

SOUTH KOREA - SOGI LEGISLATION COUNTRY REPORT
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Summary

Neither male nor female same-sex activity is criminalized in South Korea.

Discrimination on the basis of sexual orientation is prohibited in the areas of employment, education, and supply of good services, transportation and residence ([National Human Rights Commission Act](#), 2001).

Article 92 of the [Military Penal Code](#) defines sexual activity between members of the same sex as “sexual harassment” punishable by a maximum of one year of imprisonment. In *2008 Hun-Ga21 (Military Penal Code Article 92)* (March 31, 2011), the Constitutional Court upheld Article 92, finding that it did not amount to discrimination on the basis of sex and was therefore not prohibited by the Constitution.

The age of consent (19) for same-sex and opposite-sex sexual activity is the same ([Act on the Protection of Children and Juveniles from Sexual Abuse](#), 2011).

Individuals are able to change their sex marker/gender on official documents, subject to restrictions including the requirement of sex reassignment surgery, as was ruled in *Supreme Court Full Panel Order 2004Seu42*, 2004.

The National Human Rights Commission has made formal recommendations that the Supreme Court no longer require sex reassignment surgery to change sex/gender on legal documents, that the court no longer require that 'applicant will live a satisfactory life as a member of the opposite sex', and that the court create exceptions to age restrictions, and restrictions on people who are already married or have children in *Investigations and Remedies for Discrimination on the Grounds of Sexual Orientation*, 2008.

Legal Provisions

ANTI-DISCRIMINATION

National Human Rights Commission Act, 2001: This Act recognizes the right not to be discriminated against on the basis of sexual orientation in the areas of employment, education, and commercial means such as goods, services, transportation and residence.

Article 30 (Matters Subject to Investigation of Commission):

(1) In any case falling under the following subparagraphs, the person whose human rights are violated (hereinafter referred to as a "victim") or any other person or organization, that comes to know the violation of human rights, may file a petition to the Commission:

- (a) In case such human rights as guaranteed in Articles 10 through 22 of the Constitution are violated by the performance of duties (excluding the legislation of the National Assembly and the trial of a court or the Constitutional Court) of state organs, local governments or detention or protective facilities; or
- (b) In case there exists a discriminatory act of any violation of the right of equality by a juristic person, organization or private individual.

(2) The term "discriminatory act of violating the right of equality" means any of the following acts of unreasonable discrimination on the ground of gender, religion, disability, age, social status, regional, national or ethnic origin, physical condition such as features marital status, pregnancy or delivery, family status, race, skin color, thought or political opinion, criminal record of which effective term of the punishment has expired, sexual orientation, or history of diseases: Provided, That if the favorable treatment for particular persons (including groups of particular persons; hereinafter the same shall apply) is excluded from the scope of discriminatory acts by any other Act, such favorable treatment shall not be deemed to be a discriminatory act:

1. Any act of favorably treating, excluding, differentiating or unfavorably treating a particular person in employment (including recruitment, appointment, training, assignment of tasks, promotion, payment of wages and payment of commodities other than wages, financing, age limit, retirement, and dismissal, etc.);
2. Any act of favorably treating, excluding, differentiating or unfavorably treating a particular person in the supply or use of goods, services, transportation, commercial facilities, land and residential facilities; and
3. Any act of favorably treating, excluding, differentiating or unfavorably treating a particular person in the use of educational facilities or vocational training institutions.

(3) Even if any petition under paragraph (1) is not filed, the Commission may, ex officio, initiate an investigation when it deems that there exists a reasonable ground for believing that human rights have been violated and that such violation is serious.

(4) Necessary matters concerning the procedures and methods of a petition under paragraph (1) shall be prescribed by the rule of the Commission.

<http://www.unhcr.org/refworld/pdfid/3ddd1a634.pdf>

SEXUAL ACTIVITY AND AGE OF CONSENT

[Act on the Protection of Children and Juveniles from Sexual Abuse](#), 2011: This Act defines the legal age of majority for all sexual activity (same-sex and opposite-sex) as 19.

Article 2

(1) The term “children and/or juveniles” means persons under 19 years of age: Provided, that person for whom the first day of January of the year in which they reach 19 years of age has arrived shall be excluded.

<http://www.moleg.go.kr/english/korLawEng?pstSeq=58526>