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

Submission to the United Nations Human Rights Council for its Universal Periodic Review of Greece (11th Session)

INTRODUCTION

1. This information is submitted by the Lesbian and Gay Community of Greece (OLKE) 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 Greece. It was written by Irene Petropoulou, Chairperson of OLKE, and Themis Katsagiannis, member of OLKE.
2. This report provides information about the situation of LGBT in Greece.

OVERVIEW

Legal protection for lesbian and gay persons in Greece exists only in the area of employment, through the implementation of the framework directives 2000/78/EC and 2000/43/EC in the national law through the Act 3304/2005 (Act Against Discrimination) issued in 2005 on the grounds of equal treatment in the field of employment and explicitly stating the equal treatment independently of racial or ethnic origin, religious or other beliefs, disability, age, and sexual orientation.

This Act bans discrimination uniformly on any ground mentioned under international law or domestic legislation, explicitly including sexual orientation. Also, it explicitly bans direct and indirect discrimination, harassment, incitement to discrimination and victimization. The Act also features specific illustrative prohibitions of typical discriminatory conduct in key fields, including employment, vocational training, membership of professional organization, association and the provision of goods and services. It is a unique piece of legislation because of the reversed “burden of proof”, where the obligation to provide sufficient evidence in support of their position relies on the convicted in exercising discrimination, rather than the victim of discrimination.

Although “sexual orientation” is included in the above Act as a prohibited discrimination ground, however, transsexual and transgender persons are not protected from discrimination based on gender, gender identity or gender expression,

as the Greek legislation does not differentiate “sex” from “gender”. While the Act Against Discrimination explicitly includes and defines the heterosexual and homosexual orientations as the legal norm of “sexual orientation”, transsexuality is still considered as medical condition of libido dysfunction and is treated as disease by the medical authorities.

Another European Union legislation (Directive 2002/73/EC), is the Gender Equality Act 3488/2006 – issued in 2006 - which sets out the rules governing the equal treatment among women and men in employment, education and employment conditions. The field scope of this Act is surely wider but governs issues concerning employment only, plus it introduces for the first time in the Greek National Law System terms like “sexual harassment” and explicitly rewords meanings like “direct discrimination”, “indirect discrimination” and “harassment”.

The novelty of this Act is that it gives organizations, unions, and other legal entities the right to act as legal representatives of the offended person or persons before any jurisdictional, administrative or any other independent authority. The Act also features specific illustrative prohibitions of typical discriminatory conduct in the key field of gender equality introducing civil and administrative penalties in case of sexual harassment. Furthermore the reverse “burden of proof” where the obligation to provide sufficient evidence in support of their position relies on the convicted in exercising discrimination, rather than the victim of discrimination.

Unfortunately, there are no complaints filed that would highlight the existing discrimination against LGBT persons and publicly recognizing the need of enforcement of the anti-discrimination measures against LGBT people. Furthermore, there is no political, neither governmental will to combat discrimination based on sexual orientation, and especially gender identification, and LGBT people tend to refrain from taking actions in this account.

Also, OLKE is the only representative and reliable NGO that can give information about the situation of LGBT persons in Greece. The national census data does not include LGBT people. There are no governmental research and monitoring mechanisms in relation to LGBT issues. Although the Act Against Discrimination is an instrument with primarily preventive goal to provide tools and measures avoiding discrimination, so far it has never been implemented and cannot be used correctively to prove existing discrimination. On the other hand, there is no interest on the part of local researchers and research institutes to study LGBT issues.

Recommendations:

We urge the Greek Government to:

- Take all necessary legislative measures to impose appropriate protection for transgender, transsexual and intersex persons against discrimination at work, housing, public services, the provision of goods and services etc.
- Undertake campaigns of awareness-raising, directed to the general public in order to combat the prejudices that relate to sexual orientation and gender identity in employment.

Between 2008 – 2009, Dr. Drydakis Nick, PhD in Economics conducted an Athens Area Study (AAS) that provided the first evidence on the relationship between sexual

orientation and earnings in Greece for male adults. Sexual orientation minorities are found to receive significantly lower monthly wages than heterosexual workers of the same age, education, health status and occupational characteristics. Moreover, there is statistically significant evidence that homosexual and bisexual men have higher unemployment rates than similarly situated heterosexuals. Dr. Drydakis was able to disentangle the penalty associated with being unmarried from other human capital explanations of the wage gap.

(<http://econpapers.repec.org/paper/crtwpaper/0906.htm>)

Dr. Drydakis conducted another study that relied on a field experiment to provide the first evidence on the relationship between women being lesbian and their hiring prospects in Greece. The data analyzed supports the findings of previous experiments, indicating that lesbians face hiring discrimination. More importantly, entry wage differentials assigned are inconsistent with the ascendant empirical claims that lesbians have higher market earnings. The negative effect of lesbian sexual orientation is 6.1%.

(<http://econpapers.repec.org/paper/crtwpaper/0907.htm>)

Public demonstrations, pride marches and other mass events are allowed by national law, if they are peaceful and unarmed. Freedom of expression and assembly is guaranteed by the Greek Constitution. Under this scope, numerous public events organized by LGBT organizations have been permitted by the state, as well as six LGBT Pride marches (2005 – 2010).

LGBT organizations denounce the influence of the Greek Orthodox Church on Greek politics. The hierarchies of the Church have been strongly critical toward the possibility of legal recognition of same-sex civil marriage and partnerships, publicly arguing that such unions are against nature and must not be passed by parliament. Church leaders have also criticized TV broadcasts presenting positive images of gay and lesbian life.

There is often no recognition of the special needs of LGBT patients (for example, lesbians worrying about and avoiding gynecological examinations). The provision that banned gay men from donating blood has not been removed, and gay men are still refused by hospitals as blood donors on the basis of their sexual orientation. Even though homosexuality is not officially considered an illness, it is still to some extent considered a disorder.

PROTECTION AGAINST HATE SPEECH

There is currently no criminal or civil legal provision in Greece regarding hate speech related to homophobia or discrimination on the ground of sexual orientation. Criminal law only penalizes hate speech related to discrimination on the grounds of race, ethnicity, or religion. The available information shows that homophobic violence—in terms of physical or verbal attacks—is part of the experience of many LGBT persons. Also, there is limited and distorted media coverage on their issues, and cases of homophobia expressed in media by politicians and church leaders have been identified.

Recommendations:

We urge the Government of Greece to:

- Adopt explicit legal measures in order 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

INSTITUTIONAL HOMOPHOBIA AND TRANSPHOBIA

The National Council for Radio and Television (NCRT) was founded in 1989 and it is one of the oldest independent authorities in Greece. Its mandate involves upholding the laws that regulate the existence and function of radio and television stations, but it has become notorious for the very high monetary penalties it imposes on such stations. In several occasions it has dealt with issues that relate to the LGBT community, all in a negative way, practically sanctioning the presence of LGBT fictional characters on Greek television. (NCRT decisions 371-2003, 408-2004, 197-2009, 128-2010)

It is clear that its decisions and hefty fines can lead to the eradication of LGBT individuals from television and radio, since TV and radio stations will want to avoid paying fines. Such decisions are clearly dangerous to the impartial and free access to mass communication media and consequently to the struggle for the improvement of the situation of LGBT individuals, since an essential part of it is reaching the masses. It therefore sets substantial obstacles to campaigning for legislative and societal change, and hinders the struggle to ensure the human rights of the LGBT population in Greece

Recommendations:

We urge the government of Greece to:

- 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.

RIGHT TO EQUALITY AND NON-DISCRIMINATION

(Article 26 of ICCPR and Article 2 of ICESCR)

On Same-Sex Marriage

The Greek legal system does not explicitly state that civil marriage is only allowed between a man and a woman. On this ground a gay and a lesbian couple decided to get married on the Island of Tilos on June 3, 2008. The District Attorney of Rhodes Mr. Georgiou filed a legal suit to overturn these marriages, after Supreme Court prosecutor Mr. Sanidas expressed the opinion that these marriages were null and void bringing the case to the First Instance Courts of Rhodes Island. The two same sex couples lost the case, but they have expressed their will to continue the legal battle until they are justified, even if that has to happen in the European Court of Human Rights.

In spite of the rejection of same sex marriage the court commented in favor of registered partnership legislation. The decision is being challenged in the Court of Appeals, which will hear the case in February of 2011.

On Civil Partnerships

In November 2008 the Greek Parliament voted in favor of Act 3719/2008 that allowed civil unions only in for partners of different sex. This Act is considered

discriminatory on the grounds that it does not offer legal recognition for the relation between two same-sex adults, or their children. This lack of legal recognition of diverse forms of families results in discrimination in a number of areas of life. For instance same-sex partners are not recognized as next of kin in inheritance rights, social security rights, taxation and pensions.

In any case, the lack of official recognition of same-sex civil partnerships in Greece, in contrast with other EU member states, impedes the application of Directive 2004/38/EC to de facto partners of Greek citizens in cases of relocation to another EU member state.

Recommendations:

We urge the Greek Government to:

- Ensure that the Greek legislation and policies recognize the diversity of family forms;
- Take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of sexual orientation or gender identity of any of its members, including with regard to public benefits and immigration.