**Protection against violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression, association and assembly**

***Input from the Portuguese Ombudsperson (NHRI) to the report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity***

***31 January 2024***

**Introduction**

The Portuguese State is based on the sovereignty of the people, the dignity of the human person and the inherent principle of equality before the law, which determines that everyone is entitled to equal rights and freedoms, without distinction of any kind.

The principle of equality determines that every citizen shall possess the “same social dignity and shall be equal before the law” and that “[n]o one shall be privileged, favoured, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation” (Article 13, Constitution of the Portuguese Republic). Following the 1997 review, the Constitution of the Portuguese Republic enshrined the right to self-determination,
as well as legal protection against any forms of discrimination (Articles 26 (1) and 73 (2).

Over the past years, efforts were made to eliminate remnants of discrimination from the national legislation concerning sexual orientation and gender identity. Portugal has been introducing progressive legislative changes in the quest for legal and social equality and this legal framework has greatly contributed to the fight against discrimination based on orientation, identity and gender expression and sexual characteristics.

*Brief chronology of the legislation evolution: Homosexuality was decriminalised in 1982; in 2001 de facto unions are extended to same-sex couples[[1]](#footnote-1); in 2003 the Labor Code is revised and includes the principle of non-discrimination based on sexual orientation[[2]](#footnote-2); in 2004 sexual orientation was explicitly foreseen in article 13 among the non-executive list of illegitimate grounds of discrimination; in 2007 the Penal Code was revised and repealed any references to same-sex acts or differences in the age of consent[[3]](#footnote-3); in 2009 issues related to sexual orientation were included in the Sexual Education Law[[4]](#footnote-4); in 2010 the law allowing same-sex marriage was approved[[5]](#footnote-5); in 2016 the Parliament approves the adoption and civil sponsorship of children by same-sex couples[[6]](#footnote-6) and the Parliament extends the beneficiaries to techniques of Medically Assisted Procreation to all women regardless the diagnosis of infertility, marital status and sexual orientation[[7]](#footnote-7); in 2018 was approved the law that establishes the right to self-determination of gender identity and gender expression and the right to protection of the sexual characteristics of each person[[8]](#footnote-8). In 2024 it was published a law prohibiting the so-called “sexual conversion” practices against LGBT+ people, criminalizing acts aimed at altering, limiting or repressing sexual orientation, gender identity or expression[[9]](#footnote-9). By the end of 2023, the Parliament approved measures to be adopted by schools to guarantee the right of children and young people to self-determination of gender identity and expression[[10]](#footnote-10), there was some opposition of the public opinion[[11]](#footnote-11) and the President of the Republic returned the diploma without promulgation[[12]](#footnote-12).*

1. **Does your country have any laws, policies, or practices that, explicitly or implicitly, ban, restrict or make more challenging the** **exercising of freedom of expression by civil society organizations or activists advocating for LGBT persons’ human rights?**
	1. **This could include, but is not limited to, laws on the so-called propaganda of homosexuality, morality policies or codes, censorship of media content, restrictions on school curriculum, censorship of any content or scenes, censorship of literature, printed materials, blocking of sites or social media platforms, persecution of artists and authors working with the topic, etc.**

The Constitution of the Portuguese Republic guarantees that everyone has the right to freely express and divulge his thoughts in words, images or by any other means, as well as the right to inform others, inform themselves and be informed without hindrance or discrimination. The exercise of these rights may not be hindered or limited by any type or form of censorship – Article 37 (1 and 2).

In this regard ILGA-Europe – the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association produces the Rainbow Map and Index that illustrate the legal and policy situation of LGBTI people in Europe and ranks 49 European countries on their respective legal and policy practices for LGBTI people, from 0-100%.

Portugal scored 100% in the criteria regarding *civil society space* that includes: “public event held, no state obstruction of freedom of assembly; public event held, there is enough protection; Associations operate, no state obstruction of freedom association; LGBTI human rights defenders are not at risk; no laws limiting external funding; no laws limiting freedom of expression”[[13]](#footnote-13).

1. **If there are no such laws or policies, have there been attempts or incentives in the last ten years (2013-2023) to introduce such explicit or implicit restrictions, either nationally or locally? If so, who were the actors/groups/individuals or organizations behind these attempts, and what is the current situation?**

We are not aware of attempts or incentives, in the last ten years, to introduce explicit or implicit restrictions to the freedom of expression of civil society organizations or activists advocating for LGBT persons’ human rights.

1. **Does your country have any laws, policies, or practices that, explicitly or implicitly, ban, restrict or make more challenging the exercising of freedom of association and freedom of peaceful assembly by civil society organizations or activists advocating for LGBT persons’ human rights?**
	1. **Those can include – but are not limited to – explicit bans on registration of organizations working on LGBT persons’ human rights or related topics, procedures making the registration impossible or almost impossible, obstacles for applying for and receiving funding (foreign or otherwise), ignoring or indirectly encouraging attacks and threats on LGBT-related events and using such attacks as a justification for banning peaceful marches/protests, refusing to guarantee the protection of the peaceful protests by State security forces, etc.**

The right to meet and demonstrate it’s also present in the Portuguese Constitution in the section dealing with Fundamental Rights and Duties. The citizens have the right to meet peacefully and without arms, even in places that are open to the public, without the need for any authorisation and all citizens are accorded the right to demonstrate (Article 45 of the Constitution of the Portuguese Republic).

The Portuguese laws governing freedom of association and assembly date back to 1974, it does not forbid LGBT parades or demonstrations[[14]](#footnote-14). The law only requires that persons or organisations wishing to organise meetings, rallies, demonstrations or parades in public spaces or open to the public give previous notice in written to the competent body at the latest two working days in advance.

Some recent examples of freedom of assembly and association: the Madeira branches of Opus Gay and rede exaequo opened the second LGBTI+ community centre of the country, in Funchal; Arraial Lisbon Pride was held with an estimated 100.000 participants; first LGBTI+ marches were held in Covilhã, Sintra, Caldas da Rainha, Vila Nova de Famalicão, Esposende and Vizela (several medium and small cities); after a ten year gap, Azores also held a march; Lisbon will host EuroPride in 2025; a group for LGBT+ Catholics, Sopro, was established; Anémona, initially a project aiming to promote and protect the health of trans and non-binary persons, was officially recognised as an association[[15]](#footnote-15).

In this regard, see, also, the score attributed to Portugal in the Rainbow Map and Index produced by ILGA-Europe[[16]](#footnote-16).

1. **If there are no such laws or policies, have there been attempts or incentives in the last ten years (2013-2023) to introduce such explicit or implicit restrictions, either nationally or locally? If so, who were the actors/groups/individuals or organizations behind these attempts and what is the current situation?**

We are not aware of any attempts or incentives, in the last ten years, to introduce explicit or implicit restrictions to the freedom of association and freedom of peaceful assembly by civil society organizations or activists advocating for LGBT persons’ human rights.

1. **Are there practices, procedures, groups or actors, societal and political trends, incentives, civil society and constituency mobilization, laws, bills or policies, which you have not mentioned above but that already affect or are likely to affect in the future, directly or indirectly, the exercising of the human rights to freedom of expression, association and/or peaceful assembly by LGBT people, activists and civil society organizations in your country, nationally or locally?**

There are sporadic and circumscribed episodes in the Portuguese society that may affect the exercising of the human rights to freedom of expression, association and/or peaceful assembly by LGBT people, activists and civil society organizations reported by the media.

* RTP, the Portuguese public television broadcast, transmitted an episode of the feminist show “Destemidas” (aimed at children between 10 and 13 years old) which tells the story of Thérèse Clerc, one of the greatest French activists in defense of the legalization of abortion and homosexual rights. Many parents filed complaints and accused the production of "promoting abortion, divorce and homosexuality", being particularly shocked by the gay kiss scene. RTP decided to redo the episode but continued to broadcast the series at the same time and for the same target audience[[17]](#footnote-17).
* “No Meu Bairro” it’s a children's book about inclusion and diversity that addresses activism, racism, gender identity, religion or bullying. The presentation of the book sparked protests on social media and demonstrations by anti-LGBT groups[[18]](#footnote-18).
* During the World Youth Days that took place in the Portuguese capital, Lisbon, in 2023, there were a few episodesthat involved LGBT people, activists and civil society organizations: an invasion by conservative Catholic activists of a mass, organized by Centro Arco Íris, an organization defending LGBT rights[[19]](#footnote-19); five pilgrims who belong to a center for reflection on LGBT issues suffered insults, were pushed and stoned[[20]](#footnote-20); a pilgrim that raised a flag representing the transgender community was confronted by other pilgrims during the opening mass[[21]](#footnote-21).
* A right-wing conservative political party, has defended the cut of subsidies from associations that promote "gender ideologies and gender equality"[[22]](#footnote-22).
1. **Given that laws and policies regulating internet use, access and content can have especially restrictive effects on the protection of the human rights of LGBT persons, are there laws, policies and practices which appear neutral or otherwise not specifically addressed to LGBT or SOGI issues, which nonetheless have discriminatory effects on the exercising of the human rights to freedom of expression, association and/or peaceful assembly by LGBT people, activists and civil society organizations in your country, nationally or locally?**

We are not aware of any laws, policies and practices with discriminatory effects on the exercising of the human rights to freedom of expression, association and/or peaceful assembly by LGBT people, activists and civil society organizations.

1. Law no. 7/2001, of May 11, recognises de facto unions of different and same-sex partners. [↑](#footnote-ref-1)
2. Law no. 99/2003, of August 27. [↑](#footnote-ref-2)
3. Law no. 59/2007, of September 4. [↑](#footnote-ref-3)
4. Law no. 60/2009, of August 6, forbids any discriminatory behaviour or any violence on grounds of gender or sexual orientation. [↑](#footnote-ref-4)
5. Law no. 9/2010, of May 31, allowed same-sex marriages but denied the right to adopt children. [↑](#footnote-ref-5)
6. Law no. 2/2016, of February 29, eliminated discrimination in access to adoption, guardianship and further legal relations in family matters, extending it to same-sex couples. [↑](#footnote-ref-6)
7. Law no. 17/2016, of June 20. [↑](#footnote-ref-7)
8. Law no. 38/2018, of August 7. [↑](#footnote-ref-8)
9. Law no. 15/2024, of January 29. [↑](#footnote-ref-9)
10. <https://www.publico.pt/2023/12/15/p3/noticia/parlamento-aprova-direito-autodeterminacao-genero-escolas-casas-banho-neutras-2073886> [↑](#footnote-ref-10)
11. <https://www.publico.pt/2023/12/21/sociedade/noticia/pais-directores-pedem-presidente-vete-lei-autodeterminacao-genero-escolas-2074543>

<https://agencia.ecclesia.pt/portal/portugal-medicos-e-juristas-catolicos-manifestam-viva-oposicao-ao-projeto-de-lei-sobre-direito-a-identidade-e-expressao-de-genero-nas-escolas/> [↑](#footnote-ref-11)
12. <https://www.presidencia.pt/atualidade/toda-a-atualidade/2024/01/presidente-da-republica-apreciou-decretos-da-assembleia-da-republica/> [↑](#footnote-ref-12)
13. [https://www.rainbow-europe.org/#8654/0/0](https://www.rainbow-europe.org/%22%20%5Cl%20%228654/0/0) [↑](#footnote-ref-13)
14. Decree-Law no. 594/74, of November 7, and Decree-Law no. 406/74, of August 29. [↑](#footnote-ref-14)
15. <https://www.ilga-europe.org/sites/default/files/2023/portugal.pdf> [↑](#footnote-ref-15)
16. [https://www.rainbow-europe.org/#8654/0/0](https://www.rainbow-europe.org/%22%20%5Cl%20%228654/0/0) [↑](#footnote-ref-16)
17. <https://www.cmjornal.pt/tv-media/detalhe/episodio-polemico-com-beijo-gay-vai-ganhar-nova-dobragem-na-rtp>

<https://rr.sapo.pt/noticia/pais/2020/06/29/rtp-mantem-horario-e-publico-alvo-de-serie-feminista-contra-a-recomendacao-do-provedor/198141/> [↑](#footnote-ref-17)
18. <https://sicnoticias.pt/pais/2023-09-24-Grupo-de-manifestantes-interrompe-apresentacao-de-livro-infantil-pro-LGBT-5653a6af>

 <https://visao.pt/atualidade/sociedade/2023-09-29-grupos-anti-lgbt-voltam-a-protestar-contra-livro-no-meu-bairro-desta-vez-a-porta-da-fundacao-saramago/> [↑](#footnote-ref-18)
19. <https://sicnoticias.pt/especiais/jmj/2023-08-07-Ministerio-Publico-vai-investigar-invasao-a-missa-LGBTQIA--em-Lisboa-aaf90f3a> [↑](#footnote-ref-19)
20. <https://sicnoticias.pt/especiais/jmj/2023-08-10-Grupo-LGBT-apedrejado-por-catolicos-durante-JMJ-e6c679bd> [↑](#footnote-ref-20)
21. <https://sicnoticias.pt/especiais/jmj/2023-08-02-Ergue-bandeira-trans-e-e-confrontado-por-peregrinos-no-Parque-Eduardo-VII-46d183ba> [↑](#footnote-ref-21)
22. <https://visao.pt/atualidade/politica/2024-01-13-ventura-promete-cortar-todos-os-subsidios-as-associacoes-da-igualdade-de-genero/> [↑](#footnote-ref-22)