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Sweden

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B-1049 Brussels*

Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Sweden

Paul Lappalainen

Reporting period 1 January 2025 – 1 January 2026

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EXECUTIVE SUMMARY

1. Introduction

Sweden has long been home to various minorities such as the Roma, Finns and the Jewish community, as well as the Sami, an indigenous population. Nevertheless, Sweden has also long viewed itself as an ethnically homogenous country. This has been changing in large part due to various types of immigration since the 1950s, a process that was given an added boost during the 2010s. From the 1950s through to the 1970s, there was labour migration to Sweden. From the 1970s onwards, various groups of refugees arrived due to turbulence around the world. Most recently, due to the Russian war against Ukraine, Sweden has taken in a large number of Ukrainians. In addition to immigrants from EU countries, there are many people in Sweden who were born in other parts of the world. In 2025, the population reached about 10.6 million. The number of foreign-born inhabitants in 2025 was about 2.21 million or 20.8 %.¹ Ethnicity is not monitored, but Sweden's detailed statistics provide relevant proxies, such as statistics concerning country of birth and parents' country of birth.

Racialised ethnic groups are particularly affected by discrimination and exclusion. The persistent Swedish history of racism and discrimination concerning the Roma has received some recognition in recent years.² People perceived to be Muslims or from the Middle East are also clearly affected.³ The evident negative effects of racial discrimination on Afro-Swedes in the labour market are well-documented.⁴

Although Sweden considers itself to be a secular country, most people still belong to the Lutheran church which was the state church until 2000. Various other faiths have become more established in recent years. This has brought to the forefront issues concerning discrimination based on religion as well as freedom of religion, particularly regarding people who are, or are presumed to be, Muslims.

In recent years, greater visibility has been given to certain disability and sexual orientation equality law issues through mobilisation of the LGBTIQ⁵ community and NGOs working on the rights of persons with disabilities. These grounds, as well as sex, ethnicity and religion, were initially addressed in separate laws that in essence created equality silos, reinforcing the development of uneven legal protection for the different grounds.

Sweden's first law against discrimination, adopted in 1970, was a criminal law provision prohibiting discrimination due to race or religion by merchants in the provision of goods and services.⁶ However, the later civil laws against discrimination in working life set the pattern for the equality silos – based on separate laws and enforcement authorities.

¹ Statistics Sweden (2025), 'Sweden's population in summary 1960-2025', available at: <https://www.scb.se/en/finding-statistics/statistics-by-subject-area/population-and-living-conditions/population-composition-and-development/population-statistics/pong/tables-and-graphs/swedens-population-in-summary-1960-2025/>.

² Ministry of Culture (2014) *Den mörka och okända historien: vitbok om övergrepp och kränkningar av romer under 1900-talet* (The dark and unknown History – a White Paper on abuses and rights violations against Roma in the 20th century), Ds 2014:8.

³ Oxford Research AB (2013) *Forskning om diskriminering av muslimer i Sverige* (Research on discrimination of Muslims in Sweden), available at: <https://www.do.se/rattsfall-beslut-lagar-stodmaterial/publikationer/2014/forskning-om-diskriminering-av-muslimer-i-sverige>.

⁴ See e.g. CEMFOR (Uppsala University) (2018), *Antisvart rasism och diskriminering på arbetsmarknaden* (Anti-Black racism and discrimination in the labour market), Report 2021:11, Stockholm County Administrative Board, available at: https://catalog.lansstyrelsen.se/store/39/resource/DA_2021_19.

⁵ LGBTIQ here refers to lesbian, gay, bisexual, trans, non-binary, intersex, and queer people.

⁶ Government bill 1970:87 concerning ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Government determined that ratification did not require the adoption of a law against racial discrimination in working life.

The first equality silo was created by the prohibition of sex discrimination in working life that entered into effect in 1980⁷ along with the establishment of the Sex Equality Ombudsman (JämO). At least in part influenced by the developing EU equality directives in the 1990s, in 1999 three relatively modern laws against discrimination in working life were adopted concerning the grounds of ethnicity and religion, disability and sexual orientation.⁸ Three separate ombudsmen were established for oversight and enforcement in relation to these grounds.

During the 2000s, in addition to the four grounds-based laws prohibiting discrimination in working life, three multi-ground laws were adopted prohibiting discrimination in schools, higher education, and other areas of society. This was in large part influenced by the need to transpose EU law. These seven civil laws were then merged into the Discrimination Act, which went into effect in 2009. Nevertheless, sex discrimination maintained its primary role within the hierarchy of equality silos in relation to positive treatment and active measures.

To understand Swedish labour law, it is necessary to understand the dominant role of the social partners. Employees and employers are highly organised (approximately 70 % of employees and 95 % of employers). Conflicts are largely resolved through collective bargaining, while legislation plays a secondary role. The social partners were influential in slowing the development of discrimination law in relation to working life. Such laws were seen as an encroachment on their power.

Sweden has a fairly comprehensive welfare state. Social and economic benefits have been formulated only to a limited extent in terms of rights giving rise to legal claims. The enforcement of individual rights, particularly by groups that are generally affected by discrimination, has not been a strong part of Swedish legal culture. Furthermore, the constitutional tradition in regard to fundamental rights has been weak. This is changing, however, due to the increasingly important role played by EU law, the European Convention on Human Rights and the Swedish Constitution.

Regarding developments in equality law in 2025, several notable cases of interest emerged, primarily involving disability discrimination.⁹ Malmö mot diskriminering (MmD), a local anti-discrimination bureau, won a district court case following its successful 2024 Supreme Court case. In any case, local governments are going to have to pay closer attention to ensure more effective investigations and measures regarding the needs of pupils with disabilities, even if the Swedish Equality Ombudsman (DO) lost two somewhat similar Appeal Court cases. MmD also brought an interesting Appeal Court case concerning ethnic discrimination against a refugee family by a municipality. At the District Court level, the DO lost a case involving a doctor who required the removal of a religious headscarf. The appeal should be interesting as the medical examination did not seem to concern the claimant's head or face. Finally, the Appeal Court dealt with the Koran burning hate speech case by reducing the sentence and finding the defendant, RP, guilty of only one count of hate speech. At the same time, there is ongoing concern among e.g., NGOs and others that new laws and policies weakening the rule of law tend to be directed at those with a migrant background,¹⁰ and may lead to a greater risk of ethnic discrimination, for instance

⁷ Act (1979:1118) on equality between women and men in working life (*lag om jämställdhet mellan kvinnor och män i arbetslivet*).

⁸ Act on measures against discrimination in working life on grounds of ethnicity, religion or other belief (*lagen om åtgärder mot etnisk diskriminering i arbetslivet*) (1999:130); Act prohibiting discrimination in working life due to disability (*lagen om förbud mot diskriminering i arbetslivet av personer med funktionshinder*) (1999:132); Act prohibiting discrimination in working life due to sexual orientation (*lagen om förbud mot diskriminering i arbetslivet på grund av sexuell läggning*) (1999:133).

⁹ Further information and full references of these cases can be found in Section 12.2 below.

¹⁰ See Civil Rights Defenders (CRD) (2023), *Det är helheten som oroar – ett år med Tidöavtalet* (It is the overall picture that is worrisome – a year with the Tidö Agreement), <https://crd.org/wp-content/uploads/2023/12/Civil-Rights-Defenders-granskning-Ett-ar-med-Tido.pdf>. CRD's report takes up e.g. the proposals discussed by the current government within the framework for its coalition, the Tidö Agreement, concerning migration and criminal law.

by the police or other authorities. Examples of this include the Government is making it easier to deport immigrants who commit crimes, even in cases involving lesser crimes; it has increased the subsidy to encourage immigrants to leave; it has proposed a substantially increased support requirement for family reunification; and it wants to introduce stricter and clearer requirements for good behaviour before residence permits are granted.¹¹ The issue is not the individual rules themselves, but taken together they feed into the picture that 'immigrants' are the primary cause of Sweden's problems. Such laws and rules may not directly violate the Discrimination Act, but contribute to an environment in which discrimination becomes increasingly accepted. It is notable that many of these proposals are actually using human rights as a governance tool, not as a means to protect human rights, but rather as a justification for limiting human rights.¹²

2. Main legislation

There are constitutional provisions with respect to discrimination in the Swedish Instrument of Government (part of Sweden's Constitution). While not establishing enforceable rights, according to the first chapter, 'public institutions shall combat discrimination' based on an open list of grounds. In contrast, Chapter 2 Article 12 provides protection against laws and regulations that discriminate against a minority due to their ethnic origin, colour or other similar circumstances, or on account of sexual orientation. Article 13 prohibits laws and regulations that discriminate on the basis of sex. The relationship to EU law is regulated through the Instrument of Government (1:10 and 10:6) and other laws. Furthermore, the European Convention on Human Rights (ECHR) was incorporated into national law in 1995 and given quasi-constitutional status.

Sweden has also ratified various other human rights instruments.¹³ However, if an international instrument has not been incorporated or transformed into legislation, such instruments are not part of the national hierarchy of laws. Nevertheless, Swedish laws are to be interpreted by the courts in conformity with such international instruments.

By 2008, Sweden's seven civil anti-discrimination laws contained the protections required by EU law, with the exception of age. There were the four single-ground civil laws covering working life and three multi-ground civil laws prohibiting discrimination in other fields such as education. Sweden also had four anti-discrimination ombudsmen (sex, ethnicity and religion, disability, and sexual orientation).

On 1 January 2009, the seven acts were consolidated, along with their hierarchies of protection, into the Discrimination Act (2008:567). The grounds of age and transgender¹⁴ identity and expression were added. The ombudsmen were merged into the Equality Ombudsman (*Diskrimineringsombudsmannen* – DO). Various amendments have been adopted since 2009. In 2015, a new form of discrimination concerning disability was introduced – inadequate accessibility – which expanded the concept of a lack of reasonable accommodation as disability discrimination beyond employment to other areas of society.

In 2016, the Act was amended to level up the general active measures so as to cover all grounds. According to the DO, the provisions on active measures entail that all employers

¹¹ Government press release, 25 February 2025, *Skärpta regler om utvisning på grund av brott* (Stricter rule on deportation due to crimes) at <https://www.regeringen.se/pressmeddelanden/2025/02/skarpta-regler-om-utvisning-pa-grund-av-brott/>; 3 November 2025, *Ett kraftigt höjt återvändningsbidrag*; 12 December 2025, *Höjt försörjningskrav vid anhörginvandring föreslås* <https://www.regeringen.se/pressmeddelanden/2025/12/hojt-forsorjningskrav-vid-anhoriginvandring-foreslas/>.

¹² See e.g. Carlson, L. (2025) 'The Changing Paradigm of Human Rights Justifications: Challenges for Civil Society', *Ljubljana Law Review*, vol. 85, p. 135, and Grahn-Farley, M. (2025) 'The Silent Sound Of Drowning: Human Rights Justifications and Complex Intersectionality', 51 *Brooklyn Journal of International Law* 1.

¹³ See Annex of this report for a full list.

¹⁴ Transgender is a direct translation of the Swedish term used in the Discrimination Act.

are obligated, concerning all grounds, to continuously apply a four-step approach (investigate, analyse, take measures and monitor/evaluate) concerning the following areas: working conditions, provisions and practices regarding pay and other terms of employment, recruitment and promotion, education and training, and other skills development, possibilities to reconcile gainful employment and parenthood. In addition, they must establish, follow up and evaluate guidelines and routines to prevent harassment, sexual harassment and reprisals. At the same time, certain more specific duties, such as pay gap surveys and promoting gender balance in different types of work, including management, still only apply to sex.

There are also certain relevant criminal law provisions. Although prosecutions are rare, Penal Code 16:9 bans unlawful discrimination by merchants on the grounds of ethnicity, religion, sexual orientation and transgender identity or expression with regard to the provision of goods and services. There is also the 'hate speech' provision in Penal Code 16:8 concerning the same grounds as in 16:9.

The Regulation on anti-discrimination conditions in public contracts (2006:260), requires Sweden's largest Government agencies to include an anti-discrimination condition in their larger public procurement service and building contracts. The purpose is to increase awareness of and compliance with the Discrimination Act.

Generally speaking, Swedish law fulfils the minimum requirements of the Directives 2000/78/EC and 2000/43/EC. Furthermore, regarding religion, sexual orientation, age and disability, domestic law goes beyond the requirements of EU law since the full material scope of Directive 2000/43/EC applies to all grounds. This means that Swedish law would effectively comply with the Equal Treatment Directive proposed in 2008.¹⁵ This also applies to transgender identity and expression.

Even though the laws go beyond the requirements of EU law, in the author's opinion, given the procedural hindrances, lack of case law, and the lack of an environment that encourages enforcement of laws by those with less power, it would be hard to assert that the laws are effective.

3. Main principles and definitions

The relevant EU definitions and prohibitions of direct and indirect discrimination, harassment, sexual harassment and instructions to discriminate are contained in the Discrimination Act (Chapter 1, Section 4). Victimisation is also prohibited.

The law covers discrimination by association (e.g. a spouse or child) as well as discrimination by assumption about the person who is discriminated against (e.g. where the person is wrongly perceived to be a Muslim). This is based on case law and the legislative materials. The additional form of discrimination, inadequate accessibility, expands reasonable accommodation beyond working life to education and other areas of social life. The ban on direct discrimination is limited by the possibility of justification. The Discrimination Act reduces the ability to justify direct discrimination in comparison with the old acts. Except for age discrimination, there are no longer any examples of justifications in national law that may be too wide to be acceptable according to EU law.

Currently, intersectional discrimination is not covered. However, in some cases it is apparent that multiple or intersectional discrimination is a part of the case, even if the issue was not directly dealt with by the court. At the same time, a Government inquiry appointed to consider the transposition of the Pay Transparency Directive has proposed

¹⁵ Proposal (COM (2008) 426 final) for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

certain amendments that address intersectionality in relation to pay discrimination and the Equality Ombudsman.¹⁶

4. Material scope

The material scope of the Discrimination Act fulfils the minimum standards established by EU law. It also goes beyond the scope required by EU law since religion or other belief, sexual orientation, disability and age are essentially covered in the same way as sex and ethnicity.¹⁷ The material scope is set through the areas in which discrimination is prohibited: working life; education; labour market policy activities and employment services not under public contract; starting or running a business and professional recognition; membership of certain organisations; goods, services and housing etc.; healthcare and social services; the social insurance system, unemployment insurance and financial aid for studies; and national military service and civilian service. Chapter 2 Section 17 adds that discrimination by public officials is prohibited in the provision of information or services. In other words, this is to be done without e.g. racist or sexist comments or actions. However, this does not provide protection against discriminatory actions by public officials in carrying out their official duties. For example, if the action of a judge or a police officer in issuing a decision or carrying out an arrest is discriminatory, it is outside the scope of the Discrimination Act.¹⁸

The Discrimination Act applies to all aspects of the employer-employee relationship in both the public and private sectors.

5. Enforcing the law

Victims of discrimination have three basic options. Complaints can be taken to the Equality Ombudsman (DO), a union or an NGO. Due to the loser-pays rule, for most people the option of a private lawyer carries too much financial risk. In Sweden the loser pays the winning party's legal costs, which can be substantially more than any potential discrimination compensation award.

When the DO takes a case to court, the DO also assumes the financial risk of losing. If a case is taken on by a union, the union also assumes the financial risk. Few cases are taken to court by unions,¹⁹ but presumably many such cases are often settled.

Finally, victims can turn to an NGO, such as a local anti-discrimination bureau. If the case is not settled, on rare occasions, a bureau can take a case to court. Such cases are

¹⁶ White Paper SOU 2024:40 *Genomförande av lönetransparensdirektivet* (Implementation of the Pay Transparency Directive), see e.g. 49, 169, 199, 214, 247.

¹⁷ The Discrimination Act essentially fulfils the minimum standard that would apply if the Proposal (COM (2008) 426 final) for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation is adopted.

¹⁸ Discrimination Act Chapter 2, Section 17, prohibits discrimination by public employees in the provision of information, advice or other types of contact with the public, but this does not apply to public officials when they carry out their official duties. For example, when the police are carrying out an arrest or are otherwise acting in their official capacity. An interesting example occurred where a judge excluded three women wearing Muslim clothing from a public trial. The judge, in maintaining order in the court, asserted he had a right to see their faces. The Justice Ombudsman (JO) pointed out in Decision 5483-2011, 2012-10-22, that the judge violated the women's right to attend a public trial in spite of the judge's claim that their exclusion was within his mandate to maintain order. The JO pointed out that it was up to the DO to examine the discrimination issue. The DO concluded that, as the judge was carrying out his official duties, maintaining order, there was no violation of the law. In other words, Chapter 2, Section 17 did not apply. The purpose of Section 17, according to the Government bill 2007/08:95, p. 286 and 529-530, is that the prohibition of discrimination is to apply to the public employee's behaviour and language, but not to how they interpret or apply a law or regulation and other related actions undertaken to carry out their mandate. Furthermore, the prohibition of discrimination is not to apply to the content of judgments, decisions, rulings or similar issued by a court or an administrative authority, a municipality, a county council, etc. One idea is that such issues should be dealt with on appeal.

¹⁹ However, to examine some cases taken on by unions, see the Labour Court cases in Section 12.2 Country report, Non-discrimination, Sweden 2025.

generally filed as small claims cases, as NGOs generally cannot afford the financial risk. Sweden is just beginning to develop an NGO tradition where enforcement of laws can be seen not just as a way of helping individuals recover compensation, but also as a form of advocacy that helps to achieve the societal purpose of a law against discrimination by stimulating a change in behavioural norms.²⁰ Although strategic litigation by the social partners, when it is in their interest, is common, strategic litigation by less powerful NGOs is often seen as a foreign idea. At the same time, equality law itself was once a foreign idea. Public interest arises, for example, when a complainant who has given power of attorney to, e.g. a union or other NGO, a lawyer or the DO, and the case has broader implications beyond the individual case. At the same time, in more general terms, *actio popularis* is not permitted by national law in discrimination cases.

Discrimination claims regarding working life are dealt with in the Labour Court as the first instance court, assuming that the claimant is represented by a union or the DO. The DO's right to represent a victim is subsidiary to the right of a trade union to represent its members. The procedures are the same for employees in the private and public sectors. If an individual brings an employment case on their own, the case is first heard by a district court, with the Labour Court functioning as a court of appeal. The Labour Court is a special court and its decisions are final.

Cases outside working life are dealt with in the ordinary court system, i.e. the relevant district court with appeals going to the appeal court and possibly the Supreme Court.²¹ It is worth noting that very few cases actually reach the courts. Thousands of claims are submitted to the DO, with only a handful being filed in court. The unions also take a small number to court. Other NGOs also take a small number to court, usually as small claims cases. In comparison to the DO and the unions, other NGOs generally cannot afford the risks involved in the loser-pays rule.

A shifted burden of proof concerning discrimination is specified in the Discrimination Act. Nevertheless, few discrimination cases are successful, particularly those concerning ethnicity. There are indications that a key problem lies in a more restrictive application of the burden of proof by the Labour Court as compared to the ordinary courts.

Concerning sanctions, the 2009 act, in addition to the possibility of declaring discriminatory contracts void, introduced a new term for the primary sanction: discrimination compensation. Beyond providing compensation to the victim, the courts are also supposed to give particular attention to the aim of prevention. The level of discrimination compensation was therefore expected to be higher in the future as compared to the damages awarded prior to 2009. As the discrimination compensation awards are still relatively low, the sanctions are, in practice, scarcely proportionate, effective and dissuasive. The sanctions apply to all grounds of discrimination covered by the Act, including the five grounds covered by Directives 2000/43 and 2000/78.

A study examining awards granted by the Labour Court since the 1980s points out that discrimination awards up to 2017 were about 4.5 % higher than they were in 1980. There had also been a 170 % increase in trial costs since the 1980s. The study concludes that the trends concerning compensation awarded and increasing lawyers' costs and fees, combined with low success rates and the loser-pays rule, 'create a significant deterrent for plaintiffs bringing discrimination claims'.²²

²⁰ For examples of breakthrough cases by civil society see e.g. the Supreme Court decision in Section 12.2 Country report, Non-discrimination, Sweden 2025, the headscarf case, Labour Court, in Section 12.2 Country report, Non-discrimination, Sweden 2024, the dyslexia cases in Section 10 Country report, Non-discrimination, Sweden 2024 and the cases taken on by Malmö mot Diskriminering (a civil society anti-discrimination bureau) Country report, Non-discrimination, Sweden 2023 and Section 10 Country report, Non-discrimination, Sweden 2024.

²¹ Some higher education cases may also be brought before the Board of Appeal for Higher Education.

²² Carlson, L. (2017) *Comparative discrimination law: Historical and theoretical frameworks*, Brill, pp. 79-80.

Compared with the ordinary court system, the Labour Court seems to pay less attention to deterrence. In the future, this may cause confusion, as some employment discrimination cases start in the district courts and can then be appealed to the Labour Court.

Beyond prohibiting discrimination, the Discrimination Act imposes a duty on employers and education providers to undertake equality promotion measures, in particular concerning men and women. There are questions about the effectiveness of this duty related to lack of enforcement and limited sanctions.²³

One potential complementary tool in Sweden for increasing the cost risks of discrimination can be found in the Regulation on anti-discrimination conditions in public contracts (2006:260).²⁴ If meaningful sanctions apply, such as the risk of contract cancellation, such conditions would increase the interest of employers in proactive anti-discrimination measures.²⁵ The total value of all public sector contracts in Sweden was more than EUR 91.7 billion (SEK 1 000 billion) in 2023.²⁶ However, so far there has been little follow-up of such clauses, so their current effectiveness is doubtful.

Sweden has an Action Plan for the Equal Rights and Opportunities of LGBTIQ people. Within the framework of the National Action Programme against Racism, Sweden has developed action programmes to combat antisemitism, racism against Sami, Islamophobia, Afrophobia and antiziganism (Antigypsyism). There is also a Strategy for a Systematic Follow-up of Disability Policy.²⁷ The DO is involved in these action plans, as well as taking part in dialogue and consultation with NGOs and the social partners.

6. Equality bodies

The DO is the key public institution for supervising compliance with the Discrimination Act. The DO's broad mandate includes investigating complaints and the right to take cases to court on behalf of individuals. The DO also has a mandate to follow up on the Discrimination Act's proactive duties to undertake active measures to promote equality and counteract discrimination that apply to employers and education providers. The DO also has a mandate to provide advice and support; engage in educational and opinion-shaping efforts; propose legal and other measures for combating discrimination; and undertake other suitable measures to promote equality. Independent surveys and reports are important parts of this work.

The DO appointed in December 2020 instituted a shift in focus from 2021 onwards, away from equality promotion towards the investigation and enforcement of individual claims, indicating that this work will also, for example, play an integral role in the DO's equality promotion work. The DO has indicated that enforcement is a necessary foundation for supporting other efforts related to the supervision of compliance. Although the results are limited to only two court cases in 2025, the number of settlements increased to 31. The

²³ See e.g. White Paper SOU 2020:79 *Effektivare tillsyn över diskrimineringslagen – aktiva åtgärder och det skollagsreglerade området* (More effective supervision of the Discrimination Act – active measures and the issue of schools) and Svenaeus, L. (2020) *Tio år med Diskrimineringsombudsmannen - En rapport om nedmontering av Diskrimineringskyddet* (Ten years with the Equality Ombudsman – A report on the dismantling of the protection against discrimination) at: <https://arenaide.se/wp-content/uploads/sites/2/2020/11/svenaeus-2020-tio-ar-med-diskrimineringsombudsmannen-komprimerad.pdf>.

²⁴ Ordinance (2006:260) on anti-discrimination conditions in procurement contracts (*Förordning (2006:260) om antidiskrimineringsvillkor i upphandlingskontrakt*), available at: <http://rkrattsbaser.gov.se/sfst?bet=2006:260>.

²⁵ The original proposal for the regulation, which specified cancellation of the contract as a potential sanction, can be seen in Lappalainen, P. (2005), Government white paper 2005:56, *Det blågula glashuset: strukturell diskriminering i Sverige* (The blue and yellow glass house: Structural discrimination in Sweden), pp. 579-584.

²⁶ National Agency for Public Procurement, 3 October 2025, Upphandling för 1 009 miljarder (Public contracts for SEK 1009 billion) at <https://www.upphandlingsmyndigheten.se/nyheter/2025/upphandling-for-1-009-miljarder/>.

²⁷ See Section 9.2 Country report, Non-discrimination, Sweden 2024.

settlements typically provide compensation and an admission of wrongdoing, including allegations of discrimination. Beyond this, the DO has continued its outreach efforts regarding civil society.

7. Key issues

A persistent issue of great importance is the political climate. After the elections in September 2022, a three-party coalition of conservative parties formed a new minority Government. The coalition is dependent on the parliamentary support of the extreme right party, a party that has questioned the need for the Discrimination Act as well as the Equality Ombudsman. There is a cooperation agreement between the parties outlining various issues. At the same time, the governing parties have generally been supportive of the Act and the Ombudsman and there is nothing about this in the agreement between the four parties. Nevertheless, certain parts of the agreement focus on inquiries and laws being implemented that target immigrants, in some cases potentially leading to discrimination and a weakening of the rule of law.

Beyond the political climate, the key issues on the lack of efficacy concerning the Swedish discrimination legislation are the ability of the current Equality Ombudsman (DO) to maintain the DO's shift away from awareness-raising to investigation and enforcement of the Discrimination Act, and access to justice more generally.

On access to justice more broadly, Sweden's loser-pays rule is a primary hindrance to the ability of bureaux and other NGOs as well as individuals to enforce the law. There is an imbalance in legal power between the victims of discrimination and those with the power to discriminate, while at the same time, the Swedish system is based on the assumption of an equality of arms. The victims have little experience with the law, lawyers and the courts and, if they lose, they risk losing their limited resources. Even if they are successful, the compensation is limited. To limit the cost risks, most cases NGOs take to court are filed as small claims cases. On the other hand, the cost risks for employers and merchants accused of discrimination constitute tax-deductible 'business' expenses, win or lose. Furthermore, if a civil servant is accused of discrimination, the Government will pay all the costs.²⁸

To sum up, in the author's opinion, it is not the law itself that changes norms, but the implementation of the law through a critical mass of cases combined with strategic litigation. Just as those with the power to discriminate need to be challenged, judges also need to be challenged, so that they can learn to recognise, understand and counteract discrimination. A critical mass will also increase the cost risks of discrimination providing an added incentive for those who discriminate to change their behaviour so that fewer people are subjected to discrimination. While redress is important, the long-term goal is that potential victims are not subjected to discrimination in the first place.

Regarding issues of concern related to the use of artificial intelligence in the implementation of national legislation transposing directives, or in the regulation of Artificial Intelligence, due to Regulation (EU) 2024/1689 on Artificial Intelligence, as well as domestic interests, the Government has initiated several government inquiries. For more information, see section 11 below.

²⁸ For a more systemic analysis of these issues see Galanter, M. (1974) 'Why the haves come out ahead: Speculations on the limits of legal change' in 9 Law & Soc'y Rev 95. After 50 years, Galanter's analysis is still highly relevant, especially concerning equality law.

INTRODUCTION

The national legal system

The power to enact laws is vested in the Swedish Parliament (*Riksdag*). Authorities at the regional and local levels have no competence to enact legislation and do not issue local ordinances with direct relevance to the two directives. However, they can undertake and implement policies that promote equality and counteract discrimination within the framework of their mandates.

As the Parliament is the ultimate arbitrator of the law, the courts have historically played a lesser and more deferential role. However, case law is increasingly being given an important role, largely due to the Europeanisation of the Swedish legal system.

In practice, the right to initiate legislation lies predominantly with the Government. This right to make legislative proposals to Parliament is guaranteed by the Constitution.²⁹ The process starts with a legal inquiry, after which the results are sent out to relevant parties for comments on the proposed legislation. The Government then formulates a bill specifying and explaining the proposed legislation, including reflections on the comments. The Council on Legislation (*Lagrådet*), composed of justices from the Supreme Court and the Administrative Supreme Court, is then consulted on the constitutionality and consistency of laws. The Council's opinions are not binding. The bill is then submitted to Parliament. The report from the Parliament's standing committee is debated in Parliament. Formally, there is the main proposal in the standing committee and a reservation or reservations by the committee minority. After a vote, the majority side's arguments in the standing committee and the Government bill (if the Government wins the vote) are regarded as 'approved' by the Parliament.³⁰ These two documents have considerable importance when interpreting the law.

In general, the Discrimination Act is implemented within the general court system (district courts, courts of appeal and the Supreme Court) and/or the Labour Court. Discrimination in all areas except the labour market is in essence dealt with in the general court system. It is a three-instance system, starting with the district court. In civil cases, the court of appeal must permit the appeal and the same applies to the Supreme Court concerning a further appeal. Sweden also has a three-tier administrative court system, but thus far it has limited direct relevance to discrimination issues.³¹

The Labour Court deals with all aspects of the employer-employee relationship. It is a single-instance system in cases where the worker is represented by their trade union, and the employer has a collective agreement with that union or where the Equality Ombudsman (*Diskrimineringsombudsmannen* – DO) represents a claimant in accordance with the Discrimination Act. Otherwise, it is a two-instance system, where individual cases are tried in the district courts constituting the first instance, with a right of appeal to the Labour Court.

Collective agreements cover about 90 % of workers in the Swedish labour market and are very important in setting the rules. Trade union density rate is approximately 70 %, with a white-collar employees' trade union density rate of around 74 % in 2022 and a blue-collar employee membership rate of about 59 % in 2022.³² There is no national minimum

²⁹ Instrument of Government (*Regeringsformen*) (1974:152), Chapter 4, Article 4, adopted 28 February 1975. On rare occasions, the opposition parties agree on a piece of legislation that the Government does not want.

³⁰ Formally, it is only the report of the standing committee that is being debated but, as the Government almost always repeats what is said in the Government bill and most often wins, in practice it is the Government bill that is used as the main interpretation source, as it is much more detailed.

³¹ Nevertheless, see the two cases concerning freedom of religion and speech from the Supreme Administrative Court in Section 12.2 *Country report, Non-discrimination, Sweden 2023*.

³² See Medlingsinstitutet (2023), *The Swedish model & collective agreements: A brief introduction*, p. 4, available at: <https://www.mi.se/app/uploads/the-swedish-model-and-collective-agreements.pdf>.

wage. Generally, work as a civil servant is governed by contracts and collective agreements in largely the same way as in private employment. However, some special rules apply to public employment, mainly concerning the recruitment process, where some constitutional rules on objectivity apply.

List of main legislation transposing and implementing the directives

Official title of the law: Discrimination Act (2008:567)

Name used in this report: N/A

Abbreviation: No common abbreviation

Date of adoption: 5 June 2008

Entry into force: 1 January 2009

Latest amendment: Act (2024:242) amending the Discrimination Act.

Date of adoption: 25 April 2024

Entry into force: 1 July 2025

Web link: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/diskrimineringslag-2008567_sfs-2008-567

Grounds covered: Sex, transgender identity³³ or expression, ethnicity, religion and other belief, disability, sexual orientation, and age.

Civil/administrative/criminal law: Civil and administrative law

Material scope: Public and private employment, education, labour market policy activities and employment services, starting or running a business and professional recognition, membership of certain organisations, goods services and housing, health and medical care, social services, social insurance, unemployment insurance and financial aid for studies, national military service and civilian service.

Principal content: Prohibition of direct and indirect discrimination, harassment, sexual harassment, victimisation, inadequate accessibility and instructions to discriminate (civil law part) and rules on active measures concerning employers and education providers (administrative law part).

Official title of the law: Equality Ombudsman Act (2008:568)

Name used in this report: N/A

Abbreviation: No abbreviation

Date of adoption: 5 June 2008

Entry into force: 1 January 2009

Latest amendment: Act (2014:959) changing the Equality Ombudsman Act.

Web link: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008568-om-diskrimineringsombudsmannen_sfs-2008-568

Grounds covered: Sex, transgender identity or expression, ethnicity, religion and other belief, disability, sexual orientation, and age.

Civil/administrative/criminal law: Administrative law

Material scope: The internal and external work of the Equality Ombudsman.

Principal content: A description of the broad mandate of the Equality Ombudsman concerning enforcement of the Discrimination Act as well as promotion of equal rights and opportunities more generally.

Official title of the law: Penal Code (1962:700) 16:8 (agitation against an ethnic group) and 16:9 (unlawful discrimination)

Name used in this report: N/A

Abbreviation: No abbreviation

Date of adoption: 21 December 1962

Entry into force: 1 January 1965

Latest amendment: Act (2018:1744) amending the Penal Code 16:8.

³³ Transgender identity or expression is a direct translation of the term used in the Swedish legislation. It can generally be considered to be equivalent to the term 'gender identity' in English.

Web link: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700

Latest amendment: Act (2018:540) amending the Penal Code 16:9.

Web link: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700

Grounds covered: 16:8 and 16:9 – Race, skin colour, national or ethnic origin, religion, sexual orientation, and transgender identity or expression.

Civil/administrative/criminal law: Criminal law

Material scope: 16:8 Protection against agitation against an ethnic group (or other protected group), 16:9 Protection against unlawful discrimination by business operators, public employees, and others.

Principal content: 16:8 Prohibition of agitation against an ethnic group (or other protected group), 16:9 Concerns the terms and conditions that apply to others in business activities as well as to organisers of public gatherings and events.

Official title of the law: Regulation (2006:260) on anti-discrimination conditions in public contracts

Name used in this report: N/A

Abbreviation: No abbreviation

Date of adoption: 6 April 2006

Entry into force: 6 April 2006

Latest amendment: SFS (Swedish Code of Statutes) 2016:1168, Regulation amending regulation (2006:260) on anti-discrimination conditions in public contracts.

Web link: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2006260-om_sfs-2006-260

Grounds covered: The stated purpose of the regulation is to raise awareness of and compliance with the Discrimination Act (2008:567). Thus, all of the grounds in the Act are covered.

Civil/administrative/criminal law: Administrative law

Material scope: The regulation applies to Sweden's largest government agencies in their larger contracts for building and services.

Principal content: The government agencies covered are to include an anti-discrimination condition in all of their contracts for building and services if the contract:

1. has a duration of eight months or longer
2. has a total value of at least SEK 750 000 (EUR 64 500).

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Sweden consists of four different documents. The primary document in this context is the 1975 Instrument of Government. The most relevant provisions here are Chapter 1, Section 2; Chapter 2, Sections 12-13; and Chapter 12, Section 5. Chapter 2, Section 19 of the Instrument of Government is also important, as it incorporates the European Convention on Human Rights (ECHR) and its discrimination rules.

Chapter 1, Section 2 of the Instrument of Government contains generally formulated goals concerning equal opportunities and non-discrimination.³⁴ All the grounds of the directives are covered as well as others in the form of an open list, but as these are only policy goals, they are not directly applicable and cannot be asserted by individuals.

Chapter 2, Section 12 of the Instrument of Government prohibits laws or other provisions that entail discrimination in relation to those who belong to a minority group due to ethnicity, colour or other similar circumstances, or due to sexual orientation. Section 13 prohibits laws or other provisions that entail discrimination due to sex, while at the same time creating an exception for positive action as well as concerning military service. These provisions apply to all areas covered by the directives. Their material scope is in principle broader than those of the directives. These provisions are directly applicable. In general, these provisions cannot be enforced against private individuals, although they can be enforced against the state. Their importance lies in the fact that laws and other provisions that are discriminatory can be set aside by the courts.

Chapter 12, Section 5 is an instruction to the state to use only objective criteria when hiring employees. The same provision is set out in Section 4 of the Public Employee Act (1974:269). Some state appointments may be appealed to a board, in which case discrimination can be addressed on the basis of these two pieces of legislation. This part of the Instrument of Government has not been applied without Section 4 of the Public Employee Act being applied as well. This rule thus effectively covers only some state employment relations, although it applies to all grounds in the directives.

On questions of direct applicability, the traditional answer in Swedish legal culture has been that the Constitution is generally not directly applicable. For a long time, constitutional arguments were looked at with considerable scepticism. In 1975 a new Instrument of Government was adopted to replace the one from 1809. Judicial review by the courts was extremely limited in that an act of Parliament could only be set aside if it was clearly unconstitutional. However, this is changing. One reason is membership of the EU and the changes it led to in the Constitution (e.g. Chapter 1, Section 10 and Chapter 10, Section 6). Another important change was the introduction in 1994 of Chapter 2, Section 19, stating that courts should set aside parliamentary acts that violate the ECHR. Also important is the fact that there was a constitutional reform in 2010 which removed the requirement that acts of Parliament could be declared unconstitutional only if the act was clearly unconstitutional. Thus far, it is hard to say that the 2010 change has made a major difference.

³⁴ Instrument of Government (1975). Chapter 1, Section 2(5), sentence 2 states: 'The public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the individual'.

2 THE DEFINITION OF DISCRIMINATION

2.1 Definition of the grounds of unlawful discrimination within the directives

a) Racial or ethnic origin

In the 2009 Discrimination Act, the concept of ethnicity is defined as 'national or ethnic origin, skin colour or other similar circumstance' (Chapter 1, Section 5, p. 3). Although the word 'race' was removed from the 2009 act, according to the legislative preparatory works, the definition of ethnicity in the law is nevertheless supposed to cover the term 'race'. Discrimination due to ethnicity and religion were considered fairly interchangeable until the 1999 Act on measures against discrimination in working life on grounds of ethnicity, religion or other belief (*Lag om åtgärder mot etnisk diskriminering i arbetslivet*) (1999:130). At the same time, the delineation between discriminatory acts related to ethnicity as opposed to religion (or a combination of both) is often unclear – both for those who discriminate and for those who are the victims.

Swedish case law provides some clarity concerning the concepts of race or ethnic origin. Case law has established that ethnic origin has to be interpreted broadly, given the intent of the Discrimination Act. This means, for example, that 'refugees' fall within the protection of the law even though they can come from different ethnic groups.³⁵ Discrimination against refugees, foreigners, immigrants or any other mixed group defined as being 'non-Swedish' in the eyes of the discriminator can generally be regarded as ethnic discrimination. Since the concept of discrimination relates to the ground and not to the person, it is not necessary to determine whether the victim of discrimination actually belongs to a specific ethnic group. The 2025 CJEU ruling in the 'Danish ghetto case' also applied a similarly broad definition to the concept of ethnic origin, pointing out among other things that the persons in question could come from different ethnic backgrounds.³⁶

For a number of years Sweden worked towards the elimination of the word 'race' from Swedish law. According to the Government's assessment, neither Directive 2000/43 nor Directive 2000/78 requires the word 'race' to be used. Directive 2000/43 requires effective protection against race discrimination, which, according to the Government, is achieved under the Discrimination Act as currently written. The author of this report agrees that this assessment is correct in that it is likely that the Court of Justice of the European Union (CJEU) would come to the same conclusion. The directives require the establishment of certain minimum standards, but implementation differs according to national traditions and allows for some flexibility. The directives do not necessarily require specific words to be used in achieving those goals.

However, in the author's opinion, there are certain policy and implementation risks involved, even if removing the word 'race' would not necessarily violate the directives. Due to a historical denial of race discrimination as a problem in Sweden, policymakers were slow to adopt modern legislation in this regard. Symbolic laws – at best – were adopted to change attitudes rather than behaviour. The removal of the word 'race' may in turn feed into the more general denial of racism as a Swedish problem and thus confuse judges, lawyers and others in implementing the Discrimination Act. As far as terminology related to discrimination is concerned, policymakers tend to be sensitive to the interests of organisations representing discriminated groups. This relates to empowerment. However, there seems to have been little interest in the opinions of those affected by the term 'race', particularly Swedes with an African heritage. Furthermore, since policymakers seemed to believe that the removal of the word 'race' was relevant to effective implementation of the Discrimination Act, this may in turn be a hindrance to the development of actual improvements in the law.

³⁵ Göta Appeal Court, T 1666-09, *Equality Ombudsman v. Skaret*, 25.02.2010.

³⁶ CJEU, C-417/23, *Slagelse Almennyttige Boligselskab*, 18 December 2025, EU:C:2025:1017.

b) Religion or belief

There is no definition of religion in the Discrimination Act itself. However, the legislative preparatory works regarding the current act and the older acts provide some guidance. This ground covers beliefs that emanate from or are connected to religious beliefs. Thus the law's reference to religion or other belief (*religion eller annan trosuppfattning*) indicates a connection to some sort of other 'religious' belief. Atheism and agnosticism are related to the existence or non-existence of a God and are thus counted as beliefs sufficiently connected to religion to be protected by the Discrimination Act. On the other hand, political and ethical beliefs are excluded.³⁷

There is no case law where it has been necessary to define religion or belief more deeply. For example, in the 2018 handshake case,³⁸ the Labour Court accepted the refusal to shake hands with people of the opposite sex as a part of the complainant's religion without a detailed analysis of the religion in question, referring to the case law of the European Court of Human Rights.³⁹ This indicates that a deeper analysis of religious practices is not needed. However, that does not mean that such practices must necessarily be accepted by others, since the practice must be weighed against the interests of others such as employers.

It is also possible that such cases raise the issue of multiple discrimination, for example, discrimination due to religion, ethnicity and/or sex. Although the author of this report does not know of any cases where the issues have been clearly defined, the Government bill for the Discrimination Act points out the complementary and overlapping nature of the grounds of ethnicity and religion:

'What can be perceived as a cultural or traditional behaviour or expression can generally be assumed to fall under the grounds of ethnic affiliation discrimination if it is not considered to be covered by the ground of religion or other belief. Together, the two grounds of discrimination cover a broad area, and it can be assumed that in practice it is of subordinate importance which of the discrimination grounds is referred to in e.g. a negotiation or before a court.'⁴⁰

Therefore, a court would not necessarily have to delve particularly deeply into whether the wearing of a headscarf, niqab or burqa is rooted in religion or ethnicity.

There are situations where the question of definition may be important. If the members of a small group, such as the Jehovah's Witnesses, hold a moral conviction (for example, that gambling is a sin), then it is connected to religion, even if most Christians believe otherwise. When protection for a practice is upheld only by a minority within a faith, the delimitation of religious belief as opposed to individual philosophical and moral choices can be problematic. Nevertheless, it seems that courts will typically accept the claimant's statement that their religious belief is important to them in adopting the practice in question.⁴¹

c) Disability

According to Chapter 1, Section 5(4), disability means:

³⁷ Government bill 2007/08:95, pp.120-122.

³⁸ Labour Court 2018 No. 51, *Equality Ombudsman v Almega/Semantix Interpreters*, 15.08.2018.

³⁹ The Labour Court refers to e.g. *İzzettin Doğan and Others v. Turkey* [GC], No. 62649/10, 2016, paragraph 68; *Eweida and Others v. the United Kingdom*, Nos. 48420/10, 59842/10, 51671/10 and 36516/10, 2013, paragraphs 82 and 83; and *S.A.S. v. France* [GC], No. 43835/11, 2014, paragraph 108.

⁴⁰ Government bill 2007/08:95, p. 122 (author's translation).

⁴¹ See e.g. Svea Court of Appeal, case T 777-16, 22.03.2017, concerning religious views on gambling, and Labour Court 2018 No. 51, *Equality Ombudsman v Almega/Semantix Interpreters*, 15.08.2018, concerning a refusal to shake hands with a person of the opposite sex.

'Long-lasting physical, mental or intellectual limitation of a person's functional capacity that as a consequence of an injury or illness that existed at birth, has arisen since then or can be expected to arise.'⁴²

The definition is thus stated in general terms, one requirement being that the limitation in functional capacity must be long-lasting. For example, a person with a broken arm will not be covered by the law, since the disability is of a temporary nature. There is no threshold of 'severity', nor is there any reference to the ability to engage in 'normal life activities' or 'professional life', for that matter. The latter forms part of the assessment as regards a 'similar situation'. However, until there is clear case law on the point, it will be difficult to define the issues more closely.

The law, as stated in the legislative preparatory works, covers illnesses that can be expected to limit functional capacity in the future, including HIV, cancer and multiple sclerosis (MS).⁴³ It is notable that Swedish law does not require an impairment that actually hinders the participation of the person concerned in professional life. It is enough that an employer uses a presumption about the perceived disability as a reason for unfavourable treatment. For example, an MS diagnosis can fall within the definition of disability even when the person is not suffering any symptoms, if the diagnosis had a connection with the unfavourable treatment.⁴⁴

No Swedish claimant has, to the author's knowledge, lost a case because their disability issues/medical problems were not regarded as a disability. The focus on the perception of the discriminator makes it immaterial whether or not the disability is as severe as the discriminator believes. For further details see Section 2.3.a below.

The area of CJEU case law dealing with the interaction between a person's limitation and barriers in the workplace is not part of the definition above. In Sweden, in practice, barriers in the workplace become important when the employee requests reasonable accommodation measures to be taken by the employer. In the opinion of the author of this report, the threshold for proving a disability is slightly lower in Sweden when compared with the case law of the CJEU, since no connection needs to be shown to barriers in private life or barriers in professional life. In Swedish case law, the question of whether the claimant actually has a disability is less important than the focus on the perceptions and actions of the discriminator. In Sweden, the social or human rights model applies in that the focus is on disability being caused by the way that society is organised, rather than by a person's limitations. The focus is clearly not on the medical condition of the claimant.

The Swedish definition, although somewhat different, is at least equally as broad as the definition in the decision by the CJEU in joined cases *Ring and Skouboe Werge* (C-335/11 and C-337/11).⁴⁵ The claimant is normally not worse off, because in practice the Swedish definition focuses on the discriminator's perception of functional limitations.⁴⁶ In fact, as clarified in the case law, a diagnosis is not a prerequisite to the duty to provide special measures under the Schools Act. Nor is a diagnosis needed in order to assert discrimination due to a disability under the Discrimination Act.⁴⁷

⁴² The Swedish Government's translation of the law into English translates the term '*varaktig*' as permanent. However, that can lead to some confusion, as other translations of *varaktig* might be 'enduring' or 'lasting'. In this context, the author of this report considers 'long-lasting' to be a more accurate translation than 'permanent'.

⁴³ Government bill 2007/08:95, p. 123.

⁴⁴ See Labour Court 2005 No. 32, *Sveriges Civilingenjörskörbundet v T. & N. Management*, 30.03.2005. Concerning a case involving perceptions related to diabetes see Labour Court 2003 No. 47, *Svenska Metallindustriarbetareförbundet v Skandinaviska Raffinaderi AB Scanraff*, 04.06.2003.

⁴⁵ CJEU, Joined cases C-335/11 and C-337/11, *Ring and Skouboe Werge*, 11 April 2013, EU:C:2013:222, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CJ0335>.

⁴⁶ Nevertheless, see Section 2.3.a below, which indicates that a person can find themselves in a situation where they are not protected from disability discrimination in a limited number of cases due to a mistaken perception by the discriminator.

⁴⁷ See Section 12.2 *Country report, Non-discrimination, Sweden 2025*, *S v Malmö kommun*.

d) Age

Under Chapter 1, Section 5(6) of the Discrimination Act, age is defined as 'length of life to date'. This definition includes all ages and makes it clear that the young as well as the old are protected. There is no case law on the definition itself. All case law deals either with justifications provided by the discriminator or with whether two individuals are in a similar situation. In the author's opinion, Sweden is slowly getting to grips with the issue of age discrimination. This is a complex process, since age discrimination has long been such an accepted part of society in terms of laws, collective agreements and patterns of behaviour. In turn, this is the reason for the broader exceptions allowed by Swedish and EU law. However, one clear change is that age discrimination is no longer a generally accepted defence to assertions of sex or ethnic discrimination. Prior to the adoption of the 2009 Discrimination Act, it was difficult to overcome an employer's assertion that an applicant was rejected because of their age (which was legal) and thus not their sex or ethnicity (which was illegal).

e) Sexual orientation

Under Chapter 1, Section 5(5) of the Discrimination Act, sexual orientation is defined as 'homosexual, bisexual or heterosexual orientation'. In the legislative preparatory works, the Government indicates that the intention is to create a legal protection that covers the whole population, as all individuals in principle belong to one of these three categories.⁴⁸

2.2 Multiple and intersectional discrimination

In Sweden, multiple discrimination is not prohibited by law.

In Sweden, multiple discrimination is not taken into account when deciding on discrimination cases (e.g., when imposing a sanction).

In Sweden, intersectional discrimination is not prohibited by law.

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Due to the need to transpose Council Directive 2023/970/EU of 10 May 2023, which aims to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (the Pay Transparency Directive), the Government appointed an inquiry. The Government inquiry proposed certain changes to Swedish law to ensure that intersectionality in relation to compensation for pay discrimination is covered, as well as specifically addressing the issue in regard to the Equality Ombudsman's mandate. Concerning the expansion of the statutory limitation period for pay compensation to three years, the inquiry proposed that the limit should apply to all grounds of discrimination related to pay compensation, while retaining the broad array of statutory limitations that apply in the field of employment law. The inquiry, considering EU case law,⁴⁹ proposed a new provision in the Discrimination Act with the aim of clarifying that it is possible to bring a declaratory claim in cases of discrimination. This provision applies to all forms of discrimination. It should be noted that the inquiry's mandate was essentially to propose the minimum required by the Pay Transparency Directive. In the author's opinion, the inquiry should nevertheless have proposed much more to raise the protection level concerning all of the grounds in the

⁴⁸ Certain parts of the LGBTIQ community asserted that this definition provided insufficient protection, which in turn led to pressure to include the grounds transgender identity and expression in the inquiry and government bill leading to the (2008:567) that went into effect in 2009.

⁴⁹ CJEU, C-54/07, *Centrum v. Firma Feryn*, 10 July 2008, EU:C:2008:397.

Discrimination Act, in order to counteract the hierarchy between the grounds as well improving access to justice.⁵⁰

Even if it is not specified in the legislation, many cases already involve multiple discrimination in a broad sense, even if one ground is generally the primary focus.

There are two basic types of multiple discrimination/intersectionality cases. One type is exemplified by the landmark Labour Court case 2010 No. 91.⁵¹ The employer in this case was held to be liable for both age and sex discrimination. The discrimination was based on the failure to offer a 62-year-old woman a job interview (sex discrimination) and the failure to hire her (age discrimination). Two younger, less qualified women were given the jobs. The Labour Court stated that the combination of two types of discrimination committed by the same failure to act was not a reason to increase the level of the discrimination award. It was treated as a single infringement in relation to compensation. At the same time, in the author's opinion, it is interesting that the compensation awarded was relatively large, based on the idea that the woman should have been given the job – although this is not so easy to determine, as she was never interviewed for the position. Even though the issue was not discussed by the court, the final result seems to have required an intersectionality analysis.

The Equality Ombudsman receives several hundred complaints per year that potentially cover more than one ground. Most of them are of the type where the complaint concerning discriminatory treatment is asserted to involve, or can be seen as referring to, two or more grounds of discrimination.

The other type of multiple discrimination can be exemplified by Labour Court case 2011 No. 13.⁵² This landmark case regarded two different alleged instances of harassment, one involving ethnicity and the other involving sex. The rules on the burden of proof were applied to each of these two offences separately, and one of the two claimants was successful on both claims. The compensation is higher when there are separate offences concerning the same individual, but the fact that one offence concerned ethnicity, and the other concerned sex does not seem to have affected the combined level of damages awarded by the Labour Court. The claimant would probably have received the same amount even if both offences had related to the same discrimination ground.

There has been no case where one action/omission has been held to be more severe because it has violated a person both as a woman and as an immigrant or any other combination of grounds.

There is also no case law in which the issue has been directly addressed by the courts. Nevertheless, current case law is being used, by academics among others, as the basis for analysing the role of multiple discrimination and intersectionality.⁵³ In the author's opinion, these analyses may lead to improved arguments in the courts in this field, which in turn could lead to pressure to establish case law or relevant legislation. This seems to have been part of the pattern developed in the US and Canada, where the issue of intersectionality was initially brought into focus through critical analyses of case law by

⁵⁰ White Paper SOU 2024:40 *Genomförande av löntransparensdirektivet* (Implementation of the Pay Transparency Directive), see e.g. English summary 23-29 and 49, 169, 199, 214 and 247.

⁵¹ Labour Court 2010 No. 91, *Equality Ombudsman v State Employment Board*, 15.12.2010.

⁵² Labour Court 2011 No. 13, *Equality Ombudsman v Helsingborgs stad*, 16.02.2011.

⁵³ See Schömer, E. (2016) 'Sweden, a society of covert racism: Equal from the outside: Everyday racism and ethnic discrimination in Swedish society', *Oñati Socio-legal Series* [online], 6 (3), pp. 837-856, available at <http://ssrn.com/abstract=2834059>. Also see Votinius, J. J. (2016) 'Intersectionality as a tool for analysing age and gender in labour law' in: Manfredi S., Vickers L. (eds) *Challenges of active ageing*, Palgrave Macmillan, London, pp. 95-115; Pylkkänen, A., Wennberg L. (2012) 'Intersektionalitet i rätten: en metod för att synliggöra det osynliggjorda' (Intersectionality in the law: a method to make visible the invisible), *Ratfaerd*, no. 3/138, pp. 12-28; and Sépulchre M. (2023), 'Intersectional Praxis and Disability in Higher Education', *Social Inclusion*, Vol. 11/4, pp. 362-372.

academics. The legislative amendments resulting from the transposition of the Pay Transparency Directive will presumably provide additional support for a broader understanding of intersectionality.

2.3 Assumed and associated discrimination

a) Discrimination by assumption

In Sweden, discrimination based on a perception or an assumption about a person's characteristics is prohibited by national law.

The definition of (direct) discrimination is related to the ground and not to the person. The wording of the prohibition in Chapter 1, Section 4(1) of the Discrimination Act states that it applies 'if this disadvantaging is associated with' (*har samband med*) 'sex, transgender identity or expression, ethnicity, religion, disability, sexual orientation and age'. Any discrimination that relates to the protected grounds is prohibited. A mistaken assumption regarding a person's religion is clearly associated with the religion ground.

The issue of a mistaken assumption is pointed out in the preparatory legislative materials as an action that has a connection to the ground and is sufficient to constitute discrimination on that ground. If a person is discriminated against because of the mistaken assumption that they are homosexual, even if it is not true, it is still sexual orientation discrimination.⁵⁴

The principles on mistaken assumption can cut both ways in Sweden. A mistaken assumption regarding a behaviour being caused by alcohol intoxication was a valid defence for a restaurant that refused entry to a person with a disability. The personnel had concluded that the individual was drunk, when in fact the relevant behaviour (walking unevenly/slurred speech) was caused by a disability. The appeal court quoted the legislative preparatory works on mistaken assumptions and did its best to apply the same principle both ways. The court basically concluded that there had to be a recognition by the discriminator that there was a disability in order to conclude that disability discrimination had occurred. The focus in Sweden is thus on what the discriminator knows, believes or mistakenly assumes about the claimant's abilities, not the abilities themselves.⁵⁵ At the same time, a mistaken assumption concerning a person's disability led to a finding of discrimination in a case where a child was taken into custody due to assumptions relating to disability concerning the parents. Here, the key was the reliance by the municipality on norms concerning the lack of caretaking ability by persons with cognitive disabilities. There was a failure to examine the mother and the father as individuals.⁵⁶

b) Discrimination by association

In Sweden, discrimination based on association with persons with particular characteristics is prohibited in national law.

The legislative preparatory materials provide an example of discrimination by association. If a landlord refuses to rent out an apartment to a person because that person's wife or husband has another ethnicity, that will constitute ethnic discrimination against that person.⁵⁷

⁵⁴ Government bill 2007/08:95, p. 489.

⁵⁵ Svea Court of Appeal, case T 7752-08, *Equality Ombudsman v Sturehof*, 02.06.2009.

⁵⁶ Svea Court of Appeal, case T 5096, *Equality Ombudsman v Sigtuna Municipality*, 11.04.2014.

⁵⁷ Government bill 2007/08:95, p. 489.

As the definition of (direct) discrimination is related to the ground and not to the person, the prohibition applies.⁵⁸ Treating an ethnic Swede unfavourably because they have a lot of Muslim friends may be associated with the ground of religion. This applies to disability as well. If a person is treated less favourably because they are the primary carer of a child with a disability, this treatment would be regarded as associated with the disability ground. This was confirmed in the landmark case *Equality Ombudsman v. If insurance*⁵⁹ where a mother was refused child insurance because the child's hearing impairment was severe enough to entitle the mother to a care benefit for her. This was discrimination not only against the child but the mother as well. Both received a discrimination compensation award. In the author's opinion, Swedish law is in line with the CJEU reasoning established in *Coleman*, *CHEZ Razpredelenie Bulgaria* and *Bervidi*.⁶⁰

2.4 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Sweden, direct discrimination is prohibited through the Discrimination Act, Chapter 1 Section 4(1), which reads as follows:

'Direct discrimination: that someone is disadvantaged by being treated less favourably than someone else is treated, has been treated or would have been treated in a comparable situation, if this disadvantaging is associated with sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.'

b) Justification for direct discrimination

The ban on direct discrimination is limited by the possibility of justification in terms of the specific exceptions stipulated by the directives. These are discussed in Section 4 of this report.

2.5 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Sweden, indirect discrimination is prohibited under national law. It is defined.

The definition of indirect discrimination in the Discrimination Act in Chapter 1, Section 4(2) reads as follows:

'Indirect discrimination: whereby someone is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put people of a certain sex, a certain transgender identity or expression, a certain ethnicity, a certain religion or other belief, a certain disability, a certain sexual orientation or a certain age at a particular disadvantage, unless the provision, criterion or procedure has a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.'

Concerning case law there are two important cases. In Labour Court case 2018 No. 42,⁶¹ a landmark case, a woman with a disability was excluded from being eligible to work for a

⁵⁸ See Discrimination Act (2008:567) Chapter 1, Section 4(1).

⁵⁹ Svea Court of Appeal, T 1912-13, *Equality Ombudsman v. If insurance*, 08.10.2013.

⁶⁰ CJEU, C-303/06, *Coleman v Law*, 17 July 2008, EU:C:2008:415; C-83/14, *CHEZ Razpredelenie Bulgaria*, 16 July 2015, EU:C:2015:480; and C-38/24 *Bervidi*, 11 September 2025, EU:C:2025:690.

⁶¹ Labour Court 2018 No. 42, *Equality Ombudsman v. Bemanningsföretagen and Manpower*, 20.06.2018, at: <https://www.do.se/download/18.277ff225178022473141eda/1618941522056/dom-arbetsdomstolen-ANM-2016-1211.pdf>.

temporary employment agency due to her registration as being 50 % disabled, which meant that she did not fit into the framework of the collective agreement with the union. Even though the unfavourable treatment was based on a collective agreement, the court determined that the employers were unable to show that the means used were appropriate and necessary. Thus, the court ruled that this constituted indirect discrimination. This case involved not only addressing individual discrimination but was also a means of addressing the structural discrimination built into the collective agreement.

In another landmark Labour Court case (2018 No. 51)⁶² a woman had applied for a job as an interpreter. The court determined that her refusal to shake hands was a manifestation of the claimant's religion, and that the ECHR provided some protection for such manifestations. The court went on to say that, under the circumstances of the case, where personal interactions were not required e.g. concerning customers and where the prospective employee refrained from shaking hands with both men and women, the rejection of the claimant's job application was not appropriate and necessary for achieving the purpose of the company's policy. Therefore, this was a case of indirect discrimination.

b) Justification test for indirect discrimination

Guidance as to justifications is given in the legislative preparatory works to both the Discrimination Act and the previous acts.⁶³ For instance, as regards the 1999 Act prohibiting discrimination in working life due to sexual orientation, the example given of presumed unlawful indirect discrimination is that of a childcare centre requiring prospective employees to have experience of raising biological children of their own. As regards disability, according to the former Disability Ombudsman, for example, requiring a driver's licence can be a form of indirect discrimination. A licence is a necessary requirement for a job as a taxi driver, but does not have to be essential, for example, for a job as a journalist. The Government bill for the Discrimination Act uses language skills as an example when discussing the idea of a legitimate purpose and under what circumstances a criterion can be appropriate and necessary in order to achieve such a purpose.⁶⁴ The basic principle behind these examples is that the courts can accept any aim as legitimate as long as it is convinced that it is of genuine importance.

Examining the issue of whether the 'means that are used are appropriate and necessary to achieve that purpose' is more problematic in some cases.⁶⁵ As to indirect discrimination and inadequate accessibility as discrimination, several cases involved the removal of assistive devices from pupils with dyslexia when they took their national exams in the third and sixth grades. The National Agency for Education provided guidance for the tests, including the determination that the only accommodations allowed were quiet rooms and more time. But it was local governments, through their schools, that carried out the tests.

⁶² Labour Court 2018 No. 51, *Equality Ombudsman v. Almega and Semantix*, 15.08.2018 at: <https://www.do.se/download/18.277ff225178022473141ed4/1618941521726/dom-arbetsdomstol-ANM-2017-638.pdf>.

⁶³ The current Discrimination Act (2008:567) was largely the result of a consolidation of seven earlier civil laws against discrimination. Four were essentially single-ground laws related to working life. Three were multi-ground laws related to higher education, pupils and other areas of social life such as goods and services. Unless the laws have been specifically changed in 2008 or later, the earlier preparatory works are still applicable. The previous laws are the Equal Opportunities Act (1991:433) (sex discrimination in employment) (*Jämställdhetslagen*); the Act on measures against discrimination in working life on grounds of ethnicity, religion or other belief (1999:130) (*lagen om åtgärder mot etnisk diskriminering i arbetslivet*); the Act prohibiting discrimination in working life due to disability (1999:132) (*lagen om förbud mot diskriminering i arbetslivet av personer med funktionshinder*); the Act prohibiting discrimination in working life due to sexual orientation (1999:133) (*lagen om förbud mot diskriminering i arbetslivet på grund av sexuell läggning*); the Act on equal treatment of students at universities (2001:1286) (*lagen om likabehandling av studenter i högskolan*); the Act prohibiting discrimination (outside of working life and education) (2003:307) (*lagen om förbud mot diskriminering*); and the Act prohibiting discrimination against pupils (2006:67) (*lag om förbud mot diskriminering och annan kränkande behandling av barn och elever*).

⁶⁴ Government bill 2007/08:95, p. 491.

⁶⁵ See the dyslexia cases mentioned below in Section 2.8.e. Also see the cases in Section 12.2, *Country report, Non-discrimination, Sweden 2021* and Section 10 *Country report, Non-discrimination, Sweden 2024*.

The courts all agreed that pupils were put at a disadvantage, which shifted the burden of proof to the schools. In response, the schools pointed out that they were following the guidelines of the National Agency.

The courts' reasoning was that there was a legitimate purpose in the tests since the Agency said it was so. Even if the schools' basic argument was that they were simply following the guidelines in refusing the provision of assistive devices, the courts accepted that what was stated in the guidelines was true. The guidelines stated that if the devices were allowed, the tests would not test what they were intended to test, i.e. decoding in terms of the technical aspect of transforming letters into their sound equivalents. Even though the burden of proof had shifted, neither the schools that were following the guidelines, nor the Agency that created the guidelines were required to explain how and why the guidelines had a legitimate purpose.

This acceptance of a legitimate purpose also meant that the courts did not examine the proportionality issue, the issue of appropriate and necessary means. Once the legitimate purpose was accepted, there was also a corresponding acceptance that the means were appropriate and necessary since the instructions stated that otherwise the test would not be testing reading comprehension. There was at least evidence to indicate that removal of the assistive devices that the pupils used daily even for exams at school was not an appropriate and necessary means. Evidence beyond the national guidelines was not produced by the schools.

At the same time, there was evidence from experts and others that explained that pupils with dyslexia read with their ears, much like blind people read with their fingers, and others read with their eyes. There was evidence presented questioning the legitimate purpose of requiring the pupils to take the exams without their normal assistive devices, as well as asserting that the means used were not appropriate and necessary. Concerning the contrary evidence, the Svea Appeal Court stated that the fact that the National Agency for Special Needs Education and Schools, the Swedish Dyslexia Association and the Swedish Dyslexia Trust have a different view of what is meant by the term 'reading' and 'reading comprehension' is irrelevant in this regard.⁶⁶

In the author's opinion, the primary problem in the dyslexia cases is that those who are unfamiliar with the field find the issues hard to understand at first glance. In addition, questioning the veracity of a government agency that has had responsibility for these tests for a long time is also problematic. This would also mean that thousands of pupils have been treated in a discriminatory manner over the years. It can be pointed out that in the dyslexia cases, even the National Agency for Special Needs Education and Schools questioned the manner of testing. There is a possibility that it is easier for the courts to deal with the 'appropriate and necessary' issues more critically when a private party is involved. See, for example, the cases discussed in Section 2.5.a above.

In 2023 there was another problematic case that involved an employer which asserted that its clothing policy was needed, among other things, to provide a safe work environment. In practice this meant a prohibition of Muslim headscarves. After determining that the policy had a legitimate purpose based solely on the employer's assertions, the Labour Court essentially assumed that the means were appropriate and necessary.⁶⁷

2.5.1 Statistical evidence

a) Legal framework

In Sweden, there is legislation regulating the collection of personal data.

⁶⁶ Svea Appeal Court, FT 8377-19, *SL v Huddinge Municipality*, 13.03.2020. For a summary of the case, see Section 12.2, *Country report, Non-discrimination, Sweden 2021*.

⁶⁷ See *SS v Rapid Säkerhet* in Section 12.2 *Country report, Non-discrimination, Sweden 2024*.

As an EU member state, the General Data Protection Regulation (GDPR) has been applicable as of 26 May 2018, replacing Sweden's Personal Information Act (1998:204) (*Personuppgiftslagen*), which had contained rules on the right to register personal information in accordance with the previous EU directive. Article 9 of the GDPR dealing with personal data processing and exceptions is of particular relevance to discrimination issues. The prohibition in Article 9(1) relates to special categories of personal data, such as 'data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation'. Article 9 also contains a variety of exceptions that should make it possible to nevertheless collect useful data without violating the regulation. However, Sweden applied the previous rules based on an EU Directive in an extremely restrictive manner, so it may take some time to determine the boundaries of the GDPR.⁶⁸

In Sweden, statistical evidence may be admitted under national law, concerning any ground, in order to establish indirect discrimination. Sweden's general procedural rules allow the free presentation of any evidence. The primary restriction is that it must be relevant.

There is no special legislation that is intended to provide statistical data for discrimination cases.

Since indirect discrimination often requires a comparison of group impact, statistical evidence is permitted. The use of statistical evidence is not regulated in any special way. As Swedish procedural rules are based on the principle of freedom of evidence, such evidence – like all other evidence – has to be assessed according to the circumstances. In Sweden, statistical evidence is permitted by national law (given the freedom of evidence principle) and has been used in order to establish indirect sex discrimination.⁶⁹

As a general rule, information is not maintained concerning ethnicity, religion, sexual orientation or disability. On the other hand, the sex and the age of individuals are generally known.

For general statistics purposes the tax authorities maintain the population register (*folkbokföringsregistret*). This register contains information, *inter alia*, on the place of birth and nationality of a person, as well as the place of birth of their parents and the date of their taking up residence in Sweden. Religion and belief are not registered as such, but membership in religious organisations may be registered with the tax authorities so that they can provide assistance in collecting church membership fees.⁷⁰ No information on disability or sexual orientation is included in the population register.

⁶⁸ There is only one lower administrative case examining the issue of a company trying to develop more detailed statistics that could help counteract patterns of discrimination and promote equality by the company (Stockholm Administrative Court, case 13371-17, *Swedish Data Protection Authority v Company X*, 25.06.2017). The court determined, given the previous Swedish law and GDPR, that the company's data collection was based on insufficient voluntariness and insufficient proportionality. The court also referred to the DO's officially expressed negative opinions on individual mapping statistics.

⁶⁹ For example, statistics formed an important part of the Labour Court case 2005 No. 87. The court determined that a car manufacturer had violated the prohibition against indirect discrimination by imposing certain height requirements for the job, which meant that, statistically, a large number of women would be automatically ineligible for the job.

⁷⁰ The Swedish State provides support to some religious organisations by having the tax authorities assist them by collecting 'church fees'. Today, this is not a church tax as it was prior to the separation of the Swedish state and the Swedish church, but an income-related membership fee. If a religious organisation wants this assistance, its members must be registered with the tax authority. Currently, there are 18 religious organisations that receive this assistance, of which the largest is the former Swedish state church. The list of other religious organisations can be seen at: <https://www.skatteverket.se/privat/skatter/arbeteochinkomst/skattetabeller/avgifttillandratrossamfund.4.18e1b10334ebe8bc80005629.html>.

The general inquiry into living conditions undertaken by Sweden Statistics includes health information on impaired vision, hearing or mobility and severe mental or psychiatric problems. This information is relevant to the discrimination ground of disability. Disability is linked to a person's health and is therefore considered to be sensitive information.

In November 2012 the Equality Ombudsman, at the request of the Government, reported its observations to the Government concerning the role of statistics in relation to the work against discrimination.⁷¹ The Ombudsman's report contained various important principles for future work. One was that nobody should be forced to provide sensitive information regarding themselves. Nobody should thus be forced to reveal their sexual orientation, religion etc. and if they do choose to reveal it, anonymity must be granted. A second important principle is that of self-categorisation. A person must be allowed to belong to the ethnicity, religion, sexual orientation etc. that they feel part of. There cannot be a state classification. A third principle is that the views of groups who distrust society⁷² must be taken into account in such a manner as to build up trust in the research. One approach can be to make sure the research is done by people such groups can trust.

b) Practice

In Sweden, in practice, statistical evidence has been used in some cases and can be used in order to establish indirect discrimination. This assumes that statistical evidence is available and relevant.

However, to the knowledge of the author, there is no case law other than in relation to sex discrimination using statistics concerning groups that are discriminated against. As regards sex discrimination, statistics have first and foremost been used in cases concerning equal pay, but also employment to some extent. The most well-known case involved height requirements imposed by a car manufacturer.⁷³ Even in these cases, there was no real legal dispute regarding the use of statistics as such. Statistical data related to other grounds are generally not available, so it would be hard to say whether there is a reluctance to use them. While the views of the courts on statistics can be somewhat unclear, there seems to be some basic expectation concerning the production of statistics or at least some statistical analysis in certain cases.⁷⁴ Nevertheless, as the courts have issued judgments finding indirect discrimination on other grounds, the lack of precise statistics was apparently not a hindrance in those cases.

⁷¹ Equality Ombudsman (2012), *Statistikens roll i arbetet mot diskriminering – En fråga om strategi och trovärdighet* (The role of statistics in the work against discrimination – A question of strategy and credibility) available at: <https://www.do.se/rattsfall-beslut-lagar-stodmaterial/publikationer/2012/statistikens-roll-i-arbetet-mot-diskriminering>.

⁷² Representatives of some groups, including the Roma, are worried that research may be used to stigmatise the group further. For historical reasons, even in the recent past, these groups have been highly suspicious of the uses that such statistics can or will be put to. There are big differences regarding the level of trust between the groups and the authorities, which may be relevant. See Equality Ombudsman (2012), *Statistikens roll i arbetet mot diskriminering* (The role of statistics in the work against discrimination), p. 93ff. Trust is at the centre of the Equality Ombudsman's preliminary report.

⁷³ Statistics formed an important part of the Labour Court case 2005 No. 87. The court determined that a car manufacturer had violated the prohibition against indirect discrimination by imposing certain height requirements for the job, which meant that, statistically, a large number of women would be automatically ineligible for the job.

⁷⁴ See, for example, Stockholm District Court, judgment 28.01.2013, *Equality Ombudsman v If Insurances*. The company refused to insure children if the parent received a form of childcare benefit reserved for children with disabilities or long-term sick children. This could not be direct discrimination, as the group of children consisted of sick children but not necessarily children with disabilities. It was not indirect discrimination either, as the Ombudsman had not shown what proportion of children receiving the benefit were disabled; simply asserting that children with disabilities were typically disadvantaged by the rule that was applied was not enough. It is important to note that the appeal court held that there was direct discrimination based on the idea that it was sufficient to show that there was a direct connection (*samband med*) to two different groups of children – those with disabilities and those with illnesses. This was enough to constitute direct discrimination, since an individual analysis had not been made concerning access to insurance. See Svea Appeal Court, case T 1912-13, 08.10.2013, available at: <http://www.do.se/lag-och-ratt/diskrimineringsarenen/if-skadeforsakring-ab/>.

2.6 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Sweden, harassment is prohibited by national law. It is defined.

In Sweden, harassment explicitly constitutes a form of discrimination. It is one of the six forms of discrimination enumerated in the Discrimination Act. Chapter 1, Section 4(4) reads as follows:

*'Harassment':*⁷⁵ conduct that violates a person's dignity and that is associated with one of the grounds of discrimination, a certain sex, transgender identity or expression, a certain ethnicity, a certain religion or other belief, a certain disability, a certain sexual orientation or a certain age.'

When the 2009 act was adopted, there was some discussion in the legislative preparatory works on whether the definition fulfilled the requirements of the EU directives. In particular, there was a question of whether the words 'with the purpose or effect of' (*som syftar till eller leder till*) should be inserted into the phrase 'conduct violating a person's dignity'. The Government concluded that a person's intent was not the key factor, given the wording of the directives that even unintended consequences could be discriminatory. In other words, it is the effects of the conduct that are decisive. It was also concluded that where conduct was intended to violate someone's dignity, but which has failed to do so, it can be said that no one has been disadvantaged. In that situation, there is no one who can make a claim for discrimination, nor is there anyone who can ask for redress or compensation.⁷⁶ Although it is possible to question Sweden's compliance given the wording of the directive, in the expert's opinion there is some logic to the Swedish position. It is worth noting that Article 2(3) of the Racial Equality Directive states, 'the concept of harassment may be defined in accordance with the national laws and practice of the Member States.'

The legislative materials state the following points in relation to the concept of harassment. The behaviour at issue must be unwelcome and it is the victim's assessment that determines whether the behaviour or actions are unwelcome. At the same time, the harasser must have had an insight that their behaviour was offensive in a way that could constitute discrimination. In order to be successful, the person harassed, in practice, should thus make it clear to the harasser that the behaviour is perceived to be offensive. Finally, the materials also state that certain behaviours are so offensive that this should be clear to the harasser, meaning that no particular indication from the person who has been harassed is needed. There must also be a connection to one of the discrimination grounds.⁷⁷

In any case, the material scope is wide. In general, all six forms of discrimination apply in all areas. There is no area where harassment is exempted.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Sweden the employee is almost never liable.⁷⁸

⁷⁵ Sexual harassment, an additional form of harassment, is found in Chapter 1, Section 4(5). Sexual harassment is defined as conduct of a sexual nature that violates the dignity of another person. This conduct can arise between individuals irrespective of their sex. There is at least one same-sex harassment case in the courts that the author knows of. For reasons of anonymity, the author refers here only to the Equality Ombudsman's case number ANM 2015/2431.

⁷⁶ Government bill 2007/08:95, p. 106.

⁷⁷ Government bill 2007/08:95, p. 493. The Svea Appeal Court case, *SES v Swedish Social Insurance Agency*, 29.11.2019, illustrates some of the points in the legislative materials. See Section 12.2, *Country Report, Non-discrimination, Sweden 2020*.

⁷⁸ Harassment might under some circumstances fall under a section in Chapter 5 of the Penal Code

Where harassment is perpetrated by an employee, in Sweden the employer is liable if the perpetrator was in a managerial position or if the employer was informed about the harassment between employees and failed to investigate and prevent it.

Where harassment is perpetrated by third parties, an employer or provider of education, social protection (including healthcare), social advantages, goods or services cannot be held liable for third-party harassment.

In working life, the prohibition applies to the employer in the employment context. The employer may be a natural or a legal person. Under Chapter 2, Section 1 of the Discrimination Act, a person who has the right to make decisions on the employer's behalf in matters concerning the employee shall be equated with the employer. An employer can thus only be made responsible for employees who are given such authority to represent the employer in relation to other employees, i.e. management at different levels. A fellow worker lacks such authorisation concerning their fellow workers; thus, an individual employee cannot sue another employee for harassment under the Discrimination Act.

Nevertheless, there is some protection concerning harassment between employees. According to Chapter 2, Section 3 of the Discrimination Act:

'If an employer becomes aware that an employee considers that he or she has been subjected in connection with work to harassment or sexual harassment by someone performing work or carrying out a traineeship at the employer's establishment, the employer is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future.'

This obligation also applies with respect to a person carrying out a traineeship or performing work as temporary or borrowed labour.

An employer can thus become liable for the damage that results due to the employer's failure to investigate and implement reasonable measures to prevent harassment by another employee. This indicates that this law does not apply to harassment by clients. This was also one of the reasons for appointing a government inquiry tasked with examining if an employer's liability could be expanded to cover harassment by third parties.⁷⁹ The inquiry determined that there were difficulties in making an employer directly responsible for third parties. However, the inquiry recommended a clarification of the provisions in the Discrimination Act concerning active measures so that they would be used to counteract and prevent harassment by third parties. The inquiry has not yet led to legislation.

2.7 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Sweden, instructions to discriminate are prohibited in national law. The prohibition of instructions to discriminate is defined.

In Sweden, instructions explicitly constitute a form of discrimination. This constitutes one of the six forms of discrimination enumerated in the Discrimination Act. Chapter 1, Section 4(6) defines it as follows:

'Instructions to discriminate' orders or instructions to discriminate against someone in a manner referred to in points 1–5 that are given to someone who is in a

(defamation, etc.).

⁷⁹ White paper, SOU 2021:94 *Ett utökat skydd mot diskriminering* (An expanded protection against discrimination), pp. 41-45, 241-265.

subordinate or dependent position relative to the person who gives the orders or instructions or to someone who has committed herself or himself to performing an assignment for that person.’

In Sweden, instructions to discriminate require a hierarchical relationship between the instructor and instructed person. The definition above, in addition to instructions to those in a subordinate or dependent position, specifies that the prohibition also applies to those performing an assignment, such as a temporary staffing agency or a real estate agency.⁸⁰

The material scope is thus wide. There is no area where instructions to discriminate are exempted. According to the legislative materials, explicit instructions and/or suggestions are covered.⁸¹ How explicit such instructions or suggestions need to be is difficult to say without case law on this issue. In any case, as indicated below in b), a discriminatory impact must be shown.

b) Scope of liability for instructions to discriminate

In Sweden, the instructor and the discriminator are liable.

The person giving the instructions is liable for issuing the instruction to discriminate if, in addition to there being a subordinate, a dependency or an assignment relationship, a disadvantageous effect has occurred in regard to one or more persons. If such an effect does not occur, then the instruction does not violate the Discrimination Act. Basically, this means that the person receiving the instruction must have acted in accordance with the instruction. There is one exception indicated in the legislative materials. If the instruction points out a specific person (or several specific persons) as the target of discrimination, that person has had their rights violated (*blivit kränkt*), and there is thus a violation of the prohibition against discrimination. This can occur if, for example, gossip develops due to the instruction, even if the instruction was never carried out.⁸²

If an employer instructs an employment agency to discriminate, both will be liable for a violation of the law – the employer for the instruction and the employment agency for the discrimination. However, if the instruction is not carried out there will be no violation of the law.

On the other hand, if such an instruction is given to an employee and the employee performs a discriminatory act, the employer will be responsible for both violations. First, there is liability for the instruction; secondly, there is liability for the actions of employees (*principalansvar*).

Regarding health, social security, goods and services and most other areas, the service provider is responsible for the actions that an employee takes in relation to a customer or a client.

2.8 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for persons with disabilities in the area of employment

In Sweden, the duty on employers to provide reasonable accommodation for persons with disabilities is included in the law and is defined.

⁸⁰ Government bill 2007/08, pp. 494-495.

⁸¹ Government bill 2007/08, pp. 140-141.

⁸² Government bill 2007/08, pp. 494-495.

Reasonable accommodation in employment was covered by the 2009 Discrimination Act as well as earlier.⁸³ The law was amended in 2015 to extend the concept of reasonable accommodation to cover not only employment but also other areas of social life, such as education and access to goods and services. It is currently defined under the discrimination form 'inadequate accessibility'.⁸⁴ Even though the wording of the law was changed, the Government was clear in pointing out that previous rules related to reasonable accommodation in employment were not affected by the change in the Discrimination Act. Furthermore, the Government emphasised the idea that, in general, reasonable accommodation in relation to employment carried more weight as compared to other areas covered by inadequate accessibility, due to the nature of the employment relationship.⁸⁵

Inadequate accessibility was added as a form of discrimination to the Discrimination Act (Chapter 1, Section 4(3)) from 1 January 2015. The other forms of discrimination are direct, indirect, harassment, sexual harassment and instructions to discriminate. Inadequate accessibility applies to most of the areas covered by the act including the prohibition of discrimination in working life in Chapter 2, Section 1.⁸⁶ Before 2015 – when 'reasonable accommodation' was the term used – a lack of reasonable accommodation could result in direct discrimination, because the comparable situation should be assessed as if the worker or student had been accommodated. In addition, reasonable accommodation did not apply to other areas, such as access to goods and services.

The current term is written in such a way that it is supposed to accommodate every area where the new broadened prohibition applies. In other words, the reasonable accommodation duty applies not only to working life, but also to areas of social life, such as education and access to goods and services.

It is defined as follows:

*'Inadequate accessibility':*⁸⁷ that a person with disability is disadvantaged through a failure to take measures for accessibility to enable the person to come into a situation comparable with that of persons without this disability where such measures are reasonable on the basis of accessibility requirements in laws and other statutes, and with consideration to:

- the financial and practical conditions;
- the duration and nature of the relationship or contact between the operator and the individual; and
- other circumstances of relevance.⁸⁸

This change has little practical importance in the field of employment as – according to the legislative preparatory works – the previous rules continue to apply with regard to

⁸³ Reasonable accommodation was also already provided through the 1999 Act prohibiting discrimination in working life due to disability (1999:132) (*lagen om förbud mot diskriminering i arbetslivet av personer med funktionshinder*).

⁸⁴ 'Inadequate accessibility' is the term used in the translation of the Discrimination Act on the DO's website at <https://www.do.se/choose-language/english/discrimination-act-2008567>.

⁸⁵ Government bill 2013/14:198, pp. 128-129.

⁸⁶ Act (2014:958) amending the Discrimination Act (2008:567), 08.07.2014. Government bill 2013/14:198. Even prior to 2015, a failure by an employer (and in limited cases education providers) to provide reasonable accommodation could lead to a finding of discrimination. The main purpose of the inadequate accessibility concept was to expand the duty of reasonable accommodation to others with the power to prevent disability discrimination, such as providers of goods and services. Note that the duty here is primarily an individualised reasonable accommodation duty. As pointed out in the text of the law, there are other laws and statutes that include a focus on providing accessibility in a broader sense.

⁸⁷ The author refers to the translation of the Discrimination Act on the DO's website at: <https://www.do.se/choose-language/english/discrimination-act-2008567>.

⁸⁸ These three elements are assumed to equate to the 'disproportionate burden' test.

accommodation measures in employment. The expansion in coverage primarily related to fields other than employment, such as education and provision of goods and services.⁸⁹

It should be noted that as the law applies to all employers, duty is similar, in law and in practice, for private sector workers and for civil servants in the general public sector.

The availability of financial assistance from the state concerning reasonable accommodation can be taken into account, depending on the circumstances, in assessing whether the accommodation is a disproportionate burden.⁹⁰

Since the case law is limited, it is not easy to specify what accommodations will be classified as reasonable support and accommodation measures in accordance with Swedish law. It is also difficult to specify what would be recognised as a disproportionate burden and thus be seen as going beyond what is reasonable with regard to support and adaptation measures.⁹¹ The following accommodation measures were mentioned in the legislative materials accompanying the 2009 Discrimination Act as examples of requirements of measures to be taken by an employer: improvements related to physical accessibility, the acquisition of technical support, and changes in work tasks, time schedules or working methods.⁹²

The reasonableness of requiring measures to be undertaken can vary depending on the employer. This determination must be made from case to case, depending on such factors as the employee's needs, as well as the employer's ability to bear the costs, the ability to undertake a measure, the problems caused for the employer by the measure and the expected length of the employment. Government subsidies for reasonable accommodation measures can be taken into account if it is clear, for example, during the recruitment process, that a subsidy will be received.⁹³

General legislation outside the field of discrimination is important here, especially the 1977 Working Environment Act and the employer's duty to undertake 'rehabilitation measures'⁹⁴ regarding those who are already employed, in combination with the 1982 Employment Protection Act, which imposes a duty of fairly far-reaching accommodation.⁹⁵ These duties are sometimes more far-reaching than those of the Discrimination Act. However, these far-reaching obligations apply only if the worker has a good chance of returning to work for the employer in question.

b) Case law

The courts are reluctant to permanently change the tasks of co-workers in a manner that worsens the co-workers' working conditions in order to provide an accommodation for the sake of the work of a person with a disability.⁹⁶

⁸⁹ Government bill 2013/14:198, pp. 74, 115 and 128.

⁹⁰ See e.g. Labour Court 2017 No. 51, *Equality Ombudsman v Södertörn University* and Fransson, S. and Stüber, E. (2021), *Diskrimineringslagen: en kommentar* (The Discrimination Act: A commentary), 3d ed Norstedts Juridik, Stockholm and Section 2.6.b below on case law.

⁹¹ See the departmental inquiry (DS 2010:20) which suggested changing the wording of Chapter 1, Section 4 of the Discrimination Act and creating a non-exhaustive list of six factors that are relevant when assessing the concept of reasonable accommodation (p. 27).

⁹² Government bill 2007/08:95 p. 148.

⁹³ See Government bill 1997/98:179 p. 54, Government Bill 2007/08:95 pp. 150 and 200, and Fransson, S. and Stüber, E. (2021), *Diskrimineringslagen: en kommentar* (The Discrimination Act: A commentary), 3d ed Norstedts Juridik.

⁹⁴ The goal of rehabilitation is the employee's return to the workplace or the provision of support for an individual in maintaining their position in the workplace. Rehabilitation in relation to working life is further regulated by the Social Security Code (*Socialförsäkringsbalk* 2010:110), 4 March 2010.

⁹⁵ See also, for instance, Inghammar, A. (2001), 'Discrimination of people with disabilities. Normative aspects of disability and work in a Swedish, English and EC context', in: Numhauser-Henning (ed.), *Legal perspectives on equal treatment and non-discrimination*, Kluwer Law International, The Hague.

⁹⁶ Labour Court 2013 No. 78, *Equality Ombudsman v Veolia and the Swedish Bus and Coach Federation*.

In a landmark case from 2017 concerning reasonable accommodation, the Labour Court found that there was no discrimination when a university refused to hire a lecturer who was deaf, due to the costs related to the need for the necessary accommodations. The Equality Ombudsman and the university agreed that an interpreter between sign language and spoken language was needed. The potential cost to the employer, given a cost assessment of EUR 49 000 (approximately SEK 520 000) annually for the education provider, was considered unreasonable and the Ombudsman lost the case.⁹⁷

Concerning this case, in 2020, the UN Committee on the Rights of Persons with Disabilities issued a decision that was highly critical of Sweden and the manner in which reasonable accommodation was dealt with in this case, particularly the failure to engage in a dialogue with the job applicant. The committee pointed out, among other things, that the concept of reasonable accommodation requires an individual dialogue about the alternatives.⁹⁸ This communication presumably applies to all states and international organisations that have ratified the UN Convention on the Rights of Persons with Disabilities (CRPD), including the EU.

There can be an important dividing line between indirect discrimination and inadequate accessibility. While an employer may be able to prove that the measures taken concerning an employee with a disability had a legitimate purpose and the means used were appropriate and necessary to achieve that purpose, the employer can still admit that discrimination occurred in the form of inadequate accessibility.⁹⁹

In the two labour court cases¹⁰⁰ discussed in 12.2 *Country report, Non-discrimination, Sweden 2025*, the Labour Court held that there were no adequate accommodations that could be applied to the situations that would enable the person to do the job, thus there was no discrimination. In one case, various accommodations were tried without success, while in the other case, no attempt at reasonable accommodations was tried, as they were deemed unnecessary under the circumstances. The main lesson here, despite the differences between the cases, is that an employee must be able to perform the essential tasks of the job.

In examining the relevance of other accessibility regulations, such as in the building regulations, the legislative preparatory materials state the following:

Consideration of the Work Environment Act and other existing legislation should also be taken into account in the assessment of reasonableness in such a way that measures that an employer has to take under the Work Environment Act should normally be considered reasonable under the Discrimination Act too. Furthermore, technical and other developments should be taken into account to the extent that what is not considered reasonable at a certain point in time may be considered reasonable at a later date if developments give rise to such an assessment.¹⁰¹

In the author's opinion, although this will not bar an employer from arguing that a disproportionate burden exists if they have not met relevant regulations, it makes it harder for a court to accept the argument.

⁹⁷ Labour Court 2017 No. 51, *Equality Ombudsman v Södertörn University*. There was thus no need for the Labour Court to assess whether or not the true cost was higher, as the university claimed.

⁹⁸ UN Committee on the Rights of Persons with Disabilities (2021) *Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 45/2018, 2020-08-21, CRPD/C/23/D/45/2018*. Also see Section 10, European network of legal experts in gender equality and non-discrimination (2021), *Country report, Non-discrimination, Sweden 2021*.

⁹⁹ Labour Court 2020 No. 13, *ST Union v Sweden* through the Swedish Agency for Government Employers.

¹⁰⁰ Labour Court 2024 No. 12, *Police Union v Swedish Police Authority*, and Labour Court 2024 No. 66, *Municipal Workers' Union v Region Stockholm*.

¹⁰¹ Government bill 2007/08:95, 152.

Finally, in the author's opinion, while there are a few cases concerning employers and reasonable accommodation, there are too few of them to be able to state that the case law provides sufficient guidance. A key hindrance to the development of case law, as with the implementation of the Discrimination Act more generally, is the lack of access to justice by victims.

c) Definition of disability and non-discrimination protection

The definition of disability is the same in all areas of the Discrimination Act. As set out in Chapter 1, Section 5(4), disability means:

'Long-lasting physical, mental or intellectual limitation of a person's functional capacity that as a consequence of an injury or illness that existed at birth, has arisen since then or can be expected to arise.'

The definition is thus stated in general terms, a requirement being that the limitations in functional capacity must be long-lasting. For more information, see Section 2.1.c above.

The definition of a disability for the purposes of claiming reasonable accommodation is no different from that for claiming protection from non-discrimination in general. The definition is the same in the private and the general public sectors.

d) Failure to meet the duty of reasonable accommodation for persons with disabilities

In Sweden, failure to meet the duty of reasonable accommodation in employment for persons with disabilities is recognised as a form of discrimination in both the private and the general public sectors.

This failure amounts to inadequate accessibility for an individual, which is a separate form of discrimination – and the third in a list of six forms of discrimination under the Discrimination Act. Inadequate accessibility is a free-standing form of discrimination in relation to, for example, direct and indirect discrimination. In conjunction with the prohibition against discrimination in working life in Chapter 2, Section 1 of the Discrimination Act, inadequate accessibility imposes a duty of reasonable accommodation in employment.

One difficulty with the idea of reasonable accommodation involves the burden of proof. The claimant must at least suggest some potential accommodation which would put them in a comparable situation after which the burden shifts to the defendant concerning the lack of reasonableness. In order to assert the reasonableness of the need for accommodation, the cost of the accommodation has to somehow be assessed. It is not clear who has to determine the reasonableness of an accommodation and how it can be proven. Is it enough for a defendant to simply assert that the cost would be prohibitive?

In a landmark Labour Court case from 2010, a visually impaired job applicant asserted discrimination by the Social Insurance Agency when it failed to provide various types of reasonable accommodation. The defendant provided testimony concerning unreasonableness related to costs which was enough to convince the court.¹⁰² The court may have made the right decision, yet it still seems that in practice the claimant bore the burden of proving the reasonableness of the accommodation sought – regardless of the shifting of the burden of proof.

Another important issue concerning inadequate accessibility is that only discrimination compensation is available as a sanction. This is the general rule in regard to all forms of discrimination under the Act. Economic damages are not available under the Discrimination

¹⁰² Labour Court 2010 No. 13, *Equality Ombudsman v. Swedish Social Insurance Agency*.

Act concerning any form of discrimination, unless this is specified. Under certain circumstances concerning employees, financial damages may be available in regard to direct and indirect discrimination.¹⁰³ At the same time, the legislative materials also state that this form of discrimination, inadequate accessibility, should not result in any change of practices at the time concerning reasonable accommodation in the fields of working life and education.¹⁰⁴ The key here was expanding the requirement of reasonable accommodation to other fields of society.

- e) Duties to provide reasonable accommodation in areas other than employment for persons with disabilities

In Sweden, there is a duty to provide reasonable accommodation for persons with disabilities outside the area of employment, but only to a limited extent.

Since 2015, there has been a limited duty to provide reasonable accommodation for persons with disabilities even in the areas outside employment where the Discrimination Act applies. This duty (as discussed above in subsection a), is contained within the prohibition of the form of discrimination known as 'inadequate accessibility' (Chapter 1, Section 4(3)). The areas covered are those listed in the Act: working life, education, labour market policy activities and employment services not under public contract, starting or running a business and professional recognition, membership of certain organisations, services, meetings or public events, health and medical care and social services, the social insurance system, unemployment insurance and financial aid for studies, national military service and civilian service, and public employment.

The purpose of introducing inadequate accessibility was to respond to a demand from the disability movement to establish that inaccessibility, even outside of working life, is a form of discrimination.

Outside the labour market, the prohibition of this form of discrimination is complementary, but subsidiary to other legislation that provides for accessibility, such as building regulations. It also extends a limited duty of reasonable accommodation to, for example, providers of goods and services. The changes in the law in 2015 introduced certain limited possibilities concerning reasonable accommodation outside of working life. The legal demands exemplified in the legislative preparatory works are such that the relevant reasonable accommodation actions were probably already being undertaken even where there was no legal duty to do so, because what is now required under the legislation is very limited. Before 2015, a restaurant could refuse to have a member of staff read the menu to a blind guest because a fully sighted guest did not have this right. Other examples mentioned: guiding a passenger through a train station, providing extra assistance in booking a ticket, providing a quiet space for contacts with government agencies, and assistance with packing groceries at a supermarket. As these examples are explicitly mentioned in the legislative materials, these accommodation measures can be said to set a minimum legal standard.¹⁰⁵

The idea here was not to create a definition of inadequate accessibility that could be used to impose high costs on service providers when accessibility is not required by other legislation. This can be seen in the wording of the act as well as in the legislative preparatory works. Nevertheless, the act imposes limited accommodation duties.¹⁰⁶

¹⁰³ Government bill 2013/14:198, p. 106.

¹⁰⁴ Government bill 2013/14:198, p. 65.

¹⁰⁵ Government bill 2013/14:198, p. 65.

¹⁰⁶ This follows from a literal interpretation of the definition in Chapter 1 Section 4(3) of the Discrimination Act (2008:567). If there is no legislation stipulating a duty to take on a certain cost, this weighs heavily in favour of the service provider. The Equality Ombudsman's website gives some examples where there is no express legal duty elsewhere, but where an obligation nevertheless may exist under the new rules of inadequate accessibility under the Discrimination Act (<http://www.do.se/om-diskriminering/vad-ar-diskriminering/bristande-tillganglighet/#1>). The Equality Ombudsman's examples largely refer to the

As set out in the Discrimination Act, the definition of 'disproportionate burden' in this context, as contained in legislation, does not differ from the definition used with regard to employment. Given the limited number of cases, and the application to separate fact patterns, it is difficult to determine if the concept is used in the same way in case law.

The Education Act (2010:800) contains a duty to accept pupils at the school of their choice unless the financial burden required is substantial (Chapter 9, Section 15). Under the provisions introduced in 2015, a violation of the Education Act can also result in discrimination according to the rules on inadequate accessibility in the Discrimination Act.

According to Chapter 3, Section 2, paragraph 1 and 2:

All children and pupils in all forms of schools and in after-school care shall be provided with the guidance and stimulation they need for their learning and personal development, enabling them to develop in accordance with the educational goals based on their individual circumstances.

Pupils who, as a result of a disability, have difficulty fulfilling the various grading and assessment criteria that apply shall be given support aimed at counteracting as far as possible the consequences of the disability.

One example of an area where the rules do not apply is a landlord having a tenant who becomes disabled. The landlord might not agree to the installations that would be necessary for the tenant to remain in the apartment. The fact that the municipality would have been obliged to grant an allowance for the installation, as well as paying for their future removal, does not include a duty for the landlord to permit them. Discrimination law is based on comparisons between persons with disabilities and persons without disabilities, and persons without disabilities have very limited rights to make installations in rented apartments. If the 2015 rules had been applied to housing, this situation could have changed but, according to Chapter 2, Section 12c of the Discrimination Act, the prohibition of discrimination in the form of inadequate accessibility does not apply with regard to housing.¹⁰⁷

The case law still needs development concerning the rules on inadequate accessibility. However, as the rules rely heavily on laws and other forms of legislation to provide a minimum level of accessibility that applies in general outside of working life,¹⁰⁸ the biggest change is probably that a discrimination award as a remedy becomes possible, which is valuable for the claimant, especially if civil damages were not possible before. Many public law regulations have conditional fines that are payable to the state as the main sanction – i.e. a court order linked to a financial penalty if not followed.

In the Discrimination Act, the term 'inadequate accessibility' basically assumes that the accessibility standards already set in other laws and statutes are adequate. For instance, the Education Act establishes a minimum standard of accessibility that also encompasses an individualised duty of reasonable accommodation. If that standard is fulfilled, there will be no examination of inadequate accessibility based on the Discrimination Act. Thus, the introduction of this form of discrimination in the Discrimination Act does not create additional duties in regard to the accessibility standards already established in other laws and regulations.

examples in Government bill 2013/14:198, p. 65.

¹⁰⁷ The Government was worried about the potential problems associated with determining that inadequate accessibility containing a requirement of reasonable accommodation concerning housing could cause. Therefore, a broad exception was established. See Government bill 2013/14:198, pp. 93-94.

¹⁰⁸ With regard to the costs for different sectors, the Government repeatedly states that the costs are minimal as new requirements are not being introduced. See Government bill 2013/14:198, Chapter 13.

In a situation such as that of schools, where there is a clear legal duty to provide accommodation through administrative law, the Discrimination Act still helps by providing potential sanctions (discrimination compensation) that may be more effective than those in other laws and regulations, which often only provide for the imposition of conditional fines by a Government authority. The concept of inadequate accessibility is – in those situations – related to accessibility required by other legislation.

The DO's first case on inadequate accessibility outside working life and its interplay with other regulations reached the Skaraborg District Court in 2017. This landmark case concerned a pupil who used a wheelchair and the school's inadequate and dangerous access ramps. For several years the school and municipality were aware of these issues but failed to act. The District Court held that this was discrimination in the form of inadequate accessibility. The judgment was affirmed on appeal, resulting in an award of EUR 7 000 (SEK 75 000).¹⁰⁹

It is useful to look at three discrimination cases filed against local governments which involved the removal during national exams in the third and sixth grades of reasonable accommodations ordinarily used in school by pupils with dyslexia. The accommodations were removed by the schools administering the exams in accordance with the guidelines of the National School Agency. The courts held that this did not constitute inadequate accessibility or indirect discrimination. One case has been submitted to the UN CRPD Committee, and another was submitted to the European Court of Human Rights.¹¹⁰ For more information see Section 2.5.b above.

A landmark case from 2019, *Malmö mot diskriminering (MmD) v Malmö stad*, illustrates the interplay between the Discrimination Act and the Education Act. The city of Malmö took more than a year to investigate and adapt the schooling situation with regard to A's learning disabilities. Malmö was required to do this due to the requirements of Chapter 3 of the Education Act. The district court determined that the failure to develop and implement special measures related to the pupil's needs more quickly constituted a violation of the Discrimination Act in the form of inadequate accessibility and awarded EUR 1 900 (SEK 20 000) in discrimination compensation.¹¹¹ The Appeal Court upheld the decision of the district court.¹¹²

The difference between the restaurant example and the school example, as illustrated above by *Malmö mot diskriminering (MmD) v Malmö stad*, is that the Education Act has for a long time required all schools to make reasonable accommodations for pupils with disabilities, while there were no such duties for restaurants. Therefore, this form of discrimination created duties for certain entities, such as restaurants, but not for schools that already had such duties.

The proportionality test is embedded in the definition of inadequate accessibility/lack of reasonable accommodation (see Section 2.8.a above). Given the examples in the legislative preparatory works, the room in which to apply this test seems limited when there is no special legislation to rely on.

If there is a determination that there has been a failure to meet the duty of reasonable accommodation, the primary sanctions are awards of discrimination compensation and the ability of the court to declare contract clauses and certain actions, such as dismissals, null

¹⁰⁹ Göta Appeal Court, Case T 1773-17, *Equality Ombudsman v Vara Municipality*, 15.05.2018, available at: <https://www.do.se/download/18.277ff225178022473141ef1/1630316589105/dom-hovratt-ANM-2016-940.pdf>. Also see Section 12.2, *Country report, Non-discrimination, Sweden 2019*.

¹¹⁰ Regarding the European Court of Human Rights see the case of Karabelska and Djerf v. Sweden, Application no. 23844/23. Regarding the UN CRPD Committee see Communication No. 98/2022.

¹¹¹ Malmö District Court, Case no. FT 11162-18, 28.11.2019. Also see Section 12.2, *Country report, Non-discrimination, Sweden 2020*.

¹¹² Skåne and Blekinge Appeal Court, Case FT 3884-19, 29.04.2020. Also see Section 12.2, *Country report, Non-discrimination, Sweden 2021*.

and void in certain situations. What the duty will mean concerning the types of reasonable accommodation that can be demanded in various situations will depend on the development of case law.

In a 2021 landmark case, *Equality Ombudsman (DO) v. Svealandstrafiken AB*,¹¹³ AA, who was in a wheelchair, was not allowed on the buses run by Svealandstrafiken AB. The bus drivers had inaccurately estimated that AA's wheelchair together with AA's weight was more than 300 kg. For safety reasons, 300 kg is considered to be the maximum weight. The DO asserted, among other things, that the failure to adequately educate bus drivers as to the weights of various wheelchairs constituted discrimination in the form of inadequate accessibility. The district court held that the bus company had not subjected AA to discrimination on the four occasions when he was not allowed to board the bus, since the company had done what was reasonable in order to ensure that AA could travel on the bus. The fact that he was denied this opportunity on four occasions due to failures in judgement by the bus drivers did not mean that he had been disadvantaged concerning accessibility. The DO appealed.

The Appeal Court determined that the burden of proof concerning a claim of inadequate accessibility should be dealt with in the same way as in regard to indirect discrimination. Once a disadvantage has been shown, to avoid liability, the transport company must refer to and prove that reasonable measures have been undertaken or prove that an accommodation would result in an unreasonable burden. Furthermore, the Court states that, given the law, it is only in limited circumstances that references to safety reasons will allow a transport company to refuse transportation for a person with a disability. The Court determined that the transport company's reference to the lack of knowledge of its personnel was not enough to overcome its burden. In fact, if that was enough, that would render the protection against inadequate accessibility illusory. The Court held, contrary to the trial court, that Svealandstrafiken was liable for inadequate accessibility discrimination in relation to AA and was to pay discrimination compensation of EUR 5 600 (SEK 60 000) as well as the legal costs and fees of the DO in both the appeal court and the district court, EUR 3 164 (SEK 33 856).

In another landmark case in 2021, *Equality Ombudsman (DO) v. Sweden through the Social Insurance Agency*, the DO had been successful in the district court in asserting inadequate accessibility due to the Swedish Social Insurance Agency's failure to take reasonable measures in 2015-2016 to adapt its website so that it could be used by a screen reader. On appeal, the Appeal Court reversed the trial court's judgment, holding that the evidence presented was insufficient to establish discrimination under the law. In part this had to do with the evolving technology in the field and how quickly it should be implemented. In this case, it was in the planning stages but not yet in place when the complaint was filed.¹¹⁴

Some of the district court cases, as well as the 2024 Supreme Court case, *S v Malmö kommun*, highlight some of the issues related to the interplay between the Discrimination Act and the duties that apply to local schools and municipalities under the Education Act.

The landmark 2024 Supreme Court case *S v Malmö kommun* provided important clarifications in the field when it overruled an appeal court decision, holding that a diagnosis was not a prerequisite to the duty to provide reasonable accommodation measures to pupils with disabilities and that a school cannot remain passive when it is apparent that the pupil needs support. Malmö municipality had denied liability on various grounds, including the fact that it had not received the relevant diagnosis until late in the process, and that otherwise it had at all times provided the required reasonable accommodation.

¹¹³ Svea Appeal Court, Case T 3836-20, 19.10.2021. See Section 12.2, *Country report, Non-discrimination, Sweden 2022*.

¹¹⁴ Svea Appeal Court, Case T 9308-18, 12.03.2021. See Section 12.2, *Country report, Non-discrimination, Sweden 2022*.

Among the various types of evidence presented, the School Inspectorate pointed out that the school's own investigation had taken too long, and lacked a proper analysis of the pupil's needs, thus leading to a need for a more thorough analysis by the school.¹¹⁵ Timely and satisfactory action by a municipality (*kommun*) concerning the reasonable accommodation needs of pupils with disabilities is the basic requirement that the law requires, according to the Supreme Court.

In the district court cases *DO v Malmö kommun* and *DO v Skara kommun*, the court determined that the measures undertaken by the respective schools were reasonable; thus, their actions did not amount to discrimination. As seen in 12.2 below, on appeal the Appeal Courts upheld the judgments of the lower courts in these two cases.

The landmark 2024 Supreme Court case above was filed by Malmö mot Diskriminering (MmD) on behalf of the victim. One outcome of this can be seen in the District Court case in 12.2 below that MmD filed against Stockholm municipality due to a similar situation, where the school involved failed to adequately investigate and implement the accommodation measures that the pupil needed due to her disability. The court determined that Stockholm was liable and Stockholm, rather than appealing, decided it needed to learn from the case.¹¹⁶

Another noteworthy occurrence in 2025 concerned a case involving a pre-school pupil, NB, in a similar situation, who lost a district court case in 2023.¹¹⁷ The case was appealed. Even though the municipality was successful in the lower court, a settlement was reached in November 2025 that included an apology, an admission that more should have been done, and SEK 75 000 (EUR 6 950) as compensation.¹¹⁸ The settlement was presumably due to the 2024 Supreme Court case above, at least in part.

f) Duties to provide reasonable accommodation in respect of other grounds

There is no requirement in the Discrimination Act to provide reasonable accommodation in relation to grounds of discrimination other than disability in dealing with individual cases.

At the same time, various collective agreements open up the possibility of certain accommodations through clauses referring to the employer's diversity work to undertake, for example, 'with regard to the employer's resources and circumstances otherwise, to adapt working conditions so that they are suitable for all of the employees regardless of ethnicity, religion or other belief'.¹¹⁹

Another clause in a different collective agreement states:

'4.2.3 Arrangement of working hours

¹¹⁵ Supreme Court, Case T 3151-23, *S v Malmö kommun*, 13.06.2024. See Section 12.2, Country Report, Non-discrimination, Sweden 2025.

¹¹⁶ Dagens Nyheter, 2025-11-25, "*Amanda*" stämde sin skola för diskriminering – vann ("*Amanda*" sued her school for discrimination – and won) at <https://www.dn.se/sverige/amanda-stamde-sin-skola-for-diskriminering-vann/#:~:text=%20med%20autism%20diskriminerades%20av,domen%20efter%20en%20ny%20praxis>. Also see Malmö mot Diskriminering, at <https://www.mynewsdesk.com/se/malmo-mot-diskriminering/pressreleases/stockholms-tingsraett-slaar-fast-flicka-med-autism-diskriminerades-3417262>.

¹¹⁷ Attunda District Court, *NB v. Åkersberga kommun*, 2023-11-29, case no. T 4978-22.

¹¹⁸ See *Rättighetsjuristerna* (The Rights Lawyers), '*Österåkers kommun medger skadestånd*' (Österåker municipality agrees to pay compensation) at <https://rattighetsjuristerna.se/aktuellt/osterakers-kommun-medger-skadestand/>.

¹¹⁹ *Kollektivavtal Fastigheter Tjänstemannaavtal 1 juni 2023 - 31 maj 2025.pdf*, p. 73-74, (Collective agreement, Real Estate Employee Agreement June 1, 2023 - May 31, 2025) available at: <https://www.sverigesingenjorer.se/kollektivavtal/avtalsomrade/fastigheter/>. Also see Fahlbeck, R. (2011) *Bed och Arbeta: Om Religionsfrihet i Arbetsliv Och Skola* (Prayer and Work: On Freedom of Religion in Working Life and School), Liber AB, p. 250. Fahlbeck indicates that an increasing number of collective agreements include the possibility of time off for religious reasons and making up the time at a later point.

When arranging working hours, consideration must be given to both the needs of the business and the needs and wishes of the employee. The focus must be to consider, as far as possible, the employee's opportunities to combine work with family life and social life in general.

If the employee's wishes cannot be met, the employer must state the reasons for this upon request.¹²⁰

While not guaranteeing e.g. days off from work for religious reasons, these types of clauses open up the possibility of certain reasonable accommodations related to religion.

At the same time, it is hard to know if and to what extent these possibilities are actually available in practice. Unions, for example, send mixed signals about their interest in working for equal rights and opportunities. On the one hand, a major union can state that the social partners should have actual possibilities to take responsibility for equal rights and opportunities through central collective agreements on the various discrimination grounds. On the other hand, this is followed up by pointing out that the Discrimination Act's rules on active measures are compulsory and the compulsory nature of the rules makes it more difficult for the social partners to regulate, through central collective agreements, how the work for sex equality and diversity shall be carried out within a particular contract field, since this would carry with it a risk that employers will be subjected to double sanctions.¹²¹

In the author's opinion, this claim is questionable. One reason is that the unions should be extremely aware of the fact that since its establishment in 2009, the DO has taken only one case to the Board against Discrimination, and lost, while the only relatively successful case was brought by a union. Another reason is that the sanctions available under the Discrimination Act are quite limited. A third reason is that if a serious risk of double sanctions arose, the union could refrain from following up on the sanctions available under the collective agreement. Something to this effect could even be written into the agreement, if there is a serious concern about the risk of double sanctions. Furthermore, if there is a risk of double sanctions, this may be an added incentive for the employer to actually undertake the active measures.

The form of discrimination known as inadequate accessibility does not apply to any ground other than disability. With regard to other grounds, the only viable option in the Discrimination Act perhaps involves relying on the concept of indirect discrimination.

With regard to religion, it is possible to assert that there is an underlying element of reasonable accommodation in relation to indirect discrimination in examining exceptions for a legitimate purpose where the means that are used are appropriate and necessary to achieve that purpose.

It could be said that the wearing of the niqab in schools raises the issue of a form of reasonable accommodation.¹²² In some cases, schools have asked a person to remove their niqab. Such demands (not allowing a partial or full face covering in class) formally apply to everyone, but particularly affect certain Muslims. This may involve indirect discrimination, depending on the proportionality or 'appropriate and necessary' test. A relevant question is whether the legitimate purpose could have been solved by other

¹²⁰ See 4265 *Svensk Handel Apoteksanställda 2023-05-31 – 2025-04-30* (collective agreement for pharmacy employees), available at <https://www.unionen.se/kollektivavtal/4265-svensk-handel-apoteksanstallda-2023-05-31-2025-04-30#Allmänna-åligganden-med-mera-86951>.

¹²¹ See Unionen (2017), *Unionens politik för ett jämställt och inkluderande arbetsliv* (Unionen's policy for a gender equal and inclusive working life), p.6. This policy document underlines the union's various policy positions concerning equality. Available at https://www.unionen.se/sites/default/files/files/unionens_politik_för_ett_jamstallt_och_inkluderande_arbetsliv_2713-1.pdf.

¹²² Equality Ombudsman, Case 2009/103.

means. Potentially, reasonable accommodation is an underlying element in assessing various cases of indirect discrimination.¹²³

In the 2017 midwife case decided by the Labour Court,¹²⁴ the applicant was essentially seeking a reasonable accommodation from the employer, meaning that she would not have to take part in abortions due to her religious beliefs. Applying a proportionality test, the court found that the demands made by the employer were appropriate and necessary. Thus, there was no indirect discrimination.

A somewhat different situation featured in a 2017 appeal court case, where a Jehovah's witness in a public unemployment programme who was receiving an activity grant was asked to apply for a job at the Swedish National Lottery and Gambling Monopoly. His job would have involved selling companies packages of lottery tickets with the customer's logo on it so that they could give them out to employees or customers or use them for other promotional purposes. His job would thus not involve selling tickets to individuals. Given his religious convictions against gambling, he refused to go to the interview. He thus lost his place in the programme, including the activity grant. The court concluded that elements of indirect discrimination were present and that the actions of the Government were disproportionate in relation to the negative consequences for the complainant. The State, given its evidence, failed to overcome the presumption of indirect discrimination.¹²⁵

In the author's opinion, while these cases do not necessarily clearly establish the idea of a reasonable accommodation duty outside the field of disability, the idea can be said to form part of the proportionality test that is to be applied in various indirect discrimination cases. These cases involved religion, which may have a special status, due to its connection to the concept of freedom of religion. Nevertheless, it can also be asserted that, given the right cases, the idea could arguably apply to other grounds as well.

¹²³ Equality Ombudsman, Case 2009/103 involved a school where these circumstances applied. In the end, the Ombudsman did not pursue the case because the school found alternative solutions.

¹²⁴ Labour Court 2017 No. 23, *E.G. v Jönköping County*, available at: <https://arbetsdomstolen.se/media/sugcb1jr/23-17.pdf>.

¹²⁵ Svea Court of Appeal, 22.03.2017, *National Employment Agency v Equality Ombudsman*, Case T 777-16, available at: <https://www.do.se/download/18.277ff225178022473141ef0/1618941551378/dom-hovratt-ANM-2014-1037.pdf>.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

With regard to sub-sections 3.1.1, 3.1.2 and 3.1.3 below, there are no court cases of discrimination stemming from or involving the use of artificial intelligence and/or automated systems.

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Sweden there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives.

In principle, people with irregular status are entitled to the protection of the directives.

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Sweden, the personal scope of anti-discrimination law covers all natural persons but does not cover legal persons for the purpose of protection against discrimination.

This does not follow from a specific section. Some Sections of Chapter 2 of the Discrimination Act contain wording such as 'the jobseeker', 'the child, pupil or student' and so on, where it is obvious that a legal person cannot fall under the protected category. In other cases where the wording is unclear, there is a general statement in the legislative preparatory works that legal persons are not protected.¹²⁶

The Discrimination Act thus generally protects natural persons.¹²⁷ Nevertheless, as regards the act's applicability to working life, the general concept of 'employee' is a compulsory concept, which is not for the parties concerned to decide upon. Within this concept it is perfectly possible for the Labour Court, in the last instance, to look beyond or ignore the fact that a contract may be agreed between the employer and a legal entity run by the 'employee' alone.

In 2006, the Discrimination Inquiry Commission proposed a protection for legal persons in a number of (but not all) areas covered by non-discrimination legislation.¹²⁸ Most of the consultation responses were positive, with several of the discrimination ombudsmen at the time asserting that the proposal should go further. However, the Government rejected this in the final bill that became law, indicating that further analysis was needed, and that coverage of legal persons was not an explicit requirement of the directives.¹²⁹ Thus legal persons still have no explicit protection, which is potentially a problem in relation to Directive 2000/43.

b) Liability for discrimination

In Sweden, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination. The different Sections of Chapter 2 of the Discrimination Act refer to the 'employer', the 'service provider' and so on. It is clear from the wording that both natural and legal persons are covered.

¹²⁶ Government bill 2007/08:95, p. 91.

¹²⁷ Government bill 2007/08:95, p. 90.

¹²⁸ White paper SOU 2006:22, *En sammanhållen diskrimineringslagstiftning*, (A cohesive discrimination legislation) p. 332ff, available at: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2006/02/sou-200622/>.

¹²⁹ Government bill 2007/08:95, pp. 90-91.

In the case law, the issue has come up as to the authority of someone responding on behalf of the employer concerning a job application. It has been determined that a response that seems discriminatory, containing comments about the applicant's poor language skills, coming from a person with no authority for hiring, for example a receptionist, will not be a basis for a discrimination claim concerning the prospective employer. If the employee is not authorised to represent the employer in this situation, the response is outside the scope of their employment, which also means that there was no violation of the Discrimination Act by the employer. This is despite the fact that the employer never argued or demonstrated that the lack of authorisation was known about or should have been known about by the job applicant.¹³⁰ This restriction on the vicarious liability of employers limits the scope of the prohibition of discrimination in a way that could be problematic in relation to EU law.

There is also other case law concerning an employer's liability for employees or others who are said to be acting on behalf of the employer. In a situation concerning a hair salon, an interview was conducted by SF, an independent contractor in the salon. CN was the owner of the salon. During the interview for a trainee position, SF made negative comments about the applicant's headscarf. The interview by SF and CN's subsequent refusal to offer a trainee position were asserted to be discriminatory due to, among other things, comments about the applicant's headscarf during the interview. The court held that the DO failed to adequately prove that SF, during the interview, had a mandate to act on behalf of CN concerning the trainee position. The court concluded that, given the lack of evidence concerning SF's mandate, there was no violation of the Act.¹³¹

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Sweden, the personal scope of national anti-discrimination law (the Discrimination Act) does not cover the private and public sectors, including public bodies, for the purpose of protection against discrimination. The protection does not extend to legal persons. However, in general, natural persons in both the private and the public sectors are covered by the protection against discrimination. The national provisions are presumed to comply with the directives.

b) Liability for discrimination

In Sweden, the personal scope of anti-discrimination law covers the private sector and the public sector, including public bodies, for the purpose of liability for discrimination.

The prohibitions for different areas in Chapter 2 of the Discrimination Act are applicable to both the private and public sectors, including public bodies. The limitation on the applicability of the Discrimination Act relates to activity areas and not to the public or private sector or to who is responsible for the activity.

A situation where the Discrimination Act does not apply is one in which a police officer is arresting a criminal, even if the officer is carrying out their official duties in a discriminatory manner. However, if the same police officer gives advice to an ordinary citizen an hour later and treats this citizen unfavourably for a reason connected to a ground of discrimination, this activity may fall under the Discrimination Act (Chapter 2, Section 17). In such a case, it will be the Police Authority (at the appropriate level) that will be held responsible under the Discrimination Act. It is the employers, the service providers etc.

¹³⁰ Labour Court 2007 No. 45 *Ombudsman Against Ethnic Discrimination v Laika film* 16.05.2007.

¹³¹ Labour Court 2011 No. 19, *Equality Ombudsman v C.N. and Bright Hair and Beauty Salon and Café Next Door Unlimited Partnership* 23.03.2011, available at: <https://www.arbetsdomstolen.se/media/r0bllbmq/19-11.pdf>.

that are held responsible under Chapter 2 of the Discrimination Act – it does not matter whether they are a natural or legal person, nor whether it is a public or a private body.

3.2 Material scope

With regard to sub-sections 3.2.1 to 3.2.9 below, there are no court cases of discrimination stemming from or involving the use of artificial intelligence and/or automated systems.

3.2.1 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Sweden, national legislation prohibits discrimination in the following areas: conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, for the five grounds, in both private and public sectors, as described in the directives. In addition, transgender identity and expression are also covered as grounds in the Discrimination Act. However, sex characteristics are not expressly covered by the Act.

The Discrimination Act covers access to employment and occupation in various sections. Chapter 2, Section 1 applies to employment. The Discrimination Act covers the self-employed with regard to starting or running a business and professional recognition (Chapter 2, Section 10). Professional organisations are prohibited from discriminating against self-employed as well as employed people (Chapter 2, Section 11). Permits, certification and financial support are examples of areas covered by these two provisions. There are other provisions in the Discrimination Act that apply to self-employed people as well as to employed people and that offer both groups the same protection. A self-employed person can also be discriminated against by a service provider if they need a service as a customer or client (Chapter 2, Section 12), for instance if a painter buys a car for their own firm.

3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Sweden, the Discrimination Act prohibits discrimination in working conditions including pay and dismissals for all five grounds and for both private and public employment. In addition, transgender identity and expression are also covered in the Discrimination Act. However, sex characteristics are not expressly covered by the Act.

Chapter 2, Section 1 of the Discrimination Act speaks of any discrimination against a worker, jobseeker etc., and therefore applies to all forms of working conditions including pay and dismissals.

3.2.3 Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Sweden, the Discrimination Act prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities. In addition, transgender identity and expression are also covered in the Discrimination Act. However, sex characteristics are not expressly covered by the Act.

The prohibition of discrimination in the education sector applies to all sorts of education providers, from those teaching small children to those teaching university students. It

applies to all forms of education including vocational training. In Sweden, the phrase 'vocational training' is not used as an official category when distinguishing between different forms of education. Chapter 2, Section 1(3) of the Discrimination Act clearly prohibits discrimination when a person applies for or participates in training with an employer, and Sections 5-8 will apply to the education provider if responsibility for the training is shared between the employer and, for instance, a school. Those sections should always be read in conjunction with the definition of the six forms of discrimination in Chapter 1, Section 4 of the Discrimination Act.

3.2.4 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Sweden, the Discrimination Act prohibits discrimination in membership of and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment. In addition, transgender identity and expression are also covered in the Discrimination Act. However, sex characteristics are not expressly covered by the Act.

Chapter 1 Section 4 in combination with Chapter 2, Section 11 of the Discrimination Act provides that discrimination on all seven grounds is forbidden in relation to membership of or participation in an association of employees (i.e. a labour union), an association of employers or a professional organisation, and the benefits awarded by such organisations to their members.

3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Sweden, the Discrimination Act prohibits discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive. This prohibition applies to all of the other grounds covered by the Act.

Health and medical care, social services, state financial aid for studies, social insurance and related benefit systems are included in the Discrimination Act in Chapter 2, Sections 13-14. All of the Act's discrimination grounds are covered, including age, disability, religion or belief, sexual orientation and transgender identity and expression. However, sex characteristics are not expressly covered by the Act. With regard to age there is an exception for age limits set down in law with regard to health and social insurance (including student benefits) and it is generally possible to justify direct age discrimination subject to a proportionality test in most areas.

a) Article 3.3 exception (Directive 2000/78)

Sweden's Discrimination Act does not rely on Article 3(3) of Directive 2000/78.

3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)

In Sweden, the Discrimination Act prohibits discrimination in relation to social advantages as formulated in the Racial Equality Directive.

All of the Act's discrimination grounds are covered, including sex, age, disability, religion or belief, sexual orientation and gender identity and expression. However, sex characteristics are not expressly covered by the Act.

The Discrimination Act should meet the requirement of Article 3(1)(f) of Directive 2000/43/EC. Discounts on services such as trains and municipal leisure facilities

fall under the provision on goods, services and housing (Chapter 2, Section 12). Discounts will thus in principle fall under the prohibition. Discounts for persons with disabilities will always be allowed, as the disadvantaged group (persons without disabilities) is not protected by the Discrimination Act. Discounts based on age can be justified on the basis of a proportionality test, depending on the circumstances according to Chapter 2, Section 12b (4) of the Discrimination Act. Since the Discrimination Act covers all the areas required by Directive 2000/43, there will always be a section applicable to a discriminatory discount excluding certain groups. If the discount concerns the health sector, Chapter 2, Section 13 applies; if the social advantage is a social security benefit, Chapter 2, Section 14 applies.

The crime of unlawful discrimination set out in the Swedish Penal Code (16:9) contains some provisions making it a criminal offence for anyone running a private business to treat customers unfavourably in the provision of goods and services because of their sexual orientation, religion or ethnicity. The provision also covers anyone employed in such a private enterprise or acting on behalf of it, as well as anyone acting in their capacity of employee within the public administration, when dealing with the public. This means that discriminatory treatment in areas such as healthcare, education and social security can be considered a criminal offence under certain circumstances.

The author is not aware of a single example of a social advantage under the Directive that does not fall under one of the areas where the Swedish Discrimination Act applies.

3.2.7 Education (Article 3(1)(g) Directive 2000/43)

In Sweden, the Discrimination Act prohibits discrimination in relation to education, as formulated in the Racial Equality Directive.

The relevant provisions prohibiting discrimination in education are in Chapter 2, Sections 5-8 of the Discrimination Act. The prohibition applies to all grounds specified by the Discrimination Act, sex, age, disability, religion or belief, sexual orientation, and transgender identity and expression. Sex characteristics are not expressly covered by the Act. The forms of discrimination are described in Chapter 1, Section 4 of the Discrimination Act. Chapter 2, Section 5 of the Act prohibits discrimination by education providers, from preschools to universities, both public and private. This broad scope led to the use of the term 'education provider' in the Act.

As to court cases, the landmark 2024 Supreme Court case and two appeal court cases involve issues related to the interplay between pupils with disabilities, the Discrimination Act, and the duties that apply to local schools and municipalities under the Education Act. The Supreme Court case *S v Malmö kommun* overruled an appeal court decision, determining that a diagnosis was not a prerequisite to the duty to provide reasonable accommodation measures and that a school cannot remain passive when it is apparent that the pupil needs support.¹³² In the appeal court cases *DO v Malmö kommun*¹³³ and *DO v Skara kommun*,¹³⁴ the courts determined that the measures undertaken by the respective schools were reasonable; thus, their actions did not amount to discrimination.

Sweden has the ambition of ensuring that all pupils, including those with special needs, receive an education that corresponds to their potential. This does not mean that there are no problems concerning discrimination against pupils with disabilities. For example, see the cases concerning the pupils with dyslexia who asserted that their schools, following the instructions of the Swedish National Agency for Education, did not allow them to use during

¹³² Supreme Court, Case T 3151-23, *S v Malmö kommun*, 13.06.2024. See Section 12.2, Country Report, Non-discrimination, Sweden 2025.

¹³³ Appeal Court for Skåne and Blekinge, Case T 2785-24, *DO v Malmö kommun*, 16.07.2025. See Section 12.2 below.

¹³⁴ Göta Appeal Court, Case T 423-25, *DO v Skara kommun*, 19.11.2025. See Section 12.2 below.

the national exams the assistive devices they used daily in school. The Education Agency asserted that the devices would mean that the ability of students to comprehend reading materials would not be tested. It is noteworthy that SPSM, the Swedish agency specialised in such issues, submitted a statement to the courts pointing out that some pupils read with their fingers, some with their eyes and some with their ears. In spite of this, the pupils lost their appeals.¹³⁵ With regard to the tests, it should be noted that the National Agency for Education had no liability for the potentially discriminatory national exam instructions, as the Agency was not classified as an education provider.

a) Trends and patterns regarding Roma pupils

In Sweden, there is a pattern of discrimination regarding Roma pupils.

In Sweden, Roma pupils encounter severe obstacles in the education system. To a large extent, however, intentional segregation is not currently the cause of this. Roma often live in relatively acceptable housing conditions and go to the same schools as the children of the majority 'ethnic Swedes'. If they want to learn Romani Chib (the Romani language) the policy is that they should be provided with extra lessons at no cost, like the children of other national minorities. The specific situation of Roma in the Swedish schooling system with regard to discrimination has been described in various older reports from the Equality Ombudsman.¹³⁶ One important weak spot concerning Roma is the implementation of the right to education in minority languages. The Equality Ombudsman (DO) published a new report in 2025 on the rights of national minorities, including Roma, that includes both observations and recommendation. The DO essentially confirmed the results of earlier reports and newer reports concerning minorities. More specifically, there is a recommendation that the Government 'initiate systematic work to remove obstacles preventing Roma from enjoying equal rights and opportunities, and consider the need for temporary special measures.'¹³⁷ This report is not specifically directed towards Roma pupils, but it does provide a general picture concerning the need for access to rights.

An overall assessment of the current right of Roma children to an education was made in a 2019 master's thesis. The author concluded that, although Sweden has taken some important measures, such as education in schools concerning Roma culture and history and the use of Roma teaching assistants and bridge-builders, there is at the same time a tendency to focus on Roma attitudes to education as a problem, while little is being done to deal with structural discrimination in Sweden and its education system.¹³⁸ The conclusion by the author of the master's thesis is that there are various problems with the strategy. To some extent this analysis is based on a 2018 report by the Swedish National Agency for Education.¹³⁹

The Stockholm County Administrative Board has been tasked since May 2020 with increasing the amount of knowledge available concerning the exposure of children and young people to antiziganism. The Board published a report in 2021 on this topic, which was submitted to the Government. The report points out that, even though schools should be a safe and secure place for children and young people, interviews with young Roma indicated that they experience a sense of insecurity in school connected with their Roma

¹³⁵ See Section 10.1, The Dyslexia Cases, *Country report, Non-discrimination, Sweden 2022*.

¹³⁶ Diskrimineringsombudsmannen (DO) (2004) *Discrimination against Romanies in Sweden*; DO (2008) *Discrimination of national minorities in the education system*; DO (2012) *Roma rights*. These reports are available on the DO's website at: www.do.se.

¹³⁷ DO, Rapport 2025:2, *Nationella minoritetens rättigheter – några iakttagelser och rekommendationer 25 år efter Sveriges ratificering av Europarådets minoritetskonventioner* (Rights of national minorities – some observations and recommendations 25 years after Sweden's ratification of the Council of Europe minority conventions) at www.do.se.

¹³⁸ Langhammer, M. (2019) *Romska barns rätt till utbildning – som jämlika deltagare* (The right of Roma children to education – as equal participants) Master's thesis, Spring term 2019, Uppsala University.

¹³⁹ National Agency for Education (Skolverket), *Nulägesbeskrivning av romers situation i skolan* (Current description of the situation of Roma in school), 2018.05.02, Diary number: 2017:885.

identity. This indicates that they experience a limitation on their fundamental rights. To provide security and enable young Roma to be open about their Roma identity, the Board proposed various measures concerning the education of teachers and administrators, systematic work on equality in schools and the production of educational materials, along with other materials, focused on other target groups.¹⁴⁰ In 2024, the Stockholm County Administrative Board published its "New knowledge base to inspire and provide support to the work on Roma inclusion".¹⁴¹

In 2022, the Government updated its Action Programme Against Antiziganism.¹⁴² The Programme, a complement to the National Action Programme against Racism, takes up a variety of actions to be undertaken in schools as well as underlining the need to continue the ongoing dialogue with Roma civil society.

The author of this report finds it fair to say that over the years the authorities have paid some attention to Roma issues, including education. However, the individual rights approach of the Discrimination Act seems largely absent from this work with regard to education. In particular, it seems that individual rights enforcement could be more focused on structural discrimination. In practice, this could mean e.g. a greater focus on developing strategic litigation related to the right to language. Has there been a systematic failure to provide some education in their home language? Is housing discrimination based not only on individual but also on discriminatory patterns? Is there any room for class actions? Could such legal cases be based on a mutual learning process between e.g. lawyers from the DO or an anti-discrimination bureau, explaining the law and development of evidence while at the same time learning about Roma views on the specifics of issues such as housing or education. This type of process at the former Ombudsman Against Ethnic Discrimination, prior to 2009, was somewhat successful in at least developing the trust of some complainants to file complaints, which in turn led to some successful cases. Furthermore, in the author's opinion, despite the ongoing Government work, the activities carried out seem to lack a sufficiently meaningful empowerment perspective.

3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Sweden, the Discrimination Act prohibits discrimination in access to and the supply of goods and services, as formulated in the Racial Equality Directive.

The prohibition of discrimination concerning goods, services and housing in Chapter 2, Section 12 of the Discrimination Act applies to all grounds covered by the Act including sex, age, disability, religion or belief, sexual orientation and transgender identity and expression, and to all forms of discrimination as described in Chapter 1, Section 4 of the Discrimination Act. However, sex characteristics are not expressly covered by the Act. In particular Chapter 1, Section 4(3) concerning inadequate accessibility covers the failure to

¹⁴⁰ See: Stockholm County Administrative Board (2021) *Redovisning av uppdrag att öka kunskapen om romska barns och ungas utsatthet för antiziganism* (Report on task to increase knowledge about Roma children's and young people's exposure to Antigypsyism) 9 September 2021.

¹⁴¹ Stockholm County Administrative Board, 9 October 2024, at <https://www.lansstyrelsen.se/stockholm/om-oss/pressrum/nyheter/nyheter---stockholm/2024-10-09-nytt-kunskapsstod-ska-inspirera-och-qe-stod-i-arbetet-med-romsk-inkludering.html>.

¹⁴² Government (2022) at: <https://www.regeringen.se/contentassets/13890f2e7d344692975d03035a2ce200/atgardsprogram-mot-antiziganism.pdf>. The Action programme to combat Antigypsyism can be found in English at: <https://www.government.se/contentassets/262663204bab4852a9d6ae9a99d80a9b/action-programme-to-combat-antigypsyism.pdf>. Some examples of measures in the programme are intensified knowledge-enhancing initiatives concerning e.g. Antigypsyism and methodology support by the Living History Forum; development of deepened knowledge concerning intersectionality by the DO; additional efforts by the Living History Forum to develop knowledge about and measures against Antigypsyism in primary and secondary schools; and the provision of support by the Agency for Youth and Civil Society for the implementation of measures combating Antigypsyism, including work to better enable young Roma to implement measures themselves that could improve visibility and knowledge of young Roma and their subjection to Antigypsyism.

reasonably adapt goods or a service to meet the needs of a person with a disability as a form of discrimination. At the same time, the Government was concerned about how to put some limits on inadequate accessibility as a form of discrimination. These limits are found in Chapter 2, Section 12c of the Act which states that the prohibition of discrimination in the form of inadequate accessibility does not apply with regard to housing, to private individuals or if, with regard to the supply of goods and services, measures are required concerning properties and construction works that extend beyond the accessibility and usability requirements contained in the building permit or notification to begin work for the property or construction work in question under the Planning and Building Act (2010:900) or any older corresponding provisions and under regulations issued pursuant to these provisions.

The Government has also been particularly concerned about providing an exception in the Discrimination Act regarding age and discrimination related to goods and services. Chapter 2, Section 12b states:

‘The prohibition of discrimination in Section 12 associated with age;

1. does not prevent the application of provisions of an act in which a certain age is prescribed,
2. does not apply to the provision of insurance services,
3. does not prevent the application of lower age limits for admission to establishments where spirit drinks, wine, strong beer and other fermented alcoholic beverages which the business operator is licensed to serve are served on a commercial basis, and
4. does not prevent other differential treatment on grounds of age either if the differential treatment serves a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.’

These exceptions are clearly much broader than any of those that apply to other grounds. The breadth of the exceptions indicates the Government’s understanding of the extent to which age is used as a defining category within society and the difficulties of applying discrimination as a concept to those same categories. In particular, the exception in point 3 related to the common practice among pubs, nightclubs and others in appealing to audiences of certain ages.

a) Distinction between goods and services available publicly or privately

In Sweden, national law distinguishes between goods and services that are available to the public (e.g. in shops, restaurants and banks) and those that are only available privately (e.g. those restricted to members of a private group).

The Discrimination Act specifies in Chapter 2, Section 12, paragraph 1 that:

‘Discrimination is prohibited on the part of a natural or legal person who

1. supplies goods, services or housing to the general public, outside the private and family sphere, or
2. organises a meeting or event that is open to the public.’

Directing an offer to the general public is a necessary requirement for the Discrimination Act to apply. A private person can sell or rent out anything without regard to the Discrimination Act, as long as the offer stays within a small group of people.

If an item is offered to the general public through a newspaper advertisement or on a sales website, it may be regarded as being outside of the private or family sphere. Selling a car or renting out a room can fall within the private or family sphere if it happens only

occasionally. However, if someone rents out a room regularly and advertises it as soon as it is free, that may be regarded as falling within the public sphere. A private individual's pursuit of an extra income may be considered to be within the public sphere.¹⁴³

3.2.9 Housing (Article 3(1)(h) Directive 2000/43)

In Sweden, the Discrimination Act prohibits discrimination in the area of housing, as formulated in the Racial Equality Directive.

Chapter 2, Section 12 of the Discrimination Act prohibits discrimination in relation to the provision of goods, services and housing outside the sphere of private and family life. In addition to ethnicity, Section 12 applies to all of the grounds covered by the Act, including age, disability, religion or belief, sexual orientation and transgender identity and expression. However, sex characteristics are not expressly covered by the Act.

Housing falls under Chapter 2, Sections 12-12c of the Discrimination Act. The prohibition on housing discrimination covers all grounds but does not apply to private individuals who sell or rent out their property 'on sporadic occasions'. The Government bill¹⁴⁴ to the Discrimination Act states that 'sporadic occasions'¹⁴⁵ (*enstaka*) of selling or renting out a dwelling should be regarded as being within the private/family sphere. Selling an apartment or a house will thus often be exempted from the law.¹⁴⁶ A realistic scenario is that an estate agent presents two possible buyers to the seller and the seller chooses the lower bid due to ethnic reasons. As long as it is the seller's decision and the estate agent treats both buyers equally, there is no unlawful discrimination under the act.

In a landmark Appeal Court case from 2016, *Malmö mot Diskriminering v BCT*,¹⁴⁷ the landlord had rejected a prospective tenant on the basis of the person's name and the assumption that the complainant could not speak Swedish. The landlord asserted that he applied the same principle to all his tenants, they have to be able to speak Swedish. The trial court accepted the landlord's explanation as evidence that there was no discrimination. MmD appealed. The Appeal Court for Skåne and Blekinge reversed the trial court decision and ordered the payment of discrimination compensation – EUR 1 740 (SEK 20 000). The Court held that MmD had presented sufficient evidence to shift the burden of proof and the landlord's evidence was insufficient to prove that his actions did not constitute ethnic discrimination.

In an earlier landmark case from 2010, *Diskrimineringsombudsmannen v Skarets Fastigheter Aktiebolag*,¹⁴⁸ the landlord charged the tenant a higher rent because the tenant was a refugee. The landlord claimed that refugees/immigrants caused more wear and tear. The DO filed an ethnic discrimination case. The district court held that there was no violation of the law since refugees, as a group, do not constitute a category of people protected by the prohibition of ethnic discrimination. The court said that the discriminatory act must be directed at a specific group of persons with the same ethnicity. On appeal, the Appeal Court reversed the trial court decision and awarded the complainant EUR 2 600 (SEK 30 000) as well as legal fees. The Court pointed out that the trial court was too narrow

¹⁴³ Compare Government bill 2007/08:95, p. 245-247, 519, and Fransson, S. and Stüber, E. (2021), *Diskrimineringslagen: en kommentar* (The Discrimination Act: A commentary), 3d ed Norstedts Juridik..

¹⁴⁴ The Government bill is the document where the Government describes the new Act to the Parliament. If the Act is adopted as proposed – as was the case with the Discrimination Act – this bill becomes the most important source for interpreting the new act, at least before there is any case law. See the Introduction of this report.

¹⁴⁵ 'Sporadic occasions' may be more than one occasion. A person may, for instance, sell their apartment and buy a new one with a new partner, separate, sell the apartment and buy another apartment. As long as the apartments are bought and sold for housing reasons, and not commercial reasons, the sales are sporadic.

¹⁴⁶ Government bill 2007/08:95, p. 244.

¹⁴⁷ Appeal Court for Skåne and Blekinge, Case FT 407-15, *Malmö mot Diskriminering v BCT*, 30.06.2016.

¹⁴⁸ DO website at: <https://www.do.se/download/18.277ff225178022473141efb/1618941552066/dom-hovratt-OMED-2006-898.pdf>.

in its application of the law, stating that the ground of ethnicity must be given a broader definition that corresponds to the intentions of the legislator.

In another landmark case, from 2009, *Diskrimineringsombudsmannen v X*,¹⁴⁹ a Roma man applied for a vacant apartment. The Roma man contacted the landlord by phone and stated that he wanted to rent the apartment. He also told the landlord that he had debts, but that he could arrange for a guarantor. The landlord did not refuse to rent the apartment to the man because of his debts. However, the refusal came when he met the guarantor and the prospective tenant and found out that the prospective tenant was Roma. The District Court determined that there was no discrimination due to ethnicity. The DO appealed the case. The Appeal Court reversed the decision and awarded EUR 3 580 (SEK 40 000) to the complainant and ordered the landlord to pay the DO's legal fees. The DO's evidence included the complainant's testimony concerning the withdrawal of the offer and that the landlord had explained, a few days after the withdrawal, that he did not want to rent the apartment to the Roma man due to the negative opinions of the other tenants. The Court held that this was sufficient to shift the burden of proof, and the landlord was unable to prove that there were completely different reasons for the refusal to rent; the landlord was unable to prove that there was no ethnic discrimination.

a) Trends and patterns regarding housing segregation for Roma

In Sweden, there are indications of housing segregation and discrimination against the Roma. There is no registration of people according to their ethnicity, which means that it is not necessarily easy to determine how the Roma population lives. When segregation is studied in statistical materials, a proxy such as the birthplace of the individual or of their parents can be used under certain circumstances. At the same time, this type of proxy provides no relevant information concerning national ethnic minorities, such as the Roma. The Swedish housing market is highly segregated in the three biggest cities. This segregation is mostly two-dimensional. Some areas are 'Swedish-dense'. In those areas, the Swedish ethnic majority is predominant. Other areas are 'Swedish-sparse'. The typical minority ethnic neighbourhood in Sweden has no dominant group. The municipal housing companies are often the largest in many areas. It may be assumed that the average Roma lives in such a neighbourhood.

Over the years, Roma have brought a number of housing cases to the previous Ombudsman against Ethnic Discrimination as well as to the Equality Ombudsman.¹⁵⁰ Various cases leading to cancellation of contracts or a refusal to rent tend to involve references to the perceptions and wishes of the other tenants, rather than the opinions of the landlord. An example of discrimination against Roma in the housing market can be seen in the landmark case discussed above under Section 3.2.9.

There is little to indicate that the situation has improved for Roma people. As part of the Government's Roma Inclusion Strategy 2012-2032, the National Board of Housing, Building and Planning was assigned the role of counteracting housing discrimination against Roma during 2016-2020. This included a web-based training course focusing on the equal treatment of Roma in the housing market, aimed at landlords and property owners.¹⁵¹ Housing companies showed a low level of interest in the web-based training.¹⁵²

¹⁴⁹ DO website at: <https://www.do.se/download/18.277ff225178022473141efa/1618941552003/dom-hovratt-OMED-2006-331.pdf>.

¹⁵⁰ Ombudsman Against Ethnic Discrimination (2003), *Discrimination against Romanies in Sweden, DO project 2002 and 2003*; Ombudsman Against Ethnic Discrimination (2006), *Etnisk diskriminering på bostadsmarknaden* (Ethnic discrimination in the housing market), PM 2006-01-01; Equality Ombudsman (2011), *Romers rättigheter* (Roma rights).

¹⁵¹ National Board of Housing, Building and Planning (2021) *Likabehandling av romer på bostadsmarknaden* (Counteracting discrimination of Roma on the housing market), available at: <https://www.boverket.se/sv/om-boverket/publicerat-av-boverket/webbutbildning/utbildning-likabehandling/>.

¹⁵² National Board of Housing, Building and Planning Annual Report 2020, (*Rapport 2021:4*), p. 76.

In the opinion of the author of this report, it seems likely that the housing companies would show a greater interest in the education programme if they also saw a greater risk of enforcement of the Discrimination Act. It is also noteworthy that civil society continues to bring up the issue of housing discrimination, particularly concerning Roma.¹⁵³

¹⁵³ See e.g. Malmö mot Diskriminering (MmD), *Rätten till bostad är en nyckel: Förebyggande och främjande arbete mot bostadsdiskriminering, Projektrapport 2020-2021* (The right to housing is a key: Preventive and promotional work against housing discrimination, Project report 2020-2021), available at <https://malmomotdiskriminering.se/wp-content/uploads/2021/06/Rapport-bostadsprojekt.pdf>. Also see 'Inkluderande bostadsmarknad' (An inclusive housing market) concerning MmD's ongoing work 2022-2023 with a research circle involving landlords and tenant with a focus developing methods for establishing non-discrimination in housing, available at <https://malmomotdiskriminering.se/bostad/>.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)

In Sweden, the Discrimination Act provides for an exception for genuine and determining occupational requirements. In the author's opinion, Swedish law is in compliance with CJEU case law regarding genuine and determining occupational requirements.

Chapter 2, Section 2 of the Discrimination Act is formulated as follows:

'The Prohibition in Section 1 does not prevent... differential treatment based on a characteristic associated with one of the grounds of discrimination if, when a decision is made on employment, promotion or education or training for promotion, by reason of the nature of the work or the context in which the work is carried out, the characteristic constitutes a genuine and determining occupational requirement that has a legitimate purpose and the requirement is appropriate and necessary to achieve that purpose.'

In the legislative preparatory works, it is made clear that typical examples concerning this clause include those where a Muslim organisation has the right to demand that an imam be of the Muslim faith, or an organisation campaigning for equal rights for gays and lesbians or an interest organisation serving a certain immigrant group may have a right to require that, for some 'core' positions, the employees themselves should be homosexuals or should have the relevant immigrant background. At the same time, it is emphasised that exceptions from the prohibition of discrimination must be given a narrow interpretation.¹⁵⁴ Concerning an organisation, only the positions that are 'visible' to the public or of particular relevance can come into question, not an entire organisation per se, and not automatically. The employer must, furthermore, have a strong motive for applying the exception and the position must clearly have required the qualification concerned. Religious communities do not have a special status under the Discrimination Act, but they are explicitly mentioned in the legislative preparatory works, along with other examples.

Concerning occupational requirements, an interesting example is provided by the 2017 Labour Court case concerning a person who applied for a position as a midwife but, due to religious reasons, did not want to have anything to do with abortions. Because of this, the employer determined that she could not fulfil the job requirements. She filed a lawsuit. The Labour Court concluded, as did the employer, that the determining factor in not getting the job was that her inability to participate in abortions constituted 'professional limitations'.¹⁵⁵ Thus there was no discrimination. It should also be noted that a complaint concerning this case was submitted to the European Court of Human Rights. The Court determined that a proper balance was struck between the different competing interests, freedom of religion as opposed to a state's margin of appreciation, which led to the complaint being rejected.¹⁵⁶

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Sweden, the Discrimination Act does not provide for an exception for employers with an ethos based on religion or belief.

In Sweden, all grounds of discrimination are in principle considered equal, and special provisions would violate this equality. The general rule on exceptions in the labour market

¹⁵⁴ Government bill 2007/08:95, pp. 155-157.

¹⁵⁵ Labour Court 2017 No. 23, *E.G. v Jönköping County*, available at: <https://arbetsdomstolen.se/media/sugcb1jr/23-17.pdf>.

¹⁵⁶ See European Court of Human Rights, *Grimmark v. Sweden*, 11 February 2020, [43726/17](https://www.echr.coe.int/ViewDoc.aspx?id=72842).

in Chapter 2, Section 2 applies and there are thus no special exceptions for religious organisations/employers.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)

In Sweden, the Discrimination Act provides for an exception for the armed forces in relation to age but only with regard to conscription and military education under Chapter 2, Section 15 of the Discrimination Act, (Article 3(4), Directive 2000/78). An exception was needed for the ground of age discrimination due to the large variety of laws and regulations relating to age and service in the armed forces.¹⁵⁷ There is no exception in regard to disability.

In Sweden, the Discrimination Act does not provide a definition of 'armed forces'.¹⁵⁸

According to Chapter 2, Section 15 of the Discrimination Act

Discrimination is prohibited

1. in connection with enrolment procedures or other examination of personal circumstances under the National Total Defence Service Act (1994:1809) and in connection with enlistment for and during the performance of national military service or civilian service, and
2. in connection with admission examinations for and during the performance of other equivalent military training in the Swedish Armed Forces.

However, this prohibition does not apply to discrimination associated with age.

In Sweden, the scope of the exception is not explicitly limited to safeguarding the combat effectiveness of the armed forces. However, this is presumably the intention expressed in the Government bill concerning the exception for age.¹⁵⁹

In Sweden, the scope of the exception concerning age presumably does not extend to other non-combat staff, such as civilians employed in administrative positions in the army, since the focus of Chapter 2, Section 15 is on those doing compulsory military service or volunteering for military or civil service.

Chapter 2, Section 15 also covers enrolment procedures, admission tests, and other examinations related to personal circumstances under the National Total Defence Service Act (1994:1809). Conscription was reintroduced in 2018, but an individual's willingness to serve is a selection criterion.¹⁶⁰ With regard to these issues, see the district court case in Section 12.2, *Country report, Non-discrimination, Sweden 2025*.¹⁶¹ The case involves a

¹⁵⁷ Government bill 2007/08:95, p. 278.

¹⁵⁸ While there is no definition in the Discrimination Act, there is a definition in Regulation (2007:1266) with instructions for the Armed Forces.

¹⁵⁹ Government bill 2007/08:95, p. 278: '*Var och en av dessa och andra förekommande åldersgränser har i de sammanhang de tillkommit ansetts berättigade, t.ex. av hänsyn till rikets säkerhet eller personalförsörjningen inom försvaret.*' (Author's translation: 'Each of these and other existing age limits relate to contexts in which they were considered justified, e.g. for the sake of national security or the supply of defence personnel').

¹⁶⁰ In March 2017, the Government decided to reintroduce conscription, starting in 2018. As only 4 000 out of a yearly cohort of 100 000 persons were expected to serve, and as their willingness to serve is a selection criterion, there is a strong possibility of it becoming a reality only for those who want to serve. By 2023, the number of conscripts going through training was 6 320 according to *Försvarsmaktens årsredovisning 2023* (Swedish Armed Forces Annual Report 2023), p. 5. Due to NATO membership and the current global situation, it is expected that the number of conscripts undergoing basic training will increase, p. 17. Available at: <https://www.forsvarsmakten.se/siteassets/2-om-forsvarsmakten/dokument/arsredovisningar/arsredovisning-2023/forsvarsmaktens-arsredovisning-2023-bilagor.pdf>.

¹⁶¹ Stockholm District Court, Case T 17322-22, *DO v Swedish Armed Forces*, 19.11.2024.

person whose application to the Armed Forces was rejected automatically due to his diagnosis of Asperger's syndrome. The court held that the Armed Forces' rejection of AA's application in the manner described constituted direct discrimination. The prerequisites of a disadvantage, a comparable situation and a connection to disability were established. It was thus up to the Armed Forces to demonstrate that discrimination had not occurred, which was impossible, given that it was clear from the application process that no individual assessment had taken place. The case has been appealed.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Sweden, national law includes exceptions relating to difference of treatment based on nationality.

In Sweden, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

In Sweden, national origin is explicitly mentioned as part of the protected ground of ethnicity in national anti-discrimination law. Under Chapter 1, Section 5(3) of the Discrimination Act, ethnicity is defined as 'national or ethnic origin, skin colour or other similar circumstance'. Citizenship is thus not explicitly mentioned, but it falls under the definition of ethnicity, 'national origin or other similar circumstance'. The legislative materials state:

'Citizenship in itself is not covered by the discrimination ground ethnicity. Nevertheless, unjustified requirements concerning e.g. Swedish citizenship risk being determined to be indirect discrimination since such requirements typically are less favourable to persons with another ethnic or national origin than Swedish.'¹⁶²

Under Chapter 11, Section 11 of the Instrument of Government, Swedish citizenship is required for judges. Chapter 6, Section 2 says that Government ministers must have Swedish citizenship. The Chancellor of Justice, the Parliamentary Ombudsman and the three Auditors General are the other examples where Swedish nationality is required by the Instrument of Government.¹⁶³

Positions to which a person is elected by the Parliament require Swedish citizenship, in accordance with Chapter 7, Section 11 of the Parliament Act (1974:153). This act has semi-constitutional status. As regards other legislation, there are some (rare) occasions where Swedish citizenship is required.¹⁶⁴

b) Relationship between nationality and 'racial or ethnic origin'

National origin and citizenship are two of many factors that can lie at the heart of ethnicity.¹⁶⁵ The overlap is thus recognised by the law and no person can be left unprotected. A stateless person will always have an ethnic/national origin. The word 'race' has been deliberately omitted. In Sweden, discrimination on this basis will be regarded as ethnic discrimination, being a ground similar to that of skin colour.¹⁶⁶

¹⁶² Government bill 2007/08:95, p. 497.

¹⁶³ Government bill 2009/10:80, p. 333.

¹⁶⁴ See also White Paper SOU 2000:106, *Medborgarskap i svensk lagstiftning* (Citizenship in Swedish legislation). This Government inquiry includes an inventory of the areas where citizenship requirements exist.

¹⁶⁵ According to Chapter 1 Article 5(3) of the Discrimination Act, ethnic origin is defined as 'national or ethnic origin, skin colour or other similar circumstance'.

¹⁶⁶ Although the author believes the removal of the word 'race' does not violate EU law, this is not necessarily a positive development with regard to Directive 2000/43.

4.5 Health and safety at work (Article 7(2) Directive 2000/78)

In Sweden, there are no exceptions in relation to disability and health and safety at work as allowed under Article 7(2) of the Employment Equality Directive.

The ordinary exception in Chapter 2, Section 2 of the Discrimination Act (genuine and determining occupational requirement) applies to the employer. Regarding persons with disabilities, it is relevant for the employer to take into consideration not only security issues and the health and safety of others in the workplace, but also the health and safety of the person with a disability. However, the burden of proof can sometimes be shifted to the employer, who then has to prove that the contested measure is necessary to protect health and safety.¹⁶⁷ In Labour Court case 2003 No. 47,¹⁶⁸ the risks of shift work for an employee with diabetes were not proven and the refusal to employ him was deemed to constitute direct discrimination.

4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.6.1 Direct discrimination

a) Justification of direct discrimination on grounds of age

In Sweden, the Discrimination Act allows for specific justifications for direct discrimination on grounds of age.

Chapter 2 Section 2(4) states that the prohibition of discrimination in working life does not prevent:

‘Differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.’

This test, as applied thus far, is in compliance with the test in Article 6 of Directive 2000/78 as well as CJEU case law.

There is thus a general possibility to justify age discrimination with a legitimate aim if the means are appropriate and necessary in pursuit of this aim. The legislative preparatory works for the Discrimination Act describe the scope for justification as being quite broad. Age limits are common in collective agreements and the system as such works well according to the Government. Therefore, the courts are encouraged to look at a collective agreement in a holistic way, including its relationship with the relevant social security provisions, rather than singling out individual clauses in a collective agreement for scrutiny.¹⁶⁹ At the same time, the Government rejected demands for a presumption of collective agreements being compatible with Directive 2000/78.¹⁷⁰ Any benefit in a collective agreement can be seen as a ‘certain advantage linked to employment’ within the meaning of Article 6(1)(b) of the directive. In the author’s opinion, the scope for justification is likely to become too broad unless the Labour Court makes a narrow interpretation of the law. Two examples from the legislative preparatory works concerning conditions fulfilling a legitimate aim and normally being both appropriate and necessary are that:¹⁷¹

¹⁶⁷ Chapter 6, Section 3 of the Discrimination Act applies to all forms of discrimination.

¹⁶⁸ Labour Court 2003 No. 47, *Swedish Metal Workers Union v Scandinavian Refinery Ltd (Scanraff) and Cooperative Employers Organisation*, 04.06.2003.

¹⁶⁹ Government bill 2007/08:95, p. 177.

¹⁷⁰ Government bill 2007/08:95, p. 177.

¹⁷¹ Government bill 2007/08:95, p. 179.

- better conditions regarding paid vacation are justified because older workers need more rest than younger workers in order to be able to work until they retire;
- better conditions regarding periods of notice for dismissals for older workers are also justified as an aid to help them work until retirement.

In a landmark case from 2011,¹⁷² the Labour Court made a narrow interpretation of the scope for different treatment with regard to age. The case concerned a redundancy situation regarding an airline's cabin crew personnel. According to the Employment Protection Act, the principle of seniority was to apply. Those persons who had been employed for the longest time were to have the highest level of job security. This rule is only semi-mandatory, however, and can thus be modified by collective agreements. A collective agreement in this case permitted the employer to dismiss everyone over the age of 60, as they were entitled to a full pension (roughly 70 % of previous pay) under the employer's pension scheme. The case concerned 25 people. The employer argued that there was no direct age discrimination. The company needed to reduce the workforce. Being dismissed was less hard on those who had a right to a full pension, therefore there were legitimate social reasons to choose those above the age of 60 for dismissal and thus no indirect discrimination had occurred either.

The Labour Court decided that there was direct discrimination because age and the pension rights were directly linked to each other. The Labour Court said that both the desire to distribute employment fairly between generations and the desire to ensure that the remaining employees were not all close to pension age were arguments that could be valid in defending different treatment according to age under Chapter 2, Section 2(4) of the Discrimination Act. Voluntary retirement schemes could thus be acceptable. However, it was not deemed proportionate, given the circumstances of the case, to force retirement on all those who had reached the age of 60.

The dismissals were declared void. The 25 people thus kept their employment and were each awarded EUR 11 700 (SEK 125 000) to be paid by the employer in a combination of a discrimination compensation award and non-pecuniary damages under the Employment Protection Act (*Lagen om anställningsskydd*).¹⁷³

So far, the interpretation seems to be in conformity with the Directive as far as discrimination against older persons is concerned.

b) Permitted differences of treatment based on age

In Sweden, national law permits differences of treatment based on age for activities within the material scope of Directive 2000/78.

According to Chapter 2, Section 2(3), the prohibition against discrimination in working life does not prevent 'the application of age limits with regard to the right to pension, survivor's or invalidity benefits in individual contracts or collective agreements'.

c) Fixing of ages for admission to occupational pension schemes

In Sweden, national law allows occupational pension schemes to fix ages for admission to the scheme, taking up the possibility provided for by Article 6(2).

¹⁷² Labour Court 2011 No. 37, *Equality Ombudsman v Aviation Employers (Flygarbetsgivarna) and Scandinavian Airlines System*, 04.05.2011, at: <https://www.do.se/download/18.277ff225178022473141ecb/1618941521242/dom-arbetsdomstol-ANM-2010-1070.pdf>.

¹⁷³ The reform of 2013 extending the protection for age discrimination did not affect the prohibition of discrimination in the labour market.

There is a specific exception in the Discrimination Act for age limits concerning pensions, survivor's benefits and disability benefits in individual contracts and collective agreements.¹⁷⁴ In the view of the author of this report, the wording of this exception means that the Act allows for the use of age criteria in actuarial calculations concerning the benefits mentioned.

4.6.2 Special conditions for younger or older workers

In Sweden, there are special conditions set by law for older and younger workers in order to promote their vocational integration.

Within labour market policy regulations there are a number of rules which expressly refer to age, aimed at promoting the vocational integration of young and old people, respectively. Age limits are often uncontroversial. There is, for instance, a 'work guarantee' for people younger than 25. It was introduced as an amendment to the Regulation on a work guarantee for young persons and has the aim of ensuring that a young person gets a suitable place on an education programme or traineeship within three months of registering with the National Employment Agency.¹⁷⁵ Another example is the special support for the provision of summer jobs for young people.¹⁷⁶

4.6.3 Minimum and maximum age requirements

In Sweden, there are no exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training, except in relation to the military.

Minimum or maximum age requirements are dealt with under the proportionality test in Chapter 2, Section 2(4) of the Discrimination Act (see Section 4.6.1.a above).

4.6.4 Retirement

a) State pension age

In Sweden, there is no state pension age at which individuals must begin to collect their state pensions.

If an individual wishes to work beyond the state pension age, the pension can be deferred. Here the term 'state pension age' means the age at which a person can start to collect their pension. If a person wishes to work, the pension can be postponed without any upper limit, with each month of postponement resulting in an actuarial increase of the pension level.

An individual can collect a pension and still work.

According to the Swedish statutory pension scheme introduced in 1998,¹⁷⁷ there is no fixed upper pension age. The income-related public pension scheme opens up for part-time or full-time pensions from the age of 63.

¹⁷⁴ Discrimination Act (2008:567) Chapter 2, Section 2(3).

¹⁷⁵ Regulation (2007:813) on a work guarantee for young persons, (updated by SFS 2017:1165). The words 'work guarantee' have been put in quotation marks because the act contains goals and not a legally enforceable guarantee. Also see Swedish Public Employment Service (*Arbetsförmedling*), Job guarantee for young people, accessed 2025-12-20, at <https://arbetsformedlingen.se/other-languages/english-engelska/additional-support/support-a-z/job-guarantee-for-young-people>.

¹⁷⁶ Government press release, 22 April 2025, *250 miljoner till sommarjobb och jobb för unga* (250 million for summer jobs and jobs for young people) at <https://www.regeringen.se/pressmeddelanden/2025/04/250-miljoner-till-sommarjobb-och-jobb-for-unga/>.

¹⁷⁷ Social Security Code (*Socialförsäkringsbalk*) (2010:110), adopted on 04.03.2010, Chapters 62-67.

People may also postpone their pensions, continue to work for as long as they like and continue to add to their pension benefits, the scheme being based on a principle of lifelong earnings and actuarially correct calculations based on their expected remaining lifetime when they take out the pension. Postponing the pension payments for one month raises the pension by approximately 0.6 % around the age of 65. It is possible to collect a pension and still work – both the pension and the income are taxable.

However, the right to the basic pension scheme – the ‘guarantee pension’ – requires the beneficiary to be 66 years old. From 2026, the age limit will gradually increase in line with growing life expectancy.¹⁷⁸

b) Occupational pension schemes

In Sweden, there is no standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

If an individual wishes to work for longer, payments from such occupational pension schemes can often be deferred.

In most cases, an individual cannot collect an occupational pension and still work full-time for their employer.

There are over 300 occupational pension schemes in Sweden.

Occupational pension schemes generally contain flexible rules on the pensionable age. Pensions can thus normally be deferred if an individual wishes to work for longer and the scheme will provide more pension income in such cases.¹⁷⁹ The age of 55 is the earliest age at which a pension fund can allow a person to start withdrawing their pension.¹⁸⁰ Many occupational pension schemes thus have this age limit; 60 and 65 are other common age limits.

It is not uncommon for occupational pension schemes to be related to retirement and thus it is not possible for a person who keeps working full-time for the same employer to claim a pension as well.

c) State-imposed mandatory retirement ages

In Sweden, there is no state-imposed mandatory retirement age.

d) Retirement ages imposed by employers

In Sweden, the Employment Protection Act (*Lag (1982:80) om anställningsskydd*) permits employers to set the retirement age at 69 years by contract, collective bargaining or unilaterally.¹⁸¹

¹⁷⁸ Information available at the Pensions Agency, accessed 2025-12-20:

<https://www.pensionsmyndigheten.se/other-languages/english-engelska/english-engelska/guaranteed-pension-for-those-with-low-income>.

¹⁷⁹ Collective agreements on pensions are very diverse. The normal practice today is that a young person belongs to a prefunded system based on actuarial principles. Elderly workers quite often belong to a defined benefits system and some systems have a combination of a defined contribution with guaranteed defined benefits for those with many years of participation. Such systems do not always work on actuarial principles (with regard to the defined benefit part) if the worker decides to postpone their retirement.

¹⁸⁰ Income Tax Act (*Inkomstskattelag*) (1999:1229) adopted on 16.12.1999, Chapter 58 Section 8 sets this age as the lowest possible for favourable tax treatment.

¹⁸¹ Pensions Agency at: <https://www.pensionsmyndigheten.se/ga-i-pension/planera-din-pension/hojd-pensionsalder>.

Within employment law, this means there is a right for the employee to remain in their post until they reach the age of 69, despite any agreement between the parties.¹⁸² At this age, it is possible for the employer to unilaterally terminate the employment with one month's notice. This principle was accepted by the CJEU in the *Hörfeldt* case (when the applicable age was 67).¹⁸³ On a general level, most Swedes have accumulated a viable pension by the time they reach the age of 67. This general age limit was therefore proportional and could be defended as an integral part of the general labour market system.¹⁸⁴

In the landmark *Keolis* case,¹⁸⁵ the employer legally dismissed bus drivers at the age of 67. The employer then offered to re-hire the staff on a fixed short-term hourly basis (for instance filling in at short notice for permanently employed drivers calling in sick). When they reached the age of 70, their employment was not renewed. This was considered to be direct age discrimination. The Labour Court stated that the permission to dismiss with regard to the Discrimination Act (or to refuse to prolong temporary employment) without an individual assessment existed only at the age of 67. Only at this age was there explicit permission in the Employment Protection Act for dismissals without just cause. Thus, as the relevant age in the Employment Protection Act has been increased to 69, if an employer agrees, the employee can continue working after the age of 69.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights do not apply in the same way to all workers irrespective of age if they remain in employment on attaining pensionable age or another age. Today, an employee has a right to stay in their job until the age of 69 according to Section 32a of the Swedish Employment Protection Act. At this age the employer can give notice. If notice is not given, the contract continues but the employee can be dismissed at any point with one month's notice. During that period the employee will no longer be included in the last-in first-out rules or the right to re-employment.

f) Compliance of national law with CJEU case law

In Sweden, the national legislation is in line with CJEU case law on age regarding mandatory retirement.

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Sweden, national law permits and requires seniority to be taken into account in selecting workers for redundancy.

The Swedish 1982 Employment Protection Act¹⁸⁶ differentiates between dismissal on personal grounds (which requires just cause) and dismissal due to a shortage of work.

¹⁸² The rule also outlaws collective agreements stipulating a lower retirement age, something which has been criticised by the ILO, Case No. 2171, GB 286/11 (part II), March 2003. The law (Section 32a of the 1982 Employment Protection Act) has not yet been revised.

¹⁸³ Case C-141/11, *Torsten Hörfeldt v Posten AB*, judgment of 5 July 2012, EU:C:2012:421.

¹⁸⁴ The age of 67 applied previously. According to the Employment Protection Act, as amended on 18 June 2019, an employee had the right to keep working until the age of 68 from 2020 and to the age of 69 from 2023. However, the Discrimination Act still applies to any refusal to prolong employment that may involve discrimination.

¹⁸⁵ Labour Court 2015 No. 51, *Equality Ombudsman v Keolis AB*, 16.09.2015.

¹⁸⁶ Employment Protection Act (*Lag om anställningsskydd*) (1982:80).

In the latter case, just cause is regarded to exist (the decision as to whether there is a shortage of work rests entirely with the employer), but lay-offs have to be carried out in accordance with the last-in, first-out principle under Section 22.

Moreover, in the event of equal periods of employment, senior age priority applies directly. There is also special protection for persons with disabilities (preference, i.e. the seniority rule, does not necessarily apply).

Regardless of the reason for the dismissal, the notice period required (between one and six months) relates to the prior period of employment and is thus indirectly related to age.

Redundancies and collective agreements are problematic in Sweden. It is not unusual for central collective agreements to give people over the age of 60 access to early retirement if there is a redundancy situation. Such arrangements encourage the local trade union to agree to local collective agreements allowing elderly workers to be dismissed in redundancy situations instead of applying the last-in, first-out principle. If all those over the age of 60 are dismissed, it becomes a case of direct discrimination, which is prohibited. However, if 50 % of the employees over 60 whose preference was to work until early retirement are dismissed and 25 % of the younger workers are dismissed, it would become a case of possible indirect discrimination and, since collective agreements have strong standing in the Swedish labour market model, they would probably survive a proportionality test. Facilitating the dismissals of older people through local collective agreements seems to be an important reason for employers to want central collective agreements providing early retirement for workers over 60 who are made redundant.

b) Age taken into account for redundancy compensation

In Sweden, national law does not provide compensation for redundancy.

Collective agreements for white-collar workers and for workers in the public/state sector sometimes provide packages including extra unemployment benefits, retraining on favourable terms and even early retirement if the worker who is being made redundant is over 60.¹⁸⁷

4.7 Further exceptions necessary in a democratic society: Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5) Directive 2000/78)

In Sweden, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive in relation to public security, public order, criminal offences, protection of health or protection of the rights and freedoms of others.

4.8 Any other exceptions

In Sweden, other exceptions to the prohibition of discrimination (on any ground covered by this report) provided in national law are the following:

- Age limits set by law are accepted within the social security field under Chapter 2, Section 14b (1) of the Discrimination Act.
- Age limits set in laws on goods and services are permitted under Chapter 2, Section 12b (1) of the Discrimination Act.
- Age limits in the insurance sector are permitted under Chapter 2, Section 12b (2) of the Discrimination Act.

¹⁸⁷ See further descriptions and discussions of such collective agreements in relation to the sustainability of the Swedish pension system in Government White Paper SOU 2012:28, pp. 316-320.

- Minimum age limits for premises that are allowed to serve alcohol are permitted under Chapter 2, Section 12b (3) of the Discrimination Act.
- Age limits set in laws governing healthcare and social services are also permitted under Chapter 2, Section 13b (1) of the Discrimination Act.
- Discrimination in the form of inadequate accessibility, concerning access to goods, services and housing, does not apply to housing under Chapter 2, Section 12c (1) of the Discrimination Act.
- Discrimination in the form of inadequate accessibility, concerning access to goods, services and housing, does not apply to private persons under Chapter 2, Section 12c (2) of the Discrimination Act.
- Discrimination in the form of inadequate accessibility, concerning access to goods, services and housing, under Chapter 2, Section 12c (3) of the Discrimination Act, does not apply if, with regard to the supply of goods and services, measures are required concerning properties and construction works that extend beyond the accessibility and usability requirements contained in the building permit or notification to begin work for the property or construction work in question under the Planning and Building Act (2010:900) or any older corresponding provisions and under regulations issued pursuant to these provisions.
- According to Chapter 2, Section 15 of the Discrimination Act, a specific exception is made for discrimination due to age concerning the prohibition of discrimination in relation to enrolment procedures, enlistment for and the performance of national military or civilian service and admission examinations for and during the performance of other equivalent military training.
- According to Chapter 2, Section 16 of the Discrimination Act, a specific exception is made for discrimination due to age concerning the obligation by the military or other organisations referred to in Chapter 2, Section 15 to investigate and take measures against harassment and sexual harassment. If they are employed by the military, the normal rules apply.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Sweden, the extent to which positive action is specifically allowed by the Discrimination Act depends on the ground (sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or transgender identity or expression) and the area of prohibition. There is no general clause allowing positive action.

Concerning working life, there is a clause that allows for positive action only in relation to sex and age (Chapter 2, Sections 2(2) and 2(4)). Section 2(2) states that the prohibition against discrimination does not prevent 'measures that contribute to efforts to promote equality between women and men and that concern matters other than pay or other terms of employment.' Section 2(4) states that the prohibition does not apply to 'differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose'. Even though it was proposed in the relevant Government inquiry, the Government made it clear in the bill proposing the current Discrimination Act that positive action in working life concerning ethnicity was not to be allowed.¹⁸⁸

Positive action in relation to sex is also allowed more broadly in relation to other areas in Chapter 2 of the Discrimination Act such as education (Section 6(1)), labour market policy activities (Section 9(1)), starting or running a business (Section 10), membership of certain organisations (Section 11) and goods, services and housing (Section 12a). Positive action concerning ethnicity, religion or other belief in relation to education is allowed only concerning 'a folk high school or a study association' (Section 6, para 2). In relation to Sections 9 and 10, positive action concerning ethnicity is essentially allowed to the same extent that it is allowed in relation to sex. Otherwise, positive action is not mentioned in the Act in relation to the other grounds.

While not specified in the Discrimination Act, positive action in relation to persons with disabilities is generally allowed due to the asymmetric nature of the prohibition against discrimination. Measures benefiting this group may disadvantage persons with no disabilities, but that group is not protected by the Discrimination Act and thus the discrimination is presumably lawful. The protection provided for disability is 'asymmetric' as compared with, for example, the protection for ethnicity, which protects 'Swedes' and 'non-Swedes', the protection for the ground of sex, which protects men and women, and the protection for sexual orientation, which protects heterosexuals, homosexuals and bisexuals.

In other areas of labour law as well as labour market policy regulations, a number of special measures are available in relation to persons with disabilities with regard to their working life. Their purpose is to directly or indirectly compensate for disadvantages linked to disability. In some cases, for example, wage subsidies are available. An individual may also have a right to certain support measures in order to regain or retain their work capacity. These measures are regulated in the Social Insurance Code (*Socialförsäkringsbalk*, 2010:110) Chapters 29-31. Employers are required to maintain a good work environment, which means not only the physical aspects but the psycho-social aspects as well. This also means that certain types of accommodation should be made for employees with disabilities. This can relate to the physical accessibility of the workplace. These issues are regulated in the Work Environment Act (*Arbetsmiljölagen*, 1977:1160) and the Work Environment Regulation (*Arbetsmiljöförförordningen*, 1977:1166), as well as by the Discrimination Act.

¹⁸⁸ Government bill 2007/08:95 pp. 161-171.

With regard to age, direct discrimination can, in almost all areas, be justified by a proportionality test. Positive action measures would normally pass such a test.

A right for members of certain religions to refuse military service is also specified (Chapter 2, Section 15).

There are no exceptions in the act concerning sexual orientation.

The Discrimination Act also contains rules on 'active' measures. From an EU legal perspective, such measures are within the realm of positive action in a more general sense. The act requires that employers continuously carry out goal-oriented work concerning all discrimination grounds so as to actively promote equality in working life.¹⁸⁹ Education providers are also required to undertake continuous goal-oriented work with regard to all grounds (Chapter 3, Sections 1-3).

Both employers and education providers need to have procedures in place to handle instances of sexual harassment, harassment and victimisation on any ground that may be reported by students/pupils/employees (Chapter 3, Sections 6 and 18).¹⁹⁰

b) Quotas in employment for persons with disabilities

In Sweden, national law does not provide for quotas for the employment of persons with disabilities.

¹⁸⁹ Discrimination Act (2008:567), Chapter 3 Sections 1-3.

¹⁹⁰ As regards active measures, the Ombudsman works as a regulatory authority, visiting employers and universities, checking their equality plans and so on. If somebody fails to fulfil their duties, the Board Against Discrimination may – on the Ombudsman's application – issue an order to comply with a specific request before a certain date (or in the future), subject to a financial penalty under Chapter 4, Section 5 of the Discrimination Act. The financial penalty will gain legal force only after a district court has ordered the payment. The legality of the order itself – as well as the reasonableness of the amount – can be decided upon by the district court. A district court has never ordered such a payment, and applications to the Board Against Discrimination have been extremely rare. The Board lists only two application decisions on its website as at 20.12.2025, <https://namndenmotdiskriminering.se/beslut>.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Sweden, the following procedures exist for enforcing the principle of equal treatment:

- Judicial proceedings in the Labour Court (starting in the district court if the worker is represented by someone other than a trade union with a collective agreement or by the Equality Ombudsman).
- Judicial proceedings in the general court system, primarily concerning discrimination outside the field of working life.
- If a trade union with a collective agreement represents a member, there must be negotiations with a view to settling the conflict, which must take place before going to the Labour Court, according to Section 11 of the Co-Determination Act in conjunction with Chapter 4, Section 7 of the Labour Procedure Act (1974:371). Cases are often settled at this stage.
- The Equality Ombudsman negotiates with the employer before going to the Labour Court.¹⁹¹
- Criminal complaints related to Penal Code 16:8 concerning hate speech and 16:9 concerning unlawful discrimination can be submitted to the police for prosecution.

As a general rule, the administrative courts and procedures are not used to directly address discrimination under the Discrimination Act.¹⁹² However, administrative court judgments can in some cases have important effects on discrimination. For example, see the Supreme Administrative Court decisions in Section 12.2 *Country Report, Non-discrimination, Sweden 2023* annulling local government policy decisions prohibiting the use of religious headscarves, etc.

In general, administrative bodies do not apply the Discrimination Act directly. However, there are some situations where a discriminatory situation can be resolved by an administrative body through the application of other laws and regulations. If, for instance, a parent receives a decision from the School Appeal Board concluding that the accommodation costs necessary for accepting their child to a school are not substantial,¹⁹³ the school must take on those costs. This means that the discrimination issue has been resolved, but at the same time the decision does not lead to an award of discrimination compensation.

Some state employment decisions, due to rules in the Instrument of Government (Constitution) concerning objective grounds on hiring, can be appealed through administrative proceedings.¹⁹⁴ If the claimant is better qualified, they are entitled to the job, but not a discrimination compensation award. Under the Discrimination Act, a court can only grant a discrimination compensation award but not the job. Thus, using these administrative procedures is sometimes an alternative or complementary way to appeal against a discriminatory decision.

¹⁹¹ The law does not require this but having the Labour Court as the only instance presupposes well-prepared cases and that includes these negotiations. Chapter 4, Section 3 of the Discrimination Act gives the Equality Ombudsman the power to issue an order subject to a financial penalty (which can be appealed to the Board Against Discrimination) if the employer does not show up.

¹⁹² However, see the three administrative court cases described in Section 12.2, *Country report, Non-discrimination, Sweden 2021*.

¹⁹³ Education Act (*Skollag*) (2010:800), Chapter 9, Section 15 in conjunction with Chapter 28, Section 12(6).

¹⁹⁴ Instrument of Government, Chap. 12, Art. 5 (2): 'When making appointments to posts within the State administration, only objective factors, such as merit and competence, shall be taken into account.'

Along the same lines, on 1 July 2017 a mechanism was introduced in the education sector to bring an alleged violation of the Discrimination Act to the Higher Education Appeal Board in some situations. However, this does not include any possibility of obtaining a discrimination award; it is only possible to correct the discriminatory act or omission, for instance by replacing a tutor who has discriminated against a student.¹⁹⁵

Relevant criminal procedures may be initiated by a public prosecutor (or in very rare cases by the private party). The Ombudsman does not have legal standing before the courts in criminal procedures.

In the Labour Court, a trade union, the Equality Ombudsman or an NGO can act on behalf of the worker; in the general court system, the Equality Ombudsman can act on behalf of the claimant.

One of the tasks of the Ombudsman is to investigate complaints of discrimination. This includes the provision of advice, but also – at the Ombudsman's discretion – representing the victim of discrimination in settlement proceedings or, ultimately, in a court of law. Should the individual concerned be a member of a trade union, the right of the Ombudsman is subsidiary to the right of the trade union to represent its member.¹⁹⁶

Civil proceedings regarding working life under the Discrimination Act are to be dealt with in accordance with the Labour Disputes Act.¹⁹⁷ Depending on whether the employer is bound by a collective agreement, whether the person who alleges discrimination is or is not a member of the trade union with the collective agreement, and whether the trade union is willing to take up the claim, the case may be heard in the first instance either by the district court (*tingsrätt*) with ordinary judges as in other civil cases, or the Labour Court (*Arbetsdomstolen*), in a special composition comprised of a majority of judges with a judicial background and a minority of members with a background in labour market organisations.¹⁹⁸

Whereas it is the injured individual (or an NGO) who has standing (*locus standi*) as the claimant at the district court, it is the trade union which takes that position as the named party when claims are dealt with by the Labour Court as the first (and last) instance. A lawsuit taken to the district court in accordance with the described rules may always be appealed to the Labour Court, whereas a decision of the Labour Court – whether as the first or second instance – is not subject to further appeal. As already indicated, the Ombudsman can also bring a case directly to the Labour Court. When the DO takes on a claimant's case and the claimant provides a power of attorney, the DO becomes the named party in the case. Although the DO, an NGO or a union can become the named party in a discrimination case, this still assumes that the injured individual has signed a power of attorney concerning the case.

The Equality Ombudsman may represent victims of discrimination in all areas covered by the Discrimination Act. Cases outside working life will be dealt with by the ordinary court system, i.e. the relevant district court in the first instance. Discrimination in connection with social security, for instance (an example of an area that normally falls under administrative law), is thus dealt with under the general court system and the ordinary rules on civil procedure apply.¹⁹⁹

¹⁹⁵ Act (2017:282) changing the Discrimination Act.

¹⁹⁶ Discrimination Act (2008:567), Chapter 6, Section 2(3).

¹⁹⁷ Act (1974:371) on Labour Law Procedure.

¹⁹⁸ As regards the Swedish Labour Court, see, for instance, the European Court of Human Rights, *AB Kurt Kellermann v Sweden*, No. 41975/98, 26 October 2004.

¹⁹⁹ Some university or higher education cases may also be brought before the Board of Appeal for Higher Education.

The relatively few cases that end up in the court system should not necessarily be seen as proof that action is not taken in cases of discrimination. The DO, for example, settled 31 cases in 2025 that primarily involved compensation as well as an admission of discrimination.²⁰⁰ A number of cases are presumably settled out of court. The same is probably true concerning the trade unions. Most labour complaints are settled during the mandatory negotiations prior to a claim being presented to the Labour Court. In cases that are settled, the remedies are pretty much the same as those that apply in the case law of the Labour Court. At times though, a settlement can involve better results, since settlements are not necessarily limited to economic compensation. For example, a settlement can include compensation combined with employment, which is something a court could not order. Legal costs can also be reduced through settlements.

b) Barriers and other deterrents faced by litigants seeking redress

With regard to discrimination cases, inside as well as outside the labour market, there are various obstacles for potential discrimination litigants. Some examples are low levels of rights awareness, low levels of trust in the legal system, low levels of experience with lawyers and the legal system and limited awards if successful. These factors tend to compound what is presumably the most important deterrent: the huge financial risk related to litigation, particularly given the loser-pays rules. Potential litigants seldom have the resources to be able to risk paying EUR 10 000–20 000 or more for the other party's legal costs if they lose, which is the general rule. This is on top of their own costs for a lawyer. At the same time, those with the power to discriminate, such as employers, business owners and Government agencies, generally have a natural advantage due to their economic position as well as familiarity and experience with the legal system and access to expertise. Furthermore, for those taken to court for discrimination, the costs for legal services and the compensation they may be required to pay are generally considered to be normal tax-deductible business expenses. If the person who is alleged to have carried out the discrimination is a Government employee and the discrimination was within the framework of their employment, the Government employer will pay for their legal representation, as well as any discrimination compensation that is ordered.

If the claimant asks for less than half of the base amount for the year, SEK 29 400 (2025) or about EUR 2 700, a simplified small claims procedure may be used. In theory, the small claims procedure is based on the idea that a claimant does not need a lawyer. The right of the winning party to recover legal costs is limited to only minor costs in small claims cases.²⁰¹ This is why anti-discrimination bureaux and other NGOs tend to file their cases as small claims cases. Even if they want to represent the individual, they do not generally have the resources to risk losing the case.

Individuals have the option of using private lawyers, but given the loser-pays system, they are naturally hesitant, and there are presumably few lawyers who are willing to take on such cases. There is thus little chance that individuals will go to court except in those limited cases where the DO (or a union or other NGO) agrees to provide representation. Thus, for most people, the willingness of the DO (or a union or other NGO) to represent victims is very important. When the DO or a trade union or another NGO takes on a case, it is as the named party, which also means that they are taking on the economic risk of losing the case.

The cost risks and other barriers faced by litigants can be illustrated generally by the limited number of cases reaching the courts each year as well as the 2022 *Union for government employees (Fackförbundet ST) v Sweden* case described in Section 12.2 of *Country report, Non-discrimination, Sweden 2023*. In the Labour Court case, the union lost and was required to pay EUR 23 776 (SEK 272 010). If the union had not taken on the case, it

²⁰⁰ Equality Ombudsman (2026), *Annual Report 2025*, p. 24.

²⁰¹ There is a list of permitted expenses: one hour of legal aid at the current rate, a small claims fee, travel costs, costs for witnesses and translation costs.

should be apparent that few individuals would have been able to take on the cost risks. These figures clearly illustrate the financial risk involved for the individual and the benefit of representation by the DO or a trade union.

Another result of the loser-pays rules can be seen in the cases supported or filed by NGOs or individuals over the years. They are almost always brought as small claims cases. See, for example, the cases in Section 12.2 *Country report, Non-discrimination, Sweden 2025*. The Supreme Court case is an exception where the lawsuit was not a small claims case. Nevertheless, neither side requested legal fees. At the same time, the two district court cases brought by an individual and an NGO were filed as small claims cases. While this limits the cost risks involved if the case is unsuccessful, it also limits the potential discrimination compensation as well as the preventive value of the compensation awarded. Nevertheless, these and other cases brought by NGOs, either as the named party or as lawyers for the party, have at least been able to bring potentially important test cases to court on behalf of the individuals involved as well as others who could potentially benefit.

In discrimination cases taken to the courts by individuals (usually non-employment cases), it is possible for a court to rule that both parties will bear their own costs, in accordance with Chapter 6, Section 7 of the Discrimination Act, if the individual claimant loses but had good reason (*skälig anledning*) for taking the case to court.²⁰² The rule is designed to encourage individuals with good faith claims. For example, in *Malmö mot Diskriminering (MmD) v Sweden through Lund University* (described in detail in Section 12.2 of *Country report, Non-discrimination, Sweden 2023*), the court ordered the parties to bear their own costs even though MmD lost the case. The same result was confirmed in the Appeal Court. Unfortunately, this case seems to be more of an exception rather than the rule.

In the author's opinion, individuals and NGOs seldom attempt to use this possibility as there is little clarity about how the courts will apply this exception to the loser-pays rule. Rather than addressing what is an important issue concerning access to justice, the courts, particularly the Labour Court, seem to be more concerned about ensuring a restrictive application of this type of exception. Concerning labour law cases, there is an equivalent rule. In a 2015 case, the district court determined that the claimant had good reason to bring his disability discrimination case against his employer, so despite the claimant losing, the court ruled that both parties should bear their own costs. On appeal, however, the Labour Court disregarded the trial court's analysis and ordered the losing claimant to pay the winning party's legal costs of EUR 156 322 (SEK 1 663 400).²⁰³

If a person has very limited (or no) financial resources and is not represented by the DO or a trade union, it is possible to ask for legal aid under certain limited circumstances in employment cases to help with the costs of going to court. In certain limited cases legal insurance may be available as well.

Obviously, the economic risks for most individuals in such cases are quite high and/or too high, while at the same time the potential compensation is relatively low. Those bodies that have the economic means to take cases to court, the DO and the unions, generally seem unwilling to do so. At the same time, those with very limited means, individuals and NGOs seem to be developing at least some means to test the law in the courts. They rely on the small claims procedure, their limited resources and the pro bono work of lawyers and others.

In the author's opinion, this means that few individuals are willing to enforce their rights even if they have good cases. The low number of cases over the years, including 2025, is an indication of the issue. At a societal level, this also means that the Discrimination Act,

²⁰² This rule does not apply to cases filed by the Equality Ombudsman. As for cases where the Labour Disputes (Judicial Procedure) Act (1974:371) applies, an equivalent rule in Chapter 5, Section 2 of the Labour Disputes (Judicial Procedure) Act (1974:371) can be applied.

²⁰³ See Labour Court 2015 No. 57, *D.P. v Quintiles AB*, 30.09.2015.

due to a lack of a critical mass of cases and case law, will have only limited effects in changing social norms. This is presumably a key goal of the Discrimination Act as well as the EU's anti-discrimination directives.

If the legislature wants to achieve greater access to justice for individuals as well as increased effectiveness of the Discrimination Act, the courts need greater guidance concerning the distribution of costs. One possibility would be a binding decision at the preliminary stage of a case concerning good faith, relieving the individual's risks concerning legal costs.²⁰⁴

Guidance can also be found in the EU Directive to strengthen the application of the principle of equal pay for equal work between men and women through pay transparency and enforcement mechanisms (Pay Transparency Directive, 2023/970/EU). According to Article 22 on legal costs, 'courts can assess, in accordance with national law, whether the unsuccessful claimant had reasonable grounds for bringing the claim and, if so, whether it is appropriate not to require that claimant to pay the costs of the proceedings'. This indicates the minimum required of all Member States. Sweden already has such a rule, which, as indicated above, does not appear to be effective in practice. However, at the national level, Sweden could go further by including the principle in the Commission's proposal for a Pay Transparency Directive, Article 19, which stated that a claimant, if unsuccessful, could be required to pay the defendant's costs only if the case was brought in bad faith, was clearly frivolous or where such non-recovery is considered manifestly unreasonable under the specific circumstances of the case.²⁰⁵ This would provide greater assurance for individuals and NGOs that believe they have a good case.

Another possibility would be the establishment of an NGO-run test case fund similar to the Canadian Court Challenges Program.²⁰⁶ These are potential ways to contribute to the long-term goal of equality as a fundamental human right.

As regards the general time limit under the Discrimination Act, a claim must be presented within two years of when the alleged discriminatory act took place.²⁰⁷ The procedures are the same regardless of whether the case concerns the private sector or the public sector. At the same time, a complex system of rather short time limits applies in relation to working life.²⁰⁸ The labour market litigation rules are based on an assumption that the worker is represented by their trade union. If the union does not represent the worker, or if the worker is not a union member, the time limits can be a serious barrier when it comes to access to justice. Dismissal claims are regulated by the 1982 Employment Protection Act, which also sets out the applicable time limits. If the claim seeks to declare a dismissal null and void, the procedure must take place within weeks from the occurrence of the act or – in certain cases – one month after the end of the employment. If the claim concerns only indemnification, the employer must be notified within four months. The 1976 Co-Determination Act applies to cases concerning wage compensation. Here, the general time limit is four months from gaining knowledge of the act, with a maximum of two years from its occurrence.²⁰⁹ Within these time limits, it is possible to bring a discrimination case after

²⁰⁴ See the Swedish Section of the International Commission of Jurists, *Program för Rättsstaten Sverige 2023, Avdelning 4 Diskriminering* (Programme for the Rule of Law in Sweden 2023, Chapter 4 Discrimination) at: <https://www.icj-sweden.org/inbjudan-till-oppet-mote-om-sverige-som-rattsstat/>.

²⁰⁵ Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, COM/2021/93 final.

²⁰⁶ Government of Canada, Court Challenges Program. Available at: <https://www.canada.ca/en/canadian-heritage/services/funding/court-challenges-program.html> and <https://www.canada.ca/en/canadian-heritage/services/funding/court-challenges-program/background.html>.

²⁰⁷ Discrimination Act (2008:567), Chapter 6, Section 6.

²⁰⁸ Discrimination Act (2008:567), Chapter 6, Sections 4 and 5.

²⁰⁹ If someone brings an action as a result of a notice of termination or summary dismissal, the rules in the 1982 Employment Protection Act (LAS) apply. To have a dismissal declared null and void, the employer must be notified about the claim within two weeks of the dismissal. A lawsuit must be presented within two weeks thereafter or, if conciliation negotiations have taken place, within two weeks of the termination of

the employment relationship has ended. Here, it should be noted that the Government inquiry on transposition of the Pay Transparency Directive recommended the introduction of a new statutory limitation period of three years on claims concerning pay discrimination on grounds of gender, as well as on other grounds in the Discrimination Act.²¹⁰

c) Number of discrimination cases brought to justice

In Sweden, statistics on the number of court cases related to discrimination brought to justice are not available.

d) Registration of national court decisions on discrimination

In Sweden, court decisions on discrimination are not registered as such by national courts.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Sweden, trade unions, non-profit organisations (NGOs) and the Equality Ombudsman (DO) are entitled to act on behalf of victims of discrimination. They can all become the named party, if they have a power of attorney from the claimant. As the named party, they also take on the financial risks of the case and have to pay the opposing party's legal costs if they lose the case.

Labour unions have legal standing to litigate discrimination cases where one of their members is involved in accordance with Chapter 4, Section 5 of the Labour Procedure Act. The right of the Equality Ombudsman and non-profit organisations to represent a victim is subsidiary to a labour union's right to represent its members under Chapter 6 Section 2(3) of the Discrimination Act.

The unions have their own experienced negotiators and lawyers. Two of the larger union confederations even have their own specialised law firm – LO-TCO Rättsskydd AB. While unions have priority concerning the right to represent members, members do not have a right to demand representation. There can be situations where the union does not want to deal with a member's legal problems due to its understanding of the case, as well as conflicting interests that a union may have ranging from conflicts between members to conflicts between the individual member's interests and the union's own interests.

Chapter 6 Section 2 of the Discrimination Act gives non-profit organisations whose statutes state that they are to protect their members' interests the right to bring actions in their own name as a party representing an individual. The organisation must have a power of attorney from the individual and be suited to represent the individual, taking into account its activities and its interest in the matter, its financial ability to bring an action and other circumstances. One important issue here is that due to the financial risks involved, such organisations usually file their cases as small claims cases. In small claims cases, the cost

such negotiations (Section 40 LAS). As regards damage claims, the employer will be notified about the claim within four months after the damaging activity occurred and a lawsuit must be presented within four months after that or, should conciliation negotiations have taken place, within four months of terminating such negotiations (Section 41 LAS). With regard to *any other action*, the rules in the Co-Determination Act (MBL) apply. Conciliation negotiations must be demanded by the relevant trade union within four months of becoming aware of the damaging act and within two years of the act itself (Section 64 MBL). A lawsuit must be presented within three months after terminating such negotiations (Section 65). If an employee cannot be represented by a trade union, they must present the claim to the court within four months of becoming aware of the damaging act and within two years of the act itself (Section 66 MBL).

²¹⁰ White Paper SOU 2024:40 *Genomförande av lönetransparensdirektivet* (Implementation of the Pay Transparency Directive), p. 27.

risks are minimal, but this also limits the amount of discrimination compensation that can be requested.

This provision on the ability of NGOs to act as named parties was added to the law because of an interpretation of the minimum requirements of the EU anti-discrimination directives.²¹¹ At the same time, even prior to the change in the law, NGOs always had the possibility of giving assistance in the form of providing a lawyer or covering a victim's potential legal costs. However, for many years, this type of action was outside Sweden's legal and political culture, at least for NGOs that did not represent the more powerful interests in society such as unions or employers' organisations. There was no tradition of grassroots NGOs, for example, maintaining their own legal expertise or establishing public interest law firms to provide that expertise. This is slowly changing.

Anti-discrimination bureaux in particular have been able to enter into cases as named parties on behalf of claimants.²¹² There have been some questions about the right of a bureau to represent claimants in court in accordance with the rules in the Discrimination Act. It now seems clear that they do have such a right.²¹³ There is also an expectation that they will increasingly take cases to court.

There was a reduction in the number of complaints dealt with by the Equality Ombudsman over a longer period, particularly 2014-2020, due to a focus on 'strategic' complaints and other means of dealing with discrimination than through individual complaints. This contributed to an increasing reliance by victims on the bureaux, which also developed because the Ombudsman refers complainants as a potential source of advice and support.

The bureaux are thus increasingly looking at ways of taking cases to court. Among other things, they take part in the public debate, arrange seminars for the general public and provide anti-discrimination training for the private and public sectors. The inspiration for their work came from similar bureaux in the Netherlands and the UK and more indirectly from public interest law firms in the United States.

In this regard, it should be noted that the 2016 Government white paper 2016:87, on measures to improve the implementation of the anti-discrimination principle, proposed a substantial increase in funding to the local anti-discrimination bureaux, given their increasing workloads. Their funding was later increased substantially. In 2017, 15 bureaux received a total of SEK 13.5 million or about EUR 1.16 million. In 2018, the total amount was increased to SEK 28 million or about EUR 2.4 million for 16 bureaux. The total funding has stayed the same annually through to 2025, but the number of bureaux has increased to 18.²¹⁴

Even beyond the work of the local anti-discrimination bureaux, civil society has been developing an increased awareness of the importance of being more proactive concerning the development of case law related to discrimination. The main LGBTIQ organisation in Sweden, RFSL, has brought some cases in the administrative courts that involve discriminatory treatment (but not within the terms of the Discrimination Act), partly with

²¹¹ See, for example, the reference in the Government bill to Article 7(2) of the Racial Equality Directive and Article 9(2) of the Equal Treatment in Working Life Directive.

²¹² Local anti-discrimination bureaux are non-governmental organisations whose members are other organisations and sometimes individuals. For the budget year 2024, 18 bureaux were granted funding of about EUR 2.55 million from the national Government through the Swedish Agency for Youth and Civil Society, 2024-12-05, see: <https://www.mucf.se/om-oss/aktuellt/18-organisationer-far-stod-att-starka-arbetet-mot-diskriminering>. The bureaux were created in order to counteract discrimination on all grounds. They typically provide free legal advice and support to victims of discrimination. Also see section 10 below.

²¹³ See, for example, Göta Court of Appeal, 30 September 2011, *Örebro Rättighetscenter v Götavi Invest AB*, Case No. FT 198-11. Also see *Malmö mot diskriminering*, the bureau that has been the most active in taking cases to court, available at: <https://malmomotdiskriminering.se>.

²¹⁴ See MUCF Årsredovisning 2025 (Annual Report), Swedish Agency for Youth and Civil Society, p. 35, at <https://www.mucf.se>.

the help of local anti-discrimination bureaux.²¹⁵ A project called 'The law as a tool for social change' helped to develop an NGO that is now known as Disability Rights Defenders Sweden (DRDS).²¹⁶ DRDS, in cooperation with The Rights Lawyers,²¹⁷ has been key to providing at least some financing and support in various cases such as the cases concerning discrimination against pupils with dyslexia during national exams. This is mentioned here since it is only in recent years that civil society organisations representing discriminated-against groups have seen the advocacy potential in taking on an enforcement role concerning the law.

It bears repeating that one key issue about the identity of the named party is that, other than in small claims cases, they risk being ordered to pay the winning party's legal costs – which can be substantial.

This leads to the final alternative, which is private representation. According to Swedish procedural law, in theory anyone can engage in proceedings or support a complaint as a legal representative, in accordance with Chapter 12, Section 22 of the Swedish Code on Judicial Procedure (1942:740). The person is presented to the court, and the court makes a formal decision whether to accept that person as a legal representative (*rättegångsbiträde*). If the person is law abiding and does not risk becoming involved in the proceedings as a witness or something similar, there is usually no problem.

A legal representative (*rättegångsbiträde*) may speak on behalf of the claimant, and the claimant is bound by what they say or do, unless the claimant immediately declares a different opinion. Nevertheless, most legal representatives have a law degree. They will often be members of the Swedish Bar Association (*Advokatsamfundet*) and the title of *Advokat* (lawyer) is reserved for members of the bar. Unlike in some countries, however, lawyers in Sweden, as members of the bar, do not have a monopoly on the right of representation in civil law cases. In this situation, the claimant risks becoming fully liable for their own legal costs as well as those of the opposing party if they lose the case.

- b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Sweden, unions and other organisations are not entitled to act in support of victims by joining existing proceedings.

- c) Submitting observations, e.g. *amicus curiae* briefs/letters

In Sweden, associations, organisations and trade unions are not formally entitled to submit observations to courts or other adjudicating bodies, such as *amicus curiae* briefs, in discrimination cases.

As stated in Section 6.2.a above, organisations can represent victims, but under Swedish procedural law they are not allowed to join or intervene in existing proceedings. Sweden does not have the formal equivalent of friend of the court or *amicus curiae* briefs. Nevertheless, in 2024, the Swedish Institute for Human Rights submitted an *amicus curiae* brief to the Supreme Court in a case involving the environment and Sweden's human rights

²¹⁵ For example, on 19 December 2012, the Stockholm Administrative Appeal Court held that the requirement of sterilisation prior to a person applying for a change of gender marker violated the Swedish Constitution as well as Articles 8 and 14 of the European Convention of Human Rights. See Stockholm Appeal Court, *NN v. Socialstyrelsen* (The National Board for Health and Welfare), 19 December 2012, case no. 1968-12. Also see RFSL's press release 21 March 2018 concerning compensation for those who had been sterilised, available at: <https://www.rfsl.se/en/aktuellt/historic-victory-trans-people-swedish-parliament-decides-compensation-forced-sterilizations/>.

²¹⁶ Disability Rights Defenders Sweden (DRDS) at <https://drds.se>.

²¹⁷ The Rights Lawyers (*Rättighetsjuristerna*) at <https://rattighetsjuristerna.se>. The organisation is mainly made up of lawyers with a focus on providing access to justice in the field of human rights, including non-discrimination.

commitments.²¹⁸ The Supreme Court in turn accepted the brief on the basis that the Institute's opinion is admissible because it contains descriptions of and views on legal issues raised in the case and the content of the Institute's opinion concerns issues on which the Supreme Court itself could obtain information.

d) *Actio popularis*

In Sweden, national law does not allow associations, organisations or trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

When an organisation goes to court in its own name in Sweden (see Section 6.2.a above), this must be done on behalf of a specific victim.

However, in 2020, a Government inquiry was tasked with investigating whether measures are needed to strengthen the protection against discrimination in cases where there is no individual injured party. In 2021, the inquiry concluded that there is no obligation for Member States to introduce provisions concerning sanctions when there is no identifiable victim. Nevertheless, the inquiry also concluded that Sweden should introduce such provisions, thus proposing an amendment to the Discrimination Act that would make it possible to prohibit the dissemination of statements or communications expressing contempt for a person or a group of persons linked to a ground of discrimination by a person who has a leading position in an activity or organisation.²¹⁹ No proposal in this regard has been submitted to the Parliament.

e) Class action

In Sweden, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim for claims arising from the same event (class action).

Under Swedish law – outside of labour law – it is possible to submit a class action (or group proceeding) to a district court for claims arising from the same issue.²²⁰ Such cases are to be dealt with according to the rules on civil disputes. However, class actions are not allowed if the case can be appealed to, for example, the Labour Court. Labour law cases fall outside the scope of the act, but discrimination in other fields can result in class actions.²²¹

This means that a person can pursue a lawsuit on their own behalf, but with legal consequences for other persons, even though they are not parties to the case.²²²

There are various types of difficulties related to the use of class actions, e.g. the opt in rules and the loser pays rule, which is probably why there have been so few since the law came into effect in 2003.

Concerning discrimination law, there has been one successful class action on the ground of sex, challenging an affirmative action programme that benefitted men concerning access to veterinary higher education.²²³

²¹⁸ Swedish Institute for Human Rights, 2024-11-1107-04, *Amicus curiae-yttrande till Högsta domstolen i Auroramålet* (Amicus curiae brief submitted to the Supreme Court in the Aurora climate case) at <https://mrinstitutet.se/vara--publikationer/skrivelser-och-yttranden/skrivelser/2024-11-11-amicus-curiae-yttrande-till-hogsta-domstolen-i-auroramålet-->.

²¹⁹ An expanded protection against discrimination (*Ett utökat skydd mot diskriminering*), SOU 2021:94.

²²⁰ Group Proceedings Act (*Lag om grupprättegång*, 2002:599).

²²¹ Government bill 2001/02:107, p. 139.

²²² Even if each member of the group must be treated as a party by the court, the court must know all the members of the group. The judgment will be legally binding on all the members of the group. However, important developments in the case need to be communicated by the court to all of the group members.

²²³ Svea Court of Appeal, T-3552-09, 21.12.2009.

This case shows that it is possible to bring an action for discrimination in fields other than working life. Even though there are various questions and difficulties related to the use of class actions, they can have significant potential under the right circumstances. They also provide NGOs in particular with the potential to combine situation testing with a class action, for example in the case of inadequate accessibility.

Finally, there is a new act on group proceedings for the protection of consumers' collective interests, which entered into force on 1 January 2024.²²⁴ The Act enables consumer organisations to initiate class actions concerning certain consumer issues. This mechanism could be relevant to a situation where a group of consumers have been discriminated against on a ground covered by discrimination law.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Sweden, the Discrimination Act requires a shift of the burden of proof from the complainant to the respondent.

This is stated in Chapter 6, Section 3 of the Discrimination Act:

'If a person who considers that he or she has been discriminated against or subjected to reprisals demonstrates circumstances that give reason to presume that he or she has been discriminated against or subjected to reprisals, the defendant is required to show that discrimination or reprisals have not occurred.'

This section applies to all six forms of discrimination including harassment and inadequate accessibility. The victim of discrimination must be able to present facts that make it possible to presume that discrimination has occurred by providing evidence of a comparable situation, a connection to a discrimination ground and unfavourable treatment. Thereafter the burden of proof is shifted to the other party who must show that one of the requirements is not fulfilled or that the unfavourable treatment was not associated with the ground in question. No proof of intent to discriminate is required.

At the same time there seems to be a different interpretation of the burden of proof in the general court system as opposed to the Labour Court.

In their commentary explaining the 2009 Discrimination Act, Fransson and Stüber point out a possible difference in the handling of the burden of proof.²²⁵ The Supreme Court treats the less favourable treatment in a similar situation as the fact that makes the presumption apply. The eased level of proof thus sometimes applies when the claimant proves a similar situation and the less favourable treatment.²²⁶ The Labour Court applies the presumption more narrowly. The claimant must always prove the similar situation and the less favourable treatment according to normal standards of proof. The presumption applies only to the causal link between these two facts and the discrimination ground. That being so, the Labour Court seems to apply the rules on a shifted burden of proof in a manner that is too restrictive, especially with regard to ethnicity or religion.²²⁷

²²⁴ *Lag (2023:730) om gruppåtal till skydd för konsumenters kollektiva intressen* (Act on group proceedings for the protection of the collective interests of consumers).

²²⁵ Fransson, S. and Stüber, E. (2021), *Diskrimineringslagen: en kommentar* (The Discrimination Act: A commentary), 3d ed Norstedts Juridik, Stockholm. Also, see Sandesjö, H. (2010), *Domar i diskrimineringsmål 1999-2009* (Judgments in discrimination cases 1999-2009), p. 14. In cases where the rule on the burden of proof has been decisive, the success rate in the general court system was 90 % against 19 % in the Labour Court.

²²⁶ See Supreme Court, NJA 2006 p. 170, *Ombudsman Against Discrimination due to Sexual Orientation v Restaurang Fridhem* (28.03.2006). The main question was whether the same-sex couple had engaged in heavy petting or merely shown affection, which was allowed in the restaurant. The restaurant owner failed to prove they had engaged in anything beyond the normal kissing and hugging that was allowed.

²²⁷ There are other possible explanations for the difference in the claimants' success rates. One possibility is that obvious cases of discrimination are often settled in the negotiations between the employer and the trade union at a local or central level. They must take place before going to the Labour Court if a trade

The 2023 case *SS v Rapid Säkerhet*²²⁸ (see Section 12.2 *Country report, Non-discrimination Sweden, 2024*) seems to create an increased lack of clarity concerning the application of the burden of proof. There was a recognition that the burden of proof in the case had shifted so that the employer had to prove that the neutral clothing policy requiring the removal of e.g. a Muslim headscarf or other religious symbols was needed. No scientific research was presented to show that such symbols would result in a measurable risk. The only proof presented was the employer's personal analysis that there were increased safety risks in public transportation due to a general increase in hate crimes, and the presumed risks related to large crowds and alcohol consumption by passengers. The majority of the Court determined that this was sufficient to carry the employer's burden of proof. No more is required than that the company demonstrates that the 'risk assessment has been based on serious considerations, which do not appear to be unjustified, arbitrary or based on improper considerations'. Furthermore, the Court explained, since it is a matter of measures to avoid a risk, it is irrelevant that the risk has not, as shown, been realised.²²⁹ Seemingly, a good faith analysis by an employer, without more, is sufficient to shift the burden of proof.

The Court also refers to and relies on its own judgement in Labour Court case 2017 no. 65 in which safety concerns were also at issue. Both cases also involve Muslim women attempting to exercise their freedom of religion. It is noteworthy that, concerning the burden of proof, the Court did not rely on Labour Court case 2005 no. 87. Here the Court was unwilling to accept the good faith assertions of the employer combined with at least some research, as being sufficient to shift the burden of proof. At least one possibly important issue is that the 2005 case concerned indirect sex discrimination.

It should also be pointed out that the dissenting judge in the 2023 case stated that the company had not been able to demonstrate that the ban on wearing the headscarf was justified by any such concrete risk of threats and violence in the work environment that outweighed SS's interests. Therefore the judge concluded the ban could not be justified as appropriate, necessary and proportionate. Thus even given the case law of the Labour Court as well as the dissenting judge in this case, there is clearly some confusion in the Labour Court. There are also marked differences in relation to the general courts.

The difference between the general courts and the Labour Court was also taken up in a Government white paper. The inquiry report stated that it seemed to be accepted by the Labour Court and the general courts that the rule now involves a presumption (*presumptionsregel*) and is not a shared burden of proof rule. At the same time, the report seemed to be asserting that the big difference was that the general courts used the rule, while the Labour Court tended not to. The inquiry thus appeared to conclude that an even clearer wording of the rule in the act would help.²³⁰ However, no change in the law has yet been proposed.

The two landmark cases below, from the Labour Court and a district court, indicate a clear difference in the application of the burden of proof to essentially the same facts.

In 2017, the Labour Court dealt with a case that was quite similar to a case that had been dealt with in the general court system one year earlier. In both cases, the focus was on implementation of the burden of proof.

union is representing one of its members. There is also an ongoing discussion, however, on whether judges appointed by trade unions and employer organisations are neutral, if important parts of the collective bargaining system are affected by the outcome. Also, see Sandesjö, H. (2010), *Domar i diskrimineringsmål 1999-2009* (Judgments in discrimination cases 1999-2009), p. 18.

²²⁸ Labour Court 2023 No. 71, *SS v Rapid Säkerhet*,

²²⁹ Labour Court 2023 No. 71, *SS v Rapid Säkerhet*, 13.12.2023, p. 11.

²³⁰ White Paper SOU 2016:87, pp. 462-463.

These cases turned on whether there is an alternative to bare lower arms for a Muslim dental student (district court) or a Muslim dentist (Labour Court). The focus was on the application of health and safety regulations, the desire of those involved not to work with their lower arms exposed due to religious reasons and whether an application of this rule constituted indirect discrimination.

The 2016 district court case involved a female Muslim dental student at the Karolinska Institute.²³¹ In accordance with the dental programme, she was required to perform clinical tasks with bare forearms. For religious reasons, she asked if she could wear disposable forearm protection instead of having bare forearms. The Karolinska Institute, referring to a National Health and Welfare Board Regulation (2007:19),²³² made a formal decision denying this request.

The State, in defending the content of the rules, referred to health and safety reasons. The DO brought in a British expert who stated that in the UK there is no hygiene problem with disposable forearm protection. The court decided that both the British expert and the Swedish experts were equally compelling. However, as the education provider (as the alleged discriminator) bore the burden of proof with regard to the justification of possible indirect discrimination once the *prima facie* case was established, the education provider had not carried its burden of proof and lost the case. The Karolinska Institute was thus ordered to pay compensation. The case was not appealed.

The *Karolinska* case was followed by one in the Labour Court in 2017, in which the court came to the opposite conclusion, even though it was deciding a case based on essentially the same evidence.²³³ The Labour Court case arose in an employment setting during the claimant's clinical work as a dentist. The hygiene standards were thus the same in both cases, as they stemmed from the same National Health and Welfare regulation. The evidence from both sides was also the same. However, while the district court placed the burden of proof on the discriminator, because it is the discriminator who should be responsible for proving an objective justification, the Labour Court seemingly did the opposite. The Labour Court said that, when the employer presented the genuinely objective theoretical hygiene reasons, the burden of proof shifted back to the claimant. Since the DO failed to disprove the assertions of the employer's expert, the DO lost the case. The main argument for this outcome was that, when patient safety is at risk, the employer must be allowed a wide margin of appreciation when setting hygiene rules (*försiktighetsprincipen* – the duty-of-care principle) and thus any remaining doubt must fall on the claimant.

In this case, the Labour Court seems to have added a footnote to the burden of proof rules in terms of the duty-of-care principle. This footnote is not easy to find in the directives, the Discrimination Act or the legislative preparatory works. The case illustrates the disparity between the Labour Court and the ordinary courts when they have a different approach to the EU rules on the burden of proof. It is also a problem when the Labour Court can easily reject a request for a preliminary ruling from the CJEU, even when there is an obvious need.²³⁴

²³¹ Stockholm District Court, *Equality Ombudsman v Sweden through Karolinska Institute*, Case No. T 3905-15, 16.11.2016, available at: <https://www.do.se/download/18.277ff225178022473141f35/1623246077938/dom-tingsratt-karolniska-2014-1987.pdf>.

²³² Currently Regulation 2015:10.

²³³ Labour Court 2017 No. 65, *Equality Ombudsman v the People's Dentists of Stockholm County*, 20.12.2017.

²³⁴ If both Sweden and the UK take patient security seriously and still decide on different policies with regard to disposable lower arm protection, it is perfectly possible that a preliminary referral to the CJEU by the Labour Court would have resulted in allowing a wide margin of appreciation and that the Labour Court would have been allowed to decide the case as it did. It is also possible, however, that the CJEU would have said that, if the claimant showed that an alternative solution had been applied in another country without any indications of increased infections, then any remaining uncertainty should fall on the employer, as they bore the burden of proof for the objective justification in an indirect discrimination case as a matter of principle. In the author's view, the latter reasoning seems to be the most rational. This was possibly a reason for the

Today, the Karolinska Institute applies the ruling from the district court by allowing disposable lower arm protection in dental education, while dental clinics do not need to do so with regard to employees. At some point, an education provider is likely to follow the practice of the Labour Court and, when that happens, the general court system will presumably have to decide whether or not to ask for a preliminary ruling from the CJEU.

In the author's opinion, one of the difficulties for the Labour Court in applying the burden of proof may relate to certain broader legal and cultural factors concerning the court. The Labour Court was created mainly as a special arena where the unions and employers' organisations could settle disputes concerning rights and duties under collective bargaining agreements. They still appoint the majority of the judges. It is only in discrimination cases that the majority of judges are made up of the 'law' judges.

The main original issue for the Labour Court was – and still is – collective rights. At the same time, individual rights have increasingly become part of Swedish law, including labour law, particularly since Sweden joined the EU. To a large extent, discrimination law concerns individual rights, even if individual cases can be an important tool for exposing structural discrimination relating to the rights of groups that have been marginalised. For a long time, the social partners jointly opposed the adoption of such laws. This history forms part of the environment within which the Labour Court functions even today, i.e. the world of the social partners, rather than the world of the individual. The general courts perhaps find themselves a little closer to the idea of individual rights. This background provides at least some additional explanation of how two court systems can seemingly implement the same rule in very different ways.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Sweden, there are legal measures that provide protection against victimisation. Victimisation is prohibited in accordance with Chapter 2, Sections 18 and 19 of the Discrimination Act.

Victimisation (*repressalier*) is defined in the legislative preparatory works as acts, statements and failures to act which lead to a disadvantage or a sense of discomfort for the individual.²³⁵

The prohibition protects all individuals involved in an investigation, including witnesses and individuals reporting discrimination and those who have helped the victim in other ways. According to Chapter 6, Section 3 of the Discrimination Act, the shifted burden of proof applies in victimisation cases.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

The basic sanction in the Discrimination Act is the discrimination compensation award, which is regulated in Chapter 5, Section 1. This is complemented by the possibility of declaring certain acts, such as the discriminatory termination of contracts or discriminatory contract clauses void (Chapter 5, Section 3). There are no other remedies under the act open to the individual who has been the target of discrimination. The same remedies apply to all grounds of discrimination.²³⁶

However, an important case affecting sanctions in Sweden was taken to the CJEU by the Swedish Equality Ombudsman (DO). According to Swedish procedural law, if the

Labour Court not to send the issue to the CJEU for a preliminary ruling.

²³⁵ Government bill 2007/08 pp. 531-532.

²³⁶ With regard to breaches of active duties, a court order involving a financial penalty can in theory be issued.

compensation requested is paid by the defendant, the complainant has no right to a judicial determination of discrimination. In the case of *Diskrimineringsombudsmannen v Braathens Regional Aviation AB*, the DO brought a lawsuit against the airline, asserting that it had discriminated on the basis of ethnicity when a man was removed from a plane, forced to undergo an extensive security check and subsequently denied the opportunity to re-board the plane. Without admitting discrimination, the airline paid the requested compensation of EUR 950 (SEK 10 000). Once such a payment is made, according to the courts, that ends the case.

The DO appealed, wanting a hearing on the issue of discrimination and a declaratory judgment, asserting that the complainant had a right to a hearing on the discrimination issue, and that that was the minimum required by the EU directives. Further, the DO wanted the courts to submit the issue to the CJEU. After an appeal, in 2018 the Supreme Court agreed to send the following question for a preliminary ruling:

‘Must a Member State in a case of infringement of a prohibition laid down in Directive 2000/43/EC, where the victim requests discrimination compensation, always examine whether discrimination has occurred – and, where appropriate issue a finding of discrimination – whether or not the accused has or has not acknowledged that discrimination occurred, if this is requested by the victim, in order for the requirement in Article 15 on effective, proportionate and dissuasive sanctions to be considered fulfilled?’

The case was decided in 2021 in favour of the DO. The CJEU essentially held that if there was no admission of discrimination, the payment of compensation was insufficient as a matter of EU law and that the complainant had the right to a hearing.²³⁷ When the case was thereafter sent back to the Swedish Supreme Court, the Supreme Court held that as Braathens agreed to an admission, there was no longer any reason to rule on the issue of having a hearing at the time. The Court also pointed out that the issues raised by the CJEU ruling were more appropriately dealt with by the legislature rather than by the courts in the context of individual cases.²³⁸

The concept of discrimination compensation (*diskrimineringsersättning*) was created, at least in theory, in order to make it easier for the courts to provide higher amounts of compensation than was previously the case in relation to damages. Discrimination compensation awards are not supposed to be in line with the low general levels of civil damages in other legal areas. The award includes a right to compensation or damages for the violation caused by the discrimination. Chapter 5, Section 1 also requires the courts to give ‘particular attention to the purpose of discouraging such infringements’. There is a preventive goal as well as a compensatory goal.

In working life there is also a basic right to *economic damages* concerning employees. However, in recruitment and promotion cases, the individual is not considered to have a right to obtain the employment or promotion in question.²³⁹ Economic injuries are thus not compensated and, in such cases, only the non-economic injury is compensated. As is usually the case in Swedish labour law, if it is reasonable, damages can be reduced or removed completely. Depending on the discriminatory act, other labour law provisions may apply in parallel, such as the rules of the Employment Protection Act in cases of dismissal or those of the Co-Determination Act in cases where a collective agreement is violated.

²³⁷ CJEU, C-30/19, *Diskrimineringsombudsmannen v Braathens Regional Aviation AB*, judgment of 15 April 2021, EU:C:2021:269.

²³⁸ Supreme Court, case Ö 2343-18. *Equality Ombudsman (DO) v Braathens Regional Aviation*, 21.12.2021. Also see Section 12.2, *Country report, Non-discrimination Sweden, 2022*.

²³⁹ In the state sector, however, a consequence of the public law character of the constitutional provisions as regards objective grounds on hiring is that a discriminatory decision may be appealed through administrative procedures, with the discriminated-against person actually being given the position in question.

The declaration of provisions in collective agreements and in individual contracts as invalid is possible in all areas of the law under Chapter 5, Section 3.

Injunctions have a very limited use in Sweden. Although the possibility exists, the author knows of no cases related to discrimination where an injunction has been issued.

Sanctions under the Discrimination Act are normally applied to, for example, an employer, university, labour union or employers' association. This follows from expressions such as 'employer' or 'university' in the provisions on financial compensation.

For sanctions under the Discrimination Act, no differentiation is made between the public sector and the private sector.²⁴⁰

In relation to the duty to undertake active measures, the Ombudsman in theory works in the same way as a normal authority, visiting employers and universities, checking their equality documentation and so on. If somebody fails to fulfil their duties, the Board Against Discrimination²⁴¹ may – on the Ombudsman's application – issue an order to comply with a specific request before a certain date (or in the future), subject to a financial penalty in accordance with Chapter 4, Section 5 of the Discrimination Act. The financial penalty will gain legal force only after a district court has ordered the payment. The legality of the order itself, as well as the reasonableness of the amount, can be decided upon by the district court. The unions can also do this under certain circumstances.

Finally, to the extent that there are quasi-judicial powers or aspects within the mandate of the Equality Ombudsman, they have rarely been exercised, at least in formal terms. One indication is that only two decisions have been issued by the Board Against Discrimination since its creation in 2009.²⁴² One decision was initiated by a union and the other decision related to a request for an order under penalty of a fine originally filed by the previous Gender Equality Ombudsman prior to the creation of the DO in 2009. It is possible that the whole enforcement structure concerning active measures is weak and should be replaced. At the same time, this would be easier to assert if the limits of the active measures requirements in the law were seriously tested by the DO. It should be noted that only the DO and the unions have the power to test the limits of the active measures provisions in the Discrimination Act.

Beyond the provisions in the Discrimination Act, harassment by fellow workers or students may also, under certain circumstances, be regulated by general criminal law provisions relating to such behaviour as harassment, verbal abuse, threats, assault or hate speech. Violations of the penal provision on unlawful discrimination can be punished by a fine or imprisonment for a period not exceeding one year and can result in an obligation to pay financial compensation in accordance with Chapter 16, Section 9 of the Penal Code. The maximum prison sentence for hate speech (agitation against an ethnic group), as set out in Chapter 16, Section 8, is two years. In such cases, a complaint filed with the police may also result in sanctions against the individual directly responsible for the actions. See the criminal law case in the Appeal Court in 12.2 below concerning the burning of a Koran as agitation against an ethnic group (Penal Code 16:8, para 1) as well as criminal defamation (Penal Code 5:3 para 1).

²⁴⁰ With regard to alternative procedures for public employees, see Section 6.1.a above.

²⁴¹ The board is an administrative authority. It consists of a chairperson and a vice-chairperson, who must be judges. There are 11 other members: two are appointed by the Government as neutral members; six members are appointed by the Government on the recommendation of trade unions and employer organisations; one member is appointed by the Government as representing ethnic or religious minorities in Sweden; one is appointed on the recommendation of the Disabled Associations Cooperation Organisation; and one is appointed on the recommendation of the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights.

²⁴² Board Against Discrimination, available at: <https://namndenmotdiskriminering.se/beslut.html>.

- i) National legislation does not provide for preventive and socio-preventive sanctions, in particular injunctions or structural injunctions.
- ii) There are some sanctions specific to cases of collective redress (actio popularis or class actions).

As indicated in 6.2.d above, Swedish law does not allow associations, organisations or trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (actio popularis).

However, as discussed above in 6.2.e, it is possible under Swedish law – outside of labour law – to submit a class action (or group proceeding) to a district court for claims arising from the same issue.²⁴³ Such cases are handled according to the rules on civil disputes. However, class actions are not allowed if the case can be appealed to, for example, the Labour Court. Labour law cases fall outside the scope of the act, but discrimination in other fields can result in class actions.

There are various types of difficulties related to the use of class actions such as cost risks, procedural complexity and lack of incentives, which is presumably why there have been so few since the law took effect in 2003. Concerning discrimination law, there has been an important successful class action on grounds of sex concerning access to veterinary higher education. The case²⁴⁴ involved 45 women who asserted that they were discriminated against through the preferential treatment of less qualified male applicants. They were each awarded SEK 35 000 (EUR 3 190) in damages. The judgment was confirmed on appeal. In this case, the women were represented by the Center for Justice,²⁴⁵ a public interest law firm primarily funded by the business sector. The Center guaranteed the cost risks if the case turned out to be unsuccessful. This case demonstrated that it was possible to bring an action for discrimination in fields other than working life.

There are no specific sanctions related to class actions but given that the damages amounted to SEK 1 575 000 (EUR 143 471) in the case above, rather than a single case for SEK 35 000, defendants are more likely to pay attention if faced with a class action. At the same time, there are important drawbacks. The entire risk concerning legal costs applies to the named plaintiff, and not the class. The system is an opt in system which makes it more complicated and expensive to bring the class together. These are at least some of the reasons why there have been so few class actions filed in the past 20 years.

- iii) There are no sanctions in place to deal with cases of mass discrimination, particularly as a result of the use of AI or automated systems.

The Swedish law on class actions discussed above in ii would presumably be of limited use concerning cases of mass discrimination, particularly as a result of the use of AI or automated systems, due to the opt-in system and the loser pays rule discussed above. However, it is possible that the Act (2023:730) on class actions for the protection of consumers' collective interests, enabling consumer organisations to initiate class actions in accordance with the Group Proceedings Act, could be relevant to a situation involving mass discrimination.

- b) Pecuniary sanctions – maximum and average amounts

Swedish law currently provides no ceiling on compensation in discrimination cases. Nevertheless, compensation levels are low. A large award was made in 2014 by the Svea Court of Appeal in a case where the authorities had removed an infant from the custody of

²⁴³ Group Proceedings Act (*Lag om grupprättegång*, 2002:599).

²⁴⁴ Uppsala District Court, 30 March 2009, Case nr T 3897-08.

²⁴⁵ Centrum för rättvisa (Center for Justice), 21 December 2009, *Olivia Rozum m.fl. mot SLU*, <https://centrumforrattvisa.se/fall/olagligt-att-gynna-man-vid-veterinarutbildning/>.

his parents. Having a child taken away from its parents was seen as the worst injury that could be suffered and therefore the discrimination award was set at EUR 14 000 (SEK 150 000) for each of the parties involved (both parents and the child).²⁴⁶

There are no general statistics on the average amount of compensation awarded to victims.

In 2012, the Equality Ombudsman pointed out that, although it was too early to draw definitive conclusions, replacing the term 'damages' (*skadestånd*) with 'discrimination compensation' (*diskrimineringersättning*) in 2009 had not thus far resulted in any significant (*nämnvärd*) increase in the amounts awarded.²⁴⁷ In 2014, the Equality Ombudsman concluded that various judgments indicated that the compensation levels for less severe violations would in many cases be too low to have a dissuasive effect. This was considered by the DO to be a problem in relation to the EU requirement concerning dissuasive sanctions: 'Ineffective sanctions actually mean the anti-discrimination legislation will not live up to the goal of protecting those who most need it'.²⁴⁸ Over the years, in its annual reports and other submissions to the Government, the DO has highlighted the need for more effective sanctions. In its *Annual Report 2025*, the DO highlights its recommendations to the government concerning the urgent submission of a bill to the *Riksdag* on comprehensive protection against discrimination in all public activities, as well as the appointment of a legislative inquiry concerning the issue of sanctions to more effectively deter discrimination.²⁴⁹

The need for more effective sanctions seems to be in line with the conclusions drawn by Professor Laura Carlson in her analysis of compensation paid in employment discrimination cases. According to her calculations, the amounts currently being awarded by the Labour Court, adjusting for inflation, are about 4.5 % higher than they were in 1980. She points out that this does not appear to reach the threshold of enhanced compensation as envisaged by the change in terminology that came with the Discrimination Act in 2009. She also points out that this modest increase in compensation should be compared with the 170 % increase in trial costs and fees since the 1980s. She concludes that the trends concerning compensation awarded and increasing legal costs and fees, combined with low success rates, 'create a significant deterrent for claimants bringing discrimination claims'.²⁵⁰

Some of the Labour Court discrimination awards are notable, such as 2010 No. 91²⁵¹ EUR 7 000 (SEK 75 000) and 2011 No. 37²⁵² (EUR 11 700 or SEK 125 000). In the former case, the Equality Ombudsman asked for EUR 28 100 (SEK 300 000); in the latter case the Ombudsman asked for EUR 37 440 (SEK 400 000) as a discrimination award and EUR 9 360 (SEK 100 000) for the violation of the Employment Protection Act. An amount of EUR 11 700 (SEK 125 000) was awarded in a one-for-all compensation for the violation of both acts.

²⁴⁶ Svea Court of Appeal, case T 5096, *Equality Ombudsman v Sigtuna Municipality* (11.04.2014). Available at: <https://www.do.se/download/18.277ff225178022473141f03/1618941552517/dom-hovratt-ANM-2011-274.pdf>.

²⁴⁷ Equality Ombudsman (2013), *Annual Report 2012*, p. 24.

²⁴⁸ Equality Ombudsman (2015), *Annual Report 2014*, p. 60.

²⁴⁹ Equality Ombudsman (2026), *Annual Report 2025*, p. 5.

²⁵⁰ Carlson, L. (2017), *Comparative discrimination law: Historical and theoretical frameworks*, Brill, pp. 79-80.

²⁵¹ Labour Court 2010 No. 91, *Equality Ombudsman v Swedish Agency for Government Employers*, 15.12.2010. A.H., a 62-year-old woman, applied for a position as a job coach with the Public Employment Service. She was not called to an interview, and two women aged 27 and 36 were hired. A.H. was at least as qualified as one of the people hired and was better qualified than the other. Thus, a presumption of age discrimination arose. She was also better qualified compared with a man who was offered an interview and therefore a presumption of sex discrimination arose as well.

²⁵² Labour Court 2011 No. 37, *Equality Ombudsman v Aviation Employers (Flygarbetsgivarna) and Scandinavian Airlines System*, 04.05.2011. Collective agreement permitting the employer to dismiss all employees above the age of 60 in a redundancy case.

However, since the legislative preparatory works on which the Discrimination Act is based are vague regarding the expected new levels of compensation, there is a large amount of legal uncertainty. The Supreme Court helped clarify some of the uncertainty in two cases decided on the same day in 2014.²⁵³ In the landmark *Veolia* case, a bus driver had problems closing the doors of the bus. Two immigrants were sitting together and one of them had her knee close to the stop request button. The bus driver walked over to them and removed her knee from the vicinity of the button (in a non-discriminatory way according to the courts). He also said that they should return to 'Taliban country' and made a rude gesture.

The discrimination award was set by the appeal court at EUR 1 870 (SEK 20 000) each.²⁵⁴ The Supreme Court increased the amount to EUR 2 340 (SEK 25 000) on the basis that this violation was as severe as a violation through words without threats can be. The violation award was set at EUR 1 400 (SEK 15 000) each. Furthermore, EUR 1 870 (SEK 20 000) was to be added as a prevention award. Normally a prevention award is the same amount as the award for the violation.

If only one person had been discriminated against, that person would have received EUR 1 400 (SEK 15 000) plus the full prevention award (SEK 15 000 plus SEK 15 000). Since two people were to share the prevention amount, the court set the amount at a total of EUR 1 870 (SEK 20 000), to be divided between the two persons involved, as the court concluded that EUR 2 800 (SEK 30 000) would have been too harsh for the perpetrator.

There are some situations where one may be able to identify a standard level of compensation, for instance in the case of a person not being allowed to eat at a restaurant, resulting in damages of EUR 1 400 (SEK 15 000) under normal circumstances. It is unclear what will happen to these levels. The author believes that violations concerning a restaurant or nightclub are probably less severe compared with the bus case. At the same time, some restaurants seem to encourage discrimination if for no other reason than that they think it will be more lucrative for them. Potentially, the prevention award should be much higher here compared with the bus case, where the employer presumably had a substantial interest in their bus driver behaving properly.

As to sanctions, Swedish law generally provides for low levels of compensation or damages. For example, a discrimination compensation award of even EUR 7 500 (SEK 80 000) will hardly deter a larger employer. For large employers or businesses, the threat of publicity is real and probably much more significant.²⁵⁵ For small employers or small businesses, the sanctions are possibly a deterrent, but for even this to be effective it requires there to be some risk that the DO, the unions or civil society organisations will try to enforce the law.

c) Assessment of the sanctions

As the amounts awarded in Sweden are relatively similar to the amounts awarded in other Member States, it would be hard to assert that there is a compliance issue in relation to the directives. At the same time, if the question is whether the available sanctions have in practice been - or are likely to become - effective, proportionate and dissuasive, as required by the directives, the answer is no. The low amounts awarded concerning government

²⁵³ Supreme Court, case T 3592-13, *Equality Ombudsman v Veolia*, 26 June 2014. The second case was Supreme Court, case T 5507-12, *Equality Ombudsman v Stockholm County*, 26 June 2014, NJA 2014, p. 499.

²⁵⁴ In Sweden, the ground of ethnicity also covers race.

²⁵⁵ See, for instance, Skåne and Blekinge Court of Appeal, case FT 1948-12, *Forum for Equal Rights v IKEA*, 18.03.2013. An anti-discrimination bureau helped a mother to sue IKEA for not letting her daughter who has a disability play in the playroom. She demanded EUR 2 200 (SEK 20 000) as a discrimination award. IKEA admitted that it had treated her daughter badly. IKEA accepted SEK 20 000 as fair compensation but would not admit to discrimination. The case was therefore tried by both the district court and the appeal court because the classification of the decision as discrimination was important to both parties. The complainants lost the case.

agencies and/or larger private actors such as employers, can hardly be seen as effective or dissuasive. For example, in the Supreme Court case²⁵⁶ in 12.2 *Country report, Non-discrimination, Sweden 2025*, the discrimination compensation in the amount of SEK 20 000 (EUR 1 741) will presumably have limited dissuasive effect on the local government concerning the fulfilment of its duty to institute adequate reasonable accommodations in a timely manner concerning pupils with special needs.

d) Enforcement and monitoring of the implementation of sanctions

i) Courts and adjudicating bodies' mechanisms to monitor or enforce their decisions.

As the primary sanction is the payment of money, Sweden has an effective system for collecting debts and enforcement of e.g. judgments through the Swedish Enforcement Authority (*Kronofogden*). The Authority has a range of responsibilities, including enforcement, debt collection and payment injunctions, assistance, debt relief and bankruptcy supervision.²⁵⁷

ii) Possibility for courts and other adjudicating bodies to retain jurisdiction after sanctions have been imposed.

The author is of the opinion that the courts do not retain jurisdiction after sanctions have been imposed in civil cases.

iii) Further steps/measures courts or adjudicating bodies can take in case of non-compliance with the sanction.

Concerning sanctions for money, people are expected to turn to e.g. the Enforcement Authority.

iv) The burden of enforcing sanctions.

The individual involved in the case, often in combination with the Enforcement Authority.

An economic efficiency analysis of discrimination awards was commissioned by the Equality Ombudsman and undertaken by a professor of national economics in 2015.²⁵⁸ From an economic standpoint, there are clear deficiencies. Discrimination awards are divided into two parts. One portion is intended to compensate the victim for the violation of their integrity. The other portion – the prevention portion – is intended to dissuade the discriminator in relation to future violations. The most basic deficiency according to the report is that the prevention portions of discrimination awards seem to be too low to prevent future infringements. The report also states that from an econometric efficiency standpoint, the discrimination award would need to be extremely high on some occasions if the low detection risk in many areas is to be properly taken into account.

In the author's opinion, it is highly doubtful that Sweden, due to its legal, social and political culture, will ever develop extremely large discrimination compensation awards. This issue was also discussed by the author of the above report for the Equality Ombudsman.²⁵⁹ It

²⁵⁶ Supreme Court, Case T 3151-23, *S v Malmö kommun*, 13.06.2024. See Section 12.2, Country Report, Non-discrimination, Sweden 2025.

²⁵⁷ Swedish Enforcement Authority, 2025-12-20, at <https://kronofogden.se/other-languages/the-enforcement-authority---english>.

²⁵⁸ Stenek, J. (2015), *En samhällsekonomisk analys av diskrimineringsersättningen* (A socioeconomic analysis of discrimination compensation), available from the Equality Ombudsman – document LED 2015/299 17.

²⁵⁹ See Stenek, J. *En samhällsekonomisk analys av diskrimineringsersättningen*, p. 21. He cites an example of employment discrimination where the detection risk is probably below 0.1 % and where a EUR 2 000 evaluation of the damage to the individual would result in a EUR 2 million prevention award. He concludes that such high sums would be seen as unfair lottery winnings for the individuals receiving them and that such a system would lose public support in the long run.

should nevertheless also be obvious that larger awards or other forms of sanctions, or at least risks, are necessary if the law is to become more effective. Greater justification for this could come from understanding the substantial damage arising in various situations, as well as the damage caused to third parties, as was pointed out in the above-mentioned report. These issues have been missing from the discussion of the preventive potential of discrimination awards, just as, in the author's opinion, a serious discussion has been lacking concerning the sanctions and remedies system under the Discrimination Act, as well as other potential complementary issues such as anti-discrimination clauses in public contracts or other similar anti-discrimination measures related to the public sector.

In the author's opinion, the sanctions in respect of the labour market would be more effective if there was a right to damages for economic loss in cases of recruitment and promotions, at least in regard to the most qualified applicant. The most qualified applicant, if they can prove that discrimination occurred, would not have a right to the job, but the right to damages as if they had been hired and fired. This type of change would raise the cost risks associated with discrimination without radically changing the system of damages in Sweden.

Outside the labour market, the sharply reduced level of civil damages in cases where discrimination is proved by situation testing may, in theory, violate the principle of effectiveness, according to the author, at least with regard to nightclubs.²⁶⁰ However, this situation may change if there is a greater focus on discouraging future infringements. The author finds that the Supreme Court case from 2014²⁶¹ provides some positive reasoning concerning the preventive portion of the compensation, especially if a focus is placed on the importance of stopping what is thought to be economically profitable discriminatory behaviour by a club owner. This could lead to a higher prevention award as a part of the discrimination award. The Equality Ombudsman is of the opinion that the low level of awards made to people experiencing discrimination with regard to access to goods and services is a real problem.²⁶²

A key question going forward is whether the current system for sanctions is sufficiently effective, proportionate and dissuasive to bring about the goals of the directives and thus the goals of the Discrimination Act. In the author's opinion, given the current state of the legislation and the limited amount of case law, this is doubtful. Access to justice, especially for individuals and/or NGOs, is a key component in developing case law concerning effective sanctions. Access to justice is also crucial in developing a critical mass of cases so that case law can be transformed into practical norms, encouraging employers and others with the power to prevent discrimination to actually undertake proactive measures.

As was pointed out in the 2005 inquiry into structural discrimination, the overall system for promoting equality and counteracting discrimination needs to concentrate on the idea that if discrimination costs, or carries with it substantial cost risks, most people with the power to discriminate can refrain from their discriminatory tendencies. The key is not necessarily sanctions but convincing those with the power to discriminate to work seriously on preventing discrimination. The short-term goal may be compensation for victims, but the long-term goal is that potential victims are not subjected to discrimination in the first place.²⁶³

²⁶⁰ Supreme Court, *Escape Bar and Restaurant v Ombudsman Against Ethnic Discrimination*, case T-2224-07, 01.10.2008. Presumably nightclubs feel they have strong economic incentives to give preference to high-status individuals and exclude low-status individuals when admitting guests. When the Supreme Court reduced the civil damages awarded from SEK 15 000 (EUR 1 366) to SEK 5 000 (EUR 455) due to the use of situation testing to prove discrimination, one of the few effective and available means, will probably lead to continued discrimination based on a cost-benefit analysis by nightclub owners.

²⁶¹ Supreme Court case T 3592-13, *Equality Ombudsman v Veolia*, 26 June 2014. The second case was Supreme Court case T 5507-12, *Equality Ombudsman v Stockholm County*, 26 June 2014, together known as NJA 2014 – p. 499. See Section 6.5.b above.

²⁶² Equality Ombudsman (2026) Annual Report 2025, p. 5.

²⁶³ Lappalainen, P. (2005), White Paper SOU 2005:56, *Det blågula glashuset: strukturell diskriminering i*

Some changes in the law could and should be made, including in relation to economic damages relating to recruitment and promotion. At the same time, policymakers need to take a more holistic view, by examining other legal tools that can help to ensure the effectiveness of the principle of equality.

One idea is a review of the rules on class actions, so that they become more effective, especially in discrimination cases. This should also mean that class actions are available in labour law as well.

Concerning restaurant and nightclub discrimination, almost all such establishments have alcohol licences, granted by their local authority. These licences are a privilege, not a right. The licences could be tied, through the Alcohol Act, to the idea that the licence holder is put on notice that discrimination, as it can lead to disorder in nightlife, is a violation of the trust granted to them by the public and that discrimination can therefore lead to revocation of the licence.

There is an important additional sanction which, even though there seems to be little follow-up concerning implementation, has substantial potential as a complementary tool in relation to the Discrimination Act. Under the Regulation on anti-discrimination conditions in public contracts (2006:260), Sweden's largest national Government agencies must include an anti-discrimination condition in their larger public procurement building and service contracts. The purpose of the regulation is to increase awareness of and compliance with the Discrimination Act (2008:567).²⁶⁴

It is hard to say very much about the effects of this regulation or those used by some local authorities (e.g. Stockholm, Malmö and Botkyrka). The total value of all public sector contracts in Sweden was more than EUR 91.7 billion (SEK 1 000 billion) in 2023.²⁶⁵ There have been no evaluations or follow-up of the clauses used by the different agencies. Nevertheless, in the author's opinion, if the anti-discrimination conditions are formulated in such a manner that serious potential sanctions such as cancellation are included as a part of the contract, their preventive potential is substantial. There is currently little risk in violating the Discrimination Act, given the limited risks around detection, enforcement and economic sanctions. This applies particularly in relation to active measures. However, even if the detection risks are minimal, if a business risks losing, for instance, a contract worth EUR 4.7 million (SEK 50 million) due to a violation of the Discrimination Act, this should mean that the company has a much greater incentive to deal with active measures in a more serious manner than has been the case thus far. This would also be an important factor concerning individual complaints.

In the author's opinion, these types of complementary approaches to the issue of what policymakers can do concerning sanctions, i.e. focusing on the cost risks of discrimination, can help to ensure that sanctions actually become effective, proportionate and dissuasive.

Sverige (The blue and yellow glass house: Structural discrimination in Sweden).

²⁶⁴ Regulation (2006:260) on anti-discrimination conditions in public contracts (*Förordning om antidiskrimineringsvillkor i upphandlingskontrakt*), available at: <http://rkrattsbaser.gov.se/sfst?bet=2006:260>. There is an unofficial English translation at: <https://www.global-regulation.com/translation/sweden/2988722/ordinance-%25282006%253a-260%2529-on-anti-discrimination-clauses-in-procurement-contracts.html>.

²⁶⁵ National Agency for Public Procurement, 3 October 2025, Upphandling för 1 009 miljarder (Public contracts for SEK 1009 billion) at <https://www.upphandlingsmyndigheten.se/nyheter/2025/upphandling-for-1-009-miljarder/>.

7 BODY FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)²⁶⁶

7.1 National equality body

a) General 'architecture' of equality bodies

In Sweden, the specialised body designated for the promotion of equal treatment in accordance with the Discrimination Act, and therefore the EU Directives is the Equality Ombudsman (*Diskrimineringsombudsmannen* – DO).

In the author's opinion, as the DO has a broad independent mandate, as well as a comparatively large budget and staff, national law is in line with Directive 2024/1499. No legislative amendments have been adopted or are planned concerning the transposition of Directive 2024/1499.

The DO has a broad anti-discrimination and equality promotion mandate established by law, the Equality Ombudsman Act²⁶⁷ in combination with parts of the Discrimination Act. The grounds covered by the DO's mandate are sex, transgender identity or expression, ethnicity, religion and other belief, disability, sexual orientation and age. The DO's scope of action includes, but is not limited to, working life, education, labour market policy activities and employment services, starting or running a business and professional recognition, membership of certain organisations, goods, services and housing, health and medical care and social services, national military service and civilian service.

The Swedish government also provides subsidies to local anti-discrimination bureaux around the country run by non-governmental organisations. They provide advice and assistance concerning all discrimination grounds, even taking some cases to court. In 2024, for the year 2025, 18 bureaux were granted funding of about EUR 2.55 million from the national Government.²⁶⁸ They can also work together with the DO in certain situations, for example by investigating cases and then helping people submit their cases to the DO. They also participate in equality promotion through training programmes for civil society, social partners, government agencies and others. Some have also developed additional funding sources such as local governments, as well as participation in projects funded nationally or by the EU. See also Section 10 *Country report, Non-discrimination, Sweden 2025*.

In addition, there are three other government agencies that have a more specific task relevant to equality at a policy level. Their mandates do not include dealing with individual complaints.

The Agency for Participation (*Myndigheten för delaktighet*)²⁶⁹ is tasked with ensuring that disability policy impacts all parts of society, as it works to speed progress towards a society in which everyone can participate on equal terms, regardless of functional capacity.

The Gender Equality Agency (*Jämställdhetsmyndigheten*)²⁷⁰ is tasked with contributing to effective implementation of Swedish gender equality policy. Its main task is to coordinate, follow-up and provide various forms of support and knowledge in order to reach the gender equality policy goals.

²⁶⁶ Assessments and views concerning compliance with EU law throughout Section 7, notably for Directive 2024/1499 which has a transposition deadline of 19 June 2026, after the cut-off date for this report, reflect the author's opinion.

²⁶⁷ Act concerning the Equality Ombudsman (2008:568) (*Lagen om diskrimineringsombudsmannen*), available in English at: <https://www.do.se/choose-language/english/act-concerning-the-equality-ombudsman>.

²⁶⁸ See Swedish Agency for Youth and Civil Society, 2024-12-05, see: <https://www.mucl.se/om-oss/aktuellt/18-organisationer-far-stod-att-starka-arbetet-mot-diskriminering>.

²⁶⁹ See Agency for Participation (*Myndigheten för delaktighet*) at: <https://www.mfd.se/other-languages/>.

²⁷⁰ See Gender Equality Agency (*Jämställdhetsmyndigheten*) at: <https://jamstalldhetsmyndigheten.se/swedish-gender-equality-agency/>.

The Institute for Human Rights (*Institutet för mänskliga rättigheter*)²⁷¹ has the remit to promote and protect human rights in Sweden. More specifically, the task also includes the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities.

- b) Designated body for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The DO, discussed above in Section 7.1.a, is the only body exercising the competences as listed in Article 13 of the Racial Equality Directive.

The head of the DO is appointed by the Government. All responsibility for the agency lies with the head of the agency. There is no governing board. The office of the DO is located in Stockholm and complaints are submitted from around the country, primarily online. In order to represent complainants as well as for other reasons, DO employees can travel to various parts of Sweden.

In principle, the services of the DO are accessible on an equal basis for all. The DO does not charge for its services, whether this involves an initial analysis or taking cases to court. Furthermore, reasonable accommodation is provided where necessary for persons with disabilities.

7.2 Political, economic and social context of the designated body

The context of the Equality Ombudsman (DO) has varied over the years. The DO, established in 2009, was the result of a merger of the four previous equality ombudsmen, which in itself was a cause for some discontent. Different interests from within the equality silos thought it was important to have their 'own' ombudsman – gender; ethnicity, religion and other beliefs; disability; and sexual orientation, thus opposing the merger. In 2009 and 2010, there was extensive public criticism of the DO due to the successful representation of a Muslim man against the Swedish Public Employment Service in February 2010.²⁷² The result was substantial criticism of the DO from feminists, politicians including the Minister of Integration and newspaper editorials. In February 2011, the head of the office was removed. News reports at the time stated that the Government acted, among other things, due to poor management.²⁷³

The next head of the DO was appointed in 2011 and remained in office until 2020. She asserted that previously there had been too much time and effort spent on individual cases, leading her to conclude that the focus was to be put on equality promotion, including non-binding decisions, as well as a few strategic cases.

According to a former Gender Equality Ombudsman, during the period 2011-2020 the DO moved from trying to use the law to promote equality by taking on cases, assisting victims and enforcing the law, to primarily providing information concerning discrimination.²⁷⁴ Agreement with this criticism could be found among NGOs and various experts in the

²⁷¹ The Institute was established in January 2022. See Institute for Human Rights (*Institutet för mänskliga rättigheter*) at: <https://mrinstitutet.se/om-institutet/other-languages/>.

²⁷² Stockholm District Court, case T 7324-08, *Equality Ombudsman v Arbetsförmedlingen*, 8.2.2010, available at: <https://www.do.se/download/18.277ff225178022473141f2a/1618941585478/dom-tingsratt-arbetsformedlingen-omed-20067612.pdf>.

²⁷³ See, for example, *Expressen* (2011), 'Regeringen sparkar DO Katri Linna' (The Government fires DO Katri Linna), 1 February 2011, available at: <https://www.expressen.se/nyheter/regeringen-sparkar-do-katri-linna/>.

²⁷⁴ Svenaeus, L. (2020) *Tio år med Diskrimineringsombudsmannen - En rapport om nedmontering av Diskrimineringsskyddet* (Ten years with the Equality Ombudsman – A report on the dismantling of the protection against discrimination) at: <https://arenaide.se/wp-content/uploads/sites/2/2020/11/svenaeus-2020-tio-ar-med-diskrimineringsombudsmannen-komprimerad.pdf>.

field.²⁷⁵ It is noteworthy that when the Ombudsman's contract had run its course in 2020, a new Ombudsman was appointed in December 2020. Once appointed, he indicated a need to shift the focus of the DO to individual complaints, investigations and enforcement. This shift in focus permeates the annual reports since 2021.

This development is taking place in an environment where the political debate has become increasingly focused on law-and-order issues and immigrants as the cause of various problems. The solution in legislative terms has been speed with which legislation is being developed, and the sweeping nature of that legislation, often with a focus on directly or indirectly limiting the rights of immigrants to enter Sweden, to be in Sweden, and encouraging them to leave Sweden. This is seen as necessary to the fulfilment of the Tidö agreement, the political agreement between the parties forming the Government and Sweden's far-right anti-immigrant party.²⁷⁶ In some cases there is a direct focus on limiting the rights of third country nationals for example in Sweden as far as entitlement to social security and financial assistance for certain groups is concerned (see 7.6.c below). The legislation on searches without just cause in temporary security zones, while technically neutral, is expected to be used in so-called immigrant neighbourhoods.²⁷⁷ It is also relevant to note that many of these proposals are actually using the language of human rights as a governance tool, as a justification for limiting human rights.²⁷⁸

The elections in September 2022 led to an increase in the number of votes for the far-right party, which meant that it became the second largest party as well as being put in a position to ensure the establishment of the current government based on three conservative parties that is dependent on the parliamentary support of the far-right party.

The far-right party mentioned above is opposed to both the Discrimination Act and the DO, according to the party's chair of the Justice Committee of the Parliament.²⁷⁹ Thus, it can be said that the current situation is somewhat precarious. On the other hand, the Tidö Agreement,²⁸⁰ the agreement between the four parties that make up the parliamentary base for the Government, says nothing about the DO or the Discrimination Act. It can also be pointed out that the Tidö Agreement underlines at various points the need to stay within the framework of EU law.

Very few cases are filed in court by individual complainants – the cost risks related to losing are too high for most people, perhaps especially those who are most likely to be victims. Furthermore, civil society organisations that represent discriminated groups are in the initial stages of developing strategic litigation and legislation as part of their advocacy efforts. Some of the cases taken on by the local anti-discrimination bureaux lead to settlements or court judgements. If and when a bureau brings a case to court, they are

²⁷⁵ Some examples: 'Kritik mot DO: "Lagen har urholkats"' (Criticism of the DO: the law has been hollowed out), interview with the union for journalists at: <https://www.etc.se/inrikes/kritik-mot-do-lagen-har-urholkats>. 'DO får hård kritik för "tandlöshet" och "slarv"' (DO subject of hard criticism due to toothless and careless work), a disability think tank, Independent Living Institute presents an analysis of the DO's work for a year on active measures at: <https://www.arbetet.se/2018/10/19/do-far-hard-kritik-for-tandloshet-och-slary/>. See also, in particular, Svenaeus, L. (2018) 'Amnesti råder för brott mot diskrimineringslagen' (There is an ongoing amnesty for violations of the Discrimination Act), *Svenska Dagbladet*, 30.02.2018, available at: <https://www.svd.se/amnesti-rader-for-brott-mot-diskrimineringslagen>.

²⁷⁶ Tidöavtalet (Tidö Agreement), available at: <https://www.liberalerna.se/wp-content/uploads/tidoavtalet-overenskommelse-for-sverige-slutlig.pdf>.

²⁷⁷ See Section 7.6.c, Country report, Non-discrimination, Sweden 2025.

²⁷⁸ See e.g. Carlson, L. (2025) 'The Changing Paradigm of Human Rights Justifications: Challenges for Civil Society', *Ljubljana Law Review*, vol. 85, p. 135, and Grahn-Farley, M. (2025) 'The Silent Sound Of Drowning: Human Rights Justifications and Complex Intersectionality', 51 *Brooklyn Journal of International Law* 1.

²⁷⁹ See e.g. Martinsson, K. and Hennel, L., *Arbetet*, 3 October 2022, 'SD:s Richard Jomshof som ska leda justitieutskottet vill avskaffa diskrimineringslagen' (SD's Richard Jomshof, who will head the Justice Committee, wants to repeal the Discrimination Act) available at: <https://arbetet.se/2022/10/03/sds-richard-jomshof-som-ska-leda-justitieutskottet-vill-avskaffa-diskrimineringslagen/>.

²⁸⁰ Tidöavtalet (Tidö Agreement), available at: <https://www.liberalerna.se/wp-content/uploads/tidoavtalet-overenskommelse-for-sverige-slutlig.pdf>.

generally filed as small claims cases, which avoids the risk of being required to pay the winning party's legal costs. The dyslexia cases have shown that, despite being small claims cases, this approach can have strategic value.²⁸¹ Win or lose, these cases seem to have brought more media and official attention to the issue than years of civil society lobbying concerning dyslexia. This will be especially true if the UN CRPD committee returns a decision criticising Sweden's failure to implement the Convention on the Rights of Persons with Disabilities.

In summary, the Swedish equality body, the Equality Ombudsman (DO), exists in a political, economic and social context where it has a practical monopoly on the development of case law as well as dominance in other ways. Among other factors, given the small number of cases taken to court, the strategic importance of the DO was being increasingly questioned. In this regard, the shift in direction set out by the current head of the DO is promising. In the opinion of the author, the shift in direction shows a recognition of the idea that education and awareness-raising are insufficient to deal with discrimination and that these issues are not the primary role of an equality body, especially in a situation where access to justice for victims of discrimination is very limited.

7.3 Institutional architecture

In Sweden, the designated body does not form part of a body with multiple mandates.

The mandate of the Equality Ombudsman (DO) extends to counteracting discrimination and promoting equality in relation to the grounds of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation and age. The DO's mandate is set out in the Equality Ombudsman Act (2008:568). The DO has the duties described in the Discrimination Act (2008:567) as well as the duty to promote equality in other respects.

7.4 Status of the designated body – general independence and resources

a) Status of the body

- Separate or other legal status or personality: The Equality Ombudsman (DO) is a Government authority and is thus a separate legal person. The DO is currently placed under the mandate of the Government's Ministry of Employment. The DO is appointed by the Government. The person appointed as the DO is responsible for the actions of the agency and thus determines its focus and direction (*enråddighetsmyndighet*).
- Selection of governing body: There is no governing body. Neither the Government nor any other organisation has a formal influence on the DO's decision-making. Instead, there is an advisory board regulated under Section 5 of the Equality Ombudsman Regulation (2008:1401).
- Sources of funding: The DO receives its annual funding from the Government, based on a budget approved by the Parliament.
- Powers to recruit and manage staff: The Equality Ombudsman recruits and manages its own staff.
- Accountability: The DO is accountable to the Government. This can be seen in the DO's annual report as well as in the reporting back to the Government in response to annual regulation letters. There is more information about the annual regulation letters and the link between accountability and independence in the next section on independence of the body.

b) Independence of the body

²⁸¹ See Section 10, *Country report, Non-discrimination, Sweden 2023*.

The word ‘independent’ is not stipulated in the Equality Ombudsman Act, but the body is, in theory, independent. At least initially, based on the legislative materials and their references to the Paris Principles, certain special measures were taken to underline the DO’s independence. In addition, Sweden has a long theoretical tradition of a wall of separation between the Government and all governmental authorities. The Instrument of Government Chapter 12, Section 2 (which is part of the Swedish Constitution) prohibits the Government (and all other public bodies and representatives including the Parliament) from interfering in any individual case of any governmental authority.

However, if the issue of actions in individual cases is disregarded, it is obvious that the Government can direct the actions of an independent government authority in other ways. This can include changes in the annual budget, removal of the head of the authority, as well as the use of a regulation letter or possibly changing the mandate if the authority was established by a Government regulation. One of the reasons for establishing the Equality Ombudsman through the Equality Ombudsman Act was that a change in the law, and thus the DO’s mandate, would require approval by Parliament. The Act adds an extra measure of independence.

The Equality Ombudsman has independence mainly based on the general and constitutionally protected tradition of independent authorities in Sweden, as well as being established by law. Initially, this independence was complemented by some special independence-enhancing measures. However, in practice, it should be pointed out that one of the major reasons why the Equality Ombudsman’s application to the UN for A-status²⁸² as a national human rights institution was rejected was the lack of independence demonstrated by the way the Swedish Government was able to easily remove the head of the Equality Ombudsman in 2011. This power still exists.²⁸³

Although the DO is established by law, and even though the legislative materials for that law refer, *inter alia*, to the Paris Principles, the removal of the agency head in 2011 and the increasingly detailed regulation letters clearly indicate that the DO is accountable to and is held accountable in regard to the interests of the Government. It becomes easier, consciously or subconsciously, to take positions that are less controversial. This presumably contributed to the increasing focus of the former Ombudsman (2011-2020) on education and awareness-raising rather than enforcement. The current Ombudsman has demonstrated a greater level of independence in a more difficult political environment.

The regulation letter has clearly become a means of influencing the work of the Equality Ombudsman. All Government authorities (including the Equality Ombudsman) report back to the Government on the basis of their regulation letter. Even though the regulation letter for the Equality Ombudsman possibly contains fewer detailed requests compared to those for other Government authorities, the requests necessarily affect the independence of the office.

Although there are risks to independence that can be discussed, in the author’s opinion, the DO can today be considered to be independent in practice.

c) Resources

- Annual budget of the body for 2025: EUR 13.3 million (SEK 142.7 million).²⁸⁴

²⁸² A national human rights institution (NHRI) is granted A-status if there is full compliance with the international standards concerning independence, effectiveness, and the ability of NHRIs to promote and protect human rights as established by the Paris Principles.

²⁸³ It should be noted that the Swedish Institute for Human Rights, established in January 2022, was granted A-status as a national human rights institution in 2024. See press release, 2024-10-23, “Institutet får A-status i internationell prövning” at <https://mrinstitutet.se/pressmeddelanden/institutet-far-a-status-i-internationell-provning/>.

²⁸⁴ Government bill Prop. 2025/26:1, Expenditure Area 13, p. 45.

- Total number of staff of the body: 111 at the end of 2025.²⁸⁵

In the author's opinion, the resources currently allocated to the Equality Ombudsman are sufficient.

7.5 Grounds and fields covered by the designated body

The Equality Ombudsman (DO) has a mandate to deal with seven grounds of discrimination: sex, sexual orientation, ethnicity, religion and belief, disability, age and transgender identity or expression. In addition, the DO, in accordance with the Parental Leave Act (1995:584), has the right to bring cases on behalf of individuals regarding the prohibition against unfavourable treatment related to parental leave. The fields covered by the DO's mandate are those covered by the Discrimination Act: public and private employment, education, labour market policy activities and employment services, starting or running a business and professional recognition, membership of certain organisations, goods services and housing, health and medical care, social services, social insurance, unemployment insurance and financial aid for studies, national military service and civilian service.

The Swedish Discrimination Act is to a large extent built upon the idea that all seven grounds are equal. Generally none of its staff only deal with a single ground and there is no specified budget for specific grounds. When a priority is decided on, for example the issue of harassment, it can often transcend the various grounds, or it can be only a part of a ground, for instance Islamophobia or Afrophobia. The priorities are not based on the grounds, but rather on a determination of which issues need an increased focus.

In the author's opinion, there is a determination by the DO to pay an equivalent level of attention to each ground. At the same time it is important to understand the complexity involved in such an assessment. For example, an ethnic discrimination case can help to establish a higher standard of compensation for all grounds. In addition, quite a few cases can involve an intersection of several grounds such as sex and age or involve multiple grounds such as ethnicity and disability.

7.6 Competences of the designated body – and their independent exercise

a) Independent assistance to victims

In addition to the specific duties described in the Discrimination Act, the broad mandate specified in the Equality Ombudsman Act states in Section 2 that the DO 'shall provide advice and other support so as to help enable anyone who has been subjected to discrimination to claim their rights'. In combination with Chapter 6, Section 2 of the Discrimination Act, this encompasses the right to represent individuals in court, with their permission. Thus, the DO clearly has the formal competence to provide independent assistance to victims.

This entails the investigation of complaints and bringing legal proceedings, and taking the cases to court if and when necessary. This entire process is free for the complainant.

In the cases that are taken to court, the DO seems to commit the personnel and other resources that are needed in order to be effective and it appears that a high level of courtroom advocacy is provided. Two examples of this are the *Braathens* case and the *Equality Ombudsman (DO) v Region Västra Götaland* case.²⁸⁶

²⁸⁵ Equality Ombudsman (2026) *Annual Report 2025*, p. 56.

²⁸⁶ See Section 12.2, *Country report, Non-discrimination, Sweden 2022*.

For a number of years, the DO had a general policy against settlements. This policy has changed. In 2025, 31 settlements were reached, 29 in 2024, and 23 in 2023, as compared to eight in 2022.²⁸⁷ Most of these are the result of the opposing party agreeing to the facts laid out by the DO, i.e. an admission concerning discrimination as well as payment of the compensation requested.

In 2025, the DO provided assistance with the submission of a complaint to the UN Committee on the Rights of Persons with Disabilities. According to the DO, Sweden violated the UN Convention on the Rights of Persons with Disabilities both during recruitment and in the subsequent court proceedings, when the job interview for an applicant for a position as a nurse was cancelled based on information that the applicant uses a wheelchair.²⁸⁸ This is the first time that the DO had interpreted its mandate in this independent and broad manner.

Concerning the head of the Equality Ombudsman, the change in the direction of the DO's operations is producing results. This change in direction was initiated in 2021, based on the idea that the DO exists to act on behalf of those who are discriminated against or are at risk of being discriminated against, and that the DO must investigate more complaints with the goal of achieving redress, including taking cases to court.

These starting points are increasingly being reflected throughout the activities of the DO. Furthermore, the work on individual complaints has become a starting point for the DO's work on equality promotion. The change in direction can in particular be seen in the increased number of settlements. These are presumably a result of the increased number of investigations of individual complaints by the DO and the opposing party making a rational decision to not go to court. At the same time, this willingness to settle also means that there is little case law being developed.²⁸⁹

To sum up, in the author's opinion, the competence to provide independent assistance to victims is effectively exercised in an independent manner, in practice, when the DO chooses to give priority to a case. As indicated above, the current head of the DO has determined that an increasing number of cases will be investigated, and legal proceedings will be instituted when warranted. Nevertheless, while there are positive indications, it is too early to make a deeper assessment as to the actual results of this new policy. One particular area that needs further examination is the effectiveness of the follow-up work of the DO concerning the active measures undertaken by employers and education providers, and whether there is an effective interplay between the handling of individual cases and the duty to implement active measures.

As for third parties that provide individual assistance to victims, the 18 local anti-discrimination bureaux should be noted. In some situations, they even take cases to court on behalf of the victims. The unions, due to their key role in labour relations, also provide assistance to victims. Although some cases are taken to court, see e.g. 12.2 *Country report, Non-discrimination, Sweden 2025*,²⁹⁰ the unions seem to have a clear tendency to prefer negotiating settlements, including in discrimination cases.

b) Independent surveys and reports

The Swedish Equality Ombudsman (DO) has the competence to carry out and publish independent surveys and reports. This is stated in Section 3 of the Equality Ombudsman Act.

²⁸⁷ Equality Ombudsman (2026) *Annual Report 2025*, p. 24.

²⁸⁸ See Section 12.2 Labour Court, *Municipal Workers' Union v Region Stockholm*, Country report, Non-discrimination Sweden 2025.

²⁸⁹ Equality Ombudsman (2026) *Annual Report 2025*, p. 24.

²⁹⁰ See Labour Court, Case 12/24, *Police Union v Swedish Police Authority*, 07.02.2024 and Labour Court, Case 66/24, *Municipal Workers' Union v Region Stockholm*, 28.08.2024.

Of particular interest for 2025 is the DO's publication of *Förekomst av diskriminering 2025: Årlig rapport från Diskrimineringsombudsmannen* (The state of discrimination 2025: Annual report from the Equality Ombudsman (Report 2025:3)).²⁹¹ This third annual report provides an overview from the DO of the occurrence of discrimination in Sweden, how widespread discrimination is and how it has manifested. One issue emphasised here was the subjection of Afro-Swedish pupils to racism and discrimination at school. The report shows that there are great risks of discrimination in the fields of employment and education. The report is based on knowledge about the occurrence of discrimination from, e.g., complaints to the DO, research, dialogue with civil society and surveys by other actors.

A few reports will be produced during a typical year. In addition to *The state of discrimination 2025*, in 2025 the DO also produced others such as a Report on the Rights of National Minorities (2025:2) and an analysis of the complaints to the DO during the period 2015-2024 (2025:1), noting that most complaints continue to be in the field of working life and that in general the largest increase in complaints relates to disability discrimination.²⁹² The reports are generally of a high quality, often produced by professionals in the field.

The DO has also been quite active in public debate, either alone or together with the head of the Swedish Human Rights Institute, on a variety of key issues such as the increasing level of racism, the need to follow democratic procedures, and the need to protect human rights and the rule of law in new legislation.²⁹³

The DO engages in strategic planning. In 2022 a policy document was adopted setting out its overarching vision, strategy and long-term strategic goals (DO 2022/4018). Furthermore, the DO implements a three-year operational plan explaining the agency's goals and prospective activities for the period in relation to its strategy and long-term strategic goals. The operational plan also describes ongoing government assignments and assignments as an expert in government inquiries (DO 2022/1400). Where appropriate, the Equality Ombudsman also adopts policy documents and guidelines for specific aspects of its work such as litigation and dialogue with civil society.²⁹⁴

c) Recommendations

The Swedish Equality Ombudsman (DO) has the competence to issue independent recommendations on discrimination issues according to the Equality Ombudsman Act. The reports produced by the DO often contain recommendations.

²⁹¹ DO, at <https://www.do.se/rattsfall-beslut-lagar-stodmaterial/publikationer/2024/forekomst-av-diskriminering-2024>. For an English summary: <https://www.do.se/choose-language/english/reports/the-state-of-discrimination-2024>.

²⁹² DO, Rapport 2025:1, *Statistik 2015–2024: Statistik över anmälningar som inkom till Diskrimineringsombudsmannen 2015–2024* (Statistics 2015–2024: Statistics on reports received by the Discrimination Ombudsman 2015–2024) at <https://www.do.se/download/18.6e7e84a8195b818c7f422d/1745466476219/rapport-statistik-anmalningar-diskriminering-2015-2024.pdf>.

²⁹³ See e.g. DO and the Institute, 'Våra lagar byggs på allt svagare grunder' (Our laws have an increasingly weaker foundation) 2025-12-10; DO's Report to CERD, 'Sverige behöver stärka arbetet för att motverka etnisk diskriminering' (Sweden needs to strengthen the work against ethnic discrimination), 2025-11-04; 'Stärk skyddet för och arbetet med de nationella minoriteternas rättigheter' (Strengthen the protection of and the work with the rights of national minorities) 2025-10-24; 'DO biträder enskild i klagomål till FN:s funktionsrättskommitté' (DO is supporting the submission of an individual complaint to the UN's Committee on the Rights of Disabled Persons) 2025-09-30; 'Elever riskerar att få sämre skydd' (Pupils risk weaker protection against discrimination due to new legislation) 2025-08-18; DO and the Institute, Debate article: 'Regeringens förslag strider mot rättsstatliga principer, som likabehandling' (The Government's proposal violates rule of law principles like the right to equal treatment) 2025-06-30; 'HD klargör: Det går inte att köpa sig fri från ansvar för diskriminering' (The Supreme Court clarifies that it is not possible to buy your way out of liability for discrimination) 2025-04-17. These can be found at the DO's website at <https://www.do.se>.

²⁹⁴ The documents mentioned here can be requested from the Equality Ombudsman by email at: do@do.se.

In the legislative process, the Equality Ombudsman has a right to criticize proposals and provide recommendations as to the need for new legislation, amendments to current legislation, or the need to reject proposed legislation. One important example from 2025, the DO, as part of the legislative consultation process, criticized the legislative inquiry proposing legislation concerning qualifying for social security and financial assistance for certain groups. The DO points out its clear criticism of legislation that expressly puts into focus third country nationals in spite of the extensive risks of discrimination and the restrictions on equal rights and opportunities the proposals entail, especially for people from certain ethnic backgrounds. The DO goes on to state that it is unacceptable that laws are enacted that are not compatible with Sweden's commitments under international human rights conventions. The DO concludes that the consequences of the proposals can constitute obstacles to accessing equal rights and opportunities in the form of economic vulnerability for women, children and young people, the elderly and people with disabilities, as well as for people from certain ethnic backgrounds, such as third-country nationals in general and migrants born in Africa and Asia in particular. Given the risks etc., the DO recommended the rejection of the proposed legislation.²⁹⁵

In the author's opinion, the current Ombudsman has been moving the DO in a more critical direction with its recommendations, with greater recognition of the idea that a key starting point for the DO is that the DO was created to act on behalf of those who are discriminated against, or risk being subjected to discrimination. This starting point is essential for developing the DO's work in an effective manner.

d) Prevention, promotion and awareness-raising

According to the Equality Ombudsman Act, the DO has the competence to engage in the prevention of discrimination and in the promotion of equal treatment, and to adopt a strategy defining how it will engage in public dialogue, communicate with individuals and groups at risk of discrimination, provide training and guidance, and promote equality duties, equality mainstreaming and positive action among public and private entities in accordance with the Equality Ombudsman Act.

The mandate established in the Equality Ombudsman Act provides the DO with broad powers that are essentially only limited by the DO's annual budget. Today this competence seems to be increasingly used in an independent manner, in practice. This assessment is at least partly based on the current Ombudsman's determination to engage in critical dialogue and cooperation with civil society organisations. Various civil society organisations have related their positive impressions thus far concerning the outreach work of the current DO.

In the author's opinion, more effective dialogue with civil society seems to be developing. This in turn may be the key to effectiveness in various aspects of the work of the DO, ranging from strategic litigation, to reports and investigations, and advocacy concerning policies related to counteracting discrimination and promoting equality.

e) Other competences

As indicated above under d), the Equality Ombudsman Act places few limits on the competence of the DO. Under Section 1 of the Equality Ombudsman Act (2008:568), in addition to the duties described in the Discrimination Act (2008:567), the DO must work to counteract discrimination and promote equality concerning sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. Section 3 exemplifies the broad mandate by specifying that, within the DO's sphere of activities, the

²⁹⁵ DO, Legislative comment, 19 June 2025, 'Kvalificering till socialförsäkring och ekonomiskt bistånd för vissa grupper' (Qualifying for social security and financial assistance for certain groups) at <https://www.do.se/om-do/vad-gor-do/remissvar/2025/2025-06-19-kvalificering-till-socialforsakring-och-ekonomiskt-bistand-for-vissa-grupper>.

DO shall: inform, educate, discuss and have other contacts with Government agencies, enterprises, individuals and organisations; follow international developments and have contacts with international organisations; follow research and development work; propose legislative amendments or other anti-discrimination measures to the Government; and initiate other appropriate measures. This last phrase was put in to underline that the DO's broad and independent mandate is not limited to the issues set out in the rest of Section 3. Section 3 provides examples of, but not limits on, what the DO may choose to do to counteract discrimination and promote equality. Thus, in the author's opinion, the Ombudsman has substantial freedom within its budgetary constraints to undertake other potential activities that may be needed beyond those enumerated in the act. Exactly what those are or could be, will be unclear until the Ombudsman decides to actually test the limits of its mandate.

7.7 Legal standing of the designated body

In Sweden, the Equality Ombudsman (DO) has legal standing to bring discrimination complaints on behalf of identified victims to court, assuming they provide a power of attorney to the DO. The DO then becomes the party in the case, which means that the DO will be liable for the other party's legal costs if the case is lost. Chapter 4 of the Discrimination Act sets out the tasks of the Equality Ombudsman under the act, and Section 2 refers to its right under Chapter 6, Section 2 to go to court on behalf of an individual who has suffered discrimination.

In Sweden, the DO does not have legal standing to bring discrimination complaints on behalf of non-identified victims to court.

In Sweden, the DO does not have legal standing to bring discrimination complaints *ex officio* to court.

In Sweden, the DO does not have legal standing to intervene in legal cases concerning discrimination, for example, as an *amicus curiae*. However, legal standing may not be necessary. See the example of the Swedish Human Rights Institute above at 6.2.b.

7.8 Dispute resolution

a) Quasi-judicial functions

In Sweden, the Equality Ombudsman (DO) is not a quasi-judicial institution.

In Sweden, there is no separate quasi-judicial body that is competent to decide on discrimination cases.

The DO is an equality promotion body that can, among other things, take cases to court on behalf of complainants. This also means that the DO can engage in settlements on behalf of complainants who have provided power of attorney to the DO.

Nevertheless, in a limited manner the DO's mandate includes some formal quasi-judicial aspects.

In certain situations, the Ombudsman may, under Chapter 4, Sections 3 and 4 of the Discrimination Act, order the suspected discriminator to provide information, allow access to the workplace and enter into discussions subject to a financial penalty. Such an order can be appealed to the Board Against Discrimination.

Concerning the active measures duty to promote equality and counteract discrimination that applies to employers and education providers, a person who fails to fulfil their obligations may be ordered to fulfil them. Such an order, combined with a financial penalty,

can be issued by the Board Against Discrimination upon application of the DO (Chapter 4, Section 5 of the Discrimination Act).

b) Amicable settlements

In Sweden, the Equality Ombudsman has the competence to offer the parties to a discrimination complaint the possibility to seek an amicable resolution to their dispute. This would be a process where the DO, in the same manner as a private lawyer representing the complainant, could participate in an amicable settlement. Note that the Equality Ombudsman was involved in 31 settlements in 2025, 29 in 2024, 23 in 2023 and only eight in 2022 (see Section 7.6.a above). Primarily, these settlements are a result of the defendant admitting discrimination and agreeing to pay the discrimination compensation demanded, thus avoiding the need to go to court.²⁹⁶

7.9 Procedural safeguards

The limitations/safeguards are the professional expectations that apply to a civil servant who has taken on the duty of representing a member of the public as their legal representative. This is one reason why the DO can take cases to court on behalf of individual complainants, but is limited in terms of binding decision-making. It is somewhat similar to the role of a lawyer acting on behalf of a complainant. Lawyers can investigate, settle and litigate, but they do not sit as the judge in such cases. While the equality of arms is an important issue, it is also important to keep in mind that a key reason for establishing an equality body is to bring some balance to the imbalance of power, legal and otherwise, that exists between those with the power to discriminate, and those who risk being subjected to discrimination.

7.10 Data collection by the designated body

a) Registration of complaints and decisions

In Sweden, the Equality Ombudsman registers the number of complaints of discrimination it receives (by ground, field, type of discrimination, etc.). These data are available to the public and are presented in the annual report. Each annual report from 2009 onwards can easily be downloaded from the Equality Ombudsman's website.²⁹⁷

According to the 2025 annual report, in 2025 the DO received 6 831 complaints, 5 182 in 2024, and 4 607 in 2023.²⁹⁸

In 2025, the distribution of discrimination complaints was as follows: 2 699 concerned disability, 2 120 ethnicity, 948 sex, 911 age, 665 religion or other belief, 256 sexual orientation, 308 transgender identity or expression and 372 concerned sexual harassment.²⁹⁹ The distribution of the grounds related to complaints has remained relatively stable over the years. Complaints concerning ethnicity and disability tend to dominate, followed by sex and age. A number of complaints may refer to multiple grounds.

In 2025, two court decisions involving the DO became final. In addition, the DO represented complainants in two cases where district courts issued judgements. Those cases have been appealed. See the Appeal Court cases in 12.2 below. The DO also entered into 31 settlements in 2025, 29 in 2024, 23 in 2023 and eight in 2022.³⁰⁰ More specific information about the settlements can be found on the DO's website.³⁰¹

²⁹⁶ Equality Ombudsman (2026) *Annual Report 2025*, p. 24.

²⁹⁷ Equality Ombudsman at: <https://www.do.se/ovrigt/sok#query/arsredovisning>.

²⁹⁸ Equality Ombudsman (2026) *Annual Report 2025*, p. 17.

²⁹⁹ Equality Ombudsman (2026) *Annual Report 2025*, p. 19.

³⁰⁰ Equality Ombudsman (2026) *Annual Report 2025*, p. 24.

³⁰¹ The DO's website provides information on the settlements and court cases over the years in the section

b) Equality data collection

In Sweden, the Equality Ombudsman does not collect general equality data. While there are various sources for different types of equality data, there is no central source for general equality data.

7.11 Roma and Travellers

Currently, the Equality Ombudsman is not treating the Roma and Travellers specifically as a priority issue. However, Roma are included in the DO's three-year focus on national minorities (see 8.1.a).

entitled 'Tvister, domar och tillsynsbeslut' (Disputes, judgments and supervisory decisions) at <https://www.do.se/rattsfall-beslut-lagar-stodmaterial/tvister-domar-tillsynsbeslut>.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The activities of the Equality Ombudsman (DO) involving reports, training programmes and dialogue with civil society organisations, the social partners and Government authorities are ongoing. In 2025, the DO was in the second year of its three-year focus on preventing and counteracting racism and discrimination that has a connection to ethnicity and religion or other belief. In particular, concerning discrimination against Afro-Swedes in school, based in part on a dialogue with Afro-Swedes, the DO has worked on examining how schools are living up to their duty to counteract and prevent discrimination, including outreach to students.³⁰² Four areas of particular interest have been specified for the three years – discrimination of Afro-Swedes, discrimination of Muslims, discrimination and ethnic profiling, and national minority policy and discrimination of national minorities.³⁰³ In 2025, the DO produced a report on the rights of Sweden's national minorities.³⁰⁴ Intended to reach both civil society as well as policymakers, it is based on the DO's mission and Sweden's obligations under the Council of Europe Minority Conventions, and draws on experience from the DO's long-term work to combat discrimination against Jews, Roma, Sami, Swedish Finns and Tornedalians.

The DO also participated in Sweden's 2025 Human Rights Days conference with inputs on discrimination in Sweden more generally, discriminatory ethnic profiling and racism in Sweden as a hindrance to democracy. These themes were also part of an ongoing mutual learning process with rights bearers and civil society organisations – learning about problems in local communities, and in turn spreading information about the Discrimination Act and the possibilities to counteract discrimination. This has also included a continued emphasis on exchanges with the local anti-discrimination bureaux. In addition the DO, along with the European Network of Equality Bodies, hosted an international conference in Stockholm on access to justice.³⁰⁵

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

The Government, represented by the Deputy Labour Minister, invited civil society in for an advisory discussion on 22 May 2025 concerning the upcoming dialogue with the UN Committee on the Elimination of Racial Discrimination (CERD) and on the government's action plan against racism and hate crimes.³⁰⁶

In addition to the DO's work with civil society, the Government continues to provide subsidies to local anti-discrimination bureaux. They constitute a key element in providing assistance to victims of discrimination, in terms of advice, representation and awareness-raising. NGOs dealing with discrimination are encouraged to be members of and to form

³⁰² See e.g. DO, 10 June 2025, "Afrosvenska elever utsatthet för rasism och diskriminering i skolan" (Afro-Swedish pupils' exposure to racism and discrimination in school) at <https://www.do.se/rattsfall-beslut-lagar-stodmaterial/publikationer/2025/afrosvenska-elevers-utsatthet-for-rasism-och-diskriminering-i-skolan>.

³⁰³ Equality Ombudsman (2026) *Annual Report 2025*, pp. 39-41.

³⁰⁴ Equality Ombudsman (2025), *Nationella minoriteters rättigheter – några iakttagelser och rekommendationer 25 år efter Sveriges ratificering av Europarådets Minoritetskonventioner* (Rights of national minorities – some observations and recommendations 25 years after Sweden's ratification of the Council of Europe minority conventions) at <https://www.do.se/download/18.df6085519a035920d813/1761050157728/rapport-nationella-minoriteters-rattigheter.pdf>.

³⁰⁵ Equality Ombudsman (2026) *Annual Report 2025*, pp. 33-42.

³⁰⁶ Government, 29 August 2025, at <https://www.regeringen.se/sakrad/2025/08/sakrad-infor-dialog-med-fns-rasdiskrimineringskommitte-cerd-och-om-regeringens-handlingsplan-mot-rasism-och-hatbrott/>.

local anti-discrimination bureaux. Some bureaux, like the one in Malmö, have become important voices in counteracting discrimination in their regions, which gives them an interesting platform from which to engage in dialogue with others.³⁰⁷ In 2025, the Swedish Agency for Youth and Civil Society provided about EUR 2 550 000 to 19 local anti-discrimination bureaux spread across the country.³⁰⁸ The Agency, in its analyses of the work of the anti-discrimination bureaux concludes that the results and effects that the organisations have reported are well in line with the purpose of the grant. The Agency also considers that the subsidy to the anti-discrimination bureaux is of great importance to their existence and activities. The hope is that the current report from the Agency will provide the Government with a relevant basis for assessing how the contribution to anti-discrimination activities can be developed.³⁰⁹ This in turn frames a basis for an ongoing dialogue with the bureaux and by extension the discriminated groups that they work with.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

The DO maintains an ongoing dialogue with the social partners concerning equality. In 2025 this has meant working in cooperation with employers to counteract discrimination in working life, with a focus on ethnicity and religion, as well as on preparations concerning the duties that will soon apply to employers due to the Pay Transparency Directive.³¹⁰

- d) Addressing the situation of Roma and Travellers

There is no specific body at the national level to address Roma issues. However, there are various actions taken in regard to Roma as well as their status as a national minority.

The Roma are one of five national minorities in Sweden. The Stockholm County Administrative Board has been given special responsibility for all five national minorities. There is a continuing duty for the administrative board to continue its coordination and follow-up work in relation to the way in which Sweden's minority policy is implemented throughout the country. A 2025 report on Roma inclusion provides some insights into the ongoing work.³¹¹ The Board has an ongoing task to work on Roma inclusion within the framework of the Government's national long-term and coordinated strategy for Roma inclusion covering the years 2012-2032. The goal is that, at the end of the period, the Roma population will have the same living standards with regard to housing, employment, education, etc., as the majority population.³¹²

³⁰⁷ For more information about the anti-discrimination bureaux, see Section 10 below.

³⁰⁸ Agency for Youth and Civil Society, 2024-12-05, '19 organisationer får stöd för att stärka arbetet mot diskriminering' (19 organisations received support to strengthen the work against discrimination) at <https://www.mucf.se/om-oss/aktuellt/19-organisationer-far-stod-att-starka-arbetet-mot-diskriminering>.

³⁰⁹ Agency for Youth and Civil Society, *Antidiskrimineringsverksamheter 2025: Slutrapport av bidragets användning och effekter för verksamhetsåret 2023* (Anti-discrimination bureaux 2025: Final report on the use and effects of the grants for the 2023 financial year) at: <https://www.mucf.se/publikationer/antidiskrimineringsverksamheter-2025>.

³¹⁰ Equality Ombudsman (2026), *Annual Report 2025*, p. 11, 30.

³¹¹ Stockholm County Administrative Board (2025), *Romsk inkludering, Årsrapport 2024* (Roma Inclusion, Annual Report 2024) at <https://www.lansstyrelsen.se/download/18.6422d155195ade35c7049b7d/1743400154920/R2025-12-Romsk%20inkludering%20Årsrapport%202024.pdf>.

³¹² Swedish Government (2011), *En samordnad och långsiktig strategi för romsk inkludering 2012-2032* (A coordinated and long-term strategy for Roma inclusion 2012-2032), Skr. 2011/12:56, available at: <https://www.regeringen.se/rattsliga-dokument/skrivelse/2012/02/skr.-20111256-/>.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

The comprehensive Discrimination Act came into effect in 2009. Prior to that there were various laws against discrimination that had also been adopted to ensure compliance with the directives.

The task of proposing legislation in order to implement the directives into Swedish national law was given to a special investigator, who presented her report in the spring of 2002. Concerning Articles 14(a) and 16(a), the investigator pointed out that the inquiry did not find any laws or regulations that violated the prohibitions against discrimination in the directives. At the same time, the investigator pointed out that the inquiry's knowledge was incomplete concerning the potential existence of discriminatory regulations. This applied in particular to regulations of a lower status than those found in the Swedish Code of Statutes (SFS – *Svensk författningssamling*).³¹³

There have been no reports of laws, regulations or administrative provisions that are directly contrary to the principle of equal treatment in the directives. Furthermore, Chapter 2, Article 12 of the Instrument of Government states that no act of law or other provision may imply the unfavourable treatment of anyone because they belong to a minority group due to their ethnic origin, colour, or other similar circumstances, or on account of their sexual orientation. Article 13 provides a similar protection concerning gender. In addition, the European Convention on Human Rights (ECHR) was incorporated into national law in 1995 and given quasi-constitutional status. More particularly, Chapter 2, Article 19 of the Instrument of Government states that no act of law or other provision may be adopted that contravenes Sweden's undertakings under the ECHR. This can be important since the ECHR contains an open list of discrimination grounds, thus complementing Articles 12 and 13.

The potential application of these articles was limited until the changes in the Constitution in 2010. Prior to 2010, these articles provided protection against discriminatory laws adopted by the Parliament only if the laws clearly violated the Constitution (*uppenbarhetsrekvisitet*). However, various amendments were adopted in 2010 that came into effect in 2011. Chapter 11, Article 14, concerning judicial review, now provides that if a court finds that a provision conflicts with a rule of fundamental law or other superior statute, the provision will not be applied. Furthermore, it is not only the courts but other public bodies administering justice that are to apply this standard of judicial review.³¹⁴ Therefore, even if discriminatory laws were somehow to get through the protections built into the legislative process, the Swedish Constitution provides the tools for setting aside such laws.

Thus, given the lack of reports on discriminatory laws and provisions, and the current state of judicial review, which provides the potential for not applying such laws, Sweden seems to have adopted the necessary measures to transpose and implement Articles 14(a) and 16(a).

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

The author does not know of any other rules/clauses that are directly contrary to the principle of equal treatment. Furthermore, the Discrimination Act transposes Article 14(b)

³¹³ White Paper SOU 2002:43: An extended protection against discrimination (*Ett utvidgat skydd mot diskriminering*, bet. SOU 2002:43), p. 143.

³¹⁴ Ministry of Justice, Sweden (2013), *The Constitution of Sweden*, p. 8, available at: <https://www.government.se/contentassets/7b69df55e58147638f19bdfb0984f97/the-constitution-of-sweden/>.

and 16(b) respectively, since according to Chapter 5, Section 3 such rules/clauses in contracts, collective agreements, etc. that are contrary to the principle of equal treatment can be modified or declared invalid (null and void).

9 COORDINATION AT NATIONAL LEVEL

9.1 Coordination at the governmental level

The Government department responsible for coordinating issues regarding anti-discrimination on the grounds covered by this report is the Ministry of Employment.

9.2 National Strategies and action plans

In December 2024, the Government launched a *new action plan for a society free from racism*. The plan is to combat racism and hate crime³¹⁵ through concerted actions that are to be accurate, measurable and long-term. Schools, judiciary, welfare and working life are to be in focus. This new action plan is a concerted effort to fight racism in general but also to highlight and combat specific forms of racism through various measures. "Based on the available information on the prevalence of racism in Sweden, the action plan focuses particularly on anti-muslim racism, antisemitism, anti-black racism, anti-gypsyism and racism against the Sami."³¹⁶ Contributing to the focus areas, various agencies are considered particularly important, the Work Environment Authority, the Equality Ombudsman, the Living History Forum, the Police Authority, the National Agency for Education and the National Board of Health and Welfare. Working life is pointed out as an area in which better information and procedures are needed to combat racism and discrimination. The action plan will create a structure for national efforts but will also contribute to regional and local efforts. The Living History Forum will have a coordinating and monitoring role in implementation of the action plan, which will include an annual comprehensive report to the Government. The final report on the Action Plan will be submitted in 2029, the end of the five-year plan.³¹⁷

On 24 January 2025, the Government presented its new 'Proud and Safe - Action plan for equal rights and opportunities for LGBTIQ persons' (*Stolta och trygga - ny handlingsplan för hbtqi-personers lika rättigheter och möjligheter*). This three-year action plan, 2024-2027, complements Sweden's strategy for equal rights and opportunities regardless of sexual orientation, gender identity or gender expression adopted in 2014. The following focus areas are considered to be of continued central importance for the work of promoting equal rights and opportunities for LGBTIQ people: Violence, discrimination and other violations; Health, care and social services; Working life; Young LGBTIQ people; Older LGBTIQ people; Private and family life; Civil society and the cultural area.³¹⁸

The Government has also adopted a Strategy for a Systematic Follow-up of Disability Policy 2021-2031 (*Strategi för systematisk uppföljning av funktionshinderspolitiken under 2021–2031*).³¹⁹ At the same time, the Government assigned to the Swedish Agency for

³¹⁵ Government, *Handlingsplan mot rasism och hatbrott* (Action Plan Against Racism and Hate Crime) at <https://www.regeringen.se/contentassets/c2591c789c8a4e57b6aa8f82c8ada2ab/slutversion-handlingsplan-mot-rasism-och-hatbrott-tillganlig-241212.pdf>. In English at <https://www.government.se/contentassets/a18571ecb11b4934884a6612efeb2082/action-plan-to-combat-racism-and-hate-crime.pdf>.

³¹⁶ Government, 13 December 2024, "New action plan for a society free from racism," at <https://www.government.se/press-releases/2024/12/new-action-plan-for-a-society-free-from-racism/#:~:text=The%20action%20plan%20therefore%20includes,and%20discrimination%20in%20working%20life.>

³¹⁷ *Ibid.*

³¹⁸ Government, press release, 24 January 2025, <https://www.regeringen.se/pressmeddelanden/2025/01/stolta-och-trygga---ny-handlingsplan-for-hbtqi-personers-lika-rattigheter-och-mojligheter/>. The plan is at https://www.regeringen.se/globalassets/regeringen/bilder/arbetsmarknadsdepartementet/hbtq/stolt-och-trygg_handlingsplan-for-hbtqi-personers-lika-rattigheter-och-mojligheter-250124.pdf. In English, Proud and safe: Action plan for equal rights and opportunities for LGBTIQ persons <https://www.government.se/contentassets/592d2f7472cf48dda000955f1beeafeb/action-plan-for-equal-rights-and-opportunities-for-lgbtqi-persons.pdf>.

³¹⁹ Government, 'Strategi för systematisk uppföljning av funktionshinderspolitiken under 2021–2031', available at: <https://www.regeringen.se/informationsmaterial/2021/09/informationsmaterial-strategi-for->

Participation the task of providing support to the government agencies affected by the Strategy.³²⁰ According to the Government, the overall task of the Agency for Participation is to ensure that disability policy will have an impact in all parts of society. The Agency works to speed progress towards a society in which everyone can participate on equal terms, regardless of functional capacity. The assignment above is an example of the work carried out by the Agency. In 2025, the Government gave the Agency for Participation a new task – to develop a proposal for a new national action plan for disability policy. With a focus on equality, it is to be based on a civil society dialogue inter alia, and takes into account the recommendations and observations of the UN CRPD Committee.³²¹

[systematisk-uppfoljning-av-funktionshinderspolitiken-under-20212031/](https://www.regeringen.se/systematisk-uppfoljning-av-funktionshinderspolitiken-under-20212031/).

³²⁰ Government, 'Uppdrag att ge stöd vid uppföljning av funktionshinderspolitiken' (Assignment to provide support in the follow-up of the disability policy), at:

<https://www.regeringen.se/regeringsuppdrag/2021/09/uppdrag-att-ge-stod-vid-uppfoljning-av-funktionshinderspolitiken/>.

³²¹ Agency for Participation, 7 February 2025, 'Ny handlingsplan ska stärka funktionshinderspolitiken' (New action plan to strengthen disability policy) at <https://www.mfd.se/nyhetsarkiv/ny-handlingsplan-ska-starka-funktionshinderspolitiken/>. The government is hereby assigning to the Agency the task of leading the work of developing proposals for a national action plan for disability policy.

10 CURRENT BEST PRACTICES

1. The anti-discrimination bureau known as *Malmö mot Diskriminering* (MmD – Malmö against Discrimination) continued to be an example of ongoing best practice in 2025,³²² given its litigation work, advice and broader projects, providing inspiration to other bureaux as well as other civil society organisations.

MmD provides advice and support to individuals, free of charge, as well as taking on litigation. MmD also advises civil society organisations concerning discrimination issues. MmD engages in critical dialogues with civil society as well as the private and public sectors.

MmD is a non-profit organisation formed in 2010. Today there are 53 member associations. MmD's activities are financed, in addition to the national subsidy (see the best practice below on government support to local anti-discrimination bureaux), through support from the city of Malmö, project support and income from training and consulting tasks. The diversity of financing helps to ensure MmD's independence. In addition, due to its willingness to turn to the courts, several lawyers at MmD have become experienced litigators in the field of discrimination. There are only a small number of lawyers in Sweden with this level of expertise.

Interesting MmD issues in 2025 include:

- As a follow-up to MmD's successful Supreme Court case in 2024, MmD filed a similar case concerning a school's failure to undertake reasonable measures concerning a pupil. MmD's lawyers, were successful in showing that the school in Stockholm failed to live up to its duty, which meant that the municipality of Stockholm violated the Discrimination Act. See 12.2 below, *MmD v Stockholm kommun*.
- MmD successfully represented a Syrian refugee family in a small claims case where it was asserted that the municipality of Staffanstorp had discriminated against them by not fulfilling the legal duty to accept them into the municipality in the same manner that the municipality would have acted if the family had come from Ukraine in 2024. In 2025, the Appeal Court upheld the lower court decision. See 12.2 below *MmD v Staffanstorp kommun*. It is noteworthy that MmD successfully took on the case in spite of the DO's conclusion that there was no discrimination.
- MmD is developing a project '*Inte bara ord mot ord*' (Not just your word against theirs) concerning harassment in school with a focus on both pupils as well as teachers and others. MmD is also working on a toolkit concerning awareness-raising in regard to the seven discrimination grounds. MmD provides training and workshops on non-discrimination and inclusion for employers, civil servants, etc.
- In 2025, MmD submitted a complaint against Sweden to the UN CRPD Committee concerning the National Employment Agency's treatment of a man with an intellectual disability who accidentally submitted his activity report one day early, which led to a financial penalty.³²³ Despite the fact that it has been known for over a decade that the sanction system specifically affects people with intellectual and other cognitive disabilities, the Swedish state has not implemented any initiatives to reform the system. The purpose of the complaint is for the UN to review Sweden's responsibility for ensuring accessibility and to stop disproportionately harsh sanctions against this vulnerable group.

MmD has become a key actor in the discrimination field in southern Sweden and nationally. MmD has built up a strong competence in terms of litigation and equality promotion, which is important in relation to both potential claimants and among those with the power to discriminate.

³²² Information on MmD in English can be found at: <https://malmomotdiskriminering.se/sprak/> otherwise see <https://malmomotdiskriminering.se>.

³²³ MmD, Press release, 7 November 2025, <https://www.mynewsdesk.com/se/malmo-mot-diskriminering/pressreleases/svenska-staten-anmaels-till-fn-foer-systematisk-diskriminering-3414874>.

2. *It is the overall picture that is worrisome – a year with the Tidö Agreement.*³²⁴ Civil Rights Defenders (CRD).

Civil Rights Defenders (CRD) is an NGO that continues to be a significant civil society voice for human rights, including non-discrimination, in 2025. CRD's critical analysis of the Tidö Agreement continues to provide insights into the laws and policies being investigated and put into place. In particular, CRD notes the overall negative and almost structural focus on migrants in many of the current government inquiries and legislative proposals. CRD, in addition to its watchdog role concerning legislation, also functions as an anti-discrimination bureau.

3. Government support provided to local anti-discrimination bureaux. This is an ongoing best practice that has become increasingly important as a complement, and potentially healthy competition, to the Equality Ombudsman and the unions.

In 2025, about EUR 2.8 million was divided between 19 local anti-discrimination bureaux around Sweden.³²⁵ They not only provide advice and assistance at the local level to victims, but they are also increasingly taking cases to court. As their offices are local, there is greater potential for victims to actually meet a lawyer or expert in contrast to the situation at the DO, which has its office in Stockholm. They can also provide training and awareness-raising at the local level. As local NGOs, presumably they can also develop greater local knowledge of the circumstances faced by victims. This also means providing expertise to local organisations in relation to local policy issues that affect equality, including undertaking or contributing to local equality promotion issues.

4. The Equality Ombudsman's increased focus on complaints investigation and developing case law has become part of ongoing best practice

A primary reason for establishing an equality body is the imbalance in legal power that exists between those with the power to discriminate (employers, unions, merchants, landlords and civil servants) and those subjected to discrimination. This, at least in part, seems to now be a motivating factor in the DO's work with complaints as well as promoting equality. This has led to more intense investigations of complaints, leading in turn to a larger number of settlements than previously, in terms of payment of compensation as well as admissions of discrimination. The breakthroughs concerning case law have been lacking, but given the civil nature of the law, if the compensation requested is paid and there is an admission of discrimination, the cases will not get to court. The dialogue and communications with civil society organisations have also improved. There has been a recognition that a dialogue requires listening on both sides. Another important initiative by the DO was the publication in 2025 of its third annual report on the state of discrimination in Sweden.³²⁶

- Artificial intelligence (AI) and discrimination

There were no specific examples of best practice that could be identified in relation to the use of AI to improve the effective implementation of the national legislation transposing the directives.

The DO continues to monitor AI developments in Sweden. In its comments on SOU 2025:12, 'AI-kommissionens färdplan för Sverige' (The AI Commission's Roadmap for Sweden), the DO points out a number of key issues based on the DO's earlier work with

³²⁴ CRD's report can be found at <https://crd.org/wp-content/uploads/2023/12/Civil-Rights-Defenders-granskning-Ett-ar-med-Tido.pdf>. Also see CRD's website at <https://crd.org>.

³²⁵ Concerning the funding for 2025, see Agency for Youth and Civil Society, 2025-12-05, at <https://www.muuf.se/om-oss/aktuellt/19-organisationer-far-stod-att-starka-arbetet-mot-diskriminering>.

³²⁶ DO, *Förekomst av diskriminering 2025* (The state of discrimination 2024) at <https://www.do.se/rattsfall-beslut-lagar-stodmaterial/publikationer/2025/forekomst-av-diskriminering-2025>.

AI and discrimination. Among other issues, the DO points out the need to understand and prevent the discrimination risks concerning AI based on historical inequalities, which in turn will lead to a continuation of discrimination; the need to ensure insight into the working of AI systems so that evidence of discrimination can be shown; the need to inform people when AI was key to decision-making; the need to expand the reach of the Discrimination Act so that decision-making by public officials is covered, even if AI-systems are part of the process; and the need to ensure that discriminatory AI-system results are covered by the Discrimination Act even if there is no identified victim.³²⁷

³²⁷ DO, 28 May 2025, *AI-kommissionens Färdplan för Sverige*, (The AI Commission's Roadmap for Sweden) at <https://www.do.se/om-do/vad-gor-do/remissvar/2025/2025-05-28-ai-kommissionens-fardplan-for-sverige>.

11 SENSITIVE OR CONTROVERSIAL ISSUES³²⁸

11.1 Potential breaches of the directives at the national level

In general, Sweden fulfils the requirements set by the directives. However, in the opinion of the author, the following points are problematic:

- Compared with the general court system, the Labour Court seems to apply the rules on burden of proof more restrictively towards the claimant. The 2017 dentist case is the first essentially similar case that has been tried in both systems and clearly demonstrates this difference. There is also a 2023 case in Section 12.2, *Country Report, Sweden, 2024*, where the Labour Court goes even further in essentially accepting an employer's good faith assertions about the policy to bear the employer's burden of proof concerning a legitimate purpose and that the means used are appropriate and necessary. The Labour Court's practice does not seem to be in compliance with the directives, while the practice of the civil courts does seem to be compliant. This may be one of the reasons why it seems harder to win cases of ethnic discrimination in the Labour Court (see Section 6.3 of this report, as well as Article 8 Directive 2000/43 and Article 10 Directive 2000/78).
- It is hard to claim that the compensation amounts awarded by the Swedish courts are in practice 'effective, proportionate and dissuasive' as required by Article 15 of Directive 2000/43 and Article 17 of Directive 2000/78. In particular, the awards can hardly be considered dissuasive, as the amounts are connected to the other compensation awarded rather than to amounts connected to the financial situation of the perpetrator. The principle of vicarious liability in relation to discrimination law is restricted when employees in theory act outside their authority to an extent that is problematic. Furthermore, the legal concept of 'employer' may be too narrow, as the employer is regarded as the legal person itself or the natural person who, as a representative of this legal person, makes decisions regarding the employees. The employer is thus directly responsible only when an employee discriminates against another employee and the latter is subordinate to or dependent upon the former. This type of limitation brings up the question of whether the Directive has been transposed in the correct manner (see Sections 3.1.2.b and 3.2.1 of this report, and Articles 7 and 15 of Directive 2000/43 and Articles 9 and 17 of Directive 2000/78).
- In cases concerning recruitment, including promotion cases, there is no right to financial compensation (see Section 6.5.a of this report and Article 15 Directive 2000/43 and Article 17 Directive 2000/78). If there was a right to financial damages, at least for the most qualified applicant, they would clearly contribute to the effectiveness and dissuasiveness of the sanctions and still be proportional. In *Equality Ombudsman (DO) v Braathens Regional Aviation AB*,³²⁹ the CJEU's preliminary ruling stated that:

'Articles 7 and 15 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a national law which prevents a court that is seised of an action for compensation based on an allegation of discrimination prohibited by that Directive from examining the claim seeking a declaration of the existence of that discrimination where the defendant agrees to pay the compensation claimed without however recognising the existence of that discrimination. It is

³²⁸ The assessments and views expressed in both sections 11.1 and 11.2 reflect the author's opinion.

³²⁹ CJEU, C-30/19, *Equality Ombudsman (DO) v Braathens Regional Aviation AB*, judgment of 15 April 2021, EU:C:2021:269.

for the national court hearing a dispute between private persons to ensure, within its jurisdiction, the judicial protection for litigants flowing from Article 47 of the Charter of Fundamental Rights by disapplying as necessary any contrary provision of national law.'

In applying the preliminary ruling to the *Braathens* case before it, the Swedish Supreme Court ruled that since *Braathens*, after the CJEU judgment, provided an admission of discrimination as required by the CJEU, there was no longer any reason to rule on the issue of a hearing on a declaratory judgment. At the same time, the Supreme Court writes in a very unusual supplement to the decision that the issues that are relevant in the case are of such a nature that they should be handled by the legislature and not by the courts in individual cases.³³⁰ Going forward, the issue is going to be how and the extent to which the courts apply the preliminary ruling of the CJEU. It is possible that this issue will formally be resolved if the Government adopts the inquiry proposal concerning declaratory claims. At the same time, the inquiry weakens this possibility by stating in the proposed law that such claims cannot be filed as small claims cases. In the author's opinion, this will undermine the potential for individuals and NGOs to take such cases to court due to the loser pays rule, thereby further limiting the development of case law. The situation today at least is that individuals and NGOs need the ability to use the small claims procedure in order to reasonably be able to take cases to court. This would undermine the role that *Braathens* can play in regard to access to justice.³³¹

11.2 Other issues of concern

There continues to be reason for concern, in the author's opinion, in regard to the political climate. Section 10 above refers to the report by Civil Rights Defenders (CRD), *It is the overall picture that is worrisome – a year with the Tidö Agreement*.³³² According to CRD, the framework agreement between the three parties in the Government and the fourth party in the Parliament that has agreed to provide its support carries with it various proposals in the fields of migration and criminal law that can contribute to increased discrimination. The report brings up such issues as police being able to declare certain areas 'visitation zones' where the police can stop and search anyone, without any reason, and the increased risk of discrimination that these zones would entail. A law authorising so-called safety zones was adopted in 2024, in spite of opposition by various organisations such as the National Human Rights Institute and the DO. The DO pointed out the increased risks for discrimination by the police, at the same time that discriminatory actions by police in carrying out their functions are not covered by the Discrimination Act.³³³ New laws in the same vein continued to be adopted in 2025. Some examples include the Government is making it easier to deport immigrants who commit crimes, even for lesser crimes; it increased the subsidy to encourage immigrants to leave Sweden; it proposed a substantially increased support requirement for family reunification; and it wants to introduce stricter and clearer requirements for good behaviour for residence permits to be granted.³³⁴ It is not the individual rules themselves, but taken together they feed into the

³³⁰ Supreme Court, reference number: Ö 2343-18, *Equality Ombudsman v Braathens Regional Aviation*, 21.12.2021, at: <https://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/2021/o-2343-18.pdf>. Also see Section 12.2, (2022), *Country report, Non-discrimination, Sweden 2022*.

³³¹ White Paper SOU 2024:40 Genomförande av lönetransparensdirektivet (Implementation of the Pay Transparency Directive) concerning declaratory claim, see 26-27, 45, and 198-199.

³³² CRD's report can be found at <https://crd.org/wp-content/uploads/2023/12/Civil-Rights-Defenders-granskning-Ett-ar-med-Tido.pdf>.

³³³ DO, press release, 2024-01-18, *Säkerhetszoner innebär oacceptabla risker för diskriminering* (Security zones pose unacceptable risks of discrimination) at <https://www.do.se/om-do/pressrum/aktuellt/2024/2024-01-18-sakerhetszoner-innebar-oacceptabla-risker-for-diskriminering>.

³³⁴ Government, 25 February 2025, *Skärpta regler om utvisning på grund av brott* (Stricter rule on deportation due to crimes) at <https://www.regeringen.se/pressmeddelanden/2026/02/skarpta-regler-om-utvisning-pa-grund-av-brott/>; 3 November 2025, *Ett kraftigt höjt återvändningsbidrag*; 12 December 2025, *Höjt försörjningskrav vid anhörginvandring föreslås*

picture that ‘immigrants’ are the cause of all of Sweden’s problems. Such laws and rules may not directly violate the Discrimination Act, but contribute to an environment in which discrimination becomes increasingly accepted. It is also worth noting that key members of the party supporting the Government have brought up the idea of repealing the Discrimination Act. This is not part of the framework agreement with the Government, but is nevertheless an issue of concern.

The continued lack of case law continues to be an issue of concern. The current DO has a greater focus on enforcing the law, which has probably led to a substantial increase in the number of settlements. These settlements generally mean that the defendant admits discrimination and pays the compensation. This also means that case law is not developing. The lack of case law remains a primary issue of concern. NGOs are starting to realise the value of litigation as a form of advocacy.

Barriers in access to justice contribute to the lack of case law, in particular as the cost risks for the victim of taking discrimination cases to court are formidable. Those with the power to discriminate, such as employers, landlords, merchants and government employees generally have access to lawyers and funds. Win or lose, the costs for private actors can be written off as business expenses. If a government employee is accused of discrimination, their employer will generally cover their legal costs and associated costs. However, a victim of discrimination, without assistance from a union or other NGO, for example, or from the DO, will probably risk much of their personal savings in order to enforce their rights (and indirectly the rights of others) for the chance of receiving a small amount of compensation. The loser pays rule is thus a particular hindrance which slows the development of strategic litigation as well as the critical mass of cases needed to make the law more effective.

In the author’s opinion, moving from law in books to law in action requires the enforcement of laws against discrimination, both strategically as well as in terms of a critical mass. The DO, the unions and NGOs are all needed in this process. Enforcement on behalf of less powerful interests will be something of a disruptive change as regards the Swedish model, where collective thinking and a consensus culture has reigned (at least a consensus of the more powerful interests) and in which individual rights have not always been at the forefront.

This is why the following are key concerns and/or needs:

- The slow development of public interest law firms that serve victims of discrimination.
- Amendment of the Discrimination Act in a way that can lead to larger and more substantive awards, e.g. economic damages for the most qualified job applicant.
- The use of anti-discrimination conditions in public contracts needs to be followed up and strengthened.
- The development of other types of sanctions such as injunctive relief.
- Civil society organisations other than unions should have a right, subsidiary to the DO’s actions, to follow up the implementation of active measures.
- The cost risks placed on victims of discrimination who take cases to court on their own need to be shifted. A claimant who prevails should be able to recover reasonable costs, while a defendant who prevails should be able to recover their costs only if the claim was manifestly unreasonable, etc.
- A test case fund should be established, based at least initially on public funding, controlled mainly by civil society organisations, which can provide support to potentially strategic cases. Inspiration could be gained from Canada’s Court Challenges Program.³³⁵

<https://www.regeringen.se/pressmeddelanden/2025/12/hojt-forsorjningskrav-vid-anhoriginvandring-foreslas/>.

³³⁵ Government of Canada, Court Challenges Program. Available at: <https://www.canada.ca/en/canadian-heritage/services/funding/court-challenges-program.html> and <https://www.canada.ca/en/canadian-heritage/services/funding/court-challenges-program.html>

- Concerning the prevention portion of discrimination compensation awards, the law could be amended so that a large part of the preventive portion of the awards is to be paid into the test case fund. This might make it easier to convince the courts that they should make larger awards related to prevention, easing their concerns about the risk of unjust enrichment of discrimination victims.³³⁶ This type of approach could help to remove that obstacle.
- Does reasonable accommodation, as defined in the CRPD, mean one thing concerning working life and another concerning education? In *Sahlin v Sweden*,³³⁷ the UN CRPD determined that reasonable accommodation requires a dialogue with the person involved. Does this mean that EU law should be interpreted in accordance with *Sahlin*, even concerning the field of education? This is relevant due to the ongoing issue involving pupils with dyslexia and the removal of their ordinary assistive devices during national exams.
- Issues of concern regarding the use of AI

As to issues of concern regarding the use of artificial intelligence in relation to the implementation of the national legislation transposing the directives, or in connection to the regulation of Artificial Intelligence ((EU) 2024/1689), as well as domestic interests, the Government initiated several government inquiries.

One inquiry presented its results on 4 February 2025, SOU 2025:12, '*AI-kommissionens färdplan för Sverige*' (The AI Commission's Roadmap for Sweden).³³⁸ This Roadmap for Sweden involves various approaches for Sweden's path forward, such as concrete proposals for measures to strengthen the Swedish AI ecosystem, and goals that could be achieved in the future. If implemented by the government as an AI strategy, it should provide the direction and demonstrate the leadership that is needed by business, the public sector, and Swedish society at large.

Another resulted in a white paper dated 6 October 2025, '*Anpassningar till AI-förordningen: Säker användning, effektiv kontroll och stöd för innovation*' (Adaptations to the AI Regulation: Safe use, effective control and support for innovation) SOU 2025:101.³³⁹ The inquiry proposed that the new provisions needed to supplement the AI Regulation should be combined in a new law. Other proposals involve a system for market surveillance, market control, governance and compliance monitoring consisting of eleven market control authorities and two notifying authorities, the Swedish Post and Telecom Agency being given primary responsibility for market control, and sanctions and interventions being adopted.

At least in connection to discrimination, it is noteworthy that while the Roadmap for Sweden contains some discussion about ethical risks, bias was mentioned in one paragraph and discrimination was not mentioned at all. In the opinion of the author, this is possibly indicative of the need for an ongoing broader discussion of AI in Sweden: much of the focus is on the social and economic potential in relation to Sweden, while there is much less focus on the risks concerning fundamental rights, for example. In more general terms,

heritage/services/funding/court-challenges-program/backgrounder.html.

³³⁶ See the Supreme Court NJA 2008 p. 915, T2224-07, 01.10.2008. The case involved four young men who filed discrimination complaints with the DO. They used situation testing at a nightclub to establish ethnic discrimination. The DO won the case in the trial court and appeal court. The result was the same in the Supreme Court except that the damages awarded were reduced from a 'normal' amount of EUR 1 370 (SEK 15 000) to EUR 460 (SEK 5 000). The reduction was due to the use of situation testing which indicated that the victims were less injured since they expected the discrimination to occur. The underlying theme seemed to be the idea of unfair enrichment. Available at: <https://lagen.nu/dom/nja/2008s915>.

³³⁷ UN Committee on the Rights of Persons with Disabilities, *Sahlin v Sweden*, CRPD/C/23/D/45/2018, at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f23%2fD%2f45%2f2018&Lang=en.

³³⁸ Government, at <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2025/02/sou-202512/>.

³³⁹ Government, at <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2025/10/sou-2025101/>.

there seems to be a tendency to focus on minimal implementation of EU law, without considering the actual issues involved in EU law.

12 LATEST DEVELOPMENTS IN 2025

12.1 Legislative amendments

There is an amendment to the Discrimination Act, Chapter 1, Section 5, that came into effect on 1 July 2025.³⁴⁰

The second paragraph of Section 5 previously stated:

A person who intends to change or has changed the sex they belong to is also covered by sex as a ground of discrimination.

This has been changed to

The ground of sex discrimination also includes those who:

1. intend to have or have been assigned a gender other than that stated in the population register, or
2. intend to change or have changed their body through such surgical procedures as are covered by the Act (2024:237) on Certain Surgical Procedures in the Genitals.

- Legislative inquiries concerning the use of artificial intelligence

See the discussion above concerning Swedish government inquiries into issues related to AI as well as the EU AI regulation under 11.2; Issues of concern regarding the use of AI.

12.2 Case law

LABOUR COURT

There were no labour court cases in 2025 related to Directive 2000/43 or Directive 2000/78.

APPEAL COURTS

Relevant discrimination ground(s): Disability, inadequate accessibility

Name of the court: Göta Appeal Court

Date of decision: 19 November 2025

Name of the parties: DO v Skara kommun

Reference number: Case T 423-25

ECLI reference: N/A

Link: <https://www.do.se/download/18.5fd0b47419b7688ecac1a3/1769593815523/dom-hovratten-DO-2023-2891.pdf>

Brief summary: SA was a pupil in a school in the Skara municipality. Since May 2019, according to the DO, the school has known that SA had a disability as seen in SA's compulsive behaviours, weak motor skills, difficulties with transitions, and difficulties in reflecting on and interpreting tasks. The DO claimed that from 2 May 2019 to 5 April 2021, Skara disadvantaged SA by failing to promptly investigate and identify the measures needed, as required by the Education Act, to place SA in a comparable situation to other students when it comes to participating in the school's swimming lessons. This led to a failure to fulfil the knowledge requirements in the subject of physical education and health. This constituted inadequate accessibility, a violation of the Discrimination Act. Skara, in turn, asserted that timely reasonable accommodation measures were undertaken with the

³⁴⁰ SFS 2024:242, *Lag om ändring i diskrimineringslagen* (2008:567) (Act amending the Discrimination Act).

goal that SA learned to swim in the manner required. The District Court determined, based on case law, that the DO had to prove that it was possible to undertake certain measures to eliminate or reduce the effect of the disability in the specific situation. The Court held that it was not shown that the student was disadvantaged by not being placed in a comparable situation to that of a person without a disability. Thus there was no discrimination due to a lack of accessibility. The DO was required to pay Skara's legal costs which amounted to SEK 366 950 (EUR 33 500).

On appeal, referring to the 2024 Supreme Court decision³⁴¹ with somewhat similar facts, the Appeal Court pointed out that it is the person who alleges that discrimination has occurred who has the burden of proving that he or she was disadvantaged by not being placed in a comparable situation to that of a person without a disability. This also includes a requirement for the person alleging discrimination to prove that it is possible through certain measures to eliminate or reduce the impact that the disability has on the current situation. The DO failed to do this, leading the Appeal Court to uphold the District Court decision. In addition, the DO was required to pay Skara municipality's legal costs in the amount of SEK 41 625 (EUR 3 880).

Relevant discrimination ground(s): Disability, inadequate accessibility

Name of the court: Appeal Court for Skåne and Blekinge

Date of decision: 16 July 2025

Name of the parties: DO v Malmö kommun

Reference number: T 2785-24

ECLI reference: N/A

Link:

<https://www.do.se/download/18.5672a399197782a562b232/1756486045990/dom-hovratt-DO-2023-3465.pdf>

Brief summary: A claim was submitted to the Equality Ombudsman (DO) asserting that the school in Malmö did not take the appropriate measures that can be considered reasonable to enable a student with a neuropsychiatric disability to participate in education. The need for support was known since preschool age and various accommodations were undertaken. Shortly before the student started in middle school, grades 4 to 6, it became clear that the current accommodations were insufficient. Despite this, the school did not promptly investigate the student's needs, which is required by the Education Act. Nevertheless, the school made decisions on, among other things, various action programmes and an adapted course of study. The School Inspectorate found that there was a failure to promptly investigate the student's needs and rejected a pedagogical investigation as inadequate, an investigation that was needed for various accommodation measures such as an adapted course of study. The DO filed a lawsuit asserting a failure to undertake reasonable accessibility measures. The District Court determined that the measures undertaken by Malmö were reasonable, and thus that there was no discrimination. The DO was ordered to pay Malmö SEK 100 241 (EUR 9 162) for its legal costs.

The Appeal Court determined that the DO had failed to prove that there were reasonable accommodation measures that could have been put in place. Therefore, the District Court judgment was upheld and the DO was ordered to pay Malmö's legal costs in the amount of SEK 33 682 (EUR 3 140).

Relevant discrimination ground(s): Ethnicity

Name of the court: Appeal Court for Skåne and Blekinge

Date of decision: 2025-09-19

Name of the parties: Malmö mot diskriminering v Staffanstorp kommun

³⁴¹ Supreme Court, Case T 3151-23, *S v Malmö kommun*, 13.06.2024. See Section 12.2, Country Report, Non-discrimination, Sweden 2025.

Reference number: FT 394-25

ECLI reference: N/A

Link:

Brief summary: In 2022, a local antidiscrimination bureau, Malmö mot Diskriminering (MmD) came into contact with a Syrian refugee family that the Migration Authority had assigned to the municipality of Staffanstorp. Under Swedish law, Staffanstorp had a duty to accept refugees assigned to them by the Migration Authority. Staffanstorp was informed about their time of arrival at a local airport. However, Staffanstorp had made a political decision earlier that it would only accept refugees from Ukraine, thus no effort was made to pick up the family, arrange for housing, etc. The family was stranded at the airport near Malmö. MmD found out about the situation and helped the family file a complaint with the Equality Ombudsman (DO). The DO determined that based, among other things, on Staffanstorp's information, there was no discrimination. Nevertheless, MmD filed a small claims case on behalf of the four family members. MmD asserted that Staffanstorp had a duty to pick up the family from the airport, arrange for housing, etc. and that the failure to do so constituted ethnic discrimination.

The district court determined that Staffanstorp municipality's deliberate inaction disadvantaged the family by placing them in a precarious situation, stranding them at the airport. The family was later reassigned by the Migration Authority to another municipality. The family was thereby disadvantaged in the sense required by the Discrimination Act. Staffanstorp had a legal duty regarding the family, had established plans and routines for picking up and housing refugees, and presumably would have picked up a family with a different ethnic background, i.e. a Ukrainian family. The court noted that the decision by Staffanstorp municipality on 23 March 2022 to provide assistance only to Ukrainian refugees was a political decision not covered by the discrimination prohibitions in the Discrimination Act. However, the decision provided an indication that the failure to pick up the family and otherwise provide social services, had a connection to the family's ethnicity, resulting in direct discrimination in the field of social services. Staffanstorp was unable to prove that the disadvantaging of the family had nothing to do with the family's ethnicity. Thus the court ordered Staffanstorp to pay SEK 7 000 (EUR 610) to each of the four people in the family.

In a very brief judgment, the District Court judgment was upheld by the Appeal Court. Staffanstorp has applied for leave to appeal to the Supreme Court.

The result in this case, thus far, has been positive. A civil society organisation, MmD, successfully took on the case, even though the DO decided not to. At the same time, it illustrates a problem with access to justice. To avoid the risk of paying for the opposing party's legal costs, the case was filed as a small claims case, limiting the potential compensation that could be awarded.

DISTRICT COURTS

Relevant discrimination ground(s): Disability

Name of the court: Stockholm District Court

Date of decision: 19 November 2025

Name of the parties: MmD v Stockholm kommun

Reference number: FT 19260-24

ECLI reference: N/A

Address of the webpage: MmD's website <https://www.mynewsdesk.com/se/malmo-mot-diskriminering/pressreleases/stockholms-tingsraett-slaar-fast-flicka-med-autism-diskriminerades-3417262>.

Brief summary: According to MmD, the municipality of Stockholm, being responsible for A's school, has subjected A to discrimination in the form of inadequate accessibility during the period from 2 May 2019 up to and including January 2020. A was disadvantaged by

the school's failure to implement various accessibility measures as required by the Education Act, such as carrying out an investigation concerning A's need for special support measures linked to the difficulties observed by the school during the spring semester of 2019, as well as a failure to adopt an action programme as required by the Education Act. A has not been placed in a comparable situation in relation to students without A's disability, which in turn constitutes a violation of the prohibitions against discrimination. Concerning the discrimination compensation requested, half of the claimed amount relates to compensation for damages, and half relates to a prevention surcharge. Furthermore, while the municipality of Stockholm had provided some accommodation measures, etc. it did not take into account A's worsened situation and changed needs. Stockholm, in response, pointed out that various accommodation and special measures were undertaken, while others that were offered were turned down by A's parents.

A key issue for the District Court was shifting the burden of proof. The rule on evidence (*bevislätnadsregeln*) in cases of discrimination in the form of inadequate accessibility is understood to mean that the person alleging discrimination must show that he or she belongs to the group of people with disabilities and has been disadvantaged by not being placed in a comparable situation to that of a person without a disability. The latter means that he or she must prove that it is possible to eliminate or reduce the impact that the disability has on the current situation through certain measures. If such a disadvantage is demonstrated, it is presumed that discrimination has occurred. In order to avoid liability, the operator must then show that the accessibility measures that have been implemented are reasonable based on the considerations stated in the Discrimination Act, as was indicated in the 2024 Supreme Court decision.³⁴² The District Court concluded that taking all of the evidence into account, once the burden of proof had shifted, Stockholm was unable to prove that the measures undertaken for accessibility were reasonable. Stockholm was thus required to pay SEK 28 000 (EUR 2 600). This was approximately the maximum amount since the case was filed as a small claims case. The case was not appealed and Stockholm pointed out that it was important to learn from this concerning its routines and actions.

Relevant discrimination ground(s): Religion, ethnicity

Name of the court: Uppsala District Court

Date of decision: 2025-03-04

Name of the parties: DO v Uppsala Region

Reference number: Case T 2041-24

ECLI reference: N/A

Address of the webpage:

<https://www.do.se/download/18.16a7b06f194b2d8174213b/1741614460136/dom-tingsratt-DO-2024-563.pdf>

Brief summary: According to SA, a doctor at a health centre in Uppsala asked a woman seeking care to remove her headscarf (hijab) during a doctor's visit. Since the woman was seeking care for suspected haemorrhoids, a condition on a body part that was not relevant to the headscarf, she questioned the doctor's request to remove it as it sounded racist. The doctor insisted, questioning whether SA even knew what haemorrhoids were. Words were exchanged. According to the Region, which was responsible for the health centre, the doctor made the request because she felt she needed to see the entire skin of the patient. Based on SA's statement and the health centre's failure to provide a reasonable explanation for the doctor asking the woman to remove her headscarf, the DO filed a discrimination lawsuit against Uppsala Region, seeking SEK 70 000 (EUR 6 500) in compensation. The DO pointed out that it is important that everyone seeking care can feel secure in the knowledge that they will be treated in a non-discriminatory manner. Unnecessary

³⁴² Supreme Court, Case T 3151-23, *S v Malmö kommun*, 13.06.2024. See Section 12.2, Country Report, Non-discrimination, Sweden 2025.

examinations, or other inappropriate treatment, risk leading to some people being reluctant to seek care.

In the District Court, much of the evidence involved the testimony of SA and the doctor. According to SA, the doctor made various negative comments including questioning why she had come in at all and that the reason for removing the headscarf is that we live in Sweden. SA said that sounded racist, after which the doctor raised her voice insisting that she had to see the whole body. This led to SA leaving, and the doctor following her to the reception area where the conflict carried on. In the end, SA was provided with medicine by a nurse and an appointment with another doctor was made. The doctor's testimony confirmed that she insisted on the removal of the headscarf and that there were medical reasons for this, but could not remember saying anything about the headscarf while in the waiting room or anything about 'this is how we do things in Sweden'.

As the testimony presented was contradictory, the Court determined that the only issue proved was that SA had been asked to remove the headscarf. That in itself could not be considered to be discrimination in the form of harassment, especially since, once the doctor was put on notice that SA considered her comments to be a form of harassment, the doctor only tried to explain why she wanted the headscarf removed. Given those facts, the District Court concluded that the DO had not proved its case, held for the Region, and ordered the DO to pay SEK 238 360 (EUR 22 200) for the Region's legal costs. This case has been appealed.³⁴³

APPEAL COURT Criminal law

Relevant discrimination ground(s): Religion, ethnicity (Penal Code 16:8, hate speech.)

Name of the court: Appeal Court for Skåne and Blekinge

Date of decision: 6 October 2025

Name of the parties: Public prosecutor v RP

Reference number: B 5230-24

ECLI reference: N/A

Address of the webpage: N/A

Brief summary: While this case concerns hate speech under Penal Code 16:8 and not discrimination under the Discrimination Act, it is relevant to understanding the current environment in Sweden. In the spring of 2022, RP burned and desecrated the Koran in front of mosques and in areas with a comparatively high proportion of Muslims. Initially the authorities were unclear about the possibility of prosecuting these actions as a violation of Penal Code 16:8 concerning agitation against an ethnic group (hate speech). The actions led to the submission of various complaints to the police by individuals and civil society organisations concerning RP's alleged agitation against an ethnic group. He was eventually prosecuted and RP was found guilty on 12 November 2024 of two counts of agitation against an ethnic group. The two counts involved spreading hate speech to those who were there and also spreading hate speech through a simultaneous Facebook broadcast. There was also one count of criminal defamation related to various statements to the victim, LC, such as 'go home to Africa', 'you will never be a Swede', etc. On the agitation counts, RP was sentenced to four months in prison. The defamation conviction led to an order to pay SEK 20 000 (EUR 1 820) in damages to the victim.

On basically the same evidence, the Appeal Court made certain changes to the lower court's decision. Concerning the two counts, the Appeal Court determined that the local speech and the simultaneous broadcast of that speech constituted only one act of hate speech. Thus RP was found guilty on only one count. Then, instead of the four-month prison sentence, it determined that a suspended sentence as well as a fine was the

³⁴³ Svea Appeal Court, T 4186-25, *Equality Ombudsman v Region Uppsala*, 19.05.2026. This judgement was delivered after the cut-off date for this report.

appropriate sanction. It also turned out that the criminal defamation conviction concerning LC had been barred due to the statute of limitations. Nevertheless, the requirement to pay damages as a civil matter still applied as the relevant statute of limitations in civil cases was longer. The Appeal Court decision is final as the Supreme Court determined that there was no reason to grant leave to appeal (Supreme Court decision, Case B 9370-25, RP v Public Prosecutor, 08.12.2025).

ANNEX 1: INTERNATIONAL INSTRUMENTS

Country: Sweden
Date: 1 January 2026

Instrument	Date of signature	Date of ratification	Derogations/reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	Yes 28.11.1950	Yes 04.02.1952	No	Yes	Yes
Protocol 12, ECHR	Not signed	-	-	-	-
Revised European Social Charter	Yes 03.05.1996	Yes 29.05.1998	Art. 8.2, 8.4, 8.5, 12.4, E	Ratified collective complaints protocol? Yes Signed 09.11.1995 Ratified 29.05.1998	No
International Covenant on Civil and Political Rights	Yes 29.09.1967	Yes 06.12.1971	No	No	No
Framework Convention for the Protection of National Minorities	Yes 01.02.1995	Yes 09.02.2000	No	No	No
International Covenant on Economic, Social and Cultural Rights	Yes 29.09.1967	Yes 06.12.1971	No	No	No
Convention on the Elimination of All Forms of Racial Discrimination	Yes 05.05.1966	Yes 06.12.1971	No	Yes	No
ILO Convention No. 111 on Discrimination	Yes 20.06.1962	Yes 20.06.1963	No	No	No
Convention on the Rights of the Child	Yes 26.01.1990	Yes 29.06.1990	No	No	No

Instrument	Date of signature	Date of ratification	Derogations/reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of Persons with Disabilities	Yes 30.03.2007	Yes 15.12.2008	No	Yes	No

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