view, most Maltese think that it is proper for the Church to speak out against homosexuality (73 per cent as compared to European average of 40 per cent).⁸
- [11]. A report by the *MGRM*⁹ on discrimination against gay men and lesbians in Malta suggests that Malta provides a hostile social environment, mirrored in the Island's legislation. Outside of the workplace, there is no specific anti-discrimination legislation providing the LGBT community with protection from discrimination.¹⁰
- [12]. However, in recent years there has been a slight change in attitudes and in visibility of gay men, and to some degree also lesbians. Thus, Abela found a little increase in the acceptance of homosexuality from his 80's to his 90's study. He finds however that, although many respondents are willing to concede equal rights to homosexuals and to retain friendly relations with them, few would endorse homosexual behaviour or accept homosexuals living in their neighbourhood.¹¹ In general women, young adults, and in particular, students of higher education are more tolerant of homosexuals than men, older adults and persons with lower levels of education. Notwithstanding that homosexuality was decriminalised in Malta approximately 40 years ago, this group has only recently become more vocal. While the general attitude is still not one of acceptance, there is now a certain visibility developing in Maltese society.¹²

C.2. Criminal Law - Hate Crime

- [13]. The only legal prohibition against hate speech is found in Section 82A of the Criminal Code which bans 'incitement to hatred'. However, the application of this section is limited only to racial hatred and nothing

⁷ A. M. Abela (1994) *Shifting Family values in Malta – A Western European Perspective*, Malta: Media Centre for DISCERN.

⁸ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

⁹ Malta Gay Rights Movement (2003) *Sexual Orientation Discrimination in Malta: A Report on Discrimination, Harassment, and Violence against Malta's Gay, Lesbian and Bisexual Community*, Malta: Union Press.

¹⁰ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

¹¹ A.M. Abela (2000) *Values of Women and Men in the Maltese Islands – a comparative European Perspective*, Malta: Commission for the Advancement of Women, Ministry for Social Policy.

¹² M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

in this section indicates that it could apply similarly acts against an LGBT person or organisation.¹³

- [14]. The only protection that LGBT persons receive in terms of the Criminal Code is from discrimination emanating from harassment. Sections 249 to 251D¹⁴ protect everyone from actions that amount to threats, violence and harassment irrespective of the intent of these actions.¹⁵
- [15]. There are no official records of hate crimes committed against LGBT persons since there is no legislation which identifies specific crimes of violence and harassment as hate crimes against LGBT persons.¹⁶
- [16]. In an *MGRM* survey¹⁷ more than one in ten respondents claimed that they had been subjected to some form of violence due to their sexual orientation. Furthermore, half of the respondents claimed that they had experienced harassment, many of which reported this happening on more than one occasion. A considerable number of cases were also reported involving children being bullied in schools due to their sexual orientation.¹⁸
- [17]. Very few respondents filed complaints to the police in relation to these incidents. The reasons given for not reporting were:
- [18]. ‘lack of faith in the police corps, lack of information about the law and the possible courses of action that could have been taken, fear of being exposed or ridiculed by the police and the lack of incriminating evidence. Some respondents also claimed they did not consider the incidents as being of a serious enough nature to warrant a complaint to the authorities, while others claimed that it was a normal occurrence – something they had to deal with in their everyday lives.’¹⁹
- [19]. Violence against LGBT persons in public is apparently not that widespread, although there are several known cases. A significant part of the violence against LGBT persons occurs at home from family members.²⁰ With regards to harassment, in most cases the perpetrator is a person unknown to the victim. The category with the second

¹³ I. Refalo and T. Cachia (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*. FRALEX

¹⁴ Criminal Code, Chapter 9 of the Laws of Malta, Of Threats, Private Violence and harassment

¹⁵ I. Refalo and T. Cachia (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*. FRALEX

¹⁶ I. Refalo and T. Cachia (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*. FRALEX

¹⁷ Malta Gay Rights Movement (2003) *Sexual Orientation Discrimination in Malta: A Report on Discrimination, Harassment, and Violence against Malta’s Gay, Lesbian and Bisexual Community*, Malta: Union Press.

¹⁸ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

¹⁹ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

²⁰ Field trip meeting with *MGRM* (Malta 3 March 2008).

highest incidence is that of “fellow student”. Other known cases involve neighbours and police officers.²¹

C.3. Freedom of Assembly

- [20]. Freedom of assembly is protected both under the Constitution of Malta²² and also under the European Convention Act.²³ The latter ensures that the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms may be directly invoked before the Maltese courts.
- [21]. The *MGRM* has organised an annual gay pride march since 2004 which has not experienced any problems receiving the required police permits. There are no reports of public harassment or opposition to these events. In fact, gay pride receives support from other Maltese NGO's.²⁴
- [22]. The *MGRM* has experienced some problems accessing the media when promoting its services. For example, the words "gay" or "lesbian" has been regarded as unsuitable in an advert.²⁵

C.4. Family and Other Social Issues

- [23]. Same-sex partnerships, whether in the form of marriage or of registered partnerships, are not recognised under Maltese law. The Marriage Act²⁶ does not define ‘marriage’, yet marriage has always been understood under the public policy of Malta to be the permanent union of man and woman for life – an understanding upheld by the courts, excluding the possibility of same-sex partnerships being permitted under Maltese law. To date, proceedings for the recognition of same-sex marriages or partnerships have not been brought before the domestic courts.
- [24]. The Civil Code specifies that the only case where two persons are allowed to adopt is when these two persons are a married couple living together [Section 114(3)], who have been married for at least five years. Since gay marriage does not exist in Malta and gay marriage under foreign legislature is not recognised locally, homosexual couples are excluded a priori from adopting. Single persons over 30 years of age can adopt. However, there is no

²¹ Malta Gay Rights Movement (2003) *Sexual Orientation Discrimination in Malta: A Report on Discrimination, Harassment, and Violence against Malta's Gay, Lesbian and Bisexual Community*, Malta: Union Press.

²² Article 42 of the Constitution of Malta

²³ Chapter 319 of the Laws of Malta

²⁴ Field trip meeting with *MGRM*. (4 March 2008).

²⁵ B. Abela (2005) *The Catholic Church's Impact on the Granting of Rights to Lesbians, Gays and Bisexuals*, Unpublished Dissertation submitted in partial fulfilment for the M.A. in Human Rights and Democratisation, Faculty of Laws, University of Malta.

²⁶ Chapter 255 of the Laws of Malta

possibility of 2nd parent adoption. There is also no access to assisted insemination for lesbian couples.

- [25]. Since there is no legal recognition of same sex couples, public welfare services are not accessible for them as a couple either. For example, there is no access to public housing for same sex couples, as there is for married or engaged heterosexual couples. Anyone can apply as a single person, though single persons' applications are not prioritised.²⁷ With regard to private rented accommodation, the *MGRM* survey²⁸ found that eight respondents (4 per cent of their sample) claimed that they had experienced discrimination when attempting to avail themselves of these services.
- [26]. Public welfare services, such as social security benefits, can be claimed as single persons but not as a couple, and national insurance benefits, such as widow's pension, would not be issued to the partner of a same sex couple. Similarly, private insurance can be bought as for single persons, with partner being recorded as 'named person', i.e. not recognised as a partner. Employment benefits are also reserved only for married couples.²⁹
- [27]. In the absence of a will a same sex partner is not entitled to automatically receive the inheritance of their partner, though they can be included like anyone else into the legal will of their partner as a named beneficiary.³⁰
- [28]. Another recent development is the institution of conjugal visits for prison inmates. This has been broadened to include co-habitees, but only if they are heterosexual. Similarly, while shelters for homeless persons are gender segregated same sex couples are often refused because they are not allowed to be together in the same dorm.³¹
- [29]. Incidents of discrimination also occur within the family. The *MGRM* survey³² found that four of every ten respondents reported that they had been subjected to discriminatory treatment in the family. The survey also found a strong correlation between being more open about one's sexual orientation with his/her close relatives and the greater probability of being subjected to discriminatory treatment.

²⁷ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

²⁸ Malta Gay Rights Movement (2003) *Sexual Orientation Discrimination in Malta: A Report on Discrimination, Harassment, and Violence against Malta's Gay, Lesbian and Bisexual Community*, Malta: Union Press.

²⁹ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

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

³¹ Field trip meeting March 3, 2008 with the *Ministry of Family and Social Solidarity*. And M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, National Sociological Report.

³² Malta Gay Rights Movement (2003) *Sexual Orientation Discrimination in Malta: A Report on Discrimination, Harassment, and Violence against Malta's Gay, Lesbian and Bisexual Community*, Malta: Union Press.

C.5. The Labour Market

- [30]. The EU Employment Directive 2000/78/EC and the relevant prohibition of discrimination on the basis of sexual orientation were incorporated into Maltese law through Legal Notice 461 of 2004.³³ This law covers direct and indirect discrimination as well as harassment in all spheres related to employment. The law has accorded the same powers to administer such cases to both the Industrial Tribunal and civil courts.
- [31]. Legal Notice 461 of 2004 introduced the prohibition of discrimination on the basis of sexual orientation in employment. Discriminatory treatment is defined as any distinction, exclusion, restriction or difference in treatment, whether direct or indirect, which is not justifiable in a democratic society, including harassment. The regulations cover conditions for access to employment, including advertising of opportunities for employment, selection criteria and recruitment conditions in all employment sectors and activities,.
- [32]. There is no record of official complaints made in relation to discrimination on the grounds of sexual orientation in the workplace, though any employee who feels they have been unfairly treated can lodge a complaint to the Industrial Tribunal Board.³⁴
- [33]. Legal Notice 461 of 2004 was instrumental in protecting the employment of four gay teachers who were threatened with termination of their employment in Church schools. The Malta Union of Teachers intervened and the employment of the teachers involved was safeguarded. The Church schools claimed they were subjected to pressures from parents of children attending these schools.³⁵
- [34]. The *MGRM* survey³⁶ found that LGB persons do encounter discrimination in employment. There were six respondents who claimed that they had experienced discrimination in access to employment. Another eight claimed that they suspect that they have been subjected to such discrimination. Three respondents further claimed that that they were not promoted because of their sexual orientation, while another ten suspected this to be the case. Nine respondents claimed they had faced threats or attempted dismissal because of their sexual orientation. Another ten respondents, on the other hand, claimed that they had been dismissed or forced to resign for the same reason. Harassment at the workplace proved to be more widespread among the respondents, with 39.5 per cent of them claiming that they had been harassed in one way or another.

³³ Malta/LN 461/2004

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

³⁵ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

³⁶ Malta Gay Rights Movement (2003) *Sexual Orientation Discrimination in Malta: A Report on Discrimination, Harassment, and Violence against Malta's Gay, Lesbian and Bisexual Community*, Malta: Union Press.

C.6. Education

- [35]. The National Minimum Curriculum (NMC) issued in 1999 by the Ministry of Education states that the curriculum should include information and knowledge on the range of sexual identities and should teach children respect for diversity, respect towards persons with a different sexual identity, etc. However, the experiences of many LGBT people seem to belie this. As a Maltese respondent in the ILGA-IGLYO expresses it:³⁷
- [36]. “Almost all the course books I had in primary school are full of Victorian-era stereotypes and totally outdated realities and this education only prepares children to live in Disneyworld. The school curriculum does not target homosexuals because homosexuality does not even exist within the school curriculum. (Malta F23)”
- [37]. The NMC carries a proviso in relation to the educational objective that deals with human sexuality which states that “(w)hen dealing with this topic, the teachers must keep in mind the context of moral and religious values of the students and their parents” (p.43). With the dominant ‘moral and religious values’ in Malta reflecting those of the Catholic Church, this proviso could be seen to be in effect absolving teachers of their need to raise LGBT issues.³⁸ *MGRM* has thus been denied permission to disseminate leaflets and education materials aiming to inform students about LGBT sexuality and issues. *MGRM* has also tried to initiate a survey on the extent of bullying against LGBT students, but it has been refused by the church and the responsible ministry has yet not responded to their request.³⁹
- [38]. Many studies report experiences of bullying, harassment and violence against students by their peers and teachers.⁴⁰ LGBT students are thus reluctant to come out. There are also examples of transgender students dropping out or skipping school because of the bullying and harassment they experience and the lack of understanding from both teachers and students. This problem is particularly acute in Malta since most secondary schools in Malta are gender segregated.

³⁷ J. Takács (2006) *Social exclusion of young lesbian, gay, bisexual and transgender (LGBT) people in Europe*, ILGA-Europe and IGLYO.

³⁸ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

³⁹ Field trip meeting with *MGRM* (Malta, 3 March 2008).

⁴⁰ Malta Gay Rights Movement (2003) *Sexual Orientation Discrimination in Malta: A Report on Discrimination, Harassment, and Violence against Malta’s Gay, Lesbian and Bisexual Community*, Malta: Union Press. And J. Takács (2006) *Social exclusion of young lesbian, gay, bisexual and transgender (LGBT) people in Europe*, ILGA-Europe and IGLYO.

C.7. Health Service

- [39]. The *MGRM* survey⁴¹ found that a total of 12.5 per cent of respondents claimed that they had experienced discrimination in relation to health care services. Examples of such discrimination included not being allowed to donate blood and hostile treatment by members of the medical profession.
- [40]. Furthermore, 32.5 per cent of the respondents to the *MGRM* survey claimed that they concealed their sexual orientation when using the health care services. There is no data regarding health conditions concerning LGBT persons. The *MGRM* has attempted to initiate awareness of transgender health issues by holding a discussion with the Health Department in June 2007, but so far nothing has developed in this regard. There is also no recorded data concerning the treatment of LGBT persons in care homes.⁴²
- [41]. Some specific problems have been identified with regard to LGBT persons and health service:⁴³ 1) Problems with confidentiality, especially concerning those who have HIV/AIDS. This forces some HIV/AIDS patients to leave the country for treatment. The same problem is also experienced by persons with other sexually transmitted illness or in connection with sex change operations. 2) Same sex couples are not recognised as next of kin. This causes problems such as the unavailability of assistance to support partners accompany persons seeking treatment abroad that cannot be given in Malta. 3) In the mental health area there is very limited knowledge of LGBT issues – in some cases leading to a lack of diagnoses or the provision of deficient treatment. Thus, LGBT patients have been said to have mental problems, such as depressions or identity disorders, because they are LGBT.

C.8. Religion

- [42]. The Catholic Church has considerable influence in Malta, not least on the political level. This influence has hindered the implementation of the EU Framework Directive and sets barriers for promoting LGBT rights. One third of schools and most NGO's are run by the church. In statements church leaders have thus talked about same sex relations as “unnatural”, “destructive of the social fabric”, and “against God's law”.⁴⁴

⁴¹ Malta Gay Rights Movement (2003) *Sexual Orientation Discrimination in Malta: A Report on Discrimination, Harassment, and Violence against Malta's Gay, Lesbian and Bisexual Community*, Malta: Union Press.

⁴² M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

⁴³ Field trip meeting with *MGRM* (Malta, 3 March 2008).

⁴⁴ B. Abela (2005) *The Catholic Church's Impact on the Granting of Rights to Lesbians, Gays and Bisexuals*, Unpublished Dissertation submitted in partial fulfilment for the M.A. in Human Rights and Democratisation, Faculty of Laws, University of Malta.

- [43]. The 2003 *MGRM* survey found that a total of 30.7 per cent of those who stated that they belonged, or still belong to a religion, claimed that they had experienced discrimination by the religious authorities or other adherents of religion. There are also incidents where LGB persons have been denied absolution or communion by priests.
- [44]. In March 2007 a representative of the Archbishop's Curia appeared on two editions of the popular TV discussion programme 'Xarabank', expressing the view that homosexuality constitutes a 'disorder'. This position was also repeated by the bishop of Gozo in an interview published by the *Sunday Times* on 30th December 2007. The newspaper reports him as stating: 'I understand that a person who is oriented that way has a condition'.
- [45]. Another recent report received by the *MGRM* states that in Sunday mass, after reading out the pastoral letter issued by the Archbishop of Malta and the bishop of Gozo (dated 23rd February 2008), exhorting the faithful to vote responsibly in the forthcoming national elections by protecting the values of marriage and the family, the priest stated that a vote for a particular political party was a vote for divorce and gay marriage.

C.9. Sports

- [46]. There is no information to report on the issue of sports and LGBT issues in Malta.

C.10. Media

- [47]. Recent research by *Malta Gay News*⁴⁵ found that gay persons and their lives are likely to be portrayed in negative terms by the local media and that positive images of gay life are unlikely to appear in entertainment programmes. Homosexuality is rarely featured in factual programmes such as documentaries or news. *The Malta Gay News* further claims that in 200 hours of primetime broadcasting there was no more than six minutes of "realistic portrayal" of gay and lesbian lives. This six minutes occurred on "Psikologos", in December of 2007, when local psychologists referred to homosexuality as a "normal" state of being. *The Malta Gay News* also criticised the casual use of homophobic language by mainstream radio DJs.⁴⁶
- [48]. This research does not fully correlate with *MGRM* participation in several programmes on both main national and local channels. There were also two local reality shows (l-ispjun; likorix) that included gay men as participants – one of which won the show.
- [49]. See also sections on Criminal Law and Freedom of Assembly.

⁴⁵ <http://www.eugaynews.com/malta/gayrep103525.html> (12.09.2008).

⁴⁶ <http://www.eugaynews.com/malta/gayrep103525.html> (12.09.2008).

C.11. Asylum and Subsidiary Protection

- [50]. Persecution on the basis of one's sexual orientation is not listed in the qualifications enabling a person to be eligible for refugee status. However, the list of protected reasons as found in domestic law is based on the 1951 Geneva Convention which does include the broad ground of persecution due to 'membership of a particular social group'. Therefore, if it can be successfully argued that a person has a well founded fear of persecution due to his/her membership of a social group of persons (i.e homosexual community), it may be concluded that that person is eligible to be granted refugee status and due protection under Maltese law.
- [51]. The Refugees Commissioner⁴⁷ has, since the creation of the office in 2002, dealt with only one case where an asylum seeker claimed refugee protection because of the applicant's sexual orientation. It was held that the applicant in this case failed to provide convincing evidence of persecution according to the 1951 Geneva Convention. The application was rejected.
- [52]. Conditions in detention centres and open centres for asylum seekers are generally poor, with overcrowding and practically no privacy. Given these conditions it is problematic for LGBT asylum seekers to disclose their sexual orientation.⁴⁸
- [53]. With regards to subsidiary protection, the definition of dependent family members in the Refugees Act is slightly different from that found in Council Directive 2004/83/EC. In article 2 of the Act, dependent members of the family are defined as 'the spouse of the refugee, provided the marriage is subsisting on the date of the refugee's application, and such children of the refugee who, on the date of the refugee's application, are under the age of eighteen years and are not married.'

C.12. Family Reunification

- [54]. Maltese law and case-law does not in anyway provide for family reunification of same-sex spouses or of unmarried partners.
- [55]. The *EU Gay News* cites the following case to illustrate the effects of the prohibition of family reunification for same-sex couples. When a Maltese gay man's American partner, who was living with him in Malta, went back to the USA for a routine renewal of his visa, 2 years ago, the realization that he was no longer welcome in Malta became apparent. The episode not only left the man stuck in his home country but turned the couples entire life — as the Maltese man puts it — “upside down because there was nothing he could legally do to bring

⁴⁷ Instituted by the Refugees Act

⁴⁸ M. Naudi (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Malta*, Sociological Country Report.

his partner back home”. To make things worse, the couple had a child together.”⁴⁹

C.13. Transgender Issues

- [56]. Maltese law does not take into consideration transgender issues. In case law Maltese courts have consistently held that Maltese law does not formally provide a procedure for the change in legal status of transgender persons sex constitutes a violation of the right to respect for private life, as protected under Article 8(1) of the European Convention. In such judgments, the courts have ordered the Director of the Public Registry to effect changes on the birth certificate of the transgender person (see below).
- [57]. In these cases, the courts have considered whether or not such changes should be clearly marked on the relevant certificate The final decision has been that the changes should be marked on the formal certificate, but not on the publicly accessible informal certificate.
- [58]. The following transgender issues have been identified:
- Lack of access to hormone therapy and gender reassignment therapy. Therapy and operations are not covered by national health insurances;
 - Lack of knowledge about transgender issues in the health system – especially with regard to the mental health sector;
 - Absence of law specifically recognising gender identity;
 - Gender segregated secondary schooling causes problems;
 - High unemployment rates of transgender people;
 - Risky lifestyles in terms of health and personal safety;
 - A case of a transgender woman who succeeded in getting her documents changed to reflect her gender identity but was refused marriage by the registry office – a following court decision found in favour of the registry office.

C.14. Multiple discrimination

- [59]. There is a lack of official data in relation to LGBT persons with ethnic and/or religious minority backgrounds.
- [60]. There is insufficient information concerning LGBT elders due to a complete invisibility of the issue.

⁴⁹ Online, accessible at: <http://www.eugaynews.com/malta/gayexilesreport103524.html>

[61]. There is a lack of official data on LGBT disabled persons. However, there has been a reported incident from a teacher who witnessed hostile attitudes towards young (16-19 years old) LGBT disabled persons by teaching staff of a 'Special School', specifically in relation to the students' interest in same-sex relationships. Disabled persons in Malta have only recently started to be acknowledged as sexual beings.

D. Good Practice

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