

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

Sweden

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Executive summary

Implementation of Employment Directive 2000/78/EC

The findings of the study lead to the conclusion that discrimination on the basis of sexual orientation still exists in practice in various forms.

The Employment Directive 2000/78/EC is implemented in Swedish law through the Discrimination Act (*Diskrimineringslagen*), which came into force 1 January 2009.¹ The grounds covered are sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.²

The Equality Ombudsman (*Diskrimineringsombudsmannen*) was established 1 January 2009, replacing the former four different ombudsmen offices. The Equality Ombudsman has the tasks to monitor compliance with the Discrimination Act and to investigate complaints of discrimination that violate the provisions of the Discrimination Act, and in so doing can represent the complainant in connection with settlements or, as a last resort, in court.

The Discrimination Act contains anti-discrimination provisions that are applicable in all areas of society for all discrimination grounds, except age. On 1 January 2013, the ban on age discrimination was broadened to apply in all areas covered by the Discrimination Act, except for military service and civilian service.³

The Discrimination Act also contains a right for non-profit organisations to bring an action on behalf of an individual in the same way as employee organisations are entitled to do.⁴

In the education sphere, there are provisions on active measures relating to sexual orientation. In July 2012, the Government appointed a commission to suggest how the requirements for active measures in the Discrimination Act can become a more effective means of preventing discrimination and achieve equal opportunities. The report will be submitted by 1 February 2014.

A penalty, compensation for discrimination (*Diskrimineringsersättning*), for infringements of the Discrimination Act, was introduced 2009 in the Discrimination Act to facilitate higher levels of compensation to victims of discrimination. Compensation for discrimination is designed both to compensate for the abuse represented by an infringement and to act as a deterrent against discrimination.⁵

¹ Sweden, The Discrimination Act , Swedish Code of Statutes 2008:567 (*Diskrimineringslag*, *SOU 2008:567*), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

² Sweden, The Discrimination Act , Swedish Code of Statutes 2008:567 (*Diskrimineringslag*, *SOU 2008:567*), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

³ Sweden, Government Bill (*Regeringens proposition*) An extended protection against age discrimination (*Ett utvidgat skydd mot åldersdiskriminering*), 2011/12:159, available at: www.regeringen.se/content/1/c6/19/49/60/85249a6b.pdf

⁴ Sweden, The Discrimination Act , Swedish Code of Statutes 2008:567 (*Diskrimineringslag*, *SOU 2008:567*), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

⁵ Sweden, The Discrimination Act , Swedish Code of Statutes 2008:567 (*Diskrimineringslag*, *SOU 2008:567*), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

The Discrimination Act also contains a right for non-profit organisations to bring an action on behalf of an individual in the same way as employee organisations are entitled to do.⁶ Complaints on the ground sexual orientation are reported in working life, health care, education, and goods and services. The Equality Ombudsman reports that complaints on the ground of sexual orientation have decreased. The reason can be a temporary decline but difficult to analyze. A positive trend though, is that key actors from the civil society are taking greater responsibility in dealing with issues related to sexual orientation.⁷

Freedom of movement

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

Asylum and subsidiary protection

Swedish law provides that persecution on the grounds of sexual orientation is a ground for obtaining refugee status. The definition of refugee covers non-state persecution, combined with state unwillingness, in difference or inability in fact to protect a person from non-state persecution. LGBT persons are accepted as family members in the context of asylum. LGBTI asylum seekers in Sweden continue to be subject to inconsistent and arbitrary decisions with regard to the granting of asylum. The Swedish government sent a letter of assignment to the migration Board stressing the need to focus on the situation of LGBT asylum seekers.

Family reunification

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

Freedom of assembly

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

⁶ Sweden, The Discrimination Act, Swedish Code of Statutes 2008:567

(*Diskrimineringslag*, SOU 2008:567), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

⁷ Sweden, The Equality Ombudsman (Diskrimineringsombudsmannen), Annual Report 2013 (Årsredovisning 2013), p. 14, available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

demonstration can be held by only one person.

The constitutional possibility to restrict the freedom of assembly has been used by the Parliament to enact the Public Order Act (*Ordningslagen*).⁸

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

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

An estimated 60,000 participants attended gay pride festival in Stockholm 2013. The Swedish newsagent giant Pressbyrå participated in a campaign to support LGBT rights by polling out the pink carpet for its LGBT consumer base in honour of the Pride Week by renaming one of its stores Homo Agency (*Homobyrå*).

Hate speech and criminal law

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

The provisions – in constitutional and criminal law – make it a crime to, in any way, disseminate a message that includes threats or disdain towards a group of people on ground of their, race, colour, nationality, ethnicity, faith or sexual orientation. The penalty is a maximum of two years in prison or fines. A serious crime – consisting of very threatening acts or widespread dissemination and attention – is subject to a minimum of six month in prison and a maximum penalty of four years imprisonment.

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

Unlawful discrimination is a criminal offence, which means that the burden of proof is upon the prosecutor and the level of certainty demanded by the courts in relation to evidence is high. In practice, this means that intentional discrimination can be very hard to prove.

At European level, a case from Sweden became the first ever decision by the European Court of Human Rights on hate speech in relation to sexual orientation and gender identity. The Court found that Sweden did not violate the right to freedom of expression of the applicants who had

⁸ Sweden, The Swedish Parliament (Riksdag) The Public Order Act (*Ordningslagen*), SFS 1993:1617, available at:

distributed leaflets containing allegations which were “serious and prejudicial” about LGBT people.

Transgender issues

Sweden have an autonomous ground that is equivalent to gender reassignment or gender identity and gender expression

From 1 January 2013, the requirement to be a Swedish citizen and married in order to undergo gender reassignment was abolished. Foreign judgments and decisions regarding gender reassignment will under certain circumstances be considered as valid in Sweden. The same requirements for sterilization under the Sterilization Act (*Steriliseringslagen*)⁹ shall apply whether the patient is Swedish or foreign national. The statues on castration are also abolished.¹⁰ In 2012, the Administrative Court of Appeals in Stockholm ruled that the sterilisation requirement breaches both the European Convention and the Swedish Constitution.

The Administrative Court¹¹ made a ruling¹² that stated that regardless of biological or legal gender/sex persons over 18 years have the right to determine their first name. This has facilitated for many transgender people to live according to their identity.

The Patent and Registration Office (*Patent- och Registreringsverket*) has also produced a list of gender-neutral names⁵⁵, which may be useful in situations when a name change is desired.

Miscellaneous

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

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

Good practices

In 2009, the National Board on Health and Welfare removed transgender as a diagnosed mental illness or behavioral disorder. Changes were made in the Swedish version of ICD-10 - "Classification of health problems and diseases 1987. It was in the corresponding classification as the National Board in 1979 removed the Diseases of homosexuality, which then was regarded as a major step forward for equal rights regardless of sexual orientation.⁷

The Swedish Parliament passed new legislation allowing same sex couples to marry and have

⁹ Sweden, The Sterilization Act 1975:580 (*Steriliseringslagen 1975:580*) available at: <https://lagen.nu/1975:580>

¹⁰ Sweden, The Government Bill 2011/12: 142 Gender Reassignment (*Regeringsproposition 2011/12:142 Ändrad Könstillhörighet*) available at: www.regeringen.se/sb/d/14013/a/190890

¹¹ (case 2893-0928, September 2009)

civil weddings. The law came into force on May 1st 2009. Civil unions granting same sex couples the same legal status as married couples have been allowed under Swedish law since 1999.⁸

The status of ‘intersex’ persons in Sweden

The anti-discrimination legislation of gender and gender identity discrimination include intersex persons, but still the status of intersex people’s human rights remains largely unaddressed in Sweden.

Debates around corrective operations performed on intersex babies are also starting to emerge. The debate has evolved around the suggestion to not perform these operations until the persons in question can participate in decision making about their bodies. All children born in Sweden, have a gender marker/identification as female or male recorded at the Tax Office (Skatteverket). With regard to the guidelines for the treatment of intersex children, their gender is recorded at a very young age based on a medical evaluation.

1 Implementation of Employment Directive 2000/78/EC

The Employment Directive 2000/78/EC is implemented in Swedish law through the Discrimination Act (*Diskrimineringslagen*), which came into force 1 January 2009.¹³ Chapter 1 section 1 of the Discrimination Act (*Diskrimineringslagen*)¹⁴ stipulates that the purpose of the Act is to combat discrimination based on sex, transgender identity or expression, disabilities, ethnicity, religion or other belief, sexual orientation, or age. The grounds of transgender identity or expression and age were introduced in 2009.¹⁵

The scope of the Discrimination Act goes beyond minimum EU equality standards, covering working life; the education system; labour market policy activities and employment services not under public contract; starting or running a business and professional recognition; membership in trade unions and employers' associations; goods, services and housing; public assemblies; health and medical care; social services; the social insurance system; unemployment insurance; state financial assistance for studies; national military service and civilian service; and public employment.¹⁶

For all the discrimination grounds, except age, the Discrimination Act contains anti-discrimination provisions that are applicable in all areas of society. On 1 January 2013, the Discrimination Act was amended so that the ban on age discrimination was broadened to apply in all areas covered by the Discrimination Act, except for military service and civilian service.¹⁷

The Equality Ombudsman (*Diskrimineringsombudsmannen*) was established 1 January 2009, replacing the former four different ombudsmen offices. The Equality Ombudsman has the tasks to monitor compliance with the Discrimination Act, to combat discrimination and promote equal rights and opportunities for all. As part of its mandate, the Equality Ombudsman can investigate complaints of discrimination that violate the provisions of the Discrimination Act, and can also represent the complainant in connection with settlements and can also chose to bring discrimination cases to court.

As part of the Equality Ombudsman's mandate as a supervisory authority, the Ombudsman can impose financial penalties on employers, education providers and business operators who refuse to provide such information about their activities as may be of relevance to the ombudsman's

¹³ Sweden, The Discrimination Act , Swedish Code of Statutes 2008:567

(*Diskrimineringslag, SOU 2008:567*), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

¹⁴ Sweden, The Discrimination Act (*Diskrimineringslag, 2008:567*), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf.

¹⁵ Sweden, The Discrimination Act , Swedish Code of Statutes 2008:567

(*Diskrimineringslag, SOU 2008:567*), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

¹⁶ Sweden, The Discrimination Act , Swedish Code of Statutes 2008:567

(*Diskrimineringslag, SOU 2008:567*), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

¹⁷Sweden, Government Bill (*Regeringens proposition*) An extended protection against age discrimination (*Ett utvidgat skydd mot åldersdiskriminering*), 2011/12:159, available at: www.regeringen.se/content/1/c6/19/49/60/85249a6b.pdf

supervisory duties, or refuse to provide information about the qualifications of the person or persons selected for a job interview, appointed to a post or admitted to an educational programme. The same applies to those who refuse to give the Ombudsman access to workplaces or other premises where activities are conducted or refuse to attend discussions with the Ombudsman.

A penalty, compensation for discrimination (*Diskrimineringsersättning*), for infringements of the Discrimination Act, has the aim to facilitate the provision of higher levels of compensation to victims of discrimination. Compensation for discrimination is designed both to compensate for the abuse represented by an infringement and to act as a deterrent against discrimination.¹⁸

The Discrimination Act also contains a right for non-profit organisations to bring an action on behalf of an individual in the same way as trade unions are entitled to do however, this right is subsidiary to the trade unions' rights to initiate proceedings.¹⁹

In Sweden, it's mainly the local anti-discrimination agencies (*Antidiskrimineringsbyråer*), that have exercised this right. The government proposed that from 2013, make permanent the local anti-discrimination agencies and raise funding to organizations that work to combat discrimination.²⁰

Trade unions can bring a claim of discrimination to a court on behalf of the individual according to Section 25 of the Employment Act and Chapter 4, Section 5 of the Labour Disputes Act.²¹ The Equality Ombudsman may initiate an action only if the trade union abstains from doing so.

In 2013, the Equality Ombudsman received a total of 1827 complaints of discrimination, which is an increase of 17 percent compared with 2012.²² The number of cases reported in 2013 concerning discrimination on the ground of sexual orientation, were 25 cases.²³ The number of cases on the ground of sexual orientation has decreased between 2010-2013.²⁴ In 2012 there were 41 reported cases on the ground of sexual orientation compared to 45 in 2011 and 44 in 2010.²⁵ The Equality Ombudsman explains that the decrease might be a temporary decline but difficult to analyze. A positive trend though, is that key actors from the civil society are taking greater responsibility in dealing with issues related to sexual orientation.²⁶

¹⁸ Sweden, The Discrimination Act, Swedish Code of Statutes 2008:567 (*Diskrimineringslag, SOU 2008:567*), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

¹⁹ Sweden,

²⁰ Sweden, Ordinance on state aid for activities to prevent and combat discrimination (*Förordningen om statligt stöd för verksamhet som förebygger och motverkar diskriminering*), (2002:989), available at: www.notisum.se/rnp/sls/lag/20020989.htm#P1

²¹ Sweden, The Labour Disputes Act, SFS 1974:371 (Lag om rättegången i arbetstvister, 1974:371), available at: www.notisum.se/rnp/sls/lag/19740371.HTM

²² Sweden, The Equality Ombudsman (Diskrimineringsombudsmannen), Annual Report 2013 (Årsredovisning 2013), p. 14, available at: www.do.se/Documents/rapporter/%C3%85rsredovisning2013DO.pdf

²³ Sweden, The Equality Ombudsman (Diskrimineringsombudsmannen), Annual Report 2013 (Årsredovisning 2013), p. 25, available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

²⁴ Sweden, The Equality Ombudsman (Diskrimineringsombudsmannen), Annual Report 2013 (Årsredovisning 2013), p. 14, available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

²⁵ Sweden, The Equality Ombudsman (Diskrimineringsombudsmannen), Annual Report 2013 (Årsredovisning 2013), p. 14, available at: www.do.se/Documents/rapporter/%C3%85rsredovisning2013DO.pdf

²⁶ Sweden, The Equality Ombudsman (Diskrimineringsombudsmannen), Annual Report 2013 (Årsredovisning 2013), p. 25, available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

As previous years, complaints regarding discrimination based on gender identity or gender expression were very few and the Equality Ombudsman received only 19 complaints in 2013 regarding discrimination based on gender identity or gender expression compared to 16 cases in 2012 and 27 cases in 2011.²⁷ Besides health care complaints were mainly made in the employment area, goods and services, and education.²⁸

During 2013, the Equality Ombudsman brought 17 cases to court, which is a decrease compared to 2012 (21 cases) and 2011 (50 cases). The Equality Ombudsman reached 7 compared to 27 settlements in 2012. Court decisions were given in a total of 7 cases during 2013, including four in the Labor Court and 3 in the general court. Only three court decisions were made on the ground of sexual orientation.²⁹

In July 2012, the Government appointed a commission to suggest how the requirements for active measures in the Discrimination Act can become a more effective means of preventing discrimination and achieve equal opportunities. The report will be submitted by 1 February 2014.³⁰

1.1 Employment

The prohibition of discrimination in employment on grounds of sexual Orientation can be found in the Discrimination Act.³¹

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

During 2013, the Equality Ombudsman received 11 complaints from individuals based on the ground sexual orientation in employment.³²

Goods and services

The Discrimination Act (*Diskrimineringslagen*) provides prohibition of Discrimination in goods and services.³³ These provisions apply to anyone providing goods, services and housing to the public. This means that private persons are subjected to these

²⁷ Sweden, The Equality Ombudsman (*Diskrimineringsombudsmannen*), Annual Report 2013 (*Årsredovisning 2013*), p. 14, available at: www.do.se/Documents/rapporter/%C3%85rsredovisning2013DO.pdf

²⁸ Sweden, The Equality Ombudsman (*Diskrimineringsombudsmannen*), Annual Report 2013 (*Årsredovisning 2013*), p. 19, available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

²⁹ Sweden, The Equality Ombudsman (*Diskrimineringsombudsmannen*), Annual Report 2013 (*Årsredovisning 2013*), p. 76, available at: www.do.se/Documents/rapporter/%C3%85rsredovisning2013DO.pdf

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³¹ Sweden, The Discrimination Act (*Diskrimineringslag*, 2008:567), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

³² Sweden, The National Board for Youth Affairs (*Ungdomsstyrelsen*), Hon, Hen, Han (2010), p. 13, available at: www.mucf.se/sites/default/files/publikationer_uploads/hon-hen-han.pdf

³³ Sweden, The Discrimination Act (*Diskrimineringslag*, 2008:567), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

prohibitive rules even though with some restrictions linked to the protection of private life.³⁴

Discrimination against employees or job seekers is prohibited on the grounds among others of sexual orientation in job placement services offered by public employment offices or other organisations or parties offering employment services and in connection with other measures included in labour market policy activities, the setting up or running of business operations, in connection with provision of goods, services or housing, in services provided by the social services including social insurance and related benefits systems and the unemployment insurance system, the health and medical care services and with regard to student aid.³⁵

Moreover, discrimination prohibitions related to public meetings and public events, compulsory military and compulsory civilian services, public appointments and public assignments are not at present covered by any specific prohibitive statutory rules on non-discrimination based on sexual orientation. However, the general constitutional rule requiring all public authorities to observe equality before law and behave objectively and impartially is applicable according to the Instrument of Government (*Regeringsformen*) Chapter 1, para. 9).³⁶

Case Law

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

In February 2011, the Equality Ombudsman reached a settlement with a restaurant in Växjö. A man visited a restaurant in Växjö with his boyfriend. The man was unhappy with his food and did not want to pay and complained to the waitress who referred him to the cook. The cook got angry and yelled so loud that everyone there could hear it: "You fucking gay!" The Equality Ombudsman sued the restaurant for discrimination on the ground of sexual orientation. During the oral preparatory hearing in Växjö district court, the parties agreed on a settlement that gave the man 5,000 SEK.³⁷

The Stockholm District Court made a ruling that a medical centre subjected a lesbian woman to discrimination on the ground of sexual orientation. The woman was refused medical examination before she and her partner prepared to become pregnant. The Court stated that by referring the woman to a specialist clinic was in reality a rejection of the woman from the health centre. The woman contacted the health centre in Stockholm to make an appointment for medical

³⁴ Sweden,

³⁵ Sweden,

³⁶ Sweden

³⁷ Sweden, Settlement, Case number: Homo 2008/516, <http://www.do.se/sv/Om-DO/Stamningar-och-forlikningar/Stamning-Vaxjokrog/> 2011-02-24.

examination, which is necessary before a couple can be referred to a fertility unit for insemination. However, the reception nurse did not give her an appointment, and referred her instead to the special reception for lesbian and bisexual women. The woman insisted, however, to get an appointment at the health centre because she had no need for a specialist and the examination needed is a prerequisite for homosexual and heterosexual women. The Stockholm District Court ruled that the County Council should pay 15,000 kronor in discrimination compensation to the woman.³⁸

In 2013, the Equality Ombudsman brought a case against a County Council that differentiated costs for insemination treatments. The County Council charged 3,000 SEK from lesbian woman for two insemination treatments while a heterosexual woman was charged only 300 SEK per trial for the same treatment. The Equality Ombudsman demanded that the County Council should pay 100 000 SEK in discriminatory compensation to the lesbian woman. The case is still on going.³⁹

1.2 Anti-discrimination clauses in procurement contracts

The Ordinance on Anti-Discrimination Clauses in Procurement Contracts⁴⁰, which is in force since 1 July 2006, applies to some 30 state agencies. It is assumed that these regulations will counteract discrimination by a supplier in the performance of works or service contracts in Sweden. Thus, the Ordinance sets out certain requirements for how anti-discrimination clause should be worded in such contracts. The agencies are furthermore obliged to attach a sanction to the clauses in question.

Public procurement in Sweden is decentralised. Some 290 local government entities (responsible for primary and secondary school education, social services, water and sanitation, etc.) and 20 regions/counties (responsible for health care and public transport) conduct public procurement. More than 300 government agencies enjoy a high degree of operational autonomy from the ministries and have conducted their own public procurement. Legislation on public procurement in Sweden is based on EU Directives. All public procurement is regulated. In 2009, a National Procurement Assistance and Development Department (*Upphandlingsstödet*) was established at the Legal, Financial and Administrative Services Agency (*Kammarkollegiet*). In 2010, the Government ordered the Swedish Agency for Public Management (*Statskontoret*), which analyses central government activities and agencies in terms of efficiency and provides documentation for review and rationalisation, to review the organisational structure of public procurement assistance and services.

The Inquiry's mission was to propose how procurement assistance should be coordinated in order to increase competence, availability, consistency, and visibility for procurement market participants.

³⁸ Sweden, Case number: 2009/321, [available at: www.do.se/sv/Press/Pressmeddelanden-och-aktuellt/2011/Dom-i-Stockholms-tingsratt-Vardcentral-diskriminerade-lesbisk-kvinna/](http://www.do.se/sv/Press/Pressmeddelanden-och-aktuellt/2011/Dom-i-Stockholms-tingsratt-Vardcentral-diskriminerade-lesbisk-kvinna/)

³⁹ Sweden, The Equality Ombudsman (*Diskrimineringsombudsmannen*), Annual Report 2013 (*Årsredovisning 2013*), p. 76, available at: www.do.se/Documents/rapporter/%C3%85rsredovisning2013DO.pdf

⁴⁰ Sweden, The Ordinance on Anti-Discrimination Clauses in Procurement Contracts (2006:260)

Local and regional government can choose to use framework agreements provided by SKL Kommentus (a central purchasing body owned the Swedish Association of Local Authorities and Regions) and central government agencies can use framework agreements provided by the National Procurement Services (a central purchasing body that is a department of the Legal, Financial and Administrative Services Agency).

1.3 Education

Children are protected against harassment at school, including sexual harassment according to Chapter 2 Section 7 of the Discrimination Act (*Diskrimineringslagen*).⁴¹ All schools are required to hinder and prevent harassment and degrading behaviour according to Chapter 6 Section 10 of the Education Act (*Skollagen*).⁴² Degrading behaviour is under the Education Act (*Skollagen*) conduct that violates a child's or student's dignity.⁴³ Discrimination on the grounds of sexual orientation is prohibited in education, health and social services according to Chapter 2 Section 5 and 13 of the Discrimination Act (*Diskrimineringslagen*).⁴⁴ This also entails an obligation to prevent and hinder harassment. The definition of harassment is given in Chapter 1 section 4 point 3 of the Discrimination Act (*Diskrimineringslagen*) as– “conduct that violates a person’s dignity and that is associated with one of the grounds of discrimination.”⁴⁵

The Discrimination Act (*Diskrimineringslagen*)⁴⁶ stipulates that the governing boards of the schools have the responsibility for compliance with the Act. In case of violations, the governing boards will be liable to damages. In other words, children and pupils are guaranteed financial compensation for violations of the statutory provisions. Moreover, the Discrimination Act⁴⁷ requires schools to adopt equal treatment plans comprising specific measures for promoting the equal rights for children and pupils including LGBT persons. In addition, schools must prevent the exposure of children and pupils to harassment and other demeaning treatment.⁴⁸

The Equality Ombudsman (*Diskrimineringsombudsmannen, DO*)⁴⁹ works together with the Child and School Student Representative (*Barn och elevombudet, BEO*)⁵⁰, which is part of the Swedish

⁴¹ Sweden, The Discrimination Act (*Diskrimineringslag* (2008:567), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

⁴² Sweden, Ministry of Education and Research (*Utbildningsdepartementet*) The Education Act, SFS 2010:800 (*Skollag SFS 2010:800*), available at: www.notisum.se/rnp/sls/fakta/a0100800.htm.

⁴³ Sweden, ny skollag (2010:800)

⁴⁴ Sweden, The Discrimination Act (*Diskrimineringslag* (2008:567), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

⁴⁵ Sweden, The Discrimination Act (*Diskrimineringslag* (2008:567), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

⁴⁶ Sweden, The Discrimination Act (*Diskrimineringslag*) (2008), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

⁴⁷ Sweden, The Discrimination Act (*Diskrimineringslag*, 2008:567), available at: www.regeringen.se/content/1/c6/11/19/86/4a2b4634.pdf

⁴⁸ Sweden, Strategin

⁴⁹ Sweden, The Equality Ombudsman (*Diskrimineringsombudsmannen, DO*), available: www.do.se.

⁵⁰ Sweden, The Child and School Student Representative (*Barn och elevombudet, BEO*), available at: www.skolinspektionen.se/sv/beo/

Schools Inspectorate (*Skolinspektionen*)⁵¹ to counteract degrading treatment, discrimination, and harassment of children and students. The Swedish Schools Inspectorate (*Skolinspektionen*), BEO has supervision over the section of the Education Act (*Skollagen*)⁵², which deals with degrading treatment. One important task of the BEO is to investigate complaints concerning degrading treatment and represent children and students in court. The Child and School Student Representative (*Barn och elevombudet, BEO*) may also call for damages on behalf of a student who has been subjected to degrading treatment.⁵³

Complaints made to the Equality Ombudsman concerning discrimination grounds of sexual orientation and gender identity or gender expression are very few in number.⁵⁴ The Equality Ombudsman monitors the obligation of university institutions to actively promote the equal rights and opportunities of all students and to prevent discrimination on the grounds of sexual orientation.

The National Youth Board (*Ungdomsstyrelsen*) changed its name in March 2014, to the Authority for Youth and Civil Society Affairs (*Myndigheten för ungdoms- och civilsamhällesfrågor*). The Government commissioned the authority to consult with the National Agency for school Affairs (*Statens skolverk*) to take action to increase the school's LGBT skills in order to create an open and inclusive school environment. According to the to the Authority for Youth and Civil Society Affairs (*Myndigheten för ungdoms- och civilsamhällesfrågor*) young LGBT people are exposed to a greater extent than other young people to bullying, intimidation and violence. They often feel invisible, humiliated and discriminated against. The school and home environments are often perceived as unsafe locations for these young people. Young LGBT people have also indicated a greater degree than other young people that they are experiencing insecurity, lack of emotional support and lack of trust in other people. All factors contribute to both physical and mental ill health. The Government recommended that the knowledge gathered by the Authority for Youth and Civil Society Affairs (*Myndigheten för ungdoms- och civilsamhällesfrågor*) about the commitment to strengthen the school's core values should be utilized. As part of the LGBT strategy (2014-2016), the Authority has been tasked, in consultation with the National Agency for school Affairs (*Statens skolverk*) to take action to increase the school's LGBT skills and to create an open and inclusive environment in the school.⁵⁵ The mission also requires special attention to intolerance and violence in close relationships and families as contexts that can reinforce young LGBT people's vulnerability and insecurity. In 2014, the cost of carrying out the assignment be 1 000 000 SEK.⁵⁶

The Government commissioned the National School Agency (*Statens Skolverk*), to implement a renewed focus on discrimination and other degrading treatment in school, preschool and

⁵¹ Sweden, The Swedish Schools Inspectorate (*Skolinspektionen*), available at: www.skolinspektionen.se/.

⁵² Sweden, The Education Act 2010:800 (*Skollag 2010:800*), available at: www.riksdagen.se/sv/DokumentLagar/Lagar/Svenskforfattningssamling/Skollag-2010800_sfs-2010-800/.

⁵³ Sweden, The Child and School Student Representative (*Barn och elevombudet, BEO*), available at: www.skolinspektionen.se/sv/beo/

⁵⁴ Sweden, The Equality Ombudsman (*Diskrimineringsombudsmannen*), Annual Report 2012 (*Årsredovisning 2012*), p. 76, available at: www.do.se

⁵⁵ Sweden,

⁵⁶ Sweden, The Swedish Government Bill "Focusing on young people - a policy of good living conditions, power and influence (*Med fokus på unga - en politik för goda levnadsvillkor, makt och inflytande*) 2013/14: 191, p. 113, available at:

kindergarten. The Government funded this mission with 10 million SEK each year between 2011-2014. The commission will be presented to Ministry of Education by 20 January 2015.⁵⁷

To gain further understanding of how the work against bullying can be enhanced based on the children's own perspective, the government commissioned the Children's Ombudsman (*Barnombudsmannen*) to obtain children's and young people's views and experiences of abusive behaviour and harassment. The Inquiry will be submitted on April 1, 2014.⁵⁸

In May, the Södra Latin high school in central Stockholm chose to open a third set of toilets for trans pupils, or those not wishing to identify as either male or female. The idea emanated from the student council, and was validated by school authorities. Newspaper Dagens Nyheter reported this was the first school to do this in the country.

In 2013, a student reported a school to the Discrimination Ombudsman for their inaction against homophobic bullying. The case remained open by the end of the year.

⁵⁷ Sweden, Budget Bill Integration and Equality (Integration och Jämställdhet) (2014), p. 41, available at: www.sou.gov.se/content/1/c6/22/37/09/a1839207.pdf

⁵⁸ Sweden, Budget Bill Integration and Equality (Integration och Jämställdhet) (2014), p. 41, available at: <http://www.sou.gov.se/content/1/c6/22/37/09/a1839207.pdf>

2 Freedom of movement

According to the Aliens Act (*Utlänningslagen*)⁵⁹ Chapter 3(a), section 2 “a family member of an EEA national” means an alien who accompanies an EEA national to Sweden or joins an EEA national in Sweden and who is the spouse or cohabiting partner of the EEA national, a direct descendant of the EEA national or of his or her spouse or cohabiting partner, if the descendant is dependent on either of them for means of support or is under 21 years of age or a direct ascendant of the EEA national or of his or her spouse or cohabiting partner, if the relative is dependent on either of them for means of support.”

Sweden adopted 1 May 2009, new rules concerning marriages through changes in the Marriage Code. The provisions of the Marriage Code are applied in the same manner, regardless of whether the spouses are of different sexes or the same sex. The Registered Partnership Act⁶⁰ ceased to apply at the end of April 2009.⁶¹ On 22 October 2009, the assembly of the Church of Sweden, voted strongly in favour of giving its blessing to homosexual couples, including the use of the term for marriage: *äktenskap* ("matrimony"). The new rules were introduced on 1 November 2009.⁶²

In Sweden, the Marriage code (*Äktenskapsbalken*)⁶³ and other statutes involving spouses are gender-neutral. The Registered Partnership Act (*Lag om registrerat partnerskap*)⁶⁴ ceased to apply at the end of April 2009. This means that it is not possible to register a new partnership. Instead, it is now stated in Chapter 1, Section 1 of the Marriage Code (*Äktenskapsbalken*)⁶⁵ that two people entering marriage with each other become spouses.⁶⁶ Thus, same-sex couples can enter into marriage on the same terms as couples of different sexes. The provisions of the Marriage Code are applied in the same manner, regardless of whether the spouses are of different sexes or the same sex. Registered partnership was introduced in 1995. The law gave same-sex couples entering a registered partnership most of the rights and obligations that married couples have. In 2005, registered partners had attained almost the same rights and obligations as married couples. The possibility for registered partners of joint parenthood had been introduced in 2003. The law on registered partnership was repealed in 2009, when the Swedish marital law became gender neutral. On 1 September 2009, the Church of Sweden (*Svenska Kyrkan*) decided that they would officiate marriages between same-sex couples.

⁵⁹ Sweden, The Aliens Act, SFS 2005:716 (*Utlänningslagen SFS 2005:716*), available at: www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Utlanningslag-2005716_sfs-2005-716/

⁶⁰ Sweden, Registered Partnership Act, SFS 1994:1117 (*Lag om registrerat partnerskap, 1994:1117*), available at: www.notisum.se/rnp/sls/lag/19941117.htm

⁶¹ Sweden, The Aliens Act, SFS 2005:716 (*Utlänningslagen SFS 2005:716*), available at: www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Utlanningslag-2005716_sfs-2005-716/

⁶² Sweden, 17:30 (2009-10-22). "Kyrkomötet öppnade för enkönade äktenskap". DN.SE, available at: www.dn.se/nyheter/sverige/kyrkomotet-oppnade-for-enkonade-aktenskap/

⁶³ Sweden, The marriage Act (*Äktenskapsbalk 1987:230*), amendments SFS 2009:253, 2 April 2009, available at: www.lagboken.se/files/SFS/2009/090253.PDF <http://www.lagboken.se/files/SFS/2009/090253.PDF>

⁶⁴ Sweden, The Registered Partnership Act (*Lag om registrerat partnerskap*), available at: www.notisum.se/rnp/sls/lag/19941117.HTM

⁶⁵ Sweden, The marriage Act (*Äktenskapsbalk 1987:230*), amendments SFS 2009:253, 2 April 2009, available at: www.lagboken.se/files/SFS/2009/090253.PDF <http://www.lagboken.se/files/SFS/2009/090253.PDF>

⁶⁶ Sweden, The marriage Act (*Äktenskapsbalk 1987:230*), amendments SFS 2009:253, 2 April 2009, available at: www.lagboken.se/files/SFS/2009/090253.PDF <http://www.lagboken.se/files/SFS/2009/090253.PDF>

There is no minimum duration of marriage. A third-national spouse, who wants to live with a Swedish national in Sweden, must have steadily resided with the spouse to be granted a permanent residence permit pursuant to Chapter 5 Section 3a of the Aliens Act (*Utlänningslagen*). If the spouses have not been steadily co-habiting, a temporary permit can be granted pursuant to Chapter 5 Section 3, point 1 the Aliens Act (*Utlänningslagen*). This is called delayed migration trial (*uppskjuten invandringsprövning*). The temporarily residence permit is valid for two years.⁶⁷

The term “cohabiting partner” means those who are living together in a steady relationship and share the same household according to the Cohabiting Partners Act (*Sambolagen*) Section 1 paragraph 1.⁶⁸ It includes same sex partners (Cohabiting Partners Act section 1 paragraph 3). Thus, there is full equality of treatment of same sex spouses and cohabiting partners with different sex spouses and cohabiting partners. Accordingly, in Sweden same sex partners can be legally married which enables same sex partners to benefit from freedom of movement in other member states.

If a third-country national would like to bring a third country national spouse, and they have not been steadily co-habiting, then a temporary permit might be granted according to Chapter 5 Section 3, point 1, of the Aliens Act (*Utlänningslagen*). The same applies to a permit granted pursuant to Chapter 5 Section 3a the Aliens Act (*Utlänningslagen*) to someone who intends to marry or enter into a consensual relationship with someone who lives in Sweden. This is called delayed migration trial (*uppskjuten invandringsprövning*). The temporarily residence permit is for two years.⁶⁹

If the relationship continues after two years, the foreigner can apply for a permanent residence permit on the grounds of continued ties. Making a foreigner live in Sweden with a probationary period is an exception to what normally applies for migration to Sweden. The main rule in the Aliens Act is that a person who is approved for residence receives a permanent residence permit. The two-year rule is actually more of a three-year rule. After two years with a temporary residence permit in Sweden, it is possible to apply for a permanent residence permit on the grounds of ties, if the relationship is enduring. The relationship must, however, also endure when the Swedish Migration Board examines the case, which, because of waiting times, is very likely to take place one year later.

Accordingly, Sweden grants entry and residence rights to same sex spouses of an EU citizen.⁷⁰ This right is also granted the same-sex registered partner of an EU citizen. But if the spouses are unmarried and not registered partners, then the right to entry and residence in Sweden is not granted just on the basis of having a relationship.

⁶⁷ Sweden, Stronger protection against forced marriages and child marriages, SOU 2012:35 (*Stärkt skydd mot tvångsäktenskap och barnäktenskap*, SOU 2012:35), p. 383, available at: www.regeringen.se/content/1/c6/19/35/67/55cbc8d1.pdf.

⁶⁸ Sweden, Cohabiting Partners Act (Sambolagen) SFS 2003:376, available at: www.notisum.se/rnp/sls/lag/20030376.HTM

⁶⁹ Sweden, Stronger protection against forced marriages and child marriages, SOU 2012:35 (*Stärkt skydd mot tvångsäktenskap och barnäktenskap*, SOU 2012:35), p. 383, available at: www.regeringen.se/content/1/c6/19/35/67/55cbc8d1.pdf.

⁷⁰ Sweden, The Swedish Government (Regeringen), Marriage for same-sex couples - Marriage Issues (*Äktenskap för par med samma kön – Vigselsfrågor*) (SOU 2007:17), available at: www.regeringen.se/sb/d/8586/a/79062

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

3 Asylum and subsidiary protection

According to the Aliens Act (*Utlännings*)⁷¹ section 4, paragraph 1, “‘refugee’ means an alien who is outside the country of the alien’s nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country. This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these.”

The express reference to persecution on the grounds of sexual orientation was added in 2005.⁷² Sexual orientation covers homosexual or bisexual orientation. Transsexuals and more generally “trans persons” are stated in the *travaux préparatoires*³¹ to fall within the term “gender”, meaning that persecution of a person because they are a transsexual can entitle the person to refugee status, assuming the other criteria in the section are fulfilled. LGTB partners are accepted as family members in the context of asylum.

A founded fear of persecution due to sexual orientation and gender identity are included in the Aliens Act (*Utlänningslagen*) criteria for refugee status. This is whether it's the home country authorities underlying risk or if the authorities cannot be assumed to offer protection against persecution by private individuals.⁷³

This will be the case only where there is, in practice, a likelihood of prosecution, or persecution of a different form, which is attributable to the LGBT person’s sexual orientation or gender. Having said this, the position taken by the Swedish parliamentary committee in the debates on the adoption of the legislative amendment made clear that a person who has lived openly in Sweden with a homosexual or bisexual orientation couldn’t be expected to conceal this when he or she is returned to their country of origin. Thus, if a person lives openly as a homosexual or bisexual and there is a risk of prosecution for this, then he or she should not be returned.³²

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

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

The Migration Board has established a special procedural rules for handling LGBT matters, which implies the involvement of specialists who have undergone a customized

⁷¹ Sweden, The Aliens Act 2005:716 (*Utlänningslagen 2005:716*), available at (in english): www.regeringen.se/content/1/c6/06/61/22/bfb61014.pdf

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⁷³ Sweden,

professional development programs. Furthermore, training in norm critique with asylum legal specialization has been introduced as a compulsory course for new employees. A review and analysis has been done by the decided of asylum applications (1 January 2012 even February 1, 2013) on Uganda where LGBT reasons invoked.

Sweden has been known for its generous and progressive laws on asylum status for LGBT persons seeking protection. Nevertheless, the situation on the ground for those seeking asylum is not always easy. Malmö – Sanctuary for people without papers (Malmö Fristad för Papperslösa) says that there are restrictive Swedish migration and asylum policies, which force LGBT people to hide to avoid deportation. This in turn means having to live without social and political rights in Sweden. The Sanctuary states that many asylum seekers whom it meets at schools, welfare institutions, in organisations and sport clubs, or at home among neighbours and friends complains about the difficulties and complexity of the laws. The Sanctuary states that the “political context, the intricate jurisprudence and the routines at the Migration Board are all complicated” and that “even jurists who are familiar with the law and the difficult language often find themselves frustrated with the way in which the authorities argue in their assessments of asylum applications.”⁷⁴

The Migration Board has made information available to the public and those seeking asylum. It’s website contains information and instruction on the asylum process in English, Swedish, Albanian, Arabic, Bosnian, Croatian, Serbian, Dari, French, Kurmandji, Mongolian, Pashto, Romani, Persian, Russian and Tigrinya. ⁷⁵ There is also a special link specifically for LGBT issues. The information about asylum for LGBT applicants is that they have the possibility to ask for a specific gender of the interpreter, case manager, and the public counselor.

RFSL refugee officers are in contact with around 50 to 60 asylum seekers each year seeking asylum on the grounds of gender identity or sexual orientation. The persons RFSL come in contact with need legal advice and personal counseling.

RFSL has criticized the Swedish asylum policies for LGBTI asylum seekers for their inconsistency. In July, RFSL published a report about migration courts’ decisions in LGB (TI)-related asylum claims from Ugandan and Nigerian nationals. The NGO reported the migration authorities’ guidelines were “inconsistent” and “unsafe”. Over the period 2010-2013, the courts only approved 3 out of 44 applications lodged by LGBTI Nigerians, and 8 out of 58 applications from LGBTI Ugandans. RFSL called for a reform of asylum guidelines and legislation. It also reported increasing numbers of LGBTI asylum-seekers seeking assistance, now numbering 100-120 cases per year.

Two Ugandan men married one another in a church in January. Among others, Minister for EU Affairs Birgitta Ohlsson attended the wedding. However, while one of the men had previously been granted asylum, his husband learned that his request for asylum had been denied. LGBTI NGO Riksförbundet för homosexuella, bisexuella och transpersoners rättigheter (RFSL)

⁷⁴ Sweden, Malmö Sanctuary for People without Papers (Malmö Fristad för Papperslösa). Available at: www.malmofristad.se/undersidor/english.html

⁷⁵ Sweden, Considering your Asylum Application. Migration Board Website. Available at: www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/If-you-have-sought-protection-or-asylum-/Considering-your-application.html

commented that this case went to show that the Swedish Migration Board had yet to train its staff properly when dealing with LGBTI cases. The second man saw his asylum request granted later that month.⁷⁶

An applicant alleged that his deportation to Iraq would involve a violation of Article 3 of the Convention. On 13 July 2010 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused the applicant leave to appeal. Also, contrary to what the Migration Court had found, the applicant maintained that he had left a reasonable explanation as to why he had not invoked his homosexual relationship earlier in the asylum proceedings and that, consequently, he should be given the benefit of the doubt in regard to this claim.

As regards the applicant's claim that he had had a relationship with another man, the Government, while not underestimating the concerns that may legitimately be expressed with respect to the current situation of homosexuals in Iraq, pointed out that the applicant had expressed that the relationship had been conducted in secrecy and that he intended to stay with his wife and children. Thus, he had no intention to publicly demonstrate his sexual orientation upon return.

Turning to the applicant's statement that he had had a sexual relationship with another man and that, as a consequence, the Mujahedin was looking for him in 2009 and that they had killed his partner, the Court is aware of the very difficult situation for real or perceived homosexuals in Iraq and that these difficulties are present also in the Kurdistan Region. It notes, however, that the applicant has expressed the intention of living with his wife and children. More importantly, the Court has regard to the fact that, in the domestic proceedings, the applicant did not make this claim until he appealed against the Migration Board's negative decision on his asylum application, more than one year after his arrival in Sweden. Moreover, no mention of the relationship in question was made in the present proceedings before he replied to the Government's observations, almost a year and a half after lodging the application to the Court. In this connection, it is noteworthy that, in that application, he stated that there were threats against him emanating from Al-Tawahid and Al-Jihad, but did not even mention the Mujahedin. The Court agrees with the Migration Court that the applicant did not give a reasonable explanation for the delay in making this claim in the domestic proceedings. Having regard to all the circumstances, including the similar delay in the present proceedings, the Court considers that the applicant's claim concerning the homosexual relationship is not credible.⁷⁷

⁷⁶ ILGA-Europé, p. 160, available at: <https://dl.dropboxusercontent.com/u/15245131/Annual%20Review%202014%20web%20version.pdf>

⁷⁷ The European Court of Human Rights, Case of M.K.N v. Sweden, (Application no. 72413/10), Decision 27 June 2013, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-121572>

4 Family reunification

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

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

The rules on international adoption by same sex couples were the subject of considerable debate in the last few years. The end result was that, as far as Swedish law is concerned, same sex couples are entitled to adopt on the same basis as heterosexual couples. The granting authority in the place of adoption may, however, not accept same sex couples as adopters.⁷⁸

The Swedish legal practise concerning family reunification includes civil partnership, same-sex marriages and cohabitation abroad. The rules regarding family reunification (although regulated in different ways) is the same for everyone residing in or with a residence permit to the country. If the spouse has a residence permit or is residing in the country then the partner as the main rule is entitled to a residence permit. Since the rules for residence permit due to family reunification in Sweden are the same regardless of the nationality of the reference person no distinction can be made between family reunification regarding EU and non-EU nationals. According to the Directive on family reunification which has been implemented by Sweden it is an obligation to grant a residence permit to a spouse as well as unmarried, underage children to the reference person or to the spouse. In Sweden a registered partner or a cohabiting partner (when the couple has lived together abroad) is to be treated in the same way as a married couple. The possibility to attain a residence permit is available regardless of whether it is a case of family reunification or a newly established relationship. The only difference is that applicants who intend to get married or to cohabit are not covered by the directive on the right to family reunification and therefore do not have the same strongly established right to get a residence permit but instead can be granted

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a residence permit. In these cases of new relationships an examination is regularly carried out to see if the relationship is serious.

The Swedish legislative system concerning family reunification includes same-sex marriages and cohabitation abroad. To be able to benefit from family reunification due to cohabitation the couple must have lived together abroad. Sweden makes no difference as to whether the relation is formalised through marriage or whether it is between different or the same sex an alien who is a In Sweden, cohabitation is defined as two persons permanently living together in a relationship and sharing the same household.

5 Freedom of assembly

Freedom of Assembly is constitutionally protected in the 1974 Instrument of Government (IG), Chapter 2 para 1, 12 and 14. The basic constitutional rule is that any meeting of persons has constitutional protection, if it has political, educational or cultural content. No sharp distinction is drawn between a meeting (or an assembly) and a demonstration, even though the latter is characterized by its expression of a particular point of view (public or private) and that a demonstration can be held by only one person. It is important to note that the constitutional provisions do not make the character of the event a factor in determining whether it has constitutional protection or not. This means that demonstrations such as “Pride-festivals” have constitutional protection. Ch 2 para 12 of the IG stipulates that the right to assembly and demonstration can be restricted by law. This means that only the Parliament has the power to regulate the exercise of these rights. There are certain exceptions to this rule, as local authorities in situations of crisis can prohibit all meetings in public places due to the dangers to life and security of individuals (*i.e.* in the case of a nuclear accident, local authorities around the nuclear plant can ban being outdoors for safety reasons). These exceptions have so far never been used in practice.

The paragraph provides that any restriction on the right to assembly must be acceptable in a democratic society and necessary in relation to the goals of that restriction. It must not be based only on political, religious, cultural or such convictions and it may not lead to a threat to the formation of public opinion. In practice, the most important of these constitutional limits on regulating the freedom of assembly are the demand that the Parliament should be involved and the principle of proportionality expressed by the test of necessity. In Ch 2 para 14 IG, further limits on the constitutional competence to regulate the freedom of assembly are laid down. A restriction of that right can only be made for certain purposes: to secure order and security at the gathering, in regard of traffic, national security and to counter epidemics. The most important part of this provision is the way the power to regulate for protection of order and security is reduced to taking into account only such considerations *at the gathering*. This means that the restrictions in law (see below) cannot be used in order to prevent disturbances of the public order likely in the future, at places near by the gathering, etc.

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

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

There have been no changes introduced that affect the possibility of using the law to restrict the freedom of assembly of groups or organisations whose activities involve the persecution of other groups, e.g. due to perceptions of race.

Public Order Act –Rules and Practice

The Public Order Act contains an important distinction between gatherings which involve the expression of opinion (expressive) and gatherings that are purely for the purpose of entertainment. The law makes it much more difficult for the police and other authorities to act if

a meeting is considered “expressive” rather than just entertaining. This distinction felt to be a constitutional necessity— as the constitution provides that assemblies that have some expressive (political, educational and cultural) content are protected, others are not. In practice, this means that dance halls, discos, sport-events, game-halls, etc are treated differently than live concerts, street-corner talks, and theatres (live and film). The latter has constitutional protection, the others do not. In consequence, the powers the Act give the police to interfere with expressive gatherings are much more restricted than the ones conferred in relation to entertainment events.

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

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

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

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

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

violence from left-wing groups.

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

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

An estimated 60,000 participants attended gay pride festival in Stockholm 2013. The Swedish newsagent giant Pressbyrå participated in a campaign to support LGBT rights by polling out the pink carpet for its LGBT consumer base in honour of the Pride Week by renaming one of its stores Homo Agency (*Homobyrå*). A total of five Pressbyrå branches in Stockholm renamed their stores. Stockholm now has the largest gay pride festival in Scandinavia.

6 Criminal law, hate speech

6.1 Hate speech

The Swedish Penal Code contains two provisions directly concerned with contempt or discrimination on the grounds of race, colour, national or ethnic origin, religious belief or sexual orientation; one relating to agitation against a national or ethnic group, the other to unlawful discrimination.

The Penal Code contains two provisions directly concerned with contempt or discrimination on the grounds of race, colour, national or ethnic origin, religious belief or sexual orientation, namely those relating to agitation against a national or ethnic group (Chapter 16, Section 8) and to unlawful discrimination (Chapter 16, Section 9).

According to Chapter 29, Section 2, Paragraph 7 of the Penal Code, it is to be considered an aggravating circumstance when assessing penal value if the motive of a crime was to aggrieve a person, ethnic group, or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief, sexual orientation or other similar circumstance. The provision is applicable to all crime categories.

Swedish Criminal Law offers protection against racist propaganda in all settings not covered by the Freedom of the Press Act or the Fundamental Law on Freedom of Expression.

In the Swedish Penal Code Chapter 16 Section 8 (*Brottsbalken*), hate speech is forbidden according to the crime agitation against a national or ethnic group (*Hets mot folkgrupp*) Chapter 16 Sec. 8 in the Penal Code (*Brottsbalken*).⁷⁹

Agitation against a national or ethnic group (*Hets mot folkgrupp*) Chapter 16 Sec. 8 in the Penal Code (*Brottsbalken*) states that:

*A person who, in a disseminated statement or communication, **threatens or expresses contempt** for a national, ethnic or other such group of persons with allusion to race, colour, national or ethnic origin or religious belief, **or sexual orientation**, shall be sentenced for agitation against a national or ethnic group to imprisonment for at most two years or, if the crime is petty, to a fine.*

Criminal law contains provisions on aggravating circumstances concerning offences with a discriminatory motive. These provisions are found in Chapter 29, section 2 (7) of the Penal Code which provides for the discriminatory motives of offenders to be taken into account as an aggravating circumstance when sentencing in cases of criminal acts such as assault, unlawful threat, molestation and inflicting damage.

⁷⁹ Sweden, The Penal Code 1962:700 (*Brottsbalken*), amended SFS 2002:800, November 2002, available at: www.notisum.se/rnp/sls/lag/19620700.HTM

The provision stipulates that:

In assessing penal value, the following aggravating circumstances shall be given special consideration in addition to what is applicable to each and every type of crime:

'a motive for the crime was to aggrieve a person, ethnic group or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief, sexual orientation'.

The Swedish Federation for Lesbian Gay, Bisexual and Transgender Rights (*Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter, RFSL*) has long demanded that criminal law should be expanded to counter transgender hate crimes.

Hate crimes fall under public prosecution. If the prosecutor does not file a case, then according to Chapter 20, Section 8, 1 point of the Judicial Procedure (*Rättegångsbalken*), the victim can only prosecute offenses subject to public prosecution only if he/she reported the crime and the prosecutor decided not to prosecute. The absence of a decision by the prosecutor not to prosecute constitutes an absolute bar. The victim is an injured party in the case and has the right to appeal to a higher court, independent of if the prosecutor appeals or not. The Chancellor of Justice is the sole prosecutor in cases concerning offences against the freedom of the press and the freedom of expression.

It is left to the discretion of the judge(s) to decide whether or not a discriminatory motive should prompt a harsher sentence according to the provision on aggravating circumstance in Chapter 29, Section 2 point 7 of the Penal Code (*Brottsbalken*). The public prosecutor must prove the discriminatory motive.

Hate speech is regarded as a limitation of the constitutionally protected freedom of speech, which makes any changes in the law and all application of it a partly constitutional matter, something that affects interpretation and application of the law.

The three constitutional laws: the Constitution Act,⁸⁰ the Freedom of the Press Act (*Tryckfrihetsförordningen*)⁸¹ and the Freedom of Expression Act (*Yttrandefrihetsgrundlagen*)⁸² and in the Criminal Code Chapter 16 para 8 (*Brottsbalken* 16:8).⁸³

The number of complaints filed before the police regarding the Penal Code Ch. 16 para 8 (*Brottsbalken* 16:8), incitement to racial hatred were 762 (2009), 2010 (723) and in 2011 (230) cases. The number of prosecutions were 97 in 2011 and the number of judicial proceedings were 3 in 2011.

The Fundamental Law on Freedom of Expression, (*Yttrandefrihetsgrundlagen*) Chapter 5, section 1 extends protections to broadcast media such as radio, television and to recordings of sound, images and text and web sites. It should however be noted that as regards Internet communications, this law only apply to websites operated by certain mass media undertakings and websites that have been granted a certificate of constitutional protection.

The constitutional Acts cover dissemination of messages by certain technical means such as printed materials or TV and radio or computer databases and they contain special provisions on the procedure and scope of criminal responsibility that make it difficult to

⁸⁰Sweden, The Constitution Act (Regeringsformen) SFS 1974:152.

⁸¹ Sweden, The Freedom of the Press Act (*Tryckfrihetsförordningen*) SFS 1949:105.

⁸² Sweden, The Freedom of Expression Act (*Yttrandefrihetsgrundlagen*), SFS 1991:1469.

⁸³ Sweden, The Penal Code (*Brottsbalken*) SFS 1962:700

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

The provisions – in constitutional and criminal law – make it a crime to, in any way, disseminate a message that includes threats or disdain towards a group of people on ground of their race, colour, nationality, ethnicity, faith or sexual orientation.

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

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

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

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

6.2 Unlawful discrimination

Chapter 16, section 9 of the Penal Code criminalises discrimination by a person during the conduct of his or her business, or in organising a public assembly or gathering, against another person on the basis of race, colour, national or ethnic affiliation, religious belief or sexual orientation. The provision also applies to those employed in public service or having a public duty. The provision states that unlawful discrimination (*Olaga diskriminering*) is:

“any discrimination by a person in the conduct of his or her business, or when organising a public assembly or gathering, against another person on grounds of ‘race’, colour, national or ethnic origin, religious belief or sexual orientation”.

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

The Swedish National Council for Crime Prevention (*Brottsförebygganderådet*) reported that the number of cases of unlawful discrimination has remained at almost the same level during 2008-2012. In 2010, the number of reported cases of unlawful discrimination were 134, in 2011 (146) and in 2012 (120).

The number and proportion of police reports with an identified homophobic, biphobic or heterophobic motive in relation to unlawful discrimination between 2008–2012 have decreased with 38 percent. The number of cases of unlawful discrimination with an identified homophobic, biphobic or heterophobic motive were 13 in 2011 and 8 in 2012.

Case reviews undertaken by the National Council for Crime Prevention reveal a number of reasons why so few cases of unlawful discrimination are brought to trial. One is that many complainants have only a vague idea of what constitutes unlawful discrimination. This is partly why it is fairly common for such reports to prove unfounded from a strictly legal standpoint, thus precluding legal action. Another reason is that it can be difficult to prove that the motive of the act in question was to discriminate against someone. Lastly, it should be noted that the parties in a discrimination case sometimes reach a private financial settlement after the complaint has been lodged. In some situations of this kind, the complainant is no longer interested in participating actively in the criminal investigation.⁸⁴

Notable differences between the Discrimination Act (*Diskrimineringslagen*)⁸⁵ and the criminal regulation of unlawful discrimination are that the sanctions are private-law damages and that the criminal law only protects homosexuals, while the other regulation

⁸⁴ CERD 2012 p. 10

⁸⁵ Sweden, The Discrimination Act (*Diskrimineringslag*, 2008:567), available at: www.regeringen.se/content/1/c6/1/1/19/86/4a2b4634.pdf

covers sexual orientation instead. This area of law is, as can be gathered by this short overview complex and not very easily understood by individuals.

Criminal responsibility is conditioned on whether there has been any differential treatment between “ordinary” customers and the alleged victims of discrimination. This treatment can consist of acts as well as omissions. Typical cases are refusal to enter restaurants or other premises, or to order goods or services, obliging individuals to leave premises, etc. Conditions that on the surface seem neutral can be unlawful, if for example their primary effect is to exclude a certain group of people on the basis of race, etc.

Special note should be made on the fact that as unlawful discrimination is a criminal offence, the burden of proof is upon the prosecutor and the level of certainty demanded by the courts in relation to evidence is high. In practice this means that intentional discrimination can be very hard to prove, even if the particular circumstances of a case give strong indications that one of the covered grounds could have influenced the decision (not to sell, rent, etc.) under trial.

A Svea Court of Appeal ruling, the court found that the prosecutor had not proven that the proprietor of a restaurant who had asked two women who had been kissing to leave had been guilty of discrimination on the basis of sexual orientation.⁸⁶

A similar, but more recent case is when the Stockholm District Court found that two lesbian women, who, after a kissing at a nightclub and then receive complaints, became the victims of discrimination on the ground of sexual orientation. This court ruling is significant for the rights of homosexuals to openly show their sexual orientation.⁸⁷

6.3 The criminal law in practice

The Swedish National Council for Crime Prevention (*Brottsförebygganderådet*) reports annually on offences reported to the police with an identified hate crime motive. The Data is published in an annual report on statistics relating to offences reported to the police with an identified hate crime motive.⁸⁸ The figures presented for both self-reported victimisation and the statistics based on police reports are estimates, based on sample surveys conducted by the Swedish National Council for Crime Prevention (*Brottsförebygganderådet*).⁸⁹

Of the police reports registered in 2012, an estimated 5,518 were identified by the Swedish National Council for Crime Prevention (*Brottsförebygganderådet*) as having a hate crime motive. This represents the same level as in 2011 but a decrease of 6 per cent by comparison

⁸⁶ Sweden, (case B 2292- 04, decided 15 November 2005)

⁸⁷ Sweden, (case no. T 4652-07, decided 12 June 2009 by Stockholm District Court)

⁸⁸ Sweden, Klingspor, Klara & Anna Frenzel. 2013. Hatbrott 2012. Statistik över polisanmälningar med identifierade hatbrottsmotiv. Rapport 2013:16 Stockholm: Brottsförebyggande rådet.

⁸⁹ Sweden, Klingspor, Klara & Anna Frenzel. 2013. Hatbrott 2012. Statistik över polisanmälningar med identifierade hatbrottsmotiv. Rapport 2013:16 Stockholm: Brottsförebyggande rådet.

with 2008. The estimated number of police reports made regarding homophobic motivated hate crimes were 694 cases in 2012. Viewed over the past five years, the decreasing trend is most evident for reports with a homophobic hate crime motive (a 34 per cent decline) compared to a 6 per cent decline of xenophobic/ racist motivated hate crimes.

A comparison between the different hate crime motives shows that the proportion of violent crimes was particularly high in relation to the homophobic and afrophobic motives (23 and 22 per cent, compared to an average of 16 per cent).

According to the Swedish Crime Survey (SCS) 2012, approximately 86,000 individuals (1.2 per cent) of the population (aged 16–79) were exposed to a total of 151,000 xenophobic hate crimes over the course of 2011. Approximately 28,000 individuals (0.4 per cent) were exposed to a total of 50,000 anti-religious hate crimes, and approximately 13,000 individuals (0.2 per cent) were exposed to a total of 21,000 homophobic hate crimes.

The most common crime location in relation to homophobic motivated hate crimes is schools (13 per cent, compared to an average of 8 per cent). A comparison between the motives shows that it was more common for the offender to be someone close to the victim in relation to the homophobic motive than it was in relation to the other motives (9 per cent, compared to an average of 5 per cent).

The Compared to previous years, the level of victimization may be viewed as stable with regard to homophobic hate crimes.

In the SCS study, exposure to xenophobic hate crime was almost evenly distributed between the sexes (51 per cent males, 49 per cent females), while somewhat more males than females had been exposed to homophobic hate crimes (55 per cent compared to 45 percent).

7 Transgender issues

The Discrimination Act protects transgender persons against discrimination on the ground of “transgender identity or expression.” The introduction of a statutory protection against discrimination of all transgender persons in a uniform Swedish law was introduced 2009 when the Discrimination Act (Diskrimimeringslagen) was adopted. Gender identity and gender expression are autonomous grounds of discrimination.

Chapter 1 Section 1 of the Discrimination Act states that: “*The purpose of this Act is to combat discrimination and in other ways promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.*”

Chapter 1 Section 5 of the Discrimination Act defines the ground of “sex” and ‘transgender identity or expression’ as follows:

“1. Sex: that someone is a woman or a man.

2. Transgender identity or expression: that someone does not identify herself or himself as a woman or a man or expresses by their manner of dressing or in some other way that they belong to another sex.”

In the Swedish legal context, the notion ‘trans-persons’ encompasses those who are or who are perceived to be transsexuals, transvestites, intergenders, intersexuals, transgenderists, drag kings or drag queens. Transpersons have been described as “individuals who at times or always have been perceived to have or express or be perceived as expressing a gender identity that at times or always differs from the norm for the sex that is registered for them at birth”.⁹⁰

The Minister of Integration, who is also responsible for LGBT rights, appointed a review from the Department of Social Affairs (*Socialdepartementet*) to look into whether people in Sweden whose sex and gender identities do not match should be able to change their gender in official documents already after they turn 16. The inquiry will look into, for example, what the authorities should do if a teenager and his or her parents disagree in the matter. The review is part of a bigger government investigation into why LGBT persons suffer worse health than other Swedes and into how to tackle hate crimes against members of the diverse community.⁹¹

The most significant progress in Swedish legislation concerning transgender issues since 2009 is the removal of forced sterilization as a requirement in the process of changing juridical sex. The Act for the establishment of sex (gender reassignment), which laid down the medical and legal conditions for gender reassignment, was established in Sweden in 1972.⁹² This law introduced sterilization of transsexual persons as a requirement in the process of changing juridical gender. Swedish NGOs working with transrights RFSL (Swedish Federation for

⁹⁰ Sweden, The National Board of Health and Welfare (*Socialstyrelsen*), 2010, transsexuals and other people with gender identity disorder-Legal conditions for determination of sex as well as care and support (*Transsexuella och övriga personer med könsidentitetsstörningar - Rättsliga villkor för fastställelse av könstillhörighet samt vård och stöd*) 30 June 2010, p.10, (<http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18087/2010-6-31.pdf> Socialstyrelsen .

⁹¹ Sweden, The Minister of Integration,

⁹² (SFS 1972:119) available at: www.notisum.se/rnp/sls/lag/19720119.htm

Lesbian, Gay, Bisexual and Transgender Rights), KIM (transorganisation gender, identity, diversity), FPES (transorganisation, full personality express Sweden) have been lobbying for decades asking politicians to change this part of the Act on the basis that it is, in fact, in violation of the European Convention of Human Rights.

On 28 August 2012, the Government commissioned the Social Department to highlight certain legal consequences of eliminating the requirement for sterilization as a condition for changing one's sex and to propose any necessary consequential amendments to other legislation. The report was submitted on 31 October 2012, which concluded that no changes in other laws are needed for abolishing the sterilization requirement.⁹³ On 14 March 2013, the government proposed a bill to remove the sterilization requirement.⁹⁴ The proposal was voted through in parliament on 22 May 2013, and on 1 July, the Swedish Parliament adopted a law banning the forced sterilization of transgender people entered into force on 1 July 2013.⁹⁵ However, before the new law came into force, the sterilization requirement was abolished on 10 January 2013 through a judgment by the Stockholm administrative court of appeal, which set legal precedent.⁹⁶

The Administrative Court of Appeals (*Kammarrätten*) in Stockholm ruled on 19 December 2012, that the sterilisation requirement for people undergoing gender reassignment surgery breaches both the European Convention and the Swedish Constitution. The verdict follows the appeal from a Swede opposing the demand for sterilization from the Swedish National Board of Health and Welfare (*Socialstyrelsen*) in order to undergo gender reassignment surgery from female to male. The court ruled that mandatory sterilization is a forced physical procedure and goes against the right to privacy in the European Convention.

The administrative court's ruling came, after the plaintiff who wanted to undergo a sex change operation refused to be sterilized and took his case to the Swedish Board of Health which then took it to the court on his behalf.⁹⁷ The Stockholm Administrative Court of Appeal ruled that the practice of forced sterilizations, which dated back to a 1972 law on sexual identity, was unconstitutional and in violation of the European Convention on Human Rights. The law from 1972 stated that a person who wanted to change sex legally must be infertile. In practice, this led to transgendered patients being sterilized, as they had to go through with the entire process including gender reassignment surgery in order to have their ID documents changed. In its decision, the court said the law did not respect civil liberties as guaranteed by the constitution and was discriminatory since it solely targeted transgender people. The judgment stated that the requirement infringed human rights because it was contrary to both the Swedish Constitution

⁹³ Sweden, The Swedish Government, Socialdepartementet, (2012) Avskaffande av steriliseringskrav som villkor för ändrad könstillhörighet, Ds 2012:46, available at: [www.regeringen.se/sb/d/108/a/203696]

⁹⁴ Sweden,

⁹⁶ The Administrative Court of Appeals (*Kammarrätten*) in Stockholm, Judgement 2012-12-19, Court case no. 1968-12, 19 december 2012 http://du2.pentagonvillan.se/images/stories/Kammarrtens_dom_-_121219.pdf

⁹⁷ The Administrative Court of Appeals (*Kammarrätten*) in Stockholm, Judgement 2012-12-19, Court case no. 1968-12, 19 december 2012 http://du2.pentagonvillan.se/images/stories/Kammarrtens_dom_-_121219.pdf

and ECHR Article 8 and 14.⁹⁸ More specifically, the court stated that the sterilization of transgender people was in breach of article 8, 13, and 14 of the ECHR.⁹⁹

The Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (*Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter*, RFSL) reported that between 80 and 90 sex change patients who underwent forced sterilizations had turned to RFSL in a bid to possibly seek damages from the state.¹⁰⁰ In June 2013, 161 transgender persons who had been forcibly sterilised sought SEK 300,000 each (EUR 33,960) in compensation from the State. The request was handed over to the Attorney General. The Swedish Federation for Lesbian, Gay, Bisexual, and Transgender Rights (*Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter*, RFSL) and co-complaining NGOs expect an answer in 2014.

From 1 January 2013 the requirement to be a Swedish citizen and unmarried to have the right to undergo legal gender reassignment was removed from legislation. It is now enough to be registered in Sweden. Foreign judgments and decisions regarding gender reassignment are valid in Sweden.¹⁰¹ In 1992-1997, on average 17 applications were received annually. In 1998-2003, the number of applications increased to an average of 23 per year and in 2004-2009, the number of applications was on average 37 per year. The studies show an increasing number of applications per year.¹⁰²

When the current Discrimination Act entered into force on 1 January 2009, it included a statutory protection against discrimination of all transgender persons. However, LGBT organizations are now advocating for a change in the hate speech legislation and legislation on hate crimes to include violence and hatred against transgender people.¹⁰³ Since 1 January 2003, the legislation of hate speech and hate crime also includes sexual orientation, but not transgender identity or expression. Statistics from the Swedish National Council for Crime Prevention (BRÅ) shows an increase in the numbers of hate crimes against transgender persons.¹⁰⁴

⁹⁸ Sweden, The Administrative Court of Appeals (*Kammarrätten*) in Stockholm, Judgement 2012-12-19, Court case no. 1968-12, 19 december 2012 http://du2.pentagonvillan.se/images/stories/Kammarrttens_dom_-_121219.pdf

⁹⁹ Sweden, The Administrative Court of Appeals (*Kammarrätten*) in Stockholm, Judgement 2012-12-19, Court case no. 1968-12, 19 december 2012 http://du2.pentagonvillan.se/images/stories/Kammarrttens_dom_-_121219.pdf

¹⁰⁰ Sweden, The Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (*Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter*, RFSL), Ansökan om skadestånd för tvångssterilisering på grund av steriliseringskravet i lag (1972:119) om fastställande av könstillhörighet i vissa fall (könstillhörighetslagen), available at [www.rfsl.se/?p=324&aid=12448]

¹⁰¹ Sweden, The Department of Social Affairs (*Socialdepartementet*) Göran Hägglund, 2012 http://manskligarattigheter.dynamaster.se/Media/Get/287/Ändrad_könstillhörighet_2012.pdf

¹⁰² Sweden, The National Board of Health and Welfare (*Socialstyrelsen*), 2010, transsexuals and other people with gender identity disorder-Legal conditions for determination of sex as well as care and support (*Transsexuella och övriga personer med könsidentitetsstörningar - Rättsliga villkor för fastställelse av könstillhörighet samt vård och stöd*) 30 June 2010, p.10, (<http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18087/2010-6-31.pdf>) Socialstyrelsen .

¹⁰³ RFSL Ungdom, statement 2013 <http://www.rfslungdom.se/press/inkludera-transpersoner-i-hat-och-hetslagstiftningen>, 2012, RFSL <http://www.rfsl.se/?p=324&aid=12409>

¹⁰⁴ Sweden/Brottsförebyggande rådet 2013, Rapport 2013:16 Hatbrott 2012 Statistik över självrapporterad utsatthet för hatbrott och polisanmälningar med identifierade hatbrottsmotiv, s71-71

An important step towards acknowledging was that the change the National Board on Health and Welfare made in the Swedish version of ICD-10 in 2009. Transvestism was removed from the list of diagnosed mental illnesses or behavioral disorders.¹⁰⁵

At present, only people diagnosed with transsexualism receive community care, e.g. hormone treatment.¹⁰⁶ Studies show that medical and healthcare for transgender people varies and that knowledge of transgender issues within the healthcare system is relatively low.¹⁰⁷ NGOs advocate for all transgender people who need medical care to receive it, regardless of diagnosis. At the moment, regulations require transgendered people to go through several instances before reaching a “gender investigation team”. NGOs push for making it possible for them to go directly to the gender investigation team. The care for transgender people has been deficient and there are significant regional differences.¹⁰⁸

Transgender people meet difficulties in social life and in varying areas of society, e.g when seeking medical and healthcare. These difficulties affect their health, economy, employment and everyday life.¹⁰⁹

Sweden has a general name-change law (not trans-specific), to regulate change of personal names. Until 2009, all first names were linked to a particular gender, and thus a change of name was allowed as long as another name from the same gender register was chosen. However, in 2009, the Supreme Administrative Court decided that a person who is over 18 years has the autonomous right to determine the first name regardless of the biological or legal sex. All adults can now freely choose any name that they deem fit, irrespective of whether it was traditionally linked to their gender or not.

¹⁰⁵ Sweden, Socialstyrelsen 2012 changes and additions to the International statistical classification of diseases and related health problems (ICD-10) (modifications 1997-2012)-previous classification of diseases and related health problems in 1997 (KSH97) – the systematic list cumulative list 1997-2012, s 31

¹⁰⁶ Sweden, The National Board of Health and Welfare (*Socialstyrelsen*), 2010, transsexuals and other people with gender identity disorder-Legal conditions for determination of sex as well as care and support (*Transsexuella och övriga personer med könsidentitetsstörningar - Rättsliga villkor för fastställelse av könstillhörighet samt vård och stöd*) 30 June 2010, p.10, (<http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18087/2010-6-31.pdf>) Socialstyrelsen .

¹⁰⁷ Sweden, The National Board of Health and Welfare (*Socialstyrelsen*), 2010, transsexuals and other people with gender identity disorder-Legal conditions for determination of sex as well as care and support (*Transsexuella och övriga personer med könsidentitetsstörningar - Rättsliga villkor för fastställelse av könstillhörighet samt vård och stöd*) 30 June 2010, p.10, (<http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18087/2010-6-31.pdf>) Socialstyrelsen .

¹⁰⁸ Sweden, The National Board of Health and Welfare (*Socialstyrelsen*), 2010, transsexuals and other people with gender identity disorder-Legal conditions for determination of sex as well as care and support (*Transsexuella och övriga personer med könsidentitetsstörningar - Rättsliga villkor för fastställelse av könstillhörighet samt vård och stöd*) 30 June 2010, p.10, (<http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18087/2010-6-31.pdf>) Socialstyrelsen .

¹⁰⁹ Sweden, The National Board of Health and Welfare (*Socialstyrelsen*), 2010, transsexuals and other people with gender identity disorder-Legal conditions for determination of sex as well as care and support (*Transsexuella och övriga personer med könsidentitetsstörningar - Rättsliga villkor för fastställelse av könstillhörighet samt vård och stöd*) 30 June 2010, p.10, (<http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18087/2010-6-31.pdf>) Socialstyrelsen .

The Names Act ¹¹⁰ includes the right for transsexuals who have undergone gender reassignment to get their personal documents reflecting their right and coherent gender. ¹¹¹ The names are registered at the national registration authority – the Swedish Tax Agency (Skatteverket). The legislation contains a provision (Sec 34) aimed at preventing the adoption of inappropriate forenames. In other words, approval shall be withheld when a name is considered offensive or it might be expected to cause embarrassment to the bearer or when a name is manifestly unsuitable as a forename for some other reasons.

This provision has been interpreted to mean that a man may not have a woman's name and vice versa. On the other hand, this law includes the right for a person who has new legal sex to choose a name according to this person's gender identity. However, this changed when an Administrative Court ¹¹² gave Jan-Olov Ågren the right to be named Madeleine.¹¹³ This stated that regardless of biological or legal gender/sex persons over 18 have the right to determine their first name. This has facilitated for many transgender people to live according to their identity.

The Patent and Registration Office (*Patent- och Registreringsverket*) has also produced a list of gender-neutral names ⁵⁵ which may be useful in situations when a name change is desired.

Recent research has shown that the resources for providing help in cases of domestic violence differ between heterosexual and other kind of relationships. In practice, there have been situations where lesbian and transgendered victims of domestic abuse were not accepted by many women's shelters and had nowhere to turn to.¹¹⁴ The Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (*Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter*, RFSL critiques this in a recent report. In May 2013, the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (*Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter*, RFSL organised the first-ever conference dedicated to the discrimination of transgender people in the workplace, supported by the government.¹¹⁵

¹¹⁰ Sweden, The names act (1982:670) Regeringskansliet, Justitiedepartementet 1982, SFS nr: 1982:670

¹¹¹ Sweden, Court Services (2008), Change Of Name By Deed Poll Information Leaflet, online available at: [www.courts.ie/courts.ie/library3.nsf/%28WebFiles%29/D14EEC0B6D326D0F802578A1004DDBDD/\\$file/Change%20of%20name%20by%20deed%20poll.pdf](http://www.courts.ie/courts.ie/library3.nsf/%28WebFiles%29/D14EEC0B6D326D0F802578A1004DDBDD/$file/Change%20of%20name%20by%20deed%20poll.pdf)

¹¹² (case 2893-0928, September 2009)

¹¹⁴ G.Granström, *Challenging the Heteronormativity of Law*, in Exploring the Limits of Law, Å.Gunnarsson et al (eds.), Aldershot 2007, p. 131.

¹¹⁵ Sweden, The Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (*Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter*, RFSL, A thousand gemders at work (Tusen kön på på jobbet) available at: www.rfsl.se/transkonf2013/program/

8 Miscellaneous

According to Sweden's national public health survey Health on equal terms, gay and bisexual people are more likely than the general population to be vulnerable to abusive behaviour and threats of violence and lack emotional and practical support. 6% of lesbian and bisexual women are exposed to physical violence, compared to 2% among all women. Other interesting data show:

- 9% of homosexuals have been subjected to threats of violence, compared to 4% of the total population.
- 29 % of homosexuals have been subjected to abusive treatment, compared to 20% of the total population.
- 16% of homosexuals have no emotional support, compared to 12% of the total population.
- 11% of homosexuals have no practical support, compared to 6% of the total population.¹¹⁶

9 Good practices

There are two Hate Crime Units in Stockholm and Malmö. The group's main mission is to coordinate efforts to combat hate crimes in the county and develop methods of combating hate crimes. The work thus both involves prevention and investigation / prosecution. The Hate Crime Group also coordinates efforts with external contacts and vulnerable groups. The group investigates the hate crime reports occurring in the RAR (*Rational Reporting Routine*), which is the police computer system for registering filed police reports. The Hate Crime Groups also cooperates with the agency's other parts and districts and has a mandate to provide support for their respective counties.

To facilitate reporting of hate-motivated offences, the hate crime groups within the police in Malmö and Stockholm have set up a free phone number. The employee of the hate group in Malmö City manages the phone and they also inform vulnerable communities about the opportunity to call directly to the hate group.¹¹⁷ In Sweden an increasing number of police forces are appointing specific LGBT liaison officers to improve the dialogue with LGBT communities. Those officers act as spokesperson for the police forces and as focal point for members of the LGBT communities.

In 2009, the National Board on Health and Welfare removed transgender as a diagnosed mental illness or behavioral disorder. Changes were made in the Swedish version of ICD-10 - "Classification of health problems and diseases 1987". It was in the corresponding classification as the National Board in 1979 removed the Diseases of homosexuality, which then was regarded as a major step forward for equal rights regardless of sexual orientation.⁵⁸ Before 2009 transgender people lacked discrimination protection, but the new Discrimination.

In its effort to tackle homophobia and transphobia in schools, the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL) published a guide entitled, Break the norm: methods for studying norms in general and the heteronorm in particular.⁸² In simple language and through the use of various visual aides, this guide explains the mechanisms of gender stereotypes and heteronormativity and how they lead to discrimination against LGBT people. This guide was successfully used in school settings and helped teachers to facilitate a discussion on the impact of gender stereotypes. The perspectives employed in such debates have also helped students better understand how certain norms have a disproportionate impact on some communities and thus become more aware of the mechanism of discrimination against LGBT people.

The Equality Ombudsman has used the strategy of mutual knowledge of NGOs in promoting equal rights and opportunities regardless of gender, gender identity or gender expression. The

¹¹⁷ Sweden, The National Police Board (*Rikspolisstyrelsen*) Inspection Report 2013:4 inspection of police authorities' ability to detect and investigate hate crimes Monitoring report 2013:4 (Inspektion av polismyndigheternas förmåga att upptäcka och utreda hatbrott), Tillsynsrapport 2013:4, p. 18, available at: www.polisen.se/Global/www%20och%20Intrapolis/Rapporter-utredningar/01%20Polisen%20nationellt/Ovriga%20rapporter-utredningar/Inspektioner-tillsyns%20rapporter/2013/Tillsynsrapport_4_Hatbrott_130411.pdf

Equality Ombudsman's conclusion from the rights-based consultation with representatives of civil society is that health care is particularly problematic area for many transgender people and there is a great need for improvements in health care both in terms of treatment and access to care.

The Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (*Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter*. RFSL) offers LGBTQ victims of crimes support and help.¹¹⁸

The Work plan 2012 – 2014 of the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights states that it prioritizes international work around LGBT persons and their human rights, including asylum issues.¹¹⁹ RFSL for instance contributes to raising the awareness and sensitivity of staff at the Migration Board (*Migrationverket*) and the Department of Foreign Affairs (*Utrikesdepartementet*) in Sweden on LGBT challenges particularly in other countries around the world. In addition, RFSL tries to ensure that LGBT asylum seekers are met and their cases handled in a sensitive manner and in accordance with the law. RFSL says that it helps about 50 persons receive asylum every year and provides them with basic support. RFSL keeps regular vigil over how the Migration Board handles LGBT asylum cases. On 27 May 2010, for instance, it published a press statement on the shortcomings of the Board.¹²⁰ It works to influence migration politics so that LGBT persons can get asylum status. It also ensures that refugee and detention centres are LGBT friendly.

Furthermore, RFSL helps those LGBT persons who have not been granted permanent residence status or have no official papers, to receive health and medical care on equal terms as Swedish citizens. This includes trans persons in need of sex reassignment and care. In addition, asylum seekers are integrated into the RFSL board and staff team. They can also attend regular meetings and access information on facebook in a project titled Make Space (Göra Plats) organized by RFSL and asylees.¹²¹ The RFSL website provides information for asylum seekers in several languages, namely, The Federation also develops strategies for resource mobilization and fundraising for work on asylum and migration. It also works to ensure the continuation of the Federation's provision of legal advices and support to LGBT asylum seekers.

¹¹⁸ Sweden, Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter. RFSL, available at: www.rfsl.se/

¹¹⁹ Sweden, Workplan 2012 – 2014 for the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL Versamhetsplan 2012-2014) Available at: www.rfsl.se/?p=5368

¹²⁰ Sweden, Sharp Critique against the Migration Board's way of handling asylum seeking LGBT persons (Skarp kritik mot Migrationsverkets hantering av asylsökande hbt-personer). Available at: www.mynewsdesk.com/se/rfsl/pressreleases/skarp-kritik-mot-migrationsverkets-hantering-av-asylsoekande-hbt-personer-415967

¹²¹ Sweden, The Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter - RFSL) Webpage: Are you an LGBT-person seeking asylum or has been granted asylum? Available at: www.rfsl.se/?p=6291

On the 19 December 2013, the Swedish government gave the Migration board a task to make a systematic analysis of asylum applications.¹²² The reason for this mandated task was the fact that asylum applicants sometimes remained within the application process for a long time. The analysis would cover the process from the application to the point of placing asylums in residences or return to their countries of origin. This task would be done in collaboration with the Swedish Public Employment Service (Arbetsförmedlingen), the Swedish Courts (Domstolsverket), the Swedish Prison and Probation Service (Kriminalvården), the provincial government (länsstyrelserna), the Swedish Police (Rikspolisstyrelsen), Swedish Municipalities and counties (Sveriges Kommuner och Landsting) och the Swedish National Agency for Education (Skolverket).

The task aims to map and estimate the costs of the current system. It also aims to analyse factors and areas of strength in the asylum process. A part of this report is expected to be submitted to the Swedish Government Justice Department (Justitiedepartementet) by the 10 April 2014. The complete report is expected on the 16 October 2014. The Migration Board needs to provide an analysis on the most cost effective way to process the applications whilst keeping the applicants waiting for as short a period as possible.

Sweden's first retirement home for elderly members of the lesbian, gay, bisexual, and transgender (LGBT) communities opened in [Stockholm](#) on Friday, capping a four-year effort that may spark a new trend.

¹²² Sweden, Task for the Migration Board to conduct a system analysis on Asylum process from application to placement or return of application (Uppdrag till Migrationsverket att genomföra en systemanalys från ansökan om asyl till bosättning eller återvändande). p. 1. Available at: www.regeringen.se/content/1/c6/23/10/72/156cd195.pdf.

10 The status of ‘intersex’ persons in Sweden.

Are intersex people specified (or is the ground of ‘intersex’ included) under national non-discrimination legislation and/or in legal cases/jurisprudence and/ or in non-discrimination policies?

(a) Please specify: Is discrimination on ground of ‘intersex’ covered by the law? Please choose (one or more) of the following four answering options

Intersex people are not specified as a ground of discrimination under the Discrimination Act.

(b) yes, implicitly (then indicate under which discrimination ground and/or under which law, regulatory provision etc.). How has it been used, referred to, under which legislation or in which particular cases/ jurisprudence?

The legislation of gender and gender identity discrimination include intersex and transsexual persons. A very important clarification is that neither the intersexual or concept of transsexuality specify a particular sexual orientation. An intersexed or transsexual person can thus be heterosexual, bisexual, or homosexual.¹²³

Is intersex discrimination covered under national non-discrimination policies? If so, how? Please provide evidence, links and references to policies in this area.

Ordinance (2008:349) on government grants to organizations for lesbian, gay, bisexual, transgender or people with gender identity or expression (*Förordning (2008:349) om statsbidrag till organisationer för homosexuella, bisexuella, transsexuella eller personer med könsöverskridande identitet eller uttryck*), Article 2 states that the aim of the government grants is to support initiatives and activities with the purpose to strengthen the community for gay, bisexual, transgender or people with gender identity or expression.¹²⁴

Is it allowed in the respective EUMS that children remain without a gender marker/identification on their birth certificates, and if so, until which age and under which conditions? Please provide detailed information and references.

All children born in Sweden, have a gender marker/identification as female or male recorded at the Tax Office (Skatteverket). With regard to the guidelines for the treatment of intersex children, their gender is recorded at a very young age based on a medical evaluation.

¹²³ Sweden, The Swedish Government, Report by the Gender Identity Investigation (*Betänkande av Könstillhörighetsutredningen*), Modified gender identity- a proposal for a new law (*Ändrad könstillhörighet– förslag till ny lag*), SOU 2007: 16. Stockholm 2007, p. 39, available at: www.regeringen.se/content/1/c6/07/90/17/eaf7d884.pdf

¹²⁴ Sweden, SFS 2014:92

Are surgical and medical interventions performed on intersex people in your country?

If so, please specify:

It is estimated that 0.5-1 percent of all new borns have some form of intersex condition.¹²⁵

From 1 January 2013, the requirement to be a Swedish citizen and married in order to undergo gender reassignment was abolished. Foreign judgments and decisions regarding gender reassignment will under certain circumstances be considered as valid in Sweden. The same requirements for sterilization under the Sterilization Act (*Steriliseringslagen*)¹²⁶ apply whether the patient is Swedish or foreign national. The statues on castration is also abolished.¹²⁷

the legal basis (or: legal grounds) for such interventions

The legal basis is for the medical interventions are in the Health Care Act (Hälsa- och sjukvårdslagen) and the guidelines that apply to medical services.

(b) the medical protocols or procedures applicable in such situations. On what medical ground(s) could such interventions take place?

The National Board of Health and Welfare (*Socialstyrelsen*) has guidelines regarding the treatment of intersex children. The procedure specifies that examinations and genital surgical procedures should not be performed between the ages of 2 and 12. In most cases, genital surgery is performed early, before the age of 6 months. Additional surgery may be carried out when the child reaches puberty. Some adult intersex women have stressed the importance of restricting early surgical intervention to a minimum, thereby enabling these individuals to participate actively in decision-making affecting their own bodies.¹²⁸

The medical diagnosis/ground for genital surgical procedures is Androgen insensitivity syndrome (AIS) which is a sex development disorder in which individuals with male chromosomes (XY) respond poorly to male sex hormones (for example testosterone). There are two forms of androgen insensitivity syndrome: androgen insensitivity syndrome (CAIS) or partial androgen insensitivity syndrome (PAIS). The diagnosis of androgen insensitivity syndrome is made based on signs and symptoms, gynaecological examination, blood tests for

¹²⁵ Sweden, The Swedish Government, Report by the Gender Identity Investigation (*Betänkande av Könstillhörighetsutredningen*), Modified gender identity- a proposal for a new law (*Ändrad könstillhörighet- förslag till ny lag*), SOU 2007: 16. Stockholm 2007, available at: www.regeringen.se/content/1/c6/07/90/17/eaf7d884.pdf

¹²⁶ Sweden, The Sterilization Act 1975:580 (*Steriliseringslagen 1975:580*) available at: <https://lagen.nu/1975:580>

¹²⁷ Sweden, The Government Bill 2011/12: 142 Gender Reassignment (*Regeringsproposition 2011/12:142 Ändrad Könstillhörighet*) available at: www.regeringen.se/sb/d/14013/a/190890

¹²⁸ Sweden, The National Board of Health and Welfare (*Socialstyrelsen*), 2010, transsexuals and other people with gender identity disorder-Legal conditions for determination of sex as well as care and support (*Transsexuella och övriga personer med könsidentitetsstörningar - Rättsliga villkor för fastställelse av könstillhörighet samt vård och stöd*) 30 June 2010, www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18087/2010-6-31.pdf

measuring hormone levels, and DNA analysis. The diagnosis is confirmed by the presence of mutations in the androgen receptor gene.¹²⁹

Is the fully informed consent of the parties concerned required by law or by protocol – and who are those interested parties considered to be (parents/guardians etcetera)?

According to Chapter 6 section 2 of the Parental Code (*Föräldrabalken*) children remain in the legal custody of their parents until 18 years.¹³⁰ The child's parents must therefore consent to any healthcare offered to the child. The parents of the intersex infant should give full informed consent to genital surgical procedures. All interventions are planned and consented to by the parents and the physicians involved. In order to facilitate the process of making an informed decision, the parents are offered several opportunities to discuss the situation with specialist physicians and psychologists.¹³¹

if this fully informed consent is required, is any explicit reference made to a certain age of consent? (under national law and/or medical protocol)?

According to article 3 of the Act for the establishment of gender reassignment (*Lagen om fastställande av könstillhörighet i vissa fall*) consent is given by a person that is 18 years old, or by the parents of an intersex minor.¹³² According to Chapter 6 Section 11 of the Children and Parents Code (*Föräldrabalken*),¹³³ parents should take into account the child's views and wishes with increasing age and development of the child. According to If the child is 12 years or older, the child has to give consent by determining their gender identity. The medical personnel must also take account of the child's will and wishes when it comes to medical treatment.

is the fully informed consent sought from the intersex person him/herself or are parents/guardians/legal representatives of the intersex person granted the right to consent on the persons' behalf?.

In most cases, genital surgery is performed early, before the age of 6 months, which means that the parents give the consent. Additional surgery may be carried out when the child reaches puberty. In these cases, consent is needed from the child from the age of 12 according to article 3 of the Act for the establishment of gender reassignment (*Lagen om fastställande av könstillhörighet i vissa fall*).¹³⁴

¹²⁹ Sweden, The National Board of Health and Welfare (*Socialstyrelsen*), Androgen insensitivity syndrome, available at: www.socialstyrelsen.se/rarediseases/androgeninsensitivitysyndrome

¹³⁰ Sweden, The Ministry of Justice (*Justitiedepartementet*) The Children and The Parents Code 1949:381 (*Föräldrabalk, SFS 1949:381*). Stockholm: Justitiedepartementet, available at: www.notisum.se/rnp/sls/lag/19490381.htm

¹³¹ Sweden, The National Board of Health and Welfare (*Socialstyrelsen*), 2010, transsexuals and other people with gender identity disorder-Legal conditions for determination of sex as well as care and support (*Transsexuella och övriga personer med könsidentitetsstörningar - Rättsliga villkor för fastställelse av könstillhörighet samt vård och stöd*) 30 June 2010, www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18087/2010-6-31.pdf

¹³² Sweden, The Act for the establishment of gender reassignment (*Lagen om fastställande av könstillhörighet i vissa fall*) (1972:119), available at: www.notisum.se/rnp/sls/lag/19720119.htm

¹³³ Sweden, The Ministry of Justice (*Justitiedepartementet*) The Children and The Parents Code 1949:381 (*Föräldrabalk, SFS 1949:381*). Stockholm: Justitiedepartementet, available at: www.notisum.se/rnp/sls/lag/19490381.htm

¹³⁴ Sweden, The Act for the establishment of gender reassignment (*Lagen om fastställande av könstillhörighet i vissa fall*) (1972:119), available at: www.notisum.se/rnp/sls/lag/19720119.htm

Annex 1 – Case law

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

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

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

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

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

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

implications of the case (max. 500 chars)	
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Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 3 Goods and services

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

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

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

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

Case title	FR UM 8744-12 residence permit under the Aliens Act (2005:716), FR UM 8744-12 Uppehållstillstånd enligt utlänningslagen (2005:716)
Decision date	2013-03-27,
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Migration Court in Gothenburg (<i>Migrationsdomstolen I Göteborg</i>)
Key facts of the case (max. 500 chars)	<p>A Palestinian man, Abdallah Alhattis, applied for a residence and work permit in Sweden on June 11, 2012. He stated the following he comes from Gaza and have throughout his school years been being bullied and abused by some classmates. The problems escalated during the school years and the abuse became more serious and more of a sexual nature during junior high and high school. The sexual abuse continued until he left Gaza. At one point, the men were filming when he was sexually abused. Abdallah Alhattis father found out what happened, and he received threats by his family since he came to Sweden. If he returned to a Gaza, he risked being killed by his family because they had been told that he had participated in homosexual acts. Alternatively, he would risk being sentenced to imprisonment of up to 10 years. The Migration Board denied Abdallah a residence permit. Abdallah appealed the decision to the Migration Court (<i>Migrationsdomstolen</i>).</p>

Main reasoning/argumentation (max. 500 chars)	The Migration Court found that Abdullah Alhattis story together with evidence was deemed credible. He had made it probable that he was in need of protection due to prescribed homosexuality. Abdullah risked persecution at a return from his family members as well as from the Palestinian authorities. There is no internal flight alternative. Abdullah Alhatti was granted a permanent residence and refugee status.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Residence permit, prescribed homosexuality, internal flight,
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Migration Court, changed the Migration Board's decision so that Abdullah Alhatti was granted a permanent residence and refugee status.

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

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

Chapter E, Freedom of assembly, case 1

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

Chapter F, Hate speech, case 1

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

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

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

Chapter F, Hate crimes, case 2

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

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

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

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

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

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

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

Annex 2 – Statistics

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

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

Chapter B, Freedom of movement of LGBT partners

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

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

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

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

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

Chapter D, LGBT partners benefiting family reunification

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

Chapter E, LGBT people enjoyment of freedom of assembly

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

Chapter F, Homophobic hate speech

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

Chapter F, Homophobic motivation of crimes as aggravating factor

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

Chapter G, Transgender issues

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

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

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
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 (Rättsliga rådet)	✓	X The requirement for sterilization and prohibition of maintaining fertility retification of the recorded sex was removed. There is no longer anything to prevent a transsexual person to save reproductive cells prior to the change of the recorded sex. The sterilization law is repealed. The legislative amendments came into force on 1 July (Government Bill .2013.2012/13: 7). Change of name possible after gender	X	Decision issued by forensic board (Rättsliga rådet)

							reassignment by the Tax Office (Skatteverket)			
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 ¹³⁵	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			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				

¹³⁵ 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 ¹³⁵	All areas of RED*		
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
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	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
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			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
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		✓	According to the pertinent preparatory works, LGBT people could fall under the category ‘comparable group’. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
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.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
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	✓	✓	<p>Agitation against a national or ethnic group (<i>Hets mot folkgrupp</i>) Chapter 16 Sec. 8 in the Penal Code (<i>Brottsbalken</i>) states that: <i>A person who, in a disseminated statement or communication, threatens or expresses contempt for a national, ethnic or other such group of persons with allusion to race, colour, national or ethnic origin or religious belief, or sexual orientation, shall be sentenced for agitation against a national or ethnic group to imprisonment for at most two years or, if the crime is petty, to a fine.</i></p> <p>Aggravating circumstances concerning offences with a discriminatory motive, Chapter 29, section 2 (7) of the Penal Code provides for the discriminatory motives of offenders to be taken into account as an aggravating circumstance when sentencing in cases of criminal acts such as assault, unlawful threat, molestation and inflicting damage.</p> <p>The provision stipulates that: <i>In assessing penal value, the following aggravating circumstances shall be given special consideration in addition to what is applicable to each and every type of crime:</i></p> <p><i>'a motive for the crime was to aggrieve a person, ethnic group or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief, sexual orientation'.</i></p>
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.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
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 ¹³⁶		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	✓	✓	✓	✓	✓	✓	
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.

¹³⁶ 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 ¹³⁶		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
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.