

Replies to ILGA-Europe’s questionnaire on the coverage of Gender Identity and Gender Expression by National legislation and National Equality Bodies

June 2011

Table of Contents

| | |
|--|----|
| Austria | 1 |
| Belgium | 1 |
| Bulgaria | 3 |
| Cyprus | 3 |
| Czech Republic | 4 |
| Denmark..... | 4 |
| Estonia..... | 5 |
| Finland..... | 5 |
| France..... | 6 |
| Germany..... | 8 |
| Greece | 9 |
| Hungary..... | 10 |
| Iceland..... | 10 |
| Ireland | 11 |
| Italy | 12 |
| Latvia | 12 |
| Liechtenstein..... | 13 |
| Lithuania | 13 |
| Luxembourg | 13 |
| Malta | 14 |
| The Netherlands | 14 |
| Norway..... | 15 |
| Poland | 16 |
| Portugal..... | 16 |
| Romania | 17 |
| Slovakia | 20 |
| Slovenia..... | 21 |
| Spain..... | 22 |
| Sweden..... | 23 |
| United Kingdom (Great Britain) | 26 |
| United Kingdom (Northern Ireland)..... | 31 |

Austria, Ombud for Equal Treatment

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? In the Austrian Equal treatment act, does not mention discrimination on the ground of gender identity or gender expression. But we see it as discrimination on the ground of gender, which gives at the same time the best level of protection, as there is still a difference between the grounds of discrimination.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? As mentioned above we define the discrimination on the ground of gender identity and/or gender expression as discrimination on the ground of gender for which we do have a mandate.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

- i) **How many cases were there?** There are no numbers, as we don't count them and in our statistic they are shown as cases of gender discrimination, but there have been only a few.
- ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?** employment, access to goods and services
- iii) **How many did you process and conclude?** 3

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? Yes. We did organise a conference in 2009 on topic of the discrimination of trans and intersex persons and to find out how they can be protected under the Austrian legislation. On this occasion we got in contact with many different Austrian trans-organisations which took part in the conference, some of them as speakers. We made an info sheet to promote this topic and to inform persons who might be affected by discrimination, that they can come to us, although there is no specific ground of discrimination called, gender identity or gender expression. As member of Equinet we also have been working on the Equinet opinion, which was published last year.

5/ Is there anything else that you would like to share with us on this subject? Enclosed you'll find our info sheet for trans and intersex people (only available in German) and the Equinet opinion.

Belgium, Institute for the equality of women and men, information

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? Gender identity and gender expression are not explicitly included in the Belgian federal anti-discrimination legislation as discrimination grounds. However, the Belgian federal law of 10 May 2007 to combat discrimination between women and men (the so-called gender law) equals discrimination on the ground of gender reassignment with discrimination on the ground of sex. This law transposes the recast Directive 2006/54/EC, and thus aims to be applied in the domain of work and employment. The law also transposes the Directives 2004/113/EC on the access to and supply of goods and services, and 79/7/CEE on the equal treatment in matters of social security. Thus, in Belgium, transsexual people are protected against discrimination and harassment in a number of domains: employment, work, social security, access to and supply of goods and services, and also participation in or practicing an economic, social, cultural or political activity that is publicly accessible. (cf. article 4 §2 of the law of 10 May 2007 to combat discrimination between women and men).

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? In its capacity as Equality Body, and as stipulated in its founding law (law of 16 December 2002), the Institute for the equality of women and men is commissioned to guarantee and promote the equality of women and men, to fight against any form of discrimination and inequality based on gender, and to develop gender mainstreaming instruments and strategies. More specifically, this consists of (article 4):

5° help, within the limits of its goal, any person requesting advice on the scope of his/her rights and obligations. This assistance enables its beneficiary to obtain information and advice on the possible ways to have his/her rights enforced;

6° take legal action in the case of disputes resulting from the application of the law of 10 May 2007 to combat discrimination between women and men (...) and other laws, specifically aimed at guaranteeing the equality of women and men;

In this capacity, the Institute has developed an ad hoc practice that consists of receiving all transgender people (in a broad sense).

Whatever the ground of the discrimination (gender expression, gender identity, gender reassignment, transvestism ...), the Institute registers the complaint, and tries to offer an adequate response in function of the prevailing law.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

i) How many cases were there?

| | |
|------|----|
| 2006 | 4 |
| 2007 | 14 |
| 2008 | 11 |
| 2009 | 20 |
| 2010 | 20 |
| 2011 | 12 |

ii) Which field did they concern (employment, access to goods and services, education, healthcare)? The greater part of the complaints that the Institute receives regard the domain of employment. However, it should be specified that the Institute is only competent on the Belgian federal level, which mainly include competences regarding employment, social security, goods and services, ...The federate entities (communities) are competent in domains such as education, healthcare, ...The Institute has developed collaborations with the federate entities, see for ex. the development of a recommendation for the French Community to adapt the name of transgender people on their diploma's.

iii) How many did you process and conclude?

At the moment, there is one legal action for a case of dismissal of a transsexual person on the ground of gender reassignment.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? The Institute for the equality of women and men has conducted a research in 2008-2009 on the social and legal situation of transgender people in Belgium. The aim of this research was to map the discrimination and inequalities in practice, policy and legislation faced by transgender people. The results are published in the report *Being transgender in Belgium: mapping the social and legal situation of transgender people*, that is available in Dutch, French and English. (It can be downloaded via the website of the Institute for the equality of women and men (igvm-iefh.belgium.be > Publicaties/Publications), or can be ordered in print.) The research has been presented at an international seminar in Brussels on November 20th 2009. Since then, the Institute for the equality of women and men has set up a collaboration with two transgender organisations: Genres Pluriels (French-speaking) and T-werkgroep (Dutch-speaking), that includes meetings to discuss their demands and future actions; the financing of events and actions of the transgender organisations; and the inclusion of information on the IEWM on the websites of the transgender organisations and vice versa. In 2010 the transgender issue has been identified as a priority subject for granting subsidies by the Institute for the equality of women and men to equal opportunities organisations. The IEWM collaborated with Çavaria, the Flemish LGBT umbrella organisation, in organising a seminar on the transgender issue in June 2010.

5/ Is there anything else that you would like to share with us on this subject? The Institute for the equality of women and men is conducted two researches: 1/ an in-depth study of the Belgian federal law

on transsexuality (10 May 2007), which aim is to analyse the obstacles in this law, and 2/ a legal study on the possibility/necessity to explicitly include the ground “gender identity” and “gender expression” in the Belgian federal antidiscrimination law. The results of these two studies will be lead to recommendations on how to (or not to) adapt the prevailing legislation so as to eliminate all discrimination of transgender people.

Bulgarian Commission for Protection Against Discrimination

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? In the provision of Art.4 (1) of the Protection against Discrimination Act among other grounds are specifically mentioned “gender” and “sexual orientation”. The provision of Art. 4(1) states that any direct and indirect discrimination is prohibited on grounds of sex, race, nationality, ethnic origin, human genome, citizenship, origin, religion or belief, education, opinion, political affiliation, personal or public status, disability, age, sexual orientation, marital status, property status, or any other grounds, established by law or international treaties to which Republic of Bulgaria is a party. That open list enables the national equality body to investigate cases of gender identity and gender expression.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Yes, currently there is one case in a process of investigation.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

i) How many cases were there?

ii) Which field did they concern (employment, access to goods and services, education, healthcare)?

iii) How many did you process and conclude? CPD has been approached with complaints by transgender people on 3 occasions. Presently, one case file is pending.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? Not specifically but in its awareness raising activities, CPD covers the issues of gender identity.

Cypriot Office of the Commissioner for Administration (Ombudsman)

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? No, there is no express protection against gender identity and/or gender expression discrimination in our national legislation. However, we think that implicit protection exists in view of: a) the fact that Cyprus has implemented in its national legislation Directive 2006/54/EC(Recast) - which in its preamble (Recital 3) states that the principal of equal treatment also applies to discrimination arising from gender reassignment of a person, b) the European Court of Justice Case Law (like Case C-13/94 P v S Cornwall County Council, Case C-117/01 K.B. National Health Service Pensions Plan), and, c) the **European Court of Human Rights case law (like: Case - Van Kück v. Germany)**

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Albeit not explicitly, our Body is competent to investigate cases of discrimination on the ground of gender identity and/or gender expression. The Laws which determine our competences, provide that we can investigate discrimination cases on the basis of gender and sexual orientation, as well as to intervene to protect the enjoyment without discrimination of the rights protected by all the major human rights conventions ratified by Cyprus.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

i) How many cases were there? We received 3 complaints regarding discrimination on the basis of gender identity and gender expression. Two of the complaints were filed by the same person - a male

to female transsexual - who is a recognized refugee living in Cyprus and who was granted the refugee status because of fear of prosecution in the country of origin, on the basis of her gender identity. The first complaint was submitted before the complainant was recognized as a refugee and concerned the delay, and the reasons for delay, in her application to be granted asylum in Cyprus. The matter was settled soon after we raised it to the implicated authority. The second complaint concerned the refusal of the Cyprus health authorities to cover the expenses of a surgery resulting in gender reassignment that the complainant wants to do abroad. The other complaint was filed by a Greek citizen living in Cyprus who underwent an operation resulting in gender reassignment. The complaint concerns the refusal of the Cyprus Immigration authorities to re-register the complainant with her new "female" name and issue her a new identity.

ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?** I assume that the first and the third of the above-mentioned complaints concerned access to services, while, the second concerned access to healthcare.

iii) **How many did you process and conclude?** The investigation of the complaint concerning the application for asylum was terminated when the refugee status was granted to the complainant. The complaint concerning the sex reassignment surgery is in the final stages of the investigation. We plan to submit a Report regarding the matter in the next few weeks. The complaint concerning the re-registration after a gender reassignment surgery, is still under investigation

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? Not explicitly, but our Body participated in events/discussions organised for LGBT rights in general.

Czech Office of the Public Defender of Rights

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? Yes, Art. 1, 2/3, 2/4, Act. 198/2009 Coll. (Antidiscrimination Act)

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Yes, it is. Result of law (349/1999 Coll.)

3/ Have you received cases of discrimination from trans and/or intersex people? If so: No.

i) **How many cases were there?**

ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?**

iii) **How many did you process and conclude?**

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? No.

Danish Institute for Human Rights

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? There is no explicit protection against discrimination on the ground of gender identity/gender expression in Danish legislation. However, implicit, the area is covered per se by legislation regarding gender.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The Danish Institute for Human Rights (DIHR) has just been appointed as the equality body on gender (15. March 2011)– we provide a.o. assistance to victims of discrimination on the grounds of race and ethnic origin and gender. We have the remit to investigate ex-officio cases. Complaints regarding discrimination get handled by the Danish Equality Board – which is an equality tribunal. Though the legislation does not mention gender identity specifically – we at DIHR and the tribunal acknowledge the area and can and do take cases or assist in cases regarding discrimination on the ground of gender identity. Furthermore DIHR- being a national human rights institution – has in relevant projects included transgender specifically even though our equality mandate

did not until just recently entailed gender. We follow the Yogyakarta Principles and the Issue Paper produced by the CoE. We also work horizontally – so trans-Denmark is represented in our committee on equal treatment – who is an advisory body for DIHR on issues regarding discrimination and promotion of equal treatment.

3/ Have you received cases of discrimination from trans and/or intersex people? If so: We have no cases at the moment because the mandate is fairly new and we have just employed staff with specific capacity in the field of gender.

- i) **How many cases were there?**
- ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?**
- iii) **How many did you process and conclude?**

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means?

Estonian Gender Equality and Equal Treatment Commissioner

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? There is no express protection or special ground mentioned. However, the Estonian Gender Equality Act (<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X80041K1&keel=en&pg=1&ptyyp=RT&yp=X&query=soolise>) may be relied upon in cases of discrimination against transgender people.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Since our EB has interpreted the mentioned law in a way that we can investigate such cases and the published commentary to the act (<http://www.sm.ee/aktuaalne/uudised/b/a/soolise-vordoiguslikkuse-seaduse-kommenteeritud-valjaanne-aitab-juriste.html>) holds the same position, we have statutory competence to investigate cases of discrimination on ground of gender identity/expression.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

- i) **How many cases were there?**
- ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?**
- iii) **How many did you process and conclude?** Since 2005 (the establishment of Estonian EB) we have received 1 case conc. recruitment of a transsexual. There was a doubt of discrimination on ground of sex/gender and gender based harassment. We investigated and concluded that there was no discrimination.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? No. Our promotion work is mostly on gender equality and equal treatment in general. EB is very small (2 persons) and until now no special attention has been given to grounds of gender identity and/or gender expression in the meaning of protecting the minorities.

Finnish Ombudsman for Equality

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? In Finland The Constitution Act emphasis on the principle of equality of all people. In Finland discrimination against trans people is considered to be gender discrimination according to the rulings of the European Court of Justice. In the rationale for the Act on Equality between Women and Men 2005 has been stated that gender reassignment process cannot be used for discrimination in work life. The Parliament stated that it is important to clarify trans peoples protection against discrimination and solve if the legislation belongs to the Act on Equality between

Women and Men or to the Non Discrimination Act. In spring 2011 the Parliament approved the Report on Gender Equality and created the assignment to include gender minorities in the Equality Act. Until that happens the Ombudsman for Equality has decided that the Equality Act applies wide to the trans people (among others transgender and transvestite individuals) and intersex people. The Ombudsman has insisted that the Equality Act be amended to include provisions on the protection of gender minorities against discrimination and the promotion of their equality in society.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The Ombudsman for Equality has considered that the Equality Act applies wide to the trans people and has there for also investigated cases of discrimination on the ground of gender identity and/or gender expression.

3/ Have you received cases of discrimination from trans and/or intersex people? Yes.

If so:

i) How many cases were there? p.a. 5-10 cases.

ii) Which field did they concern (employment, access to goods and services, education, healthcare)? Cases have been from all those fields. Trans people have discovered the services of the Ombudsman for Equality and have contacted the Office with inquiries concerning for example compensation practices of the Social Insurance Institution (KELA), dressing rooms and washrooms at public swimming baths and sports facilities, replacement of employment and study certificates, discrimination in the workplace and recruitment and right to have treatment of infertility .

iii) How many did you process and conclude? p.a. 5-10 cases. The Ombudsman has given advice and counselling. She has also given statements and negotiated with authorities for several trans issues.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? In recent years, promoting the status of gender minorities has become an important part of the work of the Ombudsman for Equality. In 2011 gender minorities will constitute an area of focus for the Ombudsman for Equality. The Ombudsman for Equality organised the seminar "Equality and Human Rights of Gender Minorities" 12.5.2011. The speakers included among others Thematic Coordinator of the Council of Europe Commissioner for Human Rights, Lauri Sivonen. In the autumn 2011 The Ombudsman for Equality will carry out a study on the most relevant problems that trans people run into concerning practices of the authorities.

5/ Is there anything else that you would like to share with us on this subject? The Ombudsman for Equality has contacts with association for trans and intersex individuals Trasek ry, transvestite association DreamWearClub ry and LGBT rights organisation Seta ry. The Ombudsman for Equality has a representative in the Finnish intersectional LGBT working group.

French High Commission against Discrimination and for Equality – HALDE

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? Le législateur n'a pas prévu explicitement la discrimination à raison de l'identité de genre. Depuis 2008, la Halde appréhende toutefois la question du traitement plus défavorable à raison du transsexualisme sous l'angle de la discrimination à raison du sexe. Ce faisant, elle rejoint la jurisprudence de la Cour de justice des communautés européennes (arrêt P. c/ S. et Cornwall County Council du 30 avril 1996, qui considère, à propos du transsexualisme, que « lorsqu'une personne est licenciée au motif qu'elle a l'intention de subir ou qu'elle a subi une conversion sexuelle, elle fait l'objet d'un traitement défavorable par rapport aux personnes du sexe auquel elle était réputée appartenir avant cette opération ». Le Garde des sceaux a indirectement approuvé ce parti pris, en se prononçant contre la possibilité d'admettre un nouveau critère prohibé, en février 2010, à l'occasion d'une réponse à une question parlementaire, et en soutenant, en revanche, « que les dispositions actuelles du code pénal et du code de procédure pénale en matière de lutte contre les discriminations sexuelles s'appliquent aux personnes transsexuelles ou transgenres » (<http://questions.assemblee-nationale.fr/q13/13-66424QE.htm>).

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? La question du traitement plus défavorable à raison du transsexualisme pouvant être traitée sous l'angle de la discrimination à raison du sexe (cf. propos du Garde des sceaux ci-dessus), l'action de la Halde sur ces questions relevait de la loi. En effet, cette institution était « compétente pour connaître de toutes les discriminations, directes ou indirectes, prohibées par la loi ou par un engagement international auquel la France est partie » et notamment celles à raison du sexe (art. 1, loi n°2004-1486 du 30 déc. 2004 portant création de la haute autorité de lutte contre les discriminations et pour l'égalité). L'action du Défenseur des droits sur ces questions obéira en principe à la même logique, l'article 4- 3° de la loi organique n°2011-333 du 29 mars 2011 relative à cette nouvelle institution mettant en charge celui-ci de la mission de « lutter contre les discriminations, directes ou indirectes, prohibées par la loi ».

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

i) How many cases were there?

ii) Which field did they concern (employment, access to goods and services, education, healthcare)?

iii) How many did you process and conclude? La Halde a traité 4 affaires de discrimination envers des personnes transgenre dans le domaine de l'emploi (harcèlement ; inaptitude à l'emploi ; licenciement et une délibération d'ordre générale sur l'inadéquation entre l'apparence physique et le numéro de sécurité sociale) et a rendu 6 délibérations.

Recruitment (Deliberation No. 2008-28) : The applicant, a man born female, applied to become a flight attendant (FA). He was declared unfit by the head doctor of the examination centre for cabin crew (CEPN) who asked for additional psychiatric expert opinions. Two psychiatrists declared him fit and a third indicated: "No problems are foreseeable in the short-term, yet there is a concern in the long-term as to the risk of a resurgence of psychological difficulties, not as a mental pathological condition but in terms of human suffering". The applicant was held as unfit after a fifteen-minute medical examination which contended he would represent a danger, on the exclusive basis of this change of gender.

Le Collège a demandé au Conseil Médical de l'Aéronautique Civile et à la DGAC d'indemniser MM des préjudices occasionnés par les refus injustifiés de lui reconnaître l'aptitude médicale depuis nov 2006 et de présenter des observations devant le juge administratif dans le cas où il serait saisi d'une demande indemnitaire par le réclamant.

Although no new factor was added to the case, the CMAC (Civil Aviation Medical Committee) ultimately decided to cancel its previous decisions and recognise the applicant's fitness to carry out cabin crew duties. The claimant furthermore received compensation (17300 €)

Dismissal (Deliberation No. 2008-29) : The HALDE considered the dismissal of an employee was discriminatory because of his transsexualism and decided to present its observations before a Labour Court. The court took into account the HALDE'S analysis and annulled the dismissal. The employer has appealed against the decision. La Halde a également présenté ses observations devant la Cour d'appel (**délibération n° 2008-248 du 03 nov 2008**). The Court of appeal issued a favourable decision for the victim cancelling the dismissal and allocating 30 000 euros as compensation for damages and nearly 30 000 euros as a back pay.

Discrepancy between a transsexual person's physical appearance and social security number (deliberation No. 2008-190, 15/09/2008) : Transsexual people are often victims of discrimination during the adjustment and sexual conversion period. Transsexualism is a transitional state: the time during which the change from one gender to the other takes place, from the emergence of awareness of the gap between psychological identity and anatomic gender up to the change in civil status. This transitory phase can last several years. Since there is a contradiction between the claimant's physical appearance and her status as registered in the social security system, she was forced to reveal her transsexualism to her employer. Following this disclosure, she was the victim of mockery and pressure which forced her to resign.

The Halde notified the employer of the provisions relating to the principle of non-discrimination and recommended that it contact the claimant and offer her fair compensation for the damages incurred. The Halde recommended that the Government implement a regulatory or legislative measure to take into account, during the sexual conversion phase, the possible disparity between the transsexual

person's physical appearance and the identity listed on identity documents, administrative documents or any official documents in order to ensure, in particular, the right to privacy in their dealings with the offices of the State and also the principle of non-discrimination in employment with the aim of harmonising practices within jurisdictions. Lastly, the HALDE recommended that the National Health Insurance Fund (CNAM) draft an instruction, so that close attention be paid to patient's social security benefits number, taking into account the change in civil status of transsexual persons and to INSEE (Official Institute of Statistics) to take all relevant measures toward updating the national individual identification directory by taking into account the change in civil status of transsexual people.

Faute de réponse à la recommandation adressée à la Caisse nationale d'assurance maladie et au courrier de relance, le Collège publie un rapport spécial recommandant à nouveau à la Caisse nationale d'assurance maladie de prévoir une circulaire à destination de ses services afin qu'ils soient vigilants sur l'immatriculation (**délibération n°2010-59 du 1er mars 2010**)

Délibération n°2008-230 du 20 octobre 2008. La Halde a procédé à une transaction pénale dans un cas où le plaignant, transsexuel, contestait le refus d'embauche au poste de " femme de ménage " qui lui avait été opposé par un employeur à l'issue d'un essai pourtant concluant du point de vue strictement professionnel. Il ressort des éléments recueillis au cours des enquêtes menées par les services de police et par les agents de la haute autorité, que le délit de discrimination à l'embauche en raison de sa transsexualité et donc, en raison du sexe, prohibé aux articles 225-1 et 225-2 du code pénal, est constitué.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? En dehors du traitement des réclamations individuelles, la HALDE mène des actions de promotion de l'égalité. Ainsi, le sujet de l'identité de genre est pris en compte, en travaillant à des outils de sensibilisation généraux visant à prévenir et combattre les préjugés et stéréotypes ainsi que les pratiques discriminatoires, notamment dans l'emploi et l'éducation.

De manière plus spécifique, la Halde a ainsi collaboré avec l'association Estim', dans le cadre d'une formation de deux jours, en mars 2010, sur les discriminations en direction des personnels cadres et personnes ressources de l'Education nationale, afin que cette association anime un atelier sur la prévention des LGBT-phobies en milieu scolaire et développe la capacité de ces personnes-ressources à susciter des formations sur le sujet dans leurs académies respectives (ingénierie de formation).

D'un point de vue institutionnel, le Président de la Halde a donné son soutien public à la journée mondiale contre l'homophobie du 17 mai 2009, consacrée à la lutte contre la transphobie par un message écrit.

Enfin, la Halde a instauré une collaboration et dialogue permanent avec les associations TRANS, par l'intégration de 3 d'entre elles (ORTrans, Trans Aide et OUTrans) au « comité LGBT », qui se réunit depuis 2008, deux fois par an, ainsi que par des échanges bilatéraux. Ces réunions ont pour objectif de permettre d'identifier les difficultés, les voies de progrès envisageables et les bonnes pratiques à valoriser.

5/ Is there anything else that you would like to share with us on this subject? Depuis février 2010, le Ministère de la Santé retire « les troubles précoces de l'identité de genre » de la liste des affections psychiatriques longue durée (ALD23). La prise en charge des soins en lien avec les troubles de l'identité de genre se justifie désormais au titre de l'ALD hors liste (ALD 31), conformément aux dispositions prévues par l'article L.322-3 4° du Code de la Sécurité Sociale (Décret n° 2010-125 du 8 février 2010 portant modification de l'annexe figurant à l'article D. 322-1 du code de la sécurité sociale relative aux critères médicaux utilisés pour la définition de l'affection de longue durée « affections psychiatriques de longue durée »).

German Federal Anti-Discrimination Agency – FADA

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? In Germany, the General Equal Treatment Act protects against Discrimination on the grounds of sexual orientation and gender. This protection is effective in the field of civil and labour law. Partly there is also protection adjudged by jurisdiction in consequence of the

principle of equality of the German constitution (Grundgesetz –GG- Art. 3 Abs. 1 GG). Furthermore the protection of sexual self-determination is part of the general personality right in the constitution (Grundgesetz –GG- Art. 2 Abs. 1 GG in correspondence with Art. 1 GG).

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? There is no provision for this remit in the General Equal Treatment Act.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

i) **How many cases were there?** We received 98 inquiries concerning discrimination of trans people and 16 inquiries concerning intersex people

ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?**

| | Trans | intersex |
|--------------------|-------|----------|
| Employment | 26 | 1 |
| goods and services | 10 | 2 |
| Education | 2 | 0 |
| Healthcare | 9 | 2 |

iii) **How many did you process and conclude?** None

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? We commissioned research on discrimination of trans persons especially in the field of working life.

Greek Ombudsman

1/ is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? According to the law Nr. 3896/2010 it was implemented into the greek national law the directive 2006/54 of the European Parliament and the Council. According to the art. 3 of the abovementioned law as discrimination can also be considered less favourable treatment due to sex reassignment.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Yes, according to the current legal framework.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

i) **How many cases were there?** Two (2) cases (in year 2010)

ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?** One case has as subject the rejection of an adoption application of a woman, who had a sex reassignment operation. The second case was addressed by a refugee, who could not have access to work.

iii) **How many did you process and conclude?** Both of them (in 2010) although the abovementioned cases they could not be considered as stricto sensu gender equality cases according to the relevant European directives.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? The GO has issued information leaflets for the Athens Pride since 2008 and participates every year. The institution is also participating in seminars, studies etc. as equality body.

5/ Is there anything else that you would like to share with us on this subject? According to our experience the low flow of complaints in combination with the current legislation of European Union could lead to the conclusion that the current legal framework cannot cover a majority of cases. Although the GO as human rights institution is trying to deal with cases that cannot fall within the filed of the European directives of gender equality and sexual orientation. Moreover the GO has already expressed the opinion that the current European legislation must reformed in order to be more effective. See also the last annual reports of the Greek Ombudsman (GO): http://www.synigoros.gr/diakriseis/pdfs_01/equal_treatment_2009.pdf

Hungarian Equal Treatment Authority

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? The Equal Treatment Act (Act Nr. CXXV of 2003) prohibits direct/indirect discrimination based on sexual identity and sexual orientation in fields of employment, access of goods and services, housing, healthcare and education.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The Authority shall be required to investigate every single case if petitioner established at least one protected trait (e.g. his or her sexual identity or sexual orientation) and prejudice regarding himself or the person or group represented. This is explicitly as a result of law (Equal Treatment Act).

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

- i) **How many cases were there?** In average one complaint or less per year
- ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?** Employment, access to goods and services
- iii) **How many did you process and conclude?** During the 6 years of our operation only 1-or 2 cases

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? The Authority started a 51-month project in 2009, called Combating discrimination, shaping societal attitude and strengthening the work of the Authority. Fundamental purposes of this project included awareness raising through trainings for NGOs, municipalities, trade unions and public servants, setting up customer services across the country to pre-screen complaints and provide professional advice, increasing media presence and preparing researches in social sciences, which target the uncovering of various forms of discrimination.

Parliamentary Ombudsman of Iceland

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? The principle of equality is protected in Article 65 of the Icelandic Constitution No. 33/1944. The article stipulates that: "Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status". The European Convention on Human Rights and Fundamental Freedoms (ECHR) has the status of domestic law in Iceland through incorporation (Act No. 62/1994 on the European Convention on Human Rights). Article 14 of the ECHR is therefore directly applicable in Icelandic law. The principle of equality is also protected in Article 11 of Act No. 37/1993 on the Public Administration. According to paragraph 2 of the Article it is prohibited to discriminate against individuals on grounds of sexual orientation, race, color, nationality, religion, political opinions, social position, origin or on other comparable grounds. Article 233 a of the Penal Code No. 19/1940 against hate crime was in 1996 extended to protect against hate crime based on sexual orientation. However the provision does not explicitly refer to gender identity.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Yes. According to Act No. 85/1997 on the Parliamentary

Ombudsman the role of the Ombudsman is to monitor the administration of the State and local authorities and safeguard the rights of the citizens vis-à-vis the authorities. The Ombudsman shall also ensure that the principle of equality is observed and that administration is in other respects conducted in conformity with the law, good administrative practice and legal ethics.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

- i) **How many cases were there?** The Parliamentary Ombudsman in Iceland has received one case (No. 4919/2007) in this area which the Ombudsman concluded 27th April 2009. In the opinion the Ombudsman highlighted the lack of legal framework and called for legislation in order to protect the rights of transsexuals.
- ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?** The complaint regarded the Ministry's of Justice and Ecclesiastical Affairs' refusal of A's request to change her name.
- iii) **How many did you process and conclude?** The Ombudsman has concluded one case, cf. answer i) above.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? No. According to the above-mentioned Act No. 85/1997 the Ombudsman's role is limited to taking up a case following a complaint from an individual who feels unfairly treated by the authorities. The Ombudsman can also on his own initiative decide to take up a matter for investigation.

5/ Is there anything else that you would like to share with us on this subject? The Minister of Welfare has appointed a committee to make recommendations for amendments regarding the legal status of transgender people in terms of the above-mentioned opinion of the Parliamentary Ombudsman. Enclosed is a summary of the opinion No. 4919/2007 from 27th April and Act No. 85/1997 on the Parliamentary Ombudsman in English.

The Irish Equality Authority

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? Yes the gender ground includes gender identity in Ireland; the Employment Equality Acts and the Equal Status Acts.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The Equality Authority acts as Prosecutors in cases. We do take on cases about gender identity and make submissions to government on improving the provisions for trans people. Separately the Acts also allow the Equality tribunal to hear, mediate and investigate cases under both pieces of legislation about gender identity.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

- i) **How many cases were there?** Yes we have had one case on discrimination in employment. It was heard in 2011 by the Equality tribunal and the Equality Authority represented the complainant.
- ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?** Employment. The complainant announced her intention to trans and there were a number of barriers put in her way resulting in her leaving the employment.
- iii) **How many did you process and conclude?** We represented the complainant and the case was successful before the Equality Tribunal. She was awarded 35,422.71 plus interest. www.equalitytribunal.ie reference: **Louise Hannon v First Direct Logistics Ltd. Decision No. DEC-E2011-066 Ground: Gender and Disability. Press release .www.equality.ie**

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? Yes and most recently we made a submission to the Government's gender Identity recognition Group advocating a series of rights for trans people.

5/ Is there anything else that you would like to share with us on this subject? This issue has received some positive attention in Ireland recently with extensive coverage of the Hannon case.

Italian Office against Racial Discrimination

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? NO.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The national Office against racial discrimination collect and investigate cases based on race and ethnicity

3/ Have you received cases of discrimination from trans and/or intersex people? Our contact centre collects discrimination cases based on race and ethnicity.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? We organised during 2010 and 2011 in several cities, co-financed by European Commission, seminars and workshops on all discriminations (2 hrs were dedicated to discrimination for gender identity) directed to public officers.

5/ Is there anything else that you would like to share with us on this subject? Since last year we have organised a special National Working Group for transgender issues. The group is made of all the associations / NGO's that work in this field. A big focus has been the discussion of the discrimination in the workplace. We are trying to organise for this autumn a special Career day (matching between transgender people that search for jobs and companies) that want to improve the concrete representation of transgender people in the workplace.

Office of the Ombudsman of the Republic of Latvia

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? There is implicit protection in legislation of Latvia. Article 91 of the Constitutions of the Republic of Latvia stipulates that "All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind". Latvian legislation ensures equal rights for all inhabitants of Latvia irrespective of different grounds for discrimination in such areas as social protection, consumer rights protection, education and employment. The list of the grounds in these laws is open.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? There is no explicit provision dealing with particular grounds concerning competence of the Ombudsman (Equality body). According to the Law of Ombudsmen one of the functions is to ensure equal treatment and prevention of discrimination. The Ombudsman can deal with complaints in case of discrimination on any ground or breach of the principle of equal treatment not only by State authorities, but also by private individuals or legal entities.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

i) **How many cases were there?**

ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?**

iii) **How many did you process and conclude?**

We have received a few cases of discrimination from trans and/or intersex people.

One case more than 5 years ago concerned recognition of the changed gender identity by the state (state institutions rejected change of identity documents). In parallel this case was dealt by the court; statement of the Ombudsmen encouraged positive solution of the case in the court.

Two cases concerning access to goods and services (rejected entrance in the night-club) have been preceded.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? No, this aspect of equality has not been topical problem in our practice yet.

Liechtenstein's Stabsstelle für Chancengleichheit (SCG)

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? No.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? No.

3/ Have you received cases of discrimination from trans and/or intersex people? No.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? In 2009 we did a poster campaign and newspaper articles and in 2010 we helped to arrange a lecture and film series.

5/ Is there anything else that you would like to share with us on this subject? The voting about the new Liechtenstein domestic partnership law is stated on the 19th of June.

Lithuanian Office of the Equal Opportunities Ombudsman

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? Gender identity is not stipulated in any national equality law.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Office of Equal Opportunities Ombudsmen takes overall responsibility for the supervision and implementation of the Law on Equal Opportunities for Women and Men and Law of Equal Treatment in Lithuania. Unfortunately, there is no provision included on prohibiting discrimination on the basis of gender identity.

3/ Have you received cases of discrimination from trans and/or intersex people? According to the answers before, Office of Equal Opportunities Ombudsmen has never received complaints on gender identity, trans or intersex people.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? Office of Equal Opportunities Ombudsmen works on promoting, sensitizing and educating on grounds of gender, age, racial or ethnic origin, religion and beliefs, disability, sexual orientation, language, social status according to equality laws. As there are no legal regulations on gender identity, we do not cover this ground of discrimination in our daily activity as well as in our educational work.

5/ Is there anything else that you would like to share with us on this subject? On our opinion transgender people should be protected by law on all levels as well as people having the other identities. Moreover, recommendations or binding provisions (related to gender identity) from EU on definition of a notion and its introduction into national equality legislation should be needed.

Luxembourgish Centre for Equal Treatment

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? No, only race or ethnic origin, sex, sexual orientation, religion or beliefs, handicap or age

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The CET considers this problematic to belong to the ground sex, it was a decision taken by the members of the board.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

- i) **How many cases were there?** half a dozen since November 2008
- ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?** 3 employment, 1 housing, 1 general information, 1 refusal of changing papers before divorce
- iii) **How many did you process and conclude?** mostly advice & recommendation to the government

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? Participation in gay pride with information material, 2 seminars

5/ Is there anything else that you would like to share with us on this subject? Very good contacts with Transgender Luxembourg

Malta (NCPE)

In the absence of reply from the Maltese National Commission for the Promotion of Equality (NCPE), ILGA-Europe and TGEU have used data provided in studies that have been conducted by the EU Agency for Fundamental Rights and the Council of Europe. The NCPE has been acknowledged of that.

Dutch Equal Treatment Commission

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? In the Dutch equal treatment legislation there is no explicit mention of discrimination on the ground of gender identity or gender expression. In several decisions however, the Dutch Equal Treatment Commission has recognized, in line with the case law of the European Court of Justice and the European Court of Human Rights, that discrimination on the ground of gender identity or gender expression is a form of sex discrimination. Sex discrimination is prohibited in the Equal Treatment Act: article 1 lists all the grounds that are protected by this act: sex is one of them. The Equal Treatment Act is applicable to labour relations, the provision of goods and services, education and the membership of workers organizations/trade unions. Sex discrimination is also prohibited in the Equal Treatment (men and women) Act, which is only applicable to labour relations, and in a number of articles of the Civil Code, also regarding labour relations.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Yes, we can investigate cases of discrimination on the ground of gender identity/gender expression. This is as a result of the way we interpret the anti-discrimination legislation, and more in particular, the prohibition of discrimination on the ground of sex. This interpretation is based on case law of the European Courts.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

- iv) **How many cases were there?**
- v) **Which field did they concern (employment, access to goods and services, education, healthcare)?**
- vi) **How many did you process and conclude?**
 - i) The Dutch Equal Treatment Commission (ETC) is a semi-judicial body that gives non-binding expert decisions following individual complaints about discrimination. In total, we gave 22 decisions on cases concerning transsexuals (19 cases), transgenders (1 case) and transvestites (1 case), from 1998 until present.
 - ii) 14 of the 22 cases concerned the provision of goods and services, including (in 2 cases) education. Most other cases on goods and services concerned the reimbursement of medical costs by health insurance companies (7 cases). The other cases concerned i.a. the refusal of an academic gender clinic specialized in gender reassignment, to treat a transgender who only wanted part of the 'standard' gender reassignment, or the refusal of a hotel to make a reservation for a transvestite party. The other 8 cases concerned employment. Most of them concerned the ending of the labour relation.

iii) Only in 4 of the 14 cases concerning the provision of goods and services, the Dutch ETC has found discrimination. In 4 of the cases, the ETC was not competent to give a decision. These concerned mostly cases on the reimbursement of medical treatment. In the Netherlands, this is to a large extent regulated by law and the ETC is not competent to investigate if a formal law violates the equal treatment legislation. In the remaining 6 cases, the ETC found that there was no discrimination or that the discrimination was objectively justified.

Also, in 3 of the 8 employment cases, the ETC found that there had been/was a violation of the equality legislation. In 5 cases it found that there was no discrimination.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? The ETC has not organized any campaigns, seminars or studies on the subject of gender identity or gender expression. The ETC did organize a small meeting with a Dutch trans ngo, the Dutch Transgender Network. It has provided this network with information on discrimination and on the work of the ETC, which has been published on their website. Also, representatives of the ETC regularly visit meetings/seminars organized by other organizations on discrimination of transgenders or LGBTQs. The ETC has not conducted any investigation into discrimination of transgenders, but it usually looks at the position of transgenders when dealing with discrimination of persons with a homosexual orientation. E.g. in the report on discrimination on the ground of sexual orientation at work 'Discrimination is not the word', that was published in August 2010. Last, the ETC was consulted by representatives of the Ministry of Social Affairs, in preparation of the governments policy to combat discrimination on the grounds of sex and sexual orientation.

Norwegian Equality and Anti-discrimination Ombud

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? There is an implicit protection against gender identity in the Gender Equality Act. More specifically the Ombud has stated in concrete complaints that transsexual persons have a protection against discrimination on the ground of gender, under the Gender Equality Act. The protection is limited to persons being granted surgical treatment in order to change their sex. The protection is connected to their status as male or female. Persons, who are either not granted surgical treatment, or who don't want to be operated, but may experience discrimination due to gender identity or gender expression, do not have similar protection.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The Ombud may investigate individual complaints regarding discrimination on this ground. The Ombud's mandate to investigate individual discrimination cases under the various equality and anti-discrimination acts is explicitly stated in the Equality and Anti-discrimination Ombud's Act.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

i) How many cases were there?

ii) Which field did they concern (employment, access to goods and services, education, healthcare)?

iii) How many did you process and conclude?

The Ombud has handled four individual complaints regarding transsexual persons. One complaint concerning the question of the right to have two passports, showing the persons both sexes, and the other three cases were related to work life (promotion, hiring and tasks given). The Ombud also provide legal guidance to individuals, without giving any statement whether discrimination has taken place or not. The Ombud has provided such guidance to transsexual persons in eleven cases. The guidance has been related to questions concerning public services and work life, such as change of name, passport, criteria for treatment of transsexuals in hospital, driver license, discrimination and protection of children, complaint after harm from medical treatment, information about transsexuals in school, and the right for a man to wear women's clothes at work. The Ombud has handled and concluded in all four cases received. In three of the cases the Ombud concluded that discrimination had not taken place. Only in one of the cases the conclusion was that there had been a violation of the Gender Equality Act.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? The Ombud has advised the Norwegian Government that when advertising for new employees, the Government should encourage transsexual persons to apply for the job. Furthermore the Ombud has been promoting that an explicit protection against discrimination on the grounds of gender identity and/or gender expression should be included in the ongoing preparatory work for a new common equality and anti-discrimination act, covering all discrimination grounds in Norway. The Ombud arranges and participates in seminars on this specific issue.

Polish Office of the Government Plenipotentiary for Equal Treatment

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? Polish law does not provide the discrimination on ground of gender identity/or gender expression.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The role of Government Plenipotentiary for Equal Treatment is to coordinate the activities of all departments and public institutions with the aim of ensuring that the principles of equal treatment are implemented effectively, to pursue policies to counteract all forms of discrimination and to ensure equal opportunities for marginalized groups. These actions are all in accordance with the constitutional principle that all persons shall be equal before the law and no one shall be discriminated against in political, social or economic life for any reason whatsoever.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

- i) **How many cases were there?** Since 2010 we received one case of discrimination from trans and/or intersex people.
- ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?** They concern the conditions of military service.
- iii) **How many did you process and conclude?** Government Plenipotentiary for Equal Treatment asked the army for explanation. But you must now that actually the polish law do not provide military service by the trans and/or intersex people.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means?

At the moment we do not any campaigns, seminars, studies or any other means on the issue of trans and/or intersex people.

Portuguese Commission for Citizenship and Gender Equality

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? Although we have a law for Same-sex Marriage and a recent Gender Identity law that provides simplification of the change of the civil registration of sex and name for people who are diagnosed with “gender identity disorder”, there isn’t any specific protection on this issue.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? No that mandate it’s clear although we have the discrimination on sexual orientation on our mandate. All the gender identity cases, and they are just a few, are addressed in ad hoc basis.

3/ Have you received cases of discrimination from trans and/or intersex people? If so: We don’t have this data collected.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? No.

5/ Is there anything else that you would like to share with us on this subject? We should have this debate with all the workers in this body, and this mandate should have a clarification.

Romanian National Council for Combating Discrimination

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? “Ordinance no. 137/2000 on prevention and sanctioning of all forms of discrimination, republished” - Art. 2. - (1) In accordance with the ordinance herein, discrimination encompasses any difference, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social category, beliefs, sex or sexual orientation, age, handicap, non contagious chronic disease, HIV infection, belonging to a disfavoured category, as well as any other criterion aiming to or resulting in impairing or nullifying the recognition, enjoyment or exercise, in conditions of equality, of human rights and fundamental freedoms or of rights granted by law in the political, economic, social, cultural or any other field of public life.

(2) The order to discriminate a person on any ground provided by paragraph (1) is considered to be discrimination in accordance with the ordinance herein.

(3) In accordance with the ordinance herein, the provisions, criteria and practices apparently neutral that disadvantages certain persons toward other persons, on the ground of criteria provided under paragraph (1) are considered to be discriminatory, excepting the case when these provisions, criteria and practices are objectively justified by a legitimate aim and the ways of reaching that aim are adequately and necessary.

(4) Any active or passive behaviour that generates effects liable to favour or disadvantage, in an unjustified manner, a person, a group of persons or a community, or that subjects them to an unjust or degrading treatment, in comparison to other persons, groups of persons or communities, shall trigger contraventional liability, unless it falls under the incidence of criminal law.

(5) Any behaviour that on the ground of race, nationality, ethnicity, language, religion, social category, beliefs, sex or sexual orientation, belonging to a disfavoured category, age, handicap, refugee or asylum seeker status any other criterion aiming to create a humiliating, hostile, degrading or offending atmosphere constitute harassment and it's contraventionally sanctioned.

(6) Any difference, exclusion, restriction or preference based on two or more criteria provided under the paragraph (1) constitutes aggravating circumstance to the establishment of the contraventional liability unless one or more of its components does not fall under the incidence of criminal law.

(7) In accordance with the ordinance herein, any adverse treatment as a reaction to a petition or an action in court regarding the infringement of non-discrimination and equal treatment principle constitutes harassment and it's contraventionally sanctioned.

(8) The provisions of the present ordinance can not be interpreted as a restraint of the right to freedom of expression and opinion and the right to information.

(9) Measures taken by public authorities or by legal entities under private law in favour of a person, a group of persons or a community, aiming to ensure their natural development and the effective achievement of their right to equal opportunities as opposed to other persons, groups of persons or communities, as well as positive measures aiming to protect disfavoured groups, shall not be regarded as discrimination under the ordinance herein.

(10) In accordance with the ordinance herein, the elimination of all forms of discrimination shall be achieved by means of:

a) prevention of any discrimination deeds, by the establishment of special measures, including positive measures, aiming to protect disfavoured persons when they do not enjoy equal opportunities;

b) mediation, by solving on amiable terms the conflicts resulting from the commitment of a discrimination act/deed;

c) sanction of the discriminatory behaviour provided under paragraphs (1)-(7).

(11) The discriminatory behaviour provided under the paragraphs (1)-(7) shall trigger contravention, civil or penal liability according to the law in force.

2. Constitution of Romania published in the Official Gazette, Part I no. 767 of 31/10/2003: ARTICLE 26 - intimate, family and private; Article 30 - Freedom of expression.

3. Law no. 202 of 19 April 2002 on equal opportunities and treatment between women and men, published in Official Gazette no. 642 of July 25, 2006, republished with subsequent amendments: Article 4 : "The terms and expressions below, the purposes of this Act are defined as follows:

a) direct discrimination shall mean a situation where a person is treated less favorably on grounds of sex, than it is, was or would have treated another person in a comparable situation;

b) means indirect discrimination where a provision, criterion or practice, apparently neutral, particularly disadvantage people of one sex compared with those of the other sex, unless that provision, criterion or this practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;

c) means harassment occurs where an unwanted conduct related to the sex of the person, with the purpose or effect of violating the dignity of the person and of creating an intimidating, hostile, degrading, humiliating or offensive

d) means sexual harassment occurs where an unwanted conduct with sexual connotations, expressed physically, verbally or nonverbally, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading , humiliating or offensive

e) positive action means those specific actions are taken temporarily to accelerate the achievement of de facto equality between women and men are not considered discriminatory actions;

f) work of equal value means paid work which, after comparison, using the same indicators and the same units of measure, with another activity, reflecting the use of professional knowledge and skills similar or equal and deposit an amount equal or similar intellectual effort and / or physical;

g) Discrimination on grounds of sex discrimination means direct and indirect discrimination, harassment and sexual harassment of a person by another person at work or elsewhere, in which it operates;

h) Multiple discrimination means any act of discrimination based on two or more grounds of discrimination. "

4. Labour Code adopted by Law no. 53 of 24 January 2003, published in the Official Gazette. no. 72 of February 5, 2003 (with art. 5. 2) prohibits "any direct or indirect discrimination against an employee based on gender, sexual orientation, genetic features, age, national affiliation, race, color, ethnicity, religion , political option, social origin, disability, family situation or responsibility, trade union membership or activity. "

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? "Ordinance no. 137/2000 on prevention and sanctioning of all forms of discrimination, republished" - Art. 19. - (1) As regards the combating of discrimination deeds, the National Council for Combating Discrimination is exercising its duties in the following fields:

a) prevention of all forms of discrimination;

b) mediation of discrimination deeds;

c) investigation, ascertaining and sanctioning of discrimination deeds;

d) monitoring the discriminatory cases;

e) providing specialized assistance to victims of discrimination.

(2) The National Council for Combating Discrimination exercises its legal authority based on petitions and complaints from natural or legal person or takes action ex officio.

Art. 20. - (1) The person, who under the terms of this law consider himself/herself discriminated, may file a complaint at the National Council for Combating Discrimination not later than one year from the commitment of such act or from the data on which the victim takes cognizance of its commission.

(2) The National Council for Combating Discrimination is solving the petition through the Steering Board Decision provided by the article 23, paragraph 1.

(3) By the complaint introduced under the circumstances of paragraph (1), the discriminated persons have the right to claim damages prorated against the harm they suffered and to terminate the situation created by discrimination.

(4) The Steering Board of the National Council for Combating Discrimination adopts proper measures concerning the existence of discrimination, with the obligatory summons of the parts. The summons could be done through any means which ensures the acknowledgement. The absence of the parts involved does not affect the petition's solving.

(5) The investigation made by the Steering Board takes place at the institution's headquarters or in any other place settled by the institution.

(6) The interested person has the obligation to prove the existence of facts from which it may be presumed that there has been direct or indirect discrimination and it shall be for the respondent to prove that the facts does not constitute discrimination. In front of the Steering Board any proof can be pleaded, inclusively the video and audio evidence or statistical data.

(7) The Steering Board's decision regarding the solving of a petition is adopted within 90 days from noticing the petition and must include the following: the full names of the members of the Steering Board who adopted that particular decision, parties names, residence or domicile, object of the complaint and arguments of the parties, description of the discrimination deed, references to the piece of legislation whereby the contravention is ascertained and punished which represent the basis of the Steering Board Decision, methods of payment of the fine, if any, the way to appeal and the deadline in which the appeal can be filed.

(8) The decision shall be transmitted to parties within 15 days from its adoption and will become effective on the day of communication.

(9) The Decision of the Steering Board may be appealed at the Administrative Courts, under law.

(10) The decisions adopted according to provisions of paragraph (2) and which are not appealed within 15 days represent writ of execution.

Art. 21. - The provisions are enforced adequately in any case in which NCCD is investigating deeds or acts of discrimination ex officio.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

How many cases were there? The number of complaints addressed to NCCD (National Council for Combating Discrimination) until December 2010 is 4453. This number includes all complaints based on discriminatory criteria prohibited by national law G.O no. 137/2000, republished). From these complaints the following complaints were on sexual orientation and gender: Sexual orientation: 2002-1; 2003-5; 2004-6; 2005-9; 2006-6; 2007-7; 2008-6; 2009- 6; 2010-4. Gender (sex): 2002-3; 2003 -14; 2004 -13; 2005-9; 2006-11; 2007-22; 2008-32; 2009-9; 2010-18.

Which field did they concern (employment, access to goods and services, education, healthcare)? They concerned the following fields: goods, services and human dignity (2004-1 complaint, 2005 -4, 2007-2; 2008-1, 2009 -1; 2010-1)

How many did you process and conclude? In 2010, sanctions enforced in discrimination cases on ground of sexual orientation and gender was: 2 sanctions – sexual orientation; 8 sanctions –gender; and 3 recommendations on gender and 1 recommendation on sexual orientation.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or

gender expression through campaigns, seminars, studies or any other means? Yes, NCCD developed over time several campaigns and partnerships. I will mention several actions:

National Alliance Against Discrimination (ANIDA):

In 2003 it formed the National Alliance Against Discrimination, which was conceived as a forum for debate open to all NGOs and trade unions to support the prevention of acts of discrimination carried out by the National Council for Combating Discrimination. ANIDA worked in 2003-2005 and gathered a total of 80 NGOs have met regularly in the sphere of worktops their activities to identify concrete measures to promote equality and combat discrimination.

Thus, in 2003 it was set up 11 tables as follows: young, elderly, refugees and asylum seekers, gender, disability, race, nationality and language, ethnicity, sexual orientation, HIV / AIDS, social class and social origin, religion and beliefs.

The project "Youth say NO to discrimination", held from March to May 2007 was organized by the National Council for Combating Discrimination in partnership with the Pro Democracy Association - Regional Resource Center Focsani, in order to promote among teenagers in the county of Vrancea tolerant behavior of different vulnerable groups (the following criteria: ethnicity, disability, gender, religion, sexual orientation, age and HIV / AIDS).

The campaign to prevent and combat discrimination in the labour market, the National Council for Combating Discrimination has been a partner in the project "It's your chance to get involved, for a labour market without discrimination" (2007) "funded by the Netherlands Embassy in Bucharest and the Center for Equal Partnership, with funding from the Open Society Foundation. On December 10, International Day of Human Rights, National Council for Combating Discrimination in partnership with ACCEPT, the Media Monitoring Agency, Center for Gender Studies curriculum development and SUBSIDIARIES, Legal Resources Centre, Foundation for Poetry "Mircea Dinescu "Public Policy Institute, Rome ACCESS, Romani CRISS and Equal debate organized"2007: between the principle of equal treatment and discrimination, in order to take stock of the human rights situation in 2007. Discussions at this meeting focused on issues of equal treatment and discrimination - legal framework, implementation, monitoring human rights for persons with mental disabilities in institutions - stigma and mental health, human rights and discrimination against sexual minorities in Romania, and housing rights violations education of the Roma minority, freedom of expression and manipulation of the press, equality between women and men: the daily and institutionalization, the situation in preventing and combating discrimination Year of Equal Opportunities for All in Romania.

"We want. Can. Succeed" (2009) the overall objective of the project training teachers on the importance of discrimination and respect for diversity in education, information dissemination and training teachers on the importance of 1529/iulie 2007 Order of the Minister of Education, Research and Youth for diversity on the development of the national curriculum. The specific objectives were to increase teachers' interest in diversity issues, and support the development of curricula in the context of diversity, preventing stereotypes and prejudices among young future generations, preventing intolerant and discriminatory attitudes among young people, knowing the daily problems of groups vulnerable to discrimination, the reduced level of intolerance and discrimination in schools.

Slovak National Centre for Human Rights

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? In Slovakia, there is an explicit legal protection against gender identity discrimination in our national legislation. § 2a sec. 11 (a) of the Act No 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination amending and supplementing certain other law (Antidiscrimination Act) stipulates: Discrimination due to a) sex shall also mean the discrimination due to pregnancy or motherhood and the discrimination due to sex or gender identification

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Yes, the Slovak National Centre for Human Rights is competent inter alia to perform independent inquiries related to discrimination on all protected grounds, to monitor and evaluate the observance of the equal treatment principle, to issue expert opinions on

matters. This competence is based on § 1 sec. 2 of the Act Nr. 308/1993 Coll. on Establishment of the Slovak National Centre for Human Rights.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

- i) **How many cases were there?** 3 cases
- ii) **Which field did they concern (employment, access to goods and services, education, healthcare)?** employment
- iii) **How many did you process and conclude?** Two complaints contained request for information concerning discrimination of trans people in the area of employment, we provided information and offered help but the complainants did not contact our office again. The third complaint concerning inter alia the discrimination in the area of employment that the Centre got in March 2011 is being processed and the communication with the complainant is taking place.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? The Slovak National Centre for Human Rights actively promotes equality on all protected grounds (in Slovakia there is an open list of protected grounds) through different means but no promotional activity aimed particularly on equality on the grounds of gender identity and/or gender expression has been carried out yet.

5/ Is there anything else that you would like to share with us on this subject? The Slovak National Centre for Human Rights annually prepares and publishes a report for the previous calendar year on the observance of human rights, including the equal treatment principle in the Slovak Republic. With the purpose to enhance the public interest in the topic, in the report for 2010 we specifically informed about the situation and problems that trans people face in their daily life.

Slovenian Office for Equal Opportunities (Observer)

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? The protection is implicit (open-ground formula). The sexual expression could be regarded as a form of perceived ground of sex as well as a separate ground.

Apart from relatively well elaborated constitutional provisions (see article 14, 22, 49...), The Implementation of the Principle of Equal Treatment Act (Official Gazette of the Republic of Slovenia, No. 93/2007, ZUNEO-UPB1, hereinafter: the Act) is the basic and general antidiscrimination piece of legislation prohibiting discrimination (see articles 2-5). Certain other areas are further regulated by specific legislation (i.e. Employment Relationship Act, see article 6, etc.) For access to legislation in English see <http://www.zagovornik.net/en/legislation/index.html>

Protection from discrimination in Slovenia is extensive.

Everybody is protected, natural and legal persons (when particular grounds may be applicable) alike.

The prohibition against discrimination is defined by a so called general open-ground formula (in all relevant legislation) Discrimination is prohibited on the basis of sex, nationality, race or ethnic origin, religion or belief, disability, age, sexual orientation and includes also other non-specified grounds ("personal circumstances"). Other grounds could be for example nationality, language, parental or other family status, health situation, political belief, social status, wealth, membership in the trade-union, sexual identity, genetics etc.

The protection also extends far beyond the workplace and goods and services area. The areas covered include among others:

- employment, work and labour relations;
- participation in workers' and employers' organisations and other associations;
- social protection, including social security and health care;
- social benefits;
- education;
- access to and provision of goods and services which are available to the public;
- housing.

Prohibited forms of discrimination:

- Direct discrimination (includes discrimination based on perception of the particular ground and discrimination by association)
- Indirect discrimination
- Rejection of reasonable accommodation
- Harassment
- Instructions to discriminate

Victimisation against the victims and the persons who assist them is prohibited.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The advocate is competent to hear (investigate) all cases of all forms of discrimination (on any ground) in all areas of life (public & private sector). The interpretation (or even construction) of what the ground is (what are the statuses, “personal circumstances”) is left to the body which applies the law. This vagueness is opening the doors to very open and extensive interpretation (in favour of the rights). In a couple of occasions the advocate was using the Declaration of the principles of equality as a tool to decide whether certain criteria could be regarded as separate grounds or not.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

How many cases were there? Two (reported by NGO-s, with no specific victim but with general impact on LGBT people.)

Which field did they concern (employment, access to goods and services, education, healthcare)? Education – in primary and secondary schooling (exclusive promotion of heterosexual relationships and perceived gender identities, referral to the LGBT people as abnormal and even having a label of mental disorder).

How many did you process and conclude? Both concluded. One case available on the web page (Slovenian language only) with extensive reasoning on how the exclusion of these topics from curricula in the context of promoting heterosexual relationships affects LGBT and on suggestions on how to include the awareness rising on this as a result of the states positive obligations. Discrimination on the grounds inter alia sexual identity was established.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? General approach is always strictly applied (all grounds are seen as having potentially synergic effects) in all promotional endeavors and when conducting trainings. The gender identity is specifically mentioned just on specific and intensive trainings. Advocate is currently supporting the campaign for equal family rights (new family code is being heard in the Parliament)

5/ Is there anything else that you would like to share with us on this subject? The advocate is considering opening an ex officio investigation on the issues of the rights of people with transgender identities in the light of Strasbourg jurisprudence (the right to change one’s sex...).

Spanish Race and Ethnic Equality Council

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? Yes. Spanish constitution recognizes the right to equal treatment and non discrimination based on race, born, sex religion or opinion, and any other personal or social circumstance. Inside this open clause, according with the decisions of our constitutional court, is included the protection against discrimination based on sexual orientation and gender identity.

Even more, the Spanish Government has passed, the last Friday, the draft of Integral Law for the Equal Treatment and Non Discrimination which prohibit explicitly; in his article 2 the discrimination based sexual orientation or sexual identity. As well this foreseen the creation of equality body “the authority for the equal treatment” with broad powers to fight against any kind of discrimination

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? No. The equality body is focused only in the discrimination based on racial or ethnic origin. As I said in the previous question the Authority foreseen in the draft of law will have powers to investigate cases, provide independent assistance to victims of discrimination and, in any cases, has the representation of the victims in front of the court.

3/ Have you received cases of discrimination from trans and/or intersex people? If so: See questions 1 and 2

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? See questions 1 and 2

Swedish Equality Ombudsman (Diskrimineringsombudsmannen, DO)

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? The Swedish Discrimination Act (SFS 2008:567) contains an explicit prohibition of discrimination on grounds of transgender identity or expression in all areas of society covered by the act. These areas include:

- Working life
- The educational 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
- Social insurance system
- Unemployment insurance
- State financial aids for studies
- National military service and civilian service
- Public employment

In the Discrimination Act transgender identity or expression is defined as follows: "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." According to the act "A person who intends to change or has changed the sex they belong to is also covered by sex as a ground of discrimination."

The Discrimination Act can be found in its entirety here:
http://do.se/Documents/pdf/new_discrimination_law.pdf

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? Yes. The Equality Ombudsman can initiate investigations based on complaints that are lodged to the ombudsman's office. The opportunity for the Equality Ombudsman to carry out legal proceedings in cases concerning transgender identity or expression discrimination is statutory and outlined in the Discrimination Act. If the investigations show discrimination or unfair treatment can be assumed to have occurred, the Ombudsman first tries to negotiate a voluntary agreement – a settlement – between the complainant and the organization, employer or body responsible for the discrimination. If no settlement can be reached the Equality Ombudsman can take the case to court. Court cases concerning working life are brought to the Labour Court whilst cases concerning all other areas covered by the Discrimination act are taken to the general courts. In cases concerning working life where the complainant is a member of a trade union the Equality Ombudsman will initially ask the union to take their responsibility and use their primary right to investigate and initiate legal proceedings. However, if the union refuses to do so the Equality Ombudsman can start an investigation.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

How many cases were there?

The prohibition of discrimination on grounds of transgender identity or expression came into force on 1 January 2009. Since then the Equality Ombudsman has received 25 complaints concerning transgender identity or expression discrimination. The Equality Ombudsman has also received a small number of complaints from persons who intend to or have changed their legal sex and they have been investigated into as a matter of sex discrimination. Unfortunately no specific statistics are available concerning these complaints.

Which field did they concern (employment, access to goods and services, education, healthcare)? The complaints concerned:

6 Public employment

5 Working life

5 Health and medical care

4 Other goods and services

2 Restaurant or shop

1 Bank or insurance

1 Housing

1 Education

How many did you process and conclude? 7 of the 25 complaints are currently being investigated into.

The 18 concluded investigations have been concluded due to the following reasons:

12 Not enough indications that discrimination has taken place to shift the burden of proof

2 The complaint has been withdrawn

1 Not covered by the Discrimination Act

1 The information in the complaint was insufficient and no complementary additions have been made by the complainant

1 The trade union has taken over the responsibility for the complaint

1 The investigation was interrupted

So far no cases have been brought to court and no settlements have been reached. Here is a summary of some of the investigations concerning transgender identity or expression:

A: The complainant was refused the right to add a first name by the Swedish Tax Authority, in accordance with the practice that was in use at the time. The complainant requested the addition of a so-called gender-contradictory name. The complainant appealed to the Supreme Administrative Court which amended the prior practice and ruled that the addition of the first name should be permitted. After the ruling the Tax Authority allowed for the addition of the first name. The case was closed without further action.

B: The complainant visited a pub with a female friend. According to the complainant, they were denied service and were told that "there were places for lesbians". The restaurant claimed that they were denied service due to the fact that the complainant's friend had caused trouble at the pub prior to their visit. The case was closed without further action due to lack of proof/evidence.

C: Complaint on harassment in the workplace. It was uncertain how the reported incident was related to gender identity or expression and the complainant has withdrawn the notification. Therefore the case was closed.

D: The complainant has applied for change of name with the Patent and Registration Office, PRV. Supreme Administrative Court changed the former practice and made it possible to change name in accordance with the wishes of the complainant. The day after the ruling of the Supreme Administrative Court PRV sent a notice to the complainant that was based on the previous practice and refused the name change request. PRV contacted the complainant shortly after its refusal and apologized for the incident. The name change was approved. The case was closed without further action.

E: The complainant objects to the use of the term transperson used by, among others, the Equality Ombudsman, RFSL and the Parliamentary LGBT group. The case was closed without further action.

F: Complaint about an article in which the complainant was referred to by another gender than the one the complainant identified as. Newspaper articles fall outside the Equality Ombudsman's area of responsibility. The case was closed without further action.

G: The complainant wanted to get married in a civil ceremony but requested that the wedding officiator used only gender neutral pronouns. The Equality Ombudsman closed the investigation without further action.

H: Complaint on discrimination in contacts with medical services. The complainant feels harassed and discriminated against based on the refusal of the complainant's requests for therapy at a hospital and the motivation for the refusal. The case is under investigation.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? During 2009 the Equality Ombudsman formed an internal working group which was given the assignment to present strategies and an action plan for the ombudsman's work on gender identity or expression. The strategies that were applied in the work to promote equal rights and opportunities regardless of transgender identity or expression included:

- Education of strategic target groups and key actors to motivate them to take their responsibility for facilitating equal rights and opportunities for everybody
- Mutual development of knowledge in co-operation with LGBT NGOs

The activities carried out according to the action plan included:

- Specific communication strategies concerning gender identity and expression
- Internal training in norm criticism from a LGBTQ perspective
- In-service training for employees at the local antidiscrimination agencies
- Information leaflets
- International work within Equinet concerning the trans opinion and an ad hoc working group concerning transgender issues
- Pride seminars (Stockholm Pride 2009 and 2010, EuroPride 2010 in Warsaw, Pride in Gothenburg and Malmö 2010), participation in the TGEU and ILGA-Europe trans conference 2008, 3rd European Transgender Council 2010 etc.

5/ Is there anything else that you would like to share with us on this subject?

A) Since the ban on transgender identity or expression discrimination was introduced the Equality Ombudsman has answered more than 60 written questions and 25 telephone queries concerning transgender identity or expression.

B) The Equality Ombudsman has also influenced a state inquiry to propose a change to ground of discrimination transgender identity or expression in the Discrimination Act. The Equality Ombudsman advocates that the ground of discrimination expressly prohibiting the discrimination of transgender persons be called gender identity or expression with the following definition: Gender identity or expression: a person's identity or expression in terms of clothing, mannerisms and behavior with regards to gender.

When constructing and defining the various grounds of discrimination it is of the utmost importance that what is being communicated is that before the law it does not matter which gender identity or gender expression you have. Creating a ground of discrimination covering only transgender identities or expressions could be seen as tantamount to saying that the “normal” thing is that biological sex, gender identity and gender expression are all in accordance with each other based on the bio-socially constructed dichotomy female-male. It also implies that deviations from this norm should be tolerated. In the long run this cannot lead to full equality since having the power to tolerate is a luxury that only bearers of the norm can allow themselves. In other words the concept of tolerance has a built-in power imbalance. Definitions of grounds of discrimination based on tolerance for minorities should subsequently be avoided. Instead grounds of discrimination should be designed in a norm-critical and inclusive way when possible.

C) In a report which the Equality Ombudsman presented to the Swedish government in 2010 experiences of discrimination on all seven grounds included in the Swedish discrimination act were shown. The results were based on individual and group interviews. The main finding concerning gender identity or expression included:

Transgender related discrimination is omnipresent. It is the binary gender norm that creates exclusion and power imbalances which in turn leads to harassment or discrimination. The legal situation for transgender persons is oftentimes discriminatory as such. The sense of exclusion is present in most “everyday situations”. In medical services the binary gender norm can lead to both insults and faulty treatment. Transgender persons experience that they are forced into the binary gender norm and that their identities are being questioned or at best made invisible. Application forms, questionnaires more often than not exclude transgender people and make their identities invisible. The linguistic exclusion sometimes feels like a greater problem than the constantly latent threat of transgender related hate crimes. Transgender persons who choose to “come out” at their work places face harassment and discrimination from co-workers and employers. Transgender persons employ strategies to avoid discrimination. This prevents many transgender persons from openly being themselves in public situations. This leads to a limitation of their freedom of action and living space which in turn affects the physical and mental well-being of transgendered persons negatively. 40 % of transgendered people have experienced insulting treatment once or more times in the last three months which makes it twice as common for transgendered people to experience derogatory treatment compared to the population overall.

D) Concerning the Swedish gender recognition legislation

Currently a person who wants to change their legal sex has to meet the following criteria:

- sterilized
- Swedish citizenship
- unmarried
- 18 years of age

In an inquiry published 2010 the National Board of Health proposes that no demands concerning sterility or other bodily surgery shall be a prerequisite for the legal recognition of a person’s gender identity. Such demands are seen as a violation of a person’s human rights according to the Yogyakarta Principles. As of May 2009 the Swedish Marriage Act is completely gender neutral which renders the previous prerequisite that the gender recognition applicant be unmarried unnecessary. Also the criteria that the applicant has to be a Swedish citizen is being perceived as obsolete. Finally the National Board of Health recommends further inquiry concerning the issues and rights of transgendered youth under the age of 18. The Equality Ombudsman welcomes the inquiry and supports the proposed revisions of the Swedish gender recognition act.

United Kingdom (Great Britain), Equality and Human Rights Commission – EHRC

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? The Equality Act 2010 expressly prohibits discrimination because gender reassignment in employment, services, public functions, associations, education and premises.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The Equality Act 2006 places statutory duties on the Equality and Human Rights Commission to tackle discrimination and promote equality and human rights in respect of a number of protected groups, including on grounds of gender reassignment. The Commission may provide advice and assistance to individuals who are contemplating or undertaking legal proceedings for discrimination. However, the Commission does not have the power itself to adjudicate such complaints.

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

How many cases were there?

- a. Since 1 January 2009 EHRC's telephone helpline service has dealt with 200 queries which mention gender reassignment issues.
- b. Since June 2009 EHRC in England and Wales Strategic Casework and Litigation Teams have dealt with 9 gender reassignment discrimination cases.
- c. Since 1 January 2009, the Scotland strategic litigation and casework team has received cases of discrimination from 6 people who describe themselves as not having the same gender identity as at birth and/ or living full-time in a gender role that is different from birth.

Which field did they concern (employment, access to goods and services, education, healthcare)?

How many did you process and conclude?

a. Helpline Enquiries:

| | | |
|-------------------------------|---------------|--|
| Employment | 30% | |
| Goods Facilities and Services | 57% | |
| General Information | 13% | |
| Total | 200 enquiries | All enquirers are referred or external advice agencies |

b. Legal Case by protected characteristic of gender reassignment – England and Wales

| | |
|--------------------------------|---|
| Employment | 4 |
| Goods, facilities and Services | 4 |
| Employment and GFS | 1 |
| Total | 9 |

For the 9 cases EHRC dealt with since June 2009:

- 1 had a full and final settlement via Equalities Mediation Service
- 2 were resolved after EHRC provided advice
- 1 EHRC had no further contact from client so closed the file
- 4 were not strategic so the files were closed
- 1 is still ongoing

c. Please see tables below for information relating to legal cases in Scotland since 2009.

| |
|--|
| Equalities Monitoring data - Scotland |
|--|

| Year | Not having the same gender identity as at birth | Living full-time in gender role that is different from birth | Total |
|---------|---|--|-------|
| 2009/10 | 2 | 2 | 2 |
| 2010/11 | 4 | 3 | 4 |
| 2011 | 0 | 0 | 0 |

| Legal cases by protected characteristic of gender reassignment – Scotland | | | | |
|---|----------|----------------------|-------------|-------|
| | Casework | Strategic litigation | Enforcement | Total |
| 2009/10 | 2 | 0 | 0 | 2 |
| 2010/11 | 3 | 1 | 1 | 5 |
| 2011 | 0 | 0 | 0 | 0 |

| | Legal work - Scotland | Area | Outcome |
|----|-----------------------|------------------|-----------------------------|
| C1 | Casework | Health | Resolved/ settled |
| C2 | Casework | Employment | Resolved/ settled |
| C3 | Casework | Health | Referred to enforcement |
| C4 | Casework | Private services | Resolved/ settled |
| C5 | Casework | Public services | Resolved/ settled |
| C6 | Strategic litigation | Health | Referred to enforcement |
| C7 | Enforcement | Health | Change in policy & practice |

C7 refers to pre-enforcement work the Commission has carried out with the Scottish Government. As a result of the number of complaints that were being brought to the Scotland legal team about refusal to provide some gender reassignment services and unreasonably long delays in accessing services, we contacted all Scottish Health Board to identify their policies for deciding whether and how to provide access to NHS funded gender reassignment services.

This identified concerns about the lack of clarity, consistency and a potentially discriminatory approach to the provision of gender reassignment services in Scotland. As a result we raised our concerns with the Scottish Government and received a positive response. The Scottish Government agreed to stop defining gender reassignment services as non-essential cosmetic services and develop a new Protocol/ Patient Pathway specifically for gender reassignment services. A working group has been established to assist the development of the new Protocol and includes representatives from the Scottish trans-community. The Commission will be provided the opportunity to comment on the draft Protocol before it is introduced in September 2011.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? Yes. See activities below in England and secondly in Scotland.

England

Stakeholder engagement

In October 2010 the Commission in conjunction with the Government Equalities Office (GEO) hosted a workshop with representatives from transgender and associated organisations to discuss systemic discrimination experienced by the trans community. The seminar focused on developing the capacity and influence of trans organisations, analysing barriers, discussing solutions and providing good practice examples in order to help secure better outcomes for trans people.

EHRC has also provided a seminar on trans people's legal rights under new equalities legislation and provides advice in the regions on trans issues to non government organisations, local authorities etc.

Grants

The Commission is currently funding a number of projects focused on promoting trans equality:

- **Derbyshire Friend** - Rainbow Vision LGBT Project provides capacity building with youth, BAME and Trans communities, including training, infrastructure support for small groups, development of shared resources and specialised support services around hate crime and same sex domestic abuse.
- **Gendered Intelligence** – Trans Youth Group provides guidance, advice and advocacy services to young people. The project also provides the opportunity to participate in youth based activities in a safe space
- **Press for Change** – A dedicated telephone and email equalities and human rights legal help and advice service for all trans people. The programme aims to improve uptake and access to the law by the transgender community, including representation in tribunals and 1st level courts, where appropriate.

Policy

Review of Access to NHS Gender Reassignment Services (England only)

The Commission is conducting a review of existing qualitative research looking at the barriers experienced by trans people accessing gender reassignment services. It aims to identify how the key bodies involved in the design, delivery and monitoring of gender reassignment services might address the difficulties described by trans people in accessing these. It will also identify potential issues raised by the NHS reforms underway, with a focus on the new commissioning of gender reassignment services at a national level.

Collecting information on Gender Identity

The Commission is currently developing guidance to help public authorities subject to the single equality duty, and those thinking about or currently monitoring gender identity, to do so using an acceptable and methodologically robust approach. The guide will assist those who have an interest in the work of public authorities, including service users, voluntary sector bodies, trade unions, equality organisations and the protected groups, as set out in the Equality Act 2010.

The Commission has also produced a range of guidance aimed at tackling transgender discrimination and promoting transgender equality:

Advice and guidance under the Equality Act: <http://www.equalityhumanrights.com/advice-and-guidance/your-rights/transgender/>

Guidance for the public sector (supporting the Gender Equality Duty) http://www.equalityhumanrights.com/uploaded_files/PSD/psd_trans_guidance.pdf

Trans research review: A review of evidence that captures the experiences and challenges facing transgender people in Britain <http://www.equalityhumanrights.com/key-projects/trans-inequalities-reviewed/>

Public bodies and the public sector duties relating to transsexual and transgender people (2010) – Report assessing the performance of a selection of public bodies in meeting their public sector duties as they apply to trans people . <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/resources/public-bodies-and-the-public-sector-duties-relating-to-transsexual-and-transgender-people/>

Scotland Directorate

Legal

- In addition to cases the legal team has held 'round table meetings' with people from the trans community throughout Scotland to discuss the Commission's legal powers, remit and issues of systemic and persistent discrimination facing trans people in Scotland.
- The legal team provides training and information events across Scotland to raise awareness of the Commission's remit and legal powers and the Equality Act 2010. The legal protections affecting trans-people in the Equality Act 2010 are explained during these events. Trans groups and networks in Scotland are specifically targeted and encouraged to attend these events.

Stakeholder engagement – Grants

There are 3 projects in Scotland that receive grant funding from the Commission for period Feb 2010-March 2012 to carry-out trans equality focused work

- LGBT healthy living centre and 1-2-1 advocacy service, with a focuses on family support and health promotion groups, e.g. a trans swimming club.
- Equality Network to provide training and awareness raising courses on interaction of trans and race / religion and belief equality. Also funded to carryout needs assessment of trans refugees and asylum seekers and Scottish Gypsy Travellers.
- Engender Equality Counts project using active research techniques supporting a group of trans-women to carry out research and improve access to general health and gender reassignment services in four health boards in Scotland.

Policy

Much of our work on Transgender Inequality in Scotland has been achieved by bringing transgender issues together with LGB. This approach reflects the approach taken by LGBT groups in Scotland. Our policy work on LGBT issues in Scotland has included:

Responding to the Scottish Government paper 'Challenging Prejudice: Changing Attitudes to LGBT people in Scotland'. The Commission in Scotland has worked in partnership with the Scottish Government and LGBT sector to promote equality for LGBT people. Our response to the Scottish Government paper is here: <http://www.equalityhumanrights.com/scotland/consultations-in-scotland/response-to-challenging-prejudice-changing-attitudes-towards-lgbt-people-in-scotland>

Challenging Homophobia Together <http://www.equalityhumanrights.com/scotland/projects-and-campaigns-in-scotland/challenging-homophobia-together>

The Commission in Scotland actively supported a change in Scots law to extend protections to LGBT victims of hate crime. **Offences (Aggravation by Prejudice) (Scotland) Act 2009** is believed to be the first transgender-inclusive hate crime Act in Europe, and it has the most inclusive definition of transgender identity in any European legislation. <http://www.equalityhumanrights.com/news/2010/march/commission-in-scotland-welcomes-new-hate-crime-laws/#footnote1>

To complement the legislation the Commission held half day seminar for practitioners in November 2009 to discuss the implementation of the the new law in Scotland and share learn from other jurisdictions.

GB wide Policy & Research work that has included Scotland:

Trans Research Review

<http://www.equalityhumanrights.com/news/2009/october/commission-launches-transgender-report>

<http://www.equalityhumanrights.com/key-projects/trans-inequalities-reviewed>

5/ Is there anything else that you would like to share with us on this subject?

The Commission is reviewing access to National Health Service ('NHS') gender reassignment services in response to calls from trans people to our helpline and legal services which suggests that they experience difficulty accessing NHS gender reassignment services. We also wish to use the current NHS reforms as an opportunity to highlight reported difficulties with these services in order that these may be addressed in the new NHS commissioning arrangements.

This review will be used to:

- a) inform the Department of Health's approach to the commissioning of gender reassignment services at a national level, and the approach taken by other bodies identified as key to the monitoring of these services;
- b) to monitor work by the Department of Health to incorporate the Commission's proposals for gender reassignment services into the commissioning policies of the NHS Commissioning Board and GP commissioning consortia, and to work with other bodies involved in the monitoring of these; and
- c) that the published response from the Department of Health to the Commission's review will increase transparency for trans stakeholders on what the Department of Health plans to do in response to the recommendations of the review.

Overall, the review is intended to lead to improved and more consistent practices across England and improvements in services.

United Kingdom (Northern Ireland) Equality Commission for Northern Ireland

1/ Is there express or implicit protection against gender identity and/or gender expression discrimination in your national legislation? If yes, can you please indicate the legal act/s or articles where this is mentioned? The Sex Discrimination (Northern Ireland) Order 1976 (the SDO), as amended

The SDO makes it unlawful to discriminate against an individual on the ground of his or her sex in the fields of employment; training and related matters and other areas. It is also unlawful to discriminate on grounds of gender reassignment (sex change) in employment and training.

Sex Discrimination (NI) Order 1978

[4A. - (1) A person ("A") discriminates against another person ("B") in any circumstances relevant for the purposes of-

(a) any provision of Part III;

(aa) Article 30, 31 or 32, except in so far as it relates to an excluded matter, [added SI 2008/963 on 6 April 2008] or

(b) any provision of Part IV, so far as it applies to vocational training,

if he treats B less favourably than he treats or would treat other persons, and does so on the ground that B intends to undergo, is undergoing or has undergone gender reassignment.]

Northern Ireland Act 1998

Places a duty on public authorities when carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between men and women generally. Although it does not explicitly refer to gender identity, gender identity is covered implicitly.

Sex Discrimination (Amendment of Legislation) Regulations 2008

introduced protection from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services or premises.

2/ Is your Equality Body provided with the remit to investigate cases of discrimination on the ground of gender identity and/or gender expression? Is this explicitly as a result of law/public policy, or do you do it on an ad hoc basis? The Equality Commission for NI (ECNI) has statutory power to provide legal advice and assistance. Cases are determined by a specialist employment tribunal and in the case of Good Facilities and Services in the county courts in Northern Ireland. Everyone who rings ECNI will be provided with advice; however as a strategic litigation Equality Body we provide legal assistance with litigation in selected cases only. Attached is our policy for the Provision of Legal advice and Assistance which we use to decide on case support

3/ Have you received cases of discrimination from trans and/or intersex people? If so:

How many cases were there?

Which field did they concern (employment, access to goods and services, education, healthcare)?

How many did you process and conclude?

We have had a number of enquiries and requests for information over the years.

Most of these have not proceeded to litigation. In reality the enquiries about potential cases have come from a very small number of people who return with different issues. With one exception as noted below, the querists have all been male to female transsexuals. The types of allegations that have arisen are:

- Recruitment and selection – in particular failure to appoint after being shortlisted and interviewed for post. (Types of posts – office receptionists; shop assistance ladies clothes shops)
- Change in working hours arrangements;
- Unfair selection for redundancy
- Refusal of entrance to hotel
- Refusal of access to ladies toilet
- Refusal of membership to business women's association
- Refusal of Church services.

Some of these issues are excluded from protection due to statutory exceptions eg –private clubs – religious exemption; some cases were excluded as they did not meet the strict (and short) deadlines for the issue of proceedings; and some cases simply collapsed on their merits. We had one out of court settlement – see details attached; however – I think it would have been unlikely that this case would have succeeded in court.

A major issue can be protection of privacy. We assisted a case to the NI High Court and Court of Appeal in relation to restricted reporting orders and the requirement of claimants to be registered in a public register. Both claims were successful. I have attached copies. These may have limited interest as they involved technical rather than substantive issues – but the protection of privacy is often very important to individual involved.

We had one very unusual case where the claimant was a minor and the issue involved toilet facilities at school. We got a negative opinion from Counsel in this case. I may be able to provide a redacted opinion if this of interest.

4/ Has your equality body actively promoted equality on the grounds of gender identity and/or gender expression through campaigns, seminars, studies or any other means? We have been involved in outreach with specific groups, but have not carried out a full public information campaign. In October 2008 the Commission published a Fact Sheet on Sex Equality Legislation, outlining the changes made to the Sex Discrimination Order (Northern Ireland) Order 1976 by the Sex Discrimination (Amendment of Legislation) Regulations 2008. We have also published widely decisions in cases we have supported (see above)

5/ Is there anything else that you would like to share with us on this subject? In April 2010, the Equality Act 2010 was passed in Great Britain (GB). The provisions of the Act, apart from a few minor exceptions, only apply to GB and do not change equality law in Northern Ireland. The enactment of the

Equality Act 2010 has, however, resulted in significant differences arising between GB and Northern Ireland equality law. These differences affect all grounds of discrimination including gender reassignment. As a result of the changes that have taken place in GB, transsexual individuals in Northern Ireland have less protection against unlawful discrimination, harassment and victimisation than those in GB. As regards legislative changes, the Equality Commission has for example called for the extension of the sex legislation to cover protection against discrimination on the grounds of sex including gender reassignment by public bodies when exercising their public functions.

There is also no specific Governmental strategy in Northern Ireland aimed at tackling inequalities facing transsexual people. The [Gender Equality Strategy for Northern Ireland 2006-2016](#), a policy framework for work to mainstream gender equality and tackle gender inequalities, does not cover transgender people.