

# Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

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# Executive summary

## Implementation of Employment Directive 2000/78/EC

The findings of the study lead to the conclusion that discrimination on the basis of sexual orientation still exists in practice in various forms. A new Discrimination Act (Swedish Code of Statutes 2008:567) entered into force on 1 January 2009. The Law established a new government agency entitled the Equality Ombudsman (Diskrimineringsombudsman).<sup>1</sup> As a consequence, the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination because of Sexual Orientation were all phased out on 31 December 2008.

The new Law covers working life as well as essentially all other aspects of society. The grounds covered in the new Act are sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. The two discrimination grounds age and transgender identity or expression are new. The new ban on discrimination concerning age is limited in the new law, broadly speaking, to the fields of working life and education. The new ground of transgender discrimination, however, applies to all areas of society. Still, there are various gaps retained between the different grounds concerning active measures related to the various grounds.

In the education sphere, there are provisions on active measures relating to sexual orientation. An inquiry chair was tasked with investigating the effects of the provisions on active measures prescribed in the Discrimination Act. The inquiry chair was instructed to propose how requirements for active measures can be made more explicit and stringent and be linked to an effective sanction, and whether the requirements for active measures should be extended to other areas of society and encompass other discrimination grounds (including transgender identity or expression and sexual orientation).

The new comprehensive anti-discrimination legislation might provide a more effective way of remedying multiple/intersectional discrimination. In addition, there are improvements *inter alia* with regard to the availability to obtain redress and financial compensation for the injury suffered. The new anti-

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<sup>1</sup> Prop. 2007/08:95, bet. 2007/08:AU7, rskr. 2007/08:219.

discrimination law also offers a more comprehensive protection than that required by Directive 2000/78/EC.<sup>2</sup>

## Freedom of movement

As regards freedom of movement, there is no discrimination between heterosexual and LGBT persons. From 1 May 2009 new rules relating to marriage entered into force. Two persons of the same sex can marry under the same conditions as couples of different sexes. The provisions of the Marriage Code apply to all couples regardless of sex. LGBT persons benefit from freedom of movement provisions.

The Act on Registered Partnership (SFS 1994: 1117) expired at the end of April 2009. This means that it is not possible to register a new partnership. An already registered partnership continues to be a partnership until the partnership is dissolved or converted into a marriage.<sup>3</sup>

## Asylum and subsidiary protection

Swedish law provides that persecution on the grounds of sexual orientation is a ground for obtaining refugee status. The definition of refugee covers non-state persecution, combined with state unwillingness, indifference or inability in fact to protect a person from non-state persecution. LGBT persons are accepted as family members in the context of asylum.

## Family reunification

Swedish law on family reunification is based upon the concept of a “reference person” within Sweden. His or her “nuclear family” members have the right to obtain residence permits on the basis of their connection to the reference person. The provisions of the Marriage Code apply to all couples regardless of sex. The term “cohabiting partner” means those who are living together in a steady relationship and who share the same household. It includes same sex partners.

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<sup>2</sup> SOU 2006:22, *En sammanhållen diskrimineringslagstiftning*, Del I, p. 55.

<sup>3</sup> Ju 09.01, *Könsneutrala äktenskap och vigsel*, <http://www.regeringen.se/sb/d/108/a/125581>

## Freedom of assembly

Freedom of assembly is constitutionally protected in the 1974 Instrument of Government (IG), Chapter 2 para 1, 12 and 14. The basic constitutional rule is that any meetings of persons have constitutional protection, if it has political, educational or cultural content. No sharp distinction is drawn between a meeting (or an assembly) and a demonstration, even though the latter is characterized by its expression of a particular point of view (public or private) and that a demonstration can be held by only one person.

The constitutional possibility to restrict the freedom of assembly has been used by the Parliament to enact the Public Order Act (SFS 1993:1617, *Ordningslagen*).

The Act stipulates that a permit should be given by the police-authorities before an assembly or a demonstration. The police have the possibility to give permission under certain conditions, such as the time, place and manner of the demonstration (Ch. 2 para 16 of the Public Order Act).

The decisions of the police-authority can be appealed to the local administrative court, which has the power to decide on the legality as well as the appropriateness of that decision. In addition, the Parliamentary Ombudsman (*Justitieombudsmannen*) exercises a post hoc supervisory control of the police-authority.

It is quite clear from reported cases, primarily from the former Ombudsman against discrimination based on sexual orientation, but also from the National Police Board (*Rikspolisstyrelsen, RPS*), local courts, media etc., that the police generally speaking apply the law in a strict way, not interfering with ongoing demonstrations unless the conditions for doing so are clearly at hand. No discrimination against assemblies due to the content of the demonstration can be identified.

## Hate speech and criminal law

Hate speech is forbidden in Sweden, but this is regarded as a limitation of the constitutionally protected freedom of speech, which makes any changes in the law and all application of it a partly constitutional matter, something that affects interpretation and application of the criminal law. The criminal provisions on hate speech are found in the two constitutional Freedom of Press (*Tryckfrihetsförordningen*) and Freedom of Speech (*Yttrandefrihetsgrundlagen*) Acts and in the Criminal Code Ch. 16 para 8 (*Brottsbalken 16:8*).

The provisions – in constitutional and criminal law – make it a crime to, in any way, disseminate a message that includes threats or disdain towards a group of

people on ground of their, race, colour, nationality, ethnicity, faith or sexual orientation. The penalty is a maximum of two years in prison or fines. A serious crime – consisting of very threatening acts or widespread dissemination and attention – is subject to a minimum of six month in prison and a maximum penalty of four years imprisonment.

In the same part of the criminal code as hate speech is unlawful discrimination (Ch 16 para 9) on the grounds of race, colour, nationality, ethnicity, faith and sexual orientation. This prohibition is however directed to business-owners and their employees and thus only applicable in the context of public life such as access to restaurants, taxis, theaters etc. Hate-crimes are subject to harsher penalties according to special provisions on sentencing in the Criminal Code.

In June 2009, *Brottsförebyggande Rådet (Brå)* [The Swedish National Council for Crime Prevention] published statistical data regarding hate crimes during 2008 (Report 2009:10). According to the Swedish National Council for Crime Prevention the total number of hate-speech crimes reported 2008 was 800 and for unlawful discrimination 300 cases were reported.<sup>4</sup>

Discrimination on the labour-market and in other areas of social life is not covered by the criminal provision. Instead it is covered under the new Discrimination Act that replaces the following legislation: *the Equal Opportunities Act (1991:433)*, *the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief (1999:130)*, *the Prohibition of Discrimination in Working Life on Grounds of Disability Act (1999:132)*, *the Prohibition of Discrimination in Working Life because of Sexual Orientation Act (1999:133)*, *the Equal Treatment of Students at Universities Act (2001:1286)*, *the Prohibition of Discrimination Act (2003:307)*, and *the Act Prohibiting Discriminatory and Other Degrading Treatment of Children and Pupils (2006:67)*.

A special note should be made of the fact that as unlawful discrimination is a criminal offence, the burden of proof is upon the prosecutor and the level of certainty demanded by the courts in relation to evidence is high. In practice this means that intentional discrimination can be very hard to prove.

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<sup>4</sup> Sweden/Brottsförebyggande rådet (2008) Hatbrott 2009:10 – En sammanställning av polisanmälningar med främlingsfientliga, islamofobiska, antisemitiska och homofobiska motiv (p. 35).  
[http://www.bra.se/extra/faq/?module\\_instance=2&action=question\\_show&id=467&category\\_id=0](http://www.bra.se/extra/faq/?module_instance=2&action=question_show&id=467&category_id=0) (2009-07-15).

## Transgender issues

The inadequacy of the 1972 “Act on gender identity” to the positive changes in Swedish society as regards attitudes towards gender identity issues has caused lively debate in recent years and legislative reforms were adopted during 2009 through the new Discrimination Act (SFS 2008:528).

The introduction of a statutory protection against discrimination of all trans-persons in a uniform Swedish law prohibiting discrimination is a welcome initiative. It is the first time that the vulnerability of trans-persons has gained the much needed attention in a major context of legislation. The new transgender identity discrimination foundation has helped to bring LGBT-issues on the media agenda during 2009. Particularly the issue of the right for people to add a gender-neutral name. Clearly this is an issue that challenges hetero-normativity and divides the opinion between for and against.

In addition, the introduction of an obligation to implement active measures to promote equality between people regardless of their sexual identity or sexual orientation is a step in the right direction.

Although many reforms have been implemented to increase the rights of Transgender persons, there are still changes that need to be done. In Sweden, transgender persons who want to adopt a gender-neutral name to identify themselves, are denied to do so. The current Names Act of 1982 (*namnlagen* SFS 1982:670) bans biological men to adopt typical female names and vice versa. Transgender people are not, as a group protected against hate speech or unlawful discrimination according to the criminal code.

## Miscellaneous

As of 1 May 2009, new rules concerning marriages apply in Sweden. Changes to the Marriage Code mean that two people of the same sex may now marry. The provisions of the Marriage Code are applied in the same manner, regardless of whether the spouses are of different sexes or the same sex. The Registered Partnership Act ceased to apply at the end of April 2009. This means that new partnerships can no longer be registered. A partnership that is already registered will, however, remain valid until such time as it is dissolved or transformed into marriage.<sup>5</sup>

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<sup>5</sup> <http://www.rfsi.se/?p=420> (Assessed 4 July 2009),  
<http://www.sweden.gov.se/sb/d/8586/a/79062> (Äktenskap för par med samma kön – Vigsselfrågor (SOU 2007:17) ( Assessed 4 July 2009)



The Synod of the Lutheran Church of Sweden decided in favor of church weddings for homosexuals in a vote held on the 23 October 2009. The decision was based on a proposal from the church's governing board, and means that the Church of Sweden will conduct wedding ceremonies for both heterosexual and homosexual couples.<sup>6</sup>

## Good practices

In 2009, the National Board on Health and Welfare removed transgender as a diagnosed mental illness or behavioral disorder. Changes were made in the Swedish version of ICD-10 - "Classification of health problems and diseases 1997. It was in the corresponding classification as the National Board in 1979 removed the Diseases of homosexuality, which then was regarded as a major step forward for equal rights regardless of sexual orientation.<sup>7</sup>

Before 2009 transgender people lacked discrimination protection, but the new Discrimination Act (SFS 2008:528) which came into force on the first January 2009 now protects transgender people through the grounds of discrimination transgender identity or expression.

The Swedish Parliament passed new legislation allowing same sex couples to marry and have civil weddings. The law came into force on May 1<sup>st</sup> 2009. Civil unions granting same sex couples the same legal status as married couples have been allowed under Swedish law since 1999.<sup>8</sup>

Of significance is also the adoption of the second National Action Plan for Human Rights 2006-2009 in March 2006 with a long-term objective of securing full respect for human rights in Sweden.<sup>9</sup> A number of measures were announced in the plan with regard to improving the situation of LGBT persons and to be implemented during this period.<sup>10</sup> Issues addressed in the 2001 National Action Plan against Racism, Xenophobia, Homophobia and Discrimination were followed up and included in this plan. The Government established a Delegation to support the long-term task of securing full respect for human rights in Sweden based on the action plan (ToR 2006:27).<sup>11</sup> The government decided on 17 December 2009 to evaluate the National Action Plan

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<http://www.svenskakyrkan.se/default.aspx?di=259519&ptid=262482&type=pressmessage&item=454062> ( Assessed 22 October 2009)

7 <http://www.dagen.se/dagen/article.aspx?id=160141>

8 <http://www.rfsl.se/?p=420> (Assessed 4 July 2009),

<http://www.sweden.gov.se/sb/d/8586/a/79062> (Äktenskap för par med samma kön – Vigsselfrågor (SOU 2007:17) ( Assessed 4 July 2009)

9 Skr. 2005/06:95.

10 Skr. 2005/06:95, pp. 40-42.

11 <http://www.manskligarattigheter.gov.se/>

for Human Rights, 2006-2009. Hans Ytterberg, director general and former Ombudsman against Discrimination on grounds of sexual orientation (Homo) has been contracted.<sup>12</sup>

The Swedish legislation on *inter alia* freedom of movement and family reunification, providing for full equality of treatment of LGBT and other persons, can be described as a best practice.

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<sup>12</sup> Ibid.

## A. Implementation of Employment Directive 2000/78/EC

(The Employment Directive 2000/78/EC has been implemented in Swedish law through the new Discrimination Act (SFS 2008: 567). Through the implementation of the Discrimination Act, significant amendments have been made and several laws have expired and been replaced such as; the Prohibition of Discrimination Act (*lag om förbud mot diskriminering*, (SFS 2003:307), *the Prohibition of Discrimination in Working Life because of Sexual Orientation Act (lag (1999:133) om förbud mot diskriminering i arbetslivet på grund av sexuell läggning*), the Prohibition of Discrimination in Working Life on Grounds of Disability Act (*lagen (1999:132) om förbud mot diskriminering i arbetslivet på grund av funktionshinder*) and the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief (*lagen (1999:130) om åtgärder mot diskriminering i arbetslivet på grund av etnisk tillhörighet, religion eller annan trosuppfattning*).

The committee Directive (Dir 2008:25) established a new government agency entitled the Equality Ombudsman (Diskrimineringsombudsman) was established 1 January 2009. As a consequence, the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination based on Sexual Orientation were all merged into one government agency, the Equality Ombudsman from 1 January 2009.<sup>13</sup>

The new Discrimination Law covers working life, education, labour market policy activities, the setting-up or running of business operations, goods, services and housing, public meetings and public events, the social insurance system, health and medical care services. The grounds covered in the new Act are sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. The two discrimination grounds age and transgender identity or expression are new. The new ban on discrimination concerning age is limited in the new law, broadly speaking, to the fields of working life and education. The new ground of transgender discrimination, however, applies to all areas of society. Still, there are various gaps retained between the different grounds concerning active measures related to the various grounds.<sup>14</sup>

Summaries (including in the English language) of the outcome of selected court cases dealing with discrimination on the basis of sexual orientation may be found on the website of the Equality Ombudsman ([www.do.se](http://www.do.se)). Information

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<sup>13</sup> [www.do.se](http://www.do.se)

<sup>14</sup> <http://www.regeringen.se/sb/d/108/a/115903>

and reports produced by the former Ombudsman against Discrimination on grounds of Sexual Orientation (*HomO*) can also be downloaded from the website.

According to the annual report 2009 from the Equality Ombudsman, the number of discrimination cases reported to the Equality Ombudsman during 2009, where 2713 cases. During 2009, the Equality Ombudsman investigated and took a position on the legal pursuit of some 70 cases. DO come to settlements in a total of 35 cases. Court decisions were given in a total of 21 cases during the year, including seven in the Labor Court and 14 in the general court. Only three court decisions were made on the ground of sexual orientation.<sup>15</sup>

The main problem in the field of education that is reported and made visible to the Equality Ombudsman is harassment between students and the authorities' lack of ability to manage and resolve these situations.<sup>16</sup>

The Equality Ombudsman received 234 complaints in the field of education during 2009. Few complaints concerned transgender identity, gender expression or sexual orientation.<sup>17</sup>

## A.1. Employment

The Prohibition of Discrimination in Working Life on grounds of Sexual Orientation can be found in the Discrimination Act (2008: 567). During 2009, the Equality Ombudsman received 11 complaints from individuals based on the ground sexual orientation in employment. The merging of the former ombudsmen into the Equality Ombudsman has not led to any reduction in the number of cases for the different grounds of discrimination.

The bans against discrimination apply according to when an employer takes a decision to employ, makes a decision concerning promotion or chooses an employee for education that will lead to promotion, applies salary or other employment conditions, dismisses, terminates, lays off or undertakes other intrusive measures against an employee.

The Discrimination Act (2008: 567) constitutes the legal basis for the actions of the Equality Ombudsman for those who have been subjected to discrimination. If the individual in question agrees and the Equality Ombudsman deems that a judgment in the dispute would be of importance as a precedent for the

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<sup>15</sup> Årsredovisning DO, s. 33

<sup>16</sup> Årsredovisning DO, s. 50

<sup>17</sup> Årsredovisningen DO, s. 50

application of the Act or there are other special reasons for bringing the case to court.

A non-profit organization is empowered to protect the interests of its members and may initiate an action for an individual dealing with the issue of discrimination, victimisation and the obligation to investigate and implement measures against harassment provided the concerned person agrees to that. This right of action is, however, subsidiary to the trade unions' rights to initiate proceedings.<sup>18</sup>

Empowered to bring a lawsuit besides the individual personally are the organisations of employees. According to Sec 25 of the Employment Act and Ch. 4, Sec. 5 of the Labour Disputes Act (SFS 1974:371) when a trade union is entitled to bring proceedings on behalf of the individual, the Equality Ombudsman may initiate an action only if the trade union abstains from doing so. Nevertheless, reference to the individual's position in the trial shall be applied when the Ombudsman brings a lawsuit.

The Equality Ombudsman seeks in the first place redress for the concerned individual who has been discriminated through a voluntary agreement, *i.e.* a kind of friendly settlement. If this option does not work out, the Equality Ombudsman can institute court proceedings on behalf of the individual before the courts including the Swedish Labour Court (Sw. *Arbetsdomstolen*). Complaints from individuals handled by the Equality Ombudsman with regard to employment include *inter alia* the following issues:

There is no official explanation why the number of formal employment related complaints by individuals who have suffered discrimination on the ground of sexual orientation received by the former Ombudsman against Discrimination based on sexual orientation (Homo) is so "strikingly Low."<sup>19</sup> Obviously this is an area that needs more thorough research. ILGA-Europe has pointed out that significant numbers of LGBT persons across the EU are not open about their sexual orientation, often because of a fear of facing a negative attitude towards homosexuality.<sup>20</sup>

### A.1.1. Goods and services

The new Discrimination Act (SFS 2008: 567) has replaced the law on the Prohibition of Discrimination (Goods and Services) Act (SFS 2003: 307) (*lag om förbud mot diskriminering (varor, tjänster, bostäder, samhällsservice)*).

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<sup>18</sup> SOU 2006:22, pp. 65-66. See also *Carina Bildt*, Fackmedlemmars uppfattningar om diskriminering på grund av sexuell läggning på arbetsplatsen, Stockholm 2004, p. 7.

<sup>19</sup> HomO, Rapport 2006, p. 8.

<sup>20</sup> ILGA Europe, Written Response, pp. 6, 13.

Discrimination against employees or job seekers is prohibited on the grounds among others of sexual orientation in job placement services offered by public employment offices or other organisations or parties offering employment services and in connection with other measures included in labour market policy activities, the setting up or running of business operations, in connection with provision of goods, services or housing, in services provided by the social services including social insurance and related benefits systems and the unemployment insurance system, the health and medical care services and with regard to student aid .

The new uniform discrimination legislation contains a new feature, *i.e.* that discrimination prohibition with respect to goods, services and housing applies to anyone providing goods and services to the public. This means that private persons are subjected to these prohibitive rules even though with some restrictions linked to the protection of private life.<sup>21</sup>

Besides the individual personally empowered to initiate lawsuits the Equality Ombudsman can also bring discrimination cases to court. During 2009, the Equality Ombudsman received 353 complaints in the field of goods and services. Many of the complaints are related to retail, hotel and restaurant.<sup>22</sup>

Moreover, discrimination prohibitions related to *e.g.* public meetings and public events, compulsory military and compulsory civilian services, public appointments and public assignments are not at present covered by any specific prohibitive statutory rules on non-discrimination based on sexual orientation. However, the general constitutional rule requiring all public authorities to observe equality before the law and behave objectively and impartially is applicable (Instrument of Government Chapter 1, para. 9).

#### A.1.1.1. Case law

The Stockholm District Court has in the court case (case no. T 4652-07, Stockholm District Court) found that two lesbian women, who, after a kissing at a nightclub and then received complaints, became the victims of discrimination on the ground of sexual orientation. The court ruling is significant for the rights of homosexuals to openly show their sexual orientation.<sup>23</sup>

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<sup>21</sup> SOU 2006:22, pp. 47 and 56.

<sup>22</sup> Årsredovisning, 2009, Diskrimineringsombudsman, p. 32

<sup>23</sup> Årsredovisning 2009, Diskrimineringsombudsman

## A.2. Anti-discrimination clauses in procurement contracts

The Ordinance on Anti-Discrimination Clauses in Procurement Contracts (2006:260) which is in force since 1 July 2006 applies to some 30 state agencies. It is assumed that these regulations will counteract discrimination by a supplier in the performance of works or service contracts in Sweden. Thus, the Ordinance sets out certain requirements for how anti-discrimination clause should be worded in such contracts. The agencies are furthermore obliged to attach a sanction to the clauses in question.

## A.3. Education

The new Discrimination Act (SFS 2008:567) has replaced the act on Prohibiting Discriminatory and Other Degrading Treatment of Children and Pupils (*Lag - SFS 2006:67- om förbud mot diskriminering och annan kränkande behandling av barn och elever*). The governing boards of the schools have been given the responsibility for compliance with the Act which requires among other things that children and pupils are not subjected to discrimination on the grounds of ethnic background, religious or other beliefs, sexual orientation, disability, gender, transgender or expression and age. In case of violations the governing boards will be liable to damages. In other words, children and pupils are now guaranteed financial compensation for violations of the statutory provisions. Moreover, the Discrimination Act requires schools to adopt equal treatment plans comprising specific measures for promoting the equal rights for children and pupils including LGBT persons. In addition, schools must prevent the exposure of children and pupils to harassment and other demeaning treatment.

In the Government inquiry about Active measures, *Active measures to promote equal rights and opportunities - a systematic targeted work in three areas of society* (SOU 2010:7)<sup>24</sup> the investigator suggests that active measures should be conducted on all grounds of public areas employment, education and defense training. The employer shall report every three years equal treatment plans. Only employers with at least 25 employees are required to document their work with active measures. A number of NGO's have pointed out that the Swedish state should require equal treatment plans annually, including all grounds of discrimination, and that this should be required from employers with more than 10 employees.

The mandate of the Equality Ombudsman includes review of the implementation of this legislation. The Equality Ombudsman has during 2009

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<sup>24</sup> <http://www.sweden.gov.se/sb/d/12440/a/138865>

received 234 complaints in the field of education. During 2009, there were no relevant court cases interpreting the above mentioned legislation. The Ombudsman and the National Agency for Education are empowered to bring proceedings at court.

According to a report from the former Ombudsman (*HomO*) several sources indicated that homophobia and harassment related to sexual orientation are commonplace in Swedish schools. The Ombudsman (*HomO*) considered this to be “A sort of tyranny of invisibility and silence that still marks the daily lives of lesbian, gay and bisexual youth”.

With regard to higher education, the new Discrimination Act (SFS 2008:567) replaced the Equal Treatment of Students at Universities Act (SFS 2001:1286) (*lag om likabehandling av studenter i högskolan*). The Equality Ombudsman monitors the obligation of university institutions to actively promote the equal rights and opportunities of all students and to prevent discrimination on the grounds of sexual orientation.<sup>25</sup>

In 2006 the Office of the Ombudsman against Discrimination based on sexual orientation (Homo) undertook a study related to seven Swedish universities' implementation of their equal treatment obligations.<sup>26</sup> The result shows that four of the universities did not have equal treatment plans, or their plans were not updated as well as not being observed in practice. Only three university-level institutions could present plans of satisfactory quality.

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<sup>25</sup> [www.do.se](http://www.do.se)

<sup>26</sup> HomO, Rapport 2006, p. 97.



## B. Freedom of movement

According to the Aliens Act (SFS 2005:716) Chapter 3(a), section 2“ ‘a family member of an EEA national’ means an alien who accompanies an EEA national to Sweden or joins an EEA national in Sweden and who is the spouse or cohabiting partner of the EEA national, a direct descendant of the EEA national or of his or her spouse or cohabiting partner, if the descendant is dependent on either of them for means of support or is under 21 years of age or a direct ascendant of the EEA national or of his or her spouse or cohabiting partner, if the relative is dependent on either of them for means of support.”

Sweden adopted 1 May 2009, new rules concerning marriages through changes in the Marriage Code. The provisions of the Marriage Code are applied in the same manner, regardless of whether the spouses are of different sexes or the same sex. The Registered Partnership Act (SFS 1994:1117) ceased to apply at the end of April 2009.<sup>27</sup>

The term “cohabiting partner” means those who are living together in a steady relationship and share the same household (Cohabiting Partners Act SFS 2003:376, section 1 paragraph 1). It includes same sex partners (Cohabiting Partners Act section 1 paragraph 3). Thus, there is full equality of treatment of same sex spouses and cohabiting partners with different sex spouses and cohabiting partners. Accordingly, in Sweden same sex partners can be legally married which enables same sex partners to benefit from freedom of movement in other member states.

Accordingly, Sweden grants entry and residence rights to same sex spouses of an EU citizen.<sup>28</sup>This right is also granted the same-sex registered partner of an EU citizen. But if the spouses are unmarried and not registered partners, then the right to entry and residence in Sweden is not granted just on the basis of having a relationship.<sup>29</sup>

The Migration Board keeps no separate statistics on the sexual orientation of the EEA national in Sweden, or on those applications coming from same sex registered partnerships, same sex cohabiting partners or same sex married persons.

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<sup>27</sup> <http://www.rfsl.se/?p=420> (Assessed 4 July 2009),  
<http://www.sweden.gov.se/sb/d/8586/a/79062> (Äktenskap för par med samma kön – Vigsselfrågor (SOU 2007:17) ( Assessed 4 July 2009)

<sup>28</sup> Aliens Act 2005:716 para 3a sect. 2

<sup>29</sup> Aliens Act 2005: 716

## C. Asylum and subsidiary protection

According to the Aliens Act (SFS 2005:716) section 4, paragraph 1, “‘refugee’ means an alien who is outside the country of the alien’s nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country. This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these.”

The express reference to persecution on the grounds of sexual orientation was added in 2005.<sup>30</sup> Sexual orientation covers homosexual or bisexual orientation. Transsexuals and more generally “trans persons” are stated in the *travaux préparatoires*<sup>31</sup> to fall within the term “gender”, meaning that persecution of a person because they are a transsexual can entitle the person to refugee status, assuming the other criteria in the section are fulfilled. LGTB partners are accepted as family members in the context of asylum.

Even before the present wording came into force (31 March 2006), according to legislation from 1997, LGBT persons could, and did, qualify for subsidiary protection, assuming they could show that the other requirements for this were fulfilled. In a small number of cases before the Aliens Board (*Utlänningsnämnden*, the forerunner to the Migration Courts), LGBT persons were held to qualify for refugee status on the basis that their open profession of their sexual orientation constituted in the circumstances political acts which were likely to lead to persecution.

As regards the impact, or social reality of the above provisions, statistics are not available. However, it should be stressed that these provisions are followed faithfully by the Migration Authority. Having said this, it should be noted that, as the “well-grounded fear” requirement is applied, the mere fact that homosexuality, bisexuality or transsexuality is criminalized in an LGBT person’s country of origin does not per se mean that this person is qualified as a refugee. This will be the case only where there is, in practice, a likelihood of prosecution, or persecution of a different form, which is attributable to the LGBT person’s sexual orientation or gender. Having said this, the position taken by the Swedish parliamentary committee in the debates on the adoption of the legislative amendment made clear that a person who has lived openly in Sweden with a homosexual or bisexual orientation cannot be expected to conceal this when he or she is returned to their country of origin. Thus, if a

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<sup>30</sup> Legislative Bill (IProp.) 2005/06:6, Commission of Inquiry (SOU) 2004:31.

<sup>31</sup> Prop. 2005/06:6 p. 22.

person openly living with a homosexual or bisexual orientation risks prosecution for this, then he or she should not be returned.<sup>32</sup>

The definition of refugee covers non-state persecution, combined with state unwillingness, indifference or inability in fact to protect a person from non-state persecution.

The Migration Authority publishes statistics broken down on the sex and national origin of asylum seekers, and applications granted. However, it does not collect and keep separate statistics of people applying for, and being granted, refugee status on the specific grounds of sexual orientation or gender (or any of the other specific grounds for persecution). Earlier material gathered by official inquiries indicated that the number of people granted refugee status, or subsidiary protection on the bases of sexual orientation are very small, usually less than 10 people per year.<sup>33</sup>

During 2006, a system of appeals to specialized Migration Courts entered into force. There is, as yet, no relevant case law from the Migration Court of Appeal interpreting the requirement, as it is now worded, of persecution on the grounds of sexual orientation or gender.

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<sup>32</sup> Report of the Social Affairs Committee, bet. 2005/06: SfU4 p.13.

<sup>33</sup> SOU 2004:31 p. 71.

## D. Family reunification

The Aliens Act, chapter 5, section 3 provides that: “Unless otherwise provided in Sections 17–17b, a residence permit shall be given to 1. an alien who is a spouse or cohabiting partner of someone who is resident in or has been granted a residence permit to settle in Sweden, 2. a child who is an alien, is unmarried and a) has a parent who is resident in or has been granted a residence permit to settle in Sweden or b) has a parent who is married to or cohabiting partner of someone who is resident in or has been granted a residence permit to settle in Sweden, 3. a child who is an alien, is unmarried and has been adopted or is intended for adoption by someone who at the time of the adoption decision was and who still is resident in or has been granted a residence permit to settle in Sweden, if the child is not covered by point 2 and if the adoption decision has been issued or is intended to be issued by a Swedish court, is valid in Sweden under the Act on International Legal Relations concerning Adoption (SFS 1971:796) or is valid in Sweden under the Act consequent on Sweden’s Accession to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (SFS 1997:191)”.

The rules on family reunification are based upon the concept of a “reference person” within Sweden. His or her “nuclear family” members have the right to obtain residence permits on the basis of their connection to the reference person. The term “spouse” includes same sex partners who are married or are registered partners. The term “cohabiting partner” means those who are living together in a steady relationship and who share the same household (Cohabiting Partners Act SFS 2003:376, section 1 paragraph 1). It includes same sex partners (Cohabiting Partners Act section 1 paragraph 3).

The rules on international adoption by same sex couples were the subject of considerable debate in the last few years. The end result was that, as far as Swedish law is concerned, same sex couples are entitled to adopt on the same basis as heterosexual couples. The granting authority in the place of adoption may, however, not accept same sex couples as adopters.

As regards the impact, or social reality of the above provisions, there is no evidence of discrimination in the application of these provisions. The Migration Board does not collect and keep separate statistics based on the sexual orientation of reference persons.

## E. Freedom of assembly

Freedom of Assembly is constitutionally protected in the 1974 Instrument of Government (IG), Chapter 2 para 1, 12 and 14. The basic constitutional rule is that any meeting of persons has constitutional protection, if it has political, educational or cultural content. No sharp distinction is drawn between a meeting (or an assembly) and a demonstration, even though the latter is characterized by its expression of a particular point of view (public or private) and that a demonstration can be held by only one person. It is important to note that the constitutional provisions do not make the character of the event a factor in determining whether it has constitutional protection or not. This means that demonstrations such as “Pride-festivals” have constitutional protection.

Ch 2 para 12 of the IG stipulates that the right to assembly and demonstration can be restricted by law. This means that only the Parliament has the power to regulate the exercise of these rights. There are certain exceptions to this rule, as local authorities in situations of crisis can prohibit all meetings in public places due to the dangers to life and security of individuals (*i.e.* in the case of a nuclear accident, local authorities around the nuclear plant can ban being outdoors for safety reasons). These exceptions have so far never been used in practice.

The paragraph provides that any restriction on the right to assembly must be acceptable in a democratic society and necessary in relation to the goals of that restriction. It must not be based only on political, religious, cultural or such convictions and it may not lead to a threat to the formation of public opinion. In practice, the most important of these constitutional limits on regulating the freedom of assembly are the demand that the Parliament should be involved and the principle of proportionality expressed by the test of necessity.

In Ch 2 para 14 IG, further limits on the constitutional competence to regulate the freedom of assembly are laid down. A restriction of

that right can only be made for certain purposes: to secure order and security at the gathering, in regard of traffic, national security and to counter epidemics. The most important part of this provision is the way the power to regulate for protection of order and security is reduced to taking into account only such considerations *at the gathering*. This means that the restrictions in law (see below) cannot be used in order to prevent disturbances of the public order likely in the future, at places near by the gathering, etc.

As the European Convention of Human Rights has been transposed into Swedish law, Article 11 on the freedom of assembly is also part of Swedish law. It should also be mentioned that in respect of EU- law, the Charter of Fundamental Rights Article 12 also protects the freedom of assembly within that legal system and its impact on Swedish law.

The constitutional possibility to restrict the freedom of assembly has been used by the Parliament to enact the Public Order Act (1993:1617, *Ordningslagen*).

## E.1. Public Order Act –Rules and Practice

The Public Order Act contains an important distinction between gatherings which involve the expression of opinion (expressive) and gatherings that are purely for the purpose of entertainment. The law makes it much more difficult for the police and other authorities to act if a meeting is considered “expressive” rather than just entertaining. This distinction felt to be a constitutional necessity – as the constitution provides that assemblies that have some expressive (political, educational and cultural) content are protected, others are not. In practice, this means that dance-halls, discos, sport-events, game-halls, etc are treated differently than live concerts, street-corner talks and theaters (live and film). The latter has constitutional protection, the others do not. In consequence, the powers the Act give the police to interfere with expressive gatherings are much more restricted than the ones conferred in relation to entertainment events.

In practice, this distinction has caused some problems, as arrangers of entertainment-events have tried to include some activity (a talk by a local politician, a live performance, etc.) that would classify the event as expressive, and thus restricting the powers of the police to interfere. The police try to separate such gatherings in two or more “phases” and act accordingly to the “phase” the gathering is in at a given moment. Risks for misuse of powers and lessened legal certainty are the potential results of this regulation, but it seems to be quite uncontroversial outside a small group of especially interested.

The Act stipulates that a permit should be given by the police-authorities before an assembly or a demonstration. The police have the possibility to give permission under certain conditions, such as the time, place and manner of the demonstration (Ch. 2 para 16 of the Public Order Act). These conditions are not allowed to relate to the content or subject-matter of the demonstration, but only to objective factors like traffic, safety and the like. A demonstration to demonstrate on a high-way can be refused because of traffic-disturbances, but not because it is upsetting for onlookers.

The decisions of the police-authority can be appealed to the local administrative court, which has the power to decide on the legality as well as the appropriateness of that decision. In addition, the Parliamentary Ombudsman (*Justitieombudsmannen*) exercises a post hoc supervisory control of the police-authority. JO devotes particular attention to how citizens’ rights are observed by governmental authorities and almost every year makes critical decisions on how the freedom of assembly has been handled by governmental and local authorities.

The police have the authority to disperse an expressive gathering (like a demonstration) if – and only if – it is an immediate threat to public order or security or a serious disturbance of traffic (Public Order Act Ch 2 paras 20-23). Less intrusive means should be tried before dispersal, if at all possible. It is particularly noteworthy that the lack of a permit does not give the police the power to intervene with an ongoing demonstration, notwithstanding the fact that arranging a demonstration without a permit is an offence in itself. Police-practice from later years suggests that the police have become more inclined to investigate for the purpose of prosecution individuals responsible for arranging assemblies without permits.

It is quite clear from reported cases (primarily from the former Ombudsman against discrimination based on sexual orientation (*Homo*), but also from internal guidelines from the National Police Board (*Rikspolisstyrelsen, RPS*), media etc.) that the police generally speaking apply the law in a strict way, not interfering with ongoing demonstrations unless the conditions for doing so are clearly at hand. Criticism has in fact occasionally been directed towards the police for being *too passive* in situations that are upsetting for onlookers or cause milder forms of disturbances and too generous in giving permits for demonstration that are very likely to result in crimes and/or more widely felt disturbances of the public order. The typical such situation where the police have been criticized is where right-wing extremists have been, in accordance with the law, permitted to hold legal manifestations which however provoke violence from left-wing groups.

The police tactic in practice seems to take its starting point in that interfering with ongoing demonstrations in order to arrest a few more or less violent individuals often causes more disturbances to the public order, as resistance to arrests can provoke other demonstrators to interfere. Preserving public order is thus often best achieved by containing and controlling the assembly in a more passive way. Documentation and identification can at a later time lead to criminal charges and sanctions of offenders.

There are several gay pride parades in the country, the largest being the Stockholm Pride festival, which started in 1998 and today is a major cultural event in the city every summer. The local authorities support the event and national political leaders, prominent cultural figures etc. hold speeches and hosts events. These events have had permits and have been held with no real disturbances. As far as the reporter knows, no gay organization has had any problems getting permits etc. for holding meetings and demonstrations. The ongoing supervision of police-authorities by the Equality Ombudsman should have contained such information if it so was the case.

## F. Criminal law, hate speech

### F.1. Hate speech

Hate speech is forbidden in Sweden, but this is regarded as a limitation of the constitutionally protected freedom of speech, which makes any changes in the law and all application of it a partly constitutional matter, something that affects interpretation and application of the law. The criminal provisions on hate speech are found in the two constitutional Freedom of Press (*Tryckfrihetsförordningen*) and Freedom of Speech (*Yttrandefrihetsgrundlagen*) Acts and in the Criminal Code Chapter 16 para 8 (*Brottsbalken* 16:8.).

The constitutional Acts cover dissemination of messages by certain technical means such as printed materials or TV and radio or computer databases and they contain special provisions on the procedure and scope of criminal responsibility that make it difficult to get convictions. The trial is before a jury, only the Chancellor of Justice (*Justitiekanslern*) can prosecute, formal rules of criminal responsibility ensure that only one person can be held responsible for any crime and the time of limitations is very short. All of the requirements are made in order to make successful prosecutions difficult, thus ensuring strong protection for freedom of speech in the media. Trials on the basis of the constitutional provisions are unusual, no more than a handful a year. Other forms of utterances not in the media (*e.g.* . defamation by word of mouth) are covered by the criminal code. The criminal law requirements for proving such speech crimes are the same, however, the above special procedural requirements do not apply.

The provisions – in constitutional and criminal law – make it a crime to, in any way, disseminate a message that includes threats or disdain towards a group of people on ground of their race, colour, nationality, ethnicity, faith or sexual inclination. The last portion of the regulation, on sexual inclination, was included in 2002, after some rather extensive debate that mainly related to how the criminal provision should be applied in religious contexts.

The penalty is a maximum of two years in prison or fines. A serious crime – consisting of very threatening acts or widespread dissemination and attention – is subject to a minimum of six months in prison and a maximum penalty of four years imprisonment.

It must first be noted that not only word, written or spoken, are included, but also symbols, actions (*e.g.* the “Heil Hitler” salute) and clothes can be said to convey a “message” in the meaning of the law (See Supreme Court case NJA 1996 s. 577).



The message must have been “disseminated” in one way or another, which precludes criminal responsibility for wholly private conversation between two or a few persons. It is however not any longer so that any message must be made public; it is enough that a more undetermined group of people directly or indirectly receives it. Utterances at a private meeting with a group of more than a few persons attending will generally be covered. It is also worthy of notice that it is not required that the message actually was received by anyone; it is enough that there was a typical risk for such an effect (see for example RH 1998:77).

A problematic part of the regulation in practice has been the criminalization of “disdain”, as this leaves a lot of interpretive space for the police, prosecutors and courts. The Courts have, in accordance with the intentions of the Parliament, taken a rather extensive view on what behavior and what expressions that can be said to express disdain on such grounds. (See for example Supreme Court cases NJA 1982 s. 128, NJA 1996 s. 577 and NJA 2006 s. 467) This has resulted in a second problem for the courts, as in some cases the European Convention on Human Rights (ECHR) Article 10 on freedom of speech has been interpreted as placing obstacles in the way for convictions that would be in accordance with Swedish law.

A particularly debated case was the Supreme Court’s decision in NJA 2005 s. 805 regarding a clergy-man who during a sermon spoke of the bible and the views expressed therein on homosexuality (the case of Åke Green). The Supreme Court found that the criminal code had to be interpreted in the light of the ECHR Article 9 and 10 that the situation was such that it was likely that the European Court of Human Rights would find a conviction to be a violation of the ECHR and therefore the court acquitted the accused.

This case has had some follow-ups during 2006 and 2007, which goes in the same direction. It seems that the Supreme Court will convict persons that are rather clearly speaking out of an extreme right-wing perspective (as these groups, generally speaking, according to the case-law of the ECHR will be not be protected by the ECHR). The Supreme Court for example, confirmed the convictions of two people who had distributed literature insulting to homosexuals in a school. On the other hand, the Supreme Court will be very careful to convict intolerant expressions made in a religious context. This practice is consistent with the approach of the Chancellor of Justice in regard of complaints of expressions in religious papers, radio-shows, etc., according to the constitutional provisions in the Freedom of Press and Freedom of Speech Acts.

It should also be mentioned that the Criminal Code contains special provisions on aggravated penalties in cases of hate-based crimes, Ch 29 § 2. In 2002, crimes based on hate on the grounds of sexual orientation were added to the list in the paragraph.

In June 2009, *Brottsförebyggande Rådet (Brå)* [The Swedish National Council for Crime Prevention] published statistical data regarding hate crimes during 2008 (Report 2009:10). According to the Swedish National Council for Crime Prevention the total number of hate-speech crimes reported 2008 was 800 and for unlawful discrimination 300 cases were reported.<sup>34</sup>

The definition of hate crimes and the method for gathering information from the narratives of reports to the police was changed. New hate crime motives have been added such as hate crimes towards black people (afro-phobic hate crimes), Roma (anti-Roma hate crimes) and towards Transgender persons (trans-phobic hate crimes). Homo-bi- and hetero-phobic hate crimes consist of 1055 reports. In the course of 2008, hate crime motives were identified in about 5,900 police offence reports which is an increase from 2007. Very few trans-phobic hate crimes were reported, only 15 police reports.<sup>35</sup>

## F.2. Unlawful discrimination

In the same part of the criminal code as hate speech, Chapter 16 para 9, discrimination against people on the same grounds of race, colour, nationality, ethnicity, faith or sexual orientation is forbidden. This prohibition is however directed to business-owners and their employees and thus only applicable in the context of public life such as access to restaurants, taxis, theaters etc. Even if the concept of “business-owner” is interpreted widely in practice, it is a restriction of the protection against discrimination. People acting in the service of the (national or local) government, or on behalf of it, are also subject to criminal responsibility. From the preparatory works it is clear that this is mainly intended for services provided by the government that resemble commercial services, but the wording of the law is not totally clear on this and a certain uncertainty exists on the matter of the statute’s reach (see Övre Norrland Court of Appeal, case T 441-07, decided on 9 January 2008). In the second part of the paragraph, arrangers of public gatherings are included in the group covered by criminal liability.

Discrimination on the labour-market and in other areas of social life is not covered by the criminal provision. Instead it is covered under the new Discrimination Act (2008:567) that replaces the following legislation: the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief (SFS 1999:130), the Act of Prohibition of

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<sup>34</sup> Sweden/Brottsförebyggande rådet (2008) Hatbrott 2009:10 – En sammanställning av polisanmälningar med främlingsfientliga, islamofobiska, antisemitiska och homofobiska motiv (p. 35).  
[http://www.bra.se/extra/faq/?module\\_instance=2&action=question\\_show&id=467&category\\_id=0](http://www.bra.se/extra/faq/?module_instance=2&action=question_show&id=467&category_id=0) (2009-07-15).

<sup>35</sup> Ibid.

Discrimination in Working Life because of Sexual Orientation (1999:133), The Act on Equal Treatment of Students at Universities (SFS 2001:1296) and the Act of Prohibition of Discrimination (SFS 2003:307). Notable differences between the Discrimination Act (2008:567) and the criminal regulation of unlawful discrimination are that the sanctions are private-law damages and that the criminal law only protects homosexuals, while the other regulation covers sexual orientation instead. This area of law is, as can be gathered by this short overview complex and not very easily understood by individuals.

Criminal responsibility is conditioned on whether there has been any differential treatment between “ordinary” customers and the alleged victims of discrimination. This treatment can consist of acts as well as omissions. Typical cases are refusal to enter restaurants or other premises, or to order goods or services, obliging individuals to leave premises, etc. Conditions that on the surface seem neutral can be unlawful, if for example their primary effect is to exclude a certain group of people on the basis of race, etc. In NJA 1999 s. 556 the Supreme Court held that a prohibition on wearing long skirts in a supermarket was indirectly discriminatory of women of the Roma minority.

Special note should be made on the fact that as unlawful discrimination is a criminal offence, the burden of proof is upon the prosecutor and the level of certainty demanded by the courts in relation to evidence is high. In practice this means that intentional discrimination can be very hard to prove, even if the particular circumstances of a case give strong indications that one of the covered grounds could have influenced the decision (not to sell, rent, etc.) under trial. The Supreme Court in NJA 1996 s. 768 did not find it proven beyond reasonable doubt that a “bouncer” discriminated persons seeking entrance to a restaurant. There could have been other explanations for the refusal to admit three black men, according to the Court. In the Supreme Court’s decision in NJA 1999 s. 639, other factors, such as private economy, could explain the refusal to rent a flat to a woman of foreign origin and in a Svea Court of Appeal case (B 8426-06, decided 8 November 2007) a mistake regarding a person’s sobriety could explain a bouncers’ refusal to admit a person into a restaurant.

Two more cases are also of interest in this context. In the first, a conviction in a local court was overturned by the Court of Appeal (case B 3145-05, decided 22 December 2006 by Skåne and Blekinge Court of Appeal). The Court of Appeal was not convinced that there was no other possible (and lawful) explanation for the selective admittance-policy in that case. Svea Court of Appeal (case B 2292-04, decided 15 November 2005) has also found that the prosecutor had not proven that the proprietor of a restaurant who had asked two women who had been kissing to leave had been guilty of discrimination on the basis of sexual orientation.

A similar, but more recent case is when the Stockholm District Court (case no. T 4652-07, decided 12 June 2009 by Stockholm District Court) found that two lesbian women, who, after a kissing at a nightclub and then received

complaints, became the victims of discrimination on the ground of sexual orientation. This court ruling is significant for the rights of homosexuals to openly show their sexual orientation.

As the higher courts seem to take a very strict view on the level of proof, the law seems to be somewhat ineffective. The civil society in Sweden has long expressed concern that the rule of law in the area of discrimination in Sweden can only be guaranteed with new and innovative methods to prove discrimination. Situation testing is such a method that has been used mainly by a group of law students to prove ethnic discrimination<sup>36</sup> in night clubs. This method basically involves comparing the treatment of groups of persons with certain “immigrant” markers such as darker skin, hair colour or foreign sounding names to the treatment of groups of persons without those markers such as blond, blue-eyed persons with typical Swedish names. If the groups are similar in all other respects, less than equal treatment of these groups is assumed to be an indication of discrimination. This method can be used for research, for quality controls in terms of policies as well as for actually proving discrimination in the courts.<sup>37</sup>

One of the cases where situation testing was used is in the judgment of the Gothenburg local court (case B 5893.06, decided 19 March 2007), where a law-student organized four groups of young men which sought entrance to several restaurants and clubs in town. The court had no problem in finding that the difference in treatment was related to ethnic factors- other explanations being unconvincing – and convicted the accused.

In another case where situation testing was used by law students, is in the highly anticipated ruling from the Supreme Court [Case T 2224-07, decided 1 October 2008 Supreme Court). The compensation to be paid to the four men who were discriminated against by a Malmö night club was reduced. The Supreme Court reduced the damages to 5, 000 SEK (500 euro) for each person. Previously the court of appeal had ordered Escape to pay 15, 000 SEK (1500 euro) each to the four men.<sup>38</sup> The men, all of whom have “foreign” appearances, were denied entry to the Escape night club in Malmö, while their “Swedish-looking” friends were allowed into the establishment.<sup>39</sup>

This Supreme Court ruling contributes to the clarification or interpretation of damages awarded in cases of discrimination testing. While discrimination testing was accepted as proof of discrimination, the Supreme Court concluded that lower damages were appropriate in such cases.

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<sup>36</sup> The Gothenburg local court (case B 5893.06, decided 19 March 2007).

<sup>37</sup> For more information see Proving Discrimination Cases - the Role of Situation Testing. [http://www.migpolgroup.com/publications\\_detail.php?id=230](http://www.migpolgroup.com/publications_detail.php?id=230) (9 July 2009).

<sup>38</sup> Case T1358-06, decided 2007-04-34, Court of appeal, Skåne and Blekinge

<sup>39</sup> [http://do.episerverhotell.net/t/Page\\_1219.aspx](http://do.episerverhotell.net/t/Page_1219.aspx).

### F.3. The criminal law in practice

Statistics under this heading are reported in the Swedish National Council for Crime Prevention (*Brottsförebyggande rådet*) yearly reports on criminal activities, police and court practice. According to the number of crimes relating to reported (not solved) hate crimes in 2008 about 5,900 police offence reports were reported which is an increase from 2007. In the report (*Hatbrott 2009:10*) most hate crimes are classified as xenophobic/racist hate crimes. They amount to 4,225 reported offences. Among these afro-phobic hate crimes were reported in 760 cases and anti-Roma hate crimes were reported in 180 cases. Homo-bi- and hetero-phobic hate crimes consisted of 1055 reports, while antireligious hate crimes (*Islamophobic, Anti-Semitic, and other antireligious motives*) were reported in 600 police reports. Very few trans-phobic hate crimes were reported, in only 15 police reports. Twelve percent of all reported hate crimes involved a white power ideological motive. The most common offence types found among hate crimes are unlawful threats and harassment (42 per cent), followed by violent offences (21 per cent) and defamation (12 per cent).<sup>40</sup>

In June 2009, The Swedish National Council for Crime Prevention (Brå) reported that the definition of hate crimes and the method for gathering information from the narratives of reports to the police was changed. The major change is that the scope of xenophobic hate crimes has been expanded to include offences between minority groups and offences by minority groups towards majority groups. New hate crime motives have been added, such as hate crimes towards black people (afro-phobic hate crimes), Roma (anti-Roma hate crimes) and towards Transgender persons (trans-phobic hate crimes). Concerning anti-religious motives, hate crimes towards Christians is now also included in the statistics.<sup>41</sup>

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<sup>40</sup> Sweden/Brottsförebyggande rådet (2008) *Hatbrott 2009:10* – En sammanställning av polisanmälningar med främlingsfientliga, islamofobiska, antisemitiska och homofobiska motiv.  
[http://www.bra.se/extra/faq/?module\\_instance=2&action=question\\_show&id=467&category\\_id=0](http://www.bra.se/extra/faq/?module_instance=2&action=question_show&id=467&category_id=0) (2009-07-15).

<sup>41</sup> [www.bra.se](http://www.bra.se). Se, Brå report 2009:10.

## G. Transgender issues

The new Discrimination Act (SFS 2008:528) which came into force on the first January 2009 now protects transgender people through the grounds of discrimination “transgender identity or expression”. The introduction of a statutory protection against discrimination of all trans-persons in a uniform Swedish law prohibiting discrimination is a welcome initiative. It is the first time that the vulnerability of trans-persons has gained the much needed attention in a major context of legislation. The new transgender identity discrimination foundation has helped to bring LGBT-issues on the media agenda during 2009.

Before 2009 transsexuality was considered as an issue related to gender/sex identity and not to sexual orientation and it fell within the jurisdiction of the former Equal Opportunities Ombudsman (JämO).<sup>42</sup> In other words, transsexual persons were covered mainly through the prohibited discrimination ground “sex” in Swedish legislation. However, only transsexual persons (*i.e.* not all kinds of trans-persons were included) were, for example, covered by the antidiscrimination clause of the Equality legislation (*jämställdhetslagen* (SFS 1991:433).

In order to modernise the Swedish legislation a Commission of Inquiry was set up by the Government and it proposed in its final report SOU 2006:22 (*En sammanhållen diskrimineringslagstiftning*) that discrimination should be prohibited also on the grounds of “transgender identity or expression”.<sup>43</sup>

Another major step to acknowledging the rights of trans-persons is that the National Board on Health and Welfare decided in 2009 to remove “gender identity disorder” as a diagnosed mental illness or behavioral disorder. Changes were made in the Swedish version of ICD-10 - "Classification of health problems and diseases 1987". NGO's such as *Patientföreningen Benjamin* has pointed out that according to the transsexual persons themselves transsexuality is a biological variation and the medical/health care should be based on neurological basis instead.<sup>44</sup> This has not yet led to any consequences in terms of coverage or reimbursement of hormones and/or sex reassignment surgery by the State.

It was in the corresponding classification as the National Board in 1979 removed the sexual orientation as a Disease, which then was regarded as a major step forward for equal rights regardless of sexual orientation.<sup>45</sup>

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<sup>42</sup> Ny diskrimineringslag, 19-03-2008, [www.jamombud.se](http://www.jamombud.se).

<sup>43</sup> *Ibid.*, p. 42.

<sup>44</sup> SOU 2007:16, p. 97.

<sup>45</sup> <http://www.dagen.se/dagen/article.aspx?id=160141>.

The notion ‘trans-persons’ comprises in the Swedish legal context those who are or who are perceived to be transsexuals, transvestites, intergenders, intersexuals, transgenderists, drag kings or drag queens. Trans-persons have been described as “individuals who at times or always have been perceived to have or express or be perceived as expressing a gender identity that at times or always differs from the norm for the sex that is registered for them at birth.”<sup>46</sup>

To total number of applications of persons who wanted to change their gender/sex between 1972 and 2006 was 590.<sup>37</sup> During 2006 approximately 60 persons applied for gender reassignment surgery in Sweden and that figure is about the same in 2009.<sup>47</sup> It is the present Swedish 1972 Act on the establishment of sex (gender designation) (*lag om fastställelse av könstillhörighet* (SFS 1972:119) which sets down the conditions for change of sex - medically and legally. The 1972 Act requires *inter alia* that the applicant is adult, i.e. has attained 18 years of age, has been sterilized or omits reproductive ability otherwise (i.e. is sterile) in order to be considered for the change of sexual designation.

Moreover, the Act allows transsexuals who have undergone gender reassignment surgery to get their personal documents reflecting the “new” gender (see also *folkbokföringslagen* (SFS 1991:481)). The new Act on secrecy (*sekretesslagen*) which is in force since 1 October 2006 also covers the relevant information about changes in sexual designation.

Nevertheless, the 1972 Act, which was the first legislation in the world of its kind, has been heavily criticized by Swedish NGO:s as well as within academia as being old-fashioned<sup>48</sup> and even generating discriminatory attitudes and practice.<sup>49</sup> This law was promulgated during a time period in Swedish history when the eugenics debate still was vibrant.

A government appointed Commission submitted a report containing a number of proposals for necessary legislative changes in March 2007 (SOU 2007:16, *Ändrad könstillhörighet- förslag till ny lag*). Among the generally positively received proposals were: firstly that the current requirement of being unmarried or divorced as a prerequisite for authorisation for change of sex should be omitted (§ 4 in the proposed law) and secondly the introduction of a possibility to freeze gametes for future use for reproductive purpose. However, the requirement contained in the proposal for permitting a change of sexual designation to have the sex glands (Sw. *könskörtlarna*) removed without any

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<sup>46</sup> SOU 2006:22, p. 52.

<sup>47</sup> SOU 2007:16, p. 11.

<sup>48</sup> See SOU 2007:16, pp. 96-102; Uppsala Universitet, Juridiska fakulteten, Remiss “Ändrad könstillhörighet-förslag till ny lag (SOU 2007:16)”, Dnr JURFAK 2007/38, 15 november 2007, p. 1; RFSL, *Yttrande över Ändrad könstillhörighet - förslag till ny lag* (SOU 2007:16), Stockholm 8 november 2007, p. 2.

<sup>49</sup> [www.rfsu.org/sou\\_2007\\_16asp](http://www.rfsu.org/sou_2007_16asp) ; [www.foreningenbenjamin.se](http://www.foreningenbenjamin.se).

exception has been considered by the reviewing instances as a potential violation of the concerned individual's self determination and the right to personal integrity.<sup>50</sup>

On the 29th of July 2009 the Council of Europe Commissioner for Human Rights proposed in a so-called "Issue Paper titled "*Human Rights and Gender Identity*" that every requirement to undergo medical or surgical intervention to obtain a legal gender reassignment is contrary to the ECHR and suggested all Council member countries to stop sterilization or forced treatment.<sup>51</sup>

In Sweden the right to a name is governed by the Names Act of 1982 (*namnlagen* SFS 1982:670) with the latest amendments as of 2003 and it shall be registered at the national registration authority - the Swedish Tax Agency (*skatteverket*).<sup>52</sup> The legislation contains a provision (Sec 34) aimed at preventing the adoption of inappropriate forenames. In other words, approval shall be withheld when a name is considered offensive or it might be expected to cause embarrassment to the bearer or when a name for some other reasons is manifestly unsuitable as a forename. This provision has been interpreted that a man may not have a woman's name and *vice versa*. On the other hand, this would be no obstacle where the new sex of a person has been legally recognized.<sup>53</sup> However, the requirement that the first name corresponds to the person's gender in order to register a change of a name has been strongly criticized by the Swedish federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL) as being out-of-date and that one should be able to choose whatever name.<sup>54</sup> Of some relevance to the issue is that the Swedish Patent and Registration Office (*Patent- och Registreringsverket*) has produced a list of gender neutral names<sup>55</sup> which may be useful in situations when change of a name is desired.

The government has addressed the issue by making this statement:

"In certain cases, a name change has been authorized already before the official recognition of the preferred gender. In two different cases the Court of Patent Appeals (Patentbesvärsrätten) has granted name changes in spite of the legal non-recognition of the preferred gender".

Recent research has shown that the resources for providing help in cases of domestic violence differ among heterosexual and other kind of relationships. In

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<sup>50</sup> RFSL, *ibid.*, pp. 2, 6-9.

<sup>51</sup> [Utredning SOU 2007:16](#)

<sup>52</sup> [www.skatteverket.se/folkbokforing/namn.4.1.18e](http://www.skatteverket.se/folkbokforing/namn.4.1.18e).

<sup>53</sup> SOU 2007:16, p. 63. There are no statistics available with regard to the number of persons who have changed their names because of change of sex (telephone conversation with the Tax Authority on 18 January 2008).

<sup>54</sup> RFSL, *Yttrande över Ändrad könstillhörighet-förslag till ny lag* (SOU 2007:16), pp. 3, 17 and 23. See also RFSL, Att byta namn, [www.rfsl.se/?p=3690](http://www.rfsl.se/?p=3690).

<sup>55</sup> [www.prv.se/personnamn/konsneutrala\\_namn.html](http://www.prv.se/personnamn/konsneutrala_namn.html).



practice, there have been situations where lesbian victims of domestic abuse were not accepted by many women's shelters and a transgender person had nowhere to turn.<sup>56</sup>

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<sup>56</sup> G.Granström, *Challenging the Heteronormativity of Law*, in Exploring the Limits of Law, Å.Gunnarsson et al (eds.), Aldershot 2007, p. 131.

## H. Miscellaneous

In Sweden there are no laws that are similar or comparable to the institutional homophobia surfaced in Lithuania through the law on protection of minors against the detrimental effects of public information.<sup>57</sup>

In Sweden the practice reportedly used in some countries during the asylum procedure known as 'phallometry' or 'phallometric testing' is not applied.

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<sup>57</sup> [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=350870](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350870)).

## I. Good practices

In 2009, the National Board on Health and Welfare removed transgender as a diagnosed mental illness or behavioral disorder. Changes were made in the Swedish version of ICD-10 - "Classification of health problems and diseases 1997. It was in the corresponding classification as the National Board in 1979 removed the Diseases of homosexuality, which then was regarded as a major step forward for equal rights regardless of sexual orientation.<sup>58</sup>

Before 2009 transgender people lacked discrimination protection, but the new Discrimination Act (SFS 2008:528) which came into force on the first January 2009 now protects transgender people through the grounds of discrimination transgender identity or expression.

The Swedish Parliament passed new legislation allowing same sex couples to marry and have civil weddings. The law came into force on May 1st 2009. Civil unions granting same sex couples the same legal status as married couples have been allowed under Swedish law since 1999.<sup>59</sup>

Of significance is also the adoption of the second National Action Plan for Human Rights 2006-2009 in March 2006 with a long-term objective of securing full respect for human rights in Sweden.<sup>5</sup> A number of measures are announced in the plan with regard to improving the situation of LGBT persons and to be implemented during this period.<sup>6</sup> Issues addressed in the 2001 National Action Plan against Racism, Xenophobia, Homophobia and Discrimination were followed up and included in this plan. The Government established a Delegation to support the long-term task of securing full respect for human rights in Sweden based on the action plan (ToR 2006:27).<sup>60</sup>

The Swedish legislation on *inter alia* freedom of movement and family reunification, providing for full equality of treatment of LGBT and other persons, can be described as a best practice.

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<sup>58</sup> <http://www.dagen.se/dagen/article.aspx?id=160141>

<sup>59</sup> <http://www.rfsl.se/?p=420> (Assessed 4 July 2009),  
<http://www.sweden.gov.se/sb/d/8586/a/79062> (Äktenskap för par med samma kön – Vigsselfrågor (SOU 2007:17) ( Assessed 4 July 2009)

<sup>60</sup> <http://www.manskligarattigheter.gov.se/>

## Annex 1 – Case law

### Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

Case title	Dossier no 611-2007
Decision date	6 December 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Settlement –HomO
Key facts of the case (max. 500 chars)	A woman complained that she was dismissed from her job on grounds of her sexual orientation (bisexual)
Main reasoning/argumentation (max. 500 chars)	Dismissal on grounds of sexual orientation constitutes discrimination
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Discrimination on grounds of sexual orientation -dismissal
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	125 000 SEK were paid to the woman by the employer

**Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1 – Goods and services**

Case title	Case no T 3663-06
Decision date	25 February 2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Huddinge District Court (tingsrätt)
Key facts of the case (max. 500 chars)	A lesbian patient has been exposed to a demeaning behaviour during emergency treatment
Main reasoning/argumentation (max. 500 chars)	Posing insensitive and detailed questions related to the person's sexual orientation and relations constitutes harassment on the grounds of sexual orientation
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	harassment
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Settlement, including 20 000 SEK in damages to the victim

**Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 2 Goods and services**

Case title	Case no T439/05
Decision date	30 March 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	District Court of Nacka (Tingsrätt)
Key facts of the case (max. 500 chars)	Sexual orientation discrimination
Main reasoning/argumentation (max. 500 chars)	The denial of the owner of a dog kennel to sell a dog to a lesbian woman constitutes direct discrimination on the grounds of sexual orientation and harassment
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Harassment and discrimination on the grounds of sexual orientation
Results (sanctions) and key consequences or	The owner of the kennel paid 20 000 SEK in damages

implications  
of the case (max. 500  
chars)

**Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 3 Goods and services**

Case title	Case no T2100-05
Decision date	28 March 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Supreme Court of Sweden (Högsta domstolen)
Key facts of the case (max. 500 chars)	A lesbian couple was turned away from a restaurant for kissing and hugging on its premises
Main reasoning/argumentation (max. 500 chars)	In the view of the court the restaurant has not proved that there were legitimate reasons regardless of sexual orientation for turning the couple away
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Direct discrimination on the grounds of sexual orientation
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	15 000 SEK compensation



**Chapter B, Freedom of movement, case law relevant to Directive 2004/38/EC, case 1**

Case title	C-122 and C-125/99, <i>D and the Kingdom of Sweden v. Council</i> [2001] ECR I-4319
Decision date	2001
Reference details (type and title of court/body; in original language and English [official translation, if available])	European Court of Justice
Key facts of the case (max. 500 chars)	D who was in a registered partnership, had taken up employment with the Council and sought a EU staff household allowance for an accompanying partner
Main reasoning/argumentation (max. 500 chars)	Applicant, joined by Kingdom of Sweden, argued that the applicant was entitled to receive the allowance on a position of equality with a heterosexual marriage. Council rejected this.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Freedom of movement, discrimination, equal-treatment, respect for private and family life
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Council refusal to recognize a Swedish employee’s registered partnership with a same sex partner was not in violation of discrimination rules in EC treaty

**Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1**

Case title	No relevant cases
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1**

Case title	No relevant cases
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC, case 1**

Case title	No relevant cases
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter E, Freedom of assembly, case 1**

Case title	No relevant cases
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter F, Hate speech, case 1**

Case title	NJA 2005 p. 805
Decision date	2005-11-29
Reference details (type and title of court/body; in original language and English [official translation, if available])	Högsta domstolen [The Supreme Court]
Key facts of the case (max. 500 chars)	Preacher holding sermon and saying that homosexuality is against God, etc. the worst sentence including that homosexuality is “a cancer” in society.
Main reasoning/argumentation (max. 500 chars)	The Court finds the accused not guilty, mainly because of the impact of the European Convention of Human Rights and the protection of freedom of expression and freedom of religion contained therein.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The range of criminal responsibility for hate-crimes in religious context clarified.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	-

Case title	NJA 2006 p. 467
Decision date	2006-07-06
Reference details (type and	Högsta domstolen [The Supreme Court]

title of court/body; in original language and English [official translation, if available]	
Key facts of the case (max. 500 chars)	Young men handing out leaflets with right-wing propaganda at school, containing among other things statements about homosexuality as a disease, etc.
Main reasoning/argumentation (max. 500 chars)	The Court finds the accused guilty, mainly because the lack of any “serious” content of the leaflets and the special context of a school.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The range of criminal responsibility for hate-crimes in educational contexts clarified.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Accused (4 persons) convicted to prison by suspended sentence.

**Chapter F, Hate crimes, case 2**

Case title	Cases of special interest since 1996, i.e. outside the scope of this report.
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	



**Chapter G, Applicability of legislation on transgender issues, case 1**

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 1**

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 1**

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

# Annex 2 – Statistics

## Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	-	-	-	-	47	62	56	63
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								

## Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of LGBT partners who claimed their right to residence but were denied this right	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

**Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

**Chapter C, Asylum and subsidiary protection, protection of LGBT partners**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

**Chapter D, LGBT partners benefiting family reunification**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

**Chapter E, LGBT people enjoyment of freedom of assembly**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of demonstrations against tolerance of LGBT people.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

**Chapter F, Homophobic hate speech**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Range of sanctions issued for homophobic hate speech	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of non-criminal court cases initiated for homophobic statements	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

**Chapter F, Homophobic motivation of crimes as aggravating factor**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

**Chapter G, Transgender issues**

Number of name changes effected due to change of gender	-	-	-	-	-	-	-	-
Number of persons who changed their gender/sex in your country under the applicable legislation	22	27	38	27	35	49	58	-

**Chapter I, Statistics relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation [presentation according to the templates above]**