

# *The legal position of LGBT persons and same-sex couples in Cyprus*

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# The Legal Position of LGBT Persons and Same-Sex Couples in Cyprus

ALINA TRYFONIDOU<sup>1</sup>

## Abstract

*Historically, Cyprus was greatly lagging behind other European countries in the recognition and protection of the rights of LGBT persons and same-sex couples. However, from the 1990s, when male-to-male consensual sex was decriminalised, to 2015 when (same-sex and opposite-sex) civil partnerships were introduced, Cyprus has gone a long way – legally – in the recognition of same-sex relationships and the protection of the rights of LGB persons, although, admittedly, some important gaps still persist. As regards trans persons, things are not equally encouraging, as the legal system – still – makes no systematic provision for them. The aim of this article is to take stock of the protection and rights that LGBT persons and same-sex couples have come to enjoy under the Cypriot legal system. It will also seek to highlight the gaps that still remain in the protection that Cyprus offers to LGBT persons and same-sex couples and to briefly suggest ways for filling these gaps. It will be concluded that although some important steps in the right direction have been made, especially in recent years, there is still a long way to go for achieving complete equality under the law between LGBT persons and their heterosexual and cisgender brothers and sisters.*

**Keywords:** Cyprus; EU; Council of Europe; ECHR; Equality; LGBT; Gay and Lesbian; Same-Sex Couples; Trans; Discrimination on the Grounds of Sexual Orientation and Gender Identity

## 1. Introduction

Historically, Cyprus<sup>2</sup> was greatly lagging behind other European countries in the

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1 Associate Professor in EU Law, University of Reading. I am extremely grateful to the Office of the Cyprus Ombudsman for its kind assistance in providing access to materials necessary for the preparation of this article. I would also like to thank an anonymous reviewer for very helpful comments on a previous draft of this article. Needless to say, all errors remain mine

2 In this article, 'Cyprus' should be taken to refer to the Republic of Cyprus. Cyprus remains de facto divided since the Turkish invasion in July 1974. The article will only discuss the situation in the Republic of Cyprus and will not discuss the situation in the Turkish-occupied northern part of Cyprus, which in 1983 illegally proclaimed independence as the 'Turkish Republic of Northern Cyprus (TRNC)', which is until today only recognised by Turkey. The Republic of Cyprus retains

recognition and protection of the rights of lesbian, gay, bisexual and trans (hereinafter ‘LGBT’) persons and same-sex couples and ‘[t]hroughout Cyprus history, colonial and post-colonial legacy prosecuted and marginalized LGBT people’.<sup>3</sup> However, from the 1990s, when male-to-male consensual sex was decriminalised, to 2015, when (same-sex and opposite-sex) civil partnerships were introduced, Cyprus has gone a long way – legally – in the recognition of same-sex relationships and the protection of the rights of gay, lesbian, and bisexual (hereinafter ‘LGB’) persons, although, admittedly, some important gaps still persist. As regards trans persons, things are not equally encouraging, as the legal system – still – makes no systematic provision for them, and they are only very seldom removed from their ‘invisibility’, a relatively recent example being the media reaction that ensued from the closure by the police of an art exhibition by a Greek trans artist.<sup>4</sup>

The aim of this article is to take stock of the protection and rights that LGBT persons and same-sex couples have come to enjoy under the Cypriot legal system. For this purpose, a historical overview of the position of LGBT persons and same-sex couples in Cyprus will be provided, which will seek to demonstrate that the path to the rights currently enjoyed by this segment of the population has been long and difficult and fraught with many political landmines. The topic is vast, worthy of a monograph in its own right, and thus an article of this length can only focus on the basics, aiming to sketch the current position of LGBT persons and same-sex couples under the Cypriot legal system and to highlight the gaps that still remain in the protection that the State offers to them. The main conclusion of the article will be that although some important steps in the right direction have been made, especially in recent years, there is still a long way to go for achieving complete equality under the law between LGBT persons and their heterosexual and cisgender brothers and sisters.<sup>5</sup>

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sovereignty but does not exercise effective control over the Turkish-occupied part of the island. For a clear introduction to the Cyprus problem see J Ker-Lindsay, *The Cyprus Problem: What Everyone Needs to Know* (OUP 2011).

3 M. Kapsou, A. Christophi, M. Epaminonda, (Nicosia: Cyprus Family Planning Association and Accept-LGBT Cyprus, June 2011), p. 5. Available at [http://www.cyfamplan.org/famplan/userfiles/documents/a\\_report\\_on\\_sexual\\_orientation\\_in\\_cyprus.pdf](http://www.cyfamplan.org/famplan/userfiles/documents/a_report_on_sexual_orientation_in_cyprus.pdf) (last accessed on 31 August 2017).

4 ‘Εφοδος της Κυπριακής Αστυνομίας στην έκθεση της Πάολας Ρεβενιώτη’, LIFO GR, November 2014, <http://www.lifo.gr/now/culture/55911> (last accessed on 31 August 2017). See, also, the announcement by Accept-LGBT Cyprus in relation to this <http://www.acceptcy.org/en/node/9227>, November 2014 (last accessed on 31 August 2017).

5 The most recently published ILGA Europe Rainbow Europe map (2017) shows that Cyprus is one of the worst performing EU countries as regards the legal and policy human rights situation of LGBTI people: on a scale between 100% (respect of human rights, full equality) and 0% (gross violations of human rights, discrimination) Cyprus scored only 29%. ‘The Rainbow Europe map’ (Brussels: ILGA, May 2017), available at <https://www.ilga-europe.org/resources/rainbow-europe/rainbow-europe-2017> (last accessed on 31 August 2017).

## 2. LGBT Rights in Cyprus: The Social and Historical Context

Cyprus is a small island in the eastern Mediterranean. It is a relatively young state, having taken its current form – as the Republic of Cyprus – only in 1960. Before that, it was a British colony (officially since 1925, but administered by the British Empire since 1878, whilst still officially a part of the Ottoman Empire until 1914) and, thus, the majority of its laws originate from British colonial rule.<sup>6</sup> A member state of the Council of Europe since 1961, it signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1961 and ratified it in 1962. Cyprus joined the European Union (EU) in May 2004.

Cyprus is a socially conservative country and, thus, minorities and anyone different from what is perceived to be the norm can feel excluded and marginalised. As a sexual minority, LGBT persons in Cyprus have faced discrimination in all areas of life and in some cases have been harassed and/or ridiculed even by state authorities, and particularly by the police.<sup>7</sup> The absence – until very recently – of any real legal protection for LGBT persons, in combination with the fact that LGBT persons in Cyprus often do not wish to reveal their sexual orientation or gender identity, has led to underreporting of incidents of violence and harassment against this group of persons. Moreover, the fact that LGBT issues have been considered taboo coupled with the almost complete absence of a meaningful discussion of these issues in the media and the resultant lack of ‘education’ around them,<sup>8</sup> has meant that LGBT persons have, until recently, largely been invisible in Cypriot society. LGBT persons are largely absent from Cyprus popular culture and television shows, apart from a few examples in Cypriot (or Greek) television series where gay men have been negatively portrayed as highly sexualised and blithe caricatures. At schools and other educational establishments, discussion of LGBT issues remains a sensitive, and thus evaded, topic and this is quite unfortunate in that informed discussion of these issues at an early age would be an important way of addressing prejudices and stereotypes and changing attitudes and perceptions.<sup>9</sup>

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6 Exceptions to these being, for instance Cypriot Family law, which has been influenced by Greek Family law instead.

7 For a study on the experiences of LGB persons in Cyprus, particularly their experiences of acceptance or discrimination in various settings see N. Trimikliniotis and S. S. Karayanni, ‘The Situation Concerning Homophobia and Discrimination on Grounds of Sexual Orientation’ (Nicosia: Simfiliosi, March 2008), p. 6. Available at <http://www.statewatch.org/news/2010/jan/cyprus-homophobia-report.pdf>, last accessed on 10 August 2017).

8 For a study collecting and analysing the extent and quality of portrayal of LGBT issues in Cyprus media see Kapsou, et al., *A Report on Sexual Orientation in Cyprus*.

9 For a more detailed analysis of the situation in schools and suggestions for improvement see the Cyprus Anti-Discrimination Body *Report on Homophobia in Education and the Treatment of*

The nexus of heteronormativity and patriarchal structures<sup>10</sup> that has traditionally been a central aspect of the Cypriot society, together with the strong influence of the socially conservative State Church within the Cypriot society and even in politics and legislative choices, have been the main factors that have led to a homophobic and transphobic climate in the island. The State Church – currently headed by Archbishop Chrysostomos II – has always played a significant role in the social marginalisation and psychological persecution of LGBT individuals in Cyprus. In addition, it is the Church that has often been the force behind delays in legislative developments aiming to protect and respect LGBT rights. Furthermore, the Cyprus Problem and its position as the top concern of all successive governments since the 1960s has meant that other matters which are perceived to be of less importance because they concern only a small segment of the Cypriot society receive less or even no attention at all.<sup>11</sup> Accordingly, as will be seen below, legislative developments aiming to protect and respect LGBT rights have only come about slowly and mainly as a result of pressure from EU and/or Council of Europe membership.

### 3. LGBT Activism in Cyprus

As the Cyprus Commissioner for Administration and Human Rights (hereinafter ‘the Cyprus Ombudsman’) in her position as the Head of the Anti-Discrimination Body has noted,<sup>12</sup> it is important for LGBT organisations to have a presence in media and to cooperate with governmental authorities and organisations in order to raise public awareness in relation to LGBT issues.<sup>13</sup> In Cyprus, LGBT activism was born

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*Homophobic incidents*, No 63/2011 and 131/2011, 20 November 2012. Note, however, that in recent years some steps have been taken, such as a campaign supported by the Ministry of Education in 2012 ‘Shield against Homophobia in Education’ and the establishment by the same Ministry in 2011 of an Observatory for Violence in Schools, which would investigate, inter alia, the victimisation of students and teachers in schools for sexist or homophobic reasons.

10 Gay men are considered as inappropriately behaving as women and, thus, as failing to satisfy gender expectations of the Cypriot sexist ‘macho’ culture. For more on this see Trimikliniotis and Karayanni, ‘The Situation Concerning Homophobia and Discrimination on Grounds of Sexual Orientation’, pp. 2-4.

11 See N. Trimikliniotis and C. Demetriou, ‘Evaluating the Anti-Discrimination Law in the Republic of Cyprus: A Critical Reflection’ *The Cyprus Review* (Vol. 20, No. 2, 2008) pp. 79, 83; N. Kamenou, ‘“Cyprus is the Country of Heroes, Not of Homosexuals”: Sexuality, Gender and Nationhood in Cyprus’, PhD Thesis, King’s College London, 2012, available online at [https://kclpure.kcl.ac.uk/portal/files/12780640/Studentthesis-Nayia\\_Kamenou\\_2012.pdf](https://kclpure.kcl.ac.uk/portal/files/12780640/Studentthesis-Nayia_Kamenou_2012.pdf) (last accessed on 11 September 2017).

12 For a more detailed explanation as to how the Cyprus Ombudsman has been appointed national equality body, see section V(3) of the article.

13 Cyprus Anti-Discrimination Body Report regarding the prevention and fight against homophobic

in the 1980s and has contributed greatly in pushing for legislative reform and – more recently – in raising public awareness and bringing together the LGBT community of the island.

The very first organisation exclusively devoted to the promotion of the interests of the gay and lesbian community was established in December 1987 by 16 gay men and a lesbian woman. This was the ‘Liberation Movement of Homosexuals in Cyprus’ (AKOK – Απελευθερωτικό Κίνημα Ομοφυλοφίλων Κύπρου), which was founded and presided by the famous Cypriot gay rights activist Alecos Modinos. The main target of AKOK was to campaign for the decriminalisation of sexual conduct between males. After achieving its main aim in the late 1990s, AKOK was not very active and few – if any – steps were subsequently taken by this organisation.

Accordingly, for about ten years, LGBT activism in Cyprus was virtually non-existent. The end of this period of inactivity came with the establishment of Accept-LGBT Cyprus (‘Accept’). The origins of Accept go back to 2009, when in September of that year ‘a group of people came together to explore and discuss not only the discrimination they were facing but also the exclusion and intolerance they were witnessing around them when expressing their sexual identity and orientation. Get-together after get-together began to gather momentum and so with the energy, vision and passion of the many, accept LGBT Cyprus came into being. A steady group of people began to meet regularly, quickly forming an organization dedicated to, focused on and driven by, the need for sexual equality’.<sup>14</sup> The organisation was officially established in 2011 and has been very active since then, contributing to the visibility of the LGBT community in Cyprus.

Accept has lobbied the government for the legal recognition of same-sex partnerships and for other legal reforms concerning LGBT persons and same-sex couples. At the moment of writing, Accept is trying to push forward legislative reforms which will aim to resolve key problems faced by the trans and intersex communities in Cyprus. In 2014, it organised the first Gay Pride parade in Cyprus, which received wide support from almost all the political parties, as well as some current and ex politicians, Embassies and foreign diplomats, and the political offices of international organisations in Cyprus, despite the fact that it was met with severe opposition from the State Church. Since then, there is an annual Gay Pride parade in Nicosia. In addition, in October 2016, Accept hosted in Nicosia the ILGA-Europe annual conference, which is Europe’s largest annual LGBT event.

All these events, together with the progress made in the legal framework, have

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speech, No. 55/2010, 56/2010, 57/2010, 58/2010, 61/2010, 29 June 2012, para 33.

14 Kapsou, et al., *A report on Sexual Orientation in Cyprus: Mapping the Sociopolitical Climate, Experiences and Needs*, p. ii.

increased the visibility of the LGBT community in Cyprus and have encouraged the open discussion of LGBT issues in the media, with TV presenters and journalists often providing a supportive and scientifically and politically correct portrayal of such issues.

#### 4. The Protection of the Rights of Trans Persons under Cypriot Law

Although – as the LGBT acronym demonstrates – persons of homosexual or bisexual orientation are often grouped together with trans persons, different issues are involved in the treatment of these two groups of persons. In particular, there are differences between these groups as regards the challenges they face, the way they need to be protected under the law, as well as the reasons for, and the areas of life in which they are discriminated against. For this reason the article needs to distinguish between the ‘LGB’ and the ‘T’. This section is, therefore, devoted to trans persons and their treatment under the Cypriot legal system.

Before proceeding to examine the legal treatment of trans persons in Cyprus, a few words should be said about terminology. ‘Trans’ is used to refer to ‘those people who do not perceive or present their gender identity as the same as that expected of the group of people who were given the equivalent sex designation at birth’;<sup>15</sup> or, put more simply, ‘a trans person is someone who identifies with a different gender and/or expresses their gender identity differently from the gender that they were assigned at birth’.<sup>16</sup> The term ‘transsexual’ is narrower and is a sub-category of the term ‘trans’, indicating ‘someone who is intending to undergo, is undergoing or has undergone gender reassignment treatment’.<sup>17</sup> Unlike LGB persons, whose defining characteristic is their sexual orientation, which groups them together as one group, the characteristic that binds together trans persons is their gender identity.<sup>18</sup> Therefore, discrimination

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15 S. Whittle, *Respect and Equality: Transsexual and Transgender Rights* (Abingdon, UK: Routledge 2002), pp. xxii f.

16 EU Fundamental Rights Agency Report, *Being Trans in the European Union: Comparative analysis of EU LGBT survey data* (Luxembourg: Publications Office of the European Union, 2014) 14. Available at [https://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative\\_en.pdf](https://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative_en.pdf), last accessed on 31 August 2017.

17 Whittle, *Respect and Equality: Transsexual and Transgender Rights*, pp. xxii f. For an explanation of transgenderism see F. Pfäfflin, ‘Transgenderism and Transsexuality: Medical and Psychological Viewpoints’ in J M Scherpe (ed), *The Legal Status of Transsexual and Transgender Persons* (Cambridge: Intersentia, 2015).

18 The Yogyakarta principles define ‘gender identity’ as ‘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, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms’. See ‘Preamble’, Yogyakarta Principles, page 8. Available at [http://www.yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://www.yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf), last accessed on 1

against trans persons is considered to be discrimination based on gender identity.<sup>19</sup>

As Trimikliniotis and Karayanni have noted, '[i]f homosexuality is an unspeakable taboo and if lesbianism is immersed in a numb silence, sex change poses a major challenge and threat to the established order' in Cyprus.<sup>20</sup> Accordingly, and as will be seen in this section, trans persons have, until very recently, been completely invisible in the Cypriot legal framework and, apart from a handful of pieces of legislation which have been recently amended in order to make reference to gender identity, no real progress has come in relation to their position.

As noted in various reports on LGBT rights in Cyprus, there is hardly any information specific to trans persons living on the island. Moreover, until very recently, trans persons were not explicitly covered or mentioned in any pieces of legislation and the provision that has been made for them in recent legislation seeks to protect them from violent acts of other persons (hate speech) but does not protect positively any of their rights as there is still no provision in the law for a procedure which enables them to be recognised in their psychological gender, as will be explained below. The latter legislative void amounts, according to the Ombudsman, to a breach of trans persons' right to private life, contrary to Article 8 ECHR,<sup>21</sup> and is also a breach of their right to

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September 2017.

- 19 Though in some contexts (e.g. in the case law of the EU Court of Justice) it has been considered to amount to discrimination on the ground of sex.
- 20 Trimikliniotis and Karayanni, 'The Situation Concerning Homophobia and Discrimination on Grounds of Sexual Orientation', p. 24.
- 21 Cyprus Anti-Discrimination Body Report regarding the legal recognition of the gender identity of trans persons, No 21/2011, 95/2011, 14/2013, 12/2014, 2 April 2014, para 111. In 2012 a case (Application No. 72491/12 Andriana Klaedes v Cyprus (15 October 2015) was brought before the ECHR by a trans lawyer registered as a member of the Cyprus Bar Association who complained that a number of her rights under the ECHR were breached by a judge of the Larnaca District Court (criminal jurisdiction) before whom she appeared to represent a client. The lawyer argued that her right to respect for her private life under Article 8 ECHR had been infringed because of the disclosure in public by the Judge of her personal data and matters concerning her sex; that her right not to be subjected to degrading treatment under Article 3 ECHR was breached as a result of the judge's derogatory and humiliating comments in the courtroom; that her right to access to court on behalf of her clients under Article 6 ECHR was violated because of the behaviour and attitude of the judge; and that, because judges enjoyed immunity under Cyprus legislation, there was no remedy in the domestic legal system in respect of the above complaints, in breach of Article 13 ECHR. The ECtHR unanimously declared the application inadmissible, holding that the applicant had not taken the necessary steps to exhaust available domestic remedies in respect of her complaints in relation to Articles 8, 13 and 3 ECHR. Moreover, as regards her claim under Article 6 ECHR, the Court held that because it was the applicant's client and not the applicant herself that was a victim of the alleged violation, her complaint was incompatible *ratione personae* with Article 35(3)(a) ECHR and thus her complaint should be rejected. This was the only case brought before the ECtHR against Cyprus by a trans person. For a comment on the case see A. Shepherd, 'Let's not skirt the issue: reflections on Klaedes v Cyprus (2015)' (2016) 2 *The Young Human Rights Lawyer* 23. Available at <https://www>.

human dignity.<sup>22</sup> In addition, apart from their, until recently, complete invisibility in legislation, trans persons are often the victims of discrimination and hostile treatment in almost all areas of their lives.<sup>23</sup>

Despite the lack of legislation granting the right to trans persons to apply to be recognised in their psychological gender, transsexuals can change their sex and name in Cyprus<sup>24</sup> by submitting a medical certificate confirming that gender reassignment surgery has been conducted together with a sworn affidavit regarding the change of name to the District Administration authorities.<sup>25</sup> The authorities will then forward the medical certificate to the Ministry of Health for approval, and, once approval is obtained, they will issue a new passport, identity card, and electoral identity booklet to the applicant. However, the birth certificate of the applicant is not amended. It should be highlighted that although a person's gender identity can, in practice, be recognised in formal documents, there are certain requirements which must be satisfied prior to this: a gender reassignment surgery must have been performed and there must be proof of single (or divorced) status. In addition, the decision whether to proceed with such formal recognition falls at the *discretion* of the Director of the Civil Registry and Migration Department and, thus, a transsexual person is not entitled to it as of right.<sup>26</sup> Finally, there is no legal framework to secure a requirement for recognition of trans persons in their psychological gender in non-state documents, such as school certificates.<sup>27</sup> Moreover, as is obvious, trans persons who have not undergone a gender reassignment surgery can under no circumstances change their sex and name in State documents.

In her position on the matter, the Ombudsman, in line with the position expressed in international instruments,<sup>28</sup> noted that the requirement of any kind of medical intervention (including gender reassignment surgery) cannot be a prerequisite for the

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[hrla.org.uk/wp-content/uploads/2016/09/2016-Journal.pdf](http://hrla.org.uk/wp-content/uploads/2016/09/2016-Journal.pdf), last accessed on 7 December 2017.

22 *Ibid*, para 113.

23 *Ibid*, para 7.

24 This is based on the general (i.e. not trans-specific) Law 141(I)/2002 (Ο Περί Αρχείου Πληθυσμού Νόμος του 2002), sections 40 and 41.

25 M Ioannidou, 'Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Cyprus – January 2014 update', p. 25. Available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/country-study-lgbt-legal-update-2014-cy.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/country-study-lgbt-legal-update-2014-cy.pdf), last accessed on 14 August 2017.

26 Cyprus Anti-Discrimination Body Report regarding the legal recognition of the gender identity of trans persons, No 21/2011, 95/2011, 14/2013, 12/2014, 2 April 2014.

27 M Ioannidou 'Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Cyprus – January 2014 update', p. 25.

28 See, for instance, Principle 3 of the *Yogyakarta Principles*. Available at [http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles\\_en.pdf](http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf), last accessed on 1 September 2017.

legal recognition of the gender identity of a person.<sup>29</sup> In addition, it is imperative for trans persons to have access to a clear, specific, rapid, accessible, and transparent, procedure for changing their sex and name in their identity documents.<sup>30</sup>

The invisibility of trans persons in the Cypriot legal system is also reflected in the absence in the Cypriot anti-discrimination legislation of any reference to this group of persons and to gender identity as grounds on which it is prohibited to base a distinction. A perusal of the Cypriot legal framework prohibiting discrimination (to be seen in more detail below, when examining the rights of LGB persons) reveals that trans persons and the issues affecting them are conspicuous by their absence, although if Cyprus follows EU law, as it has to, it must at least consider that all provisions prohibiting discrimination on the grounds of sex also prohibit discrimination which is based on the fact that a trans person has undergone gender reassignment surgery.<sup>31</sup>

Nonetheless, in recent years some small legislative steps have been made which offer some protection to trans persons. In 2015, the Cyprus legislature passed an amendment<sup>32</sup> to the Cyprus Criminal Code (Cap 154) which provides that hate speech based on, inter alia, gender identity is a criminal offence punishable by imprisonment and/or a fine.<sup>33</sup> Moreover, section 35A of the Criminal Code (Cap 154) – added in 2017<sup>34</sup> – provides that when determining penalties, courts can consider as an aggravating factor a motive of prejudice against groups of persons who are characterised by, inter alia, gender identity. In addition, the Refugees Law (No. 6(I)/2000)<sup>35</sup> has been amended several times and now includes gender identity as valid grounds for the granting of asylum.

Despite the poor record of the Cyprus legislature in relation to the protection of the rights of trans persons, the approach of some public authorities and bodies shows

29 Cyprus Anti-Discrimination Body Report regarding the legal recognition of the gender identity of trans persons, No 21/2011, 95/2011, 14/2013, 12/2014, 2 April 2014, paras 109, 112, 113; Anti-Discrimination Body Proposals regarding the institutionalization of a legal framework for the protection of trans persons, No 24/2016, 10 October 2016, para 6, bullet point 3.

30 Cyprus Anti-Discrimination Body Report regarding the legal recognition of the gender identity of trans persons, No. 21/2011, 95/2011, 14/2013, 12/2014, 2 April 2014, paras 110 and 113; Anti-Discrimination Body Proposals regarding the institutionalization of a legal framework for the protection of trans persons, No 24/2016, 10 October 2016, para 6, bullet point 2.

31 Case C-13/94 P v S and Cornwall City Council ECLI:EU:C:1996:170.

32 eLaw 87(I)/2015 Amending the Criminal Code (Cap 154) (Ο περί Ποινικού Κώδικα (Τροποποιητικός) Νόμος του 2015).

33 Section 99A of the Cyprus Criminal Code (Chapter 154). This amendment will be discussed in more detail later, when analysed in the context of LGB rights.

34 Lawel/2017 Amending the Criminal Code (Cap 154) (Ο περί Ποινικού Κώδικα (Τροποποιητικός) Νόμος του 2017).

35 The Refugees Law 6(I)/2000 (Ο Περί Προσφύγων Νόμος του 2000).

some encouraging signs.

In early 2013, Accept submitted a complaint to the Cyprus Anti-Discrimination Body, regarding the arrest and detention of a trans woman in a male prison. Due to the fact that her name on her identity card was masculine, she was taken to a male prison. However, the prison officials were aware that she was a trans woman and, in the absence of any specific instructions, they detained her in the children's ward, which, was empty at that time. In response to the complaint, the Cyprus Anti-Discrimination Body suggested that it is incredibly important that a police instruction/circular should be issued regarding the handling of cases involving trans persons who are in detention, in order to ensure full respect of their rights. This, according to the Ombudsman, would require that transsexual persons be treated as belonging to their assigned gender, and that in situations where it is not clear whether a person is a man or a woman, that person must be requested to specify what *they* consider to be their gender identity or, in case that person is not willing to express a preference for gender identity, steps must be taken to identify it (e.g. by cooperating with doctors and psychologists).<sup>36</sup> In a subsequent report, the Ombudsman expressed her satisfaction with the response of the Cyprus Police, which demonstrated a positive attitude towards cooperating with the Anti-Discrimination Body in order to implement the latter's suggestion for a circular to be distributed among police departments concerning the treatment of trans persons in detention centres.<sup>37</sup>

In the same year, the Anti-Discrimination Body received another complaint concerning, again, the imprisonment of a transsexual woman; however, in this instance, the situation was more complicated in that the imprisonment was for a longer duration (2 years instead of for a handful of days), the prisoner was receiving hormonal treatment and was at the last stage of her gender reassignment process, and the infrastructure suitable for the special needs of trans persons seemed to be lacking. The Ombudsman was content with the way that the prison management had handled the situation; however, she made a number of suggestions as to what a circular sent to prison authorities in similar situations should include, such as the need for the prison management to ensure that trans persons are placed in safe accommodation, that they can continue their hormonal treatment with monitoring by an endocrinologist and regular health checks, that they receive psychological support from a specialist, and that prison staff address them with the name that they have chosen instead of the name written on their official documents.<sup>38</sup>

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36 Cyprus Anti-Discrimination Body Position regarding the detention of a transsexual in police detention centre, No 3/2013, 31 January 2013.

37 Cyprus Anti-Discrimination Body Position regarding the detention of a transsexual in Central Prison, No. 37/2013, 6 August 2013.

38 *Ibid.*

It is clear that, at the moment, trans persons are almost completely ignored by the Cypriot legal system. In order to ensure that it respects and protects the basic rights of trans persons, Cyprus must make express provision for them in its anti-discrimination legislation, by adding gender identity as one of the prohibited grounds of discrimination.<sup>39</sup> In addition, Cyprus must make legislation which provides a clear, specific, rapid, accessible, and transparent procedure, which enables every trans person *as of right* to apply to be recognised in *all State and non-State* documents by their psychological gender, *without* requiring prior medical or surgical intervention and sterilisation.<sup>40</sup> These are the first, and minimum, steps that must be taken as a matter of urgency, but they are by no means the only steps that Cyprus needs to take in order to fully respect and protect the rights of trans persons.

## 5. The Protection of LGB Persons and Same-Sex Couples Under Cypriot Law

Gay men, lesbian women, and bisexual men and women, are grouped together as persons who share a sexual orientation (homosexual or bisexual) which is different from that of the majority of the population, which is perceived to be heterosexual. According to the *Yogyacarta Principles*, 'sexual orientation is understood to refer 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'.<sup>41</sup> The recognition of gay and lesbian rights only began in the 1970s, following the awareness raised by the Stonewall riots in New York in June 1969 and the vocalisation of the concerns of the gay and lesbian community through the activities of early gay rights organisations, established mainly in the western world.<sup>42</sup>

Needless to say, back in the 1970s, gay and lesbian rights were unheard of in Cyprus: in a country where sex between consenting adult males was a criminal offence, there was hardly any scope for a campaign to promote and protect LGB rights. The first reference to such rights on the island was made in the 1980s with the establishment of AKOK, as well as with the awareness raised indirectly through the public discussion regarding the AIDS epidemic. As will be seen below, the first steps for the legal protection of the rights of LGB persons were (reluctantly) taken only in the late 1990s.

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39 This is also a requirement imposed on Cyprus by the ECHR – see App No 35159/09 *PV v Spain* (30 November 2010).

40 This is also a requirement imposed on Cyprus by the ECHR - see App 28957/95 *Goodwin v UK* (11 July 2002); App Nos 79885/12, 52471/13 and 52596/13 *Garçon and Nicot v France* (6 April 2017)

41 See 'Introduction', *Yogyakarta Principles*, p. 6. Available at [http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles\\_en.pdf](http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf), last accessed on 1 September 2017.

42 For an excellent account of the history of the gay rights movement see L. Faderman, *The Gay Revolution: The Story of the Struggle* (New York, NY: Simon & Schuster 2015).

In 1994, Kees Waaldijk suggested that (positive) legal change concerning LGB rights in most countries 'seems to be moving on a line starting at (0) total ban on homo-sex, then going through the process of (1) the decriminalisation of sex between adults, followed by (2) the equalisation of ages of consent, (3) the introduction of anti-discrimination legislation, and (4) the introduction of legal partnerships. A fifth point on the line might be the legal recognition of homosexual parenthood'.<sup>43</sup> At the time of writing, Cyprus seems to have taken the first four steps, plus a number of other legislative steps, in the 'line' of positive legal change for LGB rights. Each of the subsections that follows, will focus on one of these steps in Waaldijk's 'line', with one subsection added at the end to record other legislative developments.

### ***The Decriminalisation of Sexual Conduct between Consenting Males***

Cyprus had inherited its sodomy laws from its colonial past. In particular, in 1929, whilst Cyprus was still a British colony, the British Criminal Law Amendment Act 1885 was incorporated into Cyprus law.<sup>44</sup> Section 11 of the 1885 Act provided that 'Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the courts to be imprisoned for any term not exceeding two years, with or without hard labour'. The law did not mention sexual acts between females.

When Cyprus gained its independence from Britain and became the Republic of Cyprus in 1960, most of colonial law was maintained. The criminalisation of sexual acts between males was, however, now provided in the Criminal Code of Cyprus (CAP 154), Articles 171-174, which considered sexual activity between consenting male adults a criminal offense punishable by five to fourteen years' imprisonment.<sup>45</sup> Sexual acts between women were not mentioned at all in the Criminal Code and – like in most other countries in the world – have been completely ignored by Cypriot law.<sup>46</sup>

The criminalisation of sexual activity between consenting male adults was challenged in the late 1980s by Alecos Modinos, a Cypriot gay activist and president and founder of AKOK, who claimed that the maintenance in force of legislation prohibiting male homosexual activity constituted a continuous interference with his

43 K. Waaldijk, 'Standard Sequences in the Legal Recognition of Homosexuality – Europe's Past, Present and Future,' *Australasian Gay and Lesbian Law Journal* Vol. 4, (1994), pp. 50, 51-52.

44 In the UK, the Act was repealed in 1967 by the Sexual Offences Act 1967, which decriminalised sexual acts in private between consenting males who had attained the age of 21.

45 For an analysis of that legislation see Α. Γ. Λουκαΐδης, 'Η νομική πλευρά της ομοφυλοφιλίας' in *Θέματα Κυπριακού Δικαίου* (Λευκωσία 1982), pp. 207-212.

46 *Ibid.* 208-216.

right to respect for his private life, contrary to Article 8 ECHR. Prior to lodging the case, Modinos had addressed a number of letters to the President of the Republic of Cyprus, to the President of the Parliament, and to the Minister of Justice, requesting that the said legislation be amended. No answer was given to his requests and, therefore, he considered that his only remedy could come from bringing a case claiming breach of the ECHR.

After declaring the application admissible, the European Commission of Human Rights found unanimously that Cyprus was in breach of Article 8 ECHR: the maintenance in force of the legislation complained of amounted to an interference with the applicant's right to respect for his private life as guaranteed by Article 8(1) ECHR and could not be justified under Article 8(2) ECHR.<sup>47</sup> The case was then referred to the European Court of Human Rights (ECtHR) which, in its judgment delivered in 1993, also held that the contested legislation was in breach of Article 8 ECHR.<sup>48</sup> The Court – like the Commission – noted that the fact that the Attorney-General 'has followed a consistent policy of not bringing criminal proceedings in respect of private homosexual conduct on the basis that the relevant law is a dead letter' 'provides no guarantee that action will not be taken by a future Attorney-General to enforce the law, particularly when regard is had to statements by Government ministers which appear to suggest that the relevant provisions of the Criminal Code are still in force [...]. Moreover, it cannot be excluded, as matters stand, that the applicant's private behaviour may be the subject of investigation by the police or that an attempt may be made to bring a private prosecution against him'.<sup>49</sup> Accordingly, the ECtHR made it clear that Cyprus should amend its Criminal Code by removing (male) same-sex activities from the list of sexual offences. The sole dissenting vote in the case was cast by the (ad hoc) Cypriot Judge – Judge Pikis.

Despite the clear pronouncement of the ECtHR that Cyprus was in breach of its obligations under the ECHR and was, thus, required to decriminalise sexual activity between consenting males, it was only in 1998 that this step was taken.<sup>50</sup> As

47 App 15070/89 *Modinos v Cyprus*, Report of the European Commission of Human Rights, 3 December 1991. Available at <http://hudoc.echr.coe.int/eng?i=001-73503>, last accessed on 1 September 2017. The European Commission of Human Rights repeated the same conclusion in a subsequent Application made by another gay male Cypriot citizen who complained about the maintenance of the prohibition despite the ECtHR judgment in *Modinos* – see App 31106/96 *Marangos v Cyprus*, Report of the European Commission of Human Rights, 3 December 1997. Available at <http://hudoc.echr.coe.int/eng?i=001-45955>, last accessed on 1 September 2017.

48 App 15070/89 *Modinos v Cyprus*, Judgment of the European Court of Human Rights, 22 April 1993, [1993] 16 EHRR 485. For a discussion of the case see A. C. Emilianides, *Religion and Law in Cyprus* (Alphen aan den Rijn, The Netherlands, Kluwer, 2011) p. 162.

49 *Ibid.* para. 23.

50 Amending Law 40(I)/98 (Ο περί Ποινικού Κώδικα (Τροποποιητικός) Νόμος του 1998).

Modinos has noted, ‘The Greek Orthodox Church bitterly opposed this law reform and was supported by the majority of the members of Parliament. However, after a lot of pressure from the European Council of Ministers over a period of five years, a week before the third ultimatum given to the Government was to expire, the Cypriot Parliament very reluctantly reformed the law in May 1998’.<sup>51</sup> Accordingly, the main push for the decriminalisation of sexual activity between consenting males in Cyprus was not as such the outcome of *Modinos v Cyprus* but the pressure exerted by the Council of Europe following the Court’s pronouncement in the case and the island’s aspirations for joining the European Union.<sup>52</sup>

### ***The Equalisation of the Age of Consent***

Yet, the reform of the Criminal Code made in 1998 to decriminalise sexual activity between consenting males, did not bring complete equality between (male) same-sex couples and opposite-sex couples. This was because the reform introduced discrimination in the age of consent: for same-sex couples comprised of two males this was 18, whereas for opposite-sex couples this remained at 16. Complete equality was only achieved in 2002 with the Amending Law 145(I)/2002,<sup>53</sup> which made 17 the age of consent for all couples.<sup>54</sup>

Prior to Cyprus’s accession to the EU, the only general anti-discrimination clause in the Cypriot legal system was Article 28 of the Cyprus Constitution. This provision includes in its first paragraph an equality before the law clause, whilst in its second paragraph it provides that ‘Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or

51 A. Modinos, ‘Homosexual Life in Cyprus’ in R T Francoeur (ed), *The International Encyclopedia of Sexuality* (New York, NY: Continuum, 2002) p. 157.

52 For an analysis of the steps that led to the decriminalisation of sexual conduct between consenting adult males see A. K. Αιμιλιανίδης, ‘Η Αποποινικοποίηση της Ομοφυλοφιλίας στην Κύπρο’ σε Π. Παπαπολυβίου (επ), *Ιστορία της Κυπριακής Δημοκρατίας, (Φιλελεύθερος, Λευκωσία, 2011)* 108. See, also, A. K. Αιμιλιανίδης, ‘Ομοφυλοφιλία και ανθρώπινα δικαιώματα στην κυπριακή έννομη τάξη’ σε Κ. Φελλάς, Μ. Καψού, Ε. Επαμεινώνδα (επ), *Σεξουαλικότητες: Απόψεις, Μελέτες και Βιώματα στον Κυπριακό και Ελληνικό Χώρο* (Αθήνα: Πολύχρωμος Πλανήτης, 2014) 135-140.

53 Sections 3(A) and 9 of Amending Law 145(I)/2002 (Ο περι Ποινικού Κώδικα (Τροποποιητικός) (Αρ 4) Νόμος του 2002).

54 See Sections 154 and 171 of the Criminal Code (Cap 154). It should be noted that the law does not make reference to female same-sex couples and, thus, there appears to be no minimum age of consent for them.

on any ground whatsoever, unless there is express provision to the contrary in this Constitution'. As can be seen, the grounds mentioned in Article 28(2) of the Cyprus Constitution do not include sexual orientation (or gender identity) but, as noted by Drosos and Constantinides, 'this should be deemed to fall within the open-ended wording ("or on any other grounds") of the provision',<sup>55</sup> since this is how the words 'or other status' in Article 14 ECHR have been interpreted by the ECtHR,<sup>56</sup> which is the ECHR provision to which Article 28 corresponds.<sup>57</sup>

In 2002, Law 13(III)/2002<sup>58</sup> incorporated Protocol 12 to the ECHR into the Cypriot legal system. The Protocol provides a general, stand-alone prohibition of discrimination under the law: '(1) The enjoyment of any right set forth by law shall be secured 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. (2) No one shall be discriminated against on by any public authority on any ground such as those mentioned in paragraph 1'. The words 'other status' must – as has been the practice in relation to Article 14 ECHR – be interpreted as including persons having a homosexual or bisexual sexual orientation.

Accordingly, in order to comply with Cyprus's obligations under the ECHR and in order to respect the Cyprus Constitution, Cypriot public authorities must not discriminate against persons on the grounds of their sexual orientation when it comes to the enjoyment of any right set forth by law.

However, an obligation on Cyprus to protect and respect LGB persons from discrimination on the grounds of their sexual orientation is, also, imposed by EU law.

In 2000, the EU legislature – using as legal basis the newly-introduced Article 13 EC (currently Article 19 TFEU) – promulgated Directive 2000/78,<sup>59</sup> which prohibits discrimination on, inter alia, the grounds of sexual orientation, in the context of employment and occupation. It should be noted that the obligations imposed by the directive are only a floor, and Member States are free to adopt measures which

55 S. Drosos and A. Constantinides, 'The Legal Situation of Same-Sex Couples in Greece and Cyprus' in D Gallo, L Paladini and P Pustorino (eds), *Same-Sex Couples before National, Supranational and International Jurisdictions* (Heidelberg: Springer, 2014), p. 324.

56 App 33290/96 Salgueiro da Silva Mouta v Portugal Judgment of 21 December 1999, para 28 (sexual orientation); PV v Spain (n 38) (gender identity).

57 The ECHR was incorporated into the Cypriot legal system by the European Convention for the Protection of Human Rights (Ratifying) Law 39/1962 (Ο περί της Ευρωπαϊκής Σύμβασης για την Προάσπιση των Ανθρωπίνων Δικαιωμάτων (Κυρωτικός) Νόμος του 1962).

58 The European Convention for the Protection of Human Rights (Twelfth Protocol) (Ratifying) Law of 2002 (Ο περί της Ευρωπαϊκής Σύμβασης για την Προάσπιση των Ανθρωπίνων Δικαιωμάτων και Θεμελιωδών Ελευθεριών (Δωδέκατο Πρωτόκολλο) (Κυρωτικός) Νόμος του 2002).

59 Directive 2000/78 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

offer a higher level of protection and prohibit discrimination on the grounds of sexual orientation (and the other grounds laid down in it) in a wider range of areas of human life.<sup>60</sup>

Upon its accession to the EU in May 2004, Cyprus had to implement the directive, and it did so with Law 58(I)/2004,<sup>61</sup> which (partly) implements Directives 2000/43<sup>62</sup> and 2000/78. The law prohibits, inter alia, discrimination on the grounds of sexual orientation in the context of employment and occupation. Like the two 2000 Directives, the law allows positive action and prohibits direct and indirect discrimination, as well as harassment and instruction to discriminate, and prohibits all employers (i.e. public and private) from discriminating on the prohibited grounds. A person whose rights under this law are breached can bring an action before the Industrial Disputes Tribunal<sup>63</sup> or if (s)he wishes to resolve the matter without going to court, (s)he can submit a complaint to the Cyprus Ombudsman, who has the power to examine the complaint under Law 42(I)/2004.<sup>64</sup> The latter piece of legislation<sup>65</sup> aims to implement Article 13 of Directive 2000/43 and to fulfill the obligation of Cyprus to ensure the protection of rights enjoyed under international instruments (including the ECHR and its Protocols) and Part II of the Cyprus Constitution without any discrimination on a number of grounds.<sup>66</sup> More specifically, Law 42(I)/2004 appointed the Ombudsman as the national equality body, which is comprised of two separate authorities: the Equality Body and the Anti-Discrimination Body. The Ombudsman, in its role as national equality body, investigates complaints of maladministration and discrimination from public bodies towards individuals, and although it has the power to issue orders or impose fines, it has rarely made use of the powers to do so, with most cases culminating in recommending measures aimed at the cessation of the discriminatory behaviour or practice.<sup>67</sup> It should be noted that Law 42(I)/2004 gave the Ombudsman powers extending well beyond the scope of the two EU anti-discrimination directives, and, thus, its mandate does not include merely sexual orientation discrimination in the

60 *Ibid.*, Recital 28.

61 The Equal Treatment in Occupation and Employment Law of 2004 (Ο περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος του 2004).

62 Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22.

63 Section 12 of Law 58(I)/2004 (n 60).

64 *Ibid.*, Section 13.

65 Law to combat racial and other kinds of discrimination (Commissioner for Administration) 2004 (Ο περί Καταπολέμησης των Φυλετικών και Άλλων Διακρίσεων (Επίτροπος) Νόμος του 2004).

66 See Preamble to Law 42(I)/2004.

67 Drosos and Constantinides, 'The Legal Situation of Same-Sex Couples in Greece and Cyprus', p. 325.

employment and occupation fields but it also covers discrimination on this (and other) grounds in the fields of medical care, education, and access to goods and services. However, it should be underlined that this, broader, scope of the prohibition applies only vis-à-vis the mandate of the Ombudsman as national equality body and does not give rise to any rights for the victim to apply directly to courts relying on the prohibition of discrimination on the grounds of sexual orientation, as stemming from Directive 2000/78 and the national implementing legislation.<sup>68</sup>

Finally, it should be noted that Article 21 of the EU Charter of Fundamental Rights (EUCFR) imposes a legally binding prohibition of discrimination on, inter alia, the grounds of sexual orientation, without making reference to any specific areas of human life, thus demonstrating that it is an across-the-board prohibition. The Charter – as we know from its Article 51 – binds the EU institutions in all instances and also binds the Member States, but only when they are ‘implementing EU law’. The interpretation of the latter is not clear to date, with the EU Court of Justice giving different interpretations in different judgments, with some cases being interpreted narrowly to merely mean situations where Member States are implementing a specific EU law provision,<sup>69</sup> whereas in others they are being read as meaning situations where there is a link with EU law.<sup>70</sup> Given that EU law is supreme over *all* national laws<sup>71</sup> (including national constitutions), and even over laws that precede the date of accession of the said Member State to the EU,<sup>72</sup> all public bodies which act on behalf of the government of Cyprus must act in accordance with Article 21 EUCFR and, thus, must not discriminate against LGB persons on the grounds of their sexual orientation.

#### ***(4) Legal Recognition of Same-Sex Couples***

Article 22 of the Cyprus Constitution provides in its first paragraph that ‘Any person reaching nubile age is free to marry and to found a family according to the law relating

68 Ioannidou, ‘Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Cyprus – January 2014 update’, p. 1. For further information regarding the role of the Cyprus Ombudsman as the national equality body, see International Human Rights Instruments, Common core document forming part of the reports of State parties: Cyprus, HRI/CORE/CYP/2014, February 2015, 31-32, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fCORE%2fCYP%2f2014&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fCORE%2fCYP%2f2014&Lang=en) (last accessed on 14 August 2017).

69 See, for instance, Case C-45/12 Hadj Ahmed EU:C:2013:390 and Case C-198/13 Hernández EU:C:2014:2055.

70 See, for instance, Case C-617/10 Fransson EU:C:2013:105, para 21.

71 The Cyprus Constitution was amended in 2006 by the Law relating to the Fifth Amendment of the Constitution (Ο περί της Πέμπτης Τροποποίησης του Συντάγματος Νόμος 2006 (Law 127(I)/2006)) to give supremacy to EU law.

72 Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125

to marriage, applicable to such person under the provisions of this Constitution'. The gender-neutral term which is used (i.e. 'any person') would be open to an interpretation whereby two men or two women can marry each other. However, ordinary legislation – the Marriage Law 104(I)/2003<sup>73</sup> – provides more detailed regulation of marriage and defines marriage as a union between a man and a woman.<sup>74</sup>

In 2011, in her role as the national equality body, the Cyprus Ombudsman suggested to the Minister of the Interior and the President of the Parliament to take steps to draft legislation introducing civil partnerships, open to both opposite-sex and same-sex couples. The Ombudsman explained that it was necessary in order to reflect social reality and to respond to the needs of persons who are equal members of Cypriot society, to legally recognise the relationship of long-term unmarried couples, and the consequences, rights and duties deriving from it.<sup>75</sup> In her report, the Ombudsman explained that legislation which introduces civil partnerships in Cypriot law cannot exclude same-sex couples, as this would be tantamount to discrimination on the grounds of sexual orientation and a breach of the right to develop someone's personality, whilst in parallel it would have ignored the rapidly evolving European legislation and jurisprudence<sup>76</sup> in this field and the new social reality and societal needs.<sup>77</sup>

The Ombudsman's suggestion did not fall on deaf ears. After long delays and heated discussions, and despite strong opposition from the State Church and some politicians, the Civil Partnership Law 2015 was passed by the Cypriot Parliament in November 2015, with 39 votes in favour, 12 against, and 3 abstentions.<sup>78</sup> The law took effect on 9 December 2015, and the first same-sex couple entered into a civil union in early 2016.<sup>79</sup> Statistics show that to date same-sex couples have been reluctant to

73 Ο περί Γάμου Νόμος του 2003.

74 Section 3 of the Marriage Law 104(I)/2003: 'Marriage means the agreement for a union into matrimony contracted between a woman and a man [...]'.  
 75 Cyprus Anti-Discrimination Body Position Paper concerning the need to introduce civil partnerships between opposite-sex and same-sex couples, Position number 1/2011, Delivered on 22 December 2011, para 20

76 See the judgment of the ECtHR in Apps 29381/09 and 32684/09 *Vallianatos v Greece* (7 November 2013).

77 Cyprus Anti-Discrimination Body Position Paper concerning the need to introduce civil partnerships between opposite-sex and same-sex couples, Position number 1/2011, Delivered on 22 December 2011, para 22.

78 Civil Partnership Law 184(I)/2015 (Ο περί Πολιτικής Συμβίωσης Νόμος του 2015). See 'Σύμφωνο Συμβίωσης με πλειοψηφία της Βουλής', *Phileleftheros*, 27 November 2015, available at <http://archive.philenews.com/el-gr/koinonia-eidiseis/160/287898/symfono-symviosis-me-pleiopsifia-tis-voulis> (last accessed on 12 September 2017).

79 'Cyprus' first public gay wedding takes aim at prejudices', *Daily Mail*, 4 March 2016, available at <http://www.dailymail.co.uk/wires/ap/article-3477170/Cyprus-public-gay-wedding-takes-aim-prejudices.html> (last accessed on 12 September 2017).

formalise their relationship by entering into a civil partnership in Cyprus. In an article in the Cypriot newspaper *Phileleftheros*, published in September 2017, it was noted that although since the introduction of this new status, more than 120 couples have entered into a civil partnership, same-sex couples only constitute a slim minority of the couples that have formalised their relationship in this way.<sup>80</sup>

The introduction of civil partnerships which are open to both opposite- and same-sex couples is important, not only because same-sex couples can now be recognised as couples for all intents and purposes, but, also, because of the practical benefits accruing from this. In particular, in many instances, same-sex couples now have the same rights, duties and entitlements as married (heterosexual) couples.<sup>81</sup> This also means that the case-law of the EU Court of Justice interpreting Directive 2000/78 in situations involving discrimination in the area of employment against same-sex civil partners can now help such couples in Cyprus.<sup>82</sup> Yet, important gaps in protection still persist, the most significant being that civil partners are not entitled to be recognised as co-parents, either by adopting a child *together* or by being recognised as the parents of a child which has been conceived by one of the (female) civil partners through medically assisted reproduction techniques.<sup>83</sup>

However, what happens with same-sex couples who entered into a marriage or

80 See 'Πάνω από 100 Σύμφωνα Συμβίωσης – Ποιοί τα Επιλέγουν', *Phileleftheros*, 12 September 2017, available at <http://www.philenews.com/koinonia/eidiseis/article/429545/pano-apo-120-symfona-symbiosis-poio-ta-epilegyn> (last accessed on 12 September 2017).

81 Section 4 of Law 184(I)/2015 provides that apart from certain exceptions, a civil partnership contracted in accordance with the provisions of that legislation has the same legal results and consequences as marriage and any reference in legislation to 'spouse' shall be interpreted as referring also to civil partner.

82 See, for instance, Case C-267/06 *Maruko v Versorgungsanstalt der deutschen Bühnen* EU:C:2008:179, Case C-147/08 *Römer v Freie und Hansestadt Hamburg* EU:C:2011:286, Case C-267/12 *Hay v Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres* EU:C:2013:823, Case C-443/15 *Parris v Trinity College Dublin and Others* EU:C:2016:897. For an analysis of this case-law see A. Tryfonidou, 'The Impact of the Employment Equality Directive on the Protection of LGB Individuals from Discrimination under EU Law' in U. Belavusau and K. Henrard (eds), *EU Anti-Discrimination Law Beyond Gender: Achievements, Flaws and Prospects* (Oxford: Hart, 2018, forthcoming).

83 This is implicit in sections 19 and 20 of Law 184(I)/2015. Section 19 provides that a child who was born during the civil partnership of its mother or within 302 days from the dissolution of the partnership is presumed to have as its father the man with whom the mother is in a civil partnership. No reference/provision is made for situations where the mother is in a civil partnership with another woman. Section 20 provides that a child that was conceived at the time that its mother is in a civil partnership, from sperm which was donated by a man other than the man who is the civil partner of the mother, is presumed to be the child of the (male) civil partner of the mother. Likewise, no reference/provision is made for situations where the mother is in a civil partnership with another woman.

civil partnership abroad? Does Cyprus recognise their status as spouses or civil partners when they are in its territory? Also, what happens with unmarried same-sex couples?

In order to answer the above questions, we must distinguish between couples who fall within the scope of EU law because they are comprised of (at least) one EU citizen<sup>84</sup> who has exercised EU free movement rights by moving from one EU Member State to another, and couples who are in a 'purely internal situation' from the point of view of EU law because they have not moved between EU Member States and are, thus, only covered by national law.

As regards the latter (i.e. those who have not exercised free movement rights), the Supreme Court of Cyprus in the case of *Correia* in 2010, made it clear that Cyprus does not – and does not have to – recognise same-sex marriages contracted abroad.<sup>85</sup> The couple in that case was comprised of a Cypriot man and a Canadian man who married in Canada and moved to Cyprus in order to live here permanently. When in Cyprus, they were informed by the Cypriot authorities that their marriage was not valid in Cyprus and, therefore, the Canadian spouse could not enjoy any rights or benefits that spouses of Cypriot nationals normally enjoy, such as a permanent leave to remain, the right to work in Cyprus, and the right to open a bank account. When the issue was referred to the Supreme Court, the case was rejected on procedural grounds, but the court also took the opportunity to make it clear that the Cypriot authorities acted lawfully when considering that a same-sex marriage contracted abroad is not recognised in Cyprus.<sup>86</sup>

To date, there has been no case before a Cypriot court or a complaint referred to the

84 That is, a national of an EU Member State.

85 Case 1582/2008 Thadd Correia and Savvas Savva v Republic of Cyprus, Judgement of 22 July 2010. The case was discussed in Α Γιάνναρος, 'Νομικά και διαδικαστικά εμπόδια στο δικαίωμα της ελεύθερης διακίνησης και εγκατάστασης ομόφυλων συζύγων και συντρόφων Ευρωπαϊών πολιτών στο έδαφος της Κυπριακής Δημοκρατίας' σε Κ Φελλάς, Μ Καψού, Ε Επαμεινώνδα (επ), *Σέξουαλικότητα: Απόψεις, Μελέτες και Βιώματα στον Κυπριακό και Ελληνικό Χώρο* (Αθήνα: Πολύχρωμος Πλανήτης, 2014), 160-163.

86 The case had been initiated as a complaint referred to the Cyprus Ombudsman, as the Head of the Authority Against Racism and Discrimination. The Ombudsman in her report was, like the Supreme Court, of the opinion that Cyprus is free to decide whether it will open marriage to same-sex couples in its territory and whether it will recognise same-sex marriages contracted abroad, however, it considered that the manner that the Canadian spouse was treated (i.e. the refusal of the immigration authorities to take into account his relationship with his Cypriot spouse and the refusal of the authorities to allow him to work in Cyprus) amounted to discrimination on the grounds of sexual orientation. Therefore, the Ombudsman suggested that the examination of whether the Canadian spouse should be allowed to remain and work in Cyprus should be disassociated from the question whether same-sex marriage is recognised in Cyprus. See Complaint 213/2008, Report of the Authority against Racism and Discrimination regarding the provision of leave to remain in Cyprus as a visitor without the right to work to the same-sex spouse of a Cypriot citizen, 10 December 2008.

Ombudsman regarding the recognition of same-sex registered partnerships contracted abroad *where the situation does not fall within the scope of EU law* (ie where EU free movement rights have not been exercised). However, following the introduction of civil partnerships in 2015, it would be very unlikely that Cyprus would refuse to recognise civil partnerships – whether opposite-sex or same-sex – contracted abroad.

As regards situations that fall within the scope of EU law (i.e. where the couple is comprised of at least one EU citizen and has moved to Cyprus from another EU Member State), Cyprus is bound by its obligations under EU law.

In particular, as an EU Member State, Cyprus has to respect and protect the EU free movement rights of EU citizens. EU citizens who exercise their free movement rights have the right to be accompanied or joined by their family members (whatever the nationality of the family member) in the host Member State; this right stems from Directive 2004/38<sup>87</sup> for EU citizens who move to a Member State other than that of their nationality, and from the EU free movement provisions of the Treaty on the Functioning of the European Union (TFEU) for EU citizens who return to their Member State of nationality after having exercised free movement rights.<sup>88</sup> Accordingly, EU citizens can move freely to another Member State and – relying on EU law – can *require* that Member State to accept within its territory their family members, without requiring them to satisfy the conditions laid down in its immigration legislation. Cyprus has transposed Directive 2004/38 by enacting Law 7(I)/2007.<sup>89</sup>

The 2004 Directive draws a distinction between spouses, registered partners, and de facto partners and imposes different obligations on the host Member State, with regards to each of these categories.

Firstly, the ‘spouse’ of a Union citizen is in all circumstances considered to be a ‘family member’ of the Union citizen and, thus, must be allowed to accompany the Union citizen in the host Member State.<sup>90</sup> Given that Cyprus has not opened marriage to same-sex couples and taking into account the Cyprus Supreme Court’s view in the case of *Correia* mentioned above, it is likely that it will refuse to recognise same-sex marriages contracted abroad, as has been the case in some other EU Member States, such as Romania. As argued elsewhere,<sup>91</sup> it is clear that it is a violation of EU law if a

87 Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (2004) OJ L 158/77.

88 See, for instance, Case C-456/12 O & B ECLI:EU:C:2014:135.

89 Law for the right of Union citizens and their family members to move and reside freely in the Republic 2007 (ο περί του Δικαιώματος των Πολιτών της Ένωσης και των μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007). For an analysis of this legislation see Α. Γιάνναρος (n 84), 159-160.

90 Article 2(2)(a) of Directive 2004/38 (n 86).

91 A. Tryfonidou, ‘EU Free Movement Law and the Legal Recognition of Same-Sex Relationships: The Case for Mutual Recognition’ *Columbia Journal of European Law*, Vol. 21, No. 2, (2015), p. 195.

Member State refuses to grant family reunification rights to same-sex married couples coming from another EU Member State; however, further guidance is expected to be provided by the EU Court of Justice soon, as there is currently a case pending before it which deals specifically with this matter.<sup>92</sup>

Secondly, Directive 2004/38 provides in Article 2(2)(b) that the term ‘family member’ includes ‘the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State’.<sup>93</sup>

Prior to 2015, the Cypriot authorities refused to recognise the same-sex registered partner of a national of another EU Member State as a ‘family member’ and, thus, only considered that in such instances they were bound by the obligation to ‘facilitate entry and residence for the partner with whom the Union citizen has a durable relationship, duly attested’, laid down in Article 3(2)(b) of Directive 2004/38 (implemented in the Cypriot legal system by Article 4(2)(b) of Law 7(I)/2007).<sup>94</sup> The Ombudsman noted that although, indeed at the time, Cyprus did not have to give automatic family reunification rights to the registered partner of a Union citizen who moved to Cyprus (since Cyprus did not make provision in its legislation for registered partnerships), nonetheless, the Cypriot authorities, in exercising the discretion left to them by Directive 2004/38 as to whether they would admit the partner of an EU citizen, should comply with (other provisions of) national law and international laws binding on it, this meaning, *inter alia*, that they must not discriminate on the grounds of sexual orientation as this would be in violation of the island’s international obligations.<sup>95</sup>

However, due to the fact that Cyprus introduced civil partnerships in 2015, and

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92 Case C-673/16 Coman (pending). For an explanation see A. Tryfonidou, ‘Awaiting the ECJ Judgment in Coman: Towards the Cross-Border Legal Recognition of Same-Sex Marriages in the EU?’, *EU Law Analysis* blog, 5 March 2017, available at <http://eulawanalysis.blogspot.co.uk/2017/03/awaiting-ecj-judgment-in-coman-towards.html> (last accessed on 11 September 2017).

93 A question for an interpretation of this provision in situations involving same-sex registered partners was referred to the EU Court of Justice for a preliminary ruling, however, the case was subsequently withdrawn prior to the Court having the opportunity to deliver its judgment. See Case C-459/14 Cocaj (withdrawn).

94 See Complaint 68/207 submitted to the Authority against Racism and Discrimination regarding the right to enter and reside in Cyprus of the same-sex partner of a European Citizen, Report of the Authority delivered on 23 April 2008. See, also, Report of the Authority against Racism and Discrimination regarding the respect of the principle of equal treatment of same-sex couples in a registered partnership, in the context of the application of Directive 2004/38 concerning the right of EU citizens and their family members to move and reside freely in the territory of the Member States, Complaints 40/2009 and 76/2009, 31 July 2009, paras 6-10 and 14-15.

95 Complaint 68/2007, Report delivered on 23 April 2008, see, in particular, para 18.

since the latter are recognised for most purposes as equivalent to marriage, Cyprus must now recognise the (same-sex and opposite-sex) registered partners of Union citizens who come from another Member State as a ‘family member’ for the purposes of EU free movement law and, thus, grant them *automatically* the right to enter and reside in its territory as well as a host of other rights that should be granted to the family members of migrant Union citizens.

As regards the unmarried (same-sex) partners of migrant Union citizens, these continue to be covered by the obligation to facilitate their entry and residence, laid down in Article 3(2)(b) of Directive 2004/38 and implemented by Article 4(2)(b) of Law 7(I)/2007. The latter obligation does not require Cypriot authorities to *automatically* and in all circumstances accept within the country the partner of a Union citizen who comes from another Member State, but it requires them to examine carefully the situation of each couple, and if they are satisfied that there is a durable relationship and there is no reason to refuse access to its territory to the partner of the Union citizen, they must provide such access. Given that Recital 31 to the 2004 Directive states that ‘Member States should implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as [...] sexual orientation’, the Cypriot authorities must ensure that, when determining whether to admit the unmarried partner of a migrant Union citizen, they do not adopt a different (negative) approach towards same-sex couples.<sup>96</sup>

### ***Other Legislative Steps: Homophobic Speech and Homophobic Crime***

Despite the fact that there is widespread homophobia in Cypriot society, there have not been many incidents of reported physical violence towards LGBT people.<sup>97</sup> However, homophobic statements have been made publicly by a number of public figures, most prominently a former MP (Mr Andreas Themistocleous) and the Head of the State Church, Archbishop Chrysostomos II, especially at times when legislative proposals seeking to promote and protect LGBT rights were discussed. In particular, the discussion regarding the need for the development of a legal framework regulating same-sex relationships in Cyprus led to an increase in public discussion regarding this issue and to great opposition, which has been expressed at times through extreme statements which amounted to complete rejection of homosexuality, considering it a perversion, and placing it on a par with bestiality, necrophilia, pedophilia and other criminal behaviours.<sup>98</sup> Such extreme statements made repeatedly by Mr Themistocleous

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96 This would also amount to a breach of Article 14 ECHR read in conjunction with Article 8 ECHR, as established in App 68453/13 Pajić v Croatia (23 February 2016).

97 Trimikliniotis and Karayanni, ‘The Situation Concerning Homophobia and Discrimination on Grounds of Sexual Orientation’, p. 12.

98 Cyprus Anti-Discrimination Body Report regarding the prevention and fight against homophobic

have been condemned by the European Parliament, which in 2010 sent a letter to the latter, calling him to issue a public apology.<sup>99</sup> The statements made by Mr Themistocleous were also the subject of complaints submitted to the Ombudsman in her role as national equality body.<sup>100</sup> Such statements attach a stigma to LGBT persons and prevent the fight against discrimination on the basis of sexual orientation and gender identity from having any real effect.

Until relatively recently, there was no legislation in Cyprus which prohibited incitement to hatred and violence against LGBT persons. In particular, Law 134(I)/2011,<sup>101</sup> which aims to fight certain forms and expressions of racism and xenophobia through criminal law, did not (and still does not) make any reference to homophobic or transphobic behaviour.

The Ombudsman, in her report on the matter issued in 2012, suggested that Cyprus should promulgate legislation which will prohibit extreme homophobic speech which invites actions that can incite discrimination, hate, or violence against persons who have a certain sexual orientation or gender identity, noting, however, that such legislation will have to reflect the delicate balance that must exist between this matter and the need to respect the right to freedom of expression in a democratic society.<sup>102</sup> In addition, the Ombudsman stressed that the issue of homophobic speech covers a range of actions which is wider than those covered by any legislative arrangement, and, thus, it is necessary to take a holistic approach which, in parallel with the legislative measures, will seek to raise awareness among the public as regards the need to respect the rights of LGBT persons and the consequent elimination of the stigma and prejudice attached to them.<sup>103</sup>

As a result of that, in 2015, the Cyprus Parliament passed an amendment to the Cyprus Criminal Code (Cap 154)<sup>104</sup> through which a person is guilty of a criminal offence when deliberately, publicly, and in a threatening/offensive fashion, incites

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speech, Complaint No. 55/2010, 56/2010, 57/2010, 58/2010, 61/2010, 29 June 2012, para 3.

99 'Ρεζίλι στην Ευρώπη η Κύπρος' (4 June 2010) in *Gay News in Greek* blogspot, available at [http://gaynewsingreek.blogspot.co.uk/2010/06/blog-post\\_6437.html](http://gaynewsingreek.blogspot.co.uk/2010/06/blog-post_6437.html) (last accessed on 25 August 2017).

100 Cyprus Anti-Discrimination Body Report regarding the prevention and fight against homophobic speech, Complaint No. 55/2010, 56/2010, 57/2010, 58/2010, 61/2010, 29 June 2012, para 3.

101 Law for the fight of certain forms and expressions of racism and xenophobia through criminal law (Ο περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος του 2011).

102 Cyprus Anti-Discrimination Body Report regarding the prevention and fight against homophobic speech, Complaint No. 55/2010, 56/2010, 57/2010, 58/2010, 61/2010, 29 June 2012, para. 37.

103 *Ibid.*, para 38.

104 Law Amending the Criminal Code (Cap 154) 87(I)/2015 (ο περί Ποινικού Κώδικα (Τροποποιητικός) Νόμος του 2015).

hatred or violence, against any group of persons, or a member of a group, based on their sexual orientation (or gender identity, as seen earlier).<sup>105</sup> Persons convicted of this offence are subject to imprisonment of not more than three years and/or a penalty of not more than five thousand (5000) euro. The approval of the Attorney General is required in order for a prosecution under this provision to be initiated and individuals cannot lodge private criminal prosecutions. A more recent amendment<sup>106</sup> has added another provision in the Criminal Code,<sup>107</sup> which provides that when determining penalties, courts can consider as an aggravating factor a motive of prejudice against groups of persons who are characterised by, inter alia, their sexual orientation (or gender identity, as seen earlier).

In a report prepared after the 2015 amendment was passed, the Ombudsman noted that, although the 2015 amendment which made the incitement to violence or hatred against LGBT persons a criminal offence is undoubtedly a very significant step towards the abolition of discrimination against LGBT persons, nonetheless, it would be better to add the grounds of sexual orientation and gender identity to the grounds on which hate speech is prohibited under section 3(1) of Law 134(I)/2011. The Ombudsman explained that there is no reason to attach a lower level of disapproval to homophobic or transphobic speech (through lower sentences) than to that attached to racist speech through the above law, which provides that persons convicted of racist hate speech are subject to imprisonment of not more than five years and/or a penalty of not more than ten thousand (10,000) euro.<sup>108</sup>

### ***LGB Rights in Cyprus: Some Concluding Thoughts***

This section focused on examining the position of LGB persons and same-sex couples under Cypriot law. As was seen, although Cyprus has come a long way from its 'zero-point' when it considered consensual sex between two male adults a crime, it is still, as demonstrated from the latest ILGA Europe Rainbow map,<sup>109</sup> far from fully respecting the rights of LGB persons and same-sex couples. Although there is a long list of gaps that need to be filled in order for Cyprus to reach that point, I would like to highlight here three gaps that must be imminently filled.

Firstly, Cyprus should extend the scope of its anti-discrimination legislation law, namely Law 58(I)/2004, beyond the area of employment and occupation and to areas

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105 Section 99A of the Cyprus Criminal Code (Chapter 154).

106 Law Amending the Criminal Code (Cap 154) No 31(I)/2017 (ο περί Ποινικού Κώδικα (Τροποποιητικός) Νόμος του 2017).

107 Section 35A of the Cyprus Criminal Code (Chapter 154).

108 Cyprus Anti-Discrimination Body Position in relation to matters regarding discrimination based on sexual orientation and gender identity, 1/2015, 4 June 2014, para 24.

109 'The Rainbow Europe map' (Brussels: ILGA, May 2017).

such as education, healthcare, social protection, housing, and access to goods and services. As we saw, although the Ombudsman, as the national equality body, currently has the mandate to examine the actions of public bodies in areas which go beyond employment and occupation, in order to ensure that they are free from discrimination on the grounds of sexual orientation, the actual prohibition of discrimination on the grounds of sexual orientation – which applies to both public and private bodies – as laid down in the 2004 legislation, is confined to the areas of employment and occupation. This means, for example, that a same-sex couple can be refused a hotel room and that a landlord can refuse to rent a flat to a person because of his or her sexual orientation. This is clearly unacceptable and in violation of the human rights of LGB persons, including their constitutional right (as this should be read, in line with EU law and the ECHR) not to be discriminated against on the grounds of sexual orientation in all areas of life.

Secondly, although same-sex couples have the right to formalise their relationship by entering into a civil partnership since 2015, the law excludes them from being able to be co-parents, either by jointly adopting a child or by being *both* recognised as the parents of a child born to the couple through medically assisted reproduction techniques. It is true that, in practice, one of the civil partners can *alone* adopt a child or can give birth to a child with medically assisted reproduction techniques, nonetheless, the child will not be considered to belong to *the couple*. This is clearly problematic not just at a symbolic level but also because it has a host of negative practical consequences. For instance, if the civil partner who is the legal parent of the child dies, the child will not be related to his or her other parent and the latter will only be able to (formally) become a parent of the child and, thus, exercise parental rights if the relatives of the other parent, who will likely be responsible for the child, allow this. Accordingly, the law should be amended to allow same-sex civil partners to adopt children and to presume – as it is with opposite-sex civil partners – that a child born to a same-sex couple who are in a civil partnership will automatically be considered the child of both civil partners.

Related to this is the fact that Cyprus must recognise the actual legal status attached to a same-sex relationship in another jurisdiction, as well as the parental ties between a same-sex couple and their children, as these are recognised in their country of origin. Failure to do so does not merely amount to a violation of the human rights of the couple and their children but also, in situations where one of the parents and/or the children are EU citizens, to a breach of EU free movement law.

Thirdly, although the Cypriot Parliament has recently passed legislation which makes it a criminal offence to engage in acts which incite violence or hatred against LGBT persons, this offence still attracts a lower sentence than racist hate speech; the law should be amended to attach equal sentences to both types of speech in order to

ensure that an equal level of disapproval is attached to them. Moreover, and related to the above, is the fact that there is still no legislation which specifically criminalises homophobic or transphobic hate crimes.<sup>110</sup> As a result of this, such crimes do not receive any special handling during police investigations, since the police authorities do not have the obligation to examine them as such.<sup>111</sup> It is true that the recent legislative amendments to the Criminal Code have rendered a homophobic (or transphobic) motive in a crime an aggravating factor in sentencing; however, the Cyprus legislature should take the further step of creating a separate offence of hate crimes which are based on the sexual orientation or the gender identity of the person, in order to increase the visibility of these crimes and to show explicitly the level of disapproval attached to them by the State.

## 6. Conclusion

In recent years and as a result of pressures from its EU and Council of Europe membership,<sup>112</sup> Cyprus has had to make legislative provision for LGB persons and same-sex couples. Within a period of less than 20 years, same-sex relationships have been transformed from a criminal offence (relationships between men) or a completely ignored reality (relationships between women) to state-sanctioned relationships which can attract a legal status with legal rights and obligations similar to those attached to marriage. Moreover, LGBT persons are now recognised as sexual minorities which are in need of protection by the State, although, as documented in this article, apart from a few recent changes, things have not improved much for trans persons, who continue to be largely ignored by Cypriot law.

Together with the law, social attitudes seem to be slowly changing in the island; however, there appears to still be relatively low tolerance for and comfort around LGB persons, and even lower for trans persons, especially among older age groups and

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110 Cyprus Anti-Discrimination Body Position regarding the legislative regulation of hate crimes against LGBTI persons, No 3/2016, 42/2014, 28/2013, 63/2012, 69/2012, 4/2012, 7 April 2016, para. 46.

111 *Ibid*, para 81.

112 As Drosos and Constantinides have noted ‘the legal situation of same-sex couples in Greece and Cyprus presents an interesting case study of how social changes and human rights improvements can be gradually brought about “from above” when supranational actors empower local ones to overcome the unwillingness and reluctance of conservative constituencies and make necessary changes in law (and society)’ – see Drosos and Constantinides, ‘The Legal Situation of Same-Sex Couples in Greece and Cyprus’, p. 339. Phillip M. Ayoub has also been of the view that it is mostly in newer EU Member States (‘the EU-12’, according to him) that improvements in the protection of LGBT rights has come ‘from above’ – see P. M. Ayoub, ‘EU Law as an (In)Direct Source of LGBT Rights across Europe’ in U. Belavusau and K. Henrard (eds), *EU Anti-Discrimination Law Beyond Gender : Achievements, Flaws and Prospects* (Oxford: Hart Publishing, forthcoming).

among non-urban populations.

Accordingly, it is clear that a lot still needs to be done in order to improve the position of LGBT persons and same-sex couples in Cyprus, both legally and socially.

As regards the law, the gaps that persist have been noted in previous sections and the legislative steps that need to be taken as a matter of priority, have been highlighted.

For trans persons, it is important that legislation is introduced which provides a clear, quick, accessible, and transparent procedure to be followed when they wish to be recognised in their psychological gender. As explained, this procedure must not require trans persons to undergo gender reassignment surgery, to be sterilised, or to dissolve their marriage or civil partnership. In addition, gender identity should be added as one of the prohibited grounds in the Cypriot anti-discrimination legal framework, and hate crimes which are based on the gender identity of a person should become a criminal offence.

As regards LGB persons and same-sex couples, the main step that needs to be taken is to ensure that they can be recognised as the joint parents of their children. At the moment, same-sex civil partners are singled out as the only couples who legally cannot have children together. It is, of course, practically possible for the couple to have children and raise them as the children of both, but, under the law, the children would have only one parent, i.e. the civil partner who (as a single person) adopted them or the civil partner who gave birth to them as a result of medically assisted reproduction techniques. As explained earlier, the failure to recognise the parental ties between the other civil partner and the children can have very negative consequences at both a symbolic and a practical level.

Other important steps that need to be taken are the extension of the scope of the prohibition of discrimination on the grounds of sexual orientation to areas outside employment and occupation, and the introduction of a criminal offence of hate crimes which are based on the sexual orientation of a person or group of persons. These steps will send a strong signal that the authorities will not tolerate hate, violence, and discrimination against LGBT persons.

It is, also, important that in order for Cyprus to comply with its international obligations it recognises the status attached to same-sex relationships in other jurisdictions, as well as the parental ties between a same-sex couple and their children, as these are recognised in the country of origin of the couple.

These are simply *some* of the legislative steps that should be taken as a matter of urgency in order to improve the position of LGBT persons and same-sex couples under the Cypriot legal system, and much more will need to be done legislatively in the near future if Cyprus wishes to fully respect and protect the rights of this segment of the population.

Nonetheless, effective laws and criminal justice systems are essential, but not

enough. In parallel with these legislative steps, Cyprus should proactively work to bring about broader changes in societal attitudes towards LGBT persons and should adopt a comprehensive action plan for the advancement of LGBT rights. This requires outreach campaigns and education in schools and beyond to promote understanding and respect of the human rights of LGBT persons. The government should provide specific training to law-enforcement officials, members of the judiciary, and government officials, on dealing with issues affecting the LGBT community. Public authorities should demonstrate positive political leadership on this issue and there should be zero tolerance of homophobic and transphobic speech by public figures. The Cyprus Ombudsman has already played an important role in the fight against discrimination based on sexual orientation and gender identity by registering and reviewing complaints, commissioning research, and advising on policies, and she should obviously continue working hard on these matters and build alliances with civil society organisations, faith-based communities, and the private sector, in order to build a more inclusive society for LGBT persons.

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