

REPORT

on implementation by the Czech Republic of the Recommendation
CM/Rec(2010)5 of the Committee of Ministers of the Council of
Europe on measures to combat discrimination on grounds
of sexual orientation or gender identity

Platforma
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I. Executive summary

Adoption of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity went almost unnoticed by the responsible governmental bodies in the Czech Republic. The Czech state authorities, including the Ombudsman, have not undertaken any specific action to implement the recommendation (neither legislative, nor non-legislative). LGBT people, their status and rights have been entirely set aside by relevant state authorities.

The Czech Republic is in a schizophrenic situation, as it has enacted registered partnership and therefore is one of the few "exclusive" countries of the world that recognize same-sex unions and grants them social recognition and specific rights and obligations. However, the conclusion of the present registered partnership is more of a symbolic act; its legal consequences are minimal when compared to marriage. Moreover, since 2006 when the law on registered partnership was adopted, there have been no changes that would have strengthened the position of same-sex partners.

In parenting rights, the Czech Republic disadvantages same-sex families openly; state authorities – while absurdly attempting to defend the "traditional" family - do not hesitate to approve and adopt decisions that disadvantage same-sex families and are clearly in conflict with the principle of the best interest of the child. Same-sex parenting is particularly a target of open homophobia - even people who openly support same-sex unions are not ashamed to speak publicly about same-sex families as being wrongheaded and unnatural.

The Czech Republic fully respects the rights of LGBT people to freedom of association, assembly and to freedom of expression, in accordance with the recommendation. Since the Czech Republic considers itself a democratic society (and exercising these rights freely is a fundamental pillar of democracy) respecting the recommendations in this area cannot be classified as an extraordinary activity leading to active encouragement towards LGBT people.

The adoption of the Anti-Discrimination Act in 2009 introduced prohibition of discrimination on grounds of sexual orientation and gender identification in a number of areas, such as access to employment, education, health care, services and housing. Promoting equality in everyday life, however, has to be described as more than problematic. Public authorities at central and regional level do not take any action to respect the specifics of LGBT people and to make sure they are not only treated in a non-discriminatory way, but also respected in their human dignity in these areas.

For decades fortunately, the Czech criminal law has not criminalised sexual acts between persons of the same sex and there is no difference in the age of consent. On the other hand, the criminal law ignores LGBT persons as victims of hate crimes, the victim's sexual orientation not being explicitly considered as an aggravating circumstance of crimes, and crimes motivated by hatred towards LGBT people must be assessed as committed out of "other similar hatred." Surprisingly enough, the

Czech statistics do not record attacks motivated by sexual orientation or gender identity of the victim, although in the west European countries (not to mention countries east of the Czech Republic) there are hundreds or thousands of attacks motivated by sexual orientation or gender identity committed annually.

Humiliating and hateful speeches against sexual minorities occur mostly in connection with some of the LGBT events. Politicians and persons appointed to public offices condemn these speeches only exceptionally.

The position of transgender people can be identified as very difficult - they are exposed to discrimination in many areas of life. It has to be highlighted, however, that transsexual people have access to medical treatment covered by public health insurance, including the possibility of a sex change operation. Subsequently, they are allowed to make changes in all relevant documents. On the other hand, people who cannot or do not want to undergo surgical removal of reproductive organs may not to change their documents.

The status of Czech LGBT minorities is full of contradictions. The Czech Republic, while being a leader in some of the LGBT issues, is completely losing in others.

II. Recommendations to the government for priority actions

- 1) To amend the Act on Registered Partnership (No. 115/2006 Coll.) so that:
 - the provision of Section 13 (2) prohibiting a registered partner to adopt a child is abolished,
 - the condition of citizenship as one of pre-requisites necessary for concluding a registered partnership is replaced by e.g. the condition of permanent residence permit of at least one partner.
- 2) To introduce the possibility for one registered partner to adopt the child of the other (second parent adoption) into the Civil Code (Act. No. 89/2012 Coll.).
- 3) To incorporate the institution of registered partnership in the Civil Code (Act No. 89/2012 Coll.).
- 4) To introduce the right of one partner to adopt the child of the other (second parent adoption) into the Family Act (Act No. 94/1963 Coll.).
- 5) To amend the provision of Section 63 of the International Private Law (Act No. 91/2012 Coll.) so that the Czech Republic acknowledges the adoption of a partner's child or joint adoption of a child by partners abroad when one or both partners are Czech citizens.
- 6) To stipulate in the Penal Code (Act No. 40/2009 Coll.) that a bias motive due to sexual orientation or gender identity will count as an aggravating circumstance when determining sanctions for hate crimes.
- 7) To educate and support education of the police in relation to the LGBT community and particularly in the area of hate crime due to sexual orientation or gender identity of the victim.
- 8) To amend the relevant legislation, so that prior requirements for legal recognition of a gender reassignment such as sterilisation or other medical interventions, and automatic termination of marriage or registered partnership, are removed.
- 9) To introduce neutral inhabitant identification numbers (Birth Certificate Number) to ensure that transsexual persons are not discriminated based on their gender identity and that their gender identification is not unwillingly disclosed.
- 10) To pass a specific legal regulation clearly defining the rules for change of documents connected with employment of transsexual persons.
- 11) To amend the Decree on health capacity for active military service (No. 103/2005 Coll.) to exclude the diagnosis F 64.0 (gender identity disturbance) as a reason for excluding transsexuals from active military service.

- 12) To amend the Act on Specific Health Services (No. 373/2011 Coll.) so that any woman, i.e. also a woman without a partner, may apply for assisted reproductive treatment.
- 13) To amend the categories of risk factor and risky behaviour with regard to the blood donation so as to avoid discrimination based on sexual orientation.
- 14) To include themes regarding the lesbian, gay, bisexual, and transgender community into education programs at all education levels and in any and all education areas.
- 15) To support improvement of the training of teachers, school psychologists and other educational professionals, to enable them to address, homophobic and transphobic bullying effectively, and to provide support to LGBT children and young people.
- 16) To require labour inspectorates to keep detailed statistics of equal treatment principle violations at workplaces, so that cases of discrimination on the basis of sexual orientation and/or gender identity are monitored effectively; and to require labour inspectorates to inform persons who may complaints of the outcomes of their investigations.
- 17) To educate and support education of social workers to increase their awareness of specific issues regarding LGBT people, e.g. in the context of addressing issues regarding same-sex parenthood, vulnerability of senior citizens, homeless people, etc.
- 18) To educate and support the education of health care employees, particularly physicians and nurses, to increase their awareness of specific issues regarding LGBT people.
- 19) To support the establishment of LGBT community centres through subsidy programs.
- 20) To support activities aimed at combating homophobia and transphobia in sport through subsidy programs.

III – Introduction

i. Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as "one of the most long-lasting and difficult forms of discrimination to combat".¹

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

¹ “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons” <https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

ii. The purpose of this report

The purpose of this report is to assess what progress has been made by the Czech Republic authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. And secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

iii. Methodology

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which PROUD has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix iii. to this report, entitled "the Compliance Documentation Report".

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries to letters from PROUD listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on the Czech Republic commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, "Discrimination on grounds of sexual orientation and gender identity in Europe".
- Reports on the state of Human Rights in the Czech Republic in 2007, 2008, 2009 and 2010 published by Office of the Government.
- Analysis of the Situation of Lesbian, Gay, Bisexual and Transgender Minority in the Czech Republic published by the Minister for Human Rights and National Minorities.
- Research and documentation assembled by PROUD and other non-governmental organisations (In Iustitia, Czech Helsinki Committee, SIMI, OPU, ELNADRUHOU, Mezipatra, Prague Pride, Charlie).

IV. Summary Report

Short summary of findings

The Czech Republic is often presented as a country where gay, lesbian, bisexual, and transgender people live fairly good lives. It is one of the few post-communist countries where gays and lesbians may enter into a registered partnership; Czech society is – according to public opinion surveys - relatively tolerant towards sexual minorities. Nevertheless, this tolerance may be labelled as conditional. Often, real respect and recognition in everyday interaction is missing. This results in implicit support of heteronormativity and tolerance towards heterosexism, which usually have very subtle forms. Thus, there are still many LGBT persons who hide their differing sexual orientation, fearing rejection not just by those that they meet in society generally, but also by their families. Sexual (or, to be exact, homosexual) orientation is considered a private issue, which, if not presented publicly, is tolerated. However, the choice of partner, of the same or different sex, is not just a private issue; a person's partner automatically engages with family and friends and also becomes visible to the wider public. Faced with the possibility of negative reactions, many LGBT persons adopt strategies of avoidance, moving to bigger cities or abroad, or living double lives – heterosexual in public or in their families, gay or lesbian privately.

Freedom of association and assembly is guaranteed to everyone – as evidence of which may serve the first two years of the Prague Pride festival, having taken place in the 2011 and 2012, practically without any major incidents. On the other hand, both occasions were accompanied by expressions of hate, against sexual minorities, that received attention of the media. Moreover, responsible persons holding public office hardly ever criticized these homophobic expressions – on the contrary, it was they who helped spread them (e.g. a comment by the Czech President using the term „homosexuality“ and qualifying it as a dangerous ideology).

Although LGBT persons become victims of hate crimes, official statistics recording hate crimes against LGBT persons do not exist in the Czech Republic. The Penal Code does not specifically mention homophobic or transphobic motivation for a crime as an aggravating circumstance, although racial or ethnic motivation are treated as an aggravating circumstance; the only way such crimes could be covered under these provisions would be in the category „other specifically deplorable motive“. One result is that homophobic crimes are not recorded separately by criminal investigative bodies. Their awareness, of homophobic and transphobic crime is low, which results in crime motivated by sexual orientation or gender identity not being regarded as a problem.

The law does not distinguish between informal cohabitation of the same-sex and different-sex couples. A major change to this situation is brought about by a decision to formalise a relationship. The legal consequences of entering into marriage and registered partnership are quite different – e.g. by concluding registered partnership, joint assets are not established, a registered person may not adopt a child, a joint lease is not automatically established, etc. Registered partnership is not regarded as family status (similar to married, divorced, widowed, single), but as „other“ status.

The last field of open homophobia in Czech society is LGBT parenting and LGBT families. A fairly big part of Czech society, including the professional public, keeps refusing to recognize same sex couples as families. The new Civil Code serves as evidence to this – its ambition was to become a codification of all private law issues, but – contrary to pure legal logic – it did not include registered partnership, with a justification that it is not acceptable that registered partnership becomes part of family law. The discourse in the society has reduced the issue of LGB parenting to the capability of gays and lesbians of being good parents with regard to their sexual orientation and whether to enable them to adopt children. Public opinion surveys show that there is still less than one third support for adoption rights, although this figure is constantly rising. Nevertheless, same-sex families do exist in the Czech Republic and it is estimated that there are thousands of children being raised in such families. Neither the majority in the society, nor the law recognizes these families; these children have only one legal parent. Czech law, by not recognising parenting of two persons of the same sex not only disadvantages same-sex parents, it also violates the best interests of the child by denying the child the right to a family life and the additional security and protection provided by having two legal parents.

The Czech Republic was one of the last EU member states to implement its EU obligations with regard to introducing anti-discrimination legislation, reflecting a lack of enthusiasm for anti-discrimination measures both amongst the political class and the general public. Within this overall context, steps by the authorities to achieve a non-discriminatory approach and equality before the law have not involved sufficient consideration of the specific position of LGBT persons in situations where a specific approach is needed. As examples may serve lonely LGBT seniors, young people who are coming out, and victims of hate crimes. Workers in various professions, such as the police, medical staff, social workers, or teachers are not educated in this regard and various educational programmes do not specifically have regard to LGBT persons. Public institutions usually resort to general statements.

The Recommendation

The operative text of the Recommendation includes four main steps: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the Recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

In summary, a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity has not been conducted. Comprehensive anti-discrimination legislation covering both sexual orientation and gender identity exists, but no comprehensive strategy, including long-term education and awareness raising, has been implemented. The Recommendation has been translated, but it has not been widely disseminated.

The Czech authorities appear to have taken very little notice of the Recommendation, beyond arranging for its translation (although not that of the accompanying

Explanatory Memorandum). It was discussed by the Committee for Sexual Minorities of the Government Council for Human Rights, but this does not appear to have led to any actions. So, to the extent that measures proposed by the Recommendation are in place in the Czech Republic, almost all pre-date the Recommendation,

Of these, the most important is the Anti-discrimination Act, which prohibits discrimination based on sexual orientation or gender identity in employment, social protection, healthcare, social benefits, education and access to and supply of goods and provision of services available to the public, including housing. In theory, this law should provide effective legal remedies for victims of such discrimination through administrative and judicial procedures. However, these procedures are not well-known, lengthy and potentially costly, and with relatively insignificant compensation for victims. For LGBT victims of discrimination, they carry with them additional concerns around publicity, and, where employment is concerned, possible damage to future employment prospects. It is perhaps less than surprising that the authors of this report know of only one sexual orientation related employment case, and none related to gender identity.

Regarding other measures required by the Recommendation:

- No review has been conducted of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination.
- No comprehensive strategy, including long-term education and awareness raising programmes aimed at tackling discriminatory or biased attitudes and behaviour has been developed.
- While the Recommendation has been translated, the Explanatory Memorandum has not. Moreover, it seems that no attempt has been made to disseminate the Recommendation, and it has not even been published on the website of any responsible public institution.

i. Right to life, security and protection from violence

a. Hate crime

The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat "hate crimes" and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

In summary, there is no legislation specifically addressing homophobic and transphobic hate crimes, training of police, judiciary and prison officials do not adequately address the rights of LGBT persons, and homophobic and transphobic motivated crimes are not statistically monitored.

Hate crime represents one of the worst forms of violence, as it aims at the very essence of human beings. An attack motivated by hatred against a minority also often causes anxiety and fear amongst other members of the respective minority. Hate

attacks against gay, lesbian, bisexual, and transgender people occur even in countries where this minority has achieved full equality. Hate attacks against LGBT people have been recorded also in the Czech Republic, however, the extent of this kind of violence is not accurately known. Hate violence and hate speech against LGBT people in the Czech Republic are not considered a problem by the authorities. However, a survey carried out in 2008 does not support this view. From 497 LGB people participating in the survey 55 people (11%), including 43 men (14%) and 12 women (7%) reported experience of physical assault due to their sexual orientation. Men were thus victims of assault roughly twice as often as women, and attacks on them were also of a more serious nature. However, official statistics on homophobic and transphobic attacks in the Czech Republic do not exist. The barrier is not the legislation, but a lack of willingness by the authorities responsible for criminal proceedings to collect the data statistically. The extent of hate crimes motivated by sexual orientation or gender identity in the Czech Republic is very difficult to estimate.

According to the Czech Penal Code courts considering the punishment for the perpetrator shall take account of an aggravating circumstance if the *offender committed the offense out of greed, revenge, national, racial, ethnic, religious, class, or other similar hatred or other particularly reprehensible motives.*² The Penal Code does not expressly consider homophobic or transphobic hate motivation as an aggravating circumstance, unlike in the case of racial, ethnic or religious hatred. Homophobic or transphobic hate would be considered an aggravating circumstance only if it was included under *other similar hatred or other particularly reprehensible motives*. There is no case law so far and we can only assume that homophobic and transphobic hateful motivation of offender towards the victim of crime would be considered aggravating circumstance by the court.

Some criminal offenses, such as murder, grievous bodily harm, bodily harm, torture, or other inhuman treatment, deprivation of liberty, unlawful restraint, criminal damage, include qualified facts of the body of crime enabling that the perpetrator will be sentenced to higher punishment if the crime is motivated by actual or perceived race, ethnicity, nationality, political opinion, religion, or because the victim is actually or supposedly without religion. However, if such offense is motivated by the sexual orientation or gender identity of the victim, the offender will be sentenced only to the basic penalty. Only in the case of the crime of murder and serious bodily harm could the perpetrator be sentenced to higher punishment if homophobic or transphobic motivation is considered as especially deplorable motivation.

LGBT victims of hate crimes based on their sexual orientation or gender identity usually do not report the attack to the competent authorities. Reasons for such behaviour can be fear of homophobic or transphobic reaction from the police, or risk of so-called forced coming out based on publicity regarding the attack. The education of police officers does not provide adequate space for addressing the specific status of victims of hate crime motivated by homophobia or transphobia.

The position of imprisoned transsexual and transgender people is very difficult; protection of their rights is not specifically addressed. Neither laws, nor internal regulations set any specific means of treatment of transsexual and transgender people

² Section 42 lit. b) of the Act No. 40/2009 Coll., the Penal Code.

in prison and their placement. The Prison Service is obliged to place the prisoner in a male or female prison according to the sex stipulated in their identity card.

b. Hate speech

Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.

In summary, there are no laws specifically penalising homophobic or transphobic "hate speech", public disavowal by government officials of such speech is rare, and no guidelines to government officials to refrain from such speech have been issued.

As with hate crimes, the authorities do not consider hate speech against LGBT people as a problem, even though there are cases of such speech, for example, in connection with Prague Pride in 2011 and 2012, including on the part of politicians. Moreover, public officials and state representatives are not encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual, and transgender persons.

Criminal law covers incitement of hatred against certain specific categories of person, and a general category, "*other group of persons*", or incitement to restrict their rights and freedoms³, as well as the establishment, support, and promotion of movements aimed at suppressing human rights and freedoms⁴. None of these provisions refers explicitly to the sexual and transgender minority. There is no relevant case law and we can only be reasonably assumed that the LGBT minority falls into the category "*other group of persons*" and support and promotion of movements aimed at suppressing human rights of LGBT people would be considered criminal under another group of people.

ii. Freedom of association

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

In summary, LGBT organisations can gain official registration and operate freely. However, LGBT organisations are rarely consulted effectively during the development of public policies affecting LGBT persons.

³ Section 356 of the Act No. 40/2009 Coll., the Penal Code: *(1) A person who publicly incites to hatred against a nation, race, ethnic group, religion, class or other groups of persons or to the limitation of the rights and freedoms of their members, will be punished by deprivation of liberty up to 2 years.*

⁴ Section 403 (2) lit. a) of the Act No. 40/2009 Coll., the Penal Code.

Freedom of association is one of the main rights protected by Constitutional order of the Czech Republic. In the Czech Republic, the association of LGBT people or association of people aiming to protect LGBT people's right does not represent any issue. Relatively clear and simple rules of association exist and no discriminatory obstacles exist making the registration or running of LGBT people's civic associations impossible, or even making such registration or running more complicated.

On the negative side, LGBT organizations are rarely effectively consulted during the development of public policies regarding LGBT people. A channel for such consultations could be the Committee for Sexual Minorities of the Council of the Government of the Czech Republic for Human Rights whose members are next to minister's representatives also experts and representatives of NGOs. However the current government does not take account NGO as an important partner.

The situation is not helped by the attitude of the President, Mr Václav Klaus, whose negative standpoint towards civic society and NGOs is generally known. During the last few years, President Klaus has spoken against promoting the rights of LGBT people, and uses the pejorative term "homosexuality" to describe such activities.

Unfortunately, at the moment there are no major funds provided from the public finances for the running or activities of LGBT organizations. Within efforts for improving of the situation it will be useful to intensify the communication with public authorities while creating the public policies regarding LGBT people, as well as intensify the efforts to gain support from public funds.

Any improvement in the situation, both regarding consultation over policy development, and funding, will require a more positive attitude by government, at national, regional and local level.

We consider it important that entities working to protect the rights of LGBT people are established on a more solid and professional basis. In particular, the founding of a community centre to provide services to vulnerable groups, for example young people going through the coming out process, seniors, hate crime victims etc, would be an important first step. However, the founding of such a community centre for LGBT people will be impossible without support from public funds.

iii Freedom of expression and peaceful assembly

Section IV of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

In summary, freedom of expression and assembly are enjoyed without discrimination, and apart from one incident, protection of lawful assemblies has been effective. Greater emphasis on condemning incitement to violence against peaceful assemblies is needed.

Freedom of speech and peaceful assembly are protected by the constitutional order of the Czech Republic. There are no legal regulations limiting freedom of speech or peaceful assembly with regard to LGBT people or LGBT themes. Even in practice in this area there is no discrimination occurring while applying the legal regulation.

Issues in practice are mostly caused by a rather broad interpretation of freedom of speech and of the right to peaceful assembly of opponents, both conservatives, religious fundamentalists, or rightist radicals (including neo-Nazis), when they express their intolerance through verbal attacks which in some cases are close to inciting violence. In 2008 there were physical assaults against the participants in an LGBT parade in Brno.

Unfortunately both verbal and ideological support has been provided to opponents of the rights of LGBT people by the President, Václav Klaus. In 2011 he criticised the Mayor of Prague and the embassies of 13 countries for supporting the Prague Pride, considering such parades as demonstrations of "homosexuality" ideology, and marking LGBT people as "deviants". The statements by the President, and some other personages from his neighbourhood, and some like-minded persons led to solidarity demonstrations by a wide range of social groups in support of both of the Prague Prides.⁵

With regard to ensuring the safety of participants in assemblies supporting LGBT people, we can say that, after an early failure by the police (at Brno in 2008), the provision of security has been appropriate and effective, avoiding excessive intrusiveness by the police in the immediate vicinity of the assembly. At the same time no demonstration of hostility or disrespect occurred on the side of police members.

It is not necessary to propose any institutional or legal changes in relation to freedom of assembly, although the experience of recent years has highlighted the need for provisions addressing incitement to violence against LGBT persons.

However, more public officials should act with respect towards LGBT people and their assemblies and publicly condemn any demonstrations of intolerance.

iv. Respect for private and family life

These paragraphs of Section IV of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

⁵ So called "Gay pride parades" are connected with Stonewall events in the 1969. On June 28th, 1969 riots of LGBT people broke up in reaction to police rage in Stonewall Inn in Greenwich Village quarter of New York. Stonewall events are considered the start of modern movement for LGBT rights as it was the first event, when larger group of LGBT people opposed the brutality on the side of police. The first gay pride parade was held on June 27th, 1970 in Chicago, the other one only one day later in New York, i.e. on the anniversary of Stonewall events. The very same week another gay pride parades in Los Angeles and San Francisco followed. Subsequently, the pride parades started to be organized also in other countries. Pride parades usually have carnival character as well as of a demonstration for right of LGBT people.

In summary, same-sex sexual acts are not criminalised, and there are no issues concerning collection of personal data. There are numerous problems in access to the rights of couples and parenting. Although registered partnership is available to same-sex couples, the rights which it grants are very limited compared to those available to different sex couples through marriage.

Sexual intercourse between same-sex partners has not been criminalized on the territory of the Czech Republic since 1962. Then Czechoslovakia was one of the first countries to abolish the criminal nature of homosexuality. As of 1990 the same age limit applies for consensual sexual intercourse between same-sex partners and different-sex partners, i.e. 15 years. In the Czech Republic any and all sexual offences are punished in the same way regardless of sex and sexual orientation of the offender. There are no criminal offences which can be committed just by LGBT people.

With regard to same-sex relationships, the Czech law recognises informal cohabitation without any distinction based on sex or sexual orientation in a limited number of areas. Amongst these are inheritance, joint cohabitation in a leased apartment, and the possibility to refuse to be a witness in penal proceedings or to provide explanations in administrative proceedings on minor offences. However, Czech law does not acknowledge the right to inherit the lease of the apartment in the case of death or the right to a widow/er pension regardless of whether the partners are of the same or different sex.

As of 2006, the Czech law recognises the institution of registered partnership⁶ and the Czech Republic therefore became one of the few post-communist countries acknowledging the relations of same-sex persons. However, the extent of partners' rights and obligations remains very disadvantageous in comparison with marriage which remains reserved to two people of different sex. Serious differences with marriage include the fact that partners cannot jointly own property, nor jointly lease their home, there are no tax advantages as provided to a husband and wife, there is no right to a widow/er pension, and for the purpose of inheritance and gift tax the partners are included in a less advantageous class than husbands. All these facts can contribute to destabilising same-sex partnerships, while seriously disadvantaging any children in the family, contrary to the best interests of the child.

There are other differences too. While marriages can be entered into in numerous registry offices, churches or religious societies, and in embassies of the Czech Republic, registered partnerships are restricted to some 14 registry offices. In contrast with persons who intend to marry, persons who intend to enter into a registered partnership and their close relatives are not provided with a free day for the celebration.

One of the main differences in comparison with marriage is represented by the fact that the existence of the registered partnership is a legal obstacle to child adoption⁷ (no matter if such adoption is individual, joint, or if it regards the adoption of the partner's child), as well as to fostering in the majority of existing types of foster care. The ban on adoption included in the Registered Partnership Act can be considered

⁶ Act No. 115/2006 Coll., on Registered Partnership, as subsequently amended.

⁷ Ibid, Section 13 (2).

directly discriminatory, as based on the law, LGBT people may adopt a child individually if they live with their partner in an informal relationship, however, if they conclude a registered partnership, they are automatically banned from adoption without even trying to establish if they are suitable parents. In connection with securing the care of children at risk the attitude towards same-sex couples as potential substitute parents should also be re-assessed. At the moment they are *a priori* excluded from replacing parents (either as joint foster or adoption parents) without any attempt to establish if they are suitable parents.

If Czech law makes it impossible for same-sex couples to adopt an unrelated child, it also makes it impossible for one partner to adopt the child of the other. While the number of children born to same-sex couples is growing rather rapidly, Czech law does not reflect this situation in any way. A child born into a family where both parents are of the same-sex, has, at least from the legal point of view, only one parent. The non-biological parent (aka social parent) has no rights in relation to the child; nonetheless he/she is obliged pursuant to law to participate in his/her upbringing. This legal status is damaging to the child's best interest as it causes many problems, both in the family's every-day life as well as in critical situations such as the separation of the parents or death of one of them.

The Czech Republic does not recognize the adoption of a child by same-sex partners or same-sex married couples that occur abroad, the justification being that joint adoption by same-sex couples is in breach of "public order".⁸ This situation will not change even after the new International Private Law Act comes into force in 2014. Under this law, the Czech Republic refuses to recognise foreign adoptions, both on the existing ground of "breach of public order", and, under a new provision, whereby they would not be admissible under substantive provisions of Czech law.⁹ The refusal of the Czech Republic to recognise legally constituted foreign adoptions effectively deprives the child in question of its legal parents, and constitutes a serious breach of the principle of the best interests of the child; the child has practically no parents.

Certain expectations in the area of family life were connected with the drafting of the new civil code, which should have, at least pursuant to declaration of the Government, represented a modern code of any and all civil law for the needs of 21st century. However, these expectations did not come to pass. For the Conservative Government it was unthinkable to acknowledge same-sex couples as a family. Thus, the provisions regulating registered partnership were excluded from the new civil code and remains as a single piece of law. This can be seen as a declaration that people entering into a registered partnership are second-class citizens, because in a relationship that does not constitute a family, and therefore cannot be accepted as part of family law.

The area of family law represents one of the areas where discrimination against LGBT people is at its most severe, and to which the Czech Republic will have to pay more

⁸ Section 36 of the Act No. 97/1963 Coll., on International Private and Procedural Law, as subsequently amended, defines public order as principles of social and state order of the Czech Republic and its legal order on which we have to stand without exception. We have to state, that public order is not static term in the history. On the other hand it changes alongside with the development in the society and state regime without doubt, amongst these principles belong today: democracy, principle of legal state, and respect to human rights.

⁹ Section 63 of the Act No. 91/2012 Coll., on International Private and Procedural Law.

attention in the years to come. Measures needed include providing education to the public, changing the discriminatory legal provisions, and taking the lead in public discussion. Of fundamental importance is ensuring equality in the rights available under registered partnership and marriage, by including the regulation of registered partnership into the new civil code, allowing same-sex partners to own property jointly, removing obstacles to adoption by a partner of her/his partner's child (second parent adoption), as well as removing other discriminatory obstacles for entrusting children in foster care to persons living in a registered partnership, including adoption.

v. Transgender issues

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transsexual persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transsexual persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

In summary, full legal recognition is not available in a quick, transparent and accessible way, and prior requirements for legal recognition include some which are abusive (not least, requirements for surgery and sterilization). On the positive side, transsexual persons are able to marry once gender reassignment has been completed, they have access to appropriate gender reassignment services, and the cost of most reassignment treatments is currently covered by public health insurance, although there are concerns that changes under discussion may adversely affect this situation.

General information on the situation of transgender persons in the Czech Republic
In the Czech Republic transsexuals have been able to undergo gender reassignment and legal gender recognition since the 1960s. The Czech Republic has considered specific position of transsexuals before the 1989 already, and as of the 1960s it was enabled to undergo surgical gender reassignment as well as change of relevant documents. Possibility to undergo surgical operation was nevertheless regulated in the Act on Care of People's Health very briefly. Medical interventions took place at the request of the person and after approval by an expert commission, which had considerable discretion in its decision-making.¹⁰ These arrangements are in the process of being superseded, through two new laws, – a new Civil Code (to come into force in 2014) and the Act on Special Health Services which include specific and quite detailed regulation on gender transitioning. Although these legal acts were adopted in the 2012 they fail to reflect current development in the area of protection of human rights of trans persons.

In the Czech Republic no statistics concerning transpeople are available. Nevertheless, expert literature states that in the overall population one person in

¹⁰ §27a of Ant No. 20/1966 Coll., on care of health of people

10,000 is transsexual, which means there are about one thousand transsexual persons in the Czech Republic.¹¹ It would be desirable to start collecting statistics regarding number of transsexuals, and transgender people, number of surgeries, living situation of trans people etc.

There is no research or statistics documenting discrimination against trans persons in the Czech Republic. Nevertheless, on the basis of information from individual transsexuals they represent a very vulnerable group of people. Trans people are quite often victims of hate crime, discrimination in everyday life, at work in particular. They are also victims of insensitive treatment on the part of certain professionals, e.g. physicians or social workers.

Gender reassignment

The process of gender reassignment treatment in the Czech Republic is regulated by the Act on Special Health Services¹². This Act was adopted in 2011 and is effective from April 1st, 2012. The Act embodies the actual practices of gender reassignment treatment in use prior to that date. For gender reassignment treatment of a transsexual it is necessary to (i) unequivocally diagnose gender identity disorder, (ii) prove ability to permanently live as a person of the opposite sex, (iii) prove that the person didn't enter into marriage or registered partnership or that the marriage or registered partnership came to an end, (iv) receive positive decision of the expert committee. Gender reassignment surgery is then performed by surgery which includes terminating the reproductive function of the transsexual. One of the problems with this Act is that the decision of the expert committee (which consists of seven persons - including an unspecified representative of the Ministry of Health) has to be unanimous. Thus, if just one member of the committee has doubts, the transsexual person is denied access to gender reassignment. The requirement to prove the ability to permanently live as a person of opposite sex (the so called real life test) is also problematic, being considered unnecessary in certain other European states where the highest standards in legal recognition of transgender persons apply.

Gender reassignment treatment is covered financially by public health insurance. Currently, there are changes in system of public healthcare in the Czech Republic including discussions about the determination of standard and above-standard interventions. It is very important not to include gender reassignment treatment amongst the above-standard interventions paid for by the patient. Considering that trans persons are endangered by discrimination on the labor market and that they are often in a difficult social situation during the period of gender reassignment transitioning itself, inclusion of gender reassignment surgery in the list of above-standard interventions could mean that such intervention would become accessible only with great difficulty or not at all.

The Act on Specific Health Services also requires that a person who wants to undergo gender reassignment surgery must prove that his/her marriage or registered

¹¹ *Analysis of the Situation of Lesbian, Gay, Bisexual and Transgender Minority in the Czech Republic* April-October 2007, Working Group for Sexual Minorities of minister for human rights and ethnic minorities, p. 10,
<http://www.vlada.cz/assets/ppov/rlp/vybory/sexualni-mensiny/ANALYZA_final.pdf>, visited on 21 August 2012.

¹² §21-§23 of Act No. 373/2011 Sb.

partnership have come to an end. The new Civil Code¹³ goes even further in this respect. After coming into effect on January 1st, 2014 marriage or registered partnership will come to an end automatically. The most controversial part of the new Civil Code is the requirement to terminate the reproductive function during gender reassignment surgery. That means sterilization or castration of the person. Persons who are not able or don't want to undergo the above mentioned intervention for any reason are excluded from the gender legal recognition and they have no possibility to acquire new personal documents and birth certificate number.

After surgery terminating the reproductive function, a trans person acquires a new birth certificate number, new documents, new school certificates, etc. with the new name on it. Under our opinion it is necessary to ensure that this should be done in a way that the individual is not forced to repeatedly prove the identity and the fact s/he they obtained legal gender recognition. This would significantly increase the risk of the trans person being marginalized and discriminated in everyday life.

Under the Population Register Act¹⁴ a new birth certificate number is assigned to the transsexual after submission of proof of gender reassignment surgery. The transsexual has to be assigned a new birth certificate number, as in the Czech Republic there are different birth certificate numbers for women and men. After the change of birth certificate number there follows the change of personal documents, especially the birth certificate or ID. After that it is possible to change other personal documents, such as passport, driving license, or, as the case may be, records in public registers, e.g. real estate register, etc. To avoid having to assign a new birth certificate number after gender reassignment treatment it would be desirable to establish neutral identity of persons (birth certificate number) from which it would not be obvious whether the person is man or woman. Therefore, trans persons with legal gender recognition would not be discriminated on the grounds of their gender identity and the risk of potential unintentional disclosure would be eliminated.

The Act on Register of Births and Deaths, Name and Surname (hereinafter the „Act on Register Office“)¹⁵ regulates the change of name and surname of persons in the process of gender reassignment treatment. These persons may use a gender neutral name and surname. For this change to neutral name and surname confirmation from the medical organization providing gender reassignment treatment is required. The actual name and surname considered neutral and permitted is, based on our information, often dependent on the decision of a particular Register Office. After gender reassignment treatment is possible to change name and surname in such a way to correspond to a name and surname which is related to women or men in the Czech language. Such change is based on the person's own decision; however it is possible to use a previously chosen neutral name.

There is also specific legislation regarding the change of school certificates. For trans persons upon legal gender recognition such a change is possible based on the Decree of the Ministry of Education, Youth, and Sports of 2005¹⁶, on some certificates on education. However, there is no specific legislation in Czech law concerning change of documents regarding labor relations of trans person. Testimonies from transsexuals

¹³ § 29 Act No. 89/2012 Coll.

¹⁴ Act No. 133/2000 Coll.

¹⁵ Act No. 301/2000 Coll.

¹⁶ Act No 223/2005 Coll

confirm that obtaining new labor documents, especially from private employers, is often a problem. Therefore, it would be important to adopt specific legislation also for this aspect of legal gender recognition. Actually, trans persons are subject to increased risk of discrimination in the area of employment and it also disrupts their right to protection of personal data.¹⁷

Upon legal gender recognition following the process described above, a trans person may enter into a marriage with a person of the opposite sex or a registered partnership with a person of same sex under the applicable legislation. In this area, there is no difference between trans persons and non-trans persons. Based on our information, artificial fertilization is accessible for a female-to-male trans person..

Apart from the above-mentioned legislation, no specific steps concerning the situation of trans persons have been taken in the Czech Republic. While legislation concerning gender reassignment treatment and legal gender recognition is regulated in quite a detailed way, there were no "soft" measures, such as educational activities, campaigns, public education, etc. adopted by the Czech Government to improve the understanding and acceptance of trans people by relevant professions, such as physicians, social workers, policemen, as well as the general public.

For the future it is important to support the trans community, especially through extensive inclusion in processes for preparation of new legislation or other documents.

Czech experts, the interested public and other stakeholders should open a discussion on how to introduce legal gender recognition for those transgender persons who are not able to, or don't want to undergo the surgery required by the legislation (see above).

vi. Employment

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

In summary, legislation prohibiting discrimination in employment on grounds both of sexual orientation and gender identification exists. However, no other measures have been taken by the Czech authorities to prevent discrimination in this field.

The rights of LGBT persons in the employment area are, at the legislation level, sufficiently secured. Historically, the employment area was one of the first to have

¹⁷ O. Pechová, 'Transsexual People in Contact with Public Administration' *Multikulturní centrum Prague 2*

discrimination on the ground of sexual orientation banned by law. The Labour Code¹⁸ and the Employment Act¹⁹ banned discrimination on the basis of sexual orientation as early as 2002.

The incidence of discrimination based on sexual orientation was mapped in detail by a research study, carried out by a psychologist Ms. Olga Pechova in the 2009.²⁰ There were 4 % of respondents who had experience with not being accepted for a job because of their sexual orientation, 5 % had experience with discrimination in career promotion and 4 % had experience with being fired because of their sexual orientation. Altogether, some form of discrimination was experienced by 9 % of respondents.²¹ It should be noted that many lesbian, gay, and bisexual persons still conceal their sexual orientation in the workplace, particularly in certain professions or areas of employment.

The research focused on sexual orientation discrimination only – it did not deal with the specific position of transgender minority. Nevertheless, it is evident from the individual statements²² authors received in the framework of their activities that position of transgender persons on the labour market is highly vulnerable.

The Act on Professional Soldiers²³ contains provisions protecting individuals from sexual orientation discrimination since the 2000, but no cases of sexual orientation discrimination have been reported. Since the 1997, there has been a position of the Chief Inspector for Human Rights²⁴, who is a part of the division of the Inspection of the Minister of Defence and whose task is to perform controls and inspect complaints related to human rights violations.

A career in the Army of the Czech Republic is almost out of the question for transsexuals, because under the Regulation on Health Qualification for Military Service²⁵ there is a diagnosis F 64.0 (gender identity disorder) on a list of disorders or diseases which exclude or limit qualification for military service. This regulation should be amended to avoid these restrictions. From the past, there is the well-known case of Ms. Jaroslava Brokešová. After her gender reassignment from man to woman, she applied for a position at the Army of the Czech Republic and successfully passed all admission tests and a medical examination. Nonetheless, she was not accepted.

¹⁸ Act No. 65/1965 Coll., Labour Code (abolished by the currently valid Labour Code, i.e. Act No. 262/2006 Coll.).

¹⁹ Act No. 1/1991 Coll., on Employment (abolished by the currently valid Employment Act, i.e. Act No. 435/2004 Coll.).

²⁰ Olga Pechová „Diskriminace na základě sexuální orientace“ (*Discrimination on the basis of sexual orientation*). Online journal “Psychologie”, 2009, year 3, volume 3, <http://e-psycholog.eu/pdf/pechova.pdf> (visited on 2.8.2012).

²¹ The research data were received through online questionnaire. The questionnaire was distributed via e-mail, mailing lists, and in cooperation with LGBT web platforms. A total of 497 respondents participated in the research.

²² E.g. a discussion organized by PROUD on April 4th, 2012: “How the lives of transsexual people in our country are and will be”.

²³ Act No. 221/1999 Coll., on Professional Soldiers.

²⁴ Information on activities of the chief inspector is available on the website of the Ministry of defence: <http://www.mocr.army.cz/ministr-a-ministerstvo/lide-struktura/inspekce-ministra-obrany/hlavni-inspektor-ochrany-lidskych-prav-10312/>.

²⁵ Regulation No. 103/2005 Sb.

Ms. Jaroslava Brokešová filed an appeal, however, the negative decision was confirmed and she didn't proceed with her case to the Court of Appeal.²⁶

There is specific legal regulation for security forces – police, fire service, board of customs, prison security, general inspection of security forces, intelligence services and the Office for Foreign Relations and Information (foreign intelligence service). It is the Act on the Service Terms of Security Forces Members²⁷, which banned discriminatory treatment based on sexual orientation as early as 2003.

The legal regulation banning discrimination, scattered in several pieces of law, was unified in the 2009 by the Anti-discrimination Act.²⁸ This law meant a major shift in favour of discrimination victims, who may now turn for advice and help to the Public Defender of Rights (in Czech: ombudsman, "Defender"). The Defender does not have statutory powers to represent victims of discrimination or to participate in legal proceedings, but may submit his opinion on a specific matter. The Defender's opinion may then be used as one of the documents in a potential legal dispute. The Defender may also publish a general opinion and contribute to the unification of application practise of the Anti-discrimination act in such a way.

Discrimination victims may also turn to the labour inspectorates. The Labour Inspection Act²⁹, adopted in the 2005 introduced system of labour inspectorates as bodies controlling the observance of legal regulations in labour relations and labour conditions. The law has introduced several types of misdemeanours in the area of equal treatment, enabling the labour inspectorate to impose high fines. However, there is a question how much this process is used in everyday practice. The latest publicly available information on labour inspectorate controls dates back to 2010³⁰, however it provides information only on controls focused on discrimination on the basis of sex. A detailed report on the controls performed³¹ further states that: *„nonetheless regional labour inspectorates 266 motions in the area of employees' discrimination, the controlling activities have not proved any sex discrimination or other type of discrimination actually occurred.”*³² The Defender focused on controlling activity of labour inspectorates in 2009 and concluded that labour inspectorates fail to use available legal tools sufficiently. Employers are being informed of a planned inspection in advance (and therefore have the opportunity to prepare themselves for the upcoming control), whereas persons complaining receive no information about the controls' outcome.³³

²⁶ Ibid. p. 4

²⁷ Act No. 361/2003 Coll., on the Terms of Security Forces Members' Service.

²⁸ Act No. 198/2009 Coll., on Equal Treatment and Legal Means of Protection against Discrimination.

²⁹ Act No. 251/2005 Coll., on Labour Inspection.

³⁰ Annual Report on the activity of the State Labour Inspection in the 2010, available at:

<http://www.suip.cz/files/suip-b08d6abf7c8c9299d7fa15a587f939f0/zprava-o-cinnosti-suip-za-rok-2010.pdf>.

³¹ Annual Summary Report on the outcomes of Control Action carried out by the labour inspection in the 2010, available at: http://www.suip.cz/files/suip-33ab1b4ed6d0886bdccc4a280aa44cc7/rsz_o_vysledcich_ka_2010.pdf.

³² Cited from page 157 of the abovementioned report.

³³ Report on the Status of Human Rights in the Czech Republic in the 2010, p. 70. Available at the website of the Office of the Government of the Czech Republic:

<http://www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy-lidska-prava-cr/Zprava-LP-2009-CZE.pdf>.

Coming to other, non-legislative measures in support of equal treatment for LGBT persons in the employment area, the activities of institutions are not sufficient. No public awareness campaigns aiming to change the climate in the society towards a greater respect and recognition are in place. The Ethical Code of public officials is rather general and is not complemented by training aiming to draw attention to the specific position of the LGBT minority. The same may be said about vocational training for public officials – only limited space is reserved for human rights topics; in such a framework, it is not possible to deal with the specific topic of LGBT rights in detail.

vii. Education

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

In summary, the Anti-Discrimination Act bans discrimination in access to and provision of education, in relation to both sexual orientation and gender identification. While some measures have been taken to address bullying, it appears that none have been taken to provide training to teachers or other educational staff to understand the needs of LGBT pupils and address discrimination. Information on sexual orientation and gender identity is included in curricula for elementary and secondary schools, although the content of sex education classes is to be decided by each school. Transgender persons are able to have diplomas etc revised to reflect their changed name.

Czech society is often said to be tolerant towards homosexuality, and this is said to apply especially in the case of young people. Nevertheless, research shows that the real situation is different. Research done in the 2007 by the Czech NGO, the People in Need, on a sample of Czech pupils named "Equality is cool"³⁴ showed that 72 % of boys and 24 % of girls had negative attitude towards gay men. Concerning lesbians, a negative attitude was expressed by 31 % of boys and by 28 % of girls. These findings are confirmed by e.g. the study elaborated by Ms. Olga Pechová³⁵, in which more than half of polled subjects with non-heterosexual orientation mentioned certain experiences of discrimination or persecution. "More than one third of respondents, attending high schools in current years, were discriminated or persecuted due to their sexual orientation"³⁶. Based on the above mentioned figures it is obvious that the proclaimed tolerance of young people in high school towards people of the same age with a different sexual orientation or gender identity is not generally real.

³⁴ <http://www.clovekvtisni.cz/download/pdf/106.pdf> (indicated as of 2. 8. 2012)

³⁵ Olga Pechová, „Diskriminace na základě sexuální orientace“, on-line magazine Psychology, 2009

³⁶ 330 (67%) respondents out of 497 declared attending schools in last 5 years, 68 out of them (21%) mentioned attacks or harassment based on assumption of them being gay or bisexual.

There is a sufficient legal protection³⁷ against discrimination due to sexual orientation or gender identification at all school grades in the Czech Republic. Moreover the Ministry of Education, Youth, and Sport of the Czech Republic has issued procedures and recommendations to help schools fight effectively against bullying and dangerous behavior at schools, including in relation to extremism, racism, xenophobia, and homophobia. Information concerning sexual orientation and gender identity are incorporated in all framework educational programs for primary and secondary schools.

The institutions and authorities are trying to combat open discrimination and they declare their neutral approach towards sexual minorities. Nevertheless, sufficient systematic proactive measures, procedures, or support have not been adopted. Apart from proclaiming tolerance, the authorities do little more than emphasize the personal responsibility of school employees (or students). As an issue in the school system, sexual orientation "is of no interest and therefore it is not recorded", it is considered as a "purely personal issue of every individual"³⁸. Systematic attention and support for integration, inclusion and equal opportunities are focused particularly on pupils with special educational needs. Gender identity and sexuality are considered as either non-essential or so delicate, that support e.g. from the Ministry of Education, Youth, and Sport of the Czech Republic is reduced to issuing publications, the actual use of which is voluntary - based on the personal engagement of responsible persons in each school. For example, we can positively assess the publication "Homophobia in pupils groups"³⁹ issued in January 2010 by the Office of the Government of the Czech Republic and distributed by the Ministry of Education, Youth, and Sport of the Czech Republic to the local authorities for use in schools by their regional professionals working on preventing bullying, although the extent of its use is unknown..

Regarding the framework educational programs we can indicate the conflict between the rights of children to information and the rights of parents to educate their children in their own way as the main problem. While in Denmark sex education has been obligatory for more than 40 years, amongst other things thanks to a verdict of European Court for Human Rights in the 1970s⁴⁰, which declared that children´s

³⁷ Anti-Discrimination Act

³⁸ Subdean for external relations, HR and lifelong education from Pedagogic Faculty under the Charles University in Prague in e-mail correspondence dated 24 July 2012.

³⁹ Smetáčková, Braun: „Homophobia in pupils groups. Homophobic harassment and bullying on primary and high schools – the ways of display and how to fight it“. Issued by the Office of the Government of the Czech Republic in December 2012, ISBN No. 987-80-7440-016-2

⁴⁰ Verdict dated 7 December 1976 in case *Kjeldsen, Busk Madsen and Pedersen against Denmark*. Complaint of obligatory sex education being encroachment to the parent´s rights was disaffirmed based on fact, that states has the right „to disseminate through the education or training information or knowledge with directly or indirectly religious or philosophic character, whereas parents are not automatically entitled to blockade such issue being incorporated in school frameworks“. Though state is obligate to ensure, that „in subjects incorporated in school frameworks was assured, that these information or knowledge is provided in objective, critical and pluralistic way. State is not allowed to perform any kind of indoctrination in conflict with parent´s religious and philosophic belief.“ In justification, the court declared that children currently gain the information concerning the sexual life from several discreditable sources and the purpose of the sex education is to ensure that the information provided in schools is proper and objective including information regarding the contraception in order to avoid an unwanted pregnancy. Further relevant judicatory of the European court for human rights is verdict of the High Senate dated 29 June 2007 in case *Folgero and others*

rights to information have precedence over parent´s rights, in the Czech Republic, the parents´ (and teachers') rights to refuse education is emphasized instead of support of rights to information⁴¹. According to a study in 2007, personal contact is the most important information source for pupils about certain groups within society and for forming a positive attitude to them. If they do not know any member of these groups, they rely on information disseminated by the media. This was the case for more than half of respondents in the survey, in relation to a number of groups, including so-called sexual minorities⁴². Although the "Framework educational program for primary education" assumes education of tolerance (i.e. subject "Citizenship Studies") and in the sex education (i.e. subject "Health Education"), sexual minorities' issues are not mentioned.

Framework educational programs should be amended so that updated information concerning the existence and lifestyle of persons who face discrimination on account of their sexual orientation or gender identity (LGBT people and their families) is incorporated. Adoption of a sensitive approach to gender issues and the provision of alternatives to idealized and stereotyped images, would raise the awareness of students to their own uniqueness and the uniqueness of their families, as well as encourage respect for difference in other people, including their peer group and their families.

Currently there is no specialized and systematic training for teachers in matters relating to sexual orientation and gender identity, not even for teachers of sex education, although these key actors especially need support and facilitation about how to teach this particularly sensitive topic. On one hand, teachers declare their tolerant approach, on the other hand, they make no mention of issues relating to LGBT people. They marginalize these issues as non-essential or they feel uncomfortable (for example due to their own limited personal experience) to raise these issues. As a result only heterosexual topics are addressed and a heteronormative approach is implicitly supported. Proactive, efficient and updated training of teachers, educational advisors, and other educational professionals would lead to more a sensitive approach to young LGBT people, as well as helping to solve these problems. Creation of a network of professionals providing advice directly to young LGBT people would be very helpful as well.

viii. Health

These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking

against Norway (complaint No. 15472/02) and the verdict dated 9 October 2007 in case *Hasan and Eylem Zengin against Turkey* (complaint No. 1448/04) (<http://www.echr.coe.int/echr/en/hudoc/>).

⁴¹ At the same time, Supreme administrative court by its verdict issued in 2007 confirmed the opinion Ministry of Education, Youth and Sport of the Czech Republic based on above mentioned verdicts issued by the European court for human rights. Claimants demanding the cancellation of the new school subject „Ethical education“, especially area „sexual health“, denied among others education in contraception issues.

http://www.nssoud.cz/files/SOUDNI_VYKON/2011/0001_1Ao_110_20110418081848_prevedeno.pdf (displayed 24 August 2012)

⁴² Final report from quantitative research (Research agency NMS, 2007)

account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

In summary, the Anti-Discrimination Act bans discrimination in access to and provision of health service, in relation to both sexual orientation and gender identification. The National Health Plan does not take into account the specific needs of LGBT people, nor do training programmes for health care professionals address these needs. LGBT patients can identify their next of kin without discrimination. There are no medical textbooks treating homosexuality as a disease, nor of enforced medical treatment on the basis of sexual orientation or gender identity. Sexual and reproductive health programmes provide information and treatment for sexually transmitted diseases without discrimination, but assisted reproductive technology is denied to either single women or lesbian couples.

The incidence of discrimination on the basis of sexual orientation in healthcare was mapped by a research study carried out in 2009 by a psychologist Ms. Olga Pechova.⁴³ Experience with discrimination in healthcare was mentioned by 4 % of respondents. As the most frequent form of discrimination, the author mentions discrimination in blood donation faced by homosexual men in the Czech Republic.

Even though the rights of patients are stipulated in law in a detailed way, no special attention is paid to LGBT patients. National healthcare plans and programmes do not specifically address sexual orientation and gender identity. There is also no specific training on these topics provided to workers in provision of healthcare.

New healthcare legislation is better off when it comes to the rights of patients, which is without any doubt beneficial also for persons with minority sexual orientation and for transgender persons. The Act on Specific Healthcare Services⁴⁴, adopted in 2011, however, continues to limit access to artificial insemination to infertile different sex couples. Artificial insemination is therefore not accessible for single woman, nor for lesbian couples. This discriminatory regulation, persisting since the 1960s, has been upheld in the new healthcare legislation, even though the Minister for Human Rights and the Committee for Sexual Minorities lobbied for its change in favour of single and lesbian women during the drafting and legislation process.

Discrimination of gay men in blood donation has persisted in the Czech Republic for many years, despite non-governmental organisations having drawn attention to it. In 2009, the situation was also mentioned in the governmental Report on the Status of Human Rights in the Czech Republic in the 2010⁴⁵, based on the initiative of the

⁴³ Olga Pechová: „Diskriminace na základě sexuální orientace“ (*Discrimination on the basis of sexual orientation*), online journal “Psychologie”, 2009, year 3, volume 3, <http://e-psycholog.eu/pdf/pechova.pdf> (visited on August 24th, 2012).

⁴⁴ Act No. 373/2011, on Special Healthcare Services.

⁴⁵ Report on the Status of Human Rights in the Czech Republic in the 2009, p. 76. Available on the website of the Office of the Government of the Czech Republic -

Committee for Sexual Minorities. Blood donation is not accessible to any men having sex with men (MSM), no matter what their sexual behaviour, and no matter whether they live in a stable relationship with one partner. For the future, it is necessary to set blood donation parameters without any discrimination on the basis of sexual orientation and with due consideration of actual sexual behaviour and whether it is risky or not.

ix. Housing

Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

In summary, the Anti-Discrimination Act provides protection from discrimination in the field of housing on grounds both of sexual orientation and gender identification; measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, have not been taken.

In the area of housing, direct and indirect discrimination based on sexual orientation or gender identification is banned by the Anti-Discrimination Act, which prohibits discrimination in "accessing goods and services, including housing, or the provision thereof, if they are available to the public". The Act does not specify the type of housing (property or lease), the condition is that housing is available to the public (e.g. through advertising). The ban on discrimination relates also to hostels and asylum houses.

Nevertheless, LGBT people are disadvantaged in access to rental housing if they decide to enter into registered partnership. Contrary to married couples, joint (cooperative) lease for registered partners was not established; a registered partner only has the right to use the flat.⁴⁶ This also means that in the case of death of one of the partners (lessee), lease does not descend to the surviving partner. The only possibility to avoid these legal consequences is to make an agreement with the landlord and conclude a lease contract with both partners as lessees.

A new Civil Code brings positive change; it removes the discrimination by eliminating automatic establishment of joint leases for spouses – joint lease may only arise on the basis of an agreement between the tenants and the lessor. In case of death of a tenant, the lease passes automatically either to registered partner or husband/wife – who has lived in the apartment as of the day of death of the tenant and does not have his or

<http://www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy-lidska-prava-cr/Zprava-LP-2009-CZE.pdf>
(visited on August 24th, 2012).

⁴⁶ Section 705a of the Act No. 40/1964 Coll., the Civil Code.

her own apartment (except for joint tenancy). After passing the lease contract will expire within two years as of the passing, at the latest.

Apart from the above mentioned disadvantage in the field of rental housing, discrimination of LGBT people in access to housing is not widespread. Same-sex couples, either registered or not, usually have the access to mortgages without any disadvantages.

Asylum housing or housing for seniors are usually provided within the framework of social services, based on the evaluation of each individual's needs. On the other hand, the specific needs of LGBT persons, especially of LGBT seniors, have not been taken into account in housing policy. In the future, for example, the education of social workers or different conceptual materials regarding social services, where appropriate, should include specific needs of LGBTs. An example of good practise is the approach of the Ministry of Labour and Social Affairs, planning to take into account the specific needs of LGBT people in the preparation of the Concept of work with homeless people in the Czech Republic.⁴⁷

x. Sports

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

In summary, it appears that no specific actions of any kind have been taken in this field by the authorities.

In the Czech Republic homophobia and transphobia in sport is not addressed as an issue either by state institutions or regular sports associations and clubs. It is left for any situation of hate speech or behaviour based on homophobia to be solved according to the Penal Code, or within the disciplinary proceedings of the respective sport association. However, there is no evidence that situations of hate speech or behaviour based on homophobia have been dealt with in this way.

The use of terms such as “buzerant” (“fag”) are very popular amongst audiences at popular sports events such as football (soccer) or ice-hockey matches. Czech athletes do not come out and are not encouraged to come out at all. Indeed, there is no sign that the Czech Sports Association or the Czech Olympic Committee are tackling homophobia and transphobia or implementing any preventive measures. The topic of homosexuality and homophobia at the top level of Czech sport is taboo.

⁴⁷ The Concept of work with homeless people in the Czech Republic.

xi. Right to seek Asylum

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

In summary, under Czech law, a well-founded fear of persecution based on sexual orientation or gender identity could be a ground for granting international protection. No measures have been taken to protect LGBT asylum seekers from discriminatory policies or procedures, and the recent use of phallometric tests suggests the need for improved methodologies.

The number of applicants for international protection⁴⁸ in the Czech Republic is steadily decreasing in long-term view; at present, there are several hundreds of applications every year, whereas the number of applicants justifying their application by fear of persecution based on their sexual orientation or gender identity includes several individuals a year.

Justified fear of persecution based on sexual orientation or gender identity in the applicant's country of citizenship, or, if he/she is a stateless person, the country of his/her former usual residence may represent, pursuant to the Asylum Act⁴⁹, the reason for granting a form of international protection in the Czech Republic, i.e. of asylum or subsidiary protection.

In cases of well-founded fear of persecution based on the fact of being a member of LGTB minority, the asylum is usually granted due to affiliation to a particular social group⁵⁰. Indeed, the Supreme Administrative Court of the Czech Republic decided similarly in the 2006, when it considered sexual orientation a sign of affiliation to a particular social group (with respect to the circumstances and conditions in the country of origin).⁵¹ Nevertheless, relevant in this regard is the evaluation of intensity of persecution and injury pursuers are able to make or to cause to the foreigner. Homosexual orientation itself is no reason for granting asylum. For the purpose of the Asylum Act the persecution means serious violation of human rights, as well as measures causing psychological pressure or other similar behaviour, when implemented, supported, or tolerated by agents of persecution⁵². The above-

⁴⁸ The Czech Republic grants international protection in its two forms: asylum or subsidiary protection. From the terminology point of view, Czech legal order does not know the concept of asylum seekers, but defines them "applicants for international protection".

⁴⁹ Act No. 325/1999 Coll., on Asylum and amending the Act No. 283/1991 Coll., on the Police of the Czech Republic, as subsequently amended (the Asylum Act)

⁵⁰ Ibid, Section 12 lit. b) of the Asylum Act

⁵¹ Judgment of Supreme Administrative Court of October 5th, 2006, No. 2 Azs 66/2006-52, Judgment of Supreme Administrative Court of November 23rd, 2007, No. 5 Azs 50/2007-71

⁵² Ibid, Section 2 (8)

mentioned Supreme Administrative Court stated in this regard that harm imminent to the applicant for international protection due to measures causing psychological pressure does not need to be of similarly serious harm as threat to life or freedom, but at least the type of it must be comparable to such threat to life or freedom.⁵³

The Czech Republic respects the principle of *non-refoulement* and does not return a foreigner to the country of origin in the case, there is risk of capital punishment, torture, or inhuman or degrading treatment due to the homosexuality for him/her, or if his/her departure is in conflict with the international liabilities of the Czech Republic, i.e. with conventions establishing protection of human rights. In this case, subsidiary protection under the Asylum Act is granted to foreigner due to impossibility to travel out, impossibility for the foreigner to return to the country of origin.

Still in the 2009, there were several applicants for international protection who justified their application by their fear of persecution based on their sexual orientation and whose applications were considered implausible by administrative bodies, or their statement regarding their LGBT identity was disputable or unconvincing, and these applicants had to undergo sexology examination. Apart of an interview with sexologist, this examination can also involve the phalometric examination to verify sexual orientation. The Ministry of Interior terminated the use of sexology examination; or as the case may be, it is not used in practise since the 2010. This fact is also confirmed by the NGOs.

The UNHCR⁵⁴ submitted its opinion to use of phalometric examination in the Czech Republic in assessing the credibility of applications for international protection filed on the basis of persecution on grounds of sexual orientation to the Ministry of the Interior. As it results from the information provided by the Ministry of the Interior, this opinion is used as kind of methodological manual for administrative procedures while granting international protection in the case of these specific applications for international protection.

The conditions for obtaining asylum on the basis of well-founded fear of persecution due to sexual orientation or subsidiary protection are duly stipulated by the law. The Ministry of Interior, however, has not sufficient methodology of approach to asylum seekers being persecuted due to their actual or perceived homosexual orientation or affiliation to transgender minority, and from the methodological point of view it relies on the UNHCR. Persons leading interviews with applicants for international protection or interpreters do not receive any special training focused on specifics of asylum seekers from the LGBT minority; generally, the training is limited to treatment of vulnerable groups of people. Therefore, it is desirable that the Ministry of Interior draws methodological procedures for the proceedings for granting a form of international protection in these specific cases and, in particular, that employees working with these applicants are systematically and holistically educated about specifics of this minority.

⁵³ Judgment of Supreme Administrative Court of October 5th, 2006, No. 2 Azs 66/2006-52

⁵⁴ Office of the UN High Commissioner for Refugees

xii. National Human Rights Structures

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

In summary: the Public Defender of Rights is mandated to address discrimination on grounds of sexual orientation or gender identity; and to make recommendations and raise awareness – although to date, the Defender has done neither in relation to sexual orientation or gender identity. 4 individual complaints have been investigated.

In the Czech Republic, the Public Defender of Rights (hereinafter referred to as the “Defender”)⁵⁵ was established as an equality body. The Anti-Discrimination Act has conferred powers in respect of the fight against discrimination, including discrimination on the grounds of sexual orientation or gender identification, upon the Defender, who has been acting as an anti-discrimination body since December 1st, 2009. The Defender has the power to deal with discrimination based on sexual orientation or gender identity in employment, social protection, including social security, healthcare, social benefits, education, and access to and supply of goods, as well as provision of services available to the public, including housing. It may be regarded as positive that the Anti-Discrimination Act does not make any distinction between particular grounds of discrimination and provides for equal protection against discrimination in defined areas based on sexual orientation or gender identity as well as against discrimination based on other grounds, such as race, ethnicity, gender, disability, age, religion, and belief.

The powers of the Defender with regard to discrimination issues are provided by the Act on the Public Defender of Rights.⁵⁶ The Defender shall contribute to promotion of the right to equal treatment, and to this end, he/she shall, among other things, provide methodological assistance to victims of discrimination, undertake research, publish reports, and issue recommendations, as well as provide for exchange of available information with the relevant European stakeholders.

Pursuant to the Anti-Discrimination Act, the Defender provides methodological assistance to victims of discrimination by filing court actions. In practice, this means that the Defender conducts a legal assessment of a complainant’s situation, offering them the most appropriate options in terms of taking the case forward as well as counselling or assisting a complainant in securing evidence, as necessary.⁵⁷ However, the Defender does not have any statutory powers to represent discrimination victims or to participate in legal proceedings on the side of a victim in any manner whatsoever.

⁵⁵ Section 13 of the Anti-Discrimination Act.

⁵⁶ Section 21(b) of the Act No. 349/1999 Coll., on the Public Defender of Rights

⁵⁷ <http://www.ochrance.cz/diskriminace/pomoc-obetem-diskriminace/>

To date, the Defender has investigated 4 complaints regarding discrimination on the grounds of sexual orientation or gender identity. From a systemic point of view, the most interesting complaints include, for example, a complaint related to registered partnership and a claim to parental allowances, a complaint related to child custody and the sexual orientation of a parent, the issue of a blood plasma donor disqualified on the grounds of his sexual orientation, and the issue of a registered partner's ineligibility for widower's pension after the death of the other partner.

The Defender expresses his general opinions on problematic issues related to equal treatment and discrimination; nevertheless he/she has not done so yet with regard to discrimination on the grounds of sexual orientation or gender identity.

From an institutional point of view, a major breakthrough was the year 2007 – with the establishment of the Working Group for Sexual Minorities of the Minister for Human Rights and National Minorities. The working group became a first common platform for the meeting of representatives of the main non-governmental LGBT organizations and experts dealing with this issue on an academic level, as well as relevant representatives of public service. Within a year of its founding, the Working Group produced an extensive document called “Analysis of the Situation of Lesbian, Gay, Bisexual, and Transgender Minority in the Czech Republic” (hereinafter the “Analysis”) ⁵⁸, which mapped the situation of the LGBTI minority in the Czech Republic for the first time. The Analysis was prepared on the assumption that it would be submitted to the Government. However, the Minister for Human Rights and National Minorities failed to submit the Analysis to the Government, even though the Analysis became a springboard for the Working Group and subsequently for the Committee for Sexual Minorities.

In February 2008, the working group was replaced by the Committee for Sexual Minorities (hereinafter referred to as the “Committee”), as one of the Committees of an advisory body to the Government, the Council of the Government of the Czech Republic for Human Rights.⁵⁹ The Committee members include representatives of the respective ministries at the level of officers, representatives of the LGBT minority, and professionals. The Committee drafts and approves proposals for systemic changes (“initiatives”) and submits them to the Council of the Government of the Czech Republic for Human Rights. If an initiative is approved by the Council, it should be submitted to the Government for its approval. The Committee is also entitled to comment on various documents of legislative and non-legislative nature, before their submission to the Government. The actual submission of these comments and initiatives to ministers and the Government is, however, dependent on the position of the person responsible for human rights, which is the Government commissioner for human rights or a responsible minister. Without the support of the commissioner or the responsible minister, these proposals stay “on the paper”, as the committee itself does not have a real chance to submit its proposals to the Government or the relevant ministry directly on its own.

⁵⁸ Analysis of the Situation of Lesbian, Gay, Bisexual, and Transgender Minority in the Czech Republic, p. 4 http://vlada.cz/assets/ppov/rlp/vybory/sexualni-mensiny/EN_analyza_web.pdf

⁵⁹ Annual Report on Activities of the Council of the Government of the Czech Republic for Human Rights in the 2008, <http://www.vlada.cz/assets/ppov/rlp/cinnost-rady/vyrocní-zpravy/ZPRAVA-O-CINNOSTI-RLP-2008-final.pdf>.

IV. APPENDIX

i. Text of recommendation

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

(Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a “dominant culture” can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both

same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of

discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own

families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

ii. Definitions

Asexuality: an asexual person is someone who does not experience sexual attraction. Asexual people have the same emotional needs as everybody else and are just as capable of forming intimate relationships. Asexuality should not be misinterpreted as celibacy, which is a choice or a certain situation. Some consider asexuality as a sexual orientation.

Bisexual: when a person is emotionally and/or sexually attracted to persons of more than one sex.

Coming-out: the process of revealing the identification of a lesbian, gay, bisexual, trans or intersex person.

Outing: when a person's identification as lesbian, gay, bisexual, trans or intersex person is revealed without consent.

“Being in the closet”: a situation where someone has decided not to be open about his or her sexual orientation (lesbian, gay man, bisexual), gender identity/expression (trans person) and/or sex (intersex person).

Cross dresser: see *Transvestite*

Disorders of Sex Development (abbr. DSD): a medical term that has recently replaced the term intersex within medical jargon, and refers to congenital conditions in which development of chromosomal, gonadal, or anatomical sex are considered atypical.

FTM: Abbr. of Female-To-Male, most commonly used to refer to a female-to male trans person. Someone who was assigned female at birth who now identifies as male. Also called a trans man. The term is widely discussed and should be avoided as it is based on the wrong assumption that there are only two possible sexes.

Gay: a person who feels sexual and/or emotional desire exclusively or predominantly for persons of her or his own sex. The term has however been misused to cover all gay men and lesbians (and sometimes even bisexuals). This has been widely discussed, and *gay* should therefore only be used when it is referring to men are emotionally and/or sexually attracted to other men. If the intention is to cover all without intentional excluding any sexual orientation or gender identity/expression, then it is recommendable not to use only the term *gay*, and instead use *LGBTI* (lesbian, gay, bisexual, trans and intersex people)

Gender: refers to people's internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviours into male and female roles which vary across history, societies, cultures and classes. Gender is hence strongly linked to society's expectations and is not exclusively a biological matter.

Gender dysphoria: is a mental disorder diagnosis applied by psychiatrists and psychologists to classify severe discomfort/ rejection that people may feel towards

their sex embodiment and their internally felt gender identity. See also *Gender Identity Disorder*.

Gender expression: refers to people's manifestation of their gender identity, and the one that is perceived by others. Typically, people seek to make their gender expression or presentation match their gender identity/identities, irrespective of the sex that they were assigned at birth.

Gender identity: refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modifications of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerism (Yogyakarta Principles).

Gender Identity Disorder (GID): is listed in both the International Statistical Classification of Diseases and Related Health Problems (Section F Mental Disorder) of WHO; and the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (APA).

Gender marker: is a gendered designator on official documents. The most obvious gender markers are designations such as male/female or Mr/Mrs/Ms/Miss. They are often embedded in ID cards, driver's licences, birth certificates, diplomas, civil status documents and tax forms. Less obvious gender markers can be coded numbers such as social security numbers and tax numbers.

Gender reassignment: refers to the process through which people re-define the gender in which they live in order to better express their gender identity. It is often referred to as a process that may involve medical assistance including hormone therapies and surgical procedures that transpeople undergo to align their body with their gender. This process, however, also includes some or all of the following social and legal adjustments: coming out to family, friends and colleagues; dressing and acting according to one's gender; changing one's name and/or sex on legal documents; and meeting other legal or judicial procedures depending on national law. In *P. v S.*, the ECJ affirmed that gender reassignment is included within the scope of the ground of 'sex' in EU law.

Gender variant: refers to anyone whose gender varies from normative gender identity and roles of the gender assigned at birth.

Gendernormativity: (see also *Cisnormativity*) relates to the practices and institutions that legitimise and privilege those who live in the gender they were assigned at birth. Gendernormativity negatively impacts upon trans people, people who do not identify with either gender, men who are perceived to be more 'feminine' than is socially accepted, and women who are perceived to be 'too masculine'.

Gender reassignment: primarily refers to medical treatments including hormone therapies and surgical procedures that trans people undergo to align their sex with their gender, which treatments depend upon the birth sex. This process, however, also includes some or all of the following social and legal adjustments: coming out to family, friends and colleagues; dressing and acting according to one's gender;

changing one's name and/or sex on legal documents; and meeting other legal or judicial procedures depending on national law. Following the European Court of Justice decision in P. v S. and Cornwall County Council (Case C-13/94), gender reassignment has been included within the scope of the ground of 'sex' in European Union law.

Gender Reassignment Surgery (abbr. GRS): Medical term for what trans people often call gender-confirmation surgery: surgery to bring the primary and secondary sex characteristics of a trans person's body into alignment with his or her internal self-perception.

Legal Gender Recognition: A process whereby a trans person's preferred gender is recognised in law, or the achievement of the process.

Gender Role: How a person expresses himself or herself in terms of traits commonly associated with masculinity and femininity. Gender role is largely a social construct, since every society has different ideas about what sort of dress or behaviour is 'appropriate' for males or females.

Gender variant: refers to anyone whose gender varies from normative gender identity and roles of the gender assigned at birth.

Heteronormativity: Reference to cultural and social practices where men and women is being led into believing and behaving as if heterosexuality were the only conceivable sexuality. It also implies the positioning of heterosexuality as the only way of being "normal" and as the key source of social reward.

Homophobia: the fear, unreasonable anger, intolerance or/and hatred toward homosexuality. Homophobia can appear in various ways: *Internalised Homophobia:* when lesbian, gay men and bisexual people are considering and accepting heterosexuality as the correct way of being and living. *Institutionalised Homophobia:* when governments and authorities are acting against equality for LGB people. This can be hate speech from public elected persons, ban on pride events and other forms of discrimination of LGB people.

Intersex people: refers to those people who have genetic, hormonal and physical features that are neither exclusively male nor exclusively female, but are typical of both at once or not clearly defined as either. These features can manifest themselves within secondary sexual characteristics such as muscle mass, hair distribution, breasts and stature; primary sexual characteristics such as reproductive organs and genitalia; and/or in chromosomal structures and hormones. This term has replaced the term 'hermaphrodite' which was used extensively by medical practitioners during the 18th and 19th centuries.

MTF: Male-to-female, most commonly used to refer to a male-to-female trans person. Someone who was assigned male at birth but who identifies as female.

Pride events: Pride events and marches date back to June 1969 to the so-called Stonewall riot, when LGBTI persons in New York protested in the streets for several days against persistent police harassment of LGBTI individuals and venues. The following year, the uprising was commemorated by demonstrations in several

American cities, and since then annual demonstrations against homophobia/transphobia and for LGBTI rights have spread around the world.

Queer: has become an academic term that is inclusive of people who are not heterosexual - includes lesbians, gay men, bisexuals and trans. Queer theory is challenging heteronormative social norms concerning gender and sexuality, and claims that gender roles are social constructions. For many LGBTI persons, the term "queer" has negative connotations as it was traditionally an abusive term, however many LGBTI persons are now comfortable with the term and have "reclaimed" it as a symbol of pride.

Rainbow: A symbol celebrating the uniqueness and diversity within the LGBTI community. The flag has six stripes, each a different colour, ranging from purple to red.

Sexual orientation: refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

Sexual identity: the sense of being homosexual, bisexual, heterosexual or asexual. The term is used as a legal term in countries such as Germany, Czech Republic, Slovakia, Hungary and Spain.

Transgender: refers to those trans people who live permanently in their preferred gender, without necessarily undergoing any medical intervention/s.

Transsexual: refers to people who identify with the gender role opposite to the sex assigned to them at birth and seeks to live permanently in the preferred gender role. This often goes along with the wish to align their body with their preferred gender. Transsexual people might intend to undergo, are undergoing or have undergone gender reassignment treatment (which may or may not involve hormone therapy or surgery).

Transvestite/Cross dresser: refers to people who enjoy wearing the clothing of another gender for certain periods of time. Their sense of identification with another gender can range from being very strong and indeed their primary gender, to being a less critical part of their identity. Some transvestite or crossdressing people may seek medical assistance to transition and live permanently in their preferred gender at some point in their life. Others are happy to continue cross dressing part-time for the rest of their lives.

Trans Person/People/Man/Woman: is an inclusive umbrella term referring to those people whose gender identity and/or a gender expression differs from the sex they were assigned at birth. It includes, but is not limited to: men and women with transsexual pasts, and people who identify as transsexual, transgender, transvestite/cross-dressing, androgyne, polygender, genderqueer, agender, gender variant or with any other gender identity and/or expression which is not standard male or female and express their gender through their choice of clothes, presentation or body modifications, including undergoing multiple surgical procedures.

Transphobia: refers to negative cultural and personal beliefs, opinions, attitudes and behaviors based on prejudice, disgust, fear and/or hatred of trans people or against variations of gender identity and gender expression. Institutional transphobia manifests itself through legal sanctions, pathologisation and nonexistent/inadequate mechanisms to counter violence and discrimination. Social transphobia manifests itself in the forms of physical and other forms of violence, hate speech, discrimination, threats, marginalisation, social exclusion exoticisation, ridicule and insults.

iii. Compliance Documentation Report

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

- i. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

Neither public institutions, nor the responsible ministries or other central state administration bodies have conducted a review of existing legislation and other measures aiming to find out whether there are any discriminatory provisions on the basis of sexual orientation or gender identity.

The recommendation was discussed in a session of the Committee for Sexual Minorities of the Government Council for Human Rights⁶⁰ that established its priorities for the upcoming period, with the aim to achieve the implementation of the recommendation.

- ii. Are processes in place to ensure that the discrimination thus identified is redressed?*

Currently, no action is taken in order to redress persisting direct or indirect discrimination on the basis of sexual orientation or gender identity. On the contrary, new legislation is being adopted that keeps on disadvantaging the LGBT minority, such as the new Civil Code.⁶¹

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

- i. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?*

The basics of protection against unequal treatment are laid down in Article 3, section 1⁶² of the Charter of Fundamental Rights and Freedoms⁶³, according to which,

⁶⁰ For more information about Committee, see chapter XI. National human rights structures.

⁶¹ For more information, see point 24.

⁶² „Fundamental rights and freedoms are guaranteed to all without any difference based on sex, race, colour, language, religion or belief, political or other opinion, national or social origin, affiliation to a national or ethnic minority, property, gender or other position.“

⁶³ Constitutional law No. 2/1993 Sb., Charter of Fundamental Rights and Freedoms.

fundamental rights and freedoms are guaranteed to everyone without any difference on the basis of numerous grounds of discrimination or “other status”. Neither sexual orientation, nor gender identity are explicitly mentioned in this provision. Nevertheless, the list of forbidden grounds is illustrative only and it remains open to broader interpretation, which the Constitutional Court also does.

In the 2009, the Czech Republic has adopted the Anti-discrimination Act.⁶⁴ The law bans discrimination on the grounds of race or ethnic origin, nationality, sex, sexual orientation, age, disability, religion, faith, or world opinion. Gender identity is not explicitly mentioned among these grounds; nevertheless, the law considers gender identification discrimination as discrimination based on sex.

The Anti-discrimination Act bans discrimination in areas defined by the Racial Equality Directive⁶⁵, discrimination based on sexual orientation or gender identification is forbidden in employment, social protection, including social security, healthcare, social benefits, education, and access to and supply of goods and provision of services available to the public, including housing.⁶⁶

- ii. *Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?*

No comprehensive strategy of such nature has been implemented within the scope of official mandate of the Public Defender of Rights (in Czech: Ombudsman, "Defender") as an equality protection body. The Defender aims to raise awareness on discrimination mainly by issuing recommendations, providing aid to discrimination victims, and disclosing some cases to public (through website or TV broadcasting), as well as performing researches. So far, there was no recommendation or research focused on sexual orientation or gender identity exclusively.

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for

⁶⁴ Act No. 198/2009 Coll., on Equal Treatment and on Legal Means for Protection against Discrimination (the Anti-discrimination Act).

⁶⁵ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180, 19/07/2000 P. 0022 – 0026.

⁶⁶ Section 1 of the Anti-discrimination Act: *This Act transposes the relevant regulations of the European Communities and, in relation to the Charter of Fundamental Rights and Basic Freedoms and the international agreements that are part of the legal order, defines more precisely the right to equal treatment and prohibition of discrimination with respect to a) the right to employment and access to employment b) access to an occupation, business or other self-employment, c) employment contract, service and other paid employment, including remuneration, d) membership of, and involvement in, trade unions, workers' councils or employers' associations, including the benefits such associations provide to their members, e) membership of, and involvement in, professional associations, including the benefits such legal persons governed by public law provide to their members, f) social security, g) the granting and provision of social advantages, h) access to and provision of healthcare, i) access to and provision of education, j) access to goods and services, including housing, to the extent as they are offered to the public, or in their supply,*

infringements and the provision of adequate reparation for victims of discrimination;

- i. Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?*

The Anti-discrimination Act has introduced a legal action to protection against discrimination.⁶⁷ In the case of discriminatory treatment, the victims has a right to file an application by the court to order the cessation of such treatment, removal of consequences, and provision of reasonable satisfaction to victims. In the case these redress means are not sufficient, the victim has a right to claim compensation for non-proprietary loss, the amount of which is to be established by the court with regard to the seriousness of harm caused and to all accompanying circumstances.

Special means of protection against discrimination are included in the Act on Professional Soldiers,⁶⁸ which includes the right of a soldier to claim that discriminatory treatment or unwanted sexual behaviour is abandoned and that its consequences are removed. The members of security forces have a right, according to the Act on Members of Security Forces⁶⁹, to claim protection against unequal treatment by court, having the possibility to claim removal of that unequal treatment, removal of its consequences and provision of reasonable satisfaction. However, this right does not apply in the case such unequal treatment occurred in connection with a decision of a service official.

In the Civil Procedure Code, there is a provision of the so called shift of the burden of proof⁷⁰. With regard to discrimination based on sexual orientation or gender identification, this shift applies if discrimination occurred in relation to work or other dependent activity, profession, and self-employment, including access to them, membership in employers´ or employees´ organisations, as well as membership and activities in professional chambers. The shift of the burden of proof does not apply equally for all discrimination grounds – in the case of discrimination based on gender identification (which is to be understood in the framework of the Act as gender discrimination) the shift also applies with regard to the access to goods and services. Whereas the Anti-discrimination Act provides protection to all reasons of discrimination in the scope of the Racial Equality Directive, the Civil Procedure Code strictly follows the EU antidiscrimination directives and provides different protection on different grounds.

⁶⁷ Section 10 of the Anti-discrimination Act.

⁶⁸ See Chapter V. Employment.

⁶⁹ Ibid.

⁷⁰ Section 133a of the Act No.99/1963 Coll., Civil Procedure Code, as subsequently amended: *If the plaintiff states facts at court from which it may be presumed that direct or indirect discrimination a) on the basis of sex, racial, or ethnic origin, religion or belief, disability, age or sexual orientation in the field of employment or other dependant working activities, including access to them, profession, self-employment, or other self-employing activity including access to them, membership in employees´ or employers´ organisations and membership and activities in professional chambers; on the basis of racial or ethnic origin during the provision of healthcare and social care, access to education and vocational training, access to public procurement, access to housing, membership in interest associations and in the course of sale of goods in shops or provision of services occurred from the side of the defendant, or c) on the basis of sex in access to goods and services, the defendant is obliged to prove that the principle of equal treatment was not violated.*

In the 2006, the Constitutional Court provided an interpretation of the “shifting” of the burden of proof, according to which the discrimination victim “*must not only state, but also prove that he or she was not treated in a usual (non-discriminatory) way. If this statement is not proven, he or she will not be successful in the proceedings. Moreover, he or she must state, that the disadvantaging treatment was motivated by discrimination on the basis of race or ethnic origin. This motivation does not need to be proven by the victim; such a motivation is in the case of differential treatment presumed but is disprovable, if the contrary is proven (by evidence). For this victim it is impossible to meet the requirement that the plaintiff proves that he or she was discriminated based on his or her ethnic origin exclusively and not for some other reason, as it is clearly based on subject-matter itself that it is impossible to prove motivation of the defendant.*”⁷¹

- ii. *Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*

The activities of the Defender as equality body is based on three pillars – awareness-raising, education, and assistance.⁷² In the framework of awareness-raising, the Defender publishes recommendations and opinions. Recommendations are aimed at general public, provide comments on specific manifestations of discrimination in the society, and include recommendations aiming at avoiding such a treatment in the future. Opinions are aimed at professional public. In the framework of education, the Defender carries out thematic seminars, workshops, and trainings for NGOs, state administration, employers, and services providers. The third pillar is assistance to discrimination victims– every person has a right to turn to the Defender for a free-of-charge advice on discrimination issues.

There are two principal procedures available to discrimination victims– administrative and judicial.

The Defender does not consider the administrative procedure very effective (mainly due to the fact that victim is not party to the administrative proceedings, victim can only file a complaint to the administrative body, e.g. Labour Inspectorate, Labour Office or Czech Trade Inspection) and that only few people are aware of existence of such procedure. The information about this procedure is not widespread and it is provided mainly by public bodies or NGO specialized in equal treatment.

The judicial procedure could be highly effective but it is difficult task to convince the victims to file a claim by civil court. Court procedures usually take a rather long time and several years can pass until a final judgement is issued, which is rather discouraging factor, especially in labour disputes. Financial costs represent another risk – court fees and the costs of legal representation of the defendant have to be paid by the plaintiff in the case of loss. The author is not aware of any court dispute to seek protection against discrimination according to the Anti-discrimination Act. So far, all court disputes have relied on the provision for the protection of personality according to the Civil Code (protection of personality), or Labour Code.

⁷¹ Judgement of the Constitutional Court of April 26th, 2006, No.PI.ÚS 37/04.

⁷² Available at: <<http://www.ochrance.cz/diskriminace/>>, visited on the August 10th, 2012.

The Defender carries out a project “Strategic litigation” in cooperation with Pro Bono Alliance which can be the way how to improve current situation in the Czech Republic. The Defender has issued an opinion regarding important procedural aspects of the Anti-discrimination Act⁷³.

Alternative dispute resolution (ADR) is also very challenging method for the Czech equality body. Czech Act on Mediation enters into force September 1st, 2012. Due to this fact, ADR is rather undeveloped.

iii. Are the remedies effective, proportionate and dissuasive?

The most effective and dissuasive remedy is, according to the Defender, judicial procedure. Discrimination victim may file an application to the court requesting that discriminatory treatment is abandoned, the consequences of discriminatory treatment are removed, and that reasonable satisfaction, including, in some cases, monetary compensation for non-proprietary loss, is provided.

The author is only aware of one court case regarding sexual orientation discrimination – the case relates to employment discrimination.⁷⁴ The court has awarded compensation to the victim amounting to CZK 70,000 (EUR 2,800), whereas in the 2007, the average wage in the Czech Republic amounted to CZK 21,000 (EUR 840). Similar amount of compensation (amounting to approx. CZK tens of thousand) were awarded to victims of racial discrimination. Such a compensation amount is not motivating discrimination victims to file legal actions, taking into account the risk on the part of victims (duration of disputes, proceedings costs). At the same time, the compensation amount is not sufficiently dissuasive for the person committing discrimination.

Similarly, the amounts of fines imposed within administrative procedures are also usually rather low. This results in non-dissuasiveness of administrative sanctions for those who discriminate.

iv. Do the remedies include, where appropriate, adequate reparation for victims?

The judicial procedure includes compensation for victims when the victim seeks monetary or non-monetary compensation. The court can award compensation to the victim.

⁷³ Opinion of the Public Defender of Rights regarding some procedural aspects of the Anti-discrimination Act, mainly subject-matter jurisdiction of courts”, <http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Stanoviska/Stanovisko_verejneho_ochrance_prav_k_nekterym_procesnim_aspektum_antidiskriminacniho_zakona.pdf>, visited on 20th August 2012.

⁷⁴ Available at: <http://zpravy.idnes.cz/odmitli-ho-zamestnat-protoze-je-gay-db2-/domaci.aspx?c=A070115_212940_domaci_zra>, visited on 10th August 2012.

Administrative procedure doesn't include remedy in form of compensation. The administrative body usually imposes fine, but fine does not represent "direct" compensation to the victim.

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

[no action]

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible

i. What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?

No steps were taken by the State in order to raise awareness of the Recommendation and its Appendix. The Recommendation (neither in original language, nor translated into Czech) was not published on the website of any responsible public institution.

ii. Have the Recommendation and its appendix been translated?

The text of the Recommendation was translated upon the request of the Human Rights Department of the Office of the Government of the Czech Republic. The Appendix was not translated.

iii. Have they been disseminated:

- *within the lesbian, gay, bisexual and transgender communities?*
- *throughout public administration?*
- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*
- *to the media?*
- *to relevant non-governmental organisations?*

The Recommendation and its Appendices were discussed by the Committee for Sexual Minorities of the Government Council for Human Rights⁷⁵. Thus, representatives of NGOs as well as public bodies (Ministry of Health, Ministry of Labour and Social Affairs, Ministry of Culture, Ministry of Justice and Ministry of Agriculture) had a chance to get acquainted with the Recommendation.

⁷⁵ More about the Committee for Sexual Minorities. See Chapter XI. National human rights structures

The Recommendation was not disseminated among public institutions, professional public, media, employers, etc. The LGBT minority has a chance to get acquainted with the Recommendation on the website of non-governmental organisation PROUD. However, no steps were taken by public institutions in order to raise awareness on the Recommendation among interested public.

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents⁷⁶

1. **Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.**

- i. Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

According to the Ministry of the Interior, there are several regular trainings for specialists of the criminal and investigation police that also mention the topic of homophobic and transphobic manifestations.

According to the information provided by a NGO In Iustitia⁷⁷, the education of police is carried out at several levels, but none of them dedicates sufficient attention to hate crimes – the Czech system of police education does not know bias motivated crime as a specific category. Protection from homophobic crimes is not laid down in the Penal Code, but only in the Minor Offences Act. If there is any attention dedicated to homophobic incidents, it is not sufficient. The syllabuses of educational programmes do not include bias motivated crime. The Czech Republic still perceives bias motivated crime as one of the subcategories of extremism; therefore, it is rather the specifics of extremists that are studied and taught than the specifics of hate crime and the consequences of victimisation of victims. Police education does not incorporate the topic of hate crime victims and does not pay any attention to the specific position of LGBT people as victims (namely the risk of forced coming out in the course of reporting a bias motivated crime). Police education takes place at secondary police schools, police colleges and police academy (bachelor’s, master’s and doctor’s programmes). Those who are interested to serve in police forces must go through a basic professional training – the specifics of bias motivated crime are not included,

⁷⁶ See Explanatory Memorandum for explanation of hate crimes and hate-motivated incidents

⁷⁷ <<http://www.in-ius.cz/>>

the topic of human rights is only handled within several hours. Members of police forces are also educated in the course of the so called vocational training of police corpses and instructing methodical activities – even here, extremism and the specifics of combating extremism from a technical-criminalistics point of view are taught.

- ii. *Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

Any person who has become a victim of a crime may file criminal information at any public prosecution office or police office.⁷⁸ After that, the criminal investigative bodies proceed in accordance with the law.

As of January 1st, 2012, the General Inspection of Security Forces exists. The scope of its activities include searching, revealing, and investigating facts that suggest that a crime has been committed, the perpetrator being member of the police, customs officer, Prison Service officer, inspection officer, or an employee of these bodies. At the same time, the inspection carries out a reliability exam against unlawful conduct of these officers and employees. It suggests measures to be adopted against these activities and published methodological recommendations for activities of individual security forces.

At non-governmental level, the organisation In Iustitia accepts information on hate motivated violence via an online form. This system is not connected with the police one and it is not supported by the police.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

- i. *Do legislative measures to combat “hate crimes” and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*

The Czech Penal Code does not work with homophobic/gender hate motivation explicitly. These categories may be included in a general category called “other group of persons” or “other aggravating circumstance”. According to the Penal Code, the court takes into consideration (as an aggravating circumstance) namely the fact that the perpetrator has committed the crime out of greed, revenge, national, racial, ethnic, religion, class, or *other similar hate or other especially deplorable motivation*.⁷⁹

⁷⁸ Act No. 141/1961 Coll., Penal Procedure Code.

⁷⁹ Section 42 lit. b) of the Act No. 40/2009 Coll., Penal Code.

However, the term “other especially deplorable motivation” only exists in the case of the crime of murder and serious bodily harm.⁸⁰ It is a qualified body of this crime. Whereas the basic criminal charge for the crime of murder is deprivation of liberty from 10 to 18 years, if committed due to especially deplorable motivation, the perpetrator will be punished by deprivation of liberty from 15 to 20 years or by exceptional punishment. In the case of intentional commitment of the crime of serious bodily harm, the perpetrator will be punished by deprivation of liberty from 3 to 10 years; if committed due to deplorable motivation, he or she will be punished by deprivation of liberty from 5 to 12 years. If hate motivation is not proven, the punishment is imposed within the limits for the basic body of the crime.

The term “other group of persons” appears only in the body of the crime of “incitement of hatred against a group of persons or to limit their rights and freedoms”⁸¹. The term “other group of persons” does not appear in the body of the crime “Defamation of a nation, race, ethnic, or other group of persons” or “Violence against a group of inhabitants and against an individual”⁸².

At the moment the general terms of “other deplorable motivation” or “other group of persons” lack explicit explanations in the case law, that do not clearly state that lesbians, gays, and transgender persons belong into the “other group of persons” or that homophobic attacks are those that may be identified as “other especially deplorable motivation”.

- ii. *Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

According to the Penal Code, the court will take into account as aggravating circumstance the fact that the perpetrator has committed the crime out of greed, revenge, nationalist, racial, ethnical, religious, class, or *other similar hate* or out of *other especially deplorable motivation*. Nevertheless, the term “other especially deplorable motivation” only exists for the body of the crime of murder and serious bodily harm. “Other similar hate” is one of the general aggravating circumstances the court considers in the course of imposition of a punishment.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose,

⁸⁰ Sections 140 and 145 of the Act No. 40/2009 Coll., Penal Code.

⁸¹ Section 356 of the Act No. 40/2009 Coll., Penal Code: (1) *A person who publicly incites to hatred against a nation, race, ethnic group, religion, class or other groups of persons or to the limitation of the rights and freedoms of their members, will be punished by deprivation of liberty up to 2 years. (2) The same punishment will be imposed on a person who gathers together with other to commit the abovementioned crime. (3) Punishment of deprivation of liberty from 6 months to 3 years will be imposed upon the perpetrator who a) commits the crime mentioned in par. 1 in press, film, radio, TV, publicly accessible computer network or by other – similarly effective – means, or b) having committed the crime mentioned in par. 1, actively takes part at activities of a group, organisation or association that promotes discrimination, violence or racial, ethnic, class, religious or other hatred.*

⁸² Sections 352 and 355 of the Act No. 40/2009 Coll., Penal Code.

member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

- i. Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?⁸³*

The Penal Code does not include a definition of “hate violence”. Moreover, the Czech Republic sticks to the concept of extremist crime and “*a complex transition to other approach than the concept of extremist crime would mean a serious intrusion in the current system that appears to be functional in principal (despite various partial deficiencies that may be improved). The concept of hate crime originates in the USA, in different social and cultural conditions*”⁸⁴. The definition of hate violence, motivated i. a. by hate based on sexual orientation or gender identity of the victims, is not by any means disseminated by public authorities; this information is rather disseminated by NGOs.⁸⁵

- ii. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*

According to the Ministry of the Interior, annual training courses on the topic of extremism are organised for judges and public prosecutors at Justice Academy in Kroměříž. According to the NGO In Iustitia trainings are insufficient and do not concentrate on victims of homophobia, transphobia, and gender hate. See also above.

- iii. Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*

The Code of Ethics of the Police of the Czech Republic⁸⁶ must be respected by every member of the police force. According to this Code, which was adopted as internal regulation of the police president, the Police of the Czech Republic must behave in a dignified and credible way towards the society, treat everyone politely, decently and

⁸³ e.g. through police websites or leaflets distributed in the community.

⁸⁴ M. Mareš, The issue of Hate Crime. Experience from abroad and the possibilities of application of this approach in the Czech Republic, with stress on hate crime against immigrants. Analysis for the Ministry of the Interior of the Czech Republic, p.37., available at: <<http://www.mvcr.cz/clanek/bezpecnostni-hrozby-337414.aspx?q=Y2hudW09NA%3d%3d>>, visited on August 20th, 2012.

⁸⁵ E.g. In Iustitia a Counselling for Citizenship/Civic and Human Rights.

⁸⁶ Available at :<<http://www.policie.cz/clanek/eticky-kodex-policie-ceske-republiky.aspx>>, visited on August 25th, 2012.

with understanding and respect to their dignity, and apply equal and correct approach towards every person without any difference, in accordance with the respect to cultural differences and differences in values of members of minority groups, in the case there is no breach of law.

The law on public prosecutors imposes an obligation on public prosecutors to perform their function without any bias and without economic, social, racial, ethnic, sexual, religious, or other prejudices; public prosecutors must refrain from any manifestations of personal sympathies, affections, or negative stances.⁸⁷ Similarly, the law on Courts and Judges imposes an obligation on the representatives of justice to behave in a non-biased way and to treat parties without economic, social, racial, ethnic, sexual, religious, or other prejudices.⁸⁸

- iv. Are units within the police tasked specifically with investigating crimes and incidents linked to sexual orientation and (b) gender identity?*

According to the Ministry of the Interior, the Police of the Czech Republic work with the concept of extremist crimes. Their investigation is within the competence of police officers performing service in the framework of the Service of criminal police and investigation, department of general criminality. Here, police officers specialize on extremism. In Czech Police forces, specialists deal with extremist crime and liaison officers for national minorities have the task to focus on crime of national minorities and crimes whose victims were members of national minorities.

- v. Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

The Czech Police does not have police officers available, whose task would be to specialize on to liaise with local LGBT communities.

- vi. Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?*

According to the Ministry of the Interior, the Police of the Czech Republic cooperate with some NGOs in order to help victims of crime. The most intensive cooperation was established with Bílý kruh bezpečí⁸⁹.

Criminal information may be submitted anonymously, via a general e-mail address, this option stems directly from the Penal Procedure Code. However, the NGO In Iustitia argues that this option is neither promoted, nor fancied by the police. It is not possible to find out, how are these initiatives handled and further evaluated.

⁸⁷ Section 22 of the Act No. 283/1993 Coll., on Public Prosecution, as subsequently amended.

⁸⁸ Section 80 of the Act No. 6/2002 Coll., on Courts and Judges, as subsequently amended.

⁸⁹ <<http://www.bkb.cz/>>.

As of August 1st, 2012, the Czech police have launched an online application⁹⁰ enabling electronic reporting of internet criminality, or more precisely, harmful internet contents, including cyber hate (also anonymously). There are no statistics available yet on the use of the application and evaluation of submissions received. Moreover, the launch of the application was not accompanied by a media campaign to raise awareness of general public. Therefore, awareness of general public about the application is insignificant.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

- i. Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*

The Prison service of the Czech Republic has a statutory duty to treat imprisoned persons in a serious and decisive manner, to respect their rights, prevent cruel treatment and treatment that degrades their dignity. This duty applies also to mutual relationships among prisoners. In this way, the Prison service works towards the fulfilment of the aim of the exercise of safety detention, custody, and the punishment of deprivation of liberty.⁹¹ Members of the prison service have also a duty to respect honour and dignity of persons they deal with in the course of performance of service and prevent them from suffering unjustified harm.

According to the Act on Imprisonment, punishments may only be performed by means that respect the dignity of personality of condemned persons and limits harmful effects of imprisonment⁹². Human dignity of persons accused of having committed a crime may not be humiliated in the performance of custody; persons in custody may not be subjected to psychical or physical pressure.⁹³

Internal regulations of the Prison service of the Czech Republic, namely the rules of working procedure of employees of the Prison service of the Czech Republic, stipulate that the conduct of employees must be tolerant, with an elimination of all manifestations of discrimination, must be polite and correct, also regardless of sexual orientation.

Employees are regularly trained, with focus on current legal regulations, i.e. the rights of imprisoned persons. In the framework of life-long education, specialized

⁹⁰ <<http://aplikace.policie.cz/hotline/>>.

⁹¹ Section 6 of the Act No. 155/1992 Coll., on the Prison Service and Justice Ward of the Czech Republic, as subsequently amended.

⁹² Section 2 of the Act No. 169/1999 Coll., on Imprisonment, as subsequently amended.

⁹³ Section 2 of the Act No. 293/1993 Coll., on the performance of custody, as subsequently amended.

courses are provided, dealing e.g. with the treatment and communication with imprisoned persons. There are no specific courses of life-long education focused on LGBT persons. There is, however, a general human rights education, or education on the treatment and communication with imprisoned persons, without stressing LGBT themes.

- ii. *Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*

Imprisoned persons have the possibility to use the means of external control, such as the supervisory power of regional public prosecutors over the performance of custody and punishment, complaint mechanism of the Public Defender of Rights. Standard access to courts (in this context namely to administrative courts, civil courts with regard to protection of personality) is guaranteed to imprisoned persons, at the same time, these persons have the right to file a criminal information and to act as injured party within criminal procedure.

According to the information by the Prison service of the Czech Republic, detailed system of internal and external control is a guarantee for imprisoned persons to be treated with respect and without any discriminatory tendencies. In the case of breach of work or service duties, employees are made responsible with potential consequent criminal sanctions. Internal regulations of the Prison service of the Czech Republic (regulation of the director general) regulate the system of prevention of violence and other forms of bullying, in the form of spotting and surveillance (also separate accommodation, if possible) of possible victims of violence (“potential attack objects”) and possible perpetrators of violence.

According to the reports of NGOs, namely the Czech Helsinki Committee (the CHC)⁹⁴, the system of prevention of violence may not be considered effective. Only a marginal percentage of imprisoned persons are spotted as “potential attack objects”; the spotting itself is very formalistic. This observance of the CHC dated back to the 2008, since then, the committee has not carried out a systematic monitoring of prisons; nevertheless, information obtained from the CHC indicates that the situation has not improved since then.

There is an objective impediment to the implementation of legal and internal regulations – the state of the Czech prison service – lack of employees and overcrowded prisons (official numbers speak about over crowdedness up to 130%, however, the CHC estimates it to reach as far as 150%) result in objective impossibility of individual treatment of imprisoned persons and effective prevention of negative factors of the so called second life of imprisoned persons, which includes sexual violence.

In the past, the CHC has reported cases of ineffective prevention and reaction to sexual violence towards LGBT people, based on downplaying of the report, with

⁹⁴ Český helsinský výbor, <<http://www.helcom.cz/>>.

argumentation that “there was no sexual violence committed on a homosexual, as persons sexually oriented in this way search for such a conduct themselves.”⁹⁵

iii. Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?

Complaints about the conduct of the Prison Service staff, including sexual violence, are also resolved within the framework of the Internal and external control system. Internal control is performed by the department of prevention and complaints in each prison and at the Directorate General of the Prison service of the Czech Republic. External control is carried out by the Inspection General of Security Forces⁹⁶, which is an independent body (neither subordinated to the Ministry of the Interior, nor the Ministry of Justice) performing the powers of investigator and police body in criminal proceedings against members of the prison service. Imprisoned persons may also file a complaint against prison staff by a public prosecutor in charge of supervision over the performance of custody or punishment, or by the Public Defender of Rights; there is no limitation in filing written criminal information by post.

According to the information submitted by the Prison service of the Czech Republic, each serious incident endangering or harming the protected values or the rights of persons placed in custody or safety detention, or serving a sentence of deprivation of liberty is subject to the “duty to report”. This means reporting of exceptional incidents to relevant authorities, so that relevant measures are adopted.

iv. In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?

There are no specific instructions stipulated by law or internal regulations, concerning the treatment of trans persons or the placement and accommodation thereof. The prison service places prisoners to male or female prisons, according to their sex as stated in their ID. Prisoners may not request placing to prison determined for other sex. The law bans common accommodation of persons of different sex.⁹⁷

According to the information provided by the Prison service of the Czech Republic, the prison service pays attention to safety of trans persons placed in custody, safety detention, or performing the sentence of imprisonment. In the case of performance of custody or sentence of imprisonment, the prison service makes every effort to respect their personal integrity; however, the placement itself depends on the sex stated in a valid personal identity document.

⁹⁵ Czech Helsinki Committee, Report of the Czech Helsinki Committee on prisons (2003-2005).

⁹⁶ Act No. 341/2011, on Inspection General of Security Forces.

⁹⁷ Section 7 of the Act No. 169/1999 Coll., on Imprisonment, Act No. 293/1993 Coll., on the performance of custody, as subsequently amended.

In 2002, the Czech Helsinki Committee provided legal aid to a woman who went through a process of surgical and hormonal gender reassignment (male to female) and was sentenced for imprisonment for having committed a crime of neglect of compulsory maintenance during this process. Even though at the time of ordering to register in prison she was living as a woman, legal gender recognition had not taken place so far and she was placed into male prison. From a legal point of view, the situation was not solved at all in the prison service system – the prison service is not entitled to assess de facto changes before legal gender recognition takes place. The client was awarded pardon from the President of the Czech Republic. We have no information available on other similar cases but under our information there are some other. However, the legal status quo has not changed since, the prison service would have to proceed in the same way also today (i.e. to ignore lived realities).

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

- i. *Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*

In the 2010, a sociological company STEM carried out a nation-wide survey for the Ministry of the Interior, called “The mapping of attitudes of the public in the Czech Republic towards right-wing extremist, racist, and xenophobic ideas and their propagators”, which had taken into account also homophobic attitudes.⁹⁸ The survey did not lead to any special policy proposals as regards homophobia and homophobic attitudes.

- ii. *Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*

Sociological companies carry out periodical surveys concerning the acceptance of registered partnership or child adoption by same-sex couples; these surveys usually take place in the framework of public opinion polls. There were also one-off surveys carried out by NGOs or academic institutions. In the 2007, a NGO People in Need carried out a survey among high school students called “Equality is cool!”.⁹⁹ Neither ministries, nor other public institutions carry out such surveys.

- iii. *Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

⁹⁸ Final report from the research is available at: <http://www.mvcr.cz/clanek/bezpecnostni-hrozby-337414.aspx?q=Y2hudW09NA%3d%3d>, website visited on August 8th 2012.

⁹⁹ Available at: <http://www.clovekvtisni.cz/download/pdf/106.pdf>, website visited on August 8th 2012.

The Czech Police does not register hate crimes; it only registers so called extremist crime, based on the Penal Code. Well-arranged statistics are available in annual reports on extremism.¹⁰⁰ However, homophobic, transphobic, and gender hate motivated crimes are not statistically monitored. The missing legal regulation is not an obstacle; rather, it is the unwillingness of bodies in charge of criminal proceedings to collect these statistics. It is therefore difficult to assess the scope of hate violence motivated by sexual orientation or gender identity of the victim.

According to the NGO In Iustitia, a sexual aspect of a person is monitored. This category includes homosexuals as sexual deviants; besides homosexuals, this category includes prostitutes, sexual deviants, paedophiles, and other persons with some kind of sexual deviation or paraphilia.

B. “Hate speech”¹⁰¹

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

- i. Do legislative measures penalising “hate speech” on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic “hate speech”?*

In general, hate speech may be subsumed under the crimes of defamation of a nation, race, ethnic, or other group of persons¹⁰² and incitement to hatred towards a group of persons or to limit their rights and freedoms¹⁰³. Nevertheless, none of these provisions explicitly stipulates that protection against these attacks also covers sexual orientation or gender identity. Even though the name of the provision itself („Defamation of a nation, race, ethnic, or other group of persons“) speaks about „other group“, the provision itself contains an exhaustive list of groups and does not mention other groups; it is therefore impossible to include real or alleged sexual orientation of a person into „other group of persons“ by explication. On the contrary, the crime of incitement to hatred towards a group of persons or to limit their rights and freedoms explicitly includes incitement towards „other group of persons“, that

¹⁰⁰ Available at: <<http://www.mvcr.cz/clanek/extremismus-vyrocnizpravy-o-extremismu-a-strategie-boje-proti-extremismu.aspx>>, website visited on August 8th 2012.

¹⁰¹ See Explanatory Memorandum for definition of “hate speech”

¹⁰² Section 355 of the Act No. 40/2009 Coll., Penal Code: „(1) A person who publicly defames a) a nation, its language, any race, or ethnic group, or b) a group of persons for their real or alleged race, affiliation to an ethnic group, nationality, political opinion, belief or for being without any belief or for being said to be without belief, will be punished by imprisonment up to two years.

¹⁰³ Section 356 of the Act No. 40/2009 Coll., Penal Code: (1) A person who publicly incites to hatred against a nation, race, ethnic group, religion, class, or other groups of persons or to the limitation of the rights and freedoms of their members, will be punished by imprisonment up to 2 years.“

can also be formed by LGBT persons. Nevertheless, there is no relevant case-law confirming this explication.

The establishment, support, promotion of a movement aiming to suppress the rights and freedoms of humans is another crime that explicitly includes as punishable the establishment, support, promotion of a movement disseminating hate towards other group of persons. By explication, it could be possible to deduct that a movement disseminating hate towards LGBT people is included – however, relevant case-law confirming this explication does not exist yet.¹⁰⁴

- ii. *Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*
- *a culture of respect, tolerance and diversity, and*
 - *to avoid negative and stereotyped representations of LGBT people?*

The journalists' syndicate of the Czech Republic elaborated a Journalist Code of Ethics, according to which a journalist „may neither create nor depict an issue inciting discrimination of a race, colour, religion, sex, or sexual orientation.“¹⁰⁵

- iii. *Has legislation for criminalising “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?*

Incitement to hatred towards a group of persons, or incitement to limit their rights and freedoms, are punished in a stricter way, if committed via press, film, radio, television, publicly accessible computer network, or other means of similar influence.¹⁰⁶ The same applies in case of a crime “establishment, support and promotion of a movement leading to suppress the rights and freedoms of a person”.¹⁰⁷

The Czech Republic has not ratified the Convention on Cyber hate (2001, Council of Europe, No. 185). The Czech Republic has not yet become a party to the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No.: 189, of 2003).

- iv. *Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?*

¹⁰⁴ M Mareš., The issue of Hate Crime. Experience from abroad and the possibilities of application of this approach in the Czech Republic, with stress on hate crime against immigrants. Analysis for the Ministry of the Interior of the Czech Republic. Website visited on August 1st, 2012, <http://www.mvcr.cz/clanek/bezpecnostni-hrozby-337414.aspx?q=Y2hudW09NA%3d%3d>, page 34.

¹⁰⁵ Available at <<http://syndikat-novinaru.cz/1/5/36/etika/eticky-kodex>>, visited on August 1st, 2012.

¹⁰⁶ Section 356 (3) lit. a) of the Act No. 40/2009 Coll., Penal Code.

¹⁰⁷ Section 403 (2) lit. a) of the Act No. 40/2009 Coll., Penal Code.

No. Most of hate materials are spread from the legislative environment of the USA. When investigating hate crime committed via computer network, the Czech criminal investigation bodies encounter a barrier of non-cooperation on the U.S. side.

- v. *If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?*

There were several negative public statements in connection with the Prague Pride festival, namely from the President of the Czech Republic and his vice-chancellor (see below), criticism was addressed namely towards the Prague mayor, Mr. Bohuslav Svoboda, for providing patronage to the festival. Despite severe criticism, the mayor has not revoked his patronage and has supported LGBT people openly; support to the Prague Pride was also expressed by some other politicians. The incidents of “hate speech” against LGBT people are publicly disavowed by leading public officials only sporadically.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

- i. *Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

No guidelines were issued so far to raise awareness of public institutions/authorities of their responsibility to refrain from negative statements.

- ii. *Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

Negative statements towards the LGBT minority from public authorities occurred most often in connection with the Prague Pride festivals in the 2011 and 2012; some of these statements might be considered homophobic or discriminatory. In the 2011, the vice-chancellor of the President of the Czech Republic commented that “*Pressure event of homosexuals that will take place in Prague under a nice Czech name “gay parade” is not an innocent joke. It is a serious political demonstration of a certain viewing of the world. A world, where traditional family does not play any role. A world, where deep national traditions and cultural roots are eaten off by the beast of multiculturalism. A world, where sexual orientation or any other deviation are exalted as honours, abnormality as a norm, destruction of society as holy advancement.*”¹⁰⁸

¹⁰⁸ Available at <http://www.lidovsky.cz/homosexuallove-jsou-devianti-mini-hajek-fc1-/ln_domov.asp?c=A110804_172028_ln_domov_kim>, visited on August 1st, 2012.

Mr. president, Václav Klaus, has refused to reproach his vice-chancellor for having labelled gays as deviants and stated that “If someone gets irritated by the word “deviation”, I take it for a value-neutral word.”¹⁰⁹ Moreover, he expressed himself that „homosexuality“ is a dangerous ideology, and stated that „*We may respect homosexuality, but not homosexualism*“ (*respektujme homosexualitu, nikoli homosexualismus*). *I stand up for this statement of mine, without having guessed to have to defend it so early. The Prague Pride festival is not a manifestation of homosexuality, but of homosexualism, that I am afraid of (at the same time as of many other modern “-isms”). This is exactly the same stance I took in the 2006, when I vetoed the law on registered partnership.*“¹¹⁰

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

i. Has guidance been issued to public officials and state representatives in this respect?

Public officials and state representatives are not encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual, and transgender persons. On the other hand, some politicians provided patronage to activities organized by LGBT organisations. For example, in the 2011 and 2012, the Prague mayor, Mr. Bohuslav Svoboda, provided patronage to the Prague Pride festival. He has declared his support repeatedly, despite having been severely criticized by some politicians, including the Czech President. Politicians also repeatedly provided patronage to the Mezipatra Queer festival.

The Government commissioner for human rights published recommendations concerning media image of sexual minorities “Media and sexual minorities”.¹¹¹ The recommendation, being part of a press report by the commissioner on the occasion of the 2011 Prague Pride festival, addressed most frequent cases of stereotypical depicting of sexual minorities in the media.

ii. If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?

¹⁰⁹ Available at <http://zpravy.idnes.cz/ani-ja-necitim-hrdost-nad-pochodem-gayu-zastal-se-prezident-hajka-pxy-/domaci.aspx?c=A110805_151804_domaci_jw>, visited on August 1st, 2012.

¹¹⁰ Statement of the President of the Republic concerning another exemplary attack to the freedom of speech of August 5th, 2001, available at <<http://www.hrad.cz/cs/pro-media/tiskove-zpravy/7023.shtml>>, visited on August 1st, 2012.

¹¹¹ Available at <<http://www.vlada.cz/cz/ppov/rp/vybory/proti-diskriminaci/media-a-sexualni-mensiny-86512/>>, visited on August 1st, 2012.

In practise, there is no systematic support of tolerance and dialogue from public officials and other state representatives, but rather scarce statements, such as those made by the Prague mayor, Mr. Bohuslav Svoboda, the government commissioner for human rights, Ms. Monika Šimůnková, or a presidential candidate, Mr. Jiří Dientsbier, who criticized the omission of registered partnership in the new Civil Code.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

i. Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?

No. The author knows no case, when the Ministry of Interior would refuse the registration of an organization stating in its statutes, that its activities are connected with LGBT minority.

In practice there are organizations dealing with LGBT people's rights and interests in form of civic associations. Their registration is made based on the same legal regulation as in the same way as any other civic associations. For the civic associations dealing with LGBT rights and interests there are no special conditions based on the law. Even the Ministry of Interior, making the registration, has no special requirements.

ii. If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?

Obsolete.

iii. Are there examples of measures taken to:

- *ensure that LGBT organisations can operate freely,*
- *defend their interests when necessary,*
- *facilitate and encourage their work?*

No. LGBT organizations can work absolutely free in the Czech Republic and on the same condition as other NGOs. However, there is no special support provided to the LGBT organizations' activities as well as not encourages in their activities in any way.

- iv. *Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?*

There is no legal regulation providing for the inclusion of LGBT organizations in such cases. It is rather decision of the individual LGBT organizations how much and with what effects they are able to get included into such process.

Council of the Government of the Czech Republic for Human Rights as advisory body of the Government founded Committee for Sexual Minorities as one of its bodies.¹¹² Amongst members of this committee there are beside representatives of the respective ministries also activists and specialists supporting LGBT people's interests. However, the extent of acceptance of inclusion of this committee and other LGBT organizations into such process on the side of the state is strongly dependent on the actual political situation and Government composition. With regard to the actual conservative-populist government, the situation is not very forthcoming lately.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

- i. *Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?*

The author did not register any provision of major financing from public funds for the benefit of LGBT organizations in the last years. We omit subsidies provided by other states than the Czech Republic, NGOs, business companies or other private entities. However, minor grants amounting to several thousand or dozens thousand are provided by the state and municipalities usually for the different cultural events, e.g. Jiný Pohled - Queer Eye queer or queer film festival Mezipatra, repeatedly gaining support from the Municipality of the Capital City of Prague, State Fund for Support and Development of Czech Cinematography, earlier also by the Municipality of Brno. In the 2011 the Municipality of Brno refused to provide its support to Mezipatra festival, due to, as alleged by the organizers, "there is nothing but homophobia in it".¹¹³

Except of the above mentioned decision of the City of Brno there were no cases of LGBT organizations' discrimination in access to public funds, however in the framework of subsidy proceedings the LGBT issues are not prioritized in any way

¹¹² For more information about Committee, see chapter XI. National human rights structures.

¹¹³ L. Bartík, 'Jiný pohled na československý film i homosexuální holocaust, i to budou letošní Mezipatra' (Czechoslovak film and homosexual holocaust from a different point of view, even this are Mezipatra festival this year), November 3rd, 2011, available at: <http://www.munimedia.cz/prispevek/jiny-pohled-na-ceskoslovensky-film-i-homosexuální-holocaust-i-to-budou-letosni-mezipatra-2056/>, website visited on August 23rd, 2012.

and, with few exceptions regarding subsidies for cultural activities, LGBT organizations do not apply for public funds in any way.

In the 2009 The Ministry of Education, Youth, and Sports announced the invitation to submit the applications for other individual projects from the Operational program education for the competitiveness, priority axis 1 - Initial education Support area 1.2 - equal opportunities of children and pupils, including children and pupils with special educational needs, amongst which the ministry also welcomed, amongst other things, also projects targeted on the fight against the homophobia. We have no information about any organization proposing such project. On the other hand however, we have to add that the administration of projects financed from these funds is very complicated and it is hardly manageable without professional backgrounds, which Czech LGBT organizations lack in these days.

ii. Has such funding been made available to LGBT organisations?

See above point 10. i.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

i. Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?

It is disputable, if effective protection is provided. The fact is however, that during the last ten years the author did not register any manifestation of aggression or hostility towards LGBT organizations; the target of such demonstrations were rather the individual events organized by those LGBT organizations.

ii. Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?

No, no special protection is provided by the state. Under actual circumstances it could look like they are redundant. However, we have to point out that the mere existence or non-profit organizations and of civil society demonstrations in general is subject of criticism by actual head of the state, president of the Czech Republic, Mr. Václav Klaus.

iii. Are LGBT human rights organisations able to work with

- *national human rights institutions and ombudsmen,*
- *the media,*
- *other human rights organisations?*

Yes. The author has no information of posing any obstacles to such cooperation from the side of the state or anyone else.

- iv. *Are they able to take part in training sessions, international conferences and other human rights activities?*

Yes. The author has no information of any obstacles to such activities from the side of state or anyone else.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

- i. *Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

There is either no legal regulation or internal rules prohibiting consultations with LGBT organizations in such cases. On the other hand however, there is also no legal regulation establishing the rules of such consultations or requiring them. In practice, LGBT organizations can consult the passing of such measures through the Committee for Sexual Minorities of the Council of the Government of the Czech Republic for Human Rights. However, the position of the Committee is very limited and in practice its proposals are rarely accepted. The decision rests upon the Government and its individual ministers, in particular. The actual conservative-populist Government is rather non-responsive towards the Committee's comments (e.g. Committee's comments to the draft of the new Civil Code were disregarded).

- ii. *Have there been such consultations regarding the implementation of this Recommendation?*

Consultations are rather exceptional. If they occur at all, see e.g. the above described opinion of the Committee for Sexual Minorities of the Council of the Government of the Czech Republic for Human Rights in connection with drafting of the new Civil Code, such consultations are disregarded.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without

discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

- i. *Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*
- *activities that support the human rights of LGBT persons*
 - *publication of material*
 - *media coverage*
 - *organisation of/participation in conferences*
 - *dissemination/access to information on safe sexual practices?*

Yes. The authorities ensure the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity.

- ii. *Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

No. The author did not notice any efforts aiming to limit the freedom of speech regarding the LGBT themes.

- iii. *Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

No, there are no cases of public offices support in media. The President of the Republic, Mr. Vaclav Klaus, openly spoke against passing the Anti-Discrimination Act. Subsequently during the approval process of the Anti-Discrimination Act he used his presidential veto and explained his standpoint in publically available letter addressed to the Chairman of the House of Representatives of the Parliament of the Czech Republic.¹¹⁴

Public Defender of Rights as equality body repeatedly tries to assure that issues of equal treatment and discrimination are discussed in media, however, until today it never happened in connection with discrimination based on sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can

¹¹⁴ V. Klaus, 'DOKUMENT: Zduvodnění Václava Klause, proč vetoval antidiskriminační zákon' (DOCUMENT: Reasons of Mr. Vaclav Klaus for vetoing the Anti-Discrimination Act), May 16th, 2008, available at: <<http://www.novinky.cz/specialy/dokumenty/140060-dokument-zduvodneni-vaclava-klause-proc-vetoval-antidiskriminacni-zakon.html>>, visited on August 23rd, 2012.

be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

i. Have the authorities ensured freedom of peaceful assembly for LGBT people?

Czech law does not limit right of assembly of LGBT people or assembly to promote LGBT interests in any way and as of the 1989 we know no actual cases of limiting such right. With regard to the right of assembly of LGBT people, we can only evaluate the assurance of protection of this right based on pride parades as of the 2008, when such pride parade was for the first time held in Brno. Neither LGBT people nor LGBT organizations used their right of assembly in the CR otherwise than in connection with pride parades.

Queer parade Brno 2008 – Insufficient protection on side of the police. Due to insufficient protection, the extremists succeeded in get into the crowd and attacking them by kicks, fists, bottles, and eggs. Approximately after five minutes the police succeeded to divide the extremists from the attendees. The police considered cancelling the parade due to security reasons. Subsequently it decided on the shortening of the parade route.¹¹⁵

Queer Pride Parade Tabor 2009 – the municipality office allegedly advised the inhabitants of the city to better leave it and some shops boarded up their show windows due to fear from riots. Organizers considered the work of police very good and professional.¹¹⁶

Queer parade Brno 2010 – More careful preparation on the side of police. However, the venue was practically closed by the police.¹¹⁷

Prague Pride 2011 – Generally exemplary cooperation with police also with regard to the fact that there were several excesses on the side of extremists. The venues were not disturbed, the parade route did not need to be changed. No major incidents occurred. The president of the Republic, Mr. Václav Klaus, criticized the Mayor of Prague for granting his patronage to Prague Pride 2011, he also criticized the support provided to this event by embassies of 13 countries and used the term "deviation" to describe homosexuality. Some other politicians, including MPs and Senators made similar declarations as Mr. President.¹¹⁸ For better example we add some quotations

¹¹⁵ M. Vlk, 'Policie selhala při ochraně sobotní Queer parade v Brně' (Police failed in protecting the Saturday Queer Parade in Brno), June 30th, 2008, available at: <<http://blisty.cz/art/41444.html>>, visited on August 23rd, 2012.

P. Škarda, 'Extremisté vs. Queer Parade: pěsti i zápalné lahve' (Extremists vs. Queer Parade: fists and Molotoff cocktails), June 28th, 2008, available at: <http://brnensky.denik.cz/zpravy_region/extremiste-vs-queer-parade-pesti-i-zapalne-lahve.html>, visited on August 23rd, 2012.

¹¹⁶ A great success. That's our answer to the question, "How was the Queer Pride Parade and Festival in Tábor?", June 20th, 2009, available at: <http://www.queerprideparadetabor.cz/default_en.htm>, visited on August 23rd, 2012.

¹¹⁷ ČT Brno, 'Centrum Brna patřilo Queer parade' (Center of Brno hosted Queer Parade), June 26th, 2010, available at: <<http://www.ceskatelevize.cz/ct24/regiony/jihomoravsky-kraj/94193-centrum-brna-patrilo-queer-parade/>>, visited on August 23rd, 2012.

¹¹⁸ L. Rosí, 'Pochod hrdosti se obešel bez větších konfliktů, k potyčkám ale došlo' (NO major conflicts during Pride Parade, certain riots however occurred), August 13th, 2011, available at:

of declarations of people holding public offices: Mr. Petr Hájek - vice-head of the Office of the President of the Republic: *"Coercive action of homosexuals to be held in Prague under very nice Czech name "Gay parade" is not innocent fun. It is serious political demonstration of certain opinion regarding values. Of the world where there is no place for traditional family. Where deep national traditions and cultural roots are devastated by the monster of multiculturalism. World, where sexual or any other deviation is raised to a virtue, abnormality becomes norm, destruction of the society is declared to be holy development. World where civic freedoms are replaced by the lie of so called human rights and first amongst them, the freedom of speech, censorship of political correctness, as we call usual hypocrisy today. If the politician starts to speak about "xenophobia" it is clear to which side he/she belongs. Who denies the right of the deviant inhabitants to demonstrate in public in favor of upholding the world of values, where for many years the only "endangered specie" is usually the white man, heterosexual, and Christian, where civic virtues as patriotism are posed at stake for spits of media? It is shocking however, when such world of deformed values is supported or even provided by "patronage" by allegedly right wing politician or MP.*"¹¹⁹

Mr. Václav Klaus – President of the Republic: *"I absolutely refuse the requests of the ČSSD (Czech Social Democratic Party) and VV (Public Matters) to take distance from declarations of Mr. Petr Hájek, which he made in connection with the patronage of the Mayor, Mr. Bohuslav Svoboda, over the Prague Pride (I do not mention the translation of the English term "pride", which pursuant to the www.slovník.cz vocabulary means "peacockery, conceit, pride, arrogance, boast, conceit, best-years, sensual lust"), nonetheless those sentences were not said by myself and I would maybe use a different wording. However, I do not feel any "pride" for this event myself either. [...] I refuse to participate on battle of words regarding if deviation from norm (and the fact that it is a deviation cannot be negated even by Ms. Tominová) is extraordinary, special, abnormal, deviation from norm, or deviation. If someone is angry because of the term "deviation" I consider it term with absolute neutral value. In any way homosexuality is something extremely minor and as such it requires our protection, but not necessarily an apotheosis.*"¹²⁰

Mr. Ladislav Bátor – the head of the Human resource Department of the Ministry of Education, Youth, and Sports: *"We think that the patronage of the mayor should be reserved for such cultural, sport, or charity events, targeting to the general public, which help to overcome opinion and social differences and which strengthen the sense of civic togetherness. On the basis of previous experiences with events like Prague Pride, we are convinced that no such relevant reason for public support exists! On the other hand we think that such events and provocative so called Rainbow parades connected with them only help to deepen the polarization of the society, they do not lack ideological (neo-Marxist) basis and they are repeatedly*

<<http://www.ceskatelevize.cz/ct24/domaci/132858-pochod-hrdosti-se-obesel-bez-vetsich-konfliktu-k-potyckam-ale-doslo/>>, visited on August 23rd, 2012.

¹¹⁹ P. Hájek, 'Petr Hájek: Jsem kryptofašista. Doznávám se' (Petr Hájek: I am cryptofascist, I do confess), August 4th, 2011, available at: <<http://www.parlamentnilisty.cz/arena/politici-volicum/Petr-Hajek-Jsem-kryptofasista-Doznavam-se-204468>>, visited on August 23rd, 2012.

¹²⁰ V. Klaus, 'Prohlášení prezidenta republiky k dalšímu exemplárnímu útoku na svobodu slova' (Declaration of the President of the Republic to another exemplary attack on the freedom of speech), August 5th, 2011, available at: <<http://www.klaus.cz/clanky/2896>>, visited on August 23rd, 2012.

used as basis for verbal attacks against opponents in opinion as well as to intentional insults of traditional civilization and spiritual values."¹²¹

Prague Pride 2012 – Also this year negative reactions of certain Czech politicians towards Prague Pride 2012 were noticed. Mr. Petr Hájek, vice-head of the Office of the President of the Republic, participated in person on counter-demonstration against Prague Pride organized by D.O.S.T. action, on which participated also representatives of neo-Nazi movements, and passed the greetings of the President of the Republic Mr. Václav Klaus, to the participants of the counter-demonstration. Nonetheless the course of the Prague Pride 2012 was not yet evaluated in detail, the cooperation with police can be considered exemplary. Police members were not noticeable and in the case of suspected risk they resolved the situation without disturbing the course of parade and without parade participants noticing that attacks had merely verbal nature and seven extremists were taken to the police station due to verbal attacks or lack of personal identification documents.¹²²

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

- i. If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

Queer parade Brno 2008 – Certain demonstration of hostility and violence occurred from the right extremists. The protection of parade participants was not sufficient as the extremists succeeded in avoiding the police cordon and mixed amongst the parade participants and assaulted them. Police needed several minutes to separate the extremists from the parade participants.

Queer Pride Parade Tabor 2009 – Demonstrations of hostility and violence by right extremists remained in verbal form only. Preventive protection of parade participants was sufficient and right extremists did not try to make any physical assault against the parade participants.

¹²¹ L. Bátor, P. Bahník, F. Červenka, M. Semín, 'Dopis Akce D.O.S.T. primátorovi Hlavního města Prahy a starostovi městské části Praha 1 ve věci jejich záštity nad Prague Pride 2011' (Letter of the D.O.S.T. Action to the Mayor of the Capital City of Prague and to the mayor of the city district Prague 1 in the matter of their patronage for Prague Pride 2011), August 8th, 2011, available at: <<http://www.akce-dost.cz/20110807.htm>>, visited on August 23rd, 2012.

¹²² ogo, kim, 'Duhový průvod prošel Prahou, policie zadržela sedm lidí (Rainbow parade went through Prague, seven people arrested by the police)', August 18th, 2011, available at: <http://www.lidovky.cz/duhovy-pruvod-prague-pride-zacal-jdou-v-nem-tisice-lidi-pgt-/ln_domov.asp?c=A120818_134417_ln_domov_kim>, visited on August 23rd, 2012.

L. Petřík, 'Senátor za ČSSD: Gayové rozšířili AIDS a jejich exhibicionismus je odpudivý' (Social Democrat senator: Gay people helped to spread AIDS and their exhibitionism is disgusting), July 17th, 2011, available at: <<http://euportal.parlamentnilisty.cz/ShowArticleMobile.aspx?id=9332>>, visited on August 23rd, 2012.

Queer parade Brno 2010 – Demonstrations of hostility and violence by right extremists, however they were fully separated from the parade participants by police cordon. Preventive protection of parade participants was almost exaggerated, however, it was result of the police failure to do so in the 2008.

Prague Pride 2011 – Demonstrations of hostility and violence by several dozens of right extremists occurred; nonetheless several hundreds of right extremists were expected, the participation was very low on their side. Preventive protection of parade participants was sufficient, the parade was sufficiently separated by the police cordon from the extremists in the place where both groups met.

Prague Pride 2012 – Demonstrations of hostility occurred again, this time however, only from several dozens of right extremists, namely only in form of verbal assaults. In the case of right extremists we can also assume that they were less in number than in the 2011. Police members were not noticeable and in the case of suspected risk they resolved the situation without disturbing the course of parade and without parade participants noticing that. It was not necessary to establish cordon or armored policemen in the immediate vicinity of the parade to separate the attackers from the parade participants. Seven extremists were taken to the police station due to verbal attacks or lack of personal identification documents.

ii. In particular, have the police protected participants in peaceful LGBT demonstrations effectively?

As stipulated in sections above, the police action was rather different in different places and different years. In the 2010 the police tried to avoid mistake it made in the 2008, when it failed to protect parade participants. Thank to this fact, Queer parade in Brno in the 2010 almost changed into "police exercise" when the number of policeman in the street was almost the same as that of participants.

On the other hand, in Prague in the 2011 and 2012, the police showed high professionalism level, closely cooperated with organizers already in the preparation phase and the parade itself was free of any major incidents as well as without any major police visibility.

iii. Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?

No cases were established, in which police would act with lack of dignity or respect towards LGBT people during any demonstrations.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

i. Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?

No. The author did not notice any cases when state bodies would try to limit the right for peaceful assembly of LGBT people in any way.

- ii. Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*

During Queer Parade in Brno in the 2008 the police considered cancellation of the parade due to security reasons. Subsequently it only decided to shorten the parade route due to security reasons. Otherwise, the author has no information regarding any situation when non-standard attitude was used against demonstrators.

- iii. If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

The only limitation we could see in the shortening of parade route in Brno in the 2008. Czech law provides for the court review of the correctness of police actions. In the above mentioned case such right was not used, probably due to the fact that the police decision was considered as aiming to assure security for the parade participants.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

- i. If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*
 - a. Has there been encouragement to public authorities to condemn such interferences?*

The author has no information that public authorities would be encouraged to condemn illegal interventions against the right for freedom of speech or peaceful assembly.

- b. Have public authorities actually condemned such interferences?*

With regard to the fact that Czech law considers the freedom of speech and right for assembly as one of democracy pillars, that it does not limit these rights in any way with regard to the LGBT people and themes, and that no interventions from public authorities into the enforcement of these rights, it was not necessary for the public official or politicians to condemn any such interferences.

On the other hand, we have to state, that also opponents and critics use their right for freedom of speech as well as their right for peaceful assembly, nonetheless their use of these rights time to time balances on the edge of acceptability or even goes behind it.

E.g. in Brno in the 2008 physical attacks against the participants of the parade occurred. Based on information available to the author, no public officials or politicians publicly condemned such assault.

As another example we can state the invitation for violent assaults against Prague Pride 2012 participants, published on internet.¹²³ No public official or politicians reacted on such invitation for assaults.

ii. Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?

As one of the demonstrations of the public support for the freedom of speech and peaceful assembly we can consider e.g. the patronage of the Mayor of the Capital City of Prague, Mr. Bohuslav Svoboda, he granted to the Prague Pride festival already for the second time.¹²⁴

As public support we can also consider the participation of several MPs, as well as of several other politicians of the Czech Republic in the parade during Prague Pride 2011 and 2012. They were mostly members of opposition or members of parties not represented in the Parliament.

Public support for the Prague Pride was also provided by ambassadors of several countries.¹²⁵

iii. Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?

Not expressively, however e.g. the declarations of the President of the republic, Mr. Václav Klaus, who criticized the Mayor of the Capital City of Prague for granting his patronage to the Prague Pride 2011, he also criticized the support of ambassadors of 13 countries for the festival and he used the term "deviation" in connection with homosexuality, as well as many other politicians, including MPs and Senators, who has similar declarations, caused polarization of the society and increase of risk of

¹²³ A. B. Bartoš, 'Proč USA a Izrael fedrují Prague Pride?' (Why do USA and Israel financially support Prague Pride?), July 17th, 2012, available at: < <http://www.prvnizpravvy.cz/sloupky/proc-usa-a-izrael-fedruji-prague-pride/>>, visited on August 23rd, 2012.

¹²⁴ B. Svoboda, 'Záštitu primátora hlavního města Prahy nad druhým ročníkem festivalu Prague Pride' (Patronage of the Mayor of the Capital City of Prague for the second edition of Prague Pride Festival), March 13th, 2012, available at: < <http://www.praguepride.com/index.php?page=zastita-3>>, visited on August 23rd, 2012.

¹²⁵ N. L. Eisen, 'Opening Reception of Prague Pride Festival Remarks', August 13th, 2012, available at: < <http://prague.usembassy.gov/prague-pride-opening-reception-remarks.html> >, visited on August 23rd, 2012.

assaults during individual events of the Prague Pride 2011. Also other politicians joined these critics. See also point 14.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

- i. Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*

Sexual intercourse of same-sex persons itself is not punitive. The punish ability of homosexuality was abolished in the 1961 already by passing the Penal Code.¹²⁶ However, up to the 1990 there was a different age limit for heterosexual sexual intercourse (15 years) and for the homosexual sexual intercourse (18 years). As of the 1990 the age limit for both groups is the same (15 years).¹²⁷ Sexual intercourse of same-sex persons can be punishable under certain circumstances, in such case same rules apply for both groups, i.e. both same-sex and different-sex (e.g. violence in the case of rape offence¹²⁸ or age under 15 in the case of offence of sexual abuse¹²⁹). Still there is one exception. Czech penal law knows one sexual crime, which cannot be committed by person having sexual intercourse with the person of the same sex. It is the crime of sexual intercourse between relatives.¹³⁰ On the first sight, this can be seen as discrimination against heterosexual people. In this case however, it is only the intercourse being penalized and no other types of sexual intercourse. The Czech courts traditionally interpret the intercourse as connection of female and male sexual organs. In this case it applies due to protection of interest being the genetic sanity health of population in the first place.

- ii. Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding*
 - (a) sexual orientation or*
 - (b) gender identity?*

Penal law does not include any provision which could be interpreted as discriminatory based on sexual orientation or gender identity.

¹²⁶ Act No. 140/1961 Coll., Penal Code, as subsequently amended.

¹²⁷ Today see Section 187 of the Act No. 40/2009 Coll., Penal Code, as subsequently amended.

¹²⁸ Ibid, Section 185.

¹²⁹ Ibid, Section 187.

¹³⁰ Ibid, Section 188.

- iii. *If so, what steps are the authorities taking to remedy this situation?*

Obsolete.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

- i. *What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?*

Data regarding the sexual life of subjects are considered sensitive.¹³¹ Sensitive data may be processed only if the data subject has given his express consent to the processing and the processing is governed by precise rules.¹³² While selecting employees, the employer is not entitled to ask for information regarding the sexual orientation, information contrary to good morals or personal data that employer does not have obligation to collect according to the law.¹³³ Although the law does not explicitly prohibit employers to ask about information regarding gender identity, the prohibition can be clearly assumed from the mentioned provision.

According to the Office for personal data protection, it is legitimate to identify sexual orientation in relation to offenses committed according Chapter III. Offenses against human dignity in the sexual area. If state authorities have information about sexual orientation available, they cannot do so if requested to disclose this information.

- ii. *What steps have the authorities taken to ensure that existing records are destroyed?*

Obsolete.

- iii. *Have these steps been effective?*

Is there any evidence of:

- *the continued existence of such records*
- *the continuing collection of such data?*

¹³¹ See Section 4 lit. b) of the Act No. 101/2000 Coll., on Protection of Personal Data, as subsequently amended.

¹³² Ibid, section9.

¹³³ See Section 12 (2) of the Act. 435/2004 Coll., on Employment, as subsequently amended.

Obsolete.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

i. Has a review of such prior requirements been conducted?

The beginning of treatment of gender reassignment falls back into 1960s.¹³⁴ With effectiveness as of April 1st, 2012 there is a new law in the Czech Republic concerning the medical and legal aspects of gender reassignment. Until April 1st, 2012 these aspects were regulated by the Public Health Act¹³⁵. The Public Health Act dealt with gender reassignment treatment in quite a brief manner. It stated as follows: „*Medical interventions to reproductive capability of individuals, castration, stereotactic surgery, and intervention in the case of transsexuals, are performed at the request of the person for which the intervention should be performed and after approval of an expert commission consisting of a lawyer, at least two physicians with specialization in relevant discipline and two more physicians who will not participate in the performance of such a medical intervention.*“¹³⁶ The Public Health Act stated that it is necessary to have the approval of expert commission consisting of defined experts. Other legislation concerning gender reassignment transitioning was not available therefore the possibility of gender reassignment transitioning was depended only on the decision and requirements stated by the expert commission. Before April 1st, 2012 when the new Act came into effect, the practice was that there were requirements of so called real life test, i.e. test of ability to live permanently in a role of opposite sex lasting usually at least one year. Persons undergoing gender reassignment transitioning also had to divorce¹³⁷; the divorce was a condition for obtaining the positive decision of the expert commission. In the past there some persons were pressed to give up their parental rights although it was not legal. Currently, the practice forcing trans persons to give up their parental rights has been abandoned.¹³⁸

New legislation concerning gender reassignment treatment is stipulated by the Special Health Services Act¹³⁹ effective as of April 1st, 2012. Broadly speaking, Special Health Services Act adopted lot of practices that were used during the effectiveness of the previous law and explicitly regulated it in legislation. This regards an obligation of

¹³⁴ *Analysis of the Situation of Lesbian, Gay, Bisexual, and Transgender Minority in the Czech Republic* April-October 2007, Working Group for Sexual Minorities of Minister for Human rights and Ethnic Minorities, p. 28, <http://www.vlada.cz/assets/ppov/rlp/vybory/sexualni-mensiny/ANALYZA_final.pdf>, visited on August 21st, 2012.

¹³⁵ The Act No. 20/1966 Coll., on Public Health, as subsequently amended.

¹³⁶ *Ibid*, section 27.

¹³⁷ In the explanatory report to the new Civil Code which will come into legal force on January 1st, 2014 is stated that divorce requirement is present practice which is expressly stated in new Civil Code for the reason that „it is after all suitable to be sure in cases where the established standard of domestic practice will be not observed for examples in case of gender reassignment in foreign country“.

¹³⁸ *Analysis of the Situation of Lesbian, Gay, Bisexual, and Transgender Minority in the Czech Republic* April-October 2007, Working Group for Sexual Minorities of Minister for Human Rights and Ethnic Minorities, p. 30,

<http://www.vlada.cz/assets/ppov/rlp/vybory/sexualni-mensiny/ANALYZA_final.pdf >, visited on August 21st, 2012.

¹³⁹ The Act No. 373/2011 Coll., on Special Health Services.

persons willing to undergo gender reassignment treatment to obtain positive opinion of expert commission, in particular. The Special Health Services Act also specified composition of the expert commission. The commission will be established by the Ministry of Healthcare (in past the commissions were established by the medical institution performing gender reassignment surgeries); the composition of the commission is (i) medical worker who is an employee of the state categorized on the Ministry of Healthcare, (ii) physician with specialization in sexology, (iii) physician with specialization in psychiatry, (iv) clinical psychologist, (v) physician with specialization in diabetology and endocrinology, (vi) physician with specialization in urology or gynecology and obstetrics and (vii) lawyer with knowledge of healthcare law.¹⁴⁰ Controversial could be for example participation of medical worker who is an employee of the state categorized on the Ministry of Healthcare. Specialization of this worker is not established in more details in the Special Health Services Act. Moreover, the commission has to decide unanimously. This means that even if only one commission member expresses his/her doubts (based on reason whatever) the positive opinion of the commission is not granted. To our knowledge, trans people are doubtful about how the process under new legislation will be arranged. Under our information, it seems that the decision of the commission will be not considered as decision within the administrative procedure, so there will be no possibility to appeal against it.

We have no information about re-examination of requirements for legal gender recognition while the Special Health Services Act and Civil Code were prepared. Under diction of the Special Health Services Act it is quite obvious that up to now practice was only embodied into the legislation and some other requirements were added. Not all the other requirements are in favor for trans persons. On the grounds of information from members of the Committee for Sexual Minorities of the Government Council for Human Rights were some comments made by this Committee within the process of drafting the Special Health Services Act. It was pointed out for example that an obligatory divorce is a human rights violation. Further, the Committee also pointed out that it is impossible to make gender reassignment treatment to transsexuals who are in jail, in protective treatment, or during their stay in the Detention Institute. With regard to the fact that the above mentioned access that remain in the Special Health Services Act it seems that the comments of the Committee were not accepted.

As of January 1st, 2014 a new Civil Code comes into legal effect. In currently effective Civil Code¹⁴¹ there is no provision concerning legal gender recognition. Into the new Civil Code legal gender recognition was embodied. The New Civil Code establishes that legal gender recognitions done through the surgery where reproductive function of the person is made impossible. The New Civil Code further establishes mandatory invasive of genital ('transformation of genitals')¹⁴². The New Civil Code also mentions obligation of divorce or cancelation of registration partnership. Unlike the Special Health Services Act, where the applicant is obliged to prove that he/she is not married and/or did not enter into the registered partnership or that his/her marriage or registered partnership ceased to exist, the New Civil Code specifies that by gender reassignment transition marriage or registered partnership cease to exist

¹⁴⁰ Ibid, section 22.

¹⁴¹ Act No. 40/1964 Coll. Civil Code, as subsequently amended.

¹⁴² It is not obvious from the wording of the New Civil Code or from the explanatory report what is meant by the "transformation of genitals".

automatically. Therefore, based on the New Civil Code, for legal gender recognition there is requirement of mandatory surgery by which the function of reproduction organs is made impossible. Persons who are not able or don't want to undergo this surgery for any reason have no right to legal gender recognition or change of documents.

ii. Are there still requirements which might be considered disproportionate or even abusive,¹⁴³

such as:

- *irreversible sterilisation,*
- *hormonal treatment,*
- *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

The New Civil Code states that gender reassignment is made by surgery while function of reproduction organs is made impossible.¹⁴⁴

In the Czech Republic, legal gender recognition without surgery is not possible because the change of birth number or name cannot be done without certificate on surgical gender reassignment. It is possible to say that in the Czech Republic the approach to the gender reassignment transitioning is more medical than based on human rights. In recently published article of a chairman of Sexological association of the Czech Medical Chamber it is stated that mandatory surgery does not represent forced sterilization because nobody forces trans persons to undergo this surgery. Further it is stated in the article that if someone wishes to live in opposite gender role (with everything what belongs to it) it is not only his/her choice but it is a result of complex diagnostic and therapeutic process. The article also states that if somebody feels as member of the opposite sex but does not want to undergo complete gender reassignment transitioning, he/she should try to live in opposite or neutral gender role. Such "trans" subjects are certainly not forced to any treatment and surgery.¹⁴⁵ It is obvious from the above mentioned that medical discourse is predominant in approach towards trans persons.

With regard to hormonal treatment this requirement is not stated in any legislation (neither now nor in the previous legislation). Hormonal treatment is nevertheless common practice. The decision on it is competence of nursing sexologist who can make recommendation to the trans person to undergo medical intervention. According to our knowledge hormonal treatment is considered standard in gender reassignment treatment. It should be problematic in the case, person is not able or don't want (for any reason, for example health reasons) to undergo this hormonal treatment. In some cases it happened that surgery was made also without previous hormonal treatment. These were however specific cases. There are also cases where there is only hormonal treatment without pursuing surgeries. The consent of nursing

¹⁴³ The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec (2007) 17 on gender equality standards and mechanisms, which affirms that "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

¹⁴⁴ Section 29 of the new Civil Code.

¹⁴⁵ J. Zvěřina, *ZDRAVOTNICTVÍ: Helsinky Committee lies*, July 24th, 2012, available at <http://neviditelnypes.lidovky.cz/zdravotnictvi-helsinsky-vybor-fabuluje-ff2-/p_spolecnost.asp?c=A120724_203043_p_spolecnost_wag>, visited on 23 August 2012.

sexologist is necessary in such cases (which is also necessary in any cases of hormonal substitution for every other people than only trans people).

With regard to the preliminary procedures before medical gender reassignment and hence legal gender recognition we mentioned expert commission above. The Special Health Services Act also explicitly states that gender reassignment surgery is available only for those who proved an ability to live permanently as a person of opposite sex. The requirement of so called real life test is newly explicitly established in the legislation (because in the previous legislation there was no such requirement nevertheless real life test was common practice). The duration of the real life test is not exactly specified in the Act on Special Health Services.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

- i. Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*

The Act on Register Office¹⁴⁶ Register of Births and Deaths permits a person who is in process of gender reassignment treatment (including sexology treatment before surgery) to change his/her name and surname to neutral one on the grounds of her/his request and confirmation of medical institution providing treatments to the person.¹⁴⁷ In the course of process of legal gender recognition it is therefore possible (but not required) that the person uses his/her chosen neutral name. As examples of neutral names we can mention Nikola Janků, René Úřední, Vlasta Bártů. These are names which can be used by both sexes in the Czech language. Based on our information also the following neutral names are permitted: Chris, Dany etc. Under Act on Administrative fees, there is no administrative fee for this service. There is no list of such neutral names it often depends on consideration of particular register officer. Change of name of transsexuals to neutral one is free of charge.¹⁴⁸

After surgical gender reassignment medical institution which made the reassignment issues a certificate. Under the Population Register Act, of the recorded birth number is followingly changed to correspond with the recognized gender. It is necessary to go to the Register Office to announce the change. The new birth number is issued by the Population Register.¹⁴⁹ Based on the change of the birth number s/he can apply for other changes of name corresponding to his/her final "new" gender. It is in the discretion of each person to keep the neutral name or change it. Except for the change of the birth number, the full legal continuity is assured.

¹⁴⁶ Section 72 of the Act No. 301/2000 Coll. on Register of Births and Deaths, Name and Surname, as subsequently amended.

¹⁴⁷ In Czech language there is a difference between men's and women's names. Some of them may be neutral, i.e. names which can belong to both sexes.

¹⁴⁸ Under Act No. 386/1992 Sb. on Administrative fees, as subsequently amended.

¹⁴⁹ Section 17 of Act No. 133/2000 Sb. on Population Register, as subsequently amended.

- ii. *Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

As mentioned above, it is possible to change name under Act on Register Office. It is possible to change the name to a neutral one in the process of gender reassignment treatment and it is also possible to change the name after legal gender recognition. This “second” change is at discretion of particular person. But it is necessary that after legal gender recognition the trans person has a name which corresponds to the legal gender of the person.

The possibility to change the birth number is regulated by legislation. In connection with change of birth number, the documents such as ID and birth certificate etc. are issued. With a certificate documenting the new birth number it is subsequently possible to change also other documents, e.g. driving license, passport, eventually record in public registers, e.g. land registry etc. It is therefore possible to say that key documents can be changed. However, these changes have usually no retroactive character which can bring some problem in practice.¹⁵⁰ For example, if you have a child which has your old birth number in the birth certificate but you have different birth number in your personal documents and you are going to a doctor or to some public authority.

- iii. *Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*
- *diplomas,*
 - *certificates of employment, and*
 - *insurance or banking documents?*

Key school documents as new school certificates and diplomas are issued by primary and secondary schools and universities upon legal gender recognition. According to the information provided by the Ministry of Education, Youth, and Sports, it has not been contacted by any trans person experiencing problems with issuing a document on new name.

With regard to change of employment certificates and documents it is not specifically regulated by any particular legislation. However, the Czech law recognizes legal continuity of trans persons, who underwent the official procedure of legal gender recognition. Subsequently all private and public organizations are obliged to recognize achieved qualification on the grounds of submission of original employment certificate and certificate on gender reassignment transitioning. By this procedure trans persons have to expose themselves and are put in high risk of discrimination in the field of employment and also their right to protection of personal data is breached.¹⁵¹

¹⁵⁰ *Analysis of the Situation of Lesbian, Gay, Bisexual, and Transgender Minority in the Czech Republic* April-October 2007, Working Group for Sexual Minorities of Minister for Human Rights and Ethnic Minorities, p. 28, available at: <http://www.vlada.cz/assets/ppov/rlp/vybory/sexualni-mensiny/ANALYZA_final.pdf>, visited on August 21st, 2012.

¹⁵¹ O. Pechová, ‘Transsexual People in Contact with Public Administration’ *Multikulturní centrum Prague*, p.2, available at:

- iv. *If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

As mentioned above, there is a risk that some third party becomes aware of the gender reassignment transitioning, especially in the case of employment documents where no specific legislation exists. Based on our information from the trans community there can be also some problems with for example with change of company registration number of self-employed people or change of bank account etc.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

- i. *Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

In the Czech legislation there is no problem upon legal gender recognition to marry a person or to enter into a registered partnership. Based on our information it is also possible to undergo artificial fertilization in case of female-to-male trans person who wants to have a baby with his wife or partner. We didn't find any discrimination in this area.

With regard to private and family life, pursuant to the Special Health Services Act it is necessary to prove that before surgery connected with gender reassignment treatment, trans person didn't enter into marriage or registered partnership or didn't enter into similar relationship abroad or that marriage or registered partnership ceased to exist. The Special Health Services Act does not correspond to the New Civil Code which will come into legal force on January 1st 2014. The New Civil Code stipulates that marriage or registered partnership cease to exist automatically due to gender reassignment transitioning. The explanatory report to the New Civil Code states that "*under common practice medical institution doesn't perform gender reassignment in the case of married or registered persons and it is necessary to take into account also cases of persons who underwent gender reassignment abroad. Moreover, it is necessary to remember that it is specific habit but it is after all suitable to explicitly state this obligation in legislation for the cases where the habit is not observed.*" After the effectiveness of New Civil Code the marriages of a trans person ceases to exist automatically when undergoing gender reassignment treatment and legal gender recognition.

<http://www.mkc.cz/uploaded/antidiskriminace/Transsexualni_lide_VS.pdf>, visited on August 21st, 2012.p. 2

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

- i. Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

Yes, recognized regardless of the sexual orientation. Czech civil law knows both the term household, as well as the term close person. None of these terms refers only to two people.

For the purpose of the civil law, the household is represented by natural persons living continuously together and paying the costs of their needs jointly.¹⁵²

Furthermore, in the case two or more people (regardless of the sex) live together at least one year before the death of the testator in common household and who, due to the above reasons, took care of the common household or who were dependent on the deceased, they are considered legal heirs, who are inheriting within the second, or, as the case may be, third class (this means they would be omitted in the case the testator has children, as they would inherit within the first class).¹⁵³

Close person pursuant to the Civil Code means, besides relatives in direct line, siblings, husband and wife, and partner, also other persons in family or similar relation, if the detriment suffered by one such person would be reasonably considered own detriment by the other person.¹⁵⁴

The landlord has to accept, that together with the lessee also persons who are considered close persons of the lessee (however no joint lease of the apartment occurs to the close persons) will share the apartment with the lessee.¹⁵⁵ However, the right for passing the lease of the apartment to the close person in the case of lessee's death (apart of the husband/wife, partner, parent, siblings, son-in-law/daughter-in-law, child or grandchild) does not occur without landlord's consent.¹⁵⁶

In the case of death of person is caused, the single indemnification pertains to each close person living in common household with the defunct.¹⁵⁷ However, the Czech law does not provide for widow/er pension for the close persons, persons living in common households or to cohabiters. This pertains only to husband/wife.¹⁵⁸ Czech Penal law includes its own definition of close person.¹⁵⁹ Czech substantive penal law

¹⁵² See Section 115 of the Act No. 40/1964 Coll., Civil Code, as subsequently amended.

¹⁵³ Ibid, Sections 473 - 475.

¹⁵⁴ Ibid, Section 116.

¹⁵⁵ Ibid, Section 689.

¹⁵⁶ Ibid, Section 706.

¹⁵⁷ Ibid, Section 444.

¹⁵⁸ See Sections 49 -51 of the Act No. 155/1995 Coll., on pension insurance, as subsequently amended.

¹⁵⁹ See Section 125 of the Act. 40/2009 Coll., Penal Code, as subsequently amended: "*Close person means relative in direct line, adoptive parent, adoptive child, brother/sister, husband/wife and partner; other persons in family or other relation shall be considered close persons only in the case when detriment caused to one of such persons would the other person reasonably consider its own detriment.*"

knows e.g. offence of maltreatment of person living in common household, which applies regardless of the sex of the close person.¹⁶⁰

Penal Procedure Code knows the institute of witness secrecy, if in connection with provision of testimony the witness or his/her close person are in risk of bodily harm or other serious breach of their basic rights.¹⁶¹ Penal Procedure Code does not use the "close person" category and uses its own terminology. The right to refuse to testify as a witness pertains to the relative of the defendant in direct line, siblings, adoptive parent, adoptive child, husband/wife, partner and cohabitee, namely in the case when he/she would cause a risk of penal proceedings by his/her testimony to his/her relative in direct line, siblings, adoptive parent, adoptive child, husband/wife, partner and cohabitee or to other people in family or similar relationships to him/her, the detriment of who he/she would reasonably feel as his/her own detriment. The above mentioned does not apply to the offences in the case of which notification obligation exists.¹⁶²

Also Act on minor offences includes its own definition of close person, based to which the close person means besides relatives in direct line, adoptive parent, adoptive child, brother/sister, husband/wife, partner, also other persons in family or similar relation, however only in the case if the detriment suffered by one such person would be reasonably considered own detriment by the other person.¹⁶³

Act on Minor offences makes it possible to everyone to refuse to provide explanation, if the risk of sanction for minor offence or crime could occur to his/her close persons.¹⁶⁴ It results from the above mentioned, that Czech law has several definitions of the term "close person", which are almost the same. Generally, we could state that in some situations Czech law reflects also simple informal cohabitation of two or more people regardless of their sex. However, the list of such situations is not very long.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

- i. Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

Czech law knows registered partnership of same-sex people.¹⁶⁵ The registered partnership may be concluded by persons, of whom at least one is the citizen of the Czech Republic. Czech law does not know the registered partnership of different-sex people. It explicitly results from the explanatory report to the draft of the Registered

¹⁶⁰ Ibid, Section 199.

¹⁶¹ See Section 55 of the Act No. 141/1961 Coll., on Penal Court Proceedings (Penal Procedure Code), as subsequently amended.

¹⁶² Ibid, Section 100.

¹⁶³ See Section 68 (4) of the Act No. 200/1990 Coll., on minor offences, as subsequently amended.

¹⁶⁴ Ibid, Section 60.

¹⁶⁵ See Act No. 115/2006 Coll., on the registered partnership, as subsequently amended.

Partnership Act, that the legal regulation of the registered partnership is proposed exclusively for same-sex homosexual couples. Different-sex people can conclude the marriage. The marriage is reserved to different-sex people exclusively.¹⁶⁶

However, many differences to the extent of rights and obligations exist pertaining to married couples, which are not provided to the people in registered partnership. In the case of the registered partnership, e.g. in comparison with the different-sex people's marriage:

- the existence of the registered partnership represents an obstacle for a person living in the registered partnership to become adoptive parent (either as individual adoptive parent or joint adoptive parent, not even as adoptive parent of partner's child);¹⁶⁷
- the institute of common property of partners does not exist, common property can only occur amongst married couples;¹⁶⁸
- no automatic joint lease of the apartment exists, however the partner does not need the landlord's consent to live with his/her partner in the leased apartment;¹⁶⁹
- in the case of inheritance and gift tax the persons living in the registered partnership are members of other, less advantageous class than married couples; moreover in the case of partners there is a difference if they shared the common household for at least one year or not (this influences e.g. also the fact if in the case of inheritance and gift tax exception from tax applies as in the case of marriage, or if, on the other hand, the least advantageous tax rates are to be applied);¹⁷⁰
- persons in registered partnership cannot use some further tax advantages pertaining to married couples;
- widow/er pension does not exist;¹⁷¹
- there is limited choice of fourteen registry offices, where it is possible to conclude the registered partnership, whereas it is possible to enter into marriage at any of registry offices or by any church or religious society recognized by the state having the right provided by the state to execute the act of conclusion of marriage, whereas pursuant to Czech law it is also possible to conclude the marriage at any embassy of the Czech Republic abroad;¹⁷²
- In connection with preparation for conclusion of the registered partnership and participation on the ceremony of registered partnership conclusion, no right to free days pertains to the employee, whereas
- in the case of marriage, the employee has the right for 2 free days, of which 1 days is provided for the participation on the ceremony and the employee has

¹⁶⁶ See Section 1 of the Act No. 94/1963 Coll., on family, as subsequently amended.

¹⁶⁷ See Section 13 (2) of the Act No. 115/2006 Coll., on registered partnership, as subsequently amended.

¹⁶⁸ See Sections 136 and 143 – 151 of the Act No. 40/1964 Sb., Civil Code, as subsequently amended.

¹⁶⁹ Ibid, Sections 689 a 706.

¹⁷⁰ See Section 11 of the Act No. 357/1992 Coll., on inheritance tax, gift tax, and real estate transfer tax, as subsequently amended.

¹⁷¹ See Sections 49 -51 of the Act No. 155/1995 Coll., on pension insurance, as subsequently amended.

¹⁷² See Decree of Ministry of Interior No. 300/2006 Sb., implementing Act No. 115/2006 Coll., on registered partnership and on amendment of some connected acts, and amending the Decree No. 207/2001 Coll., implementing č. 301/2000 Sb., on registry offices, name and surname and on amendment of some connected acts, as subsequently amended.

the right for indemnification amounting to wage for 1 day; similar disadvantage applies also to the parents and children of the person intending to enter into the registered partnership.¹⁷³

To the contrary of the marriage, the regulation of the registered partnership was not included into the new Civil Code, which was passed and which comes into force on January 1st, 2014.¹⁷⁴ Based on the explanatory report the new Civil Code should represent modern codification of the whole civil law regulating any and all civil-law relations. With regard to this fact the experts working on the draft of the previous versions of the Code included also the regulation of the registered partnership into the new Civil Code. With regard to actual composition of the Government coalition however, the Government was not prepared to admit that the regulation of registered partnership becomes a part of the family law and to consider registered partnership as civil-law relations, as it is often stated that the registered partnership is merely public-law act. Therefore the regulation of the registered partnership was not included into the new Civil Code and remains separated in form of individual Act.

If not stipulated otherwise in this report, the validity of the new Civil Code does not bring any changes regarding the extent of rights and obligations of partners. In today's applicable legal regulations there is no notice on recognition of registered partnerships and other relations of the same-sex persons concluded abroad; explicit regulation is only included in the new International Private and Procedure Law Act which was already passed and which become effective on January 1st, 2014.¹⁷⁵ For the purpose of completeness of information we add, that the Firth Chapter of the Fourth Part of the Act is called "Registered partnerships and other relations"¹⁷⁶, whereas the previous part firth is denominated "Family Law"¹⁷⁷, by which the legislator again shows, that it does not consider the registered partnership a part of the family law).

It is regulation different from the regulation of marriage. E.g. for existence of competence of Czech courts to decide on the divorce or invalidity of the marriage different assumptions apply than for the competence of the Czech court to decide on cancellation or invalidity of the registered partnership.¹⁷⁸

The new Act on International Private and Procedure Law regulates also the possibility to conclude the marriage pursuant to Czech law also at the embassy of the Czech Republic abroad. In the case of the registered partnership neither this Act or the Registered Partnership Act, nor any other implementing regulations does not regulate the possibility to conclude the registered partnership pursuant to Czech law also on the Embassy of the Czech Republic abroad.¹⁷⁹

On the other hand, the new International Private and Procedure Law Act includes explicit ban for the citizen of the Czech Republic to conclude a marriage at the embassy of foreign state in the Czech Republic. However, such ban does not apply for the registered partnership and it is therefore questionable, how would the Czech law

¹⁷³ See Government Order No. 590/2006 Coll., stipulating the areas and extent of other important personal obstacles for work.

¹⁷⁴ See Act No. 89/2012 Coll., Civil Code.

¹⁷⁵ See Act No. 91/2012 Coll., on International Private Law.

¹⁷⁶ Ibid, Section 67.

¹⁷⁷ Ibid, Sections 47 – 66.

¹⁷⁸ Ibid, Sections 47 a 67.

¹⁷⁹ Ibid, Sections 48 a 67.

react on such registered partnership or, as the case may be, same-sex marriage, which pursuant to Czech law belongs to the category of registered partnership and similar relations.¹⁸⁰

As positive we can see the fact that at least based on the wording of the law, the foreign registered partnerships will be apparently recognized without any further needs, whereas the registered partnership or similar relationships and their results, qualification to conclude them, as well as their cancellation, invalidity, and inexistence shall be governed by the law of the state, where such registered partnership or similar relationships is or was concluded. The same law shall apply also for regulation of personal and proprietary relations of partners, regardless of the fact if the Czech law provides for any proprietary rights for the partners living in the registered partnership concluded pursuant to Czech law or not.

With regard to the above mentioned there should be no decrease or increase of extent of rights and obligations of persons, who concluded the partnership or same-sex marriage abroad to align them with extent of rights and obligations stipulated by the Czech legal regulations. Foreign decision on cancellation, invalidity, inexistence of registered partnership or similar relationships issued in the state, where such registered partnership or similar relations was or can be concluded, shall be recognized without any further proceedings in the future.¹⁸¹

Such a comparison of relations between marriage and registered partnership would require much deeper analysis for which it would also be necessary to know the practice of administrative and court bodies which is impossible due to the fact that the new International Private and Procedure Law Act shall only come into force on January 1st, 2014.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

- i. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

Obsolete.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental

¹⁸⁰ Ibid, Sections 48 a 67.

¹⁸¹ Ibid, Section 67.

responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

- i. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*

Public authorities declare, that while deciding they act in line with discrimination prohibition.¹⁸² The Registered Partnership Act expressively stipulates that partnership represents no obstacle for execution of parental responsibility of the partner to his/her child or for placing of his/her child into his/her care. Moreover it provides for the obligation of the parent's partner, if they live in common household, to assure child's development and duly protect its interests.¹⁸³

While deciding on the regulation of the child's education, i.e. while deciding on child custody of one of parents, or, as the case may be, joint or alternate child custody, the court shall follow the child's interests with regard to its personality, in particular, talents, abilities and development possibilities as well as with regard to parent's standard of living. It shall take care of respecting both parent's right for providing care and keeping regular personal contact with children as well as other parent's right, to which the child is not entrusted into custody, to have regular information about the child. The court shall also take into account the sensitive orientation and background of the child, educational possibilities and responsibility of parent, stability of the future educational environment, ability of the parent to agree with the other parent on education of the child, to sensitive liaisons of the child to siblings, grandparents and other relatives, as well as the material security on the side of parent including the housing. The court shall always take into account who took care of the sensitive, intellectual, and moral education of the child besides providing due care of it.¹⁸⁴ Parents' sexual orientation plays no relevant role in f the court deciding on regulation of child's education.

- ii. In practice, are such decisions taken on a non-discriminatory basis?*

¹⁸² See Arts. 1 and 3 of the resolution of the Presidency of the Czech National Council No. 2/1993 Coll., on adoption of the CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS as integral part of the constitutional order of the Czech Republic, as subsequently amended.

Art. 21 (1) of the Chart of fundamental rights of the European Union included in the Notice of the Ministry of Foreign Affairs No. 111/2009 Coll. I.T.

Sections 1 a 2 of the Act No. 198/2009 Coll., on equal treatment and on legal measures for protection against discrimination and on amendment of certain Acts (Anti-Discrimination Act), as subsequently amended.

¹⁸³ Section 13 (1) of the Act No. 115/2006 Coll., on Registered Partnership: "*Existence of partnership does not represent an obstacle for execution of parental responsibility of a partner towards his/her child, or an obstacle of entrustment of a child into parent's education. Partner, who is parent, shall assure the development of the child and duly protect its interests while using adequate educational methods in a way the dignity of the child and its health, as well as physical, sensitive, intellectual, and moral development are not put in danger.*"

¹⁸⁴ See Section 26 of the Act No. 94/1963 Coll., on Family, as subsequently amended.

The author of this report has no information about any cases from the last ten years, when a discriminatory decision would be issued, i.e. when child would not be entrusted into custody to the parent due to his/her sexual orientation.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

- i. What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*

Czech laws know several different options of entrusting a child into custody or for education, i.e. of forms of foster care, namely:

- tutelage;¹⁸⁵
- wardship;¹⁸⁶
- entrusting into education;¹⁸⁷
- foster care^{188 a}
- adoption;¹⁸⁹

whereas the individual options are connected with different extent of rights and obligations.

As in the case of entrustment of a child for education of one of parents, also in the above mentioned cases the ban of discrimination based on sexual orientation applies, however, as we will show later, certain distinction based on sexual orientation of applicant occurs already based on legal requirements.

At the moment, joint wardship is only possible, in the case both guardian are married.¹⁹⁰ Pursuant to the new Civil Code, the joint wardship will also be possible for two persons, who are not married, regardless of their sex and regardless of the fact if they live in registered partnership or not, nonetheless it arises from the working of the new Civil Code, that precedence shall be given to the married couples.¹⁹¹ Entrusting into joint education is provided for by the Act again only in the case of married couples.¹⁹²

In the case of foster care there is a difference between the entrusting into foster care of one person or entrusting into joint foster care. The person of foster parent must provide warranty of due education of the child. It is possible to give child into

¹⁸⁵ Ibid, Sections 83 a 84.

¹⁸⁶ Ibid, Sections 78 – 82.

¹⁸⁷ Ibid, Section 45.

¹⁸⁸ Ibid, Sections 45a – 45d.

¹⁸⁹ Ibid, Sections 63 - 77.

¹⁹⁰ Ibid, Section 79.

¹⁹¹ See Section 932 of the Act No. 89/2012 Coll., Civil Code.

¹⁹² See Section 45 Of the Act No. 94/1963 Coll., on Family, as subsequently amended.

individual foster care regardless of the fact if the foster parent is married, if he/she lives in registered partnership, with cohabitee in unofficial relationship or alone. In the 2010, for the first time a child was given into foster care to a person who lived in registered partnership; it was handicapped child for which it was impossible to find a family.¹⁹³ It is only possible to give child into joint foster care to a married couple.¹⁹⁴ Joint foster care cannot be provided by homosexual registered or non-registered couples, or heterosexual non-married couples.

Also in the case of adoption we distinguish adoption by single person or joint adoption as well as revocable or irrevocable adoption. Based on the wording of the law, the first point of view while deciding on adoption of the child shall be the best interest of the child.¹⁹⁵ Czech bodies define adoption as legal institute of replacing family care, primarily established for assurance of due education of children, who cannot be raised in their own families, and not the purpose of satisfaction of need of applicants for adoption of a child.

Precedence shall be given to joint adoption of a child and to its incorporation into complete family and the individual adoption of a child by one adoptive parent is only possible exceptionally in selected cases. However, pursuant to Czech law joint adoption is only reserved for married couples.¹⁹⁶

Individual adoption of a child by homosexual person is only possible if such person does not live in registered partnership. Prohibition of adoption included in the Registered Partnership Act can be considered as directly discriminatory, as LGBT people can adopt a child individually, if they live with partner in informal relationship, however, if they enter into the registered partnership, the possibility of adoption is refused to them. Partners in married couples can adopt a child also individually also after entering into marriage; they only need the consent of the husband/wife. We have to add, that the existence of registered partnership represents an obstacle for any adoption, i.e. also in the case of adoption of partner's child (second partner adoption).¹⁹⁷ Struggles to abolish this discriminatory provision were unsuccessful until today.

New Civil Code will bring no change to issues of adoption of a child, either positive or negative.

II. *In practice, are such decisions taken on a non-discriminatory basis?*

¹⁹³ ČT24, 'První registrovaný pár získal dítě do pěstounské péče' (*The first couple in registered partnership received a child into foster care*), June 10th, 2011, available at: <<http://www.munimedia.cz/prispevek/jiny-pohled-na-ceskoslovensky-film-i-homosexualni-holocaust-i-to-budou-letosni-mezipatra-2056/>>, visited on August 22nd, 2012.

¹⁹⁴ Ibid, Section 45a.

¹⁹⁵ See Art. 3 (1) of the notice of the Federal Ministry of Foreign Affairs No. 104/1991 Coll., Children's right Convention, as subsequently amended.

¹⁹⁶ See Section 66 of the Act No. 94/1963 Coll., on Family, as subsequently amended.

¹⁹⁷ See Section 13 (2) of the Act No. 115/2006 Coll., on Registered Partnership, as subsequently amended: "*Existing partnership represents an obstacle for any of partners to become adoptive parent of a child.*"

The author of the report has no information about any cases, when courts would refuse to grant the application for adoption of a child by a person living in same-sex relationship or due to sexual orientation of the applicant. On the other hand, we do not know any case, when a person living with the person of the same sex would really adopt a child.

Czech authorities do also not recognize joint adoption of same-sex persons occurred in line with law of other state.¹⁹⁸ They refer to reservation of public order. Pursuant to Section 63 (1) of the Act No. 91/2012 Coll., on International Private Law, which will come into force on January 1st, 2014, it will not be possible in the Czech republic to recognize adoption, if at the moment of adoption, the adoptive parent, some of adoptive parents, or adopted child, were Czech citizens, if it is in breach with public order or if adoption would not be admissible pursuant to substantive provisions of Czech law (i.e. e.g. when adoptive parents would live in registered partnership).

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

- i. What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*

Czech law does not make it possible for a single woman, to receive artificial insemination. The application has to be signed by a man and a woman, who live in together and want to undergo the insemination together (see Section 6 of the Act No. 373/2011 Coll., on Special Health Services). In the 2008 the draft of the Healthcare Act was submitted to the Government, making it possible also for a woman alone without partner to undergo the artificial insemination, which would have made it possible also for lesbian couples to undergo artificial insemination;¹⁹⁹ however, this draft was not approved. Such possibility was no more incorporated into the Special Health Services Act²⁰⁰, finally passed in the 2011, nonetheless the Commissioner of the Government for Human Rights proposed to amend the draft by such possibility.

- ii. In practice, is such access granted on a non-discriminatory basis?*

¹⁹⁸ On August 17th, 2012 the Municipality of the Capital City of Prague issued two decisions, by which it refused to issue the certificate on state citizenship of the Czech Republic for two children, twins, adopted pursuant to law of the State of California by the Czech and French citizen who live in California in same-sex relationship. As interlocutory issue for decision on issuance of the certificate on state citizenship it was necessary to decide, if the adoption made pursuant to the law of the State of California is to be recognized. Czech authorities decided that joint adoption of same-sex couple is in breach with public order of the Czech Republic and therefore the application for issuance of the certificate on the state citizenship of the Czech Republic was refused. It is likely that the case will continue within the administrative proceedings.

¹⁹⁹ L. Petrášková, 'Osamělým ženám svitla naděje na umělé oplodnění' (Lonely women have hope for artificial insemination now), October 24th, 2007, available at: <http://zpravy.idnes.cz/osamelym-zenam-svitla-nadeje-na-umele-oplodneni-f5w-/domaci.aspx?c=A071023_223229_domaci_zra>, visited on August 24th, 2012.

²⁰⁰ Act No. 373/2011 Coll., on Special Health Services.

Obsolete.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

i. Does legislation²⁰¹ exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?

Discrimination in employment in the public, as well as private sector, is prohibited by the Labour Code²⁰², the Anti-discrimination Act²⁰³ and Employment Act.²⁰⁴

ii. Does it cover:

- *access to employment (including recruitment); promotion,*
- *dismissals,*
- *pay,*
- *harassment and other forms of victimisation?*

The Labour Code stipulates the employers' obligation to ensure equal treatment for all employees²⁰⁵, which applies to working conditions (including *promotion* and *dismissals*), wage, and the provision of monetary performances and vocational training. The Labour Code bans discrimination in employment. As for the definitions of terms such as direct discrimination, indirect discrimination, harassment, sexual harassment, bullying, instruction to discriminate and incitement to discrimination, admissible forms of unequal treatment, as well as legal means of protection against discrimination, it refers to the Anti-discrimination Act.

²⁰¹ Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights -- Interpretation of the Different Provisions -- Article 1 -- right to work -- http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf). The EU Employment Directive provides the following definition of indirect discrimination: "where an apparently neutral provision, criterion or practice would put persons having a particular sexual orientation at a particular disadvantage compared with other persons"

²⁰² Act No. 262/2006 Coll., the Labour Code, as subsequently amended.

²⁰³ Act No. 198/2009 Coll., the Anti-discrimination Act.

²⁰⁴ Act No. 435/2004 Coll., on Employment, as subsequently amended.

²⁰⁵ Section 16 of the Labour Code, as subsequently amended.

One admissible form of unequal treatment is mentioned in the Labour Code directly – in case there are substantial requirements that are necessary for the performance of a given job. Such an exception must follow a legitimate aim and the requirement of the job must be proportionate. Another set of exceptions are positive measures, i.e. measures that aim to overcome disadvantages of a particular person. These disadvantages must be based on the affiliation of this person to one of the groups defined by one of the reasons of discrimination as laid down in the Anti-discrimination Act. In theory, a positive measure may be adopted in order to overcome disadvantages of LGBT persons in relation to a particular employer or job.

The Prague Pride 2012 Business Forum 2.0²⁰⁶, a conference with a subtitle “Diversity in Leadership”, has shown that there is interest on the side of businesses to pay special attention to LGBT issues. Several major businesses took part in this event – IBM, Hilton, Vodafone and Česká spořitelna (leading Czech bank). The diversity forum has shown that there are employers who are willing to support LGBT persons; however, the impression from this event is also that these can be found mainly amongst larger international businesses.

The Anti-discrimination Act is a general law aiming to ensure equal treatment and banning discrimination (not only in employment). Among other areas, equal treatment must be ensured and discriminatory treatment or behaviour is banned in these fields with relation to work and employment:

- The right to employment and *access to employment*,
- Access to occupation, business activities, and other forms of self-employment,
- Employment relations (e.g. *promotion*), service relations and all activities in the context of employment, including *pay*,
- Membership and activities in trade unions, employee councils, or employers’ organisations, including benefits that these organisations provide to their members,
- Membership and activities in professional chambers, including benefits that these public-law corporations provide to their members,
- Social security.²⁰⁷

The Anti-discrimination Act bans discrimination on the basis of: race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief, or world opinion²⁰⁸. Under discrimination based on sex, also discrimination based on pregnancy, motherhood, fatherhood, or gender identification is to be understood²⁰⁹. The Anti-discrimination Act considers *harassment, sexual harassment, victimisation, as well as instruction to discriminate and incitement to discrimination*, to be forms of discrimination.²¹⁰

²⁰⁶ Available at: <<http://www.praguepride.com/index.php?page=prague-pride-2012-business-forum>>, visited on August 4th, 2012.

²⁰⁷ Section 1 of the Anti-discrimination Act.

²⁰⁸ Ibid, Section 2 (3).

²⁰⁹ Ibid, Section 2 (4).

²¹⁰ Ibid, Section 2 (2): “(1) *Harassment shall mean any unwanted conduct associated with the grounds specified in Section 2 (3), a) taking place with the purpose or effect of diminishing the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment, or b) which could be legitimately be perceived as a precondition for a decision affecting the exercise of rights and obligations following from legal relationships.* (2) *Sexual harassment shall*

Employment Act, covers mainly relations with regard to access to employment. The law lays down an obligation²¹¹ for employers and other natural and legal persons performing activities under the law on employment, the Ministry of Labour and Social Affairs and the Labour Office to ensure equal treatment for all persons that exercise the right to employment. In the exercise of the right to employment, any form of discrimination is forbidden. This law also bans discriminatory job offers²¹². Moreover, employers may not request from job applicants information on their sexual orientation (among others)²¹³. The recruitment process must ensure equal treatment with all job applicants. The breach of the obligation to ensure equal treatment is a misdemeanour punishable by a fine up to CZK 1,000,000.²¹⁴

Persons who have been discrimination victims may turn to the Labour inspection. The Act on Labour Inspection²¹⁵, adopted in the 2005, has introduced a system of labour inspectorates – controlling bodies in labour law relations and employment conditions. The law has introduced four types of misdemeanours in the field of equal treatment – the non-securing of equal treatment for all employees, discrimination of an employee, punishment or disadvantaging of an employee for having enforced his/her rights, omitting to discuss employee’s complaint. These misdemeanours may be punished by a fine up to CZK 400,000 CZK (EUR 16,000).

iii. Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:

- *adoption of codes of conduct for both employers and employees;*
- *training and awareness raising programmes for both employers and employees;*
- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
- *recruitment efforts directed at LGBT persons;*
- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
- *co-operation with and support for employee groupings of LGBT persons?*

It took several years even to achieve the adoption of the Anti-discrimination Act finally. At the end, one of the strongest arguments for politicians was the necessity to implement EU directives relating to equal treatment, the Directive 78/2000/EC in particular, establishing a general framework for equal treatment in employment and occupation, Directive 2000/43/EC, implementing the principle of equal treatment of

mean any conduct of a sexual nature under paragraph 1 above. (3) Victimisation shall be any adverse treatment, sanction or disadvantage that has occurred as a result of exercise of the rights under this Act. (4) Instruction to discriminate shall mean the conduct of a person who misuses the subordinate position of another to discriminate against a third party. (5) Inciting discrimination shall mean the conduct of a person who persuades, confirms or encourages another to discriminate against a third party.”

²¹¹ Section 4 of the Employment Act.

²¹² Ibid, Section 12.

²¹³ Ibid.

²¹⁴ Ibid, Section 139-140.

²¹⁵ Act No. 251/2005 Coll., on Labour Inspection, as subsequently amended.

persons irrespective of racial or ethnic origin.²¹⁶ Apart from the necessity to abide by obligations arising from EU membership, the Czech authorities did not do anything of non-legislative nature in support of equal treatment for LGBTs.

The State labour inspectorate published an information brochure²¹⁷ “Equal treatment at workplace”, informing employees about legal regulation protecting against discrimination and giving advice, what to do in the case of need. The brochure, however, does not pay special attention to sexual orientation or gender identity.

In May 2012, the Government adopted²¹⁸ a Code of Ethics for officials and public administration employees. The Code is binding for all employees working in public administration. The Code requires that the conduct of public officials is highly professional, in line with the principle of equal treatment, and without any discrimination based on skin colour, sex, nationality, religion, ethnic origin, or other characteristics. From this wording, it can be derived that sexual orientation can be one of those characteristics, even though it is not explicitly mentioned. No discrimination, harassment, or prejudicial behaviour is permitted. The adoption of the Code of Ethics had massive coverage in the Czech media, however, mainly with regard to new measures against corruption. As such, the Code was also presented to the public by the Government in its press release.²¹⁹ A major breach of the Code is punishable as a breach of the Labour Code. The Government imposed on its members and on the rest of public administration bodies an obligation to use this Code for the creation of their own codes of ethics. Moreover, the Ministry of the Interior has a task to draft legislative changes legally binding public administration bodies to elaborate and publish codes of ethics. According to the Government Procedure Rules, a task without an exact deadline has to be fulfilled within 30 days as of the adoption of respective decision (in the present case, until June 9th, 2012). However, to date (July 30th, 2012), no legislative changes were submitted to the Government for consideration.

Education in public administration is coordinated by the Ministry of the Interior. The Rules for Education of public administration employees, adopted by the Government in the 2005, are binding for all public administration offices and include also human rights and fundamental freedoms. The topic of human rights and fundamental freedoms, however, is only one part of a 8-hour educational bloc called “The legal system of the Czech Republic”, which also includes two other, rather different themes: the constitutional order of the Czech Republic and the basics of administrative procedures. It is therefore evident, that issues such as equality of LGBTs at workplace may be hardly mentioned in the course of such a brief and widely defined educational programme.

²¹⁶ Explanatory report to the Anti-discrimination Act, Government of the Czech Republic, June 11th, 2007.

²¹⁷ The brochure is available on the website of the State Labour Inspectorate: Available at: <http://www.suip.cz/files/suip-f2cb873b825e58c658552e38f84d16ed/rovne_zachazeni_cerven_2012.pdf>, visited on August 24th, 2012.

²¹⁸ Government Decision No. 331 of May 9th, 2012.

²¹⁹ Available at: <<http://www.vlada.cz/cz/media-centrum/aktualne/eticky-kodex-uredniku-minimalizuje-korupcni-jednani-95380/>>, visited on August 4th, 2012.

The leading trade union organisation – Czech-Moravian Confederation of Trade Unions – has published “Legal minimum for employees”²²⁰, a brochure supported by the European Social Fund, which contains also information on the ban on discrimination, the Anti-discrimination Act and legal means for remedy.

No specific programme on promotion of measures to combat discrimination by the authorities, as mentioned in 29.iii, was identified. No recruitment efforts directed at LGBT persons were identified. These efforts may be performed by private companies, but, to our knowledge, they are not part of any Government supported policy. The authorities have not adopted any non-discrimination policy explicitly referencing sexual orientation and gender identity. The author has no information on governmental support of and cooperation with employee groupings of LGBT persons.²²¹

iv. Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?

Act on Professional Soldiers²²² lays down the obligation of military service institutions to ensure equal treatment for all professional soldiers as well as for all applicants for service in the army, especially with regard to the conditions of service performance, vocational training, promotion, pay, and other monetary performances. The law bans discrimination of applicants, as well as soldiers, on the basis of race, colour, sex, sexual orientation, religion and belief, nationality, ethnic and social origin, property, gender, marital and family status and family obligations, pregnancy, maternity or because of breastfeeding of a female-soldier.²²³ In the case of violation of rights, the law envisages filing a complaint. The provisions of equal treatment and non-discrimination were incorporated into the law in the 2000.

Act on Health Eligibility for Active Service in Armed Forces²²⁴ lists “gender identity disorder” as one of mental and behavioural disorders. F64 diagnosis may lead to ineligibility to serve in armed forces. Even though the 2007 Analysis of the lesbian, gay, bisexual, and transgender minority in the Czech Republic²²⁵ recommended that the F64 diagnosis is removed, no action has been taken.

Act on terms of service of Security forces members²²⁶ imposes obligations on security forces (i.e. police, fire corps, board of customs, prison security, General inspection of security forces, intelligence services and the Office for Foreign Relations and Information (foreign intelligence service)) to ensure equal treatment for all members.

²²⁰ Legal minimum for employees, Czech-Moravian Confederation of Trade Unions and Association of Independent Trade Unions, Prague, 2011. Available at:

<http://www.cmkos.cz/data/articles/down_3134.pdf>, visited on August 21st, 2012.

²²¹ The response to question 29.iii is completely missing in information received by the author from the Ministry of Labour and Social Affairs in response to Proud’s inquiries.

²²² Act No. 221/1999 Coll., on Professional Soldiers, as subsequently amended.

²²³ Section 2 of the Act on Professional Soldiers, as subsequently amended.

²²⁴ Act No. 103/2005 Coll., on Health Eligibility for Active Service in Armed Forces

²²⁵ Available at: <http://www.vlada.cz/assets/ppov/rlp/vybory/sexualni-mensiny/CZ_analyza_web.pdf>, visited on August 8th, 2012

²²⁶ Act No. 361/2003 Coll., on Service Terms of Security Forces Members, as subsequently amended.

In the case of breach of this obligation, a member of security force may file a complaint at a court of justice.²²⁷

v. Specifically in relation to the armed forces:

- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
- *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

According to the Act on Professional Soldiers *“Army service body or soldier must not abuse the exercise of rights and obligations arising from the service to the detriment of another soldier or to degrade his dignity. As humiliation dignity is regarded unwanted conduct of a sexual nature, and all forms of harassment aimed at violating the dignity of a soldier, creating an intimidating, hostile, degrading, humiliating or offensive environment, and which are unwelcome, inappropriate or may be the second soldier rightly perceived as a condition for decisions that affect the exercise of the rights and obligations of service.”*

Army service bodies must not disadvantage any soldier because he/she is lawfully seeking their rights and claims arising out of the service. The Army has established complaints procedure by which any soldier might complain of serious violations of human rights to Chief inspector of human rights while considering of severity is done by the complainant, not by the Chief inspector of human rights. The line (email, phone line) of the Chief Inspector of human rights was also established, the line can be used by every soldier and civilian employee to address questions, complaints and suggestions.

vi. Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?

Discrimination in general is regulated the Anti-Discrimination Act that prohibits discrimination on the grounds of sex in many areas. The Anti-Discrimination Act explicitly states that discrimination on the grounds of gender identification is considered discrimination on the grounds of sex. It results from this that gender identification is one of the reason on which it is unacceptable to be discriminated. Based on the explanatory report to the Anti-Discrimination Act prohibition of discrimination on the grounds of gender identification is applicable to all situations regardless of whether a trans person intends to, undergoes, has been undergoing underwent transitioning or not. There were no court cases concerning discrimination of trans person from the adoption of the Anti-Discrimination Act.

With regard to reality about discrimination there are no statistical data available in the Czech Republic about discrimination on grounds of gender identification. Nevertheless, trans persons are reportedly often discriminated. It is quite often because trans persons are quite easy to recognize. They are often refused not only by

²²⁷ Section 77 of the Act on Service Terms of Security Forces Members.

the majority but also by the LGBT community. Discrimination in access to goods & services is widespread. However, discrimination in the area of employment is even more severe. Trans persons are most vulnerable in the process of legal gender recognition when their documents do not correspond to their external appearance and identity. This situation also concerns those trans persons who don't want or are not able to undergo gender reassignment treatment.²²⁸ Although it should be punishable under the Czech law discrimination on grounds of gender identity is still relatively common phenomenon. It is caused amongst others by ignorance and incomprehension which usually create fear and intolerance. Often prejudice is that trans persons are not suitable in some professions.²²⁹

One of a few known examples is the case of Ms. Jaroslava Brokešová. She applied for admission to the Army of the Czech Republic upon legal gender recognition but her application was rejected. She successfully completed all admission tests including medical examination. However her application was rejected based on her transsexualism. Finally, Minister of Defence dealt with her case nevertheless military medical commission of appeal confirmed rejection with reference to health problems of Ms. Jaroslava Brokešová. Ms. Jaroslava Brokešová finally didn't submit any further legal action²³⁰ among others because access to justice and redress mechanism of trans people is often difficult. Trans persons are also openly discriminated against as regards their entrance to the Army of the Czech Republic. Regulation No. 103/2005 on Health Capability to Military Service establishes that diagnosis F 64.0 (gender identity disorder) is a reason for exclusion or restricting active military service.

vii. Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?

Based on our information there are no specific programs directly focusing on employment opportunities of trans persons. We received no information concerning this area from Ministry of Labor and Social Affairs. Based on information from some members of the trans community it would be useful to provide specific kind of social assistance in case of unemployment and it is quite difficult to find a new one.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

²²⁸ *Analysis of the Situation of Lesbian, Gay, Bisexual and Transgender Minority in the Czech Republic* April-October 2007, Working Group for Sexual Minorities of minister for human rights and ethnic minorities, p. 28 - 29, <http://www.vlada.cz/assets/ppov/rlp/vybory/sexualni-mensiny/ANALYZA_final.pdf>, visited on August 21st, 2012.

²²⁹ O. Pechová, 'Transsexual People in Contact with Public Administration' *Multikulturní centrum Prague* 4-5

²³⁰ *Ibid.* p. 4

- i. Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment? n the context of employment?*

As mentioned above, in the Czech Republic it is possible to change name, birth number, school certificates etc. in connection with gender reassignment transitioning. The Czech legislation also recognizes legal continuity of trans persons. However, there is no specific law regarding the change of working documents. We are not aware of any case where a trans person's gender history or former name in the context of employment were disclosed but we cannot exclude it. Trans persons are most vulnerable during the process of transitioning. Persons in this process should receive special attention and protection. But as mentioned above, there is no specific law concerning protection of trans persons in connection with work and employment.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

i. Have

- *equality and safety policies,*
- *codes of conduct and*
- *handbooks*

for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?

Education Act²³¹, which regulates pre-school, elementary, high, tertiary, and other education

states that education is based on the principle of equal access for every citizen of the Czech Republic and of other EU member states without any discrimination based on a number of explicitly listed reasons, whereas sexual orientation or gender identity are not included in that list. However, the list is only illustrative and sexual orientation or gender identity can be deduced from "other reasons". The Universities Act does not include any anti-discriminatory provision. The Anti-Discrimination Act establishes the duty to assure equal treatment and bans discrimination in access to education and in providing it, also based on sexual orientation or gender identity.

²³¹ Section 2 (1) of the Act on pre-school, elementary, high, tertiary and other education (Education Act), as subsequently amended.

*Methodology Guideline of the Ministry of Education, Youth, and Sports for prevention and solution of bullying at schools and schooling facilities*²³² was issued in the 2008. It provides a detailed description of how to recognize bullying, and steps to be taken by the school. The guideline describes various concrete manifestations of bullying, it does not specify bullying motivated by homophobia or transphobia.

Furthermore, in the 2010, *Guideline for primary prevention of risky behavior of children, pupils, and students at schools and schooling facilities*²³³ was issued by the Ministry of Education, Youth, and Sports. According to this guideline, the primary prevention of risky behavior of pupils under the agency of the Ministry is mainly focused on the prevention of the development of risks leading up to risky expressions in the pupils' behavior such as extremism, racism, and xenophobia, homophobia. The directive also includes general concept for risky behavior in school environment – homophobia.

In January 2010, based on impulse from the Committee for Sexual Minorities, the Office of the Government published a handbook for teachers of elementary and high schools entitled *Homophobia in school groups*. Through the Ministry of Education, Youth, and Sports the handbook was distributed to regional prevention methodologists for use at schools. It was also made available on the internet site of the Government Council for Human Rights and Committee for Sexual Minorities.²³⁴ The handbook designed mainly for educators, especially prevention methodologists, includes a foreword of the then Minister of Education, Klára Laurenčíková. The handbook provides a clear description of homophobic harassment expressions and bullying. It identifies and describes types of people who commit homophobic bullying and reasons leading them to do so. It also describes groups of people (pupils), who are potentially endangered by homophobia. The publication presents guidelines for prevention of homophobic bullying, placing the utmost importance on preventive measures. The second, didactic application, offers selected techniques – games with psychological content and other options for classroom work. These are meant for educators wishing to explore the issue in depth and work with the classroom in subjects such as health education, civic education, or personal development. The role of the Ministry of Education, Youth, and Sports was not particularly progressive, however, the material can be found on the website of the Ministry. The main asset of the institution is the possibility for the handbook to be published as part of an official line of educational materials used in Czech schools and the distribution to prevention methodologists, however, feedback is currently unknown.

The team of authors Pavlík, Smetáčková, Kolářová published a reviewed handbook for university educators *Sexual harassment at universities, where it originates, how it manifests, and what can be done against it*, in the 2010. It was based on a research project Sexual harassment at universities: incidence and perception, carried out by the Faculty of Humanities at the Charles University in the 2008-2009 with financial support of the Ministry of Education, Youth, and Sports. The handbook not only deals with the issue from a theoretical perspective but also presents examples of good

²³² Metodický pokyn ministra školství, mládeže a tělovýchovy k prevenci a řešení šikanování mezi žáky škol a školských zařízení

²³³ Ref. No. 21291/2010-28. *Metodické doporučení k primární prevenci rizikového chování u dětí, žáků a studentů ve školách a školských zařízeních*

²³⁴ Available at <<http://www.vlada.cz/cz/ppov/rp/aktuality/tiskova-konference-ministra-pro-lidska-prava-michaela-kocaba-67199>>, visited on August 10th, 2012.

practice in sexual harassment prevention from leading universities abroad. The handbook raised discussions as well as a wave of negative and rejecting reactions which were consequently also analyzed by the team of authors. The critical comments mostly concerned gender bias in conceptualizing sexual (or gender motivated) harassment and also the attempt to introduce foreign approaches to solving sexual harassment to the wider academic community. Rejection of gender as a relevant category is usually linked to disagreement with and fear of upholding gender equality. In the academic environment, measures dealing with gender motivated harassment tend to be presented as a potential limit of academic freedoms and expression of distrust in the professional ethics of educators. Such reactions give away an attempt to establish negative emotions consequently leading up to (irrational) rejection of the handbook and of the endeavor to prevent sexual (gender motivated) harassment. Individual schools tend to support activities of non-governmental organizations which carry out various lectures, discussions, and debates with the aim of providing students with information on sexual minorities and trans persons and to support tolerant school environment.²³⁵ Non-governmental organizations noticed no negative reactions from schools while proposing such activities.

- ii. *Do initial and in-service training programmes for teachers and other educational staff address the need for them to*
 - a. *treat their LGBT pupils and students with respect*
 - b. *be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

According to the Ministry of Education, Youth, and Sports almost all accredited university study programs in the field of pedagogical sciences, especially those focused on the training of teachers, include introduction to gender issues dealing also either issues of sexual orientation other than the mainstream one.

According to information available to the authors of this report, no special training programs is provided to teachers or other pedagogical staff aiding them to understand better needs of LGBT pupils and students or to recognize discrimination based on sexual orientation or gender identity.

- iii. *Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

The Ministry of Education, Youth, and Sports deems any single activities including campaigns focused on information exchange inefficient or not effective enough from a long-term perspective as far as primary prevention is concerned. Within the framework of its grant programs, the Ministry annually supports activities focusing on the prevention of discrimination, intolerance, violence, and bullying at schools and educational facilities. Nevertheless, in the past, there were only a few LGBT

²³⁵ E.g. NGOs as Charlie, Poradna pro občanství/Občanská a lidská práva, Gejt organized several dozens of discussions and meetings at schools.

advocacy organizations with sufficient capacity to take part in the grant application process.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

- i. Is information on*
 - a. sexual orientation*
 - b. gender identity**provided in school curricula and sex and health education classes?*

Information on sexual orientation and gender identity are incorporated into all curricula for elementary and secondary schools, into the educational areas People and society, People and their world, Art and culture, People and the world of work, in particular. The main emphasis on the issue in question is in the area People and society, which covers prevention of racist, xenophobic and extremist attitudes, education towards tolerance and respect of human rights and towards equality of men and women. Pupils are trained in key civic, social, personal, and communication competences which teach them respect towards beliefs of others, empathy, how to reject repression and harassment, and to understand their duty to stand up against physical and psychological violence.

- ii. Is it provided in a respectful and objective manner?*

Activities funded by the Ministry of Education, Youth, and Sports take these aspects into consideration.

- iii. Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*

In the 2008, the Department of Psychology at the Academy of Sciences published Ms. Pavlína Janošová's *The identity of girls and boys. Development and risks*. The publication includes a chapter co-written by Ms. Hanka Fifková (private sexology practitioner) "Non-standard gender identity with elementary school pupils". The

publication draws attention to the risks of homophobia-oriented victimization by peers and advises educators to work towards greater openness and tolerance of alternative gender expression and minority sexual orientation with pupils of all ages as there is a statistical probability that every classroom has one or more pupils who, mainly in adolescence, experience coming out. We have no information if the book is really systematically used.

In the 2010, the Ministry of Education, Youth, and Sports issued a *Recommendation of the Ministry for implementation of sex education at elementary schools*. Along with the recommendation, schools were supposed to be provided with the handbook *Sex education – Selected Topics*.²³⁶ The handbook published in the 2009 includes a chapter on sexual orientation, which covers homosexuality and gender identity, as well as the most common myths linked to homosexuality. The publication and distribution of the handbook were to represent the first steps in fulfilling the need for a complex implementation of sex education at elementary schools. This intention provoked an outright rejection by, among others, Committee for the Defense of Parental Rights, which claimed that parents represented by the committee understood these efforts by the Ministry as a violation of their parental rights because by common sense and legal framework of the Czech Republic, parents have privilege to educate their children. School (the state) has no right to influence their children in a way that is contrary to the value, moral, or religious systems of their parents.²³⁷ To support the Committee for the Defense of Parental Rights, the conservative group D.O.S.T. organized a protest rally “Don’t experiment with our children” on the occasion of the start of the new school year on September 1st. The efforts of competent state body to influence education in schools were, in the case of sex education, labeled as “systematic effort to turn schools into an effective tool of influencing children and youth”. The presented opinions clearly linked “healthy development of children” with the support of “the traditional family model” (incidentally the aforementioned Committee publicly contests the availability of the children’s book *Jura and lama*, in which the main protagonist has two mothers).²³⁸

In a reaction to the activities of the Committee the Minister of Education, Mr. Josef Dobeš, cancelled the handbook as well as the Recommendation from the Ministry's website. He also discontinued discussion of changes to educational programs in which restraining sex education was not recommended by the majority of experts (the Committee’s goal is to have sex education and information on STD’s and sexual harassment removed from the compulsory curriculum). The Ministry of Education, Youth, and Sports currently states on its website²³⁹: “We are open to various opinions on the subject of sex education. We have cancelled the recommendation of the Ministry for the handbook *Sex education – Selected Topics*. We leave it up to individual schools whether they use it or not.” According to Ms. Jiřina Tichá, director of the Department for pre-school, elementary, and elementary art education at the Ministry of Education, the Ministry is not planning to introduce sex education as a

²³⁶ *Sexuální výchova – vybraná témata (Sex education - selected topics)*. Praha: MŠMT in collaboration with VÚP, 2009. ISBN 978-80-87000-29-8.

²³⁷ Available at <<http://www.vorp.cz/clanek/kdo-jsme/>>, visited on August 3rd, 2012.

²³⁸ Interview for Czech Television program *Události, komentáře: Superhrdina gay?* June 22nd, 2012, available at <<http://www.ceskatelevize.cz/porady/1096898594-udalosti-komentare/212411000370622/video/>>, visited on August 1st, 2012.

²³⁹ Available at <<http://www.msmt.cz/pro-novinare/desatero-msmt-k-sexualni-vychove>>, visited on August 1st, 2012.

separate subject, however, related topics are included in the general curriculum for elementary schools (People and their world, Health education, Family education, Civic education, Biology) and based on them, each school may create a non-compulsory subject taught by teachers or external experts.²⁴⁰

As of April 2012, the results arising from workshops organized by the Ministry of Education, Youth, and Sports dealing with the revision of the General curriculum for elementary education in the area Health education including also sex education established that individual schools are to be allowed to teach sex education according to their own practice and to offer sufficient space for a wide range of approaches to the topic, including e.g. information on homosexuality and contraception. Schools are thus not prevented from extracurricular sex education, but they are not prompted to teach it.²⁴¹ The decision whether and how to follow the recommendation of the Committee of Ministers, and to support diversity in its education and information needed for its students with orientation other than heterosexual, is to be decided by each school at its own discretion. Each school shall define in its educational program how, i.e. which values will be emphasized and up to what openness level, it wishes to educate children in this area.

The Ministry of Education, Youth, and Sports issued a Provision²⁴² at the end of the 2009, regulating the introduction of the extracurricular subject Ethical Education as one of the Additional educational fields of general curricula. The Provision structures the contents of the subject into several themes²⁴³ with outreach into several educational areas of general curricula. Ethical Education shall lead to forming and sustaining satisfactory relationships, into forming a true image of oneself, into creative solutions of everyday problems, into articulating one's opinions and attitudes based on one's own judgment aided by notions gained through discussion, into critical assessment of the influence of roles in forming one's own belief system, into understanding elementary environmental problems and the contexts of the modern world. The additional subject Ethical Education shall develop the pupil's: social skills focused not only on one's own personal gain but also on well-being of others and of the whole society, skills focused on independent observation and critical judgment with inputs for practical life, independence in looking for suitable solution to problems, proper forms of communication, respect for values, opinions and beliefs of others, empathy, positive image of oneself and the capacity for effective collaboration.

The Ministry of Education, Youth, and Sports officially recommends to complement the subject of Ethical Education by methodology material by Mr. Ladislav Lancz and Ms. Eva Ivanová, written and distributed by the conservative association Ethical Forum, which also runs extensive training program for educators who will eventually

²⁴⁰ Available at <http://www.tyden.cz/rubriky/domaci/sexualni-vychova-ve-skolach-shoda-v-nedohlednu_223497.html>, visited on August 1st, 2012.

²⁴¹ Available at <<http://www.eduin.cz/tiskove-zpravy/zmeny-ve-vzdelavacich-programech-sexualni-vychovu-vyznamne-neovlivni/>>, visited on August 1st, 2012.

²⁴² Ref. No. 12586/2009-22

²⁴³ 1. Interpersonal relations and communication; 2. Human dignity. Positive evaluation of one's self; 3. Positive evaluation of others.; 4. Creativity and initiative. Solving problems and tasks. Accepting one's own and group decisions.; 5. Communicating goals.; 6. Interpersonal and social empathy.; 7. Assertiveness. Coping with aggression and competitiveness. Self-control. Solving conflicts.; 8. Real and represented role models.; 9. Pro-social behavior in personal relationships. Helping, giving, sharing, collaborating, friendship.; 10. Pro-social behavior in public life. Solidarity and social problems.

teach Ethical Education. This program was officially accredited²⁴⁴ by the Ministry of Education, Youth, and Sports as part of additional training of educators. The style of instruction of Ethical Education by the Ethical Forum is one-sided opinion-wise and some of its passages are even antithetical to the general aims prescribed by the Provision, which can be taken as the Ministry's official position on the content of the subject. For instance, the association's approach to homosexuality (sexual diversity in general or topics beyond male homosexuality – lesbians, trans persons etc. were completely omitted) is heteronormative or homophobic. The handbook purposefully cites information from dubious and completely unsuitable sources. It suggests that homosexuals live inadequate lives and supports heterosexual adaptation. It does not nourish respect of diversity, it does not support self-respect and healthy relationship of the adolescent student to themselves and their bodies, it does not lead the student towards critical thinking (position by Charlie association) 245. The Ministry pledged to remove "all materials based on Lencz's philosophy" from recommended literature. In the 2010, the publication was withdrawn from the Ministry's recommended literature and from the portal of the Ethical Forum. However, materials for Ethical Education based on Mr. Lincz and Ms. Ivanová are recommended on a portal, which is the main methodic support for educators in implementing general curricula at schools.²⁴⁶ They also remain a part of a course on Didactics at the Faculty of Pedagogy at the Masaryk University in Brno.²⁴⁷

An effective tool supporting diversity and multicultural education working with pupils' attitudes on removing stereotypes and prejudices is Living Library. The project is produced by the association OPIM in the Czech Republic. This association is the only one in Europe which uses this model at schools (from the first grades of elementary schools up to universities) and for educators (such as prevention methodologists).²⁴⁸

iv. Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?

According to the School Act²⁴⁹ education is among others based on principle of equal treatment with all inhabitants of the Czech Republic or European Union. Also according to the Universities Act²⁵⁰, universities are obliged to "provide for measure assure equal possibilities to study at universities". University students are provided with various forms of counseling including psychological one. After legal gender

²⁴⁴ No. 31622/2004-25-416 (accreditation of MŠMT as part of further training of educators).

²⁴⁵ Available at <<http://charlie.li/projekty/protest-eticka-vychova>>, visited on July 23, 2012.

²⁴⁶ Available at <<http://clanky.rvp.cz/clanek/k/g/2510/ETICKA-VYCHOVA.html/>,
<http://clanky.rvp.cz/clanek/c/Z/2895/eticka-vychova.html/>>, visited on August 24th, 2012.

²⁴⁷ Available at <[http://is.muni.cz/predmet/ped/jaro2012/OV3DC DOV2](http://is.muni.cz/predmet/ped/jaro2012/OV3DC_DOV2)>, visited on August 24th, 2012.

²⁴⁸ The first phase is a workshop modeled on the KOMPAS methodology (supported by EU and accredited by the Ministry in the Czech Republic). The main part consists of a direct personal meeting and an informal interview with a concrete person, who might face discrimination or stereotypical opinions based on their physical or sensory condition, religion, ethnicity, sexuality, life style, social situation etc. Taking advantage of such project is however conditioned by financial possibilities of individual schools and involvement of individual educators.

²⁴⁹ Section 2 of the Act No. 561/2004 Coll., School Act as subsequently amended

²⁵⁰ Section 21 of the Act No. 111/1998 Coll. Universities Act, as subsequently amended.

recognition trans people receive new documents from the school which reflect their changed name (diplomas etc.).

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

i. Do

- a. the design of national health plans,*
- b. health surveys,*
- c. suicide prevention programmes,*
- d. medical training programmes,*
- e. training courses and materials*
- f. the monitoring and quality assessment of health-care services take into account specific needs in relation to (a) sexual orientation and (b) gender identity?*

The National Health Plan – Health 21²⁵¹ – does not specifically take into account specific needs in relation to sexual orientation or gender identity. No suicide prevention programmes were identified, no information on them was provided by the Ministry of Healthcare, either.

As for medical training programmes and training courses and materials, the author has not received any information from the Ministry of Healthcare on the inclusion of specific needs in relation to sexual orientation or gender identity.

The Government of the Czech Republic has adopted “National policy in support of quality”²⁵². Based on this policy, nation-wide programme of assessing the quality of healthcare provided in health facilities (www.hodnoceni-nemocnic.cz) was introduced. The core of the project (supported by the Ministry of Healthcare) is the assessment of quality of healthcare by patients. There are 50 quality indicators in total, including respect towards patients and their dignity, as well as involvement of family and friends. Respect for sexual orientation and/or gender identity of patients is, however, not explicitly mentioned. Quality assessment has also become part of the new Healthcare Act.²⁵³

²⁵¹ The document is available in Czech on website of the Ministry of Healthcare - Available at http://mzcr.cz/Verejne/dokumenty/zdravi-pro-vsechny-v-stoleti_2461_1101_5.htmlhttp://is.muni.cz/predmet/ped/jaro2012/OV3DC_DOV2, visited on August 4th, 2012.

²⁵² Decision of the Government of May 10th, 2000, No. 458.

²⁵³ Section 98 of the Act No. 372/2011 Coll on Healthcare Services, as subsequently amended. See also below.

- ii. Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

Based on information provided to the author by the Ministry of Healthcare and the Ministry of Labour and Social Affairs, no specific training programmes for health professionals focusing on the LGBT community were identified.

- iii. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?*

Artificial insemination is available only for couples formed by a woman and a man, who intend to take advantage of this service together as a co called “infertile couple”.²⁵⁴ Artificial insemination is therefore not accessible to either single women, or to lesbian couples. This provision, in the view of the author, therefore represents direct discrimination on the ground of sexual orientation. The legal situation is in sharp contrast with information provided by the Minister of Healthcare, according to whom are all healthcare programmes and services available to all citizens without any discrimination.

In the framework of the National Healthcare Programme, a seminar on reproductive health took place in Prague in October 2010. The seminar was organized by the National Healthcare Institution and the Ministry of Education, Youth, and Sports. Even though due regard was paid to various problems connected with reproductive health, sexual orientation and gender identity issues were not mentioned at all. The presentations from the seminar are available online.²⁵⁵

- iv. Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?*

In social services, the creation of “friendly environment” towards clients is one of the basic principles. The system of social services does not distinguish among different groups of clients. At present, no information campaigns focused at health and social workers are being carried out due to the state of public finances.²⁵⁶ Nevertheless, the author is not aware of any information campaign focused on LGBT people in the past.

- v. Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of*

²⁵⁴ Section 6 of the Act No. 373/2011 Coll., on Specific Healthcare Services, as subsequently amended.

²⁵⁵ Available at <http://www.szu.cz/vychova-ke-zdravi-prevence-vrozenych-vyvojovych-vadhttp://is.muni.cz/predmet/ped/jaro2012/OV3DC_DOV2>, visited on August 4th, 2012.

²⁵⁶ Letter from the Ministry of Social Affairs.

kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?

Patients have the right to the presence of “next of kin” or a person whom they appoint. This rule is laid down in the Act on Health Services²⁵⁷. This Act is to be applied with due regard to the “other legal regulations and internal regulations” and only in the case that this presence will not interfere with the provision of healthcare services. Regarding “other legal regulations”, “next of kin” is defined by the Act No. 40/1964 Coll., the Civil Code, and includes registered partners (Act No. 115/2006 Coll., on Registered Partnership). “Next of kin” also relates to “persons that are close to each another, if harm suffered by one of these persons, could by legitimately felt as own harm by the other person”. This means that also same-sex couples who did not enter into registered partnership are considered as “next of kin” and therefore should be granted presence in hospitals. Legally speaking, patients with same-sex partners are equal to heterosexual patients. In practise, the only obstacle may be represented by “internal regulations” of healthcare providers. Nevertheless, patients also have the right to get familiar with internal rules of healthcare providers. It is a general principle that applies throughout the legal order, that regulations of lower legal force have to be in line with those of stronger legal force – laws and the constitutional order.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

i. Has homosexuality been removed from the national classification of diseases?

Homosexuality was removed from the national classification of diseases in the 1993.

ii. Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?

In the 2010, the Ministry of Education, Youth, and Sports has removed a handbook for “Ethical education”²⁵⁸ from the list of recommended books for teaching the subject “Ethical education” at schools. The initiative for the removal was a protest submitted by a civic association Charlie²⁵⁹, a student organisation focused on LGBT topics. However, according to the information provided by Charlie, the handbook is still used in practise. When searching the internet, the handbook was found among recommended literature for 6th grade of elementary school in Kojetín.²⁶⁰

²⁵⁷ Section 28 of the Act No. 372/2011 Coll., on Healthcare Services, as subsequently amended.

²⁵⁸ Lenc, Ladislav, Ivanová, Eva: „Etická výchova, metodický materiál“. Praha, 2003.

²⁵⁹ Information on the protest is available at the website of the Charlie organisation, Available at <<http://www.charlie.li/projekty/protest-eticka-vychova>>, visited on August 4th, 2012.

²⁶⁰ Available at <http://www.zsstadovni.info/index2.php?option=com_docman&task=doc_view&gid=30&Itemid=13>, visited on August 4th, 2012.

Apart of this exception, the author noticed no policy documents, medical textbooks, or training materials that would treat homosexuality as a disease. The author is not aware of any complaints in this area.

iii. Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?

The Act No. 372/2011, on Healthcare Services, sets a general principle for the provision of healthcare services – these may be provided only with a free and informed consent of the patient. The new legislation, adopted only in the 2011, has replaced the original Act on Healthcare²⁶¹, which applied for almost 50 years. Even though the original Act on Healthcare did not include provisions forcing anyone to undergo any form of treatment, protocol or medical or psychological test, nor made it possible to confine someone in a medical institution because of his/her sexual orientation, the Act on Healthcare Services of the 2011 explicitly lists the rights of patients in a separate and comprehensive chapter.

While enjoying healthcare services, patients have the right:

- to dignity, respectful treatment, and respect of privacy,
- to choose healthcare provider according to their needs,
- to consult another healthcare provider,
- to get acquainted with internal procedural rules of the healthcare provider.

Patients have also the right for the presence of next of kin, or a person of their own choice.

Furthermore, they have these rights:

- to be informed about the prices of healthcare services in advance and to information which services are covered from public insurance,
- to know the names of healthcare professionals and other workers taking part in the provision of healthcare services,
- to refuse the presence of persons who are not directly involved in the provision of healthcare services or who are in training,
- to receive visits in healthcare facilities,
- to receive spiritual support from clerics.

Persons with communication disabilities or sensor problems, as well as children, have also specific rights, taking into account their vulnerable situation.

The healthcare provider is obliged to make sure that the patient is informed sufficiently about his or her state of health, the individual healthcare procedures, and their changes. The law stipulates detailed provisions describing the nature and contents of “free” and “informed” consent.

²⁶¹ Act No. 20/1966 Coll., on Healthcare, as subsequently amended.

In certain cases, the form of the consent requires written form. In certain cases, a patient may be confined in a medial institution. These cases are listed in the law. An exhaustive list of grounds for involuntary confinement includes²⁶²:

- imposing of in-patient treatment by a court decision²⁶³,
- imposing quarantine, isolation, or treatment according to the Act on Public Health,
- imposing the examination of the state of health under Penal procedure Code²⁶⁴ or Civil Procedure Code²⁶⁵.

Urgent care may be provided to patients also without their consent, however, only in the case:

- when the state of health of the patient does not make it possible to provide consent,
- of treatment of a serious mental disorder, if the non-curing of this disorder would result in a serious harm to the patient's health.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

- i. Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

Part 4 of the Special Health Services Act regulates gender reassignment treatment. Under this Act gender reassignment treatment means performance of gender reassignment by surgery while function of reproduction organs of the person is made impossible.²⁶⁶

In the Special Health Services Act there is a new provision concerning duration of validity of positive opinion of the commission which approves possibility to undergo gender reassignment treatment. The commission can determine duration of validity of such opinion. That means that commission has discretion to decide on the validity. It could be problematic for example if the duration is too short. Pursuant to previous regulation (before effectiveness of the Special Health Services Act) there was no specific provision concerning duration of validity of the commission's opinion and it was deemed that duration of validity is unlimited. For issuance of positive opinion of the commission it is necessary to obtain consent of all members of the commission. If there is any disagreement even of only one member of the commission (within the

²⁶² Section 38 of the Act on Healthcare Services.

²⁶³ In patient treatment may be ordered by a criminal court in the case of perpetrators having committed a crime in insanity. Further details are specified in Sections 40, 47, 99, and 100 of the Act No. 40/2009 Coll., Penal Code.

²⁶⁴ Act No. 141/1961 Coll., the Penal Procedure Code, as subsequently amended.

²⁶⁵ Act No. 99/1963 Coll., Civil Procedure Code, as subsequently amended.

²⁶⁶ Section 21 of the Special Health Services Act

members there are for example medical employees of the state categorized on the Ministry of Health or lawyers) it is not possible to issue positive opinion and access surgical gender reassignment. Other members of the commission are for example physician with specialization in psychiatry, clinical psychologist, physician with specialization in diabetology and endocrinology. Psycho-sexological care is also provided to trans persons by their nursing sexologist before, during and after gender reassignment treatment. Once permission for gender reassignment treatment has been obtained access to the relevant operations is quite effective. Usually, it is necessary to make an appointment with the hospital where the operations are performed. The author of the report is not aware of any problems caused by the hospital with performance of the gender reassignment surgeries.

ii. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?

From about mid 1960s it is possible in the Czech Republic to provide surgical gender reassignment. In the past there were some sexology institutions where doctors advised trans persons against surgical gender reassignment on the grounds of non-medical reasons. Currently, we are not aware of such practice. But we have some information from trans community that in some cases they still face incidents when nursing physician while determining on diagnosis takes into consideration also certain viewpoints not directly related to the diagnosis of transsexualism (for example mental disorders or physical appearance of the person).

iii. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?

Under the Special Health Services Act the surgery relating to gender reassignment can treatment be provided to patient who is at least 18 years old. In the Czech Republic, 18 years is an age limit of full legal capacity. Until this age it is not possible to undergo surgical gender reassignment. It is possible to provide the surgery to a patient who has no full legal capacity; however, certain special conditions apply. It is required that legal representative of trans person submits a request for legal gender recognition, necessary is also positive opinion of commission (it is similar to patients with full legal capacity) and it is also necessary to have consent of the court.

With regard to intersex people based on available information, steps regarding intersex persons are often performed without respecting their autonomy, since steps are performed at a very low age and mostly cause distinct mental and somatic problems in the future. These steps lead mainly to alteration of sex organs, so that they would be in line with the impression of biological gender, in which the child should grow up based on the examining physician's opinion. A fundamental problem occurs, if the intersexual person feels later in adult life like a member of the opposite sex than the one doctors determined for him/her. This is relatively often the case for certain types of intersexuality. Such patients than have no choice but to search for treatment similar to treatment of trans persons, whereas this treatment is then normally quite complicated as a consequence of previous surgeries. But we do not have any documentation about whether these procedures were performed without

the consent of the parents, even though it is possible to doubt whether they are provided with sufficient information on all consequent steps prior to them providing consent. The situation is quite complicated, however, in terms of ethics, because parents provide consent to perform these procedures as something of a legal representative, while potential negative effects of such decisions only appear in adolescence or adulthood. It is then very difficult to ascertain the circumstances of the informative consent, and possible right of recovery from responsible physicians is then practically impossible.²⁶⁷

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

- i. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

With regard to surgical and other interventions including hormones concerning gender reassignment treatment, the basic type is covered by public health insurance. It is very positive for trans persons to whom the care of sexologist is provided. There is no straight causal connection between hormonal treatment and surgical gender reassignment. However, in the Czech Republic there are currently some changes in the system of health services including amongst others discussions on standard and above-standard medical interventions. In this regard it is therefore very important that medical intervention related to gender reassignment treatment do not become above-standard interventions in the future. Such a decision could render gender reassignment treatment inaccessible for trans people, adding to an often already difficult social situation. This would be particularly problematic for those with low or no income and who could not finance the treatment themselves. For now we have no information about whether these considerations are realistic.

- ii. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

With regard to coverage from public health insurance for gender reassignment treatment is no difference between particular trans persons if the person fulfills legal procedure. Based on our information there are no problems with coverage of gender reassignment interventions from public health insurance. Nevertheless, it should be problematic for those trans persons who might not comply with a notion of transsexuality, gender-binary or simply are not able to undergo medical gender reassignment treatment.

²⁶⁷ *Analysis of the Situation of Lesbian, Gay, Bisexual and Transgender Minority in the Czech Republic* April-October 2007, Working Group for Sexual Minorities of Minister for Human Rights and Ethnic Minorities, p. 33 - 34, <http://www.vlada.cz/assets/ppov/rlp/vybory/sexualni-mensiny/ANALYZA_final.pdf>, visited on August 21st, 2012.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

i. Does legislation prohibit discrimination in such areas as:

- *the sale or rent of housing;*
- *the provision of loans for purchase of housing;*
- *the recognition of the rights of a tenant's partner;*
- *evictions*

on the grounds of (a) sexual orientation and (b) gender identity?

Anti-Discrimination Act²⁶⁸ bans both direct and indirect discrimination in „accessing goods and services, including housing, or the provision thereof, if they are available to the public“. The Anti-Discrimination Act explicitly bans discrimination on the ground of sexual orientation and sex, whereas discrimination on the ground of gender identity is considered discrimination on the ground of sex. The Act does not specify the type of housing (property or lease), the condition is that housing is available to the public (e.g. through advertising). The ban of discrimination relates also to hostels and asylum houses.

Contrary to the conclusion of marriage, the conclusion of registered partnership does not mean that common property of partners is established. Registered partners therefore acquire property (e.g. flat, house, estates) as common property.

Registered partners are disadvantaged (in comparison to married couples) in access to rental housing. In marriage, if one of the married couple or both become tenants, joint lease of spouses is established. Also, in case of cooperative housing, if the right to conclude a cooperative lease contract arises for one of the spouses, joint lease of spouses is established, as well as joint membership of spouses in the cooperative. Joints lease of flat and joint cooperative lease of flat of spouses will also be established by the conclusion of marriage, if one of the spouses became lessee before the conclusion of marriage. On the other hand, joint (cooperative) lease for registered partners does not exist; registered partner only has the right to use the flat.²⁶⁹ This also means that in case of death of one of the partners (lessee), lease does not pass to the surviving partner. Joint lease of partners also can not be established automatically. The only possibility is to make an agreement with landlord and conclude a lease contract with both partners as lessors. In such a case, the right of lease would pass to the surviving partner.

A new Civil Code brings positive change. The Code does not include automatic establishment of joint lease of spouses – joint lease may only arise on the basis of an

²⁶⁸ For more details see page 48.

²⁶⁹ Section 705 of the Act No. 40/1964 Coll., Civil Code, as subsequently amended.

agreement between the tenants and the lessor.²⁷⁰ In case of death of a tenant, the lease passes automatically either to registered partner or husband/wife – who has lived in the apartment as of the day of death of the tenant and does not have his or her own apartment (except for joint tenancy). After passing the lease contract will expire within two years as of the passing, at the latest.²⁷¹

The access to mortgages is not limited for registered partners or same-sex couples who are not registered; the decisive factor for banks is the household or individual and their ability to pay instalments. Besides basic mortgages, banks also provide mortgages for newly weds, favouring not only newly married couples, but also couples living in registered partnership. The advantages of these products are lower instalments at the beginning of repayment period, or advantageous interest rates.

On the other hand, from the 2004 to the 2011, the State housing development fund provided so called “Loan 300” to persons under 36 years of age for construction or acquisition of flats. This loan was provided for young persons living in marriage, if at least one of the spouses has not reached the age of 36 in the year of submission of the application, and single persons who have not reached the age of 36 in the year of the submission of the application, if they provide care to at least one minor child.²⁷² Therefore, the loan might have been provided to LGBT persons who did not live in registered partnership but took care of a minor child. The loan could not have been provided to registered partners, even if they meet other conditions.

ii. Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?

Asylum housing is usually provided in the framework of social services, there is no discriminatory provision there. The provision of social services is based on the principle of equality, with regard to each client's needs. No cases of refusal of asylum housing or eviction based on sexual orientation are known.

iii. Is information available to landlords and tenants aimed at preventing such discrimination?

Detailed information on the obligation to ensure equal treatment and the ban of discrimination is available on the website of the Public Defender of Rights (hereinafter referred to as the "Defender").²⁷³ The ban of discrimination on the basis of sexual orientation and gender identity is laid down by law and thus must be known to owners as well as landlords of real estates. In March 2010, the Defender published a Recommendation for the fulfilment of the right to equal treatment for applicants for municipal housing, directed to the representatives of local administrations, as well as general public – landlords and tenants.

²⁷⁰ Section 2270 of the Act No. 89/2012 Coll., Civil Code, with legal force as of January 1st, 2014.

²⁷¹ Ibid., Section 2278

²⁷² Available at: <<http://www.sfrb.cz/programy-a-podpory/podpora-mladych/uver-300.html>>, website visited on August 2nd, 2012.

²⁷³ Available at: <<http://www.ochrance.cz/diskriminace/>>, website visited on August 2nd, 2012.

iv. Are adequate and effective legal or other remedies available to victims of such discrimination?

Victims of discrimination may file an action against discrimination and claim cessation of discriminatory treatment, damages, and non-proprietary loss. They may also turn to the Defender for help. According to the information available, no action was filed so far claiming discrimination in access to housing on the basis of sexual orientation or gender identity. Neither the Defender has dealt with such a case.

v. Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?

No public awareness campaign was carried out by ministries so far, the aim of which would be to raise the awareness of those who are in charge potential victims on equality and the ban of discrimination. Neither the Defender, nor NGOs have organized such a campaign.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

i. Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?

The state finances the provision of social services to people endangered by social exclusion and homelessness. In the framework of these services, it pays special attention to endangered children; however, the needs of LGBT people are not specifically addressed. Generally speaking, social services are provided on the basis of an objective needs assessment of each individual, targeted provision of social services and individual approach towards social services users and their needs. These are the basic principles which should serve as cornerstones of each qualified social service.

The House of Light hostel²⁷⁴ which is providing accommodation, help, support, and shelter for HIV positive people could be seen as a specific service. In the last few years, however, it faces a lack of financial resources.

ii. Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?

²⁷⁴ Available at: <http://www.aids-pomoc.cz/ns_ubytovna.htm>, website visited on August 2nd, 2012.

Social workers employed by social service providers, who also provide asylum housing and shelter, must meet strict criteria regarding their professional education. Nevertheless, the Ministry for Labour and Social Affairs has no information if these educational and training programmes include any specific needs of LGBT people. There has not been any special training or awareness-raising programmes aiming at specific needs of LGBT people.

Social workers employed by social service providers, namely those who provide asylum accommodation, must meet requirements for vocational training – it is a statutory condition and obligation. The Ministry for Labour and Social Affairs, however, does not have any information if such educational programmes include specific needs of LGBT persons. No educational programmes or campaigns were carried out to this end so far.

According to the information provided by the Ministry of Labour and Social Affairs, the recommendation regarding the needs of LGBT persons faced by homelessness, including the prevention of this phenomena, will be taken into account in the framework of drafting the Concept of work with the homeless in the Czech Republic – the Ministry of Labour and Social Affairs plans to prepare the first working draft by the end of June 2013.

IX. Sports

39.

Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

Sport in the Czech Republic is regulated by Act on Support of the Sports.²⁷⁵ No anti-discrimination measures are mentioned in the Act. It just expresses the obligation of sports-event organizers to ensure safe environment for persons and properties.

The Concept of State Politic in Sports in the Czech Republic defined in the 2009 also doesn't mention any measures against discrimination, and homophobic and transphobic discrimination, in particular. It declares support of all forms of sport activities for anybody but mentions only disabled people in this point. Besides this group of people in other chapters it states the development of sport for young people and the fight against doping.²⁷⁶

In the context of sport, Ministry of Education, Youths, and Sports is responsible for the legal and financial environment, is though not participating in creation of sport organizations within the sport environment.

The main organization - Czech Sports Association which associates other associations of individual sport disciplines, based on their web presentation, doesn't have any

²⁷⁵ Act No. 115/2001 Coll., on Support of the Sports, as subsequently amended.

²⁷⁶ Available at: <<http://www.cstv.cz/informaceprovas/ostatni/koncepcestatnipodporysportuvcr.pdf>>, website visited on August 2nd, 2012.

antidiscrimination policy except central interest in making sport accessible to the whole population, based on health reasons, and specially disabled and young people.²⁷⁷

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

- i. What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*

According to Ministry of Education, Youths, and Sports, exclusion from participating at sports events and activities is not an issue, as it is: systematically solved by education of sport coaches which professional qualification includes so called educational-psychological minimum that should provide them ability (either alone or in cooperation with external expert) to solve discrimination in the groups they are in charge of. The Czech Republic also has the Anti-Discrimination Act prohibiting any discrimination based on sexual orientation or gender identification.

Since 1970s, the Czech Olympic Committee (COV) has Fair Play Club which seeks and remunerates achievements "in the spirit of honourable and chivalrous sport behaviour". The topic of Audience behaviour at sports events is one point of interest in the 10 Points of Fair Play Behaviour document. There is no activity or even statement regarding the fight against racism, homophobia, or any other negative phenomenon (excluding doping). The general philosophy of Olympism (by Prierre Coubartain) deals with the topics of sport accessible to anyone, regardless of their wealth, health, and age. The sport of women (besides already mentioned young, disabled and poor people) gained a special chapter in COV basic document.

According to information provided via email by the General Secretary of COV, despite the topic of LGBT people was understood and answered by General Secretary as a topic of "women in sports", COV together with Ministry of Education, Youth and Sports published handbook The Prevention of Abuse in Sports Environment in ČR in 2005 (based on similar Dutch document from 1997) which was distributed via whole system of sport organizations and schools. In this manual, abuse is also defined as "*sexual proposals, comments, and questions on someone's body, clothing, private life, sexual orientation etc.*".

COV is currently partner of European Commision's project Prevention of sexualized violence in sports – Impulses for an open, secure and sound sporting environment in Europe, of the Preparatory Action in the Field of Sport“.

- ii. By encouraging, for example:*

²⁷⁷ Available at: <http://www.cstv.cz/vladni_dokumenty.htm>, website visited on August 2nd, 2012.

- *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*
- *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*
- *anti-discrimination campaigns in the sports world,*
- *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

The issue of discrimination in the sport based on sexual orientation or gender identity is not paid any attention. There are no codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and club. There has not been implemented any anti-discrimination campaign on LGBT people in sport.

According to information from gay and lesbian sports representatives, there was only little effort done in the area of financial support as there are no grant-schemes, into which support of regular leisure-time sport activities of gay and lesbian people would fit in. The biggest and oldest association Alcedo (former Pratety) had positive experience with funding their multi-sport event Prague Rainbow Spring from grants of the City of Prague, as (a) their former official identity formed a part of touristic and sports club for young people, and (b) their tournament is an international and therefore representative event nowadays with hundreds of participants. It seems that single events as tournaments “hiding the truth” of a LGBT event have more chances to find funding or get a discount from renting sport-fields than regular activities.

The 10th Prague Rainbow Spring in the 2009 gained patronage of former Minister for Education, Youths, and Sport, Mr. Ondřej Liška²⁷⁸, a representative of liberal Green Party. The year afterwards, ex-Minister for Human Rights, Mr. Michael Kocáb²⁷⁹, nominated by the same party, provided his patronage over the tournament again. In this case, it is to assume that these patronages were not an expression of a general interest of the Government or the Ministry for this topic, but rather more individual decision of single personalities, or an expression of interest in human rights by the Green Party.

Very active in the area of LGBT sports in the years 2009 and 2010 was the LGBT student union group Galibi (with the support of then vice-rector Mr. Jaroslav Kuba) from ČVUT. In the 2009 vice-rector of ČVUT shared the patronage over Prague Rainbow Spring with the Minister Liška as well as over new international football tournament Galibi Cup which is organized each year under Galibi name.²⁸⁰

iii. Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?

²⁷⁸ Press Release of Czech Technical University in Prague, available at: <<http://www.cvut.cz/informace-pro-media/tz/2009/kveten-2009/alias.2009-05-12.1245529431/http://www.ochrance.cz/diskriminace/>>, visited on the August 9th, 2012.

²⁷⁹ Press Release of Pratety/Alcedo, available at: <http://www.pratety.estranky.cz/clanky/prague-rainbow-spring/prague-rainbow-spring-2010---registration-is-open_.html>, visited on the August 9th, 2012.

²⁸⁰ Available at: <<http://www.galibi.cz/galibicup.html>>, visited on the August 9th, 2012.

Homophobic and transphobic attacks are generally taken into account by the relevant provisions of the Penal Code (hate crime, hate speech), regardless of whether they happen at sporting events, or otherwise.

Violent behaviour at stadium can be resolved in two ways: by financial penalty for the sport-event organizer that can be imposed within disciplinary action of the respective sport association or as hate speech within (penal) complaint based on the Penal Code.

iv. In particular:

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*
- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events,²⁸¹ the European Sports Charter²⁸²*
- *and ECRI's General Policy Recommendation No.12²⁸³ been implemented in respect of (a) sexual orientation and (b) gender identity?*

Czech Republic is a member of the Standing Committee of the Council of Europe for spectator violence. European Convention on Spectator Violence and Misbehaviour at Sports Events has been signed and is binding for the Czech Republic from 1 June 1995.

In already mentioned handbook of Sexual Abuse at sports by ČOV & MŠMT, regarded as abusive is to see the occurrence of comments and jokes (generally hate speech) targeted also against homosexuals. (ČOV/MŠMT 2005, p. 3)

In the 2009 as reaction to increasing vandalism and hate speech towards football (soccer) players with different ethnic origin at stadiums of Czech football major league teams there were some measures adopted either by sport clubs themselves or by Police. The Czech Football Association imposed a ban on audiences for some teams during the last two years due to racist speech and physical assaults (throwing things at players), or due to vandalism, which meant several matches played at empty stadiums. One of most problematic teams, AC Sparta Praha, started a project called "Fairly Cheering Sparta" (Sparta fandí slušně) in the 2009. It is project elaborated by Sparta's marketing department trying to "speak" to fans. This action condemns "any

²⁸¹ <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120&CL=ENG> – see particularly Articles 2 ("Domestic coordination"), 3 ("Measures"), 5 ("Identification and treatment of offenders").

²⁸²

[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(92\)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75);

See particularly: Article 1.I (to enable every individual to participate in sport, in a safe environment); Article 3 (close co-operation with the non-governmental sports organisations); Article 4.1 (non-discrimination); Article 4.2 & 4.4 (accessed by disadvantaged persons).

²⁸³ http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/e-RPG%2012%20-%20A4.pdf: Although this document relates specifically to racism and racial discrimination in the field of sport, the detailed measures set out in it are just as relevant to combating sexual orientation and gender identity discrimination in sport. Of the three documents listed above, this is the most useful in practical terms.

inappropriate and libelling cheering at stadium, dangerous behaviour of problematic fans, manipulation with pyrotechnics, or racist speeches". With the aim to approach younger people (the prospective sport audience/fans) a new prevention program for selected schools was founded in the 2011 in cooperation with the Czech Police.²⁸⁴

However, homophobic or transphobic speech is not an issue, though the word "buzerant" ("fag") is definitely widely used at sport-events in the Czech Republic.

v. *Have specific appropriate measures been taken to:*

- *put an end to the exclusion of transgender persons from sports activity or competitions,*
- *remove the obstacles encountered by them in participating in sport (dressing room access),*
- *recognize their preferred gender?*

According to Ministry of Education, Youths, and Sports there is no information on exclusion of trans people from participation at sport activities or on any obstacles regarding for example dressing rooms accessibility.

This doesn't mean that it is not an issue to be solved or at least explored. According to individual interviews with few trans people, they are trying to avoid such situations, for example participating at only such sport and sport-events, where the risk of uncomfortable situation (toilets, dressing rooms) is lower (individual sports) or avoiding sports generally.

The Czech Republic has also no experience with sportspeople being openly trans- or intersexual.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

- i. *Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*
- *developing awareness-raising activities*
 - *condemning homophobic and transphobic behaviour during and in connection with sports events?*

Czech authorities do not encourage educational activity focused on homophobia in sports, so the topic of homophobia and transphobia in sports has not been discussed yet in the Czech Republic, even when it comes to homophobia and transphobia among fans of sports clubs or the athletes themselves. The public authorities only support sporting activities themselves.

²⁸⁴ Available at: <<http://www.spartafandislusne.cz/projekt.html>>, [website visited on August 2nd, 2012.](#)

Ministry of Education, Youths, and Sports stipulated the aim of the Ministry to support inclusion in the area of sports, and therefore, it considers lesbian and gay sports groups and clubs as contrary to that target. However, if there were any funding claims and all legal demands are fulfilled, the Ministry sees no obstacle in providing financial support to such groups and clubs.

Finally to be mentioned in this area; Sport activities of lesbian and gay people are one of the most developed segment of Czech LG(BT) community. In the last years there were many groups both lesbian and gay founded in the various sport fields (swimming, football, volleyball, squash, table and regular tennis, floorball, ballroom dancing etc.) (some already perished). Also the participation (often successful) of Czech LG(BT) sportsmen and sportswomen at international tournaments incl. EuroGames, GayGames, and OutGames show that the sports area is (and was) of a big importance to LGBT people and that almost non-existing coming-outs or openly gay, lesbian, bi, or transgender people within the “regular” sports clubs, events, leagues etc. indicate significant level of homophobia and pressure on closetedness of respective LGBT sportspeople.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

i. Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?

Well-founded fear of persecution based on sexual orientation or gender identity could be a ground for granting international protection²⁸⁵ according to Czech law.

Pursuant to the Asylum Act²⁸⁶, the grounds for granting asylum are formulated as well-founded fear of prosecution based on the affiliation to a particular social group in the state of citizenship (or in case of a homeless person, in the state of last permanent residence). The Ministry of the Interior, as administrative body responsible for providing international protection, has adopted several asylum decisions, where sexual orientation represented the reason for granting asylum.²⁸⁷

Similarly, the Supreme Administrative Court issued a judgement in the 2006, considering sexual orientation a sign of affiliation to a particular social group (with regard the particular situation in the country of origin).²⁸⁸ In this regard, it is

²⁸⁵ The notion of international protection has two forms - asylum and subsidiary form of protection.

²⁸⁶ Section 12 of Act No. 325/1999 Coll., Act about asylum, as subsequently amended.

²⁸⁷ Honuskova, V., Šturma, P.: *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity*, Prague: 2010, p. 17. Available at http://fra.europa.eu/fraWebsite/attachments/LGBT-2010_thematic-study_CZ.pdf, visited on August 4th, 2012.

²⁸⁸ Judgment of Supreme Administrative Court of 05 October, 2006, No. 2 Azs 66/2006-52.

important to evaluate the intensity of persecution and harm caused by those who persecute, or are able to do so, as homosexuality itself is not a reason for granting asylum.

Worth mentioning is also a judgement of the Supreme Administrative Court, as a follow-up to the abovementioned decision: „a punishment of imprisonment from 6 months to 3 years does not represent a major interference with freedom of the applicant, as foreseen by Section 2 (5) of the Asylum Law, and is not sufficient for granting of asylum. The length of imprisonment (or imposing of a fine) does not reach the intensity required in order to grant protection in the form of asylum“²⁸⁹.

In the 2008 and 2009, there were less than 10 cases of applicants for international protection (who used their sexual orientation as the reason of their application), who went through a sexologist examination, part of which can be also a phallometric examination.²⁹⁰ According to the statement of the Ministry of the Interior: *“phallometric examination may be proposed for an individual seeking international protection in order to assess the credibility of his claim to be homosexual, where inconsistencies appear in his interview.”*²⁹¹ Nevertheless, the experience of Czech NGO²⁹² shows that sexological examinations were performed also in case when the applicant could have proven in other ways that the application is well-founded.

The applicants agreed with these sexological examinations, however, the question remains, whether their decision in that situation was free, whether they were well informed about the examination, and whether this information was provided by competent persons or whether the applicants were able to understand. The Czech NGO²⁹³ questioned whether the asylum seeker is informed about the procedure itself in a way understandable for him.²⁹⁴

According to the statement of the Ministry of the Interior of the 2010, the last time when the relevant administrative body asked for a performance of a professional expert opinion in sexual diagnostics was in the 2009. This date is confirmed also by non-governmental organisations, who have not reported a case of sexological examination aiming to ascertain sexual orientation of asylum applicants since then. According to the information provided by the Ministry of the Interior, to ascertain sexual orientation in asylum proceedings, the ministry nowadays uses a handbook provided to the ministry by the UNHCR.

ii. Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?

²⁸⁹ Judgment of Supreme Administrative Court of 23 November, 2007, No. 5 Azs 50/2007-71.

²⁹⁰ S. Jansen, T. Spijkerboer, COC Nederland, Vrije Universiteit, *Fleeing Homophobia*, September 2011, p. 52.

http://www.rechten.vu.nl/nl/Images/Fleeing%20Homophobia%20report%20EN_tcm22-232205.pdf

²⁹¹ European Union Agency for Fundamental Rights, *Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: 2010 Update – Comparative Legal Analysis*, 2010, pp. 58-59.

²⁹² Association for integration and migration [Sdružení pro integraci a migraci]

²⁹³ Organization for Aid to Refugees [Organizace pro pomoc uprchlíkům]

²⁹⁴ European Union Agency for Fundamental Rights, *Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: 2010 Update – Comparative Legal Analysis*, 2010, p. 60.

Officials who are responsible for asylum proceedings are not provided any special training on how to proceed in the cases of LGBT asylum seekers. No special training is provided either to people who are doing interviews, or to interpreters. On the other hand, Asylum Act stipulates that interview with applicant for granting international protection shall be done by a qualified person.²⁹⁵ Interviews are quite often interpreted from another language, not the native language of the applicant, the Asylum Act in accordance with Union Law stipulates that interviews shall be done in a native language or in a language which he or she is capable to understand. Considering very low annual numbers of asylum applicants who claim they are persecuted because of their sexual orientation or gender identity, there seems to be no need for specific training on problems encountered by LGBT refugees and asylum seekers. The ministry provides general training on the treatment of vulnerable groups, stressing the specifics of LGBT people.

iii. Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?

According to the information provided by the Ministry of the Interior, cases of asylum applicants usually regard people, whose sexual orientation has already been revealed, the applicant has already faced problems in connection with his or her sexual orientation – even though this fact can only be proved by applicant's statement. The application would be probably refused in the case the applicant himself/herself did not show his/her sexual orientation to public institutions or other persons, as this approach was chosen by the applicant himself/herself and there is no reason to presume that this approach would be changed in case of return to home country. So far, asylum or subsidiary protection based on sexual orientation or gender identity of applicant was granted only to persons coming from countries that punish sexual orientation or gender identity by law or do not protect the rights of LGBT persons.

Nevertheless, according to information provided by a non-governmental organization defending the rights of asylum seekers²⁹⁶, there was a case when the application was refused with an argument that if the applicant is not open about his or her sexual orientation, there is no danger for him/her in the country of origin

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

i. What procedures are in place to ensure compliance with this obligation?

According to both the Ministry of the Interior, as well as non-governmental organisations, the principle of *non-refoulement* is being implemented sufficiently,

²⁹⁵ Section 23 of the Act about asylum.

²⁹⁶ Association for integration and migration [Sdružení pro integraci a migraci]

mainly as the institute of “subsidiary protection” according to the Asylum Law²⁹⁷ defining the grounds for granting of this subsidiary form of international protection. The grounds set by the Law on Asylum fully reflect asylum grounds that are stemming not only from the EU law, but also from other relevant international instruments, mainly the European Convention for the protection of human rights and fundamental freedoms in its articles 3 and 8.

ii. Are there documented cases where asylum seekers have been returned to such a country?

Non-governmental organisations have no information about cases of return of asylum applicants to countries endangering their lives or freedom, or putting them in danger of further threats of torture, inhumane, or degrading treatment or punishment.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

i. What measures have been taken to comply with this requirement?

No specific measures were taken in order to protect asylum applicants from discrimination on the grounds of sexual orientation or gender identity. According to the information provided by the Ministry of the Interior, a working group for the prevention and elimination of sexual violence and violence based on sex was established in the residence and integration centre where asylum applicants are placed.

ii. In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?

²⁹⁷ Section 14a of the Act about asylum.

„(1) Subsidiary protection shall be granted to an alien who failed to meet requirements for granting of asylum if it has been established in the proceedings on the granting of international protection that a well-founded concern exists in his/her case that if the alien is returned to the country of which he/she is a citizen or, in case of a stateless person, to the country of his/her last permanent residence, he/she will face an actual risk of serious harm pursuant to Subsection (2) and that he/she is unable to, or due to such concern, unwilling to avail himself/herself of the protection of the country of which he/she is a citizen or the country of his/her last permanent residence (2) For the purposes of the Act, serious harm means a) imposition or enforcement of capital punishment, b) torture or inhuman or degrading treatment or punishment of an applicant for international protection, c) serious threat to life or human dignity by reason of malicious violence in situations of international or internal armed conflict, or d) if the fact that the alien leaves the country would contradict the international obligations of the Czech Republic.“

Neither employees of detention centres, nor the police, medical staff, or volunteers are trained or specifically informed about asylum seekers who claim protection because of their sexual orientation or gender identity.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

i. Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?

The Anti-Discrimination Act has conferred the powers in respect of discrimination, including discrimination on the grounds of sexual orientation and gender identity, upon the Public Defender of Rights²⁹⁸. The Defender has been acting as an anti-discrimination body since December 1st, 2009.

ii. In practice do they

- *make recommendations on legislation and policies,*
 - *conduct awareness-raising among the general public*
 - *examine individual complaints*
 - *participate in court proceedings*
 - *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed,*
- in relation to (a) sexual orientation or (b) gender identity?*

The powers of the Defender with regard to discrimination issues are provided by the Act on the Public Defender of Rights.²⁹⁹ The Defender shall contribute to promotion of the right to equal treatment, and to this end, he/she shall, among other things, provide methodological assistance to victims of discrimination, undertake research,

²⁹⁸ Section 13 of the Anti-Discrimination Act.

²⁹⁹ Section 21(b) of the Act No. 349/1999 Coll., on the Public Defender of Rights

“The Defender shall contribute to promotion of the right to equal treatment of all persons irrespective of their race or ethnic origin, nationality, sex, age, disability, religion, belief or opinions, and to this end, he/she shall

a) provide methodological assistance to victims of discrimination in lodging their proposals for commencement of proceedings concerning discrimination,

b) undertake research,

c) publish reports and issue recommendations on discrimination-related issues,

d) provide for exchange of the available information with the relevant European parties.”

publish reports, and issue recommendations, as well as provide for exchange of available information with the relevant European stakeholders.

The Defender has issued several recommendations to the general public and opinions targeting the professional public so far; nevertheless, none of the recommendations or the opinions concerned equal treatment on the grounds of sexual orientation or gender identity.

Pursuant to the Anti-Discrimination Act, the Defender shall provide methodological assistance to victims of discrimination by filing a court action. In practice, this means that the Defender conducts a legal assessment of a complainant's situation, offering them the most appropriate options in terms of taking the case forward as well as counselling or assisting a complainant in securing evidence, as necessary.³⁰⁰ However, the Defender shall have no statutory powers to represent victims of discrimination or to participate in legal proceedings on the side of a victim in any manner whatsoever.

To date, the Defender has investigated 4 complaints regarding discrimination on the grounds of sexual orientation or gender identity. From a systemic point of view, the most interesting complaints include, for example, a complaint related to registered partnership and a claim to parental allowances, a complaint related to child custody and the sexual orientation of a parent, the issue of a blood plasma donor disqualified on the grounds of his sexual orientation, or the issue of a registered partner's ineligibility for widower's pension after the death of the other partner.

The Defender expresses his general opinions on problematic issues related to equal treatment and discrimination; nevertheless he has not done so yet as regards discrimination on the grounds of sexual orientation or gender identity.

In its capacity of an advisory body to the Government, the Government Council for Human Rights shall establish committees that shall draft recommendations and proposals of a systemic nature for the Council. One of these Committees is the Committee for Sexual Minorities (hereinafter referred to as the "Committee"), the decision on the establishment of which was taken by the Government Council for Human Rights at their meeting held on February 21st, 2008.³⁰¹ The Committee members include representatives of the respective ministries at the level of officers, representatives of the LGBT minority, and the professionals. The Committee drafts and approves proposals for systemic changes ("initiatives") and submits them to the Government Council for Human Rights. If an initiative is approved by the Council, it is submitted to the Government for its approval. Members of the Committee also participate in drawing the Report on the State of Human Rights in the Czech Republic annually submitted to the Government. Through the Government Commissioner for Human Rights, members of the Committee may also comment on the Government's draft documents, both legislative and non-legislative. Hence, any comments made by the Committee must first be accepted by the Government Commissioner for Human Rights and the charged Minister, i.e. the Prime Minister in

³⁰⁰ Available at <<http://www.ochrance.cz/diskriminace/pomoc-obetem-diskriminace/>>, visited on August 4th, 2012.

³⁰¹ Annual Report on Activities of the Council of the Government of the Czech Republic for Human Rights in 2008, <http://www.vlada.cz/assets/ppov/rlp/cinnost-rady/vyrocní-zpravy/ZPRAVA-O-CINNOSTI-RLP-2008-final.pdf>.

the current electoral term, who has had the authority over the Government's advisory bodies since the 2010. A comment may not be put forward in the legislative process until it has been approved by the Government Commissioner and the Prime Minister. Whether the Committee's opinion and, by implication, the Government representative's opinion are accepted will subsequently depend on the outcome of the consultation procedure and an opinion of the Ministry that drafted the document in question.

To explain this mechanism, it is first necessary to briefly describe the history of the establishment of Government advisory bodies on human rights. In the past (i.e. since its establishment in the 1998) the Government Commissioner for Human Rights, as well as the Government Council for Human Rights, were subordinate to the designated member of the Government (e. g. the Minister of Justice). In the 2008-2010 period, the coalition Government with the representation of the Green Party created the position of the Minister for Human Rights and National Minorities who was then responsible for the management of the Government advisory bodies on human rights. Thus the agenda of human rights was high among the Government's political priorities. The Minister for Human Rights was a regular member of the Government and regularly participated in its meetings, and could independently (i.e. without the prior consent of another minister or the Prime Minister) submit proposals to the Government and comment independently on draft laws and other measures submitted by other departments. In that period, the Government also maintained the position of the Government Commissioner for Human Rights, who was subordinated to the Minister for Human Rights. The current coalition Government that has ruled since the elections in May 2010 has not created the position of the Minister for Human Rights, but it retained the position of the Government Commissioner for Human Rights. The Commissioner is still appointed by the Government, but at the same time he/she acts as the state official (as the director of the Human Rights Office of the Government of the Czech Republic). The Commissioner is subordinated to both the Prime Minister and the head of the Government Office. The advisory bodies on human rights are subordinated directly to the Prime Minister.

In the 2009, the Minister for Human Rights successfully initiated the issue of teaching materials on homophobia for primary and secondary schools entitled *Homophobia in School Collectives*,³⁰² and the members of the Committee participated in the drafting the concept of the material.

The Committee for Sexual Minorities processes initiatives for the Government Council for Human Rights whose members include representatives of the general public and various ministries at deputy level. If the Government Council for Human Rights approves an initiative, it is submitted to the Government for consideration and approval through the Government Commissioner for Human Rights and his respective minister. However, the approval of the initiative by the Government Council for Human Rights does not mean that Government initiative will be actually submitted. In practice, the initiatives are usually presented to the Government if the minister who is supposed to submit the initiative to the Government agrees with them. For example, the Government Council for Human Rights approved the initiative of the Committee on Sexual Minorities to lift the ban of individual

³⁰² See chapter VI. Education.

adoptions in the law on registered partnerships in the 2009,³⁰³ but the then Minister for Human Rights and National Minorities, due to criticism aimed at the initiative, failed to submit it to the Government, and the present Prime Minister has done so yet, either.

The establishment of the Council was preceded by the formation of the Working Group for Sexual Minorities of the Minister for Human Rights and National Minorities, which was created *within the framework of activity of the European Union “European Year of Equal Opportunities for All (2007)”*. It became a common platform for the meeting of representatives of the main non-governmental LGBT organizations and experts dealing with this issue on an academic level, as well as certain representatives of public service.³⁰⁴ In the year of its formation, the Working Group drafted the extensive document Analysis of the Situation of Lesbian, Gay, Bisexual, and Transgender Minority in the Czech Republic (hereinafter the “Analysis”), which mapped the situation of the LGBTI minority in the Czech Republic for the first time. The Analysis has been prepared with the assumption that it would be submitted to the Government; therefore, it included a series of recommendations for the ministries to improve the situation of the LGBT minority in the Czech Republic. However, the Minister for Human Rights and National Minorities failed to submit the Analysis to the Government, even though the Analysis became a springboard for the Working Group and subsequently for the Committee for Sexual Minorities.

The Council does not deal with individual complaints, nor does it take part in court proceedings. In addition to the above mentioned recommendations for the Government, which are at the heart of its activities, the Council may also publicly comment on the events relating to the LGBT minority. In the past, this has happened for example in the context of the International Day Against Homophobia. In the 2009, the Committee took opportunity to draw attention to the criminalization of homosexuality in many countries of the world. In relation to the discussion about the recodification of the Civil Code, the Committee drew attention to the exclusion of the registered partnership from this legal provision, whose ambition was to cover all the issues of private law.³⁰⁵

³⁰³ Annual Report on Activities of the Government of the Czech Republic for Human Rights in the 2009, Available at <<http://www.vlada.cz/assets/ppov/rlp/cinnost-rady/vyrocní-zpravy/Zprava-o-cinnosti-RLP-2009.pdf>>, visited on August 4th, 2012.

³⁰⁴ Analysis of the Situation of Lesbian, Gay, Bisexual, and Transgender Minority in the Czech Republic, p. 4, Available at <http://vlada.cz/assets/ppov/rlp/vybory/sexualni-mensiny/EN_analyza_web.pdf>, visited on August 4th, 2012.

³⁰⁵ See chapter IV. Right to respect for private and family life.