

The Office of the Ombudsman against Sexual Orientation Discrimination

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9+ years as Ombudsman - Conclusions

Change and progress are possible!

- Legislation is necessary but not enough
- Sanctions are vital
- Only a ban on discrimination will not do the trick
 - ✓ Promoting equality and preventing discrimination is a necessary complement
- Mainstreaming: Promotion and prevention work is "everybody's" responsibility, but there is a need for:
 - ✓ a co-ordinating driving force – e.g. a specialised body
 - ✓ monitoring and control

Tasks of the Ombudsman

'Combating homophobia and discrimination on grounds of sexual orientation in any area of Swedish society'

- **i.e. enforce the general principle of non-discrimination**

Enforcing the principles - Necessity Test for Sexual Orientation Discrimination

' [... ...] where there is a difference in treatment based on sex or sexual orientation, the principle of proportionality does not merely require that the measure chosen is in principle suited for realising the aim sought. It must also be shown that it was necessary ... '

- Karner v. Austria, European Court of Human Rights, 2003

Enforcing the principles - not a matter of 'opinions'

'To the extent that they represent a pre-disposed bias on the part of a heterosexual majority against a homosexual minority, these negative attitudes cannot, of themselves, be considered by the Court to amount to sufficient justification [... ...], any more than similar negative attitudes towards those of a different race, origin or colour.'

- Lustig-Prean & Beckett, Smith & Grady v. United Kingdom, European Court of Human Rights, 1999

Enforcing the principles – young LGBT persons' rights as an example

UN Convention on the Rights of the Child

Prohibition on discrimination:

'In the implementation of the Convention on the Rights of the Child, the Committee requires that legislation protect children against discrimination based on sexual orientation [...].'

- UK – Isle of Man (Committee on the Rights of the Child, Concluding observations, October 16, 2000)

Enforcing the principles – young LGBT persons' rights as an example

UN Convention on the Rights of the Child

Proactive protective measures:

'The Committee is concerned that homosexual and transsexual young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation.'

- UK (Committee on the Rights of the Child, Concluding observations, October 9, 2002)

Tasks of the Ombudsman

- ❑ Enforce statutory anti-discrimination law
 - ✓ *Employment*
 - ✓ *Pre-school, primary, secondary and higher education*
 - ✓ *Provision of goods and services*

- ❑ Advice and support
- ❑ Litigate individual court cases
- ❑ Propose anti-discrimination measures to the Government
- ❑ Promote equal rights and opportunities
- ❑ Monitor international developments

Promotion of Equality in Dignity and Rights

- ✓ Education for police officers, public prosecutors and judges
- ✓ Education for the Swedish Armed Forces
- ✓ Strategies for enhanced quality in all branches of law enforcement
- ✓ Information campaigns about new anti-discrimination legislation
- ✓ Conferences and seminars on sexual orientation discrimination in the work place together with labour unions
- ✓ Study of sexual education in schools
- ✓ Studies of homophobia in schools
- ✓ Monitoring of equal treatment plans in universities and schools
- ✓ Projects and studies on sexual orientation discrimination and health
- ✓ Study of university curricula for social workers
- ✓ Project on homophobic violence in the name of honour
- ✓ Report on the introduction of a gender neutral marriage legislation
- ✓ Awareness raising and education for local anti-discrimination projects
- ✓ 'The Price of Love' – a book on the consequences of homophobia from the Holocaust until today
- ✓ Introduction materials for immigrants and asylum seekers

Examples of discrimination dealt with by the Ombudsman

Employment

- Discriminatory collective bargaining agreements
- Guidelines for appointing military attachés
- Refusal to hire
- Harassment during hiring process
- Harassment in the work place
- No extension of temporary employment

Education

- Students harassed by teachers
- Students harassed by students
- Students barred from school social events
- Harassment during vocational training / practical work experience
- Degrading/stereotypical content in literature / educational materials
- Insulting or degrading treatment during classes

Examples of discrimination dealt with by the Ombudsman

Goods and Services

- No access to public health care
- Degrading treatment of patients within public health care
- Discriminatory access to assisted procreation schemes
- Discriminatory access to information on social security schemes
- Denied entry to restaurants / forced to leave premises
- Housing
- Real Estate
- Airline travel
- Entrance fees to museums
- Sexual orientation hate crime not investigated or not prosecuted by law enforcement agencies
- City councils refusing to nominate registrars for registered partnerships

Result of the Ombudsman's inquiries

Problem resolved

- ✓ Discriminatory dismissal reversed
- ✓ Discriminatory provisions or guidelines amended / deleted
- ✓ Public administration forms amended
- ✓ Harassments investigated and stopped
- ✓ Educational contents revised

[Litigation in court]

Settlement

- ✓ Financial compensation
- ✓ Apologies
- ✓ Educational undertakings

Critical observations

Finding of no-fault

Resource material

The Yogyakarta principles

- ✓ Principles describing the application of international human rights law in relation to sexual orientation and gender identity

International Commission of Jurists

- ✓ International human rights references to human rights violations on the grounds of sexual orientation and gender identity.