

## **Speech by the Greek Ombudsman, Ms Calliope Spanou, in the Council of Europe's conference on discrimination of LGBT people**

The Greek Ombudsman (GO) is a constitutionally established independent authority that has been active since October 1998. The mission of the GO is to mediate between public administration and citizens, in order to protect citizens' rights, to ensure compliance with the rule of law, and to combat maladministration.

In 2005 the GO was designated as the national equality body handling complaints with regard to discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation in the public sector (Human Rights Department) as well as discrimination on the grounds of gender and gender identity in both the public and the private sector (Gender Equality Department). Complaints involving minors are dealt with by the Children's Ombudsman, also part of the GO. All three Departments cooperate in overlapping cases of discrimination (e.g. LGBT women or children).

Although the institution has been concerned with homophobic and transphobic speech/ harassment/ bullying, very few complaints on these issues have been received. Obviously this is not an indication of the absence of such incidents within Greek society and, therefore, the problem of underreporting is of great concern. To a great extent, it suggests a lack of public awareness as to the rights and the options available for protection. The problem is significantly aggravated by the complexity of the current legal framework.

The choice made in the relevant anti-discrimination laws in Greece to delegate competencies to three supervisory bodies (the GO, the Labour Inspectorate of the Ministry of Labour, and the Equal Treatment Committee of the Ministry of Justice), two of which lack the independent nature required by the relevant EU Directives, renders the comprehensive handling and supervising of the relevant cases and the coordination of actions for the effective promotion and implementation of the principle of equal treatment, very difficult.

The regulatory scope of the national laws in force are still cause for concern in terms of the range of protection provided, and also of the interpretative hurdles having to do with specifying the content of its individual notions. The exclusion of citizenship, the restriction of the field of discrimination to specific sectors and individual areas of administrative action only, the narrowing down of notions such as "provision of services", the unclear relationship of subjective and objective data to prove the occurrence of "harassment", the fact that many forms of discrimination are of a structural nature in Greece, all illustrate the weaknesses of the legislation in force in terms of effectively handling the range and scope of discrimination in Greece.

The need for a legislative extension of the scope of implementation beyond the currently limited fields is evident. Besides, the EU legislator has had the providence of explicitly giving this very possibility to the national legislative bodies; Greece, however, has not made use of this possibility so far, at least as regards the implementation of the law (3304/2005) that incorporated the Directives (2000/48, 2000/73) in national legislation.

However, a new positive development must be mentioned. Specifically, the Penal Code was recently amended in order to recognize as aggravating factors in sentencing the existence of racial or ethnic origin, religion or belief, disability, age, sexual orientation and gender identity motivation in crimes committed. In addition, a law is now under discussion, which will possibly include sexual orientation and gender identity as grounds of specific protection against hate speech and violence in accordance with the EU framework decision (Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law).

In any case, despite the difficulties related to the existing anti-discrimination legislation, the general competency of the GO, as laid out in L. 3094/2003, often permits the GO's intervention in fields of discrimination to which national anti-discrimination laws do not apply. The joint implementation of the GO's special competency as the body promoting the principle of equal treatment and its general competence as a body protecting civil rights, renders possible the widening of the protection finally provided to persons being discriminated against.

The problem of underreporting of discrimination on grounds of sexual orientation and gender identity is obviously more complex. Both at a national and a European level, the number of complaints filed is consistently low. The limited number of such complaints suggests that those discriminated against are hesitant to expose their personal or social lives and sustain the cost that lodging a complaint possibly entails and also indicate the failure of the GO to reach these groups and to gain their trust. For this reason, the GO intends to intensify its involvement in this specific field of human rights protection, by developing specific projects and initiatives on two fronts: a) at the level of the coordination of activities between state agencies, local government and of civil society, and b) that of legislative or administrative regulatory changing or improvement which is necessary in order to achieve effective protection and awareness. The main concern is to challenge existing misconceptions and prejudices in the public administration and in public opinion, influencing the level of human rights protection and human rights ethics in the field of sexual discrimination and gender identity issues.

In fact, the GO has been trying to establish a relationship of communication and trust with the LGBT community for years. Since 2007, the GO has participated in the Athens Pride –and it should be noted that we were the first public authority in Greece to have an active presence in the festival. The GO has also carried out targeted campaigns in LGBT online and press media and has established contacts with LGBT NGO's in Greece. Still the number of relevant complaints remains very low.

Obviously the GO needs to become more active in providing targeted information, especially to vulnerable groups where underreporting of discrimination is evident. To this end the GO announced a strategic plan which includes the creation of networks of cooperation and exchange of information, drawing on the experience gained from the successful operation of the “Roma network”. However, this plan has not been implemented yet, mainly due to extensive cutbacks in the GO's budget. Given the further cutbacks expected, the GO will seek funding from European programmes in order to proceed with its implementation.

## **General comment on sexual orientation and gender identity cases investigated by the Ombudsman:**

As regards sexual orientation issues, the GO has received limited number of cases that are actually related to harassment in education and employment. The intervention of the Institution focused in resolving individual cases and the immediate amelioration of the situation, indicating the relevant protection provided and challenging misconceptions that differentiate human rights protection due to sexual orientation.

As regards gender identity issues, the number of complaints lodged is relatively higher to those involving discrimination on the ground of sexual orientation. These have mainly involved harassment by the police, as well as difficulties of transgender people that have undergone sexual reassignment surgery in the enrollment in municipal registries following a court decision.

### **Presentation of Indicative Cases:**

#### ***Transgender bullying***

We recently established contact with the Greek Transgender Support Association with whom we are trying to build a relationship of trust, so as to combat the problem of underreporting. As a result of this contact, we are currently dealing with a complaint lodged by a transgender woman (26 years old) attending night school.

In her complaint she reports a number of serious incidents of bullying and also alleges attempts by the school itself to force her to dress as a man and, failing to do so, suggesting she moves to a different school.

The Greek Ombudsman has, already, addressed two letters to the school explaining the differences between sexual orientation and gender identity and informing them of the rights and protection provided for transgender individuals in national and international law. We have, also, asked the school to respect the student's gender identity by addressing her with her chosen name, allowing her to dress as a woman and granting her wish for use of the female toilets.

The Greek Ombudsman has met with the student, as well as, the Greek Transgender Association and the Association of School Teachers against Homophobia in order to discuss the case and identify the most effective means for further intervention. A meeting between the school's principal and members of the school's staff has been arranged, possibly with the presence of the Greek Transgender Association and the Association of School Teachers against Homophobia.

#### ***Censorship of artistic expression in the National Opera***

The Greek Ombudsman received a complaint by an NGO concerning the curtailment of an erotic scene (a kiss between two men) in the official premiere, on March 2009, of the opera "Rusalka" by Antonn Dvořk, in the National Opera House.

The NGO attributed the exclusion of the specific scene to homophobic censorship. According to the complaint and the attached documents, at the opera premiere, members of the orchestra handed out a statement issued by their trade union, in which they expressed their objection to the director's artistic interpretation of the opera with regard to the homosexual representation of the central character and the inclusion of "extreme scenes".

Since discrimination on the grounds of sexual orientation is only covered in the field of employment according to EU and national antidiscrimination legislation (Council Directive 2000/78/EC and L.3304/2005), the Greek Ombudsman investigated this complaint under its general mandate as a human rights institution (specifically as a violation of freedom of expression) and its specific mandate to promote the principle of equal treatment, contributing to the creation of a culture of acceptance and understanding of diversity.

The Greek Ombudsman's investigation found that the National Opera did not intervene in the director's artistic interpretation of the opera, nor did it seek the censorship of specific scenes. However, members of the Orchestra of the National Opera (which is a separate legal entity from the National Opera) asked the director to exclude the homoerotic kiss and implied that should she not agree to this demand, they would not participate in the performance. In light of these reactions, the director and the opera singers that would have exchanged the kiss decided not to perform the contentious scene on opening night.

From the aforementioned it is obvious that, although the National Opera did not itself impose artistic restrictions, it failed to safeguard the director from the pressures that led to the censorship of her work. Thus, not only were the artist's freedom of expression and the right of the audience to enjoy an uncensored work of art undermined, but also the intolerance of homosexuality was promoted.

The Greek Ombudsman publicised the findings of this case – on its website, annual report and the media – stating that the artistic expression of homoerotic desire cannot be restricted and that the attribution of homoerotic feelings to a fictional character and the exchange of a kiss by two men neither constitute "extreme scenes", nor can they be considered offensive. It called both the Chairman of the National Opera house and the Head of the Orchestra of the National Opera to denounce the censorship that was imposed on this occasion and express their commitment in safeguarding artists' freedom of expression in the future.

### ***Censorship by the Greek national television channel***

A similar case involving censorship by the Greek national television channel (ERT) of a kiss between two male actors in "*Downton Abbey*", a British period drama television series, was lodged with the GO.

Following the GO intervention the specific episode, including the kiss, was repeated at a later date.