
**Study on Homophobia, Transphobia and Discrimination on
Grounds of Sexual Orientation and Gender Identity**

Legal Report: Norway

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A. Executive summary

Overall legal framework

1. There is no protection against discrimination in the Constitution, but a proposal for such an article is under consideration.¹ The major human rights conventions are incorporated in Norwegian law through the Human Rights Act of 1999, which gives them precedence in relation to other laws except for the Constitution.
2. Norwegian Anti-Discrimination law is based upon EU law, with the shared burden of proof etc, but is very fragmented, and each discrimination ground has its own law, more or less. But sexual orientation is only protected in the Work Environment Act and the housing legislation as of December 2009. Transsexual people are protected in all areas through the Gender Equality Act, and due to the influence of international law, this is possibly the case for other transgender people as well, but there is no case law yet to state this for certain. Transgender is not mentioned anywhere in anti-discrimination law, their legal protection is set forth through case law.
3. The Equality and Anti-Discrimination Ombud enforces all the different laws on discrimination.

Freedom of assembly and association

4. Freedom of assembly and association has a strong position in Norway, and the government funds a lot of NGOs, including LGBT ones. Prides and other LGBT demonstrations receive the same protection as other events, on the basis of what the police consider necessary in each individual case.

Freedom of expression

5. LGBT people have the same freedom of expression as any other people, and this freedom has a very strong position in Norwegian society.

Hate crime - Criminal Code

6. Hate speech against LGB people is punishable by law with a fine or up to 6 months in prison. Transgender persons have no such protection.

Family issues

7. From 1 January 2009 the Norwegian Marriage Act is gender neutral. Since the same time same-sex couples have also had the right to be considered for adoption, and lesbian couples were granted the right to artificial insemination on the same level as heterosexual couples. Only married couples can adopt children, including stepchildren, but both cohabitants and married couples have the right to artificial insemination.

¹ NOU 2009:14

8. Transgender persons can only change their official sex/gender (the Norwegian language does not distinguish between the two) when they have gone through the entire process of gender reassignment, including surgeries aimed at complete sterilization
9. Same-sex couples can get family reunification on the same conditions as other couples.

Asylum and refugee issues

10. LGBT people are recognised as a "social group" in terms of the Refugee Convention, and may have the right to asylum. Norwegian immigration authorities are also familiar with UNHCR's guidance note on refugee claims relating to sexual orientation and gender identity, but in practice this note seems to be used to only a small degree, and very rarely referred to. In practice, however, we see that a lack of understanding of homosexuality and gender identity together with some other factors lead to some, in our view, erroneous decisions.

Social security, social care and insurance

11. Social security, social care and similar public services have for the most part very standardised criteria, and LGBT persons have the same rights to access such services as any other person. In practice, however, there may be some indirect discrimination due to heteronormativity.

Education

12. Sexual orientation and gender identity are part of the curriculum in public schools, but little is done to ensure that teachers have the necessary knowledge for teaching about these subjects, or to ensure that these subjects are actually taught. The system for enforcement of such issues does not function very well.

Employment

13. Discrimination on the basis of sexual orientation is forbidden in the workplace. Transgender persons with the diagnosis transsexualism are protected through the Gender Equality Act. It is uncertain whether this is the case with other transgender people as well.

Housing

14. The Tenancy Act, the Housing Association Act, Residential Building Association Act and the Property Unit Ownership Act. all contain prohibitions on discrimination on the basis of sexual orientation, gender and a number of other things when renting out or selling residences. Transsexual persons are protected in this area as well, and probably other transgender people as well, but there is no case law as yet to state this as mentioned under s.1 above.

Health care

15. LGBT persons have the same access to health services as other people, with the exceptions mentioned in chapter 11 which mainly concern trans people.

Access to goods and services

16. It is punishable by law to discriminate on the basis of sexual orientation, among other grounds, when giving access to goods or services.

Media

17. Though LGB issues are still mainly associated with sex, there are few problems with the media. There is little awareness of transgender issues in media, but things have started to improve somewhat, mainly due to a very good documentary series on national TV about a group of transsexual women, *Jentene på Toten*. Transgender persons remain being seen as controversial..

Transgender issues

18. Transgender persons are still rather invisible in Norwegian law. However, legal debate on this issue is moving.

Good practice

19. Action plan for the improvement of LGBT living conditions.
20. Embassy personnel trained in monitoring LGBT human rights.

B. Findings

B.1. Overall legal framework

The position of international human rights conventions in Norwegian law

21. The most important human rights conventions are incorporated into Norwegian law through the Human Rights Act of 1999. Through this act the conventions considered most important are given a higher status than other laws except the Constitution, cfr. Art. 3, and can be enforced. The conventions included are the UN International Covenants on Civil and Political Rights (ICCPR), on Economic, Social and Cultural Rights (ICESCR), on the Elimination of All Forms of Discrimination Against Women (CEDAW) and on the Rights of the Child (CRC), and the European Convention on Human Rights (ECHR).
22. The Norwegian constitution dates back to 1814. Some changes have been made to accommodate various developments in society, including an article about human rights, which states that "For the State Authorities it is a Duty to respect and ensure the Human Rights", Article 110c. Since this article further states that how this is done should be regulated in ordinary laws, this article gives little opportunity for constitutional review of such laws when it comes to human rights. Thus the Human Rights Act is the only suitable law for testing Norwegian laws against the Human Rights conventions within the Norwegian legal system, but there are some fundamental principles which are included in the Constitution and used for constitutional review, such as freedom of expression. An article on the State's duty to act against all kinds of discrimination was proposed in late 2009, but what becomes of it, remains to be seen.

Discrimination law

23. As of December 31 2009 discrimination law is fragmented and consists of different acts; the Gender Equality Act² (which protects against discrimination on the basis of gender, including transsexuals and possibly other transgender people as well³), the Anti-Discrimination Act⁴ (which protects against discrimination on the basis of religion, ethnicity etc.), the Anti-Discrimination and Accessibility Acts⁵ (which protects against discrimination on the basis of persons with disabilities), the chapter on equal opportunities in the Working Environment Act (chapter 13), and the non-discrimination clauses in the housing legislation: the Tenancy Act, the Housing Association Act, and Residential Building Association Act and The Property Unit Ownership Act. (All of these prohibit discrimination on the basis of sexual orientation and gender, including gender identity to the same, somewhat uncertain degree as the Gender Equality Act, in their respective areas, see note 3).

² *Likestillingsloven.*

³ It is uncertain whether this law should be interpreted as to include other transgender people as well, there being no case law concerning this question as of today (July 2010). The interpretation is influenced by developments in EU law and international human rights law. See also the proposal for a new Anti-Discrimination law, NOU 2009:14, chapter 13.5.1 s.4, which states that only transsexuals are protected.

⁴ *Diskrimineringsloven.*

⁵ *Diskriminerings- og tilgjengelighetsloven.*

24. In addition, the Penal Code prohibits discrimination in access to goods and services plus hate speech against LGB people, but not trans.
25. A proposal for a new and general anti-discrimination law was presented in June 2009, and the Ministry for Children, Equality and Inclusion is now working on a draft to be presented to the Parliament on the basis of this proposal and the responses. In addition to prohibiting discrimination on the basis of sexual orientation in all parts of society, the proposal was to give a general protection in all areas of society against discrimination on the basis of intimate aspects of one's person, which would include gender identity and expression. However, the burden of proof for people belonging to this general category is the ordinary one, not shared as in ordinary discrimination law (Norwegian anti-discrimination law is to a large extent based on EU rules).
26. The Equality and Anti-Discrimination Ombud has the mandate of monitoring the anti-discrimination laws. The Ombud can give statements on whether something is against these laws, and try and make the parties respect the statement of their own free will.⁶ If they do not, the case is presented at the Equality Tribunal, which has the power to order amendments, cease of action or other measures necessary to ensure that discrimination, harassment, or retaliation ceases or that such actions are not repeated. Refusal to submit to the decisions of the Equality Tribunal is punished with a fine.⁷ The tribunal cannot, however, overrule or amend any decisions made by public authorities.⁸ Neither does the tribunal have the power to award damages.
27. Case law on LGBT cases is virtually non-existent in the public statistics. About 1 % in total of the cases⁹ treated by the Ombud for Equality and Anti-discrimination in 2008¹⁰ concerned complaints on discrimination on grounds of sexual orientation¹¹. One of the cases was related to discrimination in employment situations and the other has not been labelled in the statistics.
28. On gender issues 35 % of the total amount of cases treated by the Ombud for Equality and Anti-discrimination in 2008 concerned cases of discrimination on grounds of gender. In all one case of the 56 cases on gender issues concerned transgender related issues. The majority of the gender complaints (39 cases out of 56) were related to gender discrimination in employment situations.
29. There is no official explanation to the relatively low amount of cases treated by the Ombud for Equality and Anti-discrimination. It is uncertain to what extent the decisions and recommendations from the Ombud are actually followed,¹² and its lack of means of enforcement have been debated in relation to the proposed anti-discrimination law.
30. *Programmes of education and awareness*
31. The Equality and Anti-Discrimination Ombud also has, as one of its activities, to provide information about minorities and anti-discrimination law, which includes seminars and courses for employers on their duties of working against discrimination in the workplace and other types of training. Otherwise it is mainly NGOs who undertake such activities,

6 *Diskrimineringsombudsmansloven* § 3 (3)

7 *Ibid.* § 13

8 *Ibid.* § 9

9 Of 16 persons who made an application to the Ombud for Equality and Anti-discrimination only two of these resulted in an actual complaint. Most of the cases fall outside the scope of application of the framework legislation. Many cases are just filed with no reason - the Ombud does not know why the cases don't make it to an actual complaint.

10 The 2009 numbers have not been published yet.

11 Norwegian Ombud for Equality and Anti-discrimination, *Practice 2008 - Law on discrimination in practise*, 2008.

12 *Ibid.* pp. 26-27.

funded by the state. An example of this is a training programme about sexual orientation organised for health workers by the Norwegian LGBT Organisation (LLH).

B.2. Freedom of assembly and association

32. Freedom of assembly and association has a strong position in Norway. It is not mentioned in the Constitution, but is assumed by some scholars¹³ to be a legal principle on the same level as the Constitution. It is explicitly protected through the human rights conventions incorporated in the Human Rights Act of 1999, and is thus given at least what many scholars call a semi-constitutional level.
33. The government funds a lot of NGOs, including LGBT ones.¹⁴ Cases where state authorities or others have tried to limit the freedom of assembly and association for LGBT people have not been heard of from 2005 to present day. LGBT demonstrations and parades get the same amount of protection by the police as any other group, and the degree of protection needed is determined in each and every case the same way as with other groups. Hostility is somewhat more pronounced in other parts of the country, but to our knowledge not to the extent of impeding any pride events during the time period of this study.

B.3. Freedom of expression

34. LGBT people have the same freedom of expression as any other people, in accordance with Article 100 of the Constitution. The only things not considered to fall within the range of freedom of speech are incitements to discrimination, harassment and other types of degrading treatment of certain groups, cfr. the Penal Code Art. 135a. The line between the two is drawn in the following cases from the Supreme Court: Rt 1997 s. 1821, Rt 2002 s. 1618, and Rt 2007 s. 1807. Freedom of speech is also secured through the incorporation of the major human rights instruments in the Human Rights Act as mentioned in chapter 1, but the Constitution remains the most important legal provision. It was revised in 1999 together with the creation of the Human Rights Act to be entirely in accordance with those instruments. No specific groups are mentioned, and everybody has the same level of protection.
35. Freedom of speech or expression has a very strong position in Norwegian society, and it is not very difficult for NGOs working for LGBT rights to be heard in media. But this will of course depend on each person or NGOs skills in how to deal with the media. Transgender persons are still fairly invisible, although this seems to be changing lately. During spring 2010 a documentary series about a group of transgender women, mainly transsexual persons, was sent on the main national TV channel, with astonishing popularity.¹⁵ Through this and other media events, transgender issues has become part of the public debate, with several transgender persons as active participants.
36. Official authorities have, to a large extent, accepted homosexuality and bisexuality as something common, for example in the case Rt 2005 s. 1628 a porn magazine with uncensored pictures of a variety of couples, including both straight, gay and lesbian persons, having sex, was not considered as being against the law, even though the

¹³ Erik Møse, *Menneskerettigheter*, 2002 p. 485

¹⁴ LLH, the only national LGBT organisation, and the main NGO for transsexuals, HBRS, are among those who receive funding.

¹⁵ It has won a number of awards not only in LGBT media, but also in mainstream media, and had a surprisingly high number of watchers for a documentary (261.000 in a population of about 4,5 million, <http://ftpn.no/default.asp?id=1016>, accessed 28 June 2010).

Norwegian porn legislation is rather strict. The theme was the uncensored front page, not the couples' sexual orientation.

37. No court cases concerning the restriction of freedom of speech have been found from the time period of this study.

B.4. Hate crime - Penal Code

38. As to hate speech, this can be punished with a fine or up to three years of prison according to the Penal Code Article 135a. The same is the case for assistance in such an act. Hate speech is defined as threatening or demeaning somebody, or promoting hate, persecution or disdain against somebody on the basis of their sexual orientation (among a number of other grounds, but not gender identity or expression). There are very few cases actually crossing the line for incitement to discrimination, hostility or violence towards any groups, and the few court cases concern extreme right groups attacking ethnic or religious minorities. The only case treated by the Supreme Court is from 1984, and concerned a priest who had attacked gay people on a Christian radio station. Since he was not considered to have crossed the line for incitement to discrimination etc, he was not convicted. (Rt. 1984 p. 1359). Those few cases that are reported seem to concern situations that are considered within the freedom of speech, and are therefore not brought to court. The Norwegian LGBT Organisation reported one incident in 2010, which has not yet been adjudicated upon. There is no case law concerning hate speech against transgender persons.
39. Gender and gender identity is not protected under any of these articles.
40. As of 2009, it is not said explicitly in the Penal Code that hate motivation behind a crime should be considered as an aggravating factor, although this will change with the new Penal Code which will come into force in 2012. However, in practice it may be considered as an aggravating factor by the courts, and, according to the police, most often will.
41. The proposal for a new anti-discrimination law includes an article that makes it a crime to plan and organise discrimination in cooperation with others, but only on the basis of ethnic origin.

B.5. Family issues

42. From 1 January 2009 the Norwegian Marriage Act is gender neutral, cfr. Article 1. This also had the effect that transgender persons no longer had to get divorced when changing their legal gender. Since 1993 same-sex couples have had the same rights and duties as heterosexual couples through the Partnership Act, except for the right to adopt children. Stepchild adoption was allowed in 2002, and the right to maternity leave for the non-biological mother was granted in 2006.
43. From 1 January 2009, same-sex couples also have the right to be considered for adoption, and lesbian couples were granted the right to assisted insemination on the same level as heterosexual couples. Only married couples can adopt children, including stepchildren,¹⁶ but both cohabitants and married couples have the right to artificial insemination.¹⁷ As long as there is a woman in the couple who can conceive and go through the pregnancy, the reason for the need for insemination is irrelevant, including sexual orientation *and* gender identity – at least formally. A doctor must confirm the need for artificial insemination and

¹⁶ The Adoption Act chapter 1 (*Adopsjonsloven*).

¹⁷ The Biotechnology Act chapter 2 (*Bioteknologiloven*).

that the person in question can give the child good care,¹⁸ and practice will necessarily vary. Doctors have the right to refrain from referring lesbian couples to artificial insemination on the basis of personal convictions, but it remains uncertain to what extent the rule is practiced and how.

44. Single persons can adopt, but not have artificial insemination.¹⁹ In practice, however, it is not possible yet for gay couples to adopt from abroad, and since there are very few Norwegian children who are adopted every year, this right remains almost illusory as yet. This is because the states of origin or the local adoption NGOs do not accept adoption to same-sex parents as yet.
45. Agreements upon surrogacy are not considered legally binding, and one normally has to go through the stepchild adoption procedure when such children are brought from abroad.²⁰
46. Transgender persons can only change their official sex/gender (the Norwegian language does not distinguish between the two) when they have gone through the entire process of gender reassignment, including surgery aimed at complete sterilization – the removal of reproductive organs.²¹ If you have not done so, you have to marry as your registered gender. This has no legal consequences, due to the gender neutral Marriage Act. There is no possibility to store ova or semen for later use.²²
47. As a main rule, a person cannot take a first name clearly and exclusively associated with a different gender than what the person is officially registered under, but there is an exception for everybody with a transgender identity, whether they are undergoing hormone treatment or not.²³
48. From 27 January 2009, same-sex couples can also be considered as foster parents on the same level as heterosexual couples. Before then, they could still be considered as foster parents, but as a secondary option.
49. Same-sex couples can get family reunification on the same conditions as other couples.²⁴ This includes married couples and couples who have lived together for at least two years before applying. It is also possible to get a temporary residence permit in order to marry in Norway, on certain conditions. In practice, there seems to be some variation as to whether bureaucracy manages to take into consideration the special challenges same-sex couples sometimes face.

B.6. Asylum and refugee issues

50. LGBT people are recognised as a “social group” in terms of the Refugee Convention. This expression is defined in the Immigration Act Art. 30 d), but sexual orientation, gender or gender identity or expression are not mentioned. One may have the right to protection (Art. 28 in this Act) on the basis of sexual orientation or gender identity, but the latter most often get asylum on the basis of the former as the differences are unclear both to the applicant and often also the Norwegian authorities. The Norwegian immigration authorities are aware of UNHCR’s guidance note on refugee claims relating to sexual orientation and gender identity, but in practice this note seems to be used to only a small degree, and is very

18 Ibid. t Art. 2-6.

19 The Adoption Act chapter 1 (*Adopsjonsloven*) and the Biotechnology Act chapter 2 (*Bioteknologiloven*).

20 NOU 2009:5 Farskap og annen morskap

21 Forskrift om folkeregistrering Art. 2.2 s. 5.

22 See the Biotechnology Act art. 2-18.

23 The Name Act (*Navneloven*) of 2002 Art. 10, cfr. issue paper G 20/2002 from the Ministry of Justice s. 2.3.7.1, www.regjeringen.no/nb/dep/jd/dok/rundskriv/2002/rundskriv-g-2002.html \t "_blank, accessed 23 September 2010.

24 The Immigration Act (*Utlendingsloven*) Art. 40 and 41.

rarely referred to. There is a guidance note on how cases concerning gender related persecution should be treated, which is under revision to better include sexual orientation and gender identity.

51. Article 38 in the Immigration Act also gives the right to a residence permit on the basis of "strong humanitarian considerations or connection to the realm", which has a lower threshold than Article 28.
52. There are no statistics available from the Immigration Appeal Tribunal, only from the first instance, the Norwegian Directorate of Immigration. Gender identity is not a separate category, but the statistics section of the Directorate thought it probably was classified under sexual orientation.

B.7. Social security, social care and insurance

53. There is no specific legislation concerning social security, social care and insurance for LGBT people or any other such group. Social security, social care and similar public services have for the most part very standardised criteria, and LGBT persons have the same rights to access such services as any other person. This includes services such as unemployment benefits, social security, health care, parental leave etc. Since marriage is now gender neutral, the spouse will have the same rights among same-sex couples as among heterosexual couples, regardless of the kind of right one refers to.
54. As to insurance, no discriminatory practices are known of as of the present day. There are no judgments on the right to social security, social care and insurance for LGBT people.

B.8. Education

55. The right to education is secured for everybody from the age of 6 to 19 in the Education Act of 1998. The Human Rights Act also ensures this right. Sexual orientation and gender identity are part of the curriculum in public schools,²⁵ but little is done to ensure that teachers have the necessary knowledge for teaching about these subjects, or to ensure that these subjects are actually taught. As of present day, it is unclear to what extent private schools are under the obligation to teach about these subjects, and there is no functioning system of sanctions against public or private schools that do not.²⁶ The same is the case with schools that do not take action against discrimination or harassment of pupils.²⁷

B.9. Employment

56. Discrimination on the basis of sexual orientation is forbidden in the workplace. The relevant rules in the Working Environment Act²⁸ are meant to be an implementation of EU law. Transgender persons with the diagnosis transsexualism are protected through the Gender

²⁵ In the subject called "Naturfag", between 5th and 7th grade, www.udir.no/grep/Lareplan/?laereplanid=117461&visning=5, accessed 23 September 2010.

²⁶ The Public Schools Act (*Privatskolelova*). Private schools are not numerous, but mainly Christian and the Norwegian LGBT Organisation receive a few complaints about their practices every year.

²⁷ Barneombudsmanet, <http://barneombudsmanet.no/publikasjoner/tilsyn-og-/>, accessed 23 September 2010.

²⁸ *Arbeidsmiljøloven* chapter 13.

Equality Act.²⁹ It is uncertain whether this is the case with other transgender people as well, see note 3

57. The Equality and Anti-discrimination Ombud enforce the Working Environment Act chapter 13, see chapter 1.
58. No survey on the conditions at the workplace for LGBT people has been carried out since 2005,³⁰ and no surveys on the conditions for transgender persons are available.
59. Employers are under the obligation to actively promote equality and non-discrimination on the basis of gender, ethnicity, religion and disabilities, and they should report on how they do this every year. None of these obligations include sexual orientation, and the transgender perspective is not considered a part of the obligation of promotion and reporting on equality and non-discrimination.
60. Sexual orientation is not mentioned in job advertisements from the ministries, although all other recognised non-discrimination grounds are explicitly mentioned. When the issue was raised by the Equality and Anti-Discrimination Ombud, the result was that the other grounds were taken out and a more general phrase about diversity was put in the advertisements instead, with the result that it now gives the impression that the focus is on ethnic minorities.
61. As a main rule, the right to represent people in court is restricted to those with the Norwegian equivalent of a bar exam, cfr. the Civil Procedures Act Art. 3-3 and the Tribunal Act Art. 218, but NGOs working in the relevant field can represent a party in the first round of negotiations (Forlikrådet), cfr. art. 6-7 provided the person doing this is a lawyer. NGOs can also take part in the court procedures as aide for one of the parties, with party status but with somewhat fewer rights,³¹ and it cannot act outside the interests of the NGO in question.

B.10. Housing

62. The Tenancy Act, the Housing Association Act, the Residential Building Association Act all contain prohibitions on discrimination on the basis of sexual orientation, gender and a number of other grounds when renting out or selling residences. This means that discrimination of LGBT people is forbidden when it comes to renting, buying or similar of real estate with the purpose of living there. These articles are enforced by the Equality and Anti-Discrimination Ombud, see section 1.

B.11. Health care

63. LGBT persons formally have the same access to health services as other people, with the exceptions mentioned below. Therefore there are no other legal provisions concerning health care which particularly mention LGBT people.
64. Transgender persons who are under assessment at the Gender Identity Disorder Clinic in Oslo (GID) have access to remedies such as a compression vest (female-to-male) and voice training. Those who obtain the diagnosis transsexualism will also have the expenses

29 Likestillings- og diskrimineringsombudsmannet, <http://ldo.no/no/Klagesaker/Arkiv/LikestillingsOmbudsmanets-klagesaker/2005/Juni/Likestillingsloven-gjelder-ogsaa-for-transkjonnete-/>, accessed 23 September 2010.

30 NOVAs skriftserie 3/05, *Lesbiske og homofile arbeidstakere – en pilotundersøkelse*,

31 *Civil Procedures Act* art. 15-7

covered for operations, hormones, breast implants, wigs, vests and phalloplasty.³² Those who do not obtain this diagnosis receive little or no treatment and have few or no expenses covered. There is no alternative to the GID clinic, and very limited possibilities for receiving a second opinion on the diagnosis. The right to a second opinion is only valid as long as this can be done within Norway, and due to the GID clinic's monopoly on giving the diagnosis of F64.0, one has to go abroad to get a second opinion. In reality, a seemingly neutral rule leaves transgender persons without some basic guarantees that most other patients have. Patients without the diagnosis of F64.0 have very limited opportunity of receiving health care as well, there being no responsible institution and limited recognition of knowledge outside the GID clinic.

B.12. Access to goods and services

65. The Penal Code Article 349a makes it punishable by a fine or up to six months in prison to refuse someone access to goods or services, or public gatherings or displays or similar on the basis of their sexual orientation. Assistance in such an act is also punishable by law. Gender identity has no such protection.

B.13. Media

66. There is no specific media legislation mentioning LGBT, nor does their code of conduct, enforced by a council with representatives both from the media and other parts of society. There is a tendency in the media to see words as "homo", "gay", "lesbian" etc as linked to sexuality and thus a piquant aide in selling newspapers, and there is a tendency to focus on stereotypes. Still, there are an ever-growing number of well-known people who come out as gay or lesbian, and this is generally well received in media, and respectfully treated.
67. There is little awareness of transgender issues in media, but things have started to improve somewhat, mainly due to a documentary series on national TV about a group of transsexual women, *Jentene på Toten*. See also chapter on Freedom of Speech. Transgender persons remain to be seen controversial, though, especially those who are not transsexual persons and who challenge the traditional gender binary.

B.14. Transgender issues

68. The transgender perspective is mainstreamed into each section of the report. As mentioned in chapter 7 transgender persons can change their official or legal gender when having gone through the entire procedure of gender reassignment, including surgery aimed at complete sterilization. There is but one legal provision concerning change of official gender, in the regulations concerning the National Registry,³³ Art. 2.2 s.5, which only states that you can change your registered gender when your "gender status has changed". So one's legal gender is still mainly a medical issue, not a legal question, as it is up to the doctors to determine the gender status. Practice has been varying, and recently a issue paper came from the Tax Directorate stating that the GID clinic alone could confirm a change in gender status, but this has turned out to be a misinterpretation of a letter from the Directorate of Health, and LLH is still awaiting the correction from the Tax Directorate as of July 2010.
69. To sum up, transgender persons are still rather invisible in Norwegian law, but things are starting to change little by little, and in the debate concerning the proposed Anti-

³² Harry Benjamin, *Resource Centre*, e-mail dated 20 January 2010.

³³ Forskrift til lov om folkeregistrering.

Discrimination and Equality Act, trans issues have probably been among the most debated topics.

B.15. Intersex issues

70. There is no mention of intersex at all in Norwegian legislation.

B.16. Miscellaneous

71. Article 155 in the Penal Code criminalize transmittance of HIV and other viruses. With a slight modification this prohibition is upheld in the new Penal Code Articles 237 and 238. This has been highly criticized by UNAIDS and several Norwegian NGOs. LGB people are not allowed to donate blood, cfr. Guidelines from the Ministry for Health and Social Care, on the basis of their sexual orientation only, not their lifestyle or sexual behaviour.

B.17. Good practices

72. The Norwegian government has made a four year action plan (2009-2011)³⁴ for the improvement of the living conditions of LGBT people, which also includes transgender issues in a fairly thorough manner. In this action plan there is a huge number of good suggestions as to how this can and should be done, but unfortunately only a few are followed up by funding, even essential ones such as the training of teachers. Still, the mapping of problems and possible actions is a great step forward.
73. The Norwegian Minister for Children, Equality and Inclusion also appears to see discrimination of LGBT people as linked to gender discrimination in general, and gender stereotyping.
74. Personnel at several embassies are now trained in how to monitor LGBT human rights in the countries they are stationed in.
75. Norway co-organised with the governments of the Netherlands and France the Paris 2009 conference on LGBT.
76. Norway participated in DH-LGBT (intergovernmental work)
77. Norway co-funds the 'French LGBT fund'.

³⁴ Barne-, Likestillings- og Inkluderingsdepartementet, www.regjeringen.no/nb/dep/bld/dok/rapporter_planer/planer/2008/bedre-livskvalitet-for-lesbiske-homofile.html?id=519430, accessed 23 September 2010.

Annex 1: Case law

Case title	07/2027
Decision date	21 November 2008
Reference details (type and title of court/body; in original language and English (official translation if possible))	The Equality and Anti-Discrimination Ombud http://ldo.no/no/Klagesaker/Arkiv/2008/Sporsmal-om-diskriminering-pa-grunn-av-seksuell-orientering-ved-professoroppykk/
Key facts of the case (max. 500 chars)	A research fellow meant that the reason why he did not get the position of professor he had applied for, was because of his sexual orientation.
Main reasoning/argumentation (max. 500 chars)	The Ombud concluded that the reason he did not get the position was because the one who did was better qualified.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Burden of proof
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Ombud concluded that the reason he did not get the position was because the one who did was better qualified.

Case title	08/500
Decision date	04 December 2008
Reference details (type and title of court/body; in original language and English (official translation if possible))	The Equality and Anti-Discrimination Ombud http://ldo.no/no/Klagesaker/Arkiv/2008/Sporsmal-om-forskjellsbehandling-pa-grunn-av-kjonn-og-seksuell-status-ved-ansettelse-av-vaktmester/

Key facts of the case (max. 500 chars)	A transsexual woman did not get a position as a caretaker, and believed that this was because she was a transsexual or because she was a woman.
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The only transgender discrimination case I've found, and clarifies what it takes to win through.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	She did not win through, the Ombud concluded that the person who got the position was better qualified.

Case title	2002-06-10. RG 2002 1259. Borgarting lagmannsrett - kjennelse.
Decision date	June 10 2002
Reference details (type and title of court/body; in original language and English (official translation if possible))	Borgarting Court of Appeal
Key facts of the case (max. 500 chars)	An Iranian man applied for asylum in Norway on the basis of sexual orientation.
Main reasoning/argumentation (max. 500 chars)	The court rejected the appeal, reasoning that he should adapt to Iranian culture, and that religious criticism and similar was not enough to be granted asylum or any other type of protection.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	This much-criticised case is still referred to in a number of decisions by the immigration authorities. The court here does not see that in Iran it is not a matter of holding hands in the streets, it is the possibility of not living a heterosexual life that is at stake for gay people.
Results	78. The result was that the Iranian lost the case; he was not

(sanctions) and key consequences or implications of the case (max. 500 chars)	considered in need of protection by the Norwegian government on the basis of his sexual orientation.
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79. There is, in general, very little relevant Case Law available on discrimination of LGBT people in Norway and no systematic study of this field has been carried out.

Annex 2: Statistics

	2005	2006	2007	2008	2009
Number of demonstrations in favour of LGBT people / LGBT rights, gay pride parades, etc.	3	5	5	6	5
Number of demonstrations against LGBT people / LGBT rights				1	
Number of planned demonstrations / public events organised by LGBT people denied	0	0	0	0	0

	2005	2006	2007	2008	2009
Number of court cases regarding violations of the right to freedom of expression of LGBT people	0	0	0	0	0
Number of convictions regarding violations of the right to freedom of expression of LGBT people (please indicate range of sanctions ordered)	0	0	0	0	0
Range of sanctions issued for the violation of the right to freedom of expression of LGBT people.	0	0	0	0	0

	2005	2006	2007	2008	2009
Number of court cases regarding homophobic/transphobic hate speech initiated	6	4	6	3	4
Number of convictions regarding homophobic/transphobic hate speech (please indicate range of sanctions ordered)	0	3	0	1	0
Range of sanctions issued for homophobic/transphobic hate speech ³⁵					

The numbers are probably higher, but these are the ones know about for sure.

³⁵ See section 4 of the report. No further details could be obtained during the time period of this study.

	2005	2006	2007	2008	2009
Number of criminal court decisions in which homophobic/transphobic motivation was used as an aggravating factor in sentencing	0	0	0	0	0

	2005	2006	2007	2008	2009
Number of persons benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation or gender identity	10	1	3	0	6

	2005	2006	2007	2008	2009
Number of court cases raised where the right to social security and/or social care of LGBT people has been violated due to homophobic/transphobic motivations	0	0	0	0	0
Number of convictions regarding the violation of the right to social security and/or social care due to homophobic/transphobic motivations	0	0	0	0	0
Range of sanctions issued for the violation of the right to social security and/or social care due to homophobic/transphobic motivations	0	0	0	0	0

	2005 ³⁶	2006	2007	2008	2009
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).		1	2	2	2
Total complaints of discrimination on the ground of sex/gender identity (equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).					1
Total finding of Discrimination confirmed on the grounds of sexual orientation (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc). ³⁷		0	0	0	0
Total finding of Discrimination confirmed on the grounds of sex/gender identity (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).		0	0	0	0
National number of sanctions/compensation payments issued (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).		0	0	0	0
National range of sanctions/compensation payments (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).		0	0	0	0

According to Randi Solberg at the Equality and Anti-discrimination Ombud, the low numbers are partly due to the fact that LGB people are only protected against discrimination in a few areas of society.

	2005	2006	2007	2008	2009
Number of court cases raised where the right to housing of LGBT people (e.g. denial of selling or renting to a person, or not lending financial support to purchase housing) has been violated due to homophobic/transphobic motivations	0	0	0	0	0
Number of convictions regarding the violation of the right to housing due to homophobic/transphobic motivations	0	0	0	0	0

	2005	2006	2007	2008	2009
Number of cases where LGB persons have been deprived	0	0	0	0	0

³⁶ The Ombud was created in 2006, so there are no numbers for 2005.

³⁷ According to Randi Solberg at the Ombud there is one case in this time period, but I don't know from which year, about a Christian kindergarten.

of the right to access to health care facilities due to homophobic motivations?					
Number of cases where transgender persons have been deprived of the right to access to health care facilities due to transphobic motivations?	0	0	0	0	0
Number of convictions regarding the violation of the right to access to health care facilities due to homophobic motivations?	0	0	0	0	0
Number of convictions regarding the right to access to health care facilities due to transphobic motivations?	0	0	0	0	0
Range of sanctions issued for the violation of the right to access to health care facilities due to homophobic/transphobic motivations?	0	0	0	0	0
Number of persons receiving gender-confirming treatment	15-20	15-20	15-20	15-20	15-20

	2005	2006	2007	2008	2009
Number of cases where LGBT people have been deprived of the right to access goods and services due to homophobic/transphobic motivations?	4	6	4	0	0
Number of convictions regarding the violation of the right to goods and services due to homophobic/transphobic motivations?	0	2	0	0	0
Range of sanctions issued for the violation of the right to access to goods and services due to homophobic/transphobic motivations? ³⁸					

	2005	2006	2007	2008	2009
Number of court cases regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal treatment and equal opportunity.	0	0	0	0	0
Number of convictions of media by 'soft-law' institutions, such as a media council	0	0	0	0	0
Number of convictions regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal treatment and equal opportunity.	0	0	0	0	0

	2005	2006	2007	2008	2009
Number of name changes affected due to change of gender/ the gender identity of the applicant	15-20	15-20	15-20	15-20	15-20
Number of persons who changed their gender/sex in your country under the applicable legislation (if relevant split between transgender/intersex applicants)	15-20	15-20	15-20	15-20	15-20

Source: Harry Benjamin Resource Centre, read. 01.02.2010

³⁸ Data not available.