



Executive Summary

Country Report Finland 2011 on measures to combat discrimination

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1. Introduction

Until the end of the 1980's Finland was one of the most culturally homogeneous countries in Europe. The amount of immigrants was minimal. In the 1990's a major shift from emigration into immigration took place, and the number of foreign citizens grew from 26 300 in 1990 to 168 000 in 2010. Currently the number of foreigners represents some 3 per cent of the total population of 5 400 000.

Finland is home to a number of national minorities, such as the Roma (10 000 people), Jewish, Tatar and Russian minorities, as well as the indigenous Sámi people (9 000). In addition to traditional Finnish Roma minority, some 200-400 people belonging to Roma minority come annually to Finland from Romania and Bulgaria. Their social and economical standing is much worse than the Finnish Roma minority, who have additionally been able to maintain much of their culture traditions such as Roma clothing and language.

Religious diversity in Finland has increased during the past fifteen years, as the size of Islamic communities has grown up to 30 000-40 000 people due to the arrival of immigrants from Muslim countries. Their percentage of the population is still less than 1 %. Currently 81 % of the population belongs to the Evangelical Lutheran Church. Other religious groups are considerably smaller, the next largest community being the Russian Orthodox Church (1%). Around 15 % of the population do not belong to any religious community.

A considerable change in attitudes has taken place with respect to matters relating to sexual orientation. Homosexuality was penalised in criminal law until 1971, discrimination on the basis of sexual orientation was prohibited in 1995, and in 2001 the Act on Registered Partnerships guaranteed registered same-sex couples almost equal position to marriage. The Lutheran church has also accepted ministers who are homosexual or transsexual.

It is quite generally seen as a fact that age discrimination exists in Finland. In one survey, every third respondent saw that discrimination on the basis of age takes place "frequently" or "every now and then" in his/her workplace. However, there have been only a few court cases dealing with age discrimination.

¹ This summary is based on 2007 report by Timo Makkonen and was updated for the years 2008-2010 by Juhani Kortteinen



Regarding the situation of people with disabilities, the legal and political focus has remained on the specific services that people with disabilities need, i.e. on the traditional social policy approach, but not so much on equal treatment. The focus is, however, gradually shifting towards a more equal rights-based approach.

NGOs representing different discrimination grounds have for several years had good co-operation in the work against discrimination and they share common views on the needs to develop anti-discrimination legislation.

2. Main legislation

The main provisions pertaining to discrimination have been laid down in the Constitution, the Non-Discrimination Act and the Penal Code. As a general clause, a prohibition on discrimination is also included in many statutory acts.

Section 6 of the Constitution provides for equality and prohibits discrimination. The main thrust of this constitutional guarantee of non-discrimination is to ensure formal equality, i.e. the principle that people in similar circumstances are to be treated similarly, but it also aims to reach full, substantive equality in practice.

The constitutional prohibition of discrimination may be directly invoked in courts and regular laws are to be interpreted in accordance to it. So far the constitutional anti-discrimination provision has been applied mainly in situations involving the use of public power, but it may in some instances have a bearing on relationships between private parties as well.

The Non-Discrimination Act (which entered into force on 1st of February 2004) is the main instrument adopted transposing the EU directives on equal treatment (the Racial Equality Directive and the Employment Equality Directive) into national law. Substantially, the Non-discrimination Act follows quite closely the protection required by the two EU directives on equal treatment, although in some respects it goes beyond the minimum requirements set forth in them.

In employment and education/training discrimination is prohibited on the grounds required by the directives: age, ethnic and national origin, religion, belief, disability, sexual orientation and additionally on grounds of nationality, opinion, health, language and "other reasons relating to a person".

In providing public or private services on offer or available to the general public (including also social welfare, health care, social security benefits, housing and movable and immovable property) and in military service the Non-Discrimination Act prohibits discrimination only on the ground of ethnic origin.

To improve the protection against ethnic discrimination two bodies were set up at the time of implementing the Directives: the Ombudsman for Minorities and the Discrimination Tribunal both have a task to supervise compliance with the Non-

Discrimination Act They do not have authority for combating discrimination in employment. This task relies on Occupational Health and Safety Authorities.

Already upon passing the legislation implementing the two Equality Directives the Finnish Parliament expressed its view that the government should prepare an overall reform of the equality legislation that would provide all grounds of discrimination equal levels of protection, i.e. that the applicable material scope and the available legal redress mechanisms should not vary from one ground to another.

This reform has been in preparation since the beginning of 2007, but it has been blocked by several disagreements, among other things on whether to combine gender equality issues into the same legislation as other discrimination grounds and on whether to allow the Ombudsman for Equality and the Discrimination Tribunal to combat discrimination also in employment. The preparation for the reform continues, and legislation is expected to be presented to the parliament in late 2012 or early 2013.

The Penal Code has two provisions on discrimination. The first covers discrimination, inter alia, in the provision of services and in the discharge of public duties, while the second covers discrimination in the field of employment. There is a considerable amount of case law under the first provision, mainly regarding ethnic discrimination. Punishment for discrimination laid down by law is in the form of fines or imprisonment for up to six months. In practice the sentence for discrimination has been fines.

All the main domestic anti-discrimination provisions prohibit, either explicitly or implicitly, discrimination on the basis of a wide variety of grounds, including age, ethnic and racial origin, religion, belief, sexual orientation and disability. Gender equality is addressed in the Constitution and in the Penal Code, and in a separate law of general application, the Act on Equality between Women and Men. Finnish legislation does not explicitly address multiple discrimination.

Finland has ratified most of the main international agreements relevant for fighting discrimination.² Conventions that have been ratified and incorporated into national law are part and parcel of the national legal system; they can be directly applied in courts and must be taken into account in the interpretation of regular laws. This adds to the domestic legal protection from discrimination.

² European Convention on Human Rights (including Protocol No. 12), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child. Finland has signed but not ratified the UN Convention on the Rights of Persons with Disabilities and the ILO Convention No 169 concerning Indigenous and Tribal Peoples, although promises of ratification of the ILO No 169 have been made and renewed now for two decades.

The Åland Islands, which is an autonomous Swedish-speaking province of Finland with about 26 200 inhabitants and has legislative powers in certain particular subject areas such as employment, education and social welfare, has adopted its own set of non-discrimination laws. These laws prohibit discrimination on the grounds of ethnic origin, religion and belief, disability, age, sex and sexual orientation. The legislation in the Åland Islands complies with the Directives.

3. Main principles and definitions

The principle of equal treatment is strongly anchored in the domestic law, and has been so for quite some time. However, the approach of the more recent legislation, in particular the Non-Discrimination Act, is different from that of the older parts of the legislation, and in this respect Finnish anti-discrimination law is characterised by a certain dualism. The traditional approach of Finnish anti-discrimination legislation has been to opt for rather general formulations of equality and non-discrimination and to provide protection on a wide variety of grounds on an equal basis, except for gender for which a separate Act has been in effect since 1987. Discrimination has traditionally been defined primarily as “putting a person in a different position without an acceptable reason”. As this formulation is rather general in nature, it has been up to the courts and legal scholars to determine in practice what counts as a “different position” or “an acceptable reason”. Multiple discrimination as a concept has been so far unknown in the legislation and to the judicial system, although legislation as such does not set up any direct barriers to take it into consideration.

The approach of the more recent legislation, the Non-Discrimination Act in particular, is different in that it features more precise provisions that deal with the definition of discrimination, scope of application and legitimate exceptions. The prohibited grounds mentioned specifically in the Act are age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability and sexual orientation, but the provision leaves it open to add other grounds in the interpretation of the Act.

The Non-Discrimination Act prohibits expressly many different manifestations of discrimination, including direct and indirect discrimination, harassment and instruction or order to discriminate. The Act arguably prohibits also discrimination based on assumed characteristics and discrimination based on association with persons with particular characteristics, although the law is not fully clear in these respects. The Non-Discrimination Act prohibits also victimisation, which refers to adverse treatment or adverse consequences that are directed against a victim of discrimination or some other person because a discrimination complaint or other such action has been or is planned to be taken against the perpetrator. As an exception which is to be construed narrowly, differential treatment may be legitimate in working life, provided that it is based on a genuine and determining occupational requirement.

Differential treatment on the basis of age is not to be considered discrimination if such treatment has an objective and appropriate aim that is related to important societal goals, such as reduction of unemployment.

Finnish anti-discrimination law, both old and new, allows but does not require the taking of positive action. Positive action refers to specific measures that aim to alleviate or prevent disadvantages linked to discrimination. The Non-Discrimination Act, however, obliges the authorities to promote the realisation of equal treatment actively and systematically. This is to be achieved in particular by means of removing obstacles standing in the way of the realisation of equality. This is one of the situations where the Finnish anti-discrimination law goes beyond the minimum requirements set in the two EU directives.

In order to promote equal treatment of people with disabilities, the Non-Discrimination Act requires employers and education providers to take, where necessary, reasonable steps to give disabled people access to work or training, coping at work and advancing in their career.

The laws adopted by the Åland Islands follow the EU directives and the recent domestic laws, and explicitly prohibit direct and indirect discrimination, harassment, instructions to discriminate and victimization.

4. Material scope

The Finnish anti-discrimination law covers a wide area and is in general applicable in private and public sector. The primary thrust of the Constitutional prohibition of discrimination is to ensure equal treatment in the exercise of public powers.

The material scope of the Non-Discrimination Act follows quite closely the two EU directives but goes beyond them by extending its protection in the field of education/training to all grounds of discrimination. Accordingly, this Act prohibits discrimination on the basis of, inter alia, religion, belief, age, sexual orientation, disability and ethnic origin in the following fields (a broad typology): access to self-employment and occupation; conditions for access to employment, employment and working conditions, vocational guidance; access to education, all types of vocational training and retraining; and membership of and involvement in an organisation of workers or employers.

Furthermore, discrimination on the basis of ethnic origin is also prohibited in the following fields: social and health services; social benefits and advantages; military or civilian service, including voluntary military service for women; and provision of housing and other supply of services and goods available to the public. Legal transactions within the sphere of private and family life are not covered.

The Penal Code is applicable to instances of discrimination that have taken place in the fields of, inter alia, employment, provision of services and the discharge of duties in a public office.

The laws adopted by the Åland Islands ban discrimination on the grounds of ethnic origin, religion and belief, disability, age and sexual orientation as follows:

discrimination in the area of employment is prohibited on all grounds; discrimination in the area of health and social services is prohibited on the grounds of ethnic origin, religion and belief and sexual orientation; discrimination in the areas of education and provision of goods and services is prohibited on the grounds of ethnicity, religion and belief, disability and sexual orientation.

5. Enforcing the law

If a discriminatory decision is made in the exercise of public powers, the victim of discrimination may make use of the rectification procedure or some other ordinary channel of appeal. They may also turn to the Parliamentary Ombudsman or the Chancellor of Justice in order to file a complaint. These bodies may not amend or annul a particular decision but may bring legal action against an official and/or issue their opinions of the correct interpretation of the law.

Victims of ethnic discrimination may in issues outside employment also turn to the Ombudsman for Minorities. The Ombudsman or the victim of discrimination may also take the case to the Discrimination Tribunal, which has a mandate to deal with complaints relating to ethnic discrimination (but not in the field of employment). The Tribunal may confirm a settlement between the parties and prohibit the continuation or renewal of a discriminatory practice. It may also impose a conditional fine and upon application order it to be paid if the prohibition order is not followed. It may issue statements regarding the correct interpretation of anti-discrimination law upon the request of one or both of the parties, the Ombudsman for Minorities, a court of law, a public authority or an NGO.

In matters relating to employment, the Occupational Health and Safety Authority supervises compliance with anti-discrimination law. A victim may, under the Non-Discrimination Act, choose to claim compensation in a regular court. Compensation may be awarded for up to 16 430 € and even more in exceptionally serious cases.

Previously, i.e. before the Non-Discrimination Act came into force, the most often used means of judicial recourse was to bring criminal charges. Most of these cases dealt with denial of access, on the grounds of ethnic origin, to restaurants or other places open to the public. The Non-Discrimination Act has changed the situation somewhat, as it eases the burden of proof in civil law proceedings brought under it, and entitles victims of discrimination to claim compensation.

Human rights NGOs and other organisations do not have direct *locus standi* to engage in legal proceedings on behalf of the victim. However, some Human rights NGOs provide expert advice to the victims on how to bring legal action and they have used situation testing in exposing discrimination. The use of statistical evidence is possible, but since the evaluation of the evidence is based on free weighing, it is always up to the court what, if any, weight will be given to such evidence.



Discrimination cases are every now and then brought to the attention of the public, in particular by the main daily newspapers.

6. Equality bodies

The office of the Ombudsman for Minorities was established in 2001 in order to promote equal treatment irrespective of ethnic origin. The Ombudsman functions mainly as an expert body, providing advice and instructions to victims of ethnic discrimination outside employment. The Ombudsman may also provide legal aid in exceptionally significant cases. Most of the cases of ethnic discrimination which have been brought to the Ombudsman's office have dealt with provision of goods or services, particularly housing. Upon encountering discriminatory practices the Ombudsman shall, by way of advice and instructions, aim to eliminate them. The Ombudsman shall also issue recommendations and come up with initiatives aimed to improve ethnic relations and the status of ethnic minorities. A victim of discrimination may request the Ombudsman to conduct conciliation proceedings. Since the Ombudsman has powers to require information necessary for the fulfilment of his/her duties from anyone, it is possible for him/her to conduct independent investigations in individual cases concerning alleged discrimination. The Ombudsman may conduct also independent surveys and decide independently the targets and methods of these surveys.

The Åland Islands has also set up an office of Discrimination Ombudsman (DO). This is an independent entity with the task to promote and secure equal treatment on the grounds of ethnic origin, religion and belief, disability, age, sex and sexual orientation. The Ombudsman has been entrusted with overseeing the implementation and observance of the new anti-discrimination legislation adopted in the Åland Islands.