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To the Council of Europe STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

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

NGO statement on the implementation of the recommendation in Finland

Attachment to the submission by the Government of Finland

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General remarks

This statement represents the views of two civil society organisations / NGOs: Seta ry – LGBTI Rights in Finland and Trasek ry.

The organisations appreciate the cooperation with the ministries within the LGBTI working group as well as the possibility to present their views in connection of the review of the Recommendation together with the government's views. The organisations comment only insofar as the government's answers require further points of view.

The authors

Trasek is a volunteer-based human rights NGO established in 1984. Trasek gives counseling and practical advice to trans and intersex persons seeking justice. Trasek is contacted for more than 70 times a year about trans and intersex persons' access to justice or access to health care. Trasek receives indirectly minimal financial support from Finland's Slot Machine Association (RAY) a public institution distributing gambling revenues to various NGOs.

Seta is a national human rights NGO established in 1974. Seta's goal is a society where everyone can live equally, free of discrimination based on sexual orientation, gender identity or gender expression. Seta is the umbrella organization for 21 LGBTI associations all over Finland. Seta runs a Trans support center that provides individual and family counselling and peer group activities for trans and intersex persons. Seta's work is economically supported by Finland's Slot Machine Association (RAY).

Policies to advance the human rights of LGBTI people in Finland

In recent years, progress has been made in Finland regarding the inclusion of sexual orientation in some legislation and government programs. Especially the ministries of Foreign Affairs and Home Affairs have been active in advancing the mainstreaming of LGBTI policies.

However, there remains a lot to do in all sectors of government and the society. Gender identity is included only to a very limited extent in any sector. The situation of intersex persons has hardly been addressed at all by governmental programs. Local municipalities are seldom active in formulating LGBTI policies.

The answers by the Finnish ministries and authorities on the implementation of the Recommendation give generally too positive a picture on the legal situation, administrative rights and social equality of LGBTI people in Finland, especially regarding trans and intersex persons. Numerous problems remain in the implementation of the recommendation and in the human rights situation of LGBTI people in Finland at large.

In the Finnish government's response it is stated that general anti-discrimination legislation as well as the Constitution protect LGBTI people. In practice, however, it has been proven difficult especially for trans persons to access their rights based on a non-explicit legislation. An example of this is the requirements of the legislation for gender reassignment and the sometimes very broad application of the requirements especially within health care.

Another problem is the lack of explicit mandate and resources for ombudspersons to advance equality related to gender identity and sexual orientation.

The authorities often confuse gender identity or gender expression with sexual orientation. Also in the interpretation of legislation, sexual orientation is often claimed to cover gender identity although they are two different things. For example in the criminal law, bias motive related to sexual orientation is mentioned explicitly as an aggravating circumstance whereas gender identity is not.

Ignorance by authorities, employers and professionals in different fields often leads to marginalisation of both trans and intersex persons and also lesbian, gay and bisexual persons, as well as the exclusion of their families.

The questionnaire

Section I – Implementation and dissemination of the Recommendation

1. How would you assess the status of implementation of the Recommendation in your country?

Insufficient

No attempt has been made by the government to put together a comprehensive lgbti policy: neither in the format of a practical implementation plan for the recommendation nor in other formats. There is an inter-ministerial working group for LGBTI issues but it has concentrated on a review of the current situation rather than proactive measures. Lgbti issues are on the agenda of some ministries but there is a lack of comprehensive policy. There are few officials within ministries or local municipalities that are explicitly responsible for lgbti issues.

In 2012, the government adopted the first National Plan of Action for Human Rights. Lgbti issues were omitted almost altogether from the action plan.

In the current government's programme there are no explicit references to lgbti issues even as several ministries are to some extent working on lgbti.

Trans and intersex issues are regularly ignored or dealt with great ignorance by authorities and public alike. This can be seen in legislation and government instructions as well as in public debates. A positive exception is the Ombudsperson for Equality. She has opened dialogue with transgender organizations and drawn attention to several injustices faced by trans persons, including sterility as a requirement for legal gender recognition, among others in her annual report. The ombudsperson for Equality has also organised a seminar about the human rights situation of transgender people and has published a comprehensive report on the issue.

- 2 Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

B

Please explain and, if appropriate, provide examples of any such measures found:

There is not enough information about discrimination experienced by LGBTI people in the different sectors. There are some reports on discrimination but no comprehensive and/or systematic / repeated analyses. The existing information does usually not cover all of the authorities' actions and policies, except for the equality ombudsperson's report on the Status of Gender Minorities.

According to the experience of NGOs, legislative and other discrimination is common especially regarding trans and intersex persons' rights in general, family rights, education, healthcare and employment. This holds true also related to sexual orientation even if to a slightly lesser extent.

Are there measures in place to redress any such discrimination?

B

Please indicate the measures and, if appropriate, provide examples of good practices:

For sexual orientation, one of the most pressing problems regarding access to justice is the lack of an ombudsperson that would have a mandate to act in cases of sexual orientation discrimination, or advance the equality of lesbian, gay and bisexual persons in general.

As for gender identity, a good practice is that the ombudsperson for gender equality has proactively interpreted all trans and intersex persons to fall under the scope of her mandate.

3 Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

B

If appropriate, please provide examples of measures adopted or in preparation.

LGBTI issues are mentioned in the government's gender equality plan (trans and intersex persons' protection against discrimination) and in the national plan of action for human rights (trans and intersex persons' protection against discrimination and the need to create national coordination for lgbti issues) as well as in the government's plan for developing child and youth policy. A comprehensive and specific action plan is lacking, though, as are resources.

The government should adopt a cross-sectoral, comprehensive LGBTI action plan that would include measures for both national and local levels. As long as such a programme and resources for its implementation are absent, the measures are insufficient. All measures taken after the Recommendation was adopted, with the exception of the founding of an inter-ministerial LGBTI working group, have been made irrespective of the Recommendation.

4 Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. b. x c. d. e.

Effective anti-discrimination policy can only be based on adequate information on discrimination in society. In Finland, lack of information is significant and often related to the lack of sufficient support systems and prevention programmes.

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. b. x c. d. e.

See above.

In many equality and non-discrimination surveys, for example those conducted in the military, gender identity has not been addressed. Sexual orientation has often been addressed insufficiently, and there are few specific measures within any institution or authority to actively advance equality and non-discrimination with regard to gender identity and sexual orientation.

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. b. x c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices:

5 Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. b. c. x d. e.

There is very little relevant case law. Regarding sexual orientation, the current equality act only covers a limited number of fields. Regarding gender identity, the current legislation is not explicit and the potential for remedies is rather theoretical.

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. b. c. x d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The gender equality ombudsperson gives advice to trans and intersex persons. The resources of the ombudsperson for proactive and broad dissemination of information are very limited.

As for sexual orientation discrimination, within employment there are authorities responsible but they hardly do dissemination.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Lack of resources explicitly targeted at LGBTI work within the ministries and lack of coordination for LGBTI issues both within and between the ministries are the biggest bureaucratic obstacles. Other obstacles are lack of information about the Recommendation and about LGBTI issues in general, especially related to diversity of gender.

A big obstacle is also political opposition to advancing LGBTI people's human rights. Some of this opposition comes from within the government which lead to a lack of explicit LGBTI references in the government's political programme.

8 Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation should be visible within every ministry, for example on the web pages of each ministry instead of only being available on the webpage of the MFA.

In the recommendations of the ministry of internal affairs for equality planning, both sexual orientation and gender identity are included. This is very positive.

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

9 Are there measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. b. x c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The police does not always take seriously reports by lgbti people about bias-motivated incidents. For example, a trans person did not get his case investigated when she reported a public outing that should have been considered as a libel case under the current legislation.

10 Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

NGOs demanded that gender identity-based motive should have been explicitly included in the list of aggravating circumstances in 2010 but it was omitted. The list is non-exhaustive but there is little if any case law to support the effective inclusion of gender identity.

11 Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no proactive action from the part of the authorities to increase reporting. The willingness of victims to report cases is low partly due to mistrust towards police and other authorities.

12 Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Training of police, prison staff, court staff and staff of the military is insufficient and non-systematic regarding both sexual orientation and gender identity.

There is no systematic follow up on how hate crime cases related to sexual orientation, gender identity or gender expression are dealt with by the prosecutors or decided by courts. Moreover, there are no guidelines or instructions on how police, prosecutors or courts should handle hate crimes or other criminal offences against sexual or gender minorities. The authorities have not fully utilized the training possibilities supplied by OSCE or the best practices provided by the governments of United Kingdom, the Netherlands or Sweden.

13 Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. b. c. x d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are few specific measures. A trans person's placement in prison should be based on the self-perceived gender identity rather than the legal gender.

14 Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. b. x c. d. e.

It's a problem that it is allowed to publish information about a trans person's background without sanctions. There is at least one case where the police has not investigated such a case. This causes a lot of suffering and fear and makes it possible to blackmail trans persons who are not publicly out.

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. b. x c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is some public debate about the issue, even if public discussion around hate speech tends to be more about racism.

II. Freedom of association

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. b. x c. d. e.

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

Personal information about board members of NGOs is public information, available from the National Board of Patents and Registration. This may lead to outing as well as increased risk of persecution of persons who have trust positions within LGBTI organisations.

Some LGBTI organisations get reasonable amounts of public funding whereas Trasek get very little and its activities are thus at the moment completely based on voluntary work.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities?

a. b. x c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures but it seems that in acute situations the police and other actors effectively come to the help of lgbti human rights defenders (for example in some recent cases of attacks and threats to Pride events).

17 Have measures been taken to ensure that non-governmental organisations defending the of human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

a. b. c. x d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Even if LGBTI NGOs have been consulted in a number of policy procedures there are still a lot of procedures where some or all of the central LGBTI NGOs are either left out of consultations or their points of view have not had an effect on the outcome. Especially trans and intersex persons' own organisations, like Trasek, have only been heard in a limited range of issues. This leads to a gap between the everyday reality of trans people and to the actions by the government and other authorities. The response of the government to this questionnaire is thus also too optimistic regarding the hearing of LGBTI people.

One aspect of the problem is that lgbti people, especially trans and intersex persons, are not represented and consulted in local or regional councils and other institutions.

LGBTI NGOs are currently mostly only heard in procedures explicitly targeting so/gi issues, or if they are consulted in other issues, their points of view don't show in the result. There are no systematic procedures in place to ensure that LGBTI points of view are taken into account in all relevant legislative procedures. The ministry for home affairs is preparing guidelines for ministries for equality measurement in the preparation of all legislation which is very positive.

III. Freedom of expression and peaceful assembly

18 Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

There are no threats or limitations to this right from the part of the government but in recent years, several attacks by individual perpetrators and organised extreme right-wing actors have been made against Pride events and other activities by LGBTI activists and NGOs.

19 Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

IV. Right to respect for private and family life

20 Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21 Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. b. c. ☒ d. e.

Please provide examples of exceptions to this principle, if any:

The privacy of transgender people is still commonly violated. There have been problems in acquiring new certificates from schools or employers after confirmation of the new gender marker.

The population information act, reformed in 2010, rules that the previous legal gender of the person shows in the data system and the person is earmarked as transsexual in the same system. There is no clear regulation about in which cases this is disclosed and to whom. NGOs are very worried about this. Similar earmarking is not used for any other group.

Regarding patient information in health care it is common knowledge among LGBTI people that the sexual orientation and/or gender identity of the patient are recorded and stored also in many cases where it has no direct relevance to the health status of the patient. Oftentimes personal information is available also for other staff members than care personnel. Regarding trans persons this may mean that information on the person's old name and old person number are visible for people that should not have access to this information.

Also companies such as teleoperators and big market chains store information about the earlier identity of a person. This is not regulated in the current legislation which makes it very hard to achieve changes in the systems of private companies. This is also the case regarding health care. This is why there are practically no complaints to officials about data protection.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. b. ☒ c. d. e.

There have been problems in trans persons' access to fertility treatments and some other areas of medical care.

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. b. ☒ c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no government-led review about this issue. The ombudsperson for gender equality has published a report about the situation of trans and intersex persons and states that the infertility

requirement, among others, constitutes a serious breach of the human rights of people seeking legal gender recognition.

The current requirements for legal gender reassignment constitute human rights violations. Infertility requirement, marriage requirement, requirement of a psychiatric diagnosis and the requirement of "living in the preferred gender" breach the rights of an individual to self-determination and private life.

For the confirmation of a new legal gender a person must have a medical certificate verifying sterilization. This is a form of forced sterilization. Council of Europe Commissioner for Human Rights has taken a strong stand against sterilization as a prerequisite for gender reassignment. The Commissioner gave in 2012 Finland a specific recommendation to change the prerequisites of gender reassignment in accordance of human rights. In 2012 Finland also got a recommendation in the UPR process of the United Nations Human Rights Council to undertake legislative and administrative activities to improve the rights of trans and intersex persons to bodily integrity, family life and security.

If a person demanding legal gender reassignment is married or in registered partnership, consent of the spouse is required as a prerequisite so that the marriage can be altered to registered partnership and vice versa; otherwise change of the legal gender is not possible. This violates a person's right to privacy and self-determination. The non-marriage requirement has been condemned by the Council of Europe Commissioner for Human Rights.

23 Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

24 Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

Same-sex couples are excluded from marriage and external adoption rights. This constitutes an unacceptable hierarchy of partnerships.

Finnish law grants specific, partly salaried, parental leaves. This right, however, is not quite fulfilled for families of LGBTI people. The spouses of biological mothers or fathers are only entitled to the so called paternity leave after second-parent adoption has been approved, which may take more than half a year since the birth of the child. Legal fathers living in a separate household from the legal mother are not entitled to full rights or compensations, although they may be very involved in the care of the children.

Same-sex cohabiting couples are for the most part not recognized by legislation which leads to discrimination in benefits.

The current adoption system discriminates based on sexual orientation as same-sex couples are not allowed to be tried for adoption together.

Second-parent adoption is allowed but the process is lengthy and varies between different parts of the country which leads to difficult situation for the child for example in cases where one of the parents dies before second-parent adoption has been confirmed, as well as related to parental leave entitlements.

In the ongoing review of the paternity act, all parenthood situations of LGBTI people should be included and the act should be renamed Parenthood Act. LGBTI NGOs have been submitted statements during the preparatory phase but it is unclear whether their points of view will be included in the reform. Trasek was not invited to be heard by the ministry even if the paternity act is relevant to the legal parenthood of trans persons.

A revision of legislation concerning surrogacy is being considered at the moment. If surrogacy is to be legalised this should be done without discrimination due to family status, sexual orientation or gender identity.

In fertility treatments, LGBTI people are treated unequally. Treatment of same-sex couples (as well as single women) is not covered by public funds and not given in public hospitals. There are cases where trans people have been refused fertility treatment altogether.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. b. c. x d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The system in itself is discriminatory as the option to apply for external adoption is only available for married couples and individual persons.

V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

i) Access to employment

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

ii) Promotion, dismissals, pay and other working conditions

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

iii) Prevention and punishment of harassment

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

iv) Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is little concrete action by employers to enhance the equality in employment of lgbti people. So far, sexual orientation protection is explicitly covered in employment and gender identity is not. The legislation is under review. The data protection act does not recognise gender identity.

Employment discrimination of lgbti people is common. There have been several cases of discrimination against transgender people in the media recently. Also cases of discrimination based on sexual orientation have come to the knowledge of NGOs. It can be assumed that few people experiencing employment discrimination due to sexual orientation or gender identity take their case further due to fear of further discrimination in the workplace and being "outed" in one's social environment. The lack of an ombudsman with a mandate to investigate LGB discrimination cases in the work life is another reason for the lack of known cases.

VI. Education

27 Are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. b. x c. d. e.

If so, are there measures in place concerning in particular:

i) Anti-discrimination training or support and teaching aids

a. b. c. x d. e.

ii) Information, protection and support for pupils and students

a. b. c. x d. e.

Children and youth of various gender identities suffer from the predominant gender normativity in schools and from the lack of proper and sensitive support systems.

A study by the ministry of home affairs in 2011 revealed that some 36 percent of the young respondents of the survey had been target of bullying in schools because their belonging to sexual or gender minorities. Similarly, according to another study only 12 percent of teachers believed that a student's openness about sexual orientation in school would be accepted by her mates. Harassment and uncertainty of acceptance as well as invisibility in school life and curricula may furthermore significantly raise the risk of suicides among children and youths belonging to sexual and gender minorities. There have been plans to amend legislation and some special programs by the education authorities to fight discrimination and violence in schools, but they don't include references to sexual orientation or gender identity.

iii) Objective information on sexual orientation and gender identity in school curricula ?

a. b. c. x d. e.

iv) School equality and safety policies and action plans

a. b. c. x d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Sexual orientation and gender identity are not explicitly covered in most curricula. Thus the implementation of anti-discrimination and anti-bullying content that would specifically address

lgbti issues is up to the individual teacher or school. There are materials, produced mainly by NGOs but to some extent also by the government, to address equality and non-discrimination issues and safety at school.

One problem is that school books are produced by private companies and they typically try to please a wide audience, thus omitting information on lgbti issues or other aspects of diversity.

VII. Health

28 Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. b. c. x d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Sometimes health professionals mix their private beliefs about sexual orientation and gender identity into care, for example blaming the patient's sexual orientation for mental problems, or seeing trans identity as a mental problem. So called conversion therapies are not banned.

Access to hormone or surgical treatments is often complicated even when a diagnosis has been established according to the requirements of the current legislation in Finland and, particularly, there have been problems in compensation or reimbursement of the costs by the Social Insurance Institution of Finland (Kela).

In addition, considerable local variation is found in the level and quality of treatment and support for transgender people, especially gender variant children and transgender teenagers. Thus these young people do not have equal access to essential health care services. They are often treated by professionals who do not have sufficient knowledge on gender variance. The services should be equally efficient and of high quality throughout the country, but no state authority has currently taken adequate responsibility for ensuring that this is the case. Trans youth have also been denied referral to proper professional guidance and treatment preparing for gender reassignment even as the law on gender reassignment includes no age limit for access to investigation and treatment. The access of young people to gender identity investigation was discussed in 2011 by the National Ethical Board of Social and Health Sector, ETENE. It stated that young people should have access to proper support and treatment by experts in accordance to current legislation.

Intersex children have been exposed to non-medically based surgery, which may cause in later life serious mental or physical complications. There is also only very limited support or counseling to the parents of intersex children. So far no comprehensive, high-quality data on the experiences of intersex persons of the treatment has been gathered.

29 Has homosexuality been removed from the national classification of diseases?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

With the exception "sexual orientation that disturbs oneself".

The National Institute for Health and Welfare amended in 2010 the ICD-10 classification of diseases and health problems as applied in Finland and excluded classes on transvestism (F64.1 & F65.1), but maintained transsexualism as a mental disorder, contrary to, e.g., the standpoint of the European Parliament and of the Council of Europe Commissioner for Human Rights.

30 Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

There are problems and variations in access to reimbursements from the national health insurance system (KELA) for hormonal therapy and surgical procedures.

Filing complaints is difficult for trans persons because it may often compromise the person's privacy as the documents are public.

It is also sometimes difficult especially for young people to access gender reassignment procedure even as it is stipulated in the law that everyone wishing so should be sent to specialist investigation.

VIII. Housing

31 Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is a lack of data regarding LGBTI and housing. In the private housing market, discrimination is prevalent. It is difficult for LGBTI people to get apartments in a very competed market. There are

no governmental measures to combat this problem specifically from LGBTI equality point of view. The reform of the non-discrimination act is believed to give tools to address cases of discrimination in housing.

32 With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. b. c. ☒ d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There are no lgbti specific measures to address the issue.

IX. Sports

33 Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The local municipalities are responsible for a big number of sports facilities. However, it is rare that the municipalities would have proactive measures to combat LGBTI discrimination in sports. There are cases of direct discrimination by authorities, for example exclusion of trans persons from gender-specific facilities such as swimming hall dressing rooms.

It is demanded of Olympic sportspeople that they undergo genital surgery in order to be able to compete in the self-identified gender category, even if the legal gender reassignment has been completed. This is a breach of bodily integrity and right to privacy.

X. Right to seek asylum

34 In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Finland recognizes in principle sexual orientation and gender identity as grounds for granting residence permit on the basis of subsidiary or humanitarian reasons. There are no official statistics of the applications or decisions, neither positive nor negative, based on sexual orientation or gender identity, but they may be at least dozens. In some instances which have got public attention, the authorities have decided to expulse persons to countries where LGBTI people are strongly discriminated and persecuted and where homosexuality is illegal. There are also indications that in some cases the expulsion decisions have been based on a discretion requirement.

There is evidence that at least in some cases Finnish Immigration Service has not followed the guidelines of the UN High Commissioner of Refugees, e.g. the interrogators have no expertise on sexual orientation or gender identity and the amending of statement by a refugee has been considered as evidence of untrustworthiness.

MIGRI has sought training from the LGBTI NGO Seta and has received so far one training in 2012.

35 Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The highest administrative court has returned several negative asylum decisions to the MIGRI based on that MIGRI has underestimated the threat that the applicant would face in the country of origin if open about sexual orientation. In several cases, asylum has been granted, sometimes on secondary protection base.

XI. National Human Rights Structures

36 Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

There is no ombudsperson at the moment with a mandate to tackle discrimination based on sexual orientation. For gender identity and expression, the ombudsperson for gender equality has herself interpreted her mandate to cover all gender identity and gender expression related discrimination as well as intersex persons.

Currently the legislation is vague concerning multiple discrimination.

XII. Discrimination on multiple grounds

37 Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. b. c. x d. e.

Currently the legislation is very vague concerning multiple discrimination, especially if one of the grounds is regulated under the gender equality act and the other(s) in the non-discrimination act.

Section III - Follow-up

38 Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

The CoE should target enough resources in its regular budget to regular monitoring of the implementation of the Recommendation and to advancing the protection of LGBTI people's human rights in general in the member states. Allocate more resources to the European Commission against Racism and Intolerance (ECRI) to enable it to undertake effective monitoring of the relevant human rights standards in member states.

It is important that the CoE produces data, such as the Commissioner for Human rights' report on discrimination based on so/gi, about discrimination and non-equality of LGBTI people. LGBTI issues should be highlighted in reports from field visits when applicable. The recent survey by the EU's Fundamental Rights Agency into the real situation of LGBTI persons in EU should be extended member states to Council of Europe member states outside the EU.

The CoE should have permanent staff with expertise in LGBTI issues. The Finnish NGOs warmly welcome the secondment of an expert by Finland to the LGBT unit.

39 Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

The examination should preferably cover the whole scope of the recommendation. If specific focus is to be taken, it should include looking into trans and intersex persons's rights in the different areas of rights.

40 Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

There is no necessity to extend the wording of the Recommendation as long as the Recommendation is being interpreted as including intersex and gender expression, as is being done in Finland.

The role of local authorities should be emphasized and looked into more specifically in the monitoring and implementation of the Recommendation.

Finally

Seta and Trasek see the Recommendation as a highly important tool in improving the access of LGBTI people to their basic human rights guaranteed in international human rights law. We hope that a procedure will be set up to ensure the continuous monitoring of the implementation of the Recommendation in all member states. It is important for the legitimacy of the monitoring to give civil society organisations possibilities to make their voice heard in the monitoring process.

As Finnish CSOs we will be monitoring the implementation of the Recommendation in Finland also in the coming years. We are ready to give our points of view also in the future both to the Finnish government and to Council of Europe bodies.

Your sincerely

Aija Salo

Secretary General

Seta ry – LGBTI Rights in Finland

Antti Karanki

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