

Seksuaalinen tasavertaisuus - Seta ry

National Organisation for Lesbian, Gay, Bisexual and Transgender Rights in Finland¹

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Discrimination on grounds of sexual orientation and gender identity in Finland

Definitions of the grounds: (i) 'Sexual orientation' refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender; (ii) 'gender identity' refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. In relation to sexual orientation, abbreviation LGB (lesbian, gay and bisexual) is used. In relation to both grounds abbreviation LGBT (lesbian, gay, bisexual and transgender including intersex) is used.

Overview

The human rights situation of the LGBT people in Finland has been improving in particular during the last 35 years. Homosexuality was decriminalized in 1971. Ten years later it was removed from the illness classification list. In 1995 discrimination on the basis of sexual orientation was prohibited in the penal code. In 1999, the Criminal code was revised so that there is no difference in age limits for sexual acts and the prohibition of "promotion of homosexuality" was removed from the law. In 2001, the law on registered partnership gave same-sex couples almost same partnership rights as couples of different sex. Most significant difference relates to adoption, which is not available for same-sex couples. In 2004 the new Equality Act improved LGB people's protection against discrimination. In 2006, the law on assisted insemination was passed in the parliament. The law allows treatments also for single women and female couples. Before the law a number of clinics had already provided treatments for female couples. On the other hand, the law makes surrogacy illegal. In terms of gender identity, development has been slow and more recent. In 2002, the law on the gender confirmation of transsexual individuals came into force. Generally, this law has been seen as a modern and

¹ Seta ry, (founded 1974) is a national NGO working in the field of Lesbian, Gay, Bisexual and Transgender rights. Seta is an umbrella organisation with 18 member organizations. The organization works in policy advocacy and lobbying in the national level and it provides coordination and training for its member organizations and other relevant bodies. National organization has a staff of 10 employees and its member organizations currently employ five persons. Seta is a member of International Gay and Lesbian Association.

advanced. The reviewed act on gender equality (2005) now also covers discrimination of transsexual persons.

Although the legal status and protection of the LGBT people has improved in Finland, some significant problems remain. This report address three key issue areas: (i) the rights to equality and non-discrimination; (ii) family and children's rights; and (iii) transgender and intersex rights. This report also attempts to move beyond the legal situation and issues. It shed some light to the everyday life of the LGBT people in Finland. In conjunction with the legislative discussion, the report presents some relevant recent research outcomes. It also discusses some issues which have emerged through the organisation's practical work on policy advocacy and lobbying, as well as training, youth and social work.

I The Rights to Equality and Non-discrimination

According to the Finnish Constitution everyone is equal before the law.² The equality before the law is enacted in the section 6 as well as the general prohibition of discrimination. Gender is mentioned in the actual law text. Sexual orientation falls clearly under the "other reason" as clarified in the documentation of the constitutional reform in 1998.

Discrimination is further prohibited in several Acts of which some -- such as criminal law -- clearly mention sexual orientation and gender.

Two key pieces of legislation governing discrimination based on sexual orientation is the **Equality Act (2004)**.³ Discrimination based on gender identity and expression is partly governed by the **Act on Equality between Women and Men (1986/2005)**.⁴ Both acts have disadvantages.

The Act on Equality between Women and Men mentions only transsexual persons. The law should be rewritten to specify to what extent it and the work and powers of gender equality body (Ombudsman for Gender Equality) covers transgender people other than transsexuals.

The Equality Act provides different level of protection for different grounds. In terms of ethnic origin (or nationality) the scope of the law and the practical tools to prevent discrimination are wider than in terms of other grounds such as disability and sexual orientation. In the field of sexual orientation and disability the law only covers employment and education; in the field of field of ethnic origin it also covers goods and services. Moreover, the work and powers of the equality body (Ombudsman for Minority Rights) only covers ethnic origin and not sexual orientation.

Both laws are currently under review and the purpose of ongoing preparatory work is to address some of these issues.

There is clear evidence that discrimination based on sexual orientation and gender identity is a substantial problem in Finland. Results gained through a study

² Available at: <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731>

³ Available at: <http://www.finlex.fi/en/laki/kaannokset/2004/en20040021>

⁴ Available at: <http://www.finlex.fi/> (no English version available)

focusing on working life in 2002-2003 are indicative of widespread discrimination faced by the LGBT people in their everyday life. 12 % of more than 700 LGB respondents had faced direct bullying at work place because of their sexual orientation. 8% of more than 100 transperson respondents had been bullied at work because of their gender identity. 6% had been called insulting names. In addition to that, almost half of the LGB respondents had faced insulting joking at the work place. Half of the respondents had not talked openly their orientation or same-sex relationship.⁵

The Lack of Adequate Information

Effective anti-discrimination policy can only be based on adequate information on discrimination in society. In Finland, lack of information is often related to the lack of sufficient support systems and prevention programs. A national study of *Discrimination in Finland 2006* also regencies the problem: "In reforming the Non-discrimination Act, it is essential to assure that an authorized representative or responsible authority is clearly defined for every ground of discrimination. Whatever the manner in which the monitoring is executed, it is essential to guarantee that the supervisory body or bodies have an independent position and sufficient resources to operate, as well as thorough expertise in every ground of discrimination."⁶

Some fields where there is a shortage of information based on research on population:

- The risk of LGBT people committing suicide. This concerns especially young people who, in several previous studies made in other countries, have been found to have a higher risk of suicidal behaviour. Even though the suicide rate in Finland is high, **so far no suicide prevention program has had a conscious LGBT angle.**
- Access to health care and health care information. There is no research on health issues of LGBT people (others than HIV and HIV related issues), such as issues concerning mental health and a heightened probability for lesbian women to attain certain gynaecological cancers and breast cancer (recognised in previous studies outside Finland)⁷
- The prevalence of homo- and transphobic hate crimes in Finland
- The prevalence of domestic violence by and against LGBT people. **No support phone services or shelters for victims of violence are openly welcoming LGBT clients.**

⁵ See Lehtonen, Jukka & Mustola, Kati (2004) "*Straight people don't tell, do they...?*" *Negotiating the boundaries of sexuality and gender at work*. Research Reports 2b/ 04. Ministry of Labour 2004. Available at: <http://www.valt.helsinki.fi/sosio/tutkimus/equal/wwweng/publications.htm>

⁶ Lepola, Outi & Villa, Susan (eds.) *Syrjintä Suomessa 2006*. Ihmisoikeusliitto 2006. A summary in English included.

⁷ See *Lesbian and Bisexual Women's Health: Common Concerns, Local Issues*. ILGA report. ILGA 2006.

Available at:

http://doc.ilga.org/ilga/publications/publications_in_english/other_publications/lesbian_and_bisexual_women_s_health_report

- The prevalence of harassment in primary and secondary school system.⁸
- The special needs of elderly LGBT people⁹.
- The special needs of disabled LGBT people
- The prevalence of multiple discrimination, for example discrimination simultaneously based on ethnic background and homosexuality

II Family and Children Rights

In 2006 a new law on assisted insemination was passed in the Parliament. The law **allows** treatments of single women and lesbian couples. However, the rights of the children and families of the same-sex couples and other non-traditional parenting configurations face serious problems often based on discriminatory legislation.

The outcomes of the recent study on the so called Rainbow Families¹⁰ suggest that there exist several different forms of LGBT families. In terms of children's rights, it is deeply problematic that the legislation merely recognizes traditional family configurations based on two opposite sex parents or a single parent.

The social parent of a child cannot become a legal parent through adoption if s/he is of the same sex than her/his partner, because of the adoption is not available for the same sex partners (see, Act on Registered Partnerships, Section 9).¹¹ Accordingly, children in these types of families are discriminated against on the basis of their parents' sexual orientation or gender identity. The children are not entitled to law binding parental protection such as welfare, support and heritage from both of their parents, as the children of different sex parents. Moreover, these families are not entitled to same public services and benefits as their family is not recognized in the law.

The evidence of the research points out that the discrimination faced by the rainbow families is substantial. For instance 19 % of respondents of the recent study had experienced discrimination in some services. The qualitative analysis of the research data as well as previous research suggests that discrimination is often based on the fact that the practices in social welfare and health services (including fertility clinic services) are designed for heterosexual nuclear families,

⁸ On heteronormativity in the school practices see Lehtonen, Jukka *Seksuaalisuus ja sukupuoli koulussa : Näkökulmana heteronormatiivisuus ja ei-heteroseksuaalisten nuorten kertomukset*. Yliopistopaino 2003. English summary included. Available at: <https://oa.doria.fi/handle/10024/3430>

⁹ On age and employment issues, for example the risk of early retirement, see Charpentier, Sari "Heteronormativity and Working Life Course in the stories of 'People over the Age of 45'" in Lehtonen, Jukka & Mustola, Kati (2004) "*Straight people don't tell, do they...?*" *Negotiating the boundaries of sexuality and gender at work*. Research Reports 2b/ 04. Ministry of Labor 2004. Available at: <http://www.valt.helsinki.fi/sosio/tutkimus/equal/wwweng/publications.htm>

¹⁰ Aimed at lesbian, homosexual, bisexual transgender and non-heterosexual parents. Full research report in Finnish including summary in English available at:

<http://www.seta.fi/perheprojekti/documents/suomalaisetsateenkaariperheet.pdf>

¹¹ An unofficial translation of the Act by Ministry of Justice:

<http://www.finlex.fi/pdf/saadkaan/E0010950.PDF>

thus making them unsuitable for LGBT families. Discriminatory dimensions were also reported in the dialogue with day care centers and schools.

Current government has announced that it plans to make so called internal adoption available in registered partnership. This legislative move would enable registered partner to adopt her/his partner's child. This would solve some of the most acute problems. There is no quarantine though that the government's plan will become a law.

According to present situation, adoption should be available for single LGB persons. In practice, single persons have, however, problems to qualify for the adoption since the process is generally more favorable for the couples. Moreover, due to the current legislation same-sex partners are not recognized in the process.

III Transgender People and Intersex Children

The fundamental rights situation of a child born with "unclear" sex is problematic in Finland. A common medical practice is to commit surgeries and other treatments in order to reconstruct the children's sex as female or male. Significantly, not all treatments are necessarily based on medical reasons (i.e. health hazard).

As no person should be forced to undergo any form of medical or psychological treatment or procedure, rights of an intersex child are in some cases currently violated in Finland. Therefore, Finland should take all necessary legislative, administrative and other measures to ensure that no child's body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration.

A sufficient follow-up study is needed on the psycho-social readjustment of children who have been operated on without being able to express their will.

In addition, considerable local variation is found in the level and quality of treatment and support for transgender and intersex people, especially gender variant children and transgender teenagers. Thus these young people do not have equal access to essential health care services. They are often treated by professionals who do not have sufficient knowledge on gender variance. The services should be equally efficient and of high quality throughout the country, but no state authority has currently taken adequate responsibility for ensuring that this is the case.