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

**Legal Report: Iceland**

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## A. Executive summary

### *Overall legal framework*

1. The principle of equality is a constitutionally protected principle in Iceland. Prohibition of discrimination on grounds of sexual orientation and gender identity falls within the scope of the provision as discrimination on grounds of "other status." The European Convention on Human Rights (ECHR) is incorporated into domestic law and constitutional provisions are interpreted in conformity with ECHR. Other international law obligations also influence interpretation.
2. Implementation of the principle of equality in the public and private sphere varies. There is strong protection and promotion of equality in family law issues, including cohabitation and equal rights to marry. Public services and assistance both for LGBT individuals and families are provided without discrimination. Private refusal of services, in breach of LGBT rights, has been criminalised. Protection in employment context is less advanced, with progressive provisions on sex equality only, and less advanced provisions with regard to sexual orientation and gender identity. However, legislative initiative to implement Directives 2000/78/EC and 2000/43/EC<sup>1</sup> is under way.
3. There is a legal vacuum concerning transgender issues. This was recognised in 2009 and preparatory work is under way to address the situation. In the report the term "gender identity" will be used, in a non-exclusive way, to cover both transgender and transsexual issues. "Transgender" will be used broadly, sometimes also covering the term "transsexual". The acronym LGBT will also be used broadly and may occasionally be over-inclusive (as transgender issues have not until recently been explicitly included in legislation or policy debates).
4. Data relating to practice is not easily available. Case-law is published on-line on [www.haestirettur.is](http://www.haestirettur.is) (Supreme Court case-law) and on [www.domstolar.is](http://www.domstolar.is) (decisions of District Courts). The Parliamentary Ombudsman also publishes all Opinions on [www.umbodsmaduralthingis.is](http://www.umbodsmaduralthingis.is). Each of these resources have been researched for the period 2004-2009, yielding very limited results for LGBT relevant issues. Decisions of administrative bodies are also published on the internet, but not indexed, making decisions relevant to LGBT issues inaccessible for the purposes of this report. Other official data on LGBT issues is very limited. The centre for statistics in Iceland ([www.hagstofa.is](http://www.hagstofa.is), [www.statice.is](http://www.statice.is)) provides information on family issues, including the number of registered same-sex partnerships and dissolved partnerships.
5. Equality bodies within the public administration have powers to consider discrimination based on sex only. There are no equality bodies, adjudicators or mediators competent to resolve LGBT issues specifically or as a part of a mandate to monitor a wide notion of equality.

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<sup>1</sup> Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

6. LGBT associations in Iceland are Samtökin78 ([www.samtokin78.is](http://www.samtokin78.is)) and Trans-Ísland, an association formally established in 2007. Transgender people also participate within the broader umbrella of Samtökin78. These associations are consulted on legislative change and report generally good cooperation with authorities. Other LGBT associations in Iceland are Q ([www.queer.is](http://www.queer.is)) an association of lesbian, gay, bisexual, transsexual and transgender students within the University of Iceland, and FAS ([www.samtokinfas.is](http://www.samtokinfas.is)) an association of parents and relatives of lesbian and gay people.

#### *Freedom of assembly and association*

7. Freedom of assembly and association is constitutionally protected and applies in the LGBT context. Gay pride parades has been successfully organised for a number of years in Iceland. No concerns or complaints have been voiced by stakeholders under this heading.

#### *Freedom of expression*

8. Freedom of expression is also constitutionally protected and the term “expression” covers all forms of expression, including visual expression and actions. No issues relating to freedom of expression have been raised and there is no indication of interference or discrimination relating to internet activities.

#### *Hate crime*

9. The Penal Code provision on hate crime was extended in 1996 to provide protection against hate crime based on sexual orientation. The provision does not explicitly refer to gender identity; it is therefore unclear whether transgender persons are protected. There is no LGBT relevant case-law, but a case applying the provision in a different context indicates effective protection.
10. The Penal Code does not contain provisions on homophobic/transphobic motivation for crime. The Police and the Public Prosecutor do not have established procedures to identify or record homophobic/transphobic motivation for crime.

#### *Family issues*

11. LGBT persons benefit from a progressive protection of rights related to family law issues. Registered partnership has been available since 1996, with equal rights to marriage in all respects, including adoption and assisted reproduction since 2006. A religious equivalent to registered partnerships was introduced in 2008. Changes in the Act on Marriage with Amending Act 65/2010 which came into force on June 27 2010, allow marriage for everyone regardless of sex or sexual orientation. The Act, Lög um breytingar á hjúskaparlögum og fleiri lögum og um brottfall laga um staðfesta samvist (ein hjúskaparlög), agreed during the period this report was drafted, will be referred to throughout as the Marriage Amendment Act (2010). Transgender people may benefit from some of the above provisions, but there are no specific legal provisions on transgender issues.

12. Since 2006, registered same-sex cohabitation has been possible, with equal rights to opposite sex cohabiting couples, including adoption and assisted reproduction. Single women are also entitled to assisted reproduction.
13. Rights of parents and children correspond to the above family forms, with equal treatment, in most respects. With the Marriage Amendment Act (2010), some minor changes were made to correct issues relating to determination of parenthood and naming of children in same-sex relationships and their acquisition of citizenship.
14. Assisted reproduction through surrogacy is not permitted. Donation of both ova and sperm is now possible following recent changes in the law; freezing of ova or sperm for future use is also possible.
15. Good practice has been identified in family law in general, as well as in respect of social and economic rights and in the application of family reunification rules, in the context of immigration and asylum, where the term “family member”, inclusive of registered partners and cohabiting same-sex partners, is interpreted in line with domestic law, and alternative proof of cohabitation is accepted as equivalent to registration.

#### *Asylum and refugee issues*

16. Asylum and refugee issues have recently been reviewed. Act 115/2010 (September 20, 2010) amending Act 96/2002 on aliens aligns Icelandic legislation in this field to EU acquis.
17. Iceland is party to the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, as well as ECHR. The Icelandic legislation provides for asylum, subsidiary protection and protection on humanitarian grounds. Statistics show 1% of asylum applications granted in 1999-2008 while 20% of applicants were granted leave to stay on humanitarian grounds.
18. No data is available on grounds for asylum application or application for other protection. LGBT issues are acknowledged as falling within the category of “social group” in practice and henceforth Act 115/2010 provides for a wide definition of a “social group”, which ensures protection to LGBT people.

#### *Social security, social care and insurance*

19. Social security, social care and assistance is predominantly provided by public services and/or the social security system. Legislative amendments have equated the situation of Registered Partners to married couples, and cohabiting partners enjoy mostly the same rights, without discrimination on grounds of sexual orientation. No specific provisions regulate the situation of transgender people.

#### *Education*

20. Law, policy and guidelines for education promote equality, respect and awareness of difference, but implementation seems to be discretionary. According to Act 91/2008 on primary education the objectives and practice of study and instruction shall aim at preventing discrimination on the basis of certain criteria, including gender and sexual

orientation. Higher education institutions have implemented equality policies, inclusive of LGBT issues and equality committees monitor practice.

21. Some positive development was recorded in 2004 in relation to available material and funding; there is increased emphasis on awareness, including gender studies at University level.

### *Employment*

22. Guarantees against sex discrimination are advanced in Iceland and in line with EU acquis, with most EU sex discrimination acquis implemented. To date this has not been extended to discrimination on other grounds, including sexual orientation. Steps have been taken to implement Directives 2000/78/EC and 2000/43/EC, in the employment context. Implementation was not finished at the end of 2009.
23. Discrimination on grounds of sexual orientation and gender identity is likely to enjoy some protection, with reference to the general principle of equality. There is limited case-law to confirm this and no cases to confirm that discrimination on grounds of gender identity would fall within the scope of provisions prohibiting sex-discrimination.
24. Harassment in the workplace would include harassment because of sexual orientation and gender identity, with reference to regulation based on health and safety legislation.
25. Equality bodies are, as of yet, limited to monitoring sex-equality. The Parliamentary Ombudsman is empowered to resolve issues within the public administration. Trade unions and the judiciary are the available mediators and adjudicators in respect of private law disputes.

### *Housing*

26. Housing is predominantly in private ownership in Iceland. Rules on loans and ownership through cooperatives, as well as legislation on rented accommodation and housing allowances, related to rent, have all been adjusted to accommodate for registered partnerships and same-sex cohabitation.

### *Health care*

27. Equal treatment, regardless of sexual orientation, is ensured in respect of health care. Same applies to requirements of approval of treatment and organ removal by next of kin.
28. No specific legislation applies to gender reassignment treatments and plastic surgery related to gender reassignment falls within a discretionary category, where prior approval is required for coverage of cost. There is no legislation on HIV/AIDS in Iceland.

### *Access to goods and services*

29. It is a criminal offense to refuse delivery of goods or services to a person on the basis of sexual orientation. It is not clear if the provision extends to transgender people. There is no LGBT relevant case-law on the provision.

### *Media*

30. No specific provisions of the Broadcasting Act 53/2000 prohibit discrimination on grounds of sexual orientation or gender identity but codes of conduct apply. No issues of significance have come up in this context.

### *Transgender issues*

31. Definition of “transgender” is not available under Icelandic law and legal provisions relating to transgender issues are practically non-existent. There is no case-law on the issue.
32. A recent Opinion of the Parliamentary Ombudsman has highlighted the lack of legal framework and called for legislation in order to protect the rights of transgender people.
33. There are no legal rules on medical treatment, but a code of practice is followed, similar to that applied in other Nordic countries.
34. Practice relating to name-change has recently been modified, following investigation by the Parliamentary Ombudsman. Name-change is now registered upon request after one year of hormonal treatment. Similar modifications have been implemented as regards registration of sex, as change of birth certificate follows the name-change, upon request. An implicit requirement of divorce follows from the (medical) code of practice, where divorce is required for gender confirming treatment.

### *Good practice*

35. Identification of good practice is primarily within the field of family law and related socio-economic welfare rights. The newly enacted Marriage Amendment Act (2010) now equates the situation of all groups with a gender neutral right to marry.
36. Iceland has a progressive interpretation of family members in the context of immigration and asylum, where same-sex couples who have lived abroad are accorded equal treatment vis-à-vis Icelandic couples, regardless of recognition of same-sex relationships in the country of previous residence.

## B. Findings

### B.1. Overall legal framework

37. The principle of equality is a constitutionally protected principle in Iceland. Constitutional amendments in 1995 confirmed a previously unwritten principle of equality, with Article 65 of the Constitution (Stjórnarskrá lýðveldisins Íslands) providing:

*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.*

*Men and women shall enjoy equal rights in all respects.<sup>2</sup>*

38. While the provision does not explicitly mention sexual orientation or gender identity, it is undisputed that these grounds of discrimination fall within the provision as discrimination based on “other status”, supplementing the provision on privacy, in Article 71 of the Constitution.<sup>3</sup> Specific legislation implements the principle of equality in different areas of the law, most notably with regard to procedure, Act 37/1993 on Administrative Practice (Stjórnsýslulög), with Article 11, prohibiting discrimination on the above grounds.
39. The protection against discrimination on grounds of sexual orientation and gender identity is reinforced by the fact that the European Convention on Human Rights and Fundamental Freedoms (ECHR) has the force of domestic law through incorporation by Act 62/1994 on the European Convention on Human Rights, lög um Mannréttindasáttmála Evrópu. Article 8 ECHR and Article 14 ECHR are therefore directly applicable in Icelandic law. Iceland has, as of yet, not ratified Protocol 12 to the ECHR (general principle of equality).
40. Other international human rights instruments of particular relevance for LGBT issues, also bind Iceland through ratification, such as the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)). Case-law has arguably confirmed that Article 26 ICCPR (the general principle of equality), along with Article 14 ECHR, must be taken into account when construing the constitutional provision on equality, resulting in positive obligation of authorities to ensure equal treatment, in all areas of the law.<sup>4</sup>
41. The European Social Charter has been ratified by Iceland, with reservations. The amended European Social Charter has been signed by Iceland, but not ratified.
42. As a contracting party to the European Economic Area (EEA), Iceland has implemented European Union Acts relating to the internal market and other horizontal provisions relating to the four freedoms (including social policy and consumer protection). Furthermore, Acts have been implemented or taken into account in areas of cooperation outside the four freedoms (including education, training and youth and civil protection). In July 2009 Iceland submitted an application to join the EU.

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<sup>2</sup> Iceland Government, [www.government.is/constitution.%20Act%2033/1944](http://www.government.is/constitution.%20Act%2033/1944), accessed 29 September 2010.

All Icelandic legislation in force is available at the Parliament's homepage, Althingi, [www.althingi.is/vefur/lagasafn.html](http://www.althingi.is/vefur/lagasafn.html), accessed 29 September 2010. Provisions of the Constitution in the original are available at [www.althingi.is/lagas/138a/1944033.html](http://www.althingi.is/lagas/138a/1944033.html), accessed 29 September 2010.

<sup>3</sup> This is confirmed by preparatory documents as well as by a decision of Reykjanes District Court (19.05.2003), see point 162 and Annex 1.

<sup>4</sup> *Judgment of the Supreme Court*, Hrd 1999:390, (obligation to support a disabled individual in University education) and *Judgment of the Supreme Court*, Hrd 1999:2015, (obligation to broadcast election material also in sign language).

43. EU legislation prohibiting sex discrimination has in all major respects been incorporated into the EEA Agreement and implemented under Icelandic law. However, due to lack of legal basis in the EEA Agreement, the Employment Directive 2000/78/EC prohibiting discrimination on grounds of other grounds than sex and Directive 2000/43/EC prohibiting discrimination on grounds of race have not been incorporated into the Agreement and are not formally binding on Iceland. Regardless, a government initiative was taken in 2005 to examine ways to adapt Icelandic legislation so as to reflect the same rules in Iceland. Implementation of this initiative had not been finalised at the end of 2009.
44. Directive 2004/38/EC on free movement has been incorporated into the EEA Agreement<sup>5</sup> and implemented with specific adaptation in Icelandic law. Icelandic adaptations, which are largely without relevance for LGBT issues take into account the view of Iceland that the EEA Agreement does not apply in respect of third country nationals. Regardless of this, according to the text, third country national family members will “derive certain rights according to the Directive”.
45. Through the Schengen Agreement between the EU and Iceland and Norway, from 18 May 1999<sup>6</sup> a number of Schengen Acts are also binding on Iceland, including Council Regulation 343/2003/EC (Dublin II).<sup>7</sup>
46. With regard to family reunification, asylum and family reunification for asylum seekers, however, relevant EU *acquis* has not been extended to the EEA Agreement. This includes Directive 2003/86/EC (family reunification)<sup>8</sup> and Directive 2004/83/EC<sup>9</sup> (asylum). Other EU *acquis* have, however, recently been implemented, see further points 127-128 on asylum and 118-122 on family law issues.
47. Legal developments relating to LGBT issues have been extensive in the last two decades, with the exception of legislation relating to transgender issues.
48. In 1940, Iceland was the second of the Nordic countries to abandon criminalisation of sexual relations of persons of the same sex. It was not until 1992, however that provisions providing for different minimum age for consensual sexual relations with regard to same-sex relationships were abolished.<sup>10</sup>
49. Major reforms of the legislation were conducted in 1996, with criminalisation of both hate speech and the refusal to provide services due to sexual orientation (see points 71 and 185 of this report respectively). In the same year, law on registered partnership for same-sex couples was enacted, entailing similar legal status to marriage (see points 87-92).
50. In 2006 further changes were enacted, according legal status to cohabiting same sex partners and equalising their situation to opposite sex cohabiting people in areas where cohabitation entails rights, including a number of important areas, such as family law issues, social security and taxation.

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5 *Directive 2004/38/EC of the European Parliament and the Council* on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. See Annex V to the EEA-Agreement, point 1:2, third indent (Decision of the EEA Joint Committee 158/2007).

6 Ratified by Iceland, 26 May 2000 and effective as of 25 March 2001.

7 *Council Regulation 343/2003/EC* establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

8 *Council Directive 2003/86/EC* on the right to family reunification.

9 *Council Directive 2004/83/EC* on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

10 Þorvaldur Kristinsson: *Misrétti og réttarbætur* (e. discrimination and legal change), 01.01.2006, [www.Samtokin78.is](http://www.Samtokin78.is), accessed 17 December 2009. See also generally Björg Thorarensen: *Réttindi samkynhneigðra samkvæmt ákvæði 8. gr. Mannréttindasáttmála Evrópu um friðhelgi einkalífs og fjölskyldu* (e. Rights of gay people under Article 8 of the European Convention on Human Rights) (*Úlfjótur* 2005:58(1), 5-40).

51. In contrast, transgender issues have been largely absent from the law and the legislative agenda until 2009. In 2009 an Opinion of the Parliamentary Ombudsman highlighted some aspects of the legal vacuum and raised concerns that established practices might impinge upon the human rights of transgender people (see further point 196 of this report). The Ombudsman called for a review of the legislation and in November 2009 the Icelandic Parliament established an agenda for examining the necessary changes in this area.
52. With the above caveat in respect of transgender people, the legal status of LGBT people under Icelandic law is progressive and a number of important issues have been ensured in the last two decades.
53. Policies and priorities have in general been progressive. Committees established by authorities to examine LGBT issues have promoted the rights of LGBT people (primarily reports from 1994 and 2004 respectively) and have been influential. Following the recommendations of the above reports legal changes have been effected and debates and open discussion on LGB issues have increased.<sup>11</sup>
54. A number of recommendations in other policy areas, such as with regard to education, promotion of acceptance of diversity, awareness of the situation and rights of LGB have, in the same way been emphasised by the above committees. Generally, both legal change and change in attitudes have been positively assessed by stakeholders.
55. Stakeholders assess the relationship and cooperation with authorities in a positive way. There may however be scope for an increase in institutions competent to address LGBT issues, including giving advice and resolve disputes. There is also scope for increased funding of programmes and other, less formal measures of ensuring non-discrimination and inclusion of LGBT people in Iceland.

## **B.2. Freedom of assembly and association**

56. Article 74 of the Constitution (Stjórnarskrá lýðveldisins Íslands) ensures freedom of association and the freedom of assembly.

*Associations may be formed without prior permission for any lawful purpose, including political associations and trade unions. An association may not be dissolved by administrative decision. The activities of an association found to be in furtherance of unlawful objectives may however be enjoined, in which case legal action shall be brought without undue delay for a judgment dissolving the association.*

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*People are free to assemble unarmed. Public gatherings may be attended by police. Public gatherings in the open may be banned if it is feared that riots may ensue.<sup>12</sup>*

57. The above provision (which is interpreted in conformity with Article 11 ECHR) applies in the context of LGBT issues as in other contexts, and is supplemented by the constitutional protection of equality. There is no case-law on LGBT issues in the context of freedom of association.

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<sup>11</sup> See in particular the 2004 Report (drawn up by Björg Thorarensen) published (in Icelandic), [www.althingi.is/altext/131/s/0381.html](http://www.althingi.is/altext/131/s/0381.html), accessed 29 September 2010. The report is henceforth referred to as [2004 Report] and the 1994 report is referred to as [1994 Report].

<sup>12</sup> Iceland Government, [www.government.is/constitution](http://www.government.is/constitution), accessed 29 September 2010. Text in original at, [www.althingi.is/lagas/138a/1944033.html](http://www.althingi.is/lagas/138a/1944033.html), accessed 29 September 2010.

58. There is no requirement of prior approval of assemblies. Article 122 of Act 19/1940, the Penal Code (Almenn hegningarlög) provides protection against disturbances of assemblies, by criminalising private conduct which hinders lawful assembly, cf. also Article 74 of the Constitution and Article 11 ECHR. There is no case-law on the above provision in the context of LGBT.
59. During the period of review, the annual “Gay Pride” (Hinsegin dagar) has been successfully organised and has taken place in good cooperation with authorities, including the police. There have not been any restrictions on LGBT gatherings in Iceland. According to organisers of Gay Pride, there have been no problems associated with the assembly, and no complaints are directed at the police in this context.<sup>13</sup>
60. The same applies to assemblies of transgender people, where no problems are reported in this context, but it is also suggested that transgender assemblies have traditionally been low-profile.<sup>14</sup>
61. For statistics relevant to demonstrations of LGBT people, see Annex 2.

### **B.3. Freedom of expression**

62. Freedom of expression is constitutionally protected under Article 73 of the Constitution (Stjórnarskrá Lýðveldisins Íslands), interpreted in conformity with Article 10 ECHR, and supplemented by the constitutional protection of equality.

63. Article 73 of the Constitution provides the following:

*Everyone has the right to freedom of opinion and belief.*

*Everyone shall be free to express his thoughts, but shall also be liable to answer for them in court. The law may never provide for censorship or other similar limitations to freedom of expression.*

*Freedom of expression may only be restricted by law in the interests of public order or the security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others, if such restrictions are deemed necessary and in agreement with democratic traditions.<sup>15</sup>*

64. The term “expression” in the above provision is interpreted widely, covering all forms of expression, including visual expression and actions, and would thus cover expression of gender identity.<sup>16</sup>
65. The provision explicitly prohibits censorship, or prior restriction on publication or airing of material. Restrictions subsequent to publication of material are also rare, and have to fulfil constitutional requirements, which incorporate guarantees from ECHR provisions and practice.
66. There is no LGBT relevant case-law relating to censorship or restriction of material, or freedom of expression generally. Case-law shows generally that Article 73 of the Constitution is interpreted in line with Article 10 ECHR, restrictions having to be in

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13 Information from Heimir Már Pétursson, director of Hinsegin dagar, [www.gaypride.is](http://www.gaypride.is), accessed 29 September 2010.

14 Information from Anna Kristjánsdóttir, a long-time member and spokesperson of transgender people in Iceland.

15 Iceland Government, [www.government.is/constitution](http://www.government.is/constitution), accessed 29 September 2010. Text in original at [www.althingi.is/lagas/138a/1944033.html](http://www.althingi.is/lagas/138a/1944033.html), accessed 29 September 2010.

16 Björg Thorarensen, *Stjórnskipunarréttur. Mannréttindi* (e. Constitutional law – Human Rights), Reykjavík 2008, p. 358.

accordance with law, proportionate and non-discriminatory. There are no cases under Article 73 of the Constitution where limitations of rights of LGBT persons have been at issue. Associations and representatives of LGBT people have not expressed concerns in this context.

67. An old provision in the legislation on printing requires printers to provide copies of magazines to the police and makes provisions for the police to obtain other printed material at its discretion. The provision, which is aimed *inter alia* at explicit material, is however not applied, and doubts have been raised as to its compatibility with the Constitution.<sup>17</sup>
68. Regulation of content on the internet would fall within the applicable national rules, inasmuch as issues would fall within Icelandic jurisdiction. EU rules on electronic commerce have been incorporated into the EEA-Agreement.<sup>18</sup> Other than what follows from these rules, no legal requirements have been implemented applying to Internet Service Providers (ISPs) and a code of conduct has not yet been drawn up by the ISPs in Iceland. There is no filtering system for the Internet, but most ISPs do offer some optional filters for end-users.<sup>19</sup>
69. Interference or discrimination relating to internet activities has not been reported by associations of LGBT people.
70. As regards hate crime, see subsequent section.

#### **B.4. Hate crime**

71. Article 233.a of Act 19/1940, the Penal Code (Almenn hegningarlög) protecting against hate crime, was, in 1996 extended to protect against incitement to hatred on grounds of sexual orientation.
72. The provision, which in its original version was enacted to implement Art. 4 of the International Convention on the Elimination of All Forms of racial Discrimination, reads:  
  
*Anyone who does by means of ridicule, calumny, insult, threat or otherwise assault a person or group of persons on account of their nationality, colour, race, religion or sexual inclination shall be subject to fines or imprisonment of up to 2 years.*<sup>20</sup>
73. The wording of the provision, supported by preparatory documents, indicates that the protection is accorded to gay, lesbian and bisexual persons,<sup>21</sup> while transgender persons are not expressly included in the provision.
74. There is no case-law where the provision is applied in LGBT context, and therefore no guidance as to whether the provision would be extended to transgender persons.
75. A case applying Article 233.a of the Penal Code in the context of incitement to racial hatred indicates, however, an effective protection against incitement to hatred on the listed

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17 Ibid, pp. 364-5.

18 *Directive 2000/31/EC*, implemented through Act 30/2002 on Electronic Commerce and other Electronic Services (lög rafræn viðskipti og aðra rafræna þjónustu).

19 Answers by the Icelandic Government relating to Application to Join the European Union, Chapter 10, <http://evropa.utanrikisraduneyti.is>, accessed 29 September 2010.

20 Text in original at, [www.althingi.is/lagas/138a/1940019.html](http://www.althingi.is/lagas/138a/1940019.html), accessed 29 September 2010.

21 The translation "sexual inclination" is synonymous with "sexual orientation" (kynhneigð).

grounds. The case also indicates that ECHR practice provides guidance with regard to the balance between freedom of expression on the one hand and protection against hate crime on the other.<sup>22</sup>

76. The provisions of the Penal Code on libel and the general legislation on compensation, providing for compensation for libel in Act 50/1993 on tort (Skaðabótalög) are applicable in this context. There is no LGBT relevant case-law.
77. Council of Europe 2001 Convention on Cybercrime has been ratified by Iceland, entering into force in 2007; the 2003 Additional Protocol has been signed but not ratified.<sup>23</sup>
78. The Penal Code does not contain provisions on homophobic/ transphobic motivation of crime. Any account taken of such motivations would be pursuant to more general headings and principles of the Penal Code. No case-law or official statistics is available on the point.
79. A committee report on the legal status of LGB people recommended a review of police procedures, including that registration of homophobic motivation behind crimes would be introduced. This recommendation had not been implemented at the end of 2009.
80. Correspondence with the Office of the Public Prosecutor confirms that neither police nor the Public Prosecutor have a form of specific procedure to register homophobic/transphobic motivation of crime. Plans to introduce such procedures or registers have not been discussed within the Office of the Public Prosecutor.
81. It was, furthermore confirmed by correspondence with the Office of the Public Prosecutor that these aspects have not been considered in practice. No cases are pending where homophobic/transphobic motivation is alleged and no references to such is found in recent practice.
82. The Penal Code does not contain provisions on mitigation related to homophobic/transphobic motivation of crime, or LGBT issues more generally. One District Court decision provides limited guidance on practice, because of the specificity of the case.<sup>24</sup>

## **B.5. Family issues**

83. Protection of private and family life falls within the scope of Article 71 of the Constitution (Stjórnarskrá lýðveldisins Íslands), and Article 8 of the ECHR. The provision is supplemented by Article 65 of the Constitution, on equality, as well as Article 14 ECHR.
84. Article 71 reads:

*Everyone shall enjoy freedom from interference with privacy, home and family life.*

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<sup>22</sup> *Supreme Court Judgment 2002*, p. 1485 (Hrd. 2002:1485).

<sup>23</sup> Council of Europe, [www.conventions.coe.int](http://www.conventions.coe.int), accessed 29 September 2010.

<sup>24</sup> *Case S-1008/2007* (Reykjavík District Court): Ákærvaldið gegn Guðmundi Steini Magnússyni (2007). See Annex 1.

*Notwithstanding the provisions of the first paragraph above, freedom from interference with privacy, home and family life may be otherwise limited by statutory provisions if this is urgently necessary for the protection of the rights of others.*<sup>25</sup>

85. LGBT issues relating to family life do consequently enjoy the protection accorded by the ECHR, as a minimum, and there is a general presumption of interpretation of Icelandic legislation in conformity with the constitutional protection of privacy and equality in specific cases.
86. Under Icelandic law, alternative family forms enjoy a more extensive protection than the minimum protection. In this area best practice in law and application of law may be identified.
87. As of 1996, registration of same-sex couples has been possible in Iceland in accordance with Act 87/1996 on Registered Partnerships (Lög um staðfesta samvist). The Act, now repealed by the Marriage Amendment Act (2010) provided for the right to register a same-sex partnership, under the same conditions as applied to marriage between heterosexual partners. Pursuant to Article 5 of the Act, same rights and obligations pertained to registered partnerships as to marriage, as determined in Act 31/1993 on Marriage (Hjúskaparlög), and across legislation where rights were linked to marriage.
88. Article 5 of the Marriage Amendment Act (2010) now stipulates that a Registered Partnership confirmed under Act 87/1996 will henceforth have the same status in law as marriage. A procedure is also provided for to formally change a Registered Partnership to a marriage.
89. The Act on Registered Partnerships stated that in circumstances where the extension of legal provisions relating to marriage would be meaningless in LGBT context, because of provisions being gender-specific, rights accorded to married persons did not apply. This would apply in exceptional circumstances only, such as when provisions stipulate automatic assumption of paternity within marriage, this would not apply to female same sex partnerships, where specific rules applied. Subsequent legislation, including the Marriage Amendment Act (2010), follows the same approach.
90. Previously applicable exceptions to a fully equal legal status regarding the right of registered partners to adopt children and the right of assisted reproduction were abolished with amending Act 65/2006. Consequently, adoption by LGBT people has since then been possible, (see points 108-109) and assisted reproduction is also possible (see points 110-112).
91. Conditions for registration of same-sex partnerships were set out by reference to the Act on Marriage and in Regulation 326/1996. These were general conditions relating to age and marital status and the same rules applied to registered partnerships. In addition, there was a condition for registration that at least one party to the partnership was an Icelandic citizen, or a Danish, Norwegian, Swedish, Finnish or Dutch citizen<sup>26</sup>; alternatively the condition could be satisfied by both parties to the partnership, regardless of citizenship, having been permanently resident in Iceland for at least two years. These rules have been repealed with the Marriage Amendment Act (2010), no restrictions henceforth applying with regard to nationality.
92. A religious equivalent to registered partnerships, with a priest or a head of a certified religious group confirming the partnership was made possible by Act 55/2008, amending

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<sup>25</sup> Government Iceland, [www.government.is/constitution](http://www.government.is/constitution), accessed 29 September 2010. Text in original at, [www.althingi.is/lagas/138a/1944033.html](http://www.althingi.is/lagas/138a/1944033.html), accessed 29 September 2010.

<sup>26</sup> Act 87/1996 on Registered Partnerships (Lög um staðfesta samvist) and Regulation 681/2004.

the Act on Registered Partnerships. Religious confirmation of partnership was available under the law, but was formulated as discretionary, dependent upon the decision of individual priests.

93. LGBT spokespersons' criticism regarding separate legislation on marriage (between heterosexuals) and registered partnership (between LGBT persons) has now been heeded with the Marriage Amendment Act (2010), proposed in the Parliamentary sessions 2009-2010, which entered into force on June 2010.<sup>27</sup>
94. Issues relating to names and change of name resulting from registered partnerships or marriage do not apply in the Icelandic context, as traditionally, names do not change with marriage. Outstanding issues relating to children of same-sex partners, including provisions on names and citizenship, were addressed in the Marriage Amendment Act (2010).
95. Since 2006, alternative registration of cohabitation for same-sex couples has also been available under Icelandic law. Under the legislation, registration of cohabitation in the National Registry is available in the same way for same-sex couples as heterosexual couples, subject to the same general conditions, cf. Article 7 of Act 21/1990 on permanent residence (Lög um lögheimili), as amended by Act 65/2006, and subsequently by the Marriage Amendment Act (2010).
96. The amending Act (Act 65/2006) also explicitly extended rights available to heterosexual couples who have registered their cohabitation, to same-sex partners who have done so. This means that cohabiting same-sex couples enjoy equal rights as cohabiting same-sex couples in respect of most issues, including taxation, financial consequences of separation, financial assistance from the state, social security, pension rights and housing.
97. With regard to tax rules, cohabiting same-sex partners may request to be taxed together, in the same way as married couples and cohabiting couples of the opposite sex, who have registered their cohabitation, have lived together for at least one year or have or expect a child together (Act 90/2003 on income tax, lög um tekjuskatt). Furthermore, a rule providing for a tax free personal allowance that is transferable between spouses has been extended so that it is also transferable between cohabiting partners (Act 45/1987 on settlement of taxes, lög um staðgreiðslu opinberra gjalda).
98. Inheritance tax is waived between married partners/spouses and the same applies to cohabiting partners, whether same sex or opposite sex, who inherit according to a will that names the person as a cohabiting partner. In this instance no requirement is made as to the registration or the time limit of cohabitation (Act 14/2004 on Inheritance tax, lög um erfðafjárskatt).
99. Rules on financial settlement following separation, where cohabitation has lasted for at least 2 years, or the couple has a child together or is expecting a child together cf. Act 20/1991 on estates (Lög um skipti á dánarbúum) also applies to same-sex cohabiting partners.
100. On other issues, where rights of heterosexual cohabitants have been extended to same-sex cohabitation, see chapters on Social security, social care and insurance; Housing and Health care.
101. As may be seen from the above, "cohabitation" is not formally defined under Icelandic law; increasingly registered cohabitation is required for rights to be accorded, but unregistered cohabitation (typically for at least a year, or where children are involved) is also

acknowledged if substantiated by evidence; in some respects the form of cohabitation required is defined in even more flexible terms.

102. Consequently, there is a possibility of some inconsistencies in application of law, both as regards same-sex and opposite-sex cohabiting partners. Data on administrative practice is not easily accessible and conclusions cannot be drawn as to practice.
103. Generally, however, it may be stated that following the 2006 amending legislation there would be a presumption of interpretation of provisions according rights to cohabiting partners in conformity with the principle of equality, resulting in rights being granted to same-sex partners in an equal way to other cohabiting partners.
104. There is no case-law on the above legal provisions and administrative practice is not accessible.
105. None of the above provisions allow specifically for the situation of transgender people. Because of the lack of legislative definition of "transgender" and somewhat restrictive practices as to change of name and gender (see points 204-208), it is likely that the possible extension of legislation covering gay, lesbian and bisexual people will not sufficiently cater for the specific situation of transgender people in all circumstances in respect of their family life, subject to gender neutral right to marry under the Marriage Amendment Act (2010).
106. Evidence of problems in this respect has not come up during the preparation of the report.
107. Statistics relating to the above provisions show that in 2001-2005 there were 14 registered partnerships; in 2006 the number was 22, 20 in 2007 and 18 in 2008. Number of registration of cohabitation, applicable from 2006, shows 52 in 2006, 32 in 2007 and 30 in 2008.<sup>27</sup>
108. With regard to adoption rights of LGB people the 2006 amending legislation extended the right of primary adoption of children<sup>28</sup> to same-sex partners. Same sex partners in registered partnerships or in registered cohabitation for at least 5 years therefore had the same right as married couples and other cohabiting partners to adopt children, subject to general conditions and assessment of each case. Registered partners henceforth have the same legal status as married spouses pursuant to the Marriage Amendment Act (2010).
109. Act 130/1999 on adoption (Lög um ættleiðingar) does not require registration of cohabitation; it is sufficient that cohabitation for the required time is substantiated. Single individuals can also adopt by virtue of discretionary decisions, rather than as of right, pursuant to Act 130/1999.
110. Rules on assisted reproduction have also been amended to equalise the situation of LGBT people. Assisted reproduction now available to lesbian couples who have been in a registered partnership or registered cohabitation for a minimum of three years; the written consent of both parties is required (Act 55/1996 on assisted reproduction (Lög um tæknifrjóvgun), as amended by Act 65/2006) and subsequently by the Marriage Amendment Act (2010) granting same rights as in marriage.
111. Single women have also been entitled to assisted reproduction since an amendment by Act 54/2008.

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<sup>27</sup> Statistics Iceland, [www.statice.is](http://www.statice.is), accessed 29 September 2010.

<sup>28</sup> By primary adoption reference is made to a child who is not the child (stepchild or foster child) of either adopting parent. Act 87/1996 on Registered Partnerships, as amended by Act 52/2000, provided for the possibility of a second parent adoption (viz. the adoption by an individual of his/her partner's child).

112. Both women have equal parenting rights and obligation in the first mentioned scenario, whereas a child born to a single mother will by stipulation in law have one parent only. Icelandic legislation does not require access to information about a biological father, in circumstances of assisted reproduction and parental rights or obligation are not accorded to sperm donors.<sup>29</sup>
113. Parenting rights and obligations are the same for parents, regardless of sexual orientation or status. Cohabiting partners do however have parental rights and obligations (as regards the child of the other partner) only when cohabitation has been registered for at least one year.
114. There are no legal provisions on assisted reproduction involving surrogate mothers, with surrogacy being prohibited by Article 5 of Act 55/1996 on assisted reproduction (Lög um tæknifrjógvun). A recent amendment of the Act (of 1 June 2010) allows for donations of both ova and sperm to individuals in same-sex and opposite sex relationships, as well as to single women; storing of ova and sperm is equally possible without discrimination. Maximum time for storing of gametes and embryos is 10 years.<sup>30</sup>
115. Determination of family ties for the purposes of family reunification is relevant in the context of the law on aliens. Under Act 96/2002 on aliens (Lög um útlendinga) as amended, different categories of foreigners enjoy different rights relating to entry, stay, residence and work.
116. Nordic citizens are entitled to enter and stay without leave to stay (dvalarleyfi) or residence permits (búsetuleyfi), equal to Icelandic citizens. EEA-nationals (and nationals of other EFTA States) are entitled to entry and residence in accordance with the EEA-Agreement and secondary legislation, in particular Directive 2004/38/EC as adapted. As to other foreigners, detailed rules on entry, residence and the right to work are found in the Act, which are not of direct relevance to LGBT issues.
117. As to asylum seekers and stateless persons see the chapter on Asylum and refugee issues.
118. With regard to family reunification, provisions of the above Act stipulate that family members<sup>31</sup> of Icelandic and Nordic citizens, as well as family members of certain aliens holding a leave to stay (as an expert; as participant in sports; or on humanitarian grounds) or a permanent residence permit, are entitled to leave to stay (dvalarleyfi) subject to rules on secure housing, subsistence and health insurance. A right to stay without a leave to stay accrues to a family member, married (or in a registered partnership, henceforth equivalent to marriage) with the primary right holder after three years. Co-habiting family members enjoy same rights after five years of stay. Special rules apply to family members of EEA-nationals.
119. Article 13 of the Act defines “family members” as “close family members”. These are further defined as a spouse and a cohabiting partner (cf. the Marriage Amendment Act (2010)). Explicit mention is not made of same-sex cohabiting partners and Regulation 53/2003 on aliens requires “registered cohabitation”. In line with Icelandic legislation in general, the provisions would be interpreted to cover same-sex partners.

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29 Information is confidential at the donor's discretion. With the donor's permission information may be kept on register and passed on to the child after the child's 18th birthday, upon request, cf. Article 13 of Regulation No. 144/2009 (Reglugerð um tæknifrjógvun).

30 Regulation No. 144/2009, Article 14.

31 Article 13 of the Act. Family members include children younger than 18 years of age and dependent on the right holder.

120. According to information from the Directorate of Immigration, the practice is to ensure that same-sex cohabiting partners enjoy equal rights to other couples. As registration of cohabitation or partnerships is not possible in a number of countries, applicants are advised that cohabitation may be substantiated by other evidence, such as utility bills or attestations, proving actual cohabitation in a country of previous residence.<sup>32</sup>
121. The same practice applies to provisions on EEA-nationals and EFTA-nationals, where specific rules apply. A family member is determined in the same way as above and the provisions are interpreted and applied in line with Icelandic law.<sup>33</sup>
122. The same practice also applies in principle in the context of family reunion of asylum seekers, pursuant to Article 46 of the Act on aliens, stipulating that a spouse and a cohabiting partner is entitled to asylum. According to information from the Directorate of Immigration there have been no cases of asylum being granted in this context, see further points 129-131.
123. There are no provisions on transgender people in the above legislation.

## **B.6. Asylum and refugee issues**

124. Provisions on asylum and refugee issues are contained in the general legislation on aliens (Act 96/2002 on aliens, lög um útlendinga). The provisions have recently been reviewed in Iceland, following a report for the Ministry of Justice and Human Rights outlining necessary changes in the law relating to asylum.<sup>34</sup> Amendments to Act 96/2002 on aliens were enacted by Act 115/2010 (September 20, 2010).
125. Council Regulation 343/2003/EC (Dublin II) is binding on Iceland, through the Schengen-cooperation between the EU and Iceland and Norway.
126. Iceland is party to the 1951 Geneva Convention Relating to the Status of Refugees, and the 1967 Protocol to the Convention. Furthermore, Articles 3, 5, 8 and 14 ECHR are binding on Iceland and have the force of law. United Nations 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of stateless persons have not been ratified by Iceland. The Revised European Social Charter has been signed, but not ratified and implemented, by Iceland.
127. EU legislation in the field of asylum and refugee issues is not binding on Iceland either through the Schengen-cooperation or through the EEA Agreement, subject to rules relating to Dublin II. Regardless, the above mentioned report on necessary changes in the law recommended that the law be aligned to the European rules in this field.
128. These are in particular Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers; Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; and Council Directive 2005/85/EC on minimum standards on procedures in

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<sup>32</sup> Correspondence with the Directorate of Immigration in January 2010.

<sup>33</sup> Article 37 of the Act: Family members include in this case children (of the right holder or his/her spouse) who are younger than 21 years of age or dependent on the right holder (in accordance with EU rules in this area).

Acknowledgment of same-sex registered partnerships in other EEA countries, when provided for in national legislation, is in conformity with Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

<sup>34</sup> Skýrsla nefndar um meðferð hælisumsókna (Report on the procedure in asylum cases), ágúst 2008.

Member states for granting and withdrawing refugee status.<sup>35</sup> Act 115/2010 (September 20, 2010) aligns Icelandic legislation to these instruments.

129. Statistics on asylum and refugee issues show that from 1999-2008 only two of 210 applications considered as to substance<sup>36</sup> resulted in asylum under the provisions of Icelandic law, or 1%. In the same period, 42 applicants were issued with leave to stay on humanitarian grounds, or 20%.
130. Rules on subsidiary protection for individuals not falling within the concept of a refugee have been clarified under Icelandic law, with the recent changes. The law ensures the principle of non-refoulement and leave to stay resulting from subsidiary protection, confirming earlier practice.<sup>37</sup> The Report on necessary changes in the law suggested that subsidiary protection should be spelled out more clearly in the law, aligning it with provisions in European legislation, with a comparable right of asylum and legal status due to subsidiary protection made available under Icelandic law as within the EU. These changes have now been implemented.
131. No official statistics are available relating to the grounds for asylum requests.<sup>38</sup> It is therefore not known to what extent sexual orientation has been referred to as a ground for asylum requests, subsidiary protection or leave to stay on humanitarian grounds in Iceland. The Ministry of Justice and Human Rights has confirmed, however, that there are cases where persecution on ground of sexual orientation has been considered as a basis for refugee status / leave to stay on humanitarian grounds. In the amendments enacted by Act 115/2010, the definition of a „social group“ covers groups defined by sexual orientation or gender identity. The legislation henceforth provides for a better protection than required by Article 10 1 (d) of Directive 2004/83/EC (the minimum standards directive), providing for alternative, rather than cumulative, application of the „protected characteristics approach“ and “social perception approach“ to the definition of a „social group“, in line with UNHCR recommendations.
132. According to the Directorate of Immigration, UNHCR guidelines are consulted as a matter of practice in each relevant situation, including the UNHCR guideline note on refugee claims relating to sexual orientation and gender identity.<sup>39</sup>

## **B.7. Social security, social care and insurance**

133. Iceland is bound by the 1966 Covenant on Economic, Social and Cultural Rights, Article 9 as well as Articles 12 and 13 of the European Social Charter. Article 76 of the Constitution (Stjórnarskrá Lýðveldisins Íslands), provides for minimum subsistence being ensured to everyone and has been found to entail a right, based on the assessment of each individual's situation.<sup>40</sup>
134. Social security and social care is provided in Iceland primarily through the state social security system, which is funded partly by tax (e.g. family benefits, old-age and invalidity pensions, sickness and maternity benefits and long term care); contributions (employers

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35 See the above report, p. 67.

36 Total number of applications in that time frame was 619, but 210 were considered on their merits. Statistics from the above report, p. 68.

37 Information from the Directorate for Immigration in January 2010. There is no official data on the application of subsidiary protection.

38 Information from the Directorate for Immigration in January 2010.

39 Ibid.

40 *Supreme Court Judgment*, Hrd. 2000: 4480, (Mál nr. 125/2000 Tryggingastofnun ríkisins gegn Öryrkjabandalagi Íslands og gagnsók).

and employees) or by individual contributions (e.g. supplementary employment pension schemes). With regard to some benefits, supplementary schemes cover the same risk.

135. Social security under Icelandic law covers primarily sickness, maternity, invalidity, old-age, survivor's benefits, employment injuries and occupational diseases cf. Act 100/2007 on Social Security (Lög um almannatryggingar).
136. Under the Act, equal treatment is accorded to married couples, including persons in registered partnerships (henceforth enjoying the same status, cf. the Marriage Amendment Act (2010)). The same applies to cohabiting heterosexual couples and same-sex couples, who have lived together in registered cohabitation for at least one year or have or expect a child together.
137. Furthermore the law explicitly equates de facto cohabitation for at least one year, with registered cohabitation, if sufficiently substantiated by evidence. There is a general caveat to the effect that cohabiting couples can never gain more rights than married couples would, with the exception of accident cover.<sup>41</sup>
138. Complementary schemes, organised through trade unions, within the frame of legal provisions, cover some of the above risks, such as in relation to sickness, accidents and family benefits. Provisions in law relating to alternative or additional coverage by trade union funds have been modified, but not all have been modified to accommodate specifically for LGBT family forms. There is a general presumption, however, of an interpretation in conformity with legislation equalising the situation of LGBT people.
139. As regards pensions, pursuant to Act 129/1997 on mandatory pension coverage (Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða) there is a requirement for everyone between the ages of 16 and 70, whether employed or self-employed to take out a pension policy with a regulated pension fund. Pension age is the same for men and women under Icelandic law, both as regards state pension and regulated pension funds.
140. By now, the general rule as to beneficiaries is that cohabiting same-sex partners enjoy equal rights to married spouses (including same-sex partners formerly in registered partnerships) and partners in a registered cohabitation, that has lasted for either one or two years, as a minimum, or have or expect a child together (e.g. Act 129/1997 on mandatory pension coverage, lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða, (applicable to most pension funds), as well as Act 155/1998 on complementary pension schemes (Lög um Söfnunarsjóð lífeyrisréttinda) which include inter alia self employed persons and Act 1/1997 on the Pension fund of public officials (Lög um lífeyrissjóð starfsmanna ríkisins)).
141. In addition to the above, there is a discretionary provision for spousal pension for others, who have kept home with (and for) the primary pension holders for years before his or her death, thus ensuring pensions for individuals in a relationship that does not fall within the above provisions (e.g. Act 129/1997 (general) and Act 155/1998 (complementary), see above) lending itself to an interpretation including LGBT individuals in a less formalised relationships.
142. Unemployment benefits are paid to employees and self-employed persons, covered by a compulsory insurance scheme. These are individual benefits, based on residence and unemployment, cf. Act 54/2006 on unemployment insurance (Lög um atvinnuleysisstryggingar), and are administered without discrimination.

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<sup>41</sup> Accident allowance may be paid to a cohabiting partner, regardless of the above limitation, including payments for treatment, daily allowance, disability compensation and compensation in case of death. The caveat has to do with how different benefits accrue, with benefits of one spouse sometimes affecting the calculation of benefits to the other spouse.

143. In addition to health-service related to maternity coverage according to Act 100/2007 on social security (Lög um almannatryggingar), parental leave and benefits are available without discrimination on grounds of sexual orientation. Act 95/2000 on parental leave and parental benefits (Lög um fæðingar- og foreldraorlof), implementing Directive 92/85/EEC<sup>42</sup> and Directive 96/34/EC<sup>43</sup>, accord equal rights to parents, regardless of sex or sexual orientation. The legislation covers birth, adoption and permanent foster-care.
144. Act 99/2007 on social assistance (Lög um félagslega aðstoð) provides for financial assistance for families in need and covers benefits related to children and their education or special care, as well as individual and family supplementary assistance. The legislation was not amended in 2006 to cater specifically for LGBT people. However, the legislation refers generally to the Act on social security. An interpretation to accommodate for alternative family forms, where relevant,<sup>44</sup> may therefore be assumed in most cases.
145. Financial assistance in need, provided through municipality of residence, is provided in the same way to same-sex couples as to married couples and cohabiting heterosexual couples. A condition is that cohabitation is registered, however, one year of registered cohabitation, before application, is sufficient, cf. paragraph 19 (2) of Act 40/1991 on social assistance by municipalities (Lög um félagsþjónustu sveitarfélaga), as amended in 2006.
146. General legislation on tort (Act 50/1993, skaðabótalög) has been amended to align the rights of a cohabiting partner of a deceased partner to married couples.
147. As to insurance taken out privately, see below.

## B.8. Education

148. The right to general education is protected under Article 76(2) of the Constitution (Stjórnarskrá lýðveldisins Íslands) and detailed legislation regulates pre-primary education, Act 90/2008 on play-centres (Lög um leikskóla); compulsory primary education, Act 91/2008 on primary education (Lög um grunnskóla) and secondary education, Act 92/2008 on secondary education (Lög um framhaldsskóla). Equality, individual needs and respect for diversity are stressed in the above legislation. Act 21/2008 on primary education specifically prohibits discrimination and requires educational policies and planning to protect against discrimination, inter alia on grounds of sexual orientation (Article 24).
149. Policy for compulsory education (ages 6-16) pledges equal education for all, aimed at each individual's all-round, emotional and intellectual development.<sup>45</sup> School curriculum for primary education includes "life-skills" where issues of emotional and sexual developments are covered, including gay issues, but there is no specific definition of minimum requirements regarding sex-education in the school curriculum. Allegedly, practice depends on discretionary implementation in each school and depends on principals and individual teachers.<sup>46</sup>
150. Reports on the legal status of LGB people in Iceland conducted in 1994 and 2004, respectively, have emphasised the importance of educational material, inclusion of gay

<sup>42</sup> Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

<sup>43</sup> Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

<sup>44</sup> Provisions relating to children are gender neutral and benefits paid to parent(s); the same applies as a general rule in other legislation relating to parents and children.

<sup>45</sup> Ministry of Education, Science and Culture, [www.menntamalaraduneyti.is](http://www.menntamalaraduneyti.is), accessed 29 September 2010.

<sup>46</sup> From the newspaper Morgunblaðið, [www.mbl.is](http://www.mbl.is), accessed 26 February 2008.

issues in school curriculum for the social sciences, as well as increased LGBT education for a number of professionals, such as teachers and nurses.<sup>47</sup> Some positive development was recorded in the 2004 report, such as the publication of education material for primary schools; the first grant accorded to production of this material in 2004; increased exposure for further education and professionals (in particular through material from other countries) and increased emphasis on gender studies (including LGBT issues) in university education, in particular within the social sciences and with the creation of new courses in gender studies.<sup>48</sup> A thorough report on integrating human rights education at all education levels was drawn up for the Ministry of Education in 2008.<sup>49</sup>

151. In 2009, *Compass* – a manual on human rights education with young people, which includes material on gay issues, was translated and published by the Ministry of Education, with permission from the Council of Europe.<sup>50</sup>
152. Policy on bullying, including prevention of physical and mental harassment, is prescribed in the national curriculum. No specific mention is made of LGBT issues and data about implementation of policy, as well as implementation of sex-education, is not easily accessible.
153. Curriculum for secondary education (ages 16-20) does not include LGBT relevant material; however secondary schools (colleges) are required to have “equality policy” and rules on welfare, as well as generally respect and promote dignity and diversity.
154. Universities also implement equality policies, such as the University of Iceland's equality policy of 2005, defining equality with reference not only to sex, but other aspects, as well, including sexual orientation.<sup>51</sup> An equality committee monitors equality policies, and policies promoting understanding and acceptance of difference; an equality advisor provides services to the University community.
155. An association of gay university students ([www.queer.is](http://www.queer.is)) is established within University of Iceland; the association and Trans-Ísland (association of transgender people) organised seminars in November 2009, related to Transgender Day of Remembrance.
156. A project promoting equality and research, *Jafnréttisskóli*, was established at the University of Iceland in November 2009.

## **B.9. Employment**

157. Iceland is bound by the 1966 International Covenant on Economic, Social and Cultural Rights (Article 6), and by the European Social Charter.<sup>52</sup> Under Article 75 of the Constitution (*Stjórnarskrá lýðveldisins Íslands*), everyone is free to pursue the occupation of his or her choosing, subject to restrictions based on the public interest.
158. Under Icelandic law, the constitutional guarantee of equality in Article 65 of the Constitution is supported by more specific employment legislation, such as, with regard to sex equality, Act 10/2008 on Equal Opportunities and Equal Rights for Men and Women (*Lög um jafna stöðu og jafnan rétt kvenna og karla*). The Act is in line with legislation on gender equality

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47 [2004 Report], pp. 113-114.

48 [2004 Report], p. 20.

49 Ministry of Education, Science and Culture, [www.menntamalaraduneyti.is](http://www.menntamalaraduneyti.is), accessed 29 September 2010. The report is found in the original at, [http://bella.stjr.is/utgafur/skyrsla\\_mannrettindafradsla\\_08.pdf](http://bella.stjr.is/utgafur/skyrsla_mannrettindafradsla_08.pdf), accessed 29 September 2010.

50 Kompas, [www.namsgagnastofnun.is/kompas](http://www.namsgagnastofnun.is/kompas), accessed 29 September 2010.

51 University of Iceland, [www.hi.is](http://www.hi.is), accessed 29 September 2010.

52 The Revised Social Charter has not been ratified. Iceland has declared itself not to be bound by Article 19 (rights of migrant workers).

in the EU, and is considered to implement the recast equality directive (2006/54/EC).<sup>53</sup> Protection of equality thus extends beyond the employment context as regards discrimination on grounds of sex. The legislation does not extend to protection against discrimination on other grounds, such as sexual orientation or gender identity.

159. The government has taken steps to adapt legislation in line with Directives 2000/78/EC and 2000/43/EC. According to a preparatory report, the aim is to implement both directives in the employment context and it is proposed that existing equality bodies will henceforth have a mandate to advise and to give advisory rulings on complaints of discrimination on grounds other than sex.<sup>54</sup> Legislation is in preparation but has not been submitted to the Parliament.
160. Alleged discrimination of transgender or transsexual persons has never been decided by the Courts. Insofar as EU legislation on gender equality has been incorporated into the EEA-Agreement, and adopted under Icelandic law, it is likely, and in conformity with construction of EEA-law obligations in Icelandic law, that courts or adjudicators would follow the precedent from the European Court of Justice, where discrimination on grounds of gender reassignment was found to come within the scope of “discrimination based on sex”.<sup>55</sup> This is now supported by the wording of Article 5 of Directive 2006/54/EC, which has been incorporated into the EEA-Agreement.
161. Any other alleged discrimination on grounds of gender identity would, similarly, likely be construed so as to be discrimination based on “other status” with reference to the constitutional principle of equality, taking into account the case-law of the European Court of Human Rights. There is no judicial authority for the above suggested construction, however, leaving legal uncertainty with regard to discrimination based on gender identity in the context of employment, as elsewhere.
162. In the context of employment law, the prohibition of discrimination on grounds of sexual orientation has been judicially confirmed in a case concerning employment in the public service. In a district court decision from 2003, which was not appealed, the court found discrimination based on sexual orientation, contrary to Article 11 of Act 37/1993 on Public Administration (Stjórnsýslulög, cf. Article 65 of the Constitution (Stjórnarskrá lýðveldisins Íslands)).<sup>56</sup> A gay applicant for a position of a supervisor, in a home for teenage boys run by a municipality, was short-listed for the position. Following an interview in which his sexual orientation was extensively discussed, another less qualified applicant was awarded the post. The Court found a breach of the principle of non-discrimination under Article 11 of the Public Administration Act and awarded the applicant compensation on the basis of a general provision on libel in Act 50/1993 on tort (Skaðabótalög).<sup>57</sup>
163. Protection against discrimination on grounds of sexual orientation in the private employment context is less clear and not legislated. Act 55/1980 on minimum requirements for remuneration and working conditions (Lög um starfskjör launafólks) requires equality in remuneration and conditions regardless of sex and nationality, but does not explicitly refer to other grounds or “other status”.

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53 Act 10/2008 explicitly implements the following Acts incorporated into the EEA-Agreement in this area, viz. *Directive 75/711/EEC* (equal pay); *76/207/EEC* (equal rights and equal opportunities) as amended by *Directive 2002/73/EC*; *Directive 92/85/EEC* (rights of pregnant workers and mothers); *Directive 96/34/EC* (parental leave); *Directive 97/80/EC* (burden of proof in cases on sex-discrimination). A transitional period was allowed for implementation of *Directive 2006/54/EC* until 15 August 2009.

54 [www.felagsmalaraduneyti.is/media/acrobat-skjol/Skyrsla\\_Tilskipanir\\_Evropusambandsins\\_-\\_bann\\_vid\\_mismunun.pdf](http://www.felagsmalaraduneyti.is/media/acrobat-skjol/Skyrsla_Tilskipanir_Evropusambandsins_-_bann_vid_mismunun.pdf), accessed 14 July 2010

55 Case C-13/94 P v S and Cornwall County Council [1996] ECR I-2143.

56 Decision of Reykjanes District Court of 19 May 2003, see Annex I.

57 Finding of unlawful discrimination does not lead to (re)-instatement under Icelandic law, but to compensation for loss and personal injury.

164. Conditions of work and remuneration are negotiated in collective agreements and trade unions, in negotiating collective agreements apply and promote a wider notion of equality than the notion referred to in the previous paragraph, including reference to sexual orientation. The Association of Trade Unions has in this context – and in particular as regards unlawful dismissals<sup>58</sup> – called for ratification of ILO convention no. 158 (The termination of Employment Convention) in order to promote equal treatment in dismissals.
165. Legislation applicable to conditions of work and remuneration, as well as health and safety, follow in all main respects provisions of EU law, incorporated into the EEA-Agreement.<sup>59</sup> While some of these measures concern the situation of women specifically, there are no measures which relate specifically to LGBT people.
166. Harassment in the workplace on grounds of sex is dealt with in Act 10/2008 on equal treatment of men and women (Lög um jafna stöðu og jafnan rétt kvenna og karla). The Act does not explicitly cover harassment on grounds of sexual orientation or gender identity. Regulation 1000/2004 on anti-bullying measures in the work place, which is based on Act 46/1980 on health and safety at work (Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum), provides, on the other hand, for measures to contradict and protect against workplace bullying. The provision is broad enough to cover bullying on grounds of sexual orientation or gender identity. A breach of this regulation results in a fine, but the regulation does not provide for individual compensation.
167. Complaints procedures are in place as regards alleged discrimination on grounds of sex. Equality bodies have been established within the public administration, municipalities, and within institutions, such as higher education institutions, that are charged with monitoring, implementing and mainstreaming policies in respect of sex equality.
168. According to the administrative authority, Jafnréttisstofa, none of the public law equality bodies have a mandate in areas of discrimination legislation other than specifically relating to sex equality. According to a legal advisor at Jafnréttisstofa no cases or complaints have arisen in respect of gender identity (transgender, transsexual) and no cases have arisen where the sex equality adjudicator (kærunefnd jafnréttismála) has been approached with issues relating to transgender or transsexual issues.
169. In the proposed implementation of the EU equality directives [see point 159. above], it is suggested that Jafnréttisstofa will have a wider mandate; an adjudicator is not proposed however, but a body with powers to give advisory rulings.
170. Given the above, complaints procedures relating to alleged discrimination or other issues relating to sexual orientation or gender identity are few and only procedures relating to sex equality well established (both regarding public and private discrimination). Allegedly discriminatory decisions on other grounds by the public administration would mainly be challenged through procedures within the public administration and, at the last instance, the ministry supervising each area of law.
171. Furthermore, the Parliamentary Ombudsman has a general mandate to oversee public administration (including municipalities) and can, on behalf of individual complainants, pursue their case and give an opinion as to the legality of administrative decisions.
172. Complaints procedures in the private employment context, and other private contexts, in relation to alleged discrimination are less well established, with trade unions being the primary actors for mediation or resolution in the employment context. Alternatively, the

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58 Alþýðusamband Íslands (ASÍ), Icelandic Confederation of Labor, [www.asi.is](http://www.asi.is), accessed 29 September 2010.

59 Answers by the Icelandic Government relating to Application to Join the European Union, Chapter 19, <http://evropa.utanrikisraduneyti.is>, accessed 29 September 2010.

general court system is the only venue for dispute resolution relating to complaints about discrimination.

## **B.10. Housing**

173. A substantial part of the Icelandic housing market consists of private ownership rather than state-sponsored tenancy.
174. Act 44/1998 on housing (Lög um húsnæðismál) provides for loans for buying and building. Rules implementing the legislation require registered cohabitation for qualification for loans, thereby including both same-sex and opposite-sex cohabitants who have registered their cohabitation; the rules also explicitly refer to registered partnerships as well as marriage; henceforth to be interpreted to accord registered partnerships the same legal status as marriage (cf. the Marriage Amendment Act (2010)).
175. Rights pursuant to legislation on rented accommodation, Act 36/1994 (Húsaleigulög), including rights of succession of contractual rights, apply to married couples as well as registered cohabitation of both heterosexual and same-sex couples who have lived together for at least a year. The legislation also extends to “other forms of cohabitation”, which may therefore be interpreted widely to cover every form of cohabitation that has lasted for at least a year. In a similar way, Act 161/1998 on housing cooperatives (Lög um húsnæðissamvinnufélög) where people can buy a share in rented accommodation, to gradually become owners, provides for a wide definition of those covered, being all those who have shared a home for two years.
176. Act 138/1997 on housing allowances (Lög um húsaleigubætur) provides for means tested assistance for rented accommodation. Family size (including number of children) and income determine the amount of the allowance; information about all persons registered at the location is taken into account in calculating the means tested benefit.

## **B.11. Health care**

177. Iceland is bound by the 1966 International Covenant on Economic, Social and Cultural Rights, Article 12 as well as Article 11 of the European Social Charter.
178. Individual access to the highest attainable standard of health care is ensured under Icelandic law, in accordance with Act 40/2007 on health care (Lög um heilbrigðisþjónustu) and pursuant to Article 1 of Act 74/1997 on patients' rights (Lög um réttindi sjúklinga) where access to health care is ensured, as of right. Furthermore, Article 1 stipulates that there shall be no discrimination on certain listed grounds, including “other status”.
179. Interpreted in context, it may be concluded that the provision ensures the right of non-discrimination on grounds of sexual orientation and gender identity. There are no specific provisions in the above legislation relating to HIV/AIDS and no legislation on HIV/AIDS specifically. However, Article 18 of Regulation No 441/2006 (Reglugerð um söfnun, meðferð, varðveislu og dreifingu blóðs) restricts the eligibility of donors (under permanent deferral criteria for donors in Annex IV, heading 2.1). The Regulation, which implements Directive 2002/98/EC and Directive 2004/33/EC, lists as grounds for permanent deferral of donation, sexual behaviour which puts individuals at high risk of acquiring severe infectious diseases that can be transmitted by blood.<sup>60</sup>

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<sup>60</sup> Directive 2002/98/EC of the European Parliament and of the Council as regards traceability requirements and notification of serious adverse reactions and events and Commission Directive 2004/33/EC implementing Directive

180. As to the right of next of kin to be consulted, in relation to health procedures, Act 74/1997 on patients' rights does not specify the right of same-sex partners to be consulted, but uses a broad concept of next-of-kin / connected parties, which, interpreted in light of Article 1 of the Act, would doubtless include same-sex partners and other close family members.
181. The same principle applies to Act 16/1991 on organ removal (Lög um brottnám líffæra), where the term spouse includes cohabiting partner. Interpreted in light of the constitutional guarantee of non-discrimination and other legislation, the situation of same-sex partners would be covered by the provision.
182. As regards gender confirming treatments, no specific legislation applies. General rules applicable to medical care in Iceland and coverage of cost therefore apply in this context. This means that, as a general rule, medical intervention in hospital is free of charge, while consultation and medical intervention in non-hospital clinics is chargeable.<sup>61</sup>
183. According to Regulation 722/2009, and Annexes thereto, certain plastic surgery procedures are covered by social security. While plastic surgery to correct certain congenital features etc. are automatically covered, plastic surgery in relation to gender reassignment falls within a discretionary category. A prior authorisation for coverage is required, either from hospital authorities, if plastic surgery is conducted in a hospital, or by social security authorities if conducted by a hospital abroad.

#### **B.12. Access to goods and services**

184. Article 180 of Act 19/1940, the Penal Code (Almenn hegningarlög), as amended, provides for equal treatment in relation to goods and services:

*Anyone who in the course of business or service practice refuses delivery of goods or services to a person in equal measure to others on the basis of the nationality of the latter, colour, race, religion or sexual inclination shall be subject to fines or imprisonment for up to 6 months.*

*The same penalty shall apply to refusing a person admittance to an official place of gathering or other places open to the public.*<sup>62</sup>

185. The provision, which applies to public and private services and businesses alike, prohibits discrimination on grounds of sexual orientation (kynhneigð) but does not explicitly prohibit discrimination on grounds of gender identity (transgender or transsexualism).
186. According to the preparatory documents, the term „sexual inclination“, viz. “sexual orientation” is used deliberately and is intended to have a wide construction, i.e. including gay, lesbian and bisexual issues as well as discrimination against heterosexual people. Transgender issues are not mentioned, and it has not been decided in case-law whether the provision would extend to transgender people.
187. There is no case-law on the provision. No particular issues have been raised in this context by LGBT spokespersons.

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2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components. Instructions on the webpage of the Icelandic Blood Bank, [www.blodbankinn.is](http://www.blodbankinn.is), accessed 29 September 2010, include that you should not give blood if you are male and you have had sex with other males or if you have been involved in prostitution or if you have been infected or you could have been infected with hepatitis or HIV.

<sup>61</sup> Information from the Opinion of the Parliamentary Ombudsman of 27 April 2009.

<sup>62</sup> Text in original at, [www.althingi.is/lagas/138a/1940019.html](http://www.althingi.is/lagas/138a/1940019.html), accessed 29 September 2010.

188. Insurance contracts would fall within the scope of the provision, which supplements legislation on insurance contracts, providing for insurance, including life insurance, cf. Act 30/2004 on insurance contracts (Lög um váttryggingasamninga).

### **B.13. Media**

189. Specific rules on the media are found in the Broadcasting Act 53/2000 (Útvarpslög). There are no specific provisions prohibiting discrimination on grounds of sexual orientation or gender identity but the Act requires broadcasters to honour democratic principles, respect freedom of speech and encourage expression of different opinions, when controversial issues are dealt with in their programmes. Right of reply is ensured for parties suffering damage in their reputation and provisions of the Penal Code (Almenn hegningarlög) on libel apply to content published in any media.
190. The Electronic Communications Act 81/2003 (Lög um fjarskipti) applies to electronic communication networks, but does not apply to the content broadcast via the networks, where general provisions of law would apply.
191. A filter of content on the internet does not exist in Iceland; however most Internet Service Providers offer optional filters for end-users. Act on electronic commerce and other electronic services (Act 30/2002), implementing Directive 2000/31/EC, contains some provisions on limitations of access to material on the Internet.<sup>63</sup>
192. The Association of Journalists has an established code of conduct and a Committee adjudicates on complaints. Complaints may result in a finding of inappropriate conduct and findings are published in the media.
193. No specific complaints have been raised in the LGBT context during the preparation of the report, apart from indications of some negative coverage of transgender issues by parts of the media.

### **B.14. Transgender issues**

194. The terms transgender and transsexual are not legally defined under Icelandic law. There is no legislation on transgender, transsexual or intersex persons and legislation dealing with gender-specific issues and gay and bisexual issues does not, as a general rule, regulate the situation of transgender, transsexual or intersex people. See in particular points 3, 47, 51, 73, 105 and 123 of this report, as well as points 202 onwards, below.
195. As a result, the legal situation of transgender people in Iceland is uncertain, with specific legislative provisions practically non-existent. This has been acknowledged and the Parliamentary Ombudsman in Iceland has, in a recent Opinion,<sup>64</sup> concluded that the lack of legal framework may impinge on the right to protection of private life of this group of persons.
196. The Icelandic Parliament is, at the time of writing this report, debating a recent parliamentary proposal (November 2009) to establish a committee tasked with proposing necessary legal changes and policies to eliminate discrimination against transgender

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63 Directive 2000/31/EC (Directive on electronic commerce). Lög nr. 30/2002 um rafræn viðskipti og aðra rafræna þjónustu, see Answers by the Icelandic Government relating to Application to Join the European Union, Chapter 23, p. 89. <http://evropa.utanrikisraduneyti.is>, accessed 29 September 2010.

64 *Opinion in Case 4919/2007*, 27 April 2009, [www.umbodsmaduralthingis.is](http://www.umbodsmaduralthingis.is), accessed 29 September 2010.

people in Iceland and ensure their human rights. The proposal is not a proposal for legislation.

197. As has been stated, there would be a general presumption under Icelandic law that discrimination against transgender people would fall foul of the prohibition of discrimination on grounds of "other status" in the Constitution (Stjórnarskrá lýðveldisins Íslands), and that legislation would be interpreted, where possible, in conformity with the general principle of equality (Article 65 of the Constitution and Article 14 ECHR, in conjunction with particular rights).
198. A number of aspects of relevance to transgender people would also fall within the scope of the constitutional protection of privacy (Article 71 of the Constitution and Article 8 ECHR) as confirmed in the above mentioned Opinion of the Parliamentary Ombudsman. This includes issues such as name change, change of registration of gender, and issues relating to medical treatment.
199. The above provisions of the Constitution entail both a right of non-interference and positive obligations on the state to protect transgender people, as also acknowledged in the above Opinion of the Parliamentary Ombudsman.
200. There is, however, no case-law confirming the application of the above constitutional provision or general legal provisions in transgender context. This leads to legal uncertainty.
201. In particular in the context of Act 19/1940, the Penal Code (Almenn hegningarlög) such as with regard to hate speech and refusal of services, the conclusion cannot unequivocally be drawn that protection is extended to transgender people.
202. As discussed under point 73, sexual orientation is included in the above provisions of the Penal Code which does not explicitly contain reference to gender identity. Under Icelandic criminal law there is a requirement of perfect analogy for application of provisions of criminal law. While it is possible that violence or harassment against transgender, transsexual or intersex persons would be considered to fall within the protection of the provisions, this is not certain.
203. With regard to registration of name-change, the current legislation (Act 45/1996 on names, lög um mannanöfn) does not contain any provisions relating to name change of transgender people.
204. According to the above Opinion of the Parliamentary Ombudsman, it has been an established administrative practice that a name change could only be effected when a gender reassignment surgery had taken place and upon a notification to that effect from the Medical Director of Health (Landlæknir). As names are, according to the legislation, gender specific, name change could only be registered at this point.
205. Amended registration of gender is linked to name change. In practice, registration of a new gender is processed by the National Registry (Þjóðskrá), if requested, by a change of birth certificate; a new identification number may be obtained at the same time, even if identification numbers are gender neutral.
206. There is an implicit requirement of divorce, as medical treatment is conditional upon a person being single or divorced.
207. Following a complaint to the Ombudsman, and consultation between the Ombudsman and relevant authorities, the Ministry of Justice and Human Rights, the final appellate authority in this respect, declared that henceforth, i.e. from 3 April 2009, it would accept a request

for amended registration of name and/ or gender, when a year of hormonal treatment had been concluded.

208. Regardless of this change in practice, the Ombudsman alerted authorities and the Parliament to consider enacting necessary provisions regarding name-change and registration of gender and spell out the obligations for the respective authorities in these cases.
209. In addition to the above, the Ombudsman also suggested that necessary legislation for transgender people and their legal status be drawn up.<sup>65</sup>
210. Medical treatment of transgender people, including the process of gender reassignment is not regulated by law or administrative provisions in Iceland.<sup>66</sup> The only provision applicable in this context was an old provision on sterilisation , which was considered inapplicable to the process of gender reassignment and has now been repealed. Processes followed have been organic, overseen by the Medical Director of Health, answering to the Minister of Health.
211. The process is in accordance with international guidelines from The World Professional Association for Transgender Health (WPATH; previously known as the Harry Benjamin International Gender Dysphoria Association).<sup>67</sup> Medical personnel including psychiatrists assess individuals and the process is overseen by medical experts and the Medical Director of Health. Minimum age for assessment and treatment is 21 or 22 years.
212. No particular support measures in cases of refusal or subsequent to gender reassignment treatment is available.<sup>68</sup>
213. According to the Opinion of the Parliamentary Ombudsman, there are not many cases of transgender people seeking gender reassignment; it is stated however that there have been rejections of the process, by experts, based on the above guidelines, such as “wrong diagnosis”, “psychosis” or low IQ. This is not specified any further and official data is not available on the number of transgender people, medical procedures and the like.<sup>69</sup>
214. According to information from the Ministry of Health, in addition to three gender reassignment surgeries, three individuals await surgery and seven individuals are undergoing earlier stages of treatment.<sup>70</sup>
215. According to a spokesperson for transgender people it was a common practice until the late 1980s to admit transgender people to psychiatric units, when their transgender tendencies were unveiled. There were references to complaints by individuals directed at health authorities in this context, but there is no accessible data.<sup>71</sup>
216. Few rules apply as regards the cost of treatment in relation to gender reassignment specifically, but general rules apply, cf. points 183-184.

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65 Opinion of 27 April 2009.

66 Information on this aspect is also obtained from the above Opinion of the Parliamentary Ombudsman, who considered rules and practices in this area in detail.

67 Information from the Ministry of Health and the Medical Directory of Health, January 2010.

68 Information from the Directorate of Health and the Ministry of Health.

69 Recent information from the Directorate of Health states that three gender reassignment surgeries have been undertaken in Iceland from 1998; no cases have been referred abroad for surgery, but surgery option abroad is open for individuals. A referral and a prior approval would be a prerequisite for coverage by social security.

70 Information from the Ministry of Health, January 2010.

71 Information from Anna Kristjánsdóttir, a long-time spokesperson for transgender people, January 2010.

217. As regards provisions of particular relevance to transgender people covered by this report, few concrete conclusions can be drawn.
218. Protection drawn from constitutional provisions on freedom of assembly and association, as well as freedom of expression applies to gender identity and transgender people. No issues have been raised in relation to these topics.
219. Family law issues relevant to transgender people are not specifically determined under Icelandic law. Because of relatively restrictive practices with regard to recognition of transgender and transsexual people (see above), it is likely that the situation of transgender people will be subject either to no rules or disparate provisions relating to other family forms.
220. The right to marry is no longer conditional upon opposite sex, according to the Marriage Amendment Act (2010). The Act stipulates the right to marry for two individuals and will as such be applicable to transgender people. Act on permanent residence, allowing for registration of cohabitation did assume a man and a woman cohabiting or alternatively same-sex partners; the Marriage Amendment Act has revoked the formal distinction. It is, however, a requirement for registration of cohabitation that a previously married partner be divorced.
221. There are no rules on intermediate situations relating to e.g. intersex persons.
222. It follows from the above, that rights to social security, social care and insurance, insofar as these rights are determined by family situation, do not accommodate specifically for transgender people.
223. Same applies to rules on housing and health care.
224. Rules relating to employment do not specifically regulate the situation of transgender people and legislation and complaints mechanisms are based on an explicit mandate concerning sex discrimination only.
225. Access to goods and services should be provided without any discrimination on grounds of gender identity; but criminal law sanction for breach of that duty is not certain.
226. No specific comments or complaints have come up with regard to the media.
227. Access to education is provided without discrimination. Awareness and discussion has increased in recent years, in particular within the University environment; no official policy on specific education on gender identity is part of the school curriculum.
228. There are no cases or guidance on the situation of transgender persons in the context of asylum procedures.
229. A recent example of good practice was provided by a spokesperson of transgender people with regard to border control. In a case of search of a person entering the country, border control personnel adjusted search practices when confronted with a situation where transgender person undergoing treatment, and displaying identity not matching passport, so as not to embarrass the person disproportionately. Border control personnel then sought advise from the spokesperson as to suitable practice.
230. The example shows a change in approach, marked by more respect than previously was the case. The example however also shows the need of rules and guidance for police,

border control personnel and other officials, that would accommodate for the situation of transgender people.

#### **B.15. Good practice**

231. Good practice may be identified in relation to the extensive changes in family law, and associated rights, with legislation extended to cover same-sex family forms, previously both registered partnerships and cohabitation, as described in detail in points 86-113, and most recently with the newly enacted Marriage Amendment Act (2010) providing for equal rights to marry.
232. Best practice, identified in progressive countries, such as other Nordic countries, has been followed in Iceland, creating legal and de facto equality for LGBT people.
233. Interpretation of provisions of family reunification by the Immigration Directorate may also be mentioned. According to the Immigration Directorate, same-sex partnerships are accorded the same protection under the family reunification provisions of the law on aliens and best practice in Iceland followed. This does not only apply to EEA- nationals and their family members, but applies in all contexts; advice is provided to applicants and evidence of de facto cohabitation is accepted, regardless of the legal recognition in the country of origin or former residence.
234. The National Registry has been commended for good practices relating to transgender issues, where, due to lack of rules, practice has been organic.

## Annex 1: Presentation of Case Law

<b>Case title</b>	
<b>Decision date</b>	19 May 2003
<b>Reference details (type and title of court/body; in original language and English</b> (official translation if possible)	District Court (Héraðsdómur Reykjaness) – not appealed
<b>Key facts of the case</b> (max. 500 chars)	A gay applicant for a position of a supervisor in a home for teenage boys run by a municipality was short-listed for the position. Following an interview in which his sexual orientation was extensively discussed, another, less qualified applicant was awarded the post.
<b>Main reasoning/argumentation</b> (max. 500 chars)	The Court found a breach of the principle of non-discrimination under Article 11 of the Public Administration Act and awarded the applicant compensation on the basis of a general provision on libel in Act 50/1993 on compensation.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	Discrimination on grounds of sexual orientation falls within the scope of the Public Administration Act and therefore covers public service employment relationships. Supports arguments that constitutionally protected equality principle, including sexual orientation, is to be implemented through confirm interpretation.
<b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)	Compensation awarded. It is not an available remedy under Icelandic law to instate or reinstate a person into a job.

<b>Case title</b>	S-1008/2007 Ákærvaldið gegn Guðmundi Steini Magnússyni
<b>Decision date</b>	2007
<b>Reference details (type and title of court/body; in original language and English</b> (official translation if possible)	District Court (Héraðsdómur Reykjavíkur) – not appealed
<b>Key facts of the case</b> (max. 500 chars)	Criminal case in relation to an assault on a man presenting himself as a woman. The accused was not aware of the victim's gender until after oral sex had occurred. Discovery of the victim's gender led to the assault.
<b>Main reasoning/argumentation</b>	The Court did not determine punishment and no compensation was awarded. The Court found that as the victim had not disclosed his gender, mitigating circumstances (distress)

(max. 500 chars)	would be considered. It was also found and considered as a mitigating factor that the victim had initiated the assault.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	Not fully representative because of factual circumstances.
<b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)	

## Annex 2

### *Freedom of assembly and association*

	2004	2005	2006	2007	2008
<b>Number of demonstrations in favour of LGBT people / LGBT rights, gay pride parades, etc.</b>	1	1	1	1	1
<b>Number of demonstrations against LGBT people / LGBT rights</b>	0	0	0	0	0
<b>Number of planned demonstrations / public events organised by LGBT people denied</b>	0	0	0	0	0

### *Freedom of expression*

<b>NO REPORTED CASES</b>	2005	2006	2007	2008	2009
Number of court cases regarding violations of the right to freedom of expression of LGBT people					
Number of convictions regarding violations of the right to freedom of expression of LGBT people (please indicate range of sanctions ordered)					
Range of sanctions issued for the violation of the right to freedom of expression of LGBT people.					

<b>NO REPORTED CASES</b>	2005	2006	2007	2008	2009
Number of court cases regarding homophobic/transphobic hate speech initiated					
Number of convictions regarding homophobic/transphobic hate speech (please indicate range of sanctions ordered)					
Range of sanctions issued for homophobic/transphobic hate speech					

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

### *Asylum and refugee issues*

<b>NO DATA AVAILABLE</b>	2005	2006	2007	2008	2009
Number of persons benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation or gender identity					

### *Social security, social care and insurance*

<b>NO REPORTED CASES</b>	2005	2006	2007	2008	2009
Number of court cases raised where the right to social security and/or social care of LGBT people has been violated due to homophobic/transphobic motivations					
Number of convictions regarding the violation of the right to social security and/or social care due to homophobic/transphobic motivations					
Range of sanctions issued for the violation of the right to social security and/or social care due to homophobic/transphobic motivations					

## ***Education***

<b>NO DATA AVAILABLE</b>	2005	2006	2007	2008	2009
Number of cases of homophobic/transphobic bullying and harassment of LGBT students and teachers your in schools					
Number of convictions regarding homophobic/transphobic bullying and harassment of LGBT students and teachers your in schools (please indicate range of sanctions ordered)					
Range of sanctions issued for homophobic/transphobic bullying and harassment of LGBT your in schools					

## ***Employment***

<b>NO REPORTED CASES – NO AVAILABLE ADMINISTRATIVE DATA</b>	2005	2006	2007	2008	2009
<i>Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).</i>					
<i>Total complaints of discrimination on the ground of sex/gender identity (equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).</i>					
<i>Total finding of Discrimination confirmed on the grounds of sexual orientation (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).</i>					
<i>Total finding of Discrimination confirmed on the grounds of sex/gender identity (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).</i>					
<i>National number of sanctions/compensation payments issued (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).</i>					
<i>National range of sanctions/compensation payments (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).</i>					

## *Housing*

<b>NO REPORTED CASES – NO AVAILABLE ADMINISTRATIVE DATA</b>	2005	2006	2007	2008	2009
Number of court cases raised where the right to housing of LGBT people (e.g. denial of selling or renting to a person, or not lending financial support to purchase housing) has been violated due to homophobic/transphobic motivations					
Number of convictions regarding the violation of the right to housing due to homophobic/transphobic motivations					

## *Health care*

<b>NO REPORTED CASES – NO AVAILABLE ADMINSTRATIVE DATA</b>	2005	2006	2007	2008	2009
Number of cases where LGB persons have been deprived of the right to access to health care facilities due to homophobic motivations?					
Number of cases where transgender persons have been deprived of the right to access to health care facilities due to transphobic motivations?					
Number of convictions regarding the violation of the right to access to health care facilities due to homophobic motivations?					
Number of convictions regarding the right to access to health care facilities due to transphobic motivations?					
Range of sanctions issued for the violation of the right to access to health care facilities due to homophobic/transphobic motivations?					
<b>Number of persons receiving gender-confirming treatment To date three gender reassignment surgeries; three people awaiting surgery and seven undergoing earlier stages of treatment</b>					

### ***Access to goods and services***

	2005	2006	2007	2008	2009
<b>NO REPORTED CASES</b>					
Number of cases where LGBT people have been deprived of the right to access goods and services due to homophobic/transphobic motivations?					
Number of convictions regarding the violation of the right to goods and services due to homophobic/transphobic motivations?					
Range of sanctions issued for the violation of the right to access to goods and services due to homophobic/transphobic motivations?					

### ***Media***

	2005	2006	2007	2008	2009
<b>NO REPORTED CASES</b>					
Number of court cases regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal treatment and equal opportunity.					
Number of convictions of media by 'soft-law' institutions, such as a media council					
Number of convictions regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal treatment and equal opportunity.					

### ***Transgender issues***

	2005	2006	2007	2008	2009
<b>NO OFFICIAL DATA – SEE UNDER HEALTH</b>					
Number of name changes affected due to change of gender/ the gender identity of the applicant					
Number of persons who changed their gender/sex in your country under the applicable legislation (if relevant split between transgender/intersex applicants)					