

Extended protection against discrimination

A new Act prohibiting discrimination comes into force on 1 July 2003. The new Act extends effective protection against discrimination from working life and higher education to certain other areas of society. The Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation and the Disability Ombudsman will monitor compliance with the new Act.

Background

In Sweden there are at present a number of laws against discrimination. Four of these laws apply to working life. They are:

- the Gender Equality Act (1991:433),
- the Measures to Counteract Ethnic Discrimination in Working Life Act (1999:130),
- the Prohibition of Discrimination in Working Life of People with Disability Act (1999:132), and
- the Prohibition of Discrimination in Working Life because of Sexual Orientation Act (1999:133).

The last three are often called the 1999 Acts. There is also the Act on Equal Treatment of Students in Higher Education (2001:1286), which applies to discrimination in higher education on grounds of gender, ethnic origin, disability or sexual orientation. Four ombudsmen are responsible for supervising the application of these laws and monitoring compliance. They are the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation and the Disability Ombudsman.

Outside of working life and higher education protection against discrimination on grounds of ethnic origin and homosexual orientation relies on the criminal law concerning the offence of illegal discrimination. Reports of illegal discrimination are handled by the police and the prosecution service.

In the year 2000 the EU Council of Ministers adopted the following two directives:

- Directive (2000/43/EC) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and
- Directive (2000/78/EC) establishing a general framework for equal treatment in employment and occupation.

These two directives deal with different discrimination grounds—and to some extent they cover different areas of society. Both directives have to be implemented by member states during 2003 with the exception of the provisions on age and disability discrimination. Member states have another three years to implement these provisions.

In Sweden these two European Community Directives are mainly being implemented through a new Act prohibiting discrimination and through some amendments to existing laws against discrimination. (Two issues are under further investigation by the Government Offices. These are discrimination aimed at the school system and other forms of education except higher education and the question of to what extent and under what circumstances private individuals should be covered by a prohibition of discrimination.)

New Act prohibiting discrimination

The purpose of the new Act is to combat discrimination related to ethnic origin, religion or other belief, sexual orientation or disability.

Areas covered

The prohibition of discrimination related to ethnic origin, religion or other belief, sexual orientation or disability applies to

- labour market programmes,
- starting or running a business,
- occupational activity,
- membership of, participation in and benefits from organisations of workers or employers or professional organisations, and
- goods, services and housing.

In addition, the prohibition of discrimination on grounds of ethnic origin or religion or other belief also applies to

- the social services, local and national transport services for disabled people and housing adaptation allowances,
- social insurance and related transfer systems,
- unemployment insurance, and
- health and medical care and other medical services.

The concept of discrimination

The Act prohibits both direct and indirect discrimination. Harassment and instructions to discriminate against an individual are defined as discrimination and are covered by the prohibition of discrimination.

Direct discrimination is when an individual is disadvantaged by being treated less well than someone else has been treated or would have been treated in a comparable situation. It is sufficient that any one of the grounds is *one* of the reasons for the disadvantage for this to be counted as discrimination. The decisive factor is that a negative effect occurs, not what may be the reason behind the disadvantage.

Indirect discrimination is when an individual is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that in practice puts people of a particular ethnic origin, religion or other belief, sexual orientation or disability at a particular disadvantage. This does not apply, however, if the provision, criterion or procedure can be motivated by a legitimate aim and the means are appropriate and necessary to achieve the aim.

Harassment refers to conduct that violates a person's dignity and that is related to ethnic origin, religion or other belief, sexual orientation or disability.

The term *instructions to discriminate* refers to a situation in which someone gives another person orders or instructions to discriminate against some other individual.

In addition, the Act also prohibits the person who is said to have carried out the discrimination from exposing an individual to reprisals because he or she has reported or drawn attention to the discrimination or taken part in an investigation of discrimination.

Burden of proof

An rule of proof with the following wording has been introduced in the new Act: *If a person who feels that he/she has been discriminated against or exposed to reprisals shows that the circumstances give reason to presume that he or she has been discriminated against*

or exposed to reprisals, the respondent shall show that discrimination or reprisals have not occurred.

The rule of proof means that if it is likely that discrimination has occurred, then the person who is supposed to have carried out the discrimination must show that this was not the case. In other words it is not the person who feels he or she has been exposed to discrimination or reprisals who has to prove it.

Damages

A person who discriminates against someone or exposes someone to reprisals in a way that is prohibited under the Act shall pay damages for the violation that the discrimination or reprisals involve. If an employee discriminates against someone or exposes someone to reprisals the damages shall be paid by the employer of the employee. In the Bill proposing this legislation the Government emphasises that any breach of discrimination legislation is to be seen as a serious violation and that application of this legislation should lead to higher levels of damages in discrimination cases than are usual in other labour law disputes.

Supervision

As is the case with the 1999 Acts and the Act on Equal Treatment of Students in Higher Education, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation and the Disability Ombudsman are responsible for supervising the new Act. This means that the new Act extends the powers of these Ombudsmen to new areas of society. The Ombudsmen are entitled to raise actions for damages on behalf of individuals who feel that they have been discriminated against, and this right also applies to the new areas. The Ombudsmen have to try to induce parties covered by the prohibitions of discrimination to follow the Act voluntarily. Legal proceedings have to be initiated within two years from the date of the action in question or from the last date on which an obligation should have been fulfilled. Otherwise the right to initiate legal proceedings is lost.

Amendments to existing discrimination legislation

In order to fully implement the EC Directives a number of amendments are also being made to the 1999 Acts and to the Act on Equal Treatment of Students in Higher Education. In part, the amendments are intended to establish the same definitions of discrimination grounds and the same concept of discrimination in the Acts and to state the rule on a

shared burden of proof directly in the text of the Acts. In addition, the following amendments are being made to the 1999 Acts:

- the Acts are also made applicable when an employer decides on or takes action that concerns practical work experience, training or vocational guidance, and
- the scope of the Acts is extended so that the prohibitions of discrimination and the prohibition of reprisals will also benefit a person who is applying for or doing practical work experience at a workplace but is not employed there.

The Committee of Inquiry on Discrimination

The Government considers that protection against discrimination has to be as similar as practically and legally possible across the various discrimination grounds. The Government has therefore appointed a parliamentary committee with the task of considering consolidated discrimination legislation covering all or most discrimination grounds and areas of society (dir. 2002:11). As part of its task the committee has to propose how to implement the EC Directive's provisions on age discrimination. The committee has also to consider whether existing protection for people with disabilities from disadvantage on account of inadequate accessibility should be extended from working life and higher education to other areas of society. This committee is to report its findings no later than 1 July 2005.

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