



Executive Summary

Country Report Iceland 2011 on measures to combat discrimination

By Gudrun D. Gudmundsdottir

1. Introduction

Iceland's population is largely homogenous and monocultural. Historically, the most serious discrimination has been on the grounds of gender. Although Icelandic women enjoy an elevated standard of equality there is still a demonstrable dichotomy between their high level of education and qualifications and their status in the labour market and society as a whole.

In recent years, strengthened human rights dialogue has brought the situation of various vulnerable groups and minorities to the fore. The formal status of people with disabilities is good under Icelandic law. In practice, however, people with disabilities habitually suffer discrimination with respect to the right to education, housing and participation in public life and they form a large part of those living in poverty; according to the Icelandic Federation of People with Disabilities, disability pensions are not adequate for a life of dignity and only a quarter of people with disabilities work. Building and planning regulations require that public buildings be accessible for disabled persons and violations are punishable by a fine or jail sentence, but they are rarely enforced. Statistics vary on the number of people with disabilities in Iceland but membership of stakeholder organizations gives an indication; members of the umbrella organisation the Federation of People with Disabilities are between 24 and 25 thousand.

The boom years before the financial crash in 2008 saw an unprecedented rise in immigration; at one point foreign workers constituted 10% of the labour force. The majority of these were men employed in the construction industry, who then lost their jobs when construction came to a halt. As a result, foreigners now receiving unemployment benefits are proportionately more numerous than Icelanders. Issues concerning wage-discrimination have been reported and there are indications that non-citizens and persons of immigrant origin suffer inequity in various fields of daily life. A worrying trend is that youngsters of immigrant origin are less likely to graduate from high school than others and incidents of refusal of access to public spaces are reported. According to a survey carried out in 2009, 56.9 % of Icelanders thought discrimination and/or harassment based on race or origin was common. There is no call to address this in domestic legislation, which contains very limited provisions prohibiting discrimination based on race and ethnic origin. Foreign citizens in Iceland were 20.957 on 31 December 2011 or 6.6% of the population. Poles constitute by far the largest group; 43.2% of all foreigners are of Polish origin.

There are no legal provisions stipulating equality in the labour market regardless of age. Limited research has been carried out on this topic but labour participation of

older people in Iceland is among the highest in the OECD countries. However, discrimination relating to employment is apparent, especially in correlation with gender. A recent Eurobarometer study, published in 2011, demonstrates that Icelanders have witnessed or experienced more discrimination because of older age than the EU average in the workplace, in relation to access to education and training and in their leisure time. On 31 December 2011 people older than 64 constituted 12.6% of the Icelandic population.

On a positive note, Icelandic legislation aimed at equality for homosexual people is one of the world's most progressive: all marriages have the same legal status, gay couples can adopt children and lesbians may undergo artificial insemination. One of the last hurdles is the opposition of the National Church of Iceland (state church) to conducting the same religious ceremonies for heterosexual and same-sex marriages. In general, attitudes towards gay people are very liberal and Gay Pride Day is a day of family festivities in Reykjavik. Legal reform is underway to strengthen the situation of transgender people.

Religious organisations have grown from 14 in 1991 to 36 in 2011, of these 28 are of Christian denomination. 77.64% of the nation belongs to the National Church of Iceland (state church, Lutheran). Of the minority faiths, 'Asatrú (Norse pagan faith), Buddhists and Muslims are the largest denominations. Just over 10% of the population are undefined or not members of religious organisations. No research has been carried out on the extent of discrimination in the work place based on religion or belief but in 2009 23.4% of Icelanders thought discrimination based on religion or belief was common.

2. Main legislation

The discrimination grounds covered in the Icelandic Constitution are sex, religion, opinion, national origin, race, colour, financial status and parentage. The list is non-exhaustive as the provision also sets out that equality before the law and non-discrimination shall be ensured irrespective of the aforementioned grounds but also irrespective of 'other status', which can be construed as to include age.

The only comprehensive anti-discrimination legislation in force is the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 (Gender Equality Act), which is largely in line with the European Union *aquis*. Anti-discrimination in other fields is elementary and fragmented as only a handful of general law provisions stemming from the constitutional equality provision are in force. These commonly do not contain an exhaustive enumeration of prohibited discrimination grounds and are limited to a particular law sector. Provisions on equality/anti-discrimination in relation to the grounds enumerated in Directives 2000/43/EC and 2000/78/EC can be found in acts on the affairs of the elderly and acts amending legislation to eliminate discrimination against homosexual persons. The Act on the Affairs of Persons with Disabilities guarantees, *inter alia*, the right to equality, the right to receive assistance to be enabled to live and work in society, the right to general national and municipal

services, as well as access to public spaces. The law also provides for positive action measures: disabled persons shall have preference for government employment over other applicants when they are equally qualified. The ECHR, which has been transposed into domestic law, stipulates that the enjoyment of the rights and freedoms set forth in it shall be secured without discrimination and the General Penal Code, the Act on Administrative Procedure and the acts on primary schools and postal and municipal services also contain provisions touching upon equality and non-discrimination. In addition, the Act on the EEA Agreement prohibits discrimination based on citizenship in relation to the provisions of the Agreement and the transposition of the relevant EU Directives has led to the prohibition of discrimination because of temporary and part-time employment. It should be noted that the European Commission does not consider Icelandic legislation in line with Directives 2000/43/EC and 2000/78/EC as 'no detailed protection against discrimination is provided in the labour market nor is there any comprehensive legislation in force prohibiting discrimination on grounds of racial or ethnic origin outside the labour market'.

Iceland is party to the EEA Agreement and thus obliged to adopt the EU *aquis* related to the single market. Directives 2000/43/EC and 2000/78/EC were not incorporated into the EEA Agreement and have thus not been transposed into domestic law. Nevertheless, in 2005 a Committee established under the auspices of the Ministry for Social Affairs recommended transposition through the adoption of comprehensive anti-discrimination legislation covering both Directives. It is envisaged that a draft act to this end will be presented in the Icelandic Parliament in the fall of 2012.

3. Main principles and definitions

The definitions set out in the Directives have not been transposed into domestic law. No clear definitions of the protected grounds are found in national legislation and definitions of direct and indirect discrimination, harassment, victimisation, instruction do discriminate and reasonable accommodation are lacking in this context. No exceptions are explicitly allowed for religious organizations and the law is silent on 'genuine' and 'determining' occupational requirements. Certain exceptions in relation to age requirements and physical form are found in national legislation, e.g. governing those working as police officers, fire fighters and prison guards.

No national rules address multiple discrimination and no cases have been adjudicated dealing with such situations. It is envisaged that the draft comprehensive anti-discrimination act to be presented in the Parliament in the fall of 2012 will include a provision addressing multiple discrimination.

4. Material scope

Directives 2000/43/EC and 2000/78/EC have not been transposed into national law; no comprehensive anti-discrimination law applies to all sectors of public and private employment and occupation in relation to the grounds listed in the Directives. There is no legislation in force applying to the private sector prohibiting discrimination in relation to the grounds enumerated in the Directive regarding conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion. However, some discriminatory acts in relation to the aforementioned fields could possibly fall under the scope of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried. For the public sector, the Act on Administrative Procedure No. 37/1993 prohibiting discrimination between individual parties based on views relating to, *inter alia*, race, colour, national origin, religion, political opinion, social status or family could apply.

No explicit prohibition of discrimination on the grounds covered by the Directives in respect of occupational pension and access to all types and levels of vocational training is to be found. With regard to membership and participation in workers' or employers' organizations, the Act on Trade Unions and Trade Disputes No. 80/1938, which applies to both the private and the public sector, sets out that membership in trade unions shall be open to all workers employed in the respective area. Similarly, professional associations and employers' organizations are open to all enterprises/employers operating or qualified in the respective fields. There is, however, no comprehensive anti-discrimination law in force in this sector and no explicit prohibition of discrimination with regard to membership of, and involvement in, workers' or employers' organizations, or other professional organizations, and related benefits, has been enacted.

National law does not set out exceptions for social security and healthcare based on religion or belief, age, disability or sexual orientation; neither does it distinguish between goods and services available to the public and those available to members of private associations. Differences in treatment on the grounds of age and disability in the provision of financial services are not explicitly permitted by law. Provisions prohibiting discrimination based on race or ethnic origin in relation to 'social advantages' are lacking but in the public sector, discrimination of this sort is likely to constitute a breach of the equality principle codified in the Act on Administrative Procedure. In the private sector, a case could possibly be brought under Article 26(b) of the Tort Damages Act No. 50/1993. The Article stipulates that compensation may be awarded for personal injury from unlawful wrongdoing which breaches the freedom, peace, honour or person of the victim.

With regard to prohibition of discrimination in relation to education, the Primary School Act No. 91/2008 stipulates that in the organization of study and instruction and in producing and selecting study material, special effort shall be made to ensure that all pupils have equal study opportunities and a chance to select subjects and learning approaches in their own education. The objectives and practice of study and

instruction shall aim at preventing discrimination on the basis of origin, gender, sexual orientation, residence, social class, religion, health condition, disability or situation in general. Children with disabilities shall attend the general schools and have assistance, if needed.

Very few Roma have settled in Iceland so no patterns of segregation and discrimination in schools notably affect them.

No explicit provisions have been adopted to ensure non-discrimination in relation to access to housing irrespective of race or ethnic origin. The Act on the Affairs of Persons with Disabilities sets out that social services shall be available to disabled people to enable them to live in their own homes and those using other housing options, in accordance with their needs and wishes, as possible. Municipalities have the obligation to ensure that housing suitable for disabled persons is available and that the necessary services are provided.

5. Enforcing the law

Directives 2000/43/EC and 2000/78/EC have not been transposed into national law and limited sanctions exist. No specific procedures have been established to deal with discrimination on the grounds enumerated in the Directives. The sole discrimination complaints body, the Gender Equality Complaints Committee, deals with gender discrimination only. Numerous administrative procedures are in place with the aim of guaranteeing citizens' rights of recourse *vis-à-vis* public authorities, including non-discrimination. The Act on Administrative Procedure guarantees the right to lodge an appeal against decisions of administrative authorities, such as public institutions or committees. All decisions by public bodies, or bodies vested with public authority, are subject to review from a higher authority, unless otherwise provided for by law. The decisions of independent authorities may in some cases be reviewed by Ministers or special review boards/committees. In some instances, decisions by local authorities may be referred to the relevant Ministry. Furthermore, complaints concerning discriminatory administrative decisions can be brought to the Parliamentary Ombudsman. Finally, the courts are competent to review any decision taken by the executive.

The time limits for bringing complaints to review committees vary, e.g. from two weeks to three months from the date of the disputed decision, and some have no time limits. Complaints must be brought to the Parliamentary Ombudsman within one year from the date of the disputed decision or event. Judgments of the civil courts are binding and enforceable. The decisions of the Parliamentary Ombudsman are not legally binding on the authorities and do not automatically invalidate the disputed decision. Decisions of administrative committees are non-binding (except for the Gender Equality Complaints Committee, which issues binding decisions).

An association may apply to the courts for the recognition of certain rights of its members or to relieve its members of certain duties, if safeguarding the interests at

stake forms part of the association's mandate. However, few domestic organizations have the resources to assist victims of discrimination - only disability organizations have done this in relation to the grounds covered by the Directives – and cases are as a rule not brought to the attention of the public. The burden of proof has not been shifted and situation testing and statistics have, as of yet, not been used.

Breaches of Articles 125, 180 and 233a of the General Penal Code are subject to official indictment. Criminal proceedings commence with an investigation by the police either on its own initiative or pursuant to a complaint. If the investigation reveals that a crime may have been committed, the matter is referred to a prosecutor. If the prosecutor considers that there is a *prima facie* case against the accused, an indictment charge will be brought by the prosecutor before a general court.

Sanctions are not explicitly set out for discrimination based on the grounds enumerated in the Directives but discrimination could give rise to civil liability, falling under the general rules. The Courts may rule that a certain act or omission should be remedied and award the victim material damages. Violations of the General Penal Code provisions on hate speech and discrimination in services and access to public places are subject to fines or imprisonment of up to two years and six months. Violations of prohibition of public insults against the beliefs or religion of lawfully established religious communities are subject to fines or imprisonment of up to three months. It should be noted that Articles 125 and 180 have never been applied and only one case has been adjudicated concerning a breach of Article 233a.

6. Equality bodies

No equality body has been established to promote equality and non-discrimination on the grounds of race or ethnic origin, religion or belief, age, disability or sexual orientation. No human rights commission has been established and the sole equality body in place, the Centre for Gender Equality, deals with gender only. The Parliamentary Ombudsman may deal with cases concerning equality/discrimination in relation to administrative procedure.