

Cyprus: The Status of Lesbian, Gay, Bisexual and Transgender Rights

Submission to the United Nations Human Rights Council for its Universal Periodic Review of Cyprus (6th Session)

INTRODUCTION

1. This information is submitted by ILGA-Europe¹ and the Gay Liberation Movement of Cyprus (AKOK) in the framework of the Universal Periodic Review, to draw the attention of the Human Rights Council to human rights concerns affecting lesbian, gay, bisexual and transgender (LGBT) people in Cyprus.

2. This report provides information about the situation of LGBT people on the whole island (i.e. both in the Republic of Cyprus and in Northern Cyprus). This report draws from the *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Cyprus*², conducted for the European Union Fundamental Rights Agency (FRA Report).

OVERVIEW

3. The 2009 OHCHR Report on the question of human rights in Cyprus (A/HRC/10/37) acknowledges that “the persisting de facto partition of the island of Cyprus continues to constitute an obstacle to the enjoyment of human rights”. This situation affects lesbian, gay, bisexual and transgender (LGBT) in a particular way. While LGBT people in southern part of Cyprus experience widespread discrimination and marginalisation, the situation of LGBT people in the northern part of the island is rendered more difficult by the existence of criminal provisions prohibiting homosexual relations³.

4. In 2002, following the European Court of Human Rights ruling in *Modinos v. Cyprus* (Judgment of 22 April 1993, Series A no. 259), the Republic of Cyprus repealed the criminal provisions that prohibited consensual sexual activity among adult males who are over the age of consent. However, a provision criminalizing sexual relations between consenting adult males is still in effect in the Northern part of Cyprus, making this territory within the Council of Europe to have such laws.

5. In Southern Cyprus (Republic of Cyprus), lesbian, gay and bisexual persons enjoy legal protection against discrimination in the areas of employment, through the transposition of the European Union Employment Framework Directive (2000/78/EC). However, according to the

1 ILGA-Europe, the European Region of the International Lesbian and Gay Association, enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe is a European NGO with more than 240 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 47 European countries; it receives financial support from the European Commission.

2 *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Cyprus*, Nicos Trimikliniotes and Corina Demetriou (February 2008), http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-NR_CY.pdf

3 Information on the situation of LGBT people in Northern Cyprus can be found at <http://www.queer.cy.org/eng/index.htm>

FRA report on Cyprus, the implementation of this law suffers from the failure to ensure that discriminatory laws and provisions are repealed; dialogue and consultation with NGOs; dissemination of information targeting the vulnerable groups; and the limited resources afforded to the equality body to enable it to adequately perform its tasks. It is important to note that prejudices amongst society and the lack of targeted awareness raising measures have so far prevented Cypriot LGBT persons from using the equality body procedure at national level.

6. The right to freedom of assembly is guaranteed by Article 21 of the Cypriot Constitution (Republic of Cyprus), which is equivalent to article 11 of the ECHR. However, in order to organise a procession or an assembly, the conditions laid down under the Assemblies and Processions Law must be observed which require prior application in the prescribed form to the police commissioner. There have never been any gay parades in Cyprus; this is usually attributed to the fact that there is no significant LGBT movement and that there is general societal stigma against homosexuality in the Cypriot society.

7. It should be noted that there is limited research available on LGBT issues in Southern and Northern Cyprus. The existing research shows that homophobia and discrimination against LGBT people is widespread, that the issue of homosexuality is a taboo subject in the country and that homosexuality is not tolerated in Southern Cyprus by a large number of people⁴. An opinion survey on attitudes towards homosexuality commissioned by the Cyprus Ombudsman Office (Southern Cyprus) in 2006 found that a majority of the interviewees considered relationships between same-sex partners as wrong. The majority (54%) said they were 'always wrong' and 26% were 'usually wrong'; only 3% said they are 'rarely wrong' and another 3% 'never wrong'. Comparing with another survey carried out in 2001, this survey concluded that attitudes towards homosexuality have become worse during the last two years⁵. As reported in the FRA Report on Cyprus, the worsening of attitudes was attributed by the researchers of the survey to the de-criminalisation of homosexuality and to the fact that homosexuals have recently become more demonstrative in public.

RIGHT TO EQUALITY AND NON-DISCRIMINATION (Article 26 of ICCPR and Article 2 of ICESCR)

8. Chapter 154 penal code in effect in northern Cyprus contains a **provision which criminalises sexual relations between consenting adult males**, and makes such relations punishable with up to five years of prison (article 171). Not only does the criminalisation of homosexuality compel individuals to hide their sexual orientation at work, within their family and friends, and in society in general, the criminal provision clearly contravenes international and European human rights law as recognised by the European Court of Human Rights and UN treaty bodies and special procedures¹.

9. It should be stressed that the jurisdictional complications constitute a significant obstacle in repealing this criminal provision. As a result of the non-recognition of the Turkish Republic of Northern Cyprus by the international community, monitoring by human rights bodies of the implementation of international human rights instruments in Northern Cyprus has been extremely limited. As a result, very little pressure has been exerted on the authorities of Northern Cyprus to remind them of their human rights obligations or to call of them to undertake the necessary measures to fulfil their obligations, such as the obligation to ensure equality before the law and equal protection of the law, regardless of a person's sexual orientation or gender identity.

⁴ See Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Cyprus, p. 22-23

⁵ The English version of the survey is available at [www.ilga-](http://www.ilga-europe.org/europe/guide/country_by_country/cyprus/survey_on_public_attitudes_toward_homosexuality_in_cyprus)

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10. Recommendation:

- Authorities have to repeal Chapter 154 of the penal code of Northern Cyprus that is employed to prohibit consensual sexual activity between men who are over the age of consent.
- Authorities have to ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.

RIGHT TO EDUCATION

(Article 13 of ICESCR)

11. The general societal stigma against homosexuality which prevails in the Cypriot society constitutes one of the most important challenges to the full enjoyment of human rights by LGBT people and to combating discrimination based on sexual orientation in Southern Cyprus.

12. According to the Gay Liberation Movement, the lack of awareness-raising and education about human rights and LGBT issues significantly contributes to the ongoing stigmatisation of LGBT people in Southern Cyprus. This is particularly true in schools where lesbians, gays, bisexuals and transgender people are either portrayed negatively or made invisible in the curriculum. The lack of access to sex education in schools is also highlighted as a problem. As reported in the FRA report on Cyprus, an opinion survey was carried out in schools⁶, focusing on the pupil's attitudes on sex education. The survey found that the vast majority of pupils believe that the subject must be introduced at secondary school, whilst one quarter believed it should be introduced at primary school. It was also suggested by pupils who took part in the survey that teachers engage in a dialogue on sexuality issues, that parents must also be trained and that Cypriot society must deal with various taboos and prejudices that characterise a small and conservative society. The survey found that pupils believed that NGOs offering support and counselling on sexuality and gender relations must be supported; that modernisation and respect for diversity and open-mindedness must be promoted, whilst special care must be taken for high risk groups.

13. Recommendations:

We urge the Government of Cyprus to:

- Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;
- Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, *inter alia*, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds;

PROTECTION AGAINST HATE SPEECH

14. As reported in the FRA Report on Cyprus, there are various recorded statements in the media which are homophobic. According to the Gay Liberation Movement, members of the Church as well as politicians frequently state in public that homosexuals are "immoral persons, bodily and mentally perverted". Such statements are reportedly fuelling stigma

⁶ The survey, published in November 2006 and carried out by the Cyprus Youth Board and the Cyprus Institute of Reproductive Medicine, was titled "Research into health in heterosexual relationships and sexuality". See Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Cyprus, p. 24.

against LGBT people and constitute another significant obstacle to combating discrimination based on sexual orientation⁷.

15. No action was ever taken on a case of speech motivated by homophobia. There are no provisions in the legislation in the Republic of Cyprus dealing expressly with hate speech related to homophobia and transphobia and/or discrimination on the ground of sexual orientation and gender identity. There is no provision in the Cypriot legal system regarding crimes committed with a homophobic and transphobic motivation nor is such motivation recognised as an aggravating factor. However, some of the more general provisions of the penal codeⁱⁱ may be interpreted as applying to these cases as well. But there is no case law or equality body decision regarding any of these provisions to date. As explained in the FRA report, most homosexuals in Cyprus are “closeted” and will not pursue their rights if that involves revealing their sexual orientation.

16. Recommendations:

We urge the Government of Cyprus to:

- Adopt the explicit legal measures to ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities;
- Ensure that the outputs of media is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that speech motivated by homophobia and transphobia does not remain unpunished.

END NOTES

i See judgments of the European Court of Human Rights, inter alia: ¶ Dudgeon v. the United Kingdom, judgment of 22 October 1981, Series A no. 45; ¶ Norris v. Ireland, judgment of 26 October 1988, Series A no. 142; ¶ Modinos v. Cyprus, judgment of 22 April 1993, Series A no. 259; ¶ S.L. v. Austria, no. 45330/99, ECHR 2003-I; ¶ L. and V. v. Austria, nos. 39392/98 and 39829/98, ECHR 2003-I; see also Views of the Human Rights Committee: ¶ Communication No. 488/1992: Australia, U.N. Doc. CCPR/C/50/D/488/1992, Nicholas Toonen v. Australia, 4 April 1994; see concluding observations of the U.N. human rights treaty bodies, inter alia: ¶ Human Rights Committee, Concluding observations of the Human Rights Committee: Barbados, U.N. Doc. CCPR/C/BRB/CO/3, 11 May 2007, para. 13: “The Committee expresses concern over discrimination against homosexuals in the State party, and in particular over the criminalizing of consensual sexual acts between adults of the same sex (art. 26). The State party should decriminalize sexual acts between adults of the same sex and take all necessary actions to protect homosexuals from harassment, discrimination and violence.”; ¶ Human Rights Committee, Concluding observations of the Human Rights Committee: Egypt, U.N. Doc. CCPR/CO/76/EGY, 28 November 2002, para. 19: “The Committee notes the criminalization of some behaviours such as those characterized as “debauchery”...The State party should ensure that articles 17 and 26 of the Covenant are strictly upheld, and should refrain from penalizing private sexual relations between consenting adults.”; ¶ Committee against Torture, Conclusions and recommendations of the Committee against Torture: Egypt, U.N. Doc. CAT/C/CR/29/4, 23 December 2002, para. 6: “The Committee recommends that the State party: [...] (k) Remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation.”; ¶ U.N. General Assembly, Extrajudicial, summary or arbitrary executions, Interim report of the Special Rapporteur, Asma Jahangir, U.N. Doc. A/57/138, 2 July 2002, para. 37: “...the continuing prejudice against members of sexual minorities and, especially, the criminalization of matters of sexual orientation increase the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses...”; ¶ CHR, Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Asma Jahangir, U.N. Doc. E/CN.4/2000/3, 25 January 2000, para. 116: “[...] The Special Rapporteur believes that decriminalizing matters of sexual orientation would greatly contribute to overcoming the social stigmatization of members of sexual minorities”; ¶

⁷ See Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Cyprus, p. 5.

ii “Under the Cypriot Criminal Code (Cap.154) a number of discriminatory acts are punishable offences. None of these offences refer either explicitly to homophobic motivation or generally to sexual orientation in any way. In fact, having in mind the political setting that formed the background at the time when the criminal code was being drafted, most of these provisions were clearly drafted having in mind ethnic discrimination, but some have been drafted widely enough so as to enable an interpretation that covers any type of discrimination. These are the following:

(a). Article 47(b) provides any person who publishes any words or documents or makes any visible representation whatsoever with a seditious intention is guilty of a felony and is liable to imprisonment for five years.

(b). Article 48(f) defines “seditious intention” as “intention to promote feelings of ill will and hostility between different communities or classes of the population of the Republic”.

(c) Articles 51 and 51A provide that any person who issues a calculated statement, printed or published to “encourage recourse to violence on the part of any of the inhabitants or to “encourage recourse to violence or promote feelings of ill will between different classes of communities or persons in the Republic of Cyprus” or which “procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance is guilty of a misdemeanour and is liable to imprisonment of up to twelve months or to a fine. The Criminal Code contains two more provisions which may, in the opinion of the Cyprus Expert of the Legal Network of Independent Experts on Fundamental Rights in 2006, indirectly lead to a conviction for discriminatory acts:

(g) Article 105 provides that civil servants (i.e. government employees) may be held guilty for “abuse of power” and may be sentenced to imprisonment of up to two years and/or a fine of up to CYP£1,500 (Euros 2,563). Abuse of power may well include using one’s position of power to discriminate against persons in the course of their duties, although this is not stated explicitly in the law.

(h). Article 136 provides that any person who violates the law on purpose, in relation to an act involving the public or part of the public, is guilty of an offence and is liable to up to two years imprisonment and/or a fine not exceeding £1,500 CYP (approximately Euros 2,563). It can therefore be inferred that an act violating the anti-discrimination provision of the Cypriot Constitution (article 28) or of the law transposing the Employment Directive (Law N.58(I)/2004) or any other law, may constitute a criminal offence under Section 136 of the Criminal Code if committed deliberately with a homophobic motive.”

(From Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Cyprus, p. 19-20)