

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

Finland

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Executive summary

Implementation of Employment Directive 2000/78/EC

Directive 2000/78/EC was transposed into national law by means of the adoption of the Equal Treatment Act (*yhdenvertaisuuslaki/lag om likabehandling*, 21/2004) and amendment of a number of specific acts. A separate set of laws were adopted in the Åland Islands, which is an autonomous province of Finland and has exclusive legislative competence over specific matters within its jurisdiction. Finland was condemned by the European Court of Justice in February 2005 for having exceeded the deadline for the national transposition of the Directive, particularly as regards Åland Islands.

Finnish equal treatment law appears to be in full compliance with the EU Employment Equality Directive. In some respects, particularly as regards the material scope of application of the relevant legislation, it goes beyond the requirements set forth by the Directive.

A victim of sexual orientation discrimination can avail of several different legal avenues, of civil or criminal law nature, for the purposes of obtaining redress.

There has been one case with discrimination on the grounds of sexual orientation that was dealt in a criminal proceeding and one case with discrimination on the grounds of sexual orientation that was dealt in a civil proceeding. In addition, there has been a civil case that involved discrimination on the grounds of transsexuality. However, the precise number of cases is simply not known. It is difficult to analyse trends on case law since the number of cases is so low. The discrimination cases presented in this section have been discussed in public, and they have raised awareness on discrimination and its prohibition.

Freedom of movement

The provisions regarding freedom of movement of EU citizens and members of their families are laid down in the Aliens Act (*ulkomaalaislaki/utlänningslag*, 301/2004). These provisions apply equally to everyone irrespective of their sexual orientation. By virtue of the Aliens Act and the Act on Registered Partnerships (*laki rekisteröidystä parisuhteesta/lag om registrerad partnerskap*, 950/2001) persons who have contracted a registered partnership have the same rights as persons who are married, and same-sex couples living in the same household have the same rights as different-sex couples living in the same household. As a rule, family members of EU citizens (irrespective of whether they themselves are EU citizens) have the same right of residence in Finland as the EU citizen concerned.

There is no statistical data showing how many LGBT persons have exercised their right to reside in Finland on the grounds of being a family member of an EU citizen. One case interpreting the domestic law in this respect could be found from the case law database FINLEX and the pertinent legal literature. However, as there is only one case, trends over time cannot be analysed.

Asylum and subsidiary protection

Under the Aliens Act non-citizens may be granted asylum if they reside outside their home country owing to a well-founded fear of being persecuted for reasons of “membership in a particular social group”. Under the Act, as revised, persecution on the grounds of sexual orientation is to be considered persecution for reasons of “membership in a particular social group”. Family members, including LGBT partners, of persons who have been granted asylum or subsidiary protection are, upon application, also issued a residence permit.

Statistical data showing how many LGBT individuals have sought asylum or a residence permit on the above grounds does not exist in Finland. No significant case law apart from one case could be found in this context from the case law database FINLEX or the pertinent legal literature. Due to the lack of statistics and case law, trends over time cannot be analysed.

Family reunification

A family member of a third country national residing in Finland may be issued a residence permit on the basis of family ties. The material provisions regarding family reunification apply equally to married spouses and individuals in a registered partnership, and to different-sex couples living in a marriage-like relationship and same-sex couples living in such a relationship. Under the Aliens Act, when a non-national is issued a residence permit, his/her family members are issued a similar permit for the same period of time.

Statistical data showing how many LGBT individuals have exercised their above-mentioned rights does not exist in Finland. No case law could be found in this context from the case law database FINLEX or the pertinent legal literature. Due to the lack of statistics and case law, trends over time cannot be analysed.

Freedom of assembly

The Constitution and the Assembly Act provide strong protection for the right to exercise the freedom of assembly. Everyone has the right to arrange demonstrations and other public meetings without a permit, as well as the right to participate in them. These rights apply to “peaceful public meetings”, which is interpreted to mean that the purpose of the meeting must not be to break the law for instance by means of inciting hatred, as defined in the Penal Code, against a population group (such as LGBT people). The police is specifically required under domestic law to protect public meetings from illegal third-party interference.

There is no statistical data about the number of pro-LGBT people demonstrations that have been arranged in Finland, nor is there respective data about the number of demonstrations that have been critical of LGBT people or their rights. No case law could be found in this context from the case law database FINLEX or pertinent legal literature.

There has been a case where gay pride parade has been interfered with. Furthermore, one homo-phobic demonstration was arranged in September 2013. The event was called “Hetero Pride” as a response to Gay Pride events, and was held in front of the Parliament House. Homophobic demonstrations are very rare in Finland and this event gained a lot of publicity in the media as a rare occurrence.

Hate speech and criminal law

Hate speech against LGBT groups or individuals may constitute several different types of crimes as defined in the Penal Code, such as invasion of personal reputation, defamation or incitement against a population group. If hate speech takes place in the context of employment or education it may also constitute harassment under the Equal Treatment Act (*yhdenvertaisuuslaki/lag om likabehandling*, Act no. 21/2004). Homophobic motives may be taken into account as a ground for increasing the punishment for a common crime such as assault.

The requested information (such as the number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing), cannot be submitted since such statistical data could only be obtained through a fully-fledged research into actual court records. However, the Police College of Finland produces on a yearly basis a report on hate crime. In 2012, 27 cases of hate crime were motivated by the victim's real or perceived sexual orientation, and three cases were based on the victim's transgender identity or appearance.

We are aware of one case concerning gay pride parade, and that case is presented in Annex 1.

Transgender issues

The issue of discrimination against transgender persons is not specifically addressed in Finnish law although the revision process to include a new prohibition against discrimination on the basis of gender identity and gender expression to the Act on Equality between Women and Men (*laki naisten ja miesten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och men*, Act no. 609/1986)¹ is on-going. The prevailing legal opinion, as well as the practice of the Ombudsperson for Equality, supports the interpretation that the law regarding equality and non-discrimination between women and men applies also to discrimination against transgender persons.

There is a specific piece of legislation that governs the official recognition of the sex of a transsexual person. The new *de facto* sex of a person shall be legally recognised *ex officio* (i.e. there is no room for discretion), provided that certain conditions laid down in law are met. A person whose new *de jure* sex has been recognised by the competent authorities is to be treated as a person of that sex for all purposes under the law, including the change of name.

Statistics about the number of individuals who have changed their *de jure* sex have been available from March 2010. Two cases that are relevant in this context are presented in Annex 1.

Miscellaneous

There are no laws or policies in Finland on the protection of minors against the detrimental effects of public information and the proposed criminalisation of promotion of homosexual relations in public places. Furthermore, there is nothing to suggest the use of "phallometry" during asylum procedure in Finland.

¹ Finland, the Act on Equality between Women and Men (*laki naisten ja miesten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och men*, Act no. 609/1986). Unofficial translation of the Act available at (all hyperlinks accessed 30.6.2014): www.tasa-arvo.fi/en/publications/act2005

A citizens' initiative (*kansalaisaloite/medborgarinitiativ*) was submitted to the Parliament on 13 December 2013 pertaining to the amendment of the Marriage Act (*avioliittolaki/äktenskapslag*, Act no. 234/1929) so that marriage would be possible also between two persons of the same sex.

Good Practices

Finland has, since 1997, collected and reported data on a yearly basis on the racist crimes reported to the police. The 2009 report included, for the first time, also information about other kinds of hate crimes and now the Police College of Finland (*Poliisiammattikorkeakoulu/Polisyreshögskolan*) produces on a yearly basis a report on hate crime. The research includes more information than the crimes reported to police as hate crimes, since researchers also use search terms and read narrative information in the police reports. This enables the reporting to tackle the shortages of the reporting of the police. This allows the researchers to draw conclusions as to who are typical offenders and victims, what are typical hate crimes and where and when these crimes occur.

A person whose new sex status has been recognised in accordance with the Act on legal recognition of the gender of transsexuals (*laki transseksuaalin sukupuolen vahvistamisesta/lag om fastställande av transsexuella personers könstillhörighet*, Act no. 563/2002) has under the Name Act (*nimilaki/namnlag*, Act no. 695/1985) the right to have his/her first name changed by means of a simple notification procedure. In practice - and this is considered to constitute a good practice in this context - transsexuals are able to register their new first names already after having started hormonal treatment, i.e. before having had their "new" sex officially recognised.

Intersex persons

Intersex people are not explicitly mentioned in the current non-discrimination legislation. The Act on Equality between Women and Men (*laki naisten ja miesten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och män*, Act no. 609/1986) is being revised and the draft bill include prohibition against discrimination on the basis of gender identity and gender expression. This includes intersex persons. The Government bill is expected to be presented to the Parliament in 2014. There is no case law regarding discrimination of intersex persons.

Finland does not have a national non-discrimination policy. The Action Plan for Gender Equality 2012-2015 of the Finnish government² does not mention intersex persons.

² Finland, Ministry for Social Affairs and Health (*sosiaali- ja terveystieteiden ministeriö, STM / social- och hälsovårdsministeriet, SHM*) (2012) Action Plan for Gender Equality 2012-2015 (*Hallituksen tasa-arvo-ohjelma 2012-2015/Regeringens jämställdhetsprogram 2012-2015*), Sosiaali- ja terveystieteiden ministeriön julkaisu 2012:10, Helsinki, sosiaali- ja terveystieteiden ministeriö, available at: www.stm.fi/c/document_library/get_file?folderId=5197397&name=DLFE-21812.pdf

1 Implementation of Employment Directive 2000/78/EC

Directive 2000/78/EC was transposed into national law primarily by means of the adoption of the Equal Treatment Act³ (*yhdenvertaisuuslaki/lag om likabehandling*, Act no. 21/2004). The Equal Treatment Act is a general piece of legislation in the sense that its overall material scope is wide and it covers several discrimination grounds. A number of more specific, already existing acts were amended when the Equal Treatment Act was adopted with a view to bringing their non-discrimination provisions in line with the latter. These Acts included the Employment Contracts Act (*työsopimuslaki/arbetsavtalslag*, Act no. 55/2001), Civil Servant Act (*valtion virkamieslaki/statstjänstemannalag*, Act no. 750/1994), Act on Civil Servants in Municipalities (*laki kunnallisesta viranhaltijasta/lag on kommunala tjänsteinnehavare*, Act no. 304/2003) and Seaman's Act (*merityösopimuslaki/lag om sjöarbetsavtal*, Act no. 756/2011). Discrimination is prohibited also in a number of other pieces of legislation that had been enacted already before the transposition of the Directive. Most important of these are the Constitution (*perustuslaki/grundlag*, Act no. 731/1999) and the Penal Code (*rikoslaki/strafflag*, Act no. 39/1889).

The Åland Islands, an autonomous province of Finland, has exclusive legislative competence over matters pertaining to, among others, civil servants employed by the Province of Åland or one of the municipalities in the Åland Islands, education, self-employment and partially also provision of services in the Åland Islands (e.g. transport services). In consequence, the above-mentioned acts, adopted by the Parliament of Finland, are applicable in the Åland Islands only insofar as they do not deal with these areas, being applicable e.g. with respect to employees in private companies but not civil servants. A distinct set of acts had therefore to be adopted in the Åland Islands to transpose the Directive. The most important of these is the Provincial Act on Prevention of Discrimination in the Province of Åland Islands (*Landskapslag om förhindrande av diskriminering i landskapet Åland*, Act no. 66/2005), in addition to which a number of other acts, dealing with specific subject areas such as high school education, were adopted.

EU Member States were required to transpose the Employment Directive into national law by 2 December 2003. The Equal Treatment Act (*yhdenvertaisuuslaki/lag om likabehandling*, Act no. 21/2004), together with the above-mentioned amendments to the other relevant acts, entered into force on 1 February 2004 and Åland Islands' equality legislation entered into force in December 2005. Hence Finland was late in transposing the Directive, particularly in respect to the Åland Islands, and was indeed condemned for this by the European Court of Justice on 24 February 2005.⁴

The Finnish anti-discrimination legislation is currently under a comprehensive review process and the legislative process to renew the Equal Treatment Act (*yhdenvertaisuuslaki/lag om likabehandling*, Act no. 21/2004) was started in 2007. The Ministry of Justice of Finland (*oikeusministeriö/justitieministeriet*) set up in January 2007 the Equality Committee (*yhdenvertaisuustoimikunta*), and charged it with preparing a proposal for renewed equal treatment legislation. The Committee concluded its work in December 2009 by

³ There is no official translation available of the name of this act. In addition to the name Equal Treatment Act (*yhdenvertaisuuslaki/lag om likabehandling*, Act no. 21/2004), the name Non-Discrimination Act (*yhdenvertaisuuslaki/lag om likabehandling*, Act no. 21/2004) is used in English.

⁴ ECJ, C-327/04, *Commission of the European Communities v. Finland*, 24 February 2005.

submitting its report to the Ministry of Justice.⁵ The report was discussed with the representatives of trade unions and employers associations, NGOs and public authorities and a draft bill was published in April 2013 and sent out for written comments. The Government bill was presented to the Parliament in April 2014⁶.

The bill contains, among others, the following proposals:

- Discrimination on the basis of age, ethnic origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family ties, state of health, disability, sexual orientation or other reason that concerns an individual's person would be prohibited.
- The prohibition of discrimination based on gender would remain covered by the provisions of the Act on Equality between Women and Men (*laki naisten ja miesten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och män*, Act no. 609/1986). However, the Act will also be amended to include prohibition against discrimination on the basis of gender identity and gender expression. The Government bill includes a new prohibition against discrimination on the basis of gender identity and gender expression, and new obligations for authorities, employers and educational institutions on promoting equality regarding transgender persons,. The Government bill was presented to the Parliament in April 2014, simultaneously with the above-mentioned Non-Discrimination Act.⁷
- The scope of application of the Equal Treatment Act would be expanded so that it would cover all public and private activities. Matters *belonging to the sphere of private life and family life and the practise of religion* would however be excluded from the scope.
- The duty to promote equal treatment would expand so that it would concern all discrimination grounds, including sexual orientation, not just ethnic discrimination as is presently the case. The duty-bearers would include not just government and municipal authorities, but also educational institutions and employers with more than 30 employees. The general duty would encompass a more specific duty to draw up an equality plan setting out the specific measures by which the general duty will be implemented.
- The concept of direct discrimination would differ from ground to ground and from situation to situation. Refusal to provide reasonable accommodation would amount to discrimination, and the prohibition of discrimination would encompass discrimination by association and discrimination based on assumptions.
- The office of the Ombudsperson for Minorities would be turned into the office of

⁵ Finland, the Equality Committee (*yhdenvertaisuustoimikunta*) (2009), Draft Proposal for the Government Proposition for the Act on Equality between Women and Men (*Ehdotus uudeksi yhdenvertaisuuslaiksi ja siihen liittyväksi lainsäädännöksi. Yhdenvertaisuustoimikunnan mietintö 21.12.2009*). Available at (all hyperlinks accessed 28.5.2014): http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/20094ehdotusuudeksiyhdenvertaisuuslaiksijasiihe_nliittyvaksilainsaadannoksi.yhdenvertaisuustoimikunnanmietinto..html

⁶ Finland (2014), Government bill on the revision of the Act on Equal Treatment and other laws relating to it (*Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräiksi siihen liittyviksi laeiksi, HE 19/2014 vp*). Available at (all hyperlinks accessed 27 June 2014): www.finlex.fi/fi/esitykset/he/2014/20140019.pdf

⁷ Finland (2014), Government bill on the revision of the Act on Equal Treatment and other laws relating to it (*Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräiksi siihen liittyviksi laeiksi, HE 19/2014 vp*).

the Ombudsperson for Equality, and the Ombudsperson would be charged with supervising compliance with the Equal Treatment Act with respect to all the grounds covered by the Act, including sexual orientation. The powers of the Discrimination Tribunal of Finland would be similarly expanded. However, the mandate of the Ombudsperson and the Discrimination Tribunal would not cover working life.

1.1 Scope and gaps

Finnish anti-discrimination law, and in particular the anti-discrimination law applicable in the Åland Islands, goes in some respects beyond the requirements set forth by the Employment Directive, particularly as regards its material scope of application. It would seem that the domestic law satisfies all the requirements set forth by the said Directive.

The Equal Treatment Act prohibits discrimination on the grounds of sexual orientation in: access to self-employment and to occupation; support for business activities; recruitment conditions, employment and working conditions (including dismissal and pay), vocational training and promotion; membership of, and involvement in, workers' or employers' organisations; and access to education and training, including advanced training, retraining and vocational guidance. The law protects not just paid workers but e.g. trainees as well. The Act on State Civil Servants, the Act on Municipal Office Holders and the Seamen's Act provide *complementary* protection by means of prohibiting discrimination on the grounds of sexual orientation in their respective fields of application. By way of an apparent mistake, the non-discrimination provision of the Act on State Civil Servants did not initially explicitly refer to sexual orientation as a prohibited ground of discrimination. This omission – which was arguably of no legal consequence as the list of prohibited grounds is open-ended and the preparatory works make it clear that sexual orientation is one of the prohibited grounds - was corrected in late 2007 and the amended non-discrimination provision (section 11 of the Act) entered into force 1 January 2008.

The Provincial Act on Prevention of Discrimination in the Province of Åland Islands prohibits discrimination on the grounds of sexual orientation in: Access to self-employment and to occupation; vocational guidance, vocational training and retraining, including work training; access to civil service in the Åland Islands or one of the municipalities therein, and the conditions of such service; healthcare and social security; schools; and professional provision of goods and services, including housing. The Provincial Act on Collective Contracts (*Landskaplag om tjänstekollektivavtal*, Act no. 22/1978, as amended by act of 69/2005) bans clauses in collective agreements that discriminate on the grounds of sexual orientation. A number of provincial acts which deal with specific forms of education, including higher education, prohibit discrimination on the grounds of sexual orientation in their specific fields of application.

Finnish anti-discrimination law goes, in terms of the material scope of application, beyond the requirements of the Employment Equality Directive. Whereas there were initially some concerns as to whether it fully complies with the Directive in some other respects, these concerns have now been alleviated, because a number of amendments have been made into that law in order to bring it fully in line with the Directive.

The Equal Treatment Act does not specifically mention discrimination based on gender identity. A Government bill on the renewal of the Act on Equality between Women and Men (*laki naisten ja miesten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och män*, Act no. 609/1986) presented to the Parliament in April 2014. It includes a new prohibition

against discrimination on the basis of gender identity and gender expression, and new obligations for authorities, employers and educational institutions on promoting equality regarding transgender persons.⁸

1.2 Enforcement

A victim of discrimination may, on the basis of the Equal Treatment Act, file a claim in a district court with a view to obtaining compensation (*hyvitys*). The amount of compensation can be as high as €15 000 and even more when the circumstances so warrant.⁶ The payment of compensation is not connected to criminal liability.

Discriminatory provisions included in an employment contract may be annulled or amended by an ordinary court or by a Labour Court if the matter deals with a collective agreement.

Criminal charges under the Penal Code may also be brought. Discrimination is a crime under public prosecution in the Penal Code, which means that when a crime report has been filed by the victim or someone else, or when the police otherwise has reason to suspect that a crime has taken place, it is for the police to investigate the matter under the leadership of a prosecutor (pre-trial investigation). A person who is found to be a victim of discrimination may be awarded compensation under the Equal Treatment Act or be awarded damages from the perpetrator under the Tort Liability Act (*vahingonkorvauslaki/skeadeståndslag*, Act no. 412/1974, as amended by law 509/2004). Damages may, on the above grounds, be claimed from the perpetrator also in civil proceedings where the matter of criminal responsibility is not examined.

As regards employment, compliance by employers with anti-discrimination law is supervised by the Occupational Health and Safety Authority. It may receive communications from employees, and carry out on-site inspections in the private sector, and if it considers that there are probable grounds to believe that discrimination, as defined in the Penal Code, has taken place, it must report the case to a public prosecutor (i.e. the Authority's duty to act does not depend on the consent of the victim(s) of discrimination). Communications leading to inspections may come from other sources than employees, and communications from employees are not necessary for the Authority to carry out inspections.

In case a discriminatory decision is made in the exercise of public powers, a victim of discrimination may file a complaint to the Parliamentary Ombudsperson or the Chancellor of Justice of the Government. These bodies do not have the power to amend decisions of authorities or award damages, but they may e.g. issue admonitions or order criminal prosecutions against a public official. There are minor differences in the mandate of these two institutions. The Chancellor of Justice is exempted from examining issues concerning the Defence Forces, the Border Guard or peacekeeping personnel. Nor does he oversee prisons and other institutions where people are confined against their will. He has no duty to oversee the legality of various forms of deprivation of liberty, such as arrests, remands in custody or imprisonment. The Ombudsperson and the Chancellor of Justice can transfer complaints from one to the other also at other times if this expedites handling of the matter

⁸ Finland (2014), Government bill on the revision of the Act on Equal Treatment and other laws relating to it (*Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräiksi siihen liittyviksi laeiksi, HE 19/2014 vp*),

or is otherwise justified. If for some reason it is considered appropriate to transfer a complaint from one overseer to the other, the complainant is always notified of this.⁹

There is no equality body in Finland dealing with discrimination on the ground of sexual orientation. This situation remains in 2014. The Ombudsperson for Minorities deals only with discrimination on the grounds of ethnic origin and the Ombudsperson for Equality deals with gender equality, including discrimination on the grounds of gender identity but not sexual orientation (see heading 7 of this report for more details).

Article 9(2) of the Employment Equality Directive, regarding the involvement of associations and other legal entities in judicial or other procedures, did not lead to the taking of any specific transposition actions. In the Finnish legal system both natural and legal persons can have rights and obligations and have legal standing. However, only those whose rights or obligations are directly at stake have legal standing in court in a particular case. Neither class actions nor organisational standing are possible in discrimination cases. Interested organisations may not bring legal action on behalf of a victim of discrimination without his/her authorisation, or as juridical persons formally (in their own name) act as legal counsel even with authorisation, or become third parties or even (usually) act as *amicus curiae*. Individual lawyers (or even lay individuals, subject to some restrictions), also when working for an organisation, may, subject to general statutory restrictions for representation, bring legal action and represent a victim in a court upon his/her authorisation, and may of course provide legal and other assistance such as advice. There are no procedures for legal authorisation of the organisations whose employees can engage in proceedings in this way; hence there are no statistics on this either, and basically any organisation can play a role in this regard. In practice interested organisations do not, primarily because of lack of resources, directly engage in legal proceedings, but only give legal and/or other advice to the (potential) complainants and give contact information for lawyers who have specialised in the subject area.¹⁰ Accordingly the relevance of Article 9(2) for the purposes of vindicating the rights of victims of discrimination has been modest.

1.3 Statistics and case law

1.3.1 Statistics

According to information obtained from Statistics Finland it is possible to obtain aggregate figures about the number of court cases relating to particular types of criminal or civil law proceedings. However, the existing statistics are not (and cannot be) disaggregated in such a manner that they would disclose e.g. the number of

⁹ Information retrieved from the website of the Parliamentary Ombudsman (*Eduskunnan oikeusasiamies/Riksdagens justitieombudsman*), available at (accessed 28.5.2014): www.oikeusasiamies.fi/Resource.phx/EOA/english/ombudsman/chancellorofjustice.htm

¹⁰ The main national NGO in this field, Seta – LGBTI Rights in Finland (Seta ry), does not currently provide legal advice but only gives information regarding whom to contact for further advice and counselling (authorities or a lawyer or another NGO). The Feminist Association Union (Naisasialiitto Unioni ry) offers legal help for women free of charge in all kinds of matters. Trasek, which is an association for transsexual people, offers (at least occasionally) legal advice in relation to issues related to transsexuality. It is impossible to exhaustively list all associations that may be active in this field, as there are 127 000 associations in Finland and basically any one of them could give some advice in legal matters. The main point however is that there are no NGOs in Finland that regularly represent victims of discrimination in a court for free of charge or e.g. for a nominal fee.

discrimination cases relating specifically to sexual orientation. To obtain the number of such court proceedings, tried under the national transposition legislation, one would have to launch a fully-fledged research into all equal treatment cases decided by the national courts, in order to detect or determine from the actual court decisions or records the specific discrimination ground(s) in relation to which cases have been tried. Such an inquiry, the performance of which is subject to several administrative and technical hurdles, is beyond the scope of the present study.

Two such studies have however been done. A study carried out by the Finnish League for Human Rights (*Ihmisoikeusliitto*) surveyed all criminal proceedings between 1.1.2007- 31.8.2008 where discrimination was at issue, and found out that none of those cases involved discrimination on the grounds of sexual orientation. The study surveyed also all civil law discrimination cases from the same time period, and found that none of them concerned sexual orientation or gender identity.¹¹ A follow-up study was published in 2013.¹² This study surveyed all criminal proceedings between 1 January 2008 - 31 December 2011 where discrimination was at issue, and found out that only one of those cases involved discrimination on the grounds of sexual orientation. The study surveyed also all civil law discrimination cases from the same time period, and found that only one of them concerned sexual orientation.¹³ Furthermore, there was one civil case that involved discrimination on the grounds of transsexuality. The study surveyed also all administrative law discrimination cases from the same time period, and found that none of them concerned discrimination in the grounds of being LGBT.

1.3.2 Case law

Decisions of the general courts of law, these including the Courts of Appeal, the Supreme Court, the Administrative Courts and the Supreme Administrative Court, as well as some specialised courts such as the Labour Court, can be found in a publicly accessible database called FINLEX. The database is not comprehensive, as it does not include all cases decided by the above-mentioned courts (but entails discretion by the courts as to which ones of their cases are considered to have general relevance), nor does it include decisions of Courts of First Instance, equality bodies, the Parliamentary Ombudsperson or the Chancellor of Justice. A comprehensive keyword-based search of the database¹⁴ was conducted on 13 February 2010 and on 8 January 2014 but did not yield any positive hits. This means that no case involving discrimination on the ground of sexual orientation, decided under the transposition legislation, had found its way into the FINLEX database. No case law descriptions regarding sexual orientation discrimination, decided under the transposition laws, could be found from the pertinent legal literature either.¹⁵ However, the

¹¹ Aaltonen, M., Joronen, M. and Villa, S. (2009), *Discrimination in Finland 2008 (Syrjintä Suomessa 2008)*, Helsinki, Ihmisoikeusliitto.

¹² Aaltonen, M., Heino, P. and Villa, S. (2013), *Study on access to justice in discrimination cases ("Riiteleminen on pienelle ihmiselle raskasta" Selvitys syrjinnän uhrien oikeusturvakeinojen saavutettavuudesta ja vaikuttavuudesta)*, Helsinki, sisäasiainministeriön julkaisu 13/2013.

¹³ Both proceedings, criminal and civil, dealt with the same case, which is presented in Annex 1.

¹⁴ The decisions of each relevant judicial body were browsed e.g. with search words "discrimination", "equal treatment", "sexual orientation" and "transsexual" and their variants (such as intersexuality and gender identity), after which resulting cases were examined as to whether they involved discrimination on the grounds of sexual orientation or transsexuality.

¹⁵ Ahtela, K., Bruun, N., Koskinen, P.K., Nummijärvi, A. & Saloheimo, J., (2006) *Gender equality and equality (Tasa-arvo ja yhdenvertaisuus)*, Helsinki: Talentum. Rainer

above mentioned study provides statistical data on discrimination cases, and reveals that there has been one case with discrimination on the grounds of sexual orientation that was dealt in a criminal proceeding (case 1) and one case with discrimination on the grounds of sexual orientation that was dealt in a civil proceeding (case 2). In addition, there has been a civil case that involved discrimination on the grounds of transsexuality (case 3). These three cases are presented in Annex 1. One should not draw from the above information the conclusion that there has been only the above mentioned cases so far that would have dealt with sexual orientation discrimination or discrimination on the grounds of transgender identity. All available information suggests that the number of cases is low but the precise number of cases is simply not known and not possible to obtain without a thorough study of actual court records.

With regard to LGBTI persons the most prominent NGO is Seta - LGBTI Right in Finland. It has 21 member organisations (mainly local organisations), and employs 9 people. Trasek is the only Finnish association for transgender and intersexual individuals and their loved ones. IT does not have paid employees. Both organisations can support victims, but they rarely do since they do not employ lawyers and do not have resources for supporting victims. Both organisations focus on advocacy.

In general, associations do not play a notable role in supporting victims. Associations have a general right to request a statement on the correct interpretation of the Non-Discrimination Act from the National Discrimination Tribunal in matters pertaining to ethnic discrimination, but associations do not have a right to take a case to the court or to the National Discrimination Tribunal to pursue the matter in its own name, not even with the consent of the victim. Furthermore, associations cannot become third parties to such proceedings.

It is difficult to analyse trends on case law since the number of cases is so low. The discrimination cases presented in this section have been discussed in public, and they have raised awareness on discrimination and its prohibition.

Hiltunen refers to two court cases regarding discrimination on the grounds of sexual orientation, but these predate the transposition legislation. See Hiltunen, R., (2004) *Combating sexual orientation discrimination in employment: legislation in fifteen EU member states, Chapter 6 Finland*, April 2004. Available at (accessed 8 January 2014): <https://openaccess.leidenuniv.nl/bitstream/handle/1887/12587/Chap06-FIN-12Nov2004.PDF?sequence=8>

2 Freedom of movement

In accordance with sections 8 and 12 of the Act on Registered Partnerships (*laki rekisteröidystä parisuhteesta/lag om registrerad partnerskap*, 950/2001) registered partnerships, irrespective of the country in which the partnership has been registered, insofar as the registration is valid in that country, have the same legal effect as marriage unless otherwise provided for by law. Under section 154 of the Aliens Act (*ulkomaalaislaki/utlänningslag*, 301/2004) members of the family of a Union citizen include, among others, the following: (i) spouse, (by virtue of the Act on Registered Partnerships, this includes registered partners¹⁶ - throughout the Aliens Act) and individuals who, irrespective of their sex, live in the same household in marriage-like circumstances, provided that they have lived in the same household for at least two years; such individuals are to be treated as ‘spouses’ for the purposes of the Aliens Act;¹⁷ (ii) descendants who have not reached 21 years of age or are dependent on the Union citizen, as well as respective descendants of the spouse (again, including e.g. registered partners); and (iii) relatives in ascending line who are dependent on the Union citizen and relatives of similar status of the spouse. Criterion (i) therefore applies also to same-sex couples who meet the prescribed criteria of two years’ co-habitation even if they have not contracted a registered partnership. The section and the Aliens Act as a whole applies also to their children, i.e. the law is the same for children irrespective of whether their parent(s)/legal guardian(s) live in same-sex or different-sex relationship.

Accordingly, same-sex couples enjoy the same rights as different-sex couples when it comes to EU citizens’ freedom of movement in Finland. As is obvious, same-sex couples both of whom are EU citizens have independent subjective rights regarding entry and stay in Finland, i.e. these rights are not derived from the rights of the partner, and the rules laying down these rights do not discriminate on the grounds of sexual orientation. The relevant substantive rights are specified in Chapter 10 of the Aliens Act, and provide, among others, that Union citizens are to be granted entry into Finland provided that they hold a valid passport or other valid identity card. According to Section 158 of the Aliens Act, EU citizens can reside in Finland for up to three months without registering their right of residence, and the same right applies to members of their families, irrespective of whether the latter are Union citizens or not. Union citizens can reside without registration ‘for a reasonable period of time’ even after the three months’ deadline if they look for work and have genuine chances of finding it.

Union citizens who reside in Finland for longer than three months have to register their residence. A Union citizen has the right to reside in Finland for longer than three months if, as specified in more detail in section 158a of the Aliens Act, (i) he/she is in employment or is self-employed; (ii) he/she has got sufficient funds to support him-/herself and his/her family and has got, if necessary, a sickness insurance for the said persons, with a view to their residence not burdening the Finnish social security system; (iii) he/she is enrolled in an accredited educational institution and has the sufficient funds and if necessary a sickness insurance for him-/herself and his/her family, *or* (iv) he/she is a family member – as defined above – of a person who has got the right of residence as specified in (i)-(iii), irrespective of whether he/she is a Union citizen.¹⁶ Family members’ right of residence remains unaffected by the death or departure from the country by the Union citizen, provided that the family member him-/herself is a Union citizen. The same applies in the event of divorce (or, by implication, dissolution

¹⁶ This is clear also in view of: Finland, the explanatory memorandum to the Government proposal for the Aliens Act (*Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta*), HE 205/2006, p.29-30.

¹⁷ This has been recognised also in case law, e.g. Supreme Administrative Court KHO:2009:85, 9 October 2009.

of registered partnership). Before being granted *permanent residence* the family member must however meet the criteria specified in section 158 a(1). In the event of the death of an EU citizen, his/her family members who are not citizens of the Union retain the right of residence, provided they have resided in Finland for at least one year before the death. Specific criteria apply to their right to obtain permanent residence. In the event of dissolution of marriage (or registered partnership), the right of residence is retained if the marriage (or registered partnership) has lasted for three years, one year of which must have been spent in Finland, or if one or more of the other conditions specified in section 161e, subsection 2, apply.

Sections 167–170 of the Aliens Act deal with refusal of entry, deportation and expulsion. These provisions make no distinctions between same-sex and different-sex couples.

LGBT partners of citizens of Finland are in a position to benefit from the freedom of movement and residence in another EU member state according to Directive 2004/38/EC in the sense that the Finnish law provides – as already noted - for the opportunity to contract a registered partnership equivalent to marriage. There is no information on the basis of which one could draw conclusions, either way, as to whether the rights specified in the said directive can effectively be enjoyed in practise in the other member states, i.e. whether the other member states have correctly transposed the directive into their domestic laws.

Same-sex marriages which are legally recognised in the country of origin meet the criteria set forth in the Section 37 of the Aliens Act in the same way as any other marriage.

The Recast Qualification Directive has not been transposed into national law and the process is still on-going. The Directive will be transposed by means of revision of the Aliens Act (*ulkomaalaislaki/utlänningslag*, 301/2004).

2.1 Statistics

According to information obtained from Finnish Immigration Service (*maahanmuuttovirasto/migrationsverket*) on 12 February 2010 and on 20 January 2014,¹⁸ the statistical information requested by the FRA does not exist, mainly because family members are not required to indicate whether they live in a same-sex or different-sex relationship or whether they are married or have contracted a registered partnership, in addition to which the various registration procedures differ to the extent that no overall, reliable statistics can be provided.

2.2 Case law

A comprehensive keyword-based search of the FINLEX case law database, conducted on 14 February 2010 and on 10 January 2014, did not yield any case law that would be relevant in this context. Nor could any relevant case law be found from the pertinent legal literature.

¹⁸ Information obtained 20 January 2014 from Planning Officer Ari Keränen.

3 Asylum and subsidiary protection

Section 87 of the Aliens Act provides that non-citizens “residing in the country are granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.” New section 87b of the Act, which entered into force in June 2009, specifies in subsection 4 that sexual orientation is one factor that that may constitute a “particular social group” within the meaning of section 87. Illegal forms of sexual conduct (as defined in the EU countries’ legislation, in accordance with Directive 2004/83/EC) cannot be considered to constitute “sexual orientation” for the purposes of this provision. According to the subsection 5 of the Section 87b when assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually belongs to a sexual minority, provided that the actor of persecution attributes such a characteristic to the applicant. Section 106 of the Aliens Act provides that individuals who are granted asylum are also granted formal refugee status.

LGBT persons who are not considered to meet the requirements of granting asylum under section 87 but who are in their home country or country of permanent residence under the threat of death penalty, torture or other inhuman treatment or treatment violating human dignity, may be issued a residence permit on the grounds of “subsidiary protection” under section 88 of the Aliens Act. Article 88 may also be applicable in a situation where a person is in need of protection because homosexuality is criminalised in his/her home country or country of permanent residence, or because he/she would be subjected to harassment in that country.¹⁹

Under section 114 a residence permit is issued on the basis of family ties to a family member of a refugee or a non-national who has been issued a residence permit on the basis of a need for protection or who has enjoyed temporary protection if (i) the sponsor lives in Finland or has been issued a residence permit for the purpose of moving to Finland, and (ii) the applicant is not considered a danger to public order, security or health. If the above conditions for granting a residence permit are not readily met, the decision to grant or not to grant the permit shall be made on the basis of a comprehensive consideration of all relevant facts, i.e. a failure to meet the requirements set forth by law do not automatically lead to a decision not to grant the permit.

The definition of “family member” for the purposes of section 114 regarding residence permits for family members of refugees and non-nationals who have been issued a residence permit on the basis of need for protection is laid down in section 37 of the Aliens Act. Under the said article family members are the following: (i) spouse of a person residing in Finland (the concept of “spouse” covering individuals in registered relationships),²⁰ (ii) unmarried children under 18 years of age over whom the person residing in Finland or his or her spouse had guardianship and (iii) persons living continuously in a marriage-like relationship within the same household regardless of their sex, provided that they have lived together for at least two years or that they have a child

¹⁹ This interpretation is based on the fact that the Explanatory memorandum to the Government proposal for the Aliens Act mentions for instance discrimination against women, as defined in the UN CEDAW convention, as a factor to be taken into account in the application of section 88. See HE 28/2003 vp, pp. 177-178. There is no case law on this as far as we know.

²⁰ This is expressly written down to section 37. See also: Finland, the explanatory memorandum to the Government proposal for Aliens Act (*Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta*), HE 205/2006, p. 139 and Finland, the Act on Registered Partnerships (*laki rekisteröidystä parisuhteesta/lag om registrerad partnerskap*, 950/2001).

in joint custody or that there is some other “weighty reason” for it. For example, not living together due to studying or working, could be considered as a weighty reason. There is not much case law on this provision, but the requirement for living together for two years has allowed for a flexible interpretation.²¹ If the person residing in Finland is a minor, his or her guardian is considered a family member.

Accordingly, LGTB partners are accepted as family members in the context of asylum and/or subsidiary protection insofar as they live in a registered partnership, have lived in the same household for at least two years, have a child in joint custody *or* if there is some other weighty reason for it.

3.1 Statistics

According to information obtained from Finnish Immigration Service (*maahanmuuttovirasto/migrationsverket*) on 12 February 2010 and on 20 January 2014,²² the statistical information requested by the FRA does not exist. As regards data about numbers of persons who have sought asylum or subsidiary protection this data does not exist because the specific grounds on which applications are made – and decided upon – are not registered in a manner that would permit generation of statistical data. This was also found in a recent report that could not present statistical data from Finland.²³ As regards other data requested by the FRA under this heading, the information does not exist because of the reasons described above under heading.

3.2 Case law

A comprehensive keyword-based search of the FINLEX case law database, conducted on 10 January 2014 yielded one case that is relevant in this context. This case is presented in Annex 1 (case 4). Other case law was not found from the pertinent legal literature. According to information obtained from the Finnish Refugee Advice Centre (*Pakolaisneuvonta*)²⁴ their lawyers have assisted individuals who have sought asylum in Finland because of fear of persecution on grounds of sexual orientation. Some of the applications have been successful, whereas others have not; statistics on these matters (regarding this specific ground for seeking asylum) do not exist.

²¹ Information obtained from Pauliina Helminen, Director of the Immigration Unit at Finnish Immigration Service, on 4 June 2014.

²² Information obtained on 20 January from Planning Officer Ari Keränen and by telephone on 12 February 2010.

²³ Jansen, S and Spijkerboer, T. (2011) *Fleeing homophobia. Asylum claims related to sexual orientation and gender identity in Europe*, Amsterdam, Vrije Universiteit Amsterdam.

²⁴ Telephone interview on 14 February 2008.

4 Family reunification

A family member of a third country national within the meaning of Council Directive 2003/86/EC can be issued a residence permit on the basis of family ties. The material provisions regarding family reunification apply equally to married spouses and individuals in a registered partnership, and to different and same-sex couples living in a marriage-like relationship. The concept of a family member applicable in this context is defined in section 37 of the Aliens Act. Under the said article family members are the following: (i) spouse of a person residing in Finland (the concept of “spouse” covering individuals in registered relationships),²⁵ (ii) unmarried children under 18 years of age over whom the person residing in Finland or his or her spouse had guardianship and (iii) persons living continuously in a marriage-like relationship within the same household regardless of their sex, provided that they have lived together for at least two years or that they have a child in joint custody or that there is some other “weighty reason” for it. For example, not living together due to studying or working, could be considered as a weighty reason. There is not much case law on this provision, but the requirement for living together for two years has not been meant to be uncompromising.²⁶ If the person residing in Finland is a minor, his or her guardian is considered a family member.

Under the Aliens Act, when a non-national is issued a residence permit, his/her family members are issued a similar permit for the same period of time. For instance, under section 45(3) of the Aliens Act, when a non-national is issued a temporary residence permit, his/her family member(s) are issued a temporary residence permit for the same time period. The same principle applies to continuous and permanent residence permits.

Under certain conditions individuals, including LGBT persons, enjoy the opportunity to reside in Finland even in the event that the family tie is broken.²⁷

4.1 Statistics

According to information obtained from Finnish Immigration Service (*maahanmuuttovirasto/migrationsverket*) on 12 February 2010 and on 20 January 2014,²⁸ the statistical information requested by the FRA under this heading does not exist for reasons specified under heading.

4.2 Case law

A comprehensive keyword-based search of the FINLEX case law database, conducted on 14 February 2010 and on 10 January 2014, did not yield any case law that would be relevant in this context. Nor could any relevant case law be found from the pertinent legal literature.

²⁵ This is expressly written down to section 37. See also: Finland, the explanatory memorandum to the Government proposal for Aliens Act, HE 205/2006, p. 139 and Finland, the Act on Registered Partnerships.

²⁶ Information obtained from Pauliina Helminen, Director of the Immigration Unit at Finnish Immigration Service (*Maahanmuuttoviraston maahanmuutto-osasto/Migrationsverkets immigrationsavdelning*), by phone on 4 June 2014.

²⁷ For more information see e.g. Finland, sections 54(6) and 56(2) of the Aliens Act.

²⁸ Information obtained 20 January 2014 from Planning Officer Ari Keränen and on 12 February and 13 March 2008 by e-mail from the Finnish Immigration Service (*maahanmuuttovirasto/migrationsverket*).

5 Freedom of assembly

Section 13 of the Constitution (*perustuslaki/grundlag*, Act no. 731/1999) provides that “everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them.” More detailed provisions on the exercise of the freedom of assembly are laid down in the Assembly Act (*kokoontumislaki/lag om sammankomster*, Act no. 530/1999).

The Assembly Act concerns public meetings, including demonstrations, and lays down the regulatory provisions on the arrangement of such meetings. It specifies that public meetings shall be arranged peacefully and without infringing the rights of participants or bystanders. Section 3 prohibits any discrimination in the context of arrangement of the meeting. For instance, it is prohibited to deny, without legally valid reasons, access to a public meeting (incl. demonstration) on the basis of sexual orientation or to remove a person thereof on the same grounds.²⁹

The Act further specifies that public meetings may be arranged by private individuals with full legal capacity, by corporations and foundations,³⁰ and according to the Sections 5 and 6 everyone has the right to participate in a public meeting. The meeting may be arranged outdoors in a public square, opening, street and in another similar public place that is suitable for meetings, without the permission of the owner or holder. The owner or holder, the state or the municipality in a typical case, may restrict the use of such a place for meeting purposes if it is to be anticipated that the arrangement of the meeting will cause unreasonable inconvenience to the owner or holder or unreasonable damage to the environment. The Section 7(1) of the Act provides that arranger of a public meeting that is to be held outdoors must notify the local police of the meeting orally or in writing at least six hours before the beginning of the meeting (also a later notification may be considered valid). That notification shall contain information on, among others the arranger and the purpose of the meeting.

The Constitution and the Assembly Act provide strong protection for the freedom to arrange gay pride parades and pro-gay rights demonstrations. Under section 19 of the Act it is the specific duty of the police to safeguard the exercise of the freedom of assembly. The exercise of this right is subject only to the conditions laid down in the law, particularly the requirement that the meeting be peaceful and does not infringe the rights of the participants or bystanders. The condition that the meeting be peaceful is interpreted to mean that the purpose of the meeting must not be illegal;³¹ it appears for instance that there is no right to convene a demonstration, even in the (alleged) interests of promoting gay rights, if its purpose is to incite hatred – as defined in the Penal Code - against a religious or ethnic group that is considered by the arrangers to be unfriendly to LGBT people. The law does not however allow the infringement of the freedom of assembly where only a few demonstrators engage in criminal activity but the purpose of the meeting as such is not incompatible with the law.³² In such a case it is the duty of the arranger of the meeting to see to the compliance with the law and to prevent any actions that may be punishable under law. According to Section 21 of the Act, only if the measures taken by the arranger

²⁹ See also: Finland, Chapter 14 Section 5 of the Penal Code (*rikoslaki/strafflag*, Act no. 39/1889).

³⁰ Finland, the Section 5 of the Assemble Act provides that a person who has attained 15 years of age may arrange a public meeting, unless it is evident that he/she will not be capable of fulfilling the requirements that the law imposes on the arranger of a meeting. Persons without full legal capacity may arrange public meetings together with persons with full legal capacity.

³¹ Pohjola, T. and Majuri, T. (2000), *Kokoontumisvapaus*, Helsinki, Lakimiesliiton kustannus.

³² Pohjola, T. and Majuri, T. (2000), *Kokoontumisvapaus*, Helsinki, Lakimiesliiton kustannus.

prove inadequate, a senior police officer has the right to interrupt the meeting or order it to disperse.

Police has the duty to protect public meetings from illegal third-party interference. In this context it is significant that violence perpetrated by other than participants of the public meeting, e.g. counter-demonstrators, is not a ground for considering that the meeting is not “peaceful” within the meaning of the law. The Penal Code contains two provisions that are particularly important in this context: Chapter 14, section 5 contains the penal provision for violation of political rights (applicable e.g. where a person is prevented, by means of threats or violence, from expressing his/her opinions or from participating to a public meeting), and section 6 of that chapter contains the penal provision for the prevention of an assembly. Also other provisions of the Penal Code may apply particularly in case of violent counter-demonstrations.

Demonstrations and other public meetings that are critical of, or hostile towards, LGBT persons and/or their rights are subject to the requirement that the meeting be “peaceful” and that its purpose is therefore not illegal. In this context it is important that incitement against a population group, as defined in section 11 chapter 10 of the Penal Code, arguably though not (yet) explicitly prohibits any incitement against LGBT persons.³³ The arrangement of a public meeting the purpose of which is incompatible with chapter 11 section 10 is not protected by the Assembly Act. It is the duty of the arranger of a meeting (the purpose of which as such is not illegal) to take action to ensure that individual participants refrain from breaching the law, in particular the Penal Code. Where the measures taken by the arranger prove inadequate, a senior police officer has the right to interrupt the meeting or order it to disperse.

5.1 Statistics

Given that the arrangement of demonstrations and other public meetings is not subject to any procedure for obtaining prior permission, as explained above, there is no statistical data indicating how many pro-LGBT or homophobic demonstrations have been arranged in Finland or in how many instances the arrangement of such demonstrations has been prohibited or interfered with.

5.2 Case law

A comprehensive keyword-based search of the case law database FINLEX, conducted on 14 February 2010 and 13 January 2014, did not yield positive results as regards court decisions that would be relevant in this context. Given that the case law database is not comprehensive, one cannot conclusively infer from this that there have been no such cases.

However, there has been a case where gay pride parade has been interfered with. This case law is presented under Hate speech and criminal law (case 5). Three men who had taken part in an attack against the Helsinki Pride parade in July 2010, had been given suspended prison sentences of four months by the Helsinki District Court in May 2011. In addition, they were ordered to pay the victims damages of about €30,000. A group of persons attacked at had appealed at the district court claiming that the punishment was too mild considering that the attack hit such a large group of people and was specifically targeted at persons belonging to

³³ Nuutila, Ari-Matti (2002), ‘Sotarikokset ja rikokset ihmisyyttä vastaan’ in: Heinonen, O., Koskinen, P., Lappi-Seppälä, T., Majanen, M., Nuotio, K., Nuutila, A.-M., Rautio, I., (eds.), *Rikosoikeus*, Helsinki, WSOY.

sexual minorities. However, the Helsinki Court of Appeal imposed a suspended prison sentence of four months to the defendants. The Court of Appeal states that the provision on grounds for increasing the punishment had been amended in June 2011 from covering national, racial or ethnic population to also religion, sexual orientation and disability. The court argues that before the amendment it was not clear whether the provision should be interpreted so as to cover sexual and gender minorities, and therefore the grounds for increasing the punishment were not applicable at the time of the crime. It was ruled that the provision on grounds for increasing the punishment was not applicable to sexual and gender minorities before the Criminal Code had been amended and clarified in June 2011.

Furthermore, one homo-phobic demonstration was arranged in September 2013. The event was called “Hetero Pride” as a response to Gay Pride events, and was held in front of the Parliament House. The organisers wore t-shirts with homophobic slogans: “Stop the homofication – Yes to family values” and “Publicly straight – Hetero Pride”. A counter-demonstration by LGBTI activists had more attendance than the actual Hetero Pride demonstration and the police sent riot police squads to control the event. The Hetero Pride event was attended by some politicians, such as the party secretary of the Christian Democratic Party (*Kristillisdemokraatit/Kristendemokraterna*) Asmo Maanselkä and an assistant to a member of the parliament from the True Finns Party (*Perussuomalaiset/Sannfinnländare*) Teuvo Hakkarainen. There was no violence or aggression apparent during the demonstration. Homophobic demonstrations are very rare in Finland and this event gained a lot of publicity in the media as a rare occurrence.³⁴

³⁴ Aalto, M. 21.9.2013, Hetero Pride jäi pienen joukon mielenosoitukseksi, Helsingin Sanomat.

6 Hate speech and criminal law

Hate speech may constitute several different types of crimes as defined in the Penal Code, three of which are most important.

First, hate speech may constitute an invasion of personal reputation as defined in chapter 24, section 8 of the Penal Code. Under the said provision, a person who “unlawfully publicly spreads information, an insinuation or an image of the private life of another person, so that the act is conducive to causing that person damage or suffering, or subject that person to contempt, shall be sentenced for an *invasion of personal reputation* to a fine”. Given that information about sexual orientation is usually considered to constitute information about private life (such information being protected by the right to privacy), and that many LGBT persons do not wish to make such information generally known, and considering that the publication of such information may have harmful effects on such persons, homophobic hate speech directed against a specific individual can constitute an invasion of personal reputation as defined chapter 24, section 8 of the Penal Code.³⁵ Making of incorrect statements about the sexual orientation of a person is likely to be considered to constitute defamation, referred to below, rather than invasion of personal reputation.³⁶

Second, hate speech may constitute defamation as defined in chapter 24, section 9 of the Penal Code. Under the said provision “a person who... makes a derogatory comment on another... shall be sentenced for defamation to a fine”. A comment relating to sexual orientation may constitute defamation even where the perpetrator was mistaken about the sexual orientation of the offended person. Section 10 of the same chapter lays down the conditions for aggravated defamation, which takes place when the offence causes widespread suffering or substantial damage and the offence is aggravated also when assessed as a whole. . Hate speech directed against specified individual(s) can therefore also be dealt with under this provision.

Third, hate speech may constitute incitement against a population group as defined in chapter 11, section 10 of the Penal Code. The section 10 on ethnic agitation states that “A person who makes available to the public or otherwise spreads among the public or keeps available for the public information, an expression of opinion or another message where a certain group is threatened, defamed or insulted on the basis of its race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or a comparable basis, shall be sentenced for ethnic agitation to a fine or to imprisonment for at most two years” The section 10(a) on aggravated ethnic agitation states that “If the ethnic agitation involves incitement or enticement

(1) to genocide or the preparation of genocide, a crime against humanity, an aggravated crime against humanity, a war crime, an aggravated war crime, murder, or manslaughter committed for terrorist intent, or

(2) to serious violence other than what is referred to in paragraph 1 so that the act clearly endangers public order and safety, and the ethnic agitation also when assessed as a whole is

³⁵ Nuutila, Ari-Matti (2002), ‘Yksityisyyden, rauhan ja kunnian loukkaamisrikokset’ in: Heinonen, O., Koskinen, P., Lappi-Seppälä, T., Majanen, M., Nuotio, K., Nuutila, A.-M., Rautio, I., (eds.), *Rikosoikeus*, Helsinki, WSOY.

³⁶ Finland, Government bill on revising criminal provisions on the offences against privacy, public peace and personal reputation (*Hallituksen esitys Eduskunnalle yksityisyyden, rauhan ja kunnian loukkaamista koskevien rangaistussäännösten uudistamiseksi*), HE 184/1999 vp. Available at (accessed 30 June 2014): <http://www.finlex.fi/fi/esitykset/he/1999/19990184>

aggravated, the offender shall be sentenced for aggravated ethnic agitation to imprisonment for at least four months and at most four years”.

The provision was amended in 2011 to explicitly cover sexual orientation. Gender identity is not specifically mentioned in the section 10. However, in the Government Bill (*Hallituksen esitys / Regeringsproposition 317/2010*) it is stated that gender minorities such as transgender persons and intersex persons are the kind of groups that can be thought to need special protection and thus are included in “comparable basis”.

Hate speech may also be dealt with under other branches of law than criminal law. Hate speech may constitute discrimination within the meaning of the Equal Treatment Act. Section 6 of the Act stipulates that harassment is one form of discrimination and that harassment is about “deliberate or de facto infringement of the dignity and integrity of a person or group of people by the creation of an intimidating, hostile, degrading, humiliating or offensive environment (harassment)”. In view of section 6, particularly recurring hate speech – and even “lesser” forms of intimidation – may therefore come to be considered harassment. According to provisions of the Section 2 of the Act, the material scope of application of the Equal Treatment Act is, in the case of sexual orientation, restricted to the fields of employment and education. An employer or a provider of education that infringes the provisions of section 6 is liable to pay compensation to the injured party for suffering up to 15 000 euros and even more in exceptional circumstances.³⁷

A victim of hate speech may also be entitled to obtain damages under the Tort Liability Act (*vahingonkorvauslaki/skadeståndslag*, Act no. 412/1974), as amended e.g. by law 509/2004). Chapter 5, section 6 of the Act stipulates that a person is entitled to compensation for suffering where, among others, (i) his/her private life has been infringed by means of an act punishable under law, (ii) he/she has been discriminated against by means of an act punishable under law; or where (iii) his/her dignity has been purposefully or out of gross negligence seriously injured. Therefore compensation for suffering may be obtained where criminal acts as defined in the above-mentioned provisions of the Penal Code – chapter 24, sections 8 and 9 and chapter 11, section 10 – or where discrimination as defined in chapter 11, section 11 or chapter 47, section 3 or 3a are at stake. A victim is entitled to damages even where the perpetrator has not in fact been charged with any of the above-mentioned offences.³⁸

The Penal Code (*rikoslaki /strafflag*, Act no. 39/1889) defines the aggravating circumstances in chapter 6 section 5. The crimes motivated by race, skin colour, birth status, national or ethnic origin, sexual orientation or disability or comparable basis are subject to aggravating circumstances in sentencing.

The Prosecution Service pays special attention to the processing of hate crimes. The Prosecutor General has given guidelines and instructions in this regard to the prosecutors. Typical hate crimes and ‘general’ crimes that appear to incorporate a hate-based motive

³⁷ Finland, Section 9 of the Equal Treatment Act (*yhdenvertaisuuslaki/lag om likabehandling*, Act no. 21/2004). The theoretical ceiling, the amount of which is currently 15 000 euros and which will be reviewed every two years, was according to the preparatory works to the Non-Discrimination Act adopted for the purposes of conveying to the courts the message that the amount of compensation in discrimination cases should be substantial.

³⁸ Finland, Government bill on revising the tort liability act (*Hallituksen esitys Eduskunnalle laiksi vahingonkorvauslain muuttamisesta ja eräiksi siihen liittyviksi laeiksi*), HE 167/2003 vp. Available at (accessed 30 June 2014: <http://www.finlex.fi/fi/esitykset/he/2003/20030167>

are considered socially important and each case shall be reported to the Office of the Prosecutor General.

The police is guided by their internal guidelines on reporting hate crime formulated by the National Police Board in accordance with the Act on Police Administration (*laki poliisin hallinnosta/polisförvaltningslag*, Act no. 14.2.1992/110).³⁹

6.1 Statistics

As pointed out in section 1.3., overall data about specific crimes, such as incitement against a population group, do exist, but this data is not disaggregated according to the target group. Therefore the requested information, i.e. data about the numbers of criminal court cases regarding homophobic hate speech, number of convictions regarding homophobic hate speech, range of sanctions in such cases, number of non-criminal court cases initiated for homophobic statements, number of non-criminal court cases initiated for homophobic statements which were successfully completed, or the number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing, cannot be submitted. Such statistical data could only be obtained through a fully-fledged research into actual court records.

However, the Police College of Finland (*Poliisiammattikorkeakoulu/Polisyrkeshögskolan*) produces on a yearly basis a report on hate crime. The most recent report on suspected hate crime compiled at the Police College of Finland was published on 6 November 2013. The report reviews crimes reported to the police in 2012, and the statistics are based on crime reports retrieved from the national police information system. Hate crimes are not comprehensively classified in the police system. The statistics are manually compiled by searching the crimes codified in the system as hate crimes, by sorting cases by relevant search terms, and reading through narrative information about the incidents in the police reports.⁴⁰

In 2012, 27 cases of hate crime were motivated by the victim's real or perceived sexual orientation, and three cases were based on the victim's transgender identity or appearance. These crimes were mostly one-sided assaults, verbal threats and insults, or discrimination cases.⁴¹

6.2 Case law

A comprehensive keyword-based search of the case law database FINLEX, conducted on 12 February 2010 and on 14 January 2014, did not yield positive results as regards court decisions in the types of court proceedings enumerated above. One cannot, as mentioned before, draw from this the conclusion that there have been no such cases, as the case law database is not comprehensive and does not include e.g. the decisions of Courts of First Instance.

³⁹ Finland, The National Police Board (*Poliisihallitus/ Polisstyrelsen*) 2011: Categorisation of hate crimes and offences with characteristics of a hate crime in the data system for police matters (Instructions).

⁴⁰ Tihveräinen, T. (2013), *Poliisin tietoon tullut viharikollisuus Suomessa 2012*, Tampere: Poliisiammattikorkeakoulu.

⁴¹ Tihveräinen, T. (2013), *Poliisin tietoon tullut viharikollisuus Suomessa 2012*, Tampere, Poliisiammattikorkeakoulu.

7 Transgender issues

The issue of discrimination against transgender persons is not specifically addressed in the domestic law. However, section 6 of the Constitution provides for equality before the law and prohibits discrimination on the grounds of; inter alia, gender and “other reason relating to a person”. In the Finnish legal system there is a general piece of legislation that addresses gender equality (Act on Equality between Women and Men), and a separate general piece of legislation (Equal Treatment Act) that addresses discrimination on the grounds of e.g. sexual orientation. The latter Act does not specifically mention discrimination against transgender people.

The Ombudsperson for Equality (gender equality) has taken the position that discrimination against transgender persons can be dealt with under gender discrimination legislation. The Ombudsperson took this position in 2005, following a Parliamentary Committee⁴² which in turn based itself on ECJ’s decision in *P v. S*.⁴³ This position has received support in the pertinent literature.⁴⁴ The Ombudsperson has indicated that it conceives its mandate in this respect broadly (i.e. as not just covering equality for persons who have undergone gender reassignment treatments but transgender people in general), on the grounds that the text of the law is open enough to support this interpretation and as otherwise legal protection for these persons would be insufficient.⁴⁵ Although this position in our view merits support, it could in theory also be argued that discrimination against transgender people forms a prohibited ground of discrimination of its own, being an “other status” within the meaning of the domestic law.⁴⁶

A draft bill on the renewal of the Act on Equality between Women and Men (*laki naisten ja miesten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och män*, Act no. 609/1986) was circulated for comments in June 2012. The draft bill includes a new prohibition against discrimination on the basis of gender identity and gender expression, and new obligations for authorities, employers and educational institutions on promoting equality regarding transgender persons⁴⁷. The Government bill was presented to the Parliament in April 2014, simultaneously with the Act on Equal Treatment (see chapter 1).⁴⁸

The relevant provisions of the Aliens Act that deal with freedom of movement, asylum and subsidiary protection and family reunification, discussed above, apply also with respect

⁴² Finland, Report of the Committee on Employment and Equality (*Työelämä- ja tasa-arvovaliokunnanmietintö*), 3/2005 vp (regarding HE 195/2004 vp).

⁴³ ECJ, C-13/94, *P v. S*, 30 April 1996.

⁴⁴ Lehtonen, J. and Mustola, K., ‘Seksuaalisuuden ja sukupuolen moninaisuus työssä - tutkimuksen tausta ja keskeiset käsitteet’, in Lehtonen, J. and Mustola, K. (ed.), *”Eihän heterotkaan kerro...” Seksuaalisuuden ja sukupuolen rajankäyntiä työelämässä*, Helsinki, Työministeriö, tutkimukset ja selvitykset 2/04, p. 19.

⁴⁵ See e.g. Aaltonen, M., Joronen, M. and Villa, S. (2009), *Discrimination in Finland 2008 (Syrjintä Suomessa 2008)*, Helsinki, Ihmisoikeusliitto and Finland, Ombudsperson for Equality (2012), *Selvitys sukupuolivähemmistöjen asemasta*, Helsinki: Tasa-arvovaltuutettu.

⁴⁶ That this is an option was also suggested by the above-mentioned report of the Parliamentary Committee, see TyVM 3/2005 vp. See also the case from the Vaasa Administrative Court, explained in the Annex (case 7), where discrimination on the grounds that the person lived in a same-sex relationship was considered to constitute discrimination on the grounds of “other status”, not sexual orientation.

⁴⁷ Finland, Draft Proposal for the Government Proposition for a Act on Equality between Women and Men (*Hallituksen esitys eduskunnalle laiksi naisten ja miesten välisestä tasa-arvosta annetun lain muuttamisesta*), 28 June 2012, available at (all hyperlinks accessed 30 June 2014): http://www.stm.fi/c/document_library/get_file?folderId=5069262&name=DLFE-21107.pdf

⁴⁸ Finland (2014), Government bill on the revision of the Act on Equal Treatment and other laws relating to it (*Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräiksi siihen liittyviksi laeiksi, HE 19/2014 vp*),.

to transgender people. Moreover, the relevant provisions apply equally to couples that are married and couples that live in a registered partnership, and to same-sex and different-sex couples that live in the same household – so the fact that a person has undergone or is undergoing a gender reassignment procedure should not affect his/her legal rights. There are no legal grounds to suspect that transgender people would not/should not be considered to constitute a “particular social group” within the meaning of section 87 of the Aliens Act, given that sexual minorities clearly qualify; therefore asylum or residence permit on the basis of need for protection may be granted on the grounds that the person concerned has a well-founded fear of being persecuted for reasons of his/her transsexuality.⁴⁹ The laws regarding freedom of assembly and protection from hate speech apply equally to transgender people as well.

The Act on legal recognition of the gender of transsexuals (*laki transseksuaalin sukupuolen vahvistamisesta/lag om fastställande av transsexuella personers könstillhörighet*, Act no. 563/2002) entered into force in January 2002. Under that Act, the competent authorities shall recognise (officially confirm) that a person belongs to the opposite sex than that recorded into the population register, provided that he/she (i) provides a medical report testifying that he/she permanently experiences being a member of the opposite sex and that he/she lives in that gender role and that he/she been sterilised or is otherwise incapable of having children; (ii) is an adult (over 18 years of age); (iii) is not married or in a registered partnership (exceptions apply)⁵⁰ and is a Finnish citizen or a resident in Finland. The competent authority for this is the local register office (*maistraatti*).

On 6 September 2013, the Ministry of Social Affairs and Health (*sosiaali- ja terveystieteiden ministeriö/social- och hälsovårdsministeriet*) set up a working group to renew the Act on legal recognition of the gender of transsexuals (*laki transseksuaalin sukupuolen vahvistamisesta/lag om fastställande av transsexuella personers könstillhörighet*, Act no. 563/2002). The working group was assigned the task to prepare necessary legislative changes to the Act with regard to requirements of being unable to reproduce and being unmarried. In addition, the working group will assess other needs for legislative reform. The working group will submit its proposal on 30 September 2014.⁵¹

Section 5 of the act on legal recognition of the gender of transsexuals provides that a person whose new *de jure* sex has been recognised by the authorities is to be treated as a person of that sex for all purposes under the law. Under the Section 32 c of the Name Act (*nimilaki/namnlag*, Act no. 695/1985), one can simply notify (no permission required) the local registry office of one’s new first name – provided e.g. that the name is not offensive. The change of the first name by way of simple notification procedure can be done only once, after which the change of the name is subject to an application procedure under which a person’s first name can be changed if there are “valid grounds thereto” (section 32 d). Whereas the Name Act prohibits men from having women’s names and vice versa, this is no obstacle where the new sex status has already been officially recognised. In practice

⁴⁹ Applications based on this ground appear not to be numerous. Information (telephone conversation) from the Finnish Refugee Advice Centre on 14.2.2008. There is no reason to believe that the situation has changed in this regard.

⁵⁰ Finland, section 2 of the Act on legal recognition of the gender of transsexuals (*laki transseksuaalin sukupuolen vahvistamisesta/lag om fastställande av transsexuella personers könstillhörighet*, Act no. 563/2002) provides that, if the other spouse gives his/her consent to this, a marriage is transformed into a registered partnership and a registered partnership is transformed into a marriage, in which case being married or in a registered partnership is not an obstacle for having one’s real sex legally recognized.

⁵¹ Information retrieved from the Ministry of Social Affairs and Health website, available at: www.stm.fi/vireilla/tyoryhmat/sukupuolen_vahvistaminen.

transsexuals have been able to register their new first name already after having started hormonal treatment, i.e. before having had their “new” sex officially recognised.⁵²

7.1 Statistics

The office of the Ombudsperson for Equality does not keep the kind of systematic records that would reliably give the exact numbers of communications submitted to them with regard to transgender issues. According to information obtained from the Ombudsperson’s office on 11 February 2008 and 12 February 2010, less than ten cases of suspected discrimination against transgender people have been communicated to the Ombudsperson per year since 2005.⁵³ According to information obtained from the Ombudsperson’s office on 15 January 2014, it is not possible to give exact numbers of communications regarding transgender issues. However, they estimate that 5-11 complaints of discrimination concerning transgender issues have been lodged annually during 2010-2013. Complaints have not increased in number.⁵⁴

A manual examination on 14 February 2010 and on 14 January 2014 of the case law of the Equality Board (“*tasa- arvolautakunta*”) did not disclose any cases that would have dealt with discrimination on the grounds of transsexuality.

According to information provided by the Finnish Population Centre, direct and precise statistics on the numbers of people whose de jure sex has been changed or on numbers of name changes due to such change of de jure sex are not available. However, the personal identity code (PIN), which is automatically issued to each citizen of Finland and those residing in Finland for one year or more and upon application also to other persons residing in Finland, reveals the de jure sex of the person concerned (for women the PIN is an even number and for men it is an odd number), and numbers of changes of the PIN which involve a change in the number which indicates sex can be given. The numbers of such changes have increased gradually, being 43 in 2000 and 90 in 2007. However, these figures include ‘false positives’, the amount of which could be even 50% of the cases or more, because the numbers include cases where the PIN that a foreigner has had is changed (or actually: corrected) in a manner that indicates a change of sex even though there has been no change in this regard. Therefore the figures based on changes of the PIN are not very reliable.⁷⁰

The number of name changes, where the name has been changed from a male name to a female name or vice versa, may actually give a more reliable picture of the situation. Also the numbers of such changes has increased over the years, being 8 in 2000 and 24 in 2007. These numbers are not fully reliable either, as they underestimate the number of changes of de jure sex and changes of name affected by virtue of the change of sex, because they do not include cases where a particular name is gender neutral (i.e. used by both women and men). The actual number of changes of de jure sex is therefore somewhere between the number of changes indicated in the previous chapter (number of changes of PIN from male to female and vice versa) and the number of changes of name from male to female or vice versa.⁷¹ The most reliable statistical information comes from the population register, which has from March 2010 included information on the reason for change of the PIN. From March 2010,

⁵² Finland, Ombudsperson for Equality (2012), *Selvitys sukupuolivähemmistöjen asemasta*, Helsinki: Tasa-arvovaltuutettu.

⁵³ Telephone conversation on 11 February 2008 and email 13 February 2008 and 12 February 2010.

⁵⁴ Information obtained from Minna Lundell-Kiuru, senior inspector on 15 January 2014.

there has been 247 cases of PIN change on the basis of change of de jure sex. This means 60 to 70 cases annually (in 2010 35 cases, in 2011 68 cases, in 2012 55 cases and in 2013 85 cases).⁵⁵

7.2 Case law

According to a report on the position of gender minorities,⁵⁶ commissioned by the Ombudsperson for Equality, there has been one court case relevant in this context concerning discrimination on the grounds of transsexuality. This case is presented in Annex 1 (case 3). The claimant was appointed as a Head of Division at the Financial Supervisory Authority, but after the claimant announced that he would be changing his name and adopting the female gender, a new recruitment process for the Head of Division was conducted, and the claimant was not chosen. This was the first court ruling on discrimination against a transsexual employee on the basis of the Equality Act and the employee was awarded €15,000 in damages as compensation for the discrimination.

In addition, there has been a case concerning the decision of the local registry office that refused to change the PIN of the male-to-female transsexual applicant to reflect her new (de jure and de facto) sex. This case is presented in the Annex 1 as well (case 6). Legislation provides that, if the other spouse gives his/her consent to change the PIN, a marriage is transformed into a registered partnership and a registered partnership is transformed into a marriage, in which case being married or in a registered partnership is not an obstacle for having one's real sex legally recognised. The Supreme Administrative Court of Finland upheld the decision of the local registry office. The grounds for this decision was that the applicant was married, and her spouse did not give her consent for the change of PIN.

We are not aware of any other case law that would be directly relevant in this context. A keyword-based search of the case law database FINLEX, conducted on 14 February 2010 and 15 January 2014, did not yield positive results.

⁵⁵ Information obtained from Timo Salovaara, director of information service on 20 January 2014 and from Pauli Pekkanen, project manager on 21 January 2014.

⁵⁶ Finland, Ombudsperson for Equality (2012), *Selvitys sukupuolivähemmistöjen asemasta*, Helsinki: Tasa-arvovaltuutettu.

8 Miscellaneous

The FRA National Guidelines for this Flash Report ask the Member States to provide information about developments that are similar to or comparable with the developments in Lithuania as concerns the law on the protection of minors against the detrimental effects of public information and the proposed criminalisation of promotion of homosexual relations in public places. There are no similar or comparable laws or policies in Finland.

The FRA Guidelines also request the provision of information about the use of “phallometry” during asylum procedure. There is nothing to suggest that such a method would be used or would have been used in Finland.

A citizens’ initiative (*kansalaisaloite/medborgarinitiativ*) was submitted to the Parliament on 13 December 2013 pertaining to the amendment of the Marriage Act (*avioliittolaki/äktenskapslag*, Act no. 234/1929) so that marriage would be possible also between two persons of the same sex. The current Programme of the Finnish Government does not include any measures to promote same-sex marriage.⁵⁷

⁵⁷ Finland, Government (2011) Programme of the Finnish government (*Hallitusohjelma / Regeringsprogrammet*), available at: www.valtioneuvosto.fi/hallitus/hallitusohjelma/pdf332889/220611hallitusohjelma_en.pdf.

9 Good practises

The following may be presented as good practices from Finland:

Data collection on hate crimes.

Finland has, since 1997, collected and reported data on a yearly basis on the racist crimes reported to the police. The 2009 report included, for the first time, also information about other kinds of hate crimes and now the Police College of Finland (*Poliisiammattikorkeakoulu/Polisyrkeshögskolan*) produces on a yearly basis a report on hate crime. The methodology used is rather robust: researchers analyse each and every crime report that fits a certain profile, and analyse the case with a view to determining whether it was partly or wholly bias-motivated. The reports review crimes reported to the police, and the statistics are based on crime reports retrieved from the national police information system. Hate crimes are not comprehensively classified in the police system. The statistics for the annual report are manually compiled by searching the crimes codified in the system as hate crimes, by sorting cases by relevant search terms, and reading through narrative information about the incidents in the police reports. The research includes more information than the crimes reported to police as hate crimes, since researches also use search terms and read narrative information in the police reports. This enables the reporting to tackle the shortages of the reporting of the police. This allows the researchers to analyse not just the yearly number of racist crimes, but also to draw conclusions as to who are typical offenders, what are typical racist crimes and where and when these crimes occur and who are the victims.

Change of name of transsexual individuals.

A person whose new sex status has been recognised in accordance with the Act on legal recognition of the gender of transsexuals (*laki transseksuaalin sukupuolen vahvistamisesta/lag om fastställande av transsexuella personers könstillhörighet*, Act no. 563/2002) has under the Name Act (*nimilaki/namnlag*, Act no. 695/1985) the right to have his/her first name changed by means of a simple notification procedure. In practice - and this is considered to constitute a good practice in this context – transsexuals are able to register their new first names already after having started hormonal treatment, i.e. before having had their “new” sex officially recognised.

10 Intersex persons

10.1 Legislation

Intersex people are not explicitly mentioned in the current non-discrimination legislation.

The Ombudsperson for Equality (gender equality) has taken the position that discrimination against transgender persons can be dealt with under gender discrimination legislation (see chapter 7 for more information). The Ombudsperson has indicated that it conceives its mandate in this respect broadly (i.e. as not just covering equality for persons who have undergone gender reassignment treatments but transgender people in general), on the grounds that the text of the law is open enough to support this interpretation and as otherwise legal protection for these persons would be insufficient. The Ombudsperson mentions intersex persons as a minority group on its website.⁵⁸

The Act on Equality between Women and Men (*laki naisten ja miesten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och män*, Act no. 609/1986) is being revised and the draft bill include prohibition against discrimination on the basis of gender identity and gender expression. This includes intersex persons. The Government bill is expected to be presented to the Parliament in 2014.⁵⁹

There is no case law regarding discrimination of intersex persons. A keyword-based search of the case law database FINLEX, conducted on 15 January 2014, did not yield positive results.

10.2 National non-discrimination policies

Finland does not have a national non-discrimination policy.

The Action Plan for Gender Equality 2012-2015 of the Finnish government does not mention intersex persons.⁶⁰

10.3 Children and gender marker/identification on birth certificates

According to a report on the position of gender minorities,⁶¹ commissioned by the Ombudsperson for Equality, children may remain without a gender marker in the population

⁵⁸ See e.g. Aaltonen, M., Joronen, M. and Villa, S. (2009), *Discrimination in Finland 2008* (Syrjintä Suomessa 2008), Helsinki, Ihmisoikeusliitto and Finland, Ombudsperson for Equality (2012), *Selvitys sukupuolivähemmistöjen asemasta*, Helsinki: Tasa-arvovaltuutettu.

⁵⁹ Finland, Draft Proposal for the Government Proposition for a Act on Equality between Women and Men, 28 June 2012, available at: www.stm.fi/vireilla/lainsaadantohankkeet/tasa-arvo

⁶⁰ Finland, Ministry for Social Affairs and Health (*sosiaali- ja terveysministeriö*, STM / *social- och hälsovårdsministeriet*, SHM) (2012) *Action Plan for Gender Equality 2012-2015* (Hallituksen tasa-arvo-ohjelma 2012–2015/Regeringens jämställdhetsprogram 2012–2015), Sosiaali- ja terveysministeriön julkaisuja 2012:10, Helsinki, sosiaali- ja terveysministeriö, available at: www.stm.fi/c/document_library/get_file?folderId=5197397&name=DLFE-21812.pdf

⁶¹ Finland, Ombudsperson for Equality (2012), *Selvitys sukupuolivähemmistöjen asemasta*, Helsinki: Tasa-arvovaltuutettu.

register until the medical doctors have confirmed his/her gender. The personal identity code (PIN), is automatically issued to each citizen of Finland and those residing in Finland for one year or more and upon application also to other persons residing in Finland. The personal identity code is a means of identification that is more specific than a name since several people may have the exact same name but there are no two persons with exactly the same personal identity code. Personal identity code is needed in many situations, especially in contacts with authorities. The code is needed for the payment of wages, salaries and fees and it is essential in bank transactions since it is required when opening an account. In practice this means that the child who is entered in the population register without a gender marker is not given the last number of the PIN that reveals the gender of the person (for women the PIN is an even number and for men it is an odd number), during the period that doctors are contemplating on the gender. According to a surgeon who is an expert in this field, this is atypical and usually takes only one week. After that the gender of the child is marked in the system.⁶² There is no maximum period of time prescribed by law during which a child may remain without a gender marker.

10.4 Surgical and medical interventions

Surgical and medical interventions are performed on intersex people in Finland. However, there are no legal grounds especially mentioning intersex persons. In addition, there are no special medical protocols in such situations, general medical protocols and procedures apply. It seems that procedures and practices differ regionally. Surgical interventions are performed in two University hospitals, namely in Helsinki and Oulu.⁶³

Chapter 2 Section 6 of the Act on the Status and Rights of the Patients (*Laki potilaan asemasta ja oikeuksista/Lag om patientens ställning og rättigheter*, Act no. 785/1992) provides that the patient has to be cared in mutual understanding with him/her. The Section 7 provides that the opinion of a minor patient on a treatment measure has to be assessed if it is possible with regards to his/her age or level of development. If a minor patient owing to his/her age and level of development can decide on the treatment given to him/her, he/she has to be cared in a mutual understanding with him/her. If a minor patient cannot decide on the treatment given to him/her, he/she has to be cared in mutual understanding with his/her guardian or legal representative. In practice this depends on the age or level of development of the child. Consultation should always be done in case it is possible.

⁶² Information obtained from Mika Venhola, surgeon from the University hospital of Oulu on 20 January 2014 and Maarit Huuska, leading social worker from Transgender support center on 17 January 2014.

⁶³ Information obtained from Mika Venhola, surgeon from the University hospital of Oulu on 20 January 2014 and Maarit Huuska, leading social worker from Transgender support center on 17 January 2014..

Annex 1 – Case law

Chapter 1.3.2., case 1

Case title	Discrimination on the grounds of sexual orientation – criminal proceeding
Decision date	28 January 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Court of Appeal of Helsinki (<i>Helsingin hovioikeus / Helsingfors hovrätt</i>)
Key facts of the case (max. 500 chars)	<p>In September 2008, the claimant was appointed editor-in-chief of a newspaper owned by Pohjois-Suomen Media Oy. On 1 October 2008, her contract was cancelled by the CEO of the media conglomerate after he was informed that the claimant lives in a same sex relationship, and that her spouse is politically active.</p> <p>The prosecutor initiated criminal proceedings in the district court of Helsinki. Accordingly, the burden of proof in this case was on the claimant/prosecutor.</p>
Main reasoning/argumentation (max. 500 chars)	<p>The defendant argued that the claimant had given erroneous and misleading information at the job interview concerning her spouse's political activeness. In addition, the claimant had given a reporter working for a competing newspaper an interview about having been chosen as editor of Lapin Kansa before Pohjois-Suomen Media Oy announced the news in its stock exchange release as had been agreed. According to the defendant, the ground for terminating the contract of employment was lack of trust.</p> <p>The claimant maintained that she lost her job on the ground of her sexual orientation.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Landmark case, since it was the first case regarding discrimination on the grounds of sexual orientation.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The district court found the defendant not guilty of work discrimination. The Court of Appeal reversed the decision on district court and found the defendant guilty.</p> <p>The Supreme Court of Finland has granted leave of appeal in the case and the case will be heard in the Supreme Court. Thus the decision of the Court of Appeal is not legally binding.</p>
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Chapter 1.3.2., case 2

Case title	Discrimination on the grounds of sexual orientation – civil proceeding (Dnro S09/2057)
Decision date	18 March 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Court of Appeal of Helsinki (<i>Helsingin hovioikeus / Helsingfors hovrätt</i>)
Key facts of the case (max. 500 chars)	<p>In September 2008, the claimant was appointed editor-in-chief of a newspaper owned by Pohjois-Suomen Media Oy. On 1 October 2008, her contract was cancelled by the CEO of the media conglomerate after he was informed that the claimant lives in a same sex relationship, and that her spouse is politically active.</p> <p>The claimant initiated civil proceedings in the district court of Helsinki. Accordingly, the burden of proof in this case was on the defendant.</p> <p>(See above (case 1) for the same case tried in criminal proceeding)</p>
Main reasoning/argumentation (max. 500 chars)	<p>According to the CEO, the reason for cancelling the contract was lack of confidence. The editors-in-chief of provincial newspapers are expected to be absolutely unbiased and neutral. The claimant was asked about this in her job interview, and she had told that neither she nor her spouse is involved in politics. The CEO argued that the claimant's contract was cancelled, because she had not been honest in the interview about the political activism of her partner.</p> <p>The claimant argued that the real reason for the termination of the contract was the fact that she lives in a same sex relationship.</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Landmark case, since it was the first case regarding discrimination on the grounds of sexual orientation.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Pohjois-Suomen Media Oy was found guilty of discrimination and ordered to pay €40,000 in damages for wrongful termination of a contract of employment and €5,000 euros in compensation for discrimination on the grounds of sexual orientation (based on the Equal Treatment Act). The decision reversed an earlier decision by the District Court of Helsinki (<i>Helsingin käräjäoikeus / Helsingfors tingsrätt</i>) (dnro 08/32123) that had found the defendant not guilty. The Supreme Court of Finland did not grant leave of appeal in the case. The decision of the Court of Appeal is legally binding.

Chapter 1.3.2., case 3

Case title	Discrimination on the grounds of transsexuality (Dnro 10/44974)
Decision date	20 December 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	District Court of Helsinki (<i>Helsingin käräjäoikeus/Helsingfors tingsrätt</i>)
Key facts of the case (max. 500 chars)	In May 2009, the claimant was appointed as a Head of Division at the Financial Supervisory Authority. After the appointment the claimant announced that he would be changing his name and adopting the female gender which he perceived as his gender identity. Following this, the employer extended the application period for experts for the division in question, and some of the experts who had applied withdrew their applications. The claimant was then transferred to an advisor's post. In the autumn of 2009, a new recruitment process for the Head of Division was conducted, and the claimant was not chosen.

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Helsinki District Court ruled that the Financial Supervisory Authority had violated the non-discrimination provision in the case of a transsexual employee. The employer's actions in extending the application period for experts was ruled to be wholly in violation of the Act on Equality between Women and Men (<i>laki miesten ja naisten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och män</i>, Act no. 609/1986).</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>This was the first court ruling on discrimination against a transsexual employee on the basis of the Equality Act.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The employee was awarded €15,000 in damages as compensation for the discrimination.</p>

Chapter 3.1.2., Case 4

Case title	Asylum on the grounds of sexual orientation, KHO 2012:1
Decision date	13 January 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Supreme Administrative Court (<i>Korkein hallinto-oikeus/Högsta förvaltningsdomstolen</i>)
Key facts of the case (max. 500 chars)	The applicant is homosexual. In his country of origin, homosexuals face a risk of capital punishment. The applicant applied for asylum on the grounds of a well-founded fear of persecution as a member of a particular social group (homosexual individuals).
Main reasoning/argumentation (max. 500 chars)	The Supreme Administrative Court held that sexual orientation belongs to one's private life and is therefore protected as a human right. Although an individual had previously concealed his or her sexual identity in order to avoid any harmful consequences, he or she must not be expected to conceal it in the future, at least if his or her true sexual identity had already come to the knowledge of the authorities of his or her home state.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	An individual must not be expected to conceal his or her true sexual identity even if he or she avoids the risk of persecution through that.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The matter was referred to the Immigration Service in order to be reconsidered.

Chapter 6.1.2. case 5

Case title	Gay pride parade and gas attack (Dnro R 11/1836)
Decision date	4 May 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Court of Appeal of Helsinki (<i>Helsingin hovioikeus/Helsingfors hovrätt</i>)
Key facts of the case (max. 500 chars)	Three men who had taken part in a pepper spray and smoke flare attack against the Helsinki Pride parade in July 2010, had been given suspended prison sentences of four months by the Helsinki District Court in May 2011. In addition, they were ordered to pay the victims damages of about €30,000. The defendants were found guilty of 88 counts of assault, the possession of an object or substance applicable to the harming of another person, and 71 counts of violating the right to political action. A group of persons attacked at had appealed at the district court claiming that the punishment was too mild considering that the attack hit such a large group of people and was specifically targeted at persons belonging to sexual minorities. The Helsinki Court of Appeal imposed a suspended prison sentence of four months to the defendants. The three defendants
Main reasoning/argumentation (max. 500 chars)	The Court of Appeal states that the provision on grounds for increasing the punishment had been amended in June 2011 from covering national, racial or ethnic population to also religion, sexual orientation and disability. The court argues that before the amendment it was not clear whether the provision should be interpreted so as to cover sexual and gender minorities, and therefore the grounds for increasing the punishment were not applicable at the time of the crime.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	It was ruled that the provision on grounds for increasing the punishment was not applicable to sexual and gender minorities before the Criminal Code had been amended and clarified in June 2011.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

Chapter 7.1.2. case 6

Case title	Change of PIN number (KHO:2009:15)
Decision date	3 February 2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	Supreme Administrative Court (<i>Korkein hallinto-oikeus/Högsta förvaltningsdomstolen</i>)
Key facts of the case (max. 500 chars)	The Supreme Administrative Court of Finland upheld the decision of the local registry office whereby the office had refused to change the PIN of the male-to-female transsexual applicant to reflect her new (de jure and de facto) sex. The grounds for this decision was that the applicant was married, and her spouse did not give her consent for the change of PIN, in consequence of which their marriage would have been transformed into a registered partnership.
Main reasoning/argumentation (max. 500 chars)	Legislation provides that authorities shall officially confirm that a person belongs to the opposite sex than that recorded into the population register, provided that he/she is not married or in a registered partnership. Legislation also provides that, if the other spouse gives his/her consent to this, a marriage is transformed into a registered partnership and a registered partnership is transformed into a marriage, in which case being married or in a registered partnership is not an obstacle for having one's real sex legally recognised. However, same-sex marriage is not possible.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Consent of the spouse to transforming marriage into registered partnership and change of PIN.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Supreme Administrative Court of Finland upheld the decision of the local registry office

Chapter 7, footnote 38, case 7

Case title	N/A (Ref. No. 04/0253/3)
Decision date	27 August 2004
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Vaasan Hallinto-oikeus</i> /Vaasa Administrative Court
Key facts of the case (max. 500 chars)	The Cathedral Chapter of the Evangelical Lutheran Church of Finland had made a decision that the applicant was not eligible to be appointed a chaplain (assistant vicar), as she was publicly living in a same-sex relationship and had announced that she would officially register the relationship.
Main reasoning/argumentation (max. 500 chars)	The Constitution and the Equal Treatment Act provide for equality before the law and prohibit discrimination on the grounds of, inter alia, sexual orientation and “other reasons related to a person”. Same-sex relationship is to be considered to constitute an “other reason related to a person”, on the basis of which it is not possible to discriminate, considering inter alia that the contemporary Finnish society approves of same-sex relationships as is evident from the legislation regarding the right of same-sex couples to register their relationship (Act on Registered Partnerships). The decision of the Cathedral Chapter might have been justified had there been an applicable legal basis for it in the form of an exception to the applicability of non-discrimination norms. No such exception was however provided for e.g. by the Church Order (which lays down rules for appointing vicars and chaplains) or the Church Act.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The decision confirms that the Equal Treatment Act and the Constitution are applicable in a case involving sexual orientation discrimination in the Church; Discrimination on the basis of living in a same-sex relationship was considered an “other reason related to a person”, not sexual orientation discrimination as such.; (Implicitly:) The having of a particular sexual orientation was not considered to be a <i>bona fide</i> occupational requirement for the position of a chaplain.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Vaasa Administrative Court annulled the decision of the Cathedral Chapter.

Annex 2 – Statistics

Chapter 7, Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of name changes effected due to change of gender ⁶⁴	8	12	5	9	16	19	21	24						
Number of persons who changed their gender/sex in your country under the applicable legislation ⁶⁵	43	46	27	36	41	64	80	90			35	68	55	85

N.B. These statistics should not be taken at a face value because of reasons explained under heading 7 which compromise the validity of the statistics.

⁶⁴ According to Population Register Centre (correspondence in June 2014), there is no information available on the name changes since some names are gender neutral and names are not classified as being women's or men's names.

⁶⁵ According to Population Register Centre (correspondence in June 2014), the information on changed sex/gender has been introduced to the population system in 2010. This means that there are no information available prior this. The information given in the report 2010 had no reference to a source, so the NFP is not able to verify this information.

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment. When belonging to a gender is legally recognised, marriage will be converted, without any separate measures, into a registered partnership and registered partnership into marriage.

FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU									✓	No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case <i>Lydia Foy</i> (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice

PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ✕=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ⁶⁶	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	

⁶⁶ Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ⁶⁶	All areas of RED*		
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		
FI		✓			Covers employment and education.
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ⁶⁶	All areas of RED*		
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	9	7	11	20	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or <i>travaux préparatoires</i>
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to ‘gender identification’.
DE			✓	Constitutional amendment proposal by opposition (‘sexual identity’)
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to ‘other issues related to gender’.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			A draft bill proposes to explicitly cover transgender discrimination in equality legislation and the Government bill was presented to the Parliament in April 2014.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered ‘sex’ discrimination. The new ground ‘transgender identity or expression’ now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the ‘gender reassignment’ protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under “medical supervision” and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	10	3	15	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI	✓	✓	11 In May 2011, legislative changes to Chapter 6 Section 5 of the Criminal Code (<i>Rikoslaki/Strafflag</i> , Act no. 39/1889) on aggravating circumstances extended the possibility to use aggravating circumstances in sentencing in cases of racist crimes and crimes motivated by race, skin colour, birth status, national or ethnic origin, sexual orientation or disability or comparable basis. Furthermore, the provision on incitement to hatred covers sexual orientation after the abovementioned legislative change.
FR	✓	✓	

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
HU			LGBT people could fall under the category 'groups of society'. Penal Code was amended to include hate motivated crimes against 'certain groups of society'. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓ = applicable; positive development since 2008

Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification

Country Codes	Free movement ⁶⁷		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of ‘family member’ includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of ‘family member’ includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the ‘affective relationship’ be ‘duly attested’ remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU acquis, confirms the notion that a family member includes the de facto partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	

⁶⁷ In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement ⁶⁷		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities' discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried <i>de facto</i> partner, subject to conditions.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	8	15	8	13	8	12	

Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.