



DANISH INSTITUTE FOR
HUMAN RIGHTS

COWI

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

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A. A Summary of the Overall Situation of LGBT Persons

- [1]. Portuguese attitudes toward homosexuality have changed significantly since the 1990s, and negative attitudes toward homosexuals have decreased.
- [2]. The Portuguese Constitution (CRP 1976, revised in 2004) is the only one in Europe to explicitly forbid discrimination on the basis of sexual orientation. This legal disposition is part of the Fundamental Rights Chapter of the Constitution. However, several rights, such as those to civil partnership, marriage and adoption, are not granted to same-sex couples in Portugal.
- [3]. Whereas LGBT organisations have no specific problems regarding freedom of assembly and public demonstrations, existing data show that LGBT persons experience discrimination in various institutional settings, including health and education. In a survey, 28.6 per cent of LGB respondents said they had experienced prejudice or discrimination from colleagues—a large proportion considering that the majority of respondents were not open about their sexual orientation at work.

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 Professor Alexandre Sousa Pinheiro, Dinamene de Freitas, and Inês Marinho, University of Lisbon.¹
 - A sociological country report carried out for this study reviewing available data, written by Teresa Líbano Monteiro, Verónica Policarpo and Francisco Vieira da Silva, Institute of Social Sciences at the University of Lisbon.²
 - Data collected through interviews held in Portugal with the LGBT NGO *ILGA-Portugal* and the National Equality Body *Comissão para a Cidadania e Igualdade* [Commission for Citizenship and Gender Equality].

¹ D. de Freitas, I. Marinho and A.S. Pinheiro (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Portugal*. FRALEX.

² T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

- Data collected through an online questionnaire sent out to the stakeholders mentioned above.

- [5]. Regarding Portugal, the researchers stated the following:
- [6]. The research material available for this study was limited in terms of statistical data—both regarding official and unofficial sources.’

C. Key Findings

C.1. Attitudes Toward LGBT persons

- [7]. According to the results of the European Values Survey (1990 and 1999) Portuguese attitudes toward homosexuality have become more positive since 1990.³
- [8]. Further surveys examining acceptance and attitudes toward homosexuality were carried out on a European level in 2008 and 2006.
- [9]. 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 Portugal was 6.6, compared with the EU average of 7.9 (Sweden was highest with 9.5 and Romania the lowest with 4.8).⁴
- [10]. 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 29 per cent in Portugal (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 Portugal. Thirty-one per cent of Europeans felt that homosexual couples should be allowed to adopt children throughout Europe; the figure was 19 per cent in Portugal (Netherlands scored highest with 69 per cent and Poland and Malta the lowest with 7 per cent).⁵

C.2. Criminal Law - Hate Crime

- [11]. There is little official or scientific data on the extent and character of hate crimes on the grounds of sexual orientation.

³ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

⁴ European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

⁵ Eurobarometer 66 (2006), available at: http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf, pp. 43-46.

- [12]. The Portuguese Penal Code was amended in September 2007⁶ and several innovations have been introduced directly or indirectly relating to sexual orientation and protection of LGBT persons.
- [13]. Hate speech related to homophobia and discrimination on the grounds of sexual orientation is classified as a crime in criminal law under the designation ‘Racial, religious and sexual discrimination’ (Article 240). In fact, this article describes several discriminatory behaviours as crimes and is not restricted to the above-mentioned grounds for discrimination. According to the article, it is a crime to create an association or organisation or to develop activities in order to incite discrimination against or hatred of someone or a group based on sexual orientation. It is also a crime to participate in the activities of or support such associations, including financially. Furthermore, homophobic motivations are relevant in at least three other crimes: murder, assault and severe assault. The homophobic motivation in these crimes is considered an aggravating factor.⁷
- [14]. Cases of hate crime reported in the media usually consist of: 1) gay male victims being physically attacked outside gay bars or meeting places 2) transgender women (MtF) physically attacked and murdered.⁸

C.3. Freedom of Assembly

- [15]. In Portugal, LGBT associations have not had problems regarding assembly or public demonstrations. Moreover, there is no register of attacks on LGBT demonstrations. However, in the first Gay Pride Parade in Oporto, the political party *Partido Nacional Renovador* wrote insults and threats all along the route of the parade.⁹

C.4. Family and Other Social Issues

- [16]. Although same-sex unions have been recognised in Portugal since 2001, there are still limitations compared to opposite-sex unions, such as adoption. Regarding access to housing, welfare services and insurance, LGBT couples are still disadvantaged in Portugal. Benefits such as the right to stay at home or at the hospital with an ill partner or buying a house together are not extended to same-sex partners.¹⁰

⁶ Portugal/Código Penal (23ª alteração) Lei n.º 59/2007 (04.09.2007), available at: <http://www.dre.pt/pdf1sdip/2007/09/17000/0618106258.PDF> (15.02.2008).

⁷ D. de Freitas, I. Marinho and A.S. Pinheiro (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Portugal*. FRALEX

⁸ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

⁹ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

¹⁰ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

- [17]. In terms of freedom of movement, Directive 2004/38/EC was transposed as Lei 37/2006. According to this law, freedom of movement is guaranteed to members of de facto unions. This law makes no distinction between opposite-sex and same-sex unions and is applicable to unions lasting more than two years. Portuguese law makes no reference to family members of a third-state national who lives in a de facto union with an EU citizen.¹¹
- [18]. According to a national survey of homosexuals and bisexuals, 39 per cent of respondents (n=350) felt discriminated on the grounds of sexual orientation in their families, women more so than men.¹²

C.5. The Labour Market

- [19]. Directive 2000/78/CE was transposed by the Labour Code and by Lei 35/2004. These instruments are only applied to private contracts. The provisions on equality contained in the instruments, however, apply to public employment as well. Non-discrimination with respect to sexual orientation is thus expressly guaranteed by the Portuguese legal system in the field of labour law.¹³
- [20]. There is no equality body empowered to investigate charges and establish penalties for sexual orientation discrimination. However, the President of the Commission for Citizenship and Gender Equality has publicly committed to resolving this institutional omission. It is not possible for public bodies or private associations to act in court on behalf of an LGBT person who has suffered discrimination on the grounds of sexual orientation.¹⁴
- [21]. There is little data about the situation of LGBT persons in relation to discrimination in employment and the labour market in Portugal. There are few studies in which this question is investigated, making it impossible to ascertain the number of official complaints.
- [22]. In a scientifically non-representative sample¹⁵ made up of 350 homosexuals and bisexuals, 28.6 per cent of the respondents said they had experienced direct prejudice or discrimination from colleagues at least once. Fourteen per cent felt discriminated against by their employer, and 7.2 perceived discrimination when looking for employment. The figures should be viewed in light of the fact that

¹¹ D. de Freitas, I. Marinho and A.S. Pinheiro (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Portugal*. FRALEX.

¹² T.L. Monteiro, V. Policarpo, F.V. da Silva (2006). *Inquérito Nacional sobre Experiências da Homossexualidade em Portugal* (Relatório de Pesquisa/2006), Lisboa, Centro de Investigação e Estudos de Sociologia, Instituto Superior de Ciências do Trabalho e da Empresa.

¹³ D. de Freitas, I. Marinho and A.S. Pinheiro (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Portugal*. FRALEX.

¹⁴ D. de Freitas, I. Marinho and A.S. Pinheiro (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Portugal*. FRALEX.

¹⁵ T.L. Monteiro, V. Policarpo, F.V. da Silva (2006). *Inquérito Nacional sobre Experiências da Homossexualidade em Portugal* (Relatório de Pesquisa/2006), Lisboa, Centro de Investigação e Estudos de Sociologia, Instituto Superior de Ciências do Trabalho e da Empresa.

only 28.2 per cent of the respondents were open about their sexuality to colleagues and 24.9 per cent were open to their employers.

- [23]. Particularly regarding MtF transsexuals, access to jobs other than sex work is difficult due to discrimination toward persons that are undergoing the process of sex reassignment.¹⁶

C.6. Education

- [24]. There is no official data on discrimination based on sexual orientation within the national education system, since official data only specifies the category of each incident, not the motive behind it. However, a few studies have been conducted in this area.
- [25]. According to a survey carried out in a non-representative sample¹⁷ of 350 homosexuals and bisexuals, 34 per cent stated that they had been direct victims of prejudice or discrimination from fellow pupils due to their homosexual or bisexual orientation on at least one occasion, men more often than women. According to the study, schools are the second most common context in which discrimination occurs, after the family. These figures should be read in light of the fact that sexual orientation is largely invisible in Portugal. According to the study, the revelation of sexual orientation to others is generally highly restricted, selective and reserved for homosexual friends.
- [26]. A study carried out by *Rede Ex-aequo*, an NGO which works mainly with young persons on developing projects for schools, says that ‘*there are still many instances of homophobia and transphobia in schools in Portugal and due to this, schools are still not a safe place for young LGBT people, or people perceived as such.*’¹⁸

C.7. Health Service

- [27]. Gay men are not allowed to donate blood in the health system, and single women as well as lesbian couples are not allowed to receive assisted insemination services. In general, LGBT persons are faced with heteronormativity by medical staff, including doctors and nurses. Examples are gynaecologists asking about and assuming that patients are in heterosexual relationships, and gay men being associated with

¹⁶ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

¹⁷ T.L. Monteiro, V. Policarpo, F.V. da Silva (2006) *Inquérito Nacional sobre Experiências da Homossexualidade em Portugal* (Relatório de Pesquisa/2006), Lisboa, Centro de Investigação.

¹⁸ Rede Ex-Aequo (2006). *Observatório de Educação*. Retrieved February 25, 2008, from <http://ex-aequo.web.pt/observatorio.html>

HIV/AIDS.¹⁹ Furthermore, many Portuguese psychotherapists address homosexuality as ‘a problem.’²⁰

- [28]. According to a national survey, 13.3 per cent (of 350 respondents) felt directly or indirectly discriminated against by health professionals on the grounds of sexual orientation, women more than men.²¹
- [29]. According to *ILGA-Portugal*, same-sex partners experience problems with health insurance policies. Although de facto unions are accepted, some companies refuse to recognise same-sex unions as eligible for such contracts.²²

C.8. Religion

- [30]. The Catholic Church is influential regarding values and attitudes regarding sexuality, following the official position of the Vatican.²³
- [31]. The Portuguese leaders of the Roman Catholic Church do not approve of the same-sex partnerships legally recognised by the Portuguese State, and during recent years have developed a campaign arguing that homosexual rights attack the traditional family. In the V World Meeting of Families, held in Valencia in 2006, the speaker of the Portuguese Conference of Bishops, D. Carlos Azevedo, declared that the ‘devaluation’ of the concept of the family, in Portugal, is a result of the increase of civil unions and homosexual relationships.²⁴

C.9. Sports

- [32]. There is no official or scientific data that enables an association to be made between sport and discrimination on grounds of sexual orientation. It can be stated that LGBT persons are invisible in Portuguese professional sport.

C.10. Media

- [33]. There is some evidence that LGBT visibility has increased in the Portuguese media within the last decade.²⁵ However, LGBT persons

¹⁹ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

²⁰ G. Moita (2001) *Discursos sobre a homossexualidade no contexto clínico: a homossexualidade de dois lados do espelho*, Tese de Doutoramento em Ciências Biomédicas, Universidade do Porto.

²¹ T.L. Monteiro, V. Policarpo, F.V. da Silva (2006) *Inquérito Nacional sobre Experiências da Homossexualidade em Portugal* (Relatório de Pesquisa/2006), Lisboa, Centro de Investigação.

²² Field trip meeting with *ILGA-Portugal* (Portugal, 18 March 2008).

²³ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

²⁴ <http://www.paroquias.org/noticias.php?n=6669>

²⁵ Caldeira (2006) *A Representação das Minorias Sexuais na Informação Televisiva Portuguesa*, Lisboa: Livros Horizonte.

are still disproportionately unrepresented in the mass media. Moreover, lesbians and bisexuals are practically invisible in media representations, and are therefore under-represented, when compared to representations of gay men.

C.11. Asylum and Subsidiary Protection

- [34]. Persecution on grounds of sexual orientation is not a specific criterion for obtaining asylum. However, Portuguese law is sufficiently flexible to encompass a number of social grounds, providing leeway for an interpretation that includes persecution of LGBT persons as ‘persecution of a specific social group’.²⁶
- [35]. In the period 2000-2007, six LGBT persons have benefitted from asylum/subsidiary protection on grounds of sexual orientation persecution.²⁷

C.12. Family Reunification

- [36]. The family reunification law does not make specific reference to LGBT persons. Nevertheless, they are covered by the law in general terms.²⁸
- [37]. Regarding registered partnerships, family reunion may be authorised with a partner, whether in national territory or abroad, with whom a registered partnership is duly proved under the terms of the law. The applicant for the right to reunification simply has to prove the legality of the partnership. In the case of LGBT individuals, when the country of origin does not recognise registered partnerships between persons of the same sex, it is not clear how the immigrant can prove family status.²⁹
- [38]. There is no statistical overview of the number of same-sex couples having applied for or obtained family reunification. However, according to *ILGA-Portugal* many LGBT immigrants contact the association for information on the right to family reunification.³⁰

C.13. Transgender Issues

- [39]. At present in Portugal, there is no law related to gender identity. As a consequence it is not possible to determine whether transgender issues

²⁶ D. de Freitas, I. Marinho and A.S. Pinheiro (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Portugal*. FRALEX.

²⁷ D. de Freitas, I. Marinho and A.S. Pinheiro (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Portugal*. FRALEX.

²⁸ D. de Freitas, I. Marinho and A.S. Pinheiro (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Portugal*. FRALEX

²⁹ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

³⁰ Field trip meeting with *ILGA-Portugal* (Potugal, 18 March 2008).

are to be dealt with as gender discrimination or as sexual orientation discrimination.

- [40]. Existing regulations were approved by the *Doctors' Public Association*³¹ or are court decisions.
- [41]. According to a resolution approved by the executive branch of the Doctors' Public Association on 19.05.1995, operations to change an individual's sex are prohibited except where adequate diagnosis confirms a case of transsexualism or gender dysphoria.
- [42]. The regulation also stipulates that operations will only be performed after a medical diagnosis has been made by two psychiatrists and a mandatory opinion has been issued by one 'ad hoc commission' whose members are appointed by the Doctors' Public Association.
- [43]. The candidate for surgery must be over 18, of sound mind and not married.
- [44]. The birth certificate contains gender information. In the absence of any law regulating name changes, transsexuals wishing to change their names are compelled to initiate a legal proceeding before the state. Courts have expressed the view that a gap exists in this area.³² Therefore, they accept name changes provided the candidate satisfies the following prerequisites:
- over 18;
 - not in a position to procreate;
 - has undergone the operation;
 - the changes are irreversible;
 - has been living for a year with the new identity;
 - has no children.
- [45]. Transgender persons who have not undergone genital surgery or have children can only change their names to those used for both genders, such as Jó or Zara.

C.14. Multiple Discrimination

- [46]. There are several known cases of homicides of transgender sex workers with non-Portuguese backgrounds, suggesting that the combination of a transgender identity and an immigrant background

³¹ The public association responsible for ensuring ethical practices in the profession. It is an autonomous body.

³² See:
<http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/67f529a8e2023ad2802568030003cf06?OpenDocument> (15.02.2008).

places people in a marginalized position and making them preferred victims of crime.³³

- [47]. LGBT elders face multiple discrimination—including discrimination by younger LGBT persons. Moreover, issues arise when LGBT elders need special care, namely healthcare, and have to enter elderly care institutions. In these cases, many gay men and lesbians are forced back into the closet in order to avoid prejudice and discrimination, both from other elderly residents and from staff.³⁴

D. Good Practice

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

³³ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.

³⁴ T.L. Monteiro, V. Policarpo, F.V. da Silva (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Portugal*, Sociological Country Report.