

European network of legal experts in
gender equality and non-discrimination

Country report

Non-discrimination

Norway

2016

Including summaries in
English, French and
German



EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality
Unit JUST/D1

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

Norway

Else Leona McClimans

Reporting period 1 January 2015 – 31 December 2015

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2016

PDF ISBN 978-92-79-46990-9

doi:10.2838/580752

DS-02-16-797-3A-N

© European Union, 2016

CONTENTS

EXECUTIVE SUMMARY	5
RÉSUMÉ	13
ZUSAMMENFASSUNG	22
INTRODUCTION.....	30
1 GENERAL LEGAL FRAMEWORK	33
2 THE DEFINITION OF DISCRIMINATION	34
2.1 Grounds of unlawful discrimination explicitly covered.....	34
2.1.1 Definition of the grounds of unlawful discrimination within the directives	34
2.1.2 Multiple discrimination	36
2.1.3 Assumed and associated discrimination	37
2.2 Direct discrimination (Article 2(2)(a))	38
2.2.1 Situation testing	39
2.3 Indirect discrimination (Article 2(2)(b))	40
2.3.1 Statistical evidence	41
2.4 Harassment (Article 2(3))	42
2.5 Instructions to discriminate (Article 2(4))	44
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78).....	44
3 PERSONAL AND MATERIAL SCOPE	49
3.1 Personal scope	49
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)	49
3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)	49
3.2 Material scope	50
3.2.1 Employment, self-employment and occupation.....	50
3.2.2 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))	50
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	50
3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	51
3.2.5 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))	51
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	51
3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)	52
3.2.8 Education (Article 3(1)(g) Directive 2000/43)	52
3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43).....	54
3.2.10 Housing (Article 3(1)(h) Directive 2000/43).....	55
4 EXCEPTIONS.....	57
4.1 Genuine and determining occupational requirements (Article 4)	57
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	57
4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)	59
4.4 Nationality discrimination (Article 3(2))	60
4.5 Work-related family benefits (Recital 22 Directive 2000/78)	60
4.6 Health and safety (Article 7(2) Directive 2000/78)	61

4.7	Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	61
4.7.1	Direct discrimination.....	61
4.7.2	Special conditions for young people, older workers and persons with caring responsibilities	63
4.7.3	Minimum and maximum age requirements	63
4.7.4	Retirement	63
4.7.5	Redundancy.....	65
4.8	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)	66
4.9	Any other exceptions	66
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)	67
6	REMEDIES AND ENFORCEMENT	69
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	69
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)	71
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78) .	74
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)	75
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78).....	75
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)	81
8	IMPLEMENTATION ISSUES	87
8.1	Dissemination of information, dialogue with NGOs and between social partners	87
8.2	Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)	88
9	COORDINATION AT NATIONAL LEVEL	90
10	CURRENT BEST PRACTICES	91
11	SENSITIVE OR CONTROVERSIAL ISSUES.....	92
11.1	Potential breaches of the directives (if any)	92
11.2	Other issues of concern.....	93
12	LATEST DEVELOPMENTS IN 2015.....	94
12.1	Legislative amendments	94
12.2	Case law	94
	ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION	98
	ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS	100

EXECUTIVE SUMMARY

1. Introduction

Norway is a relatively homogenous country with approximately 5,2 million inhabitants. There are 698 550 immigrants in Norway and 149 657 people born in Norway with immigrant parents. These two groups constitute approximately 16,3% of the total population. There are 538 000 persons with non-Norwegian citizenship living in Norway.¹ The Sami people are the largest indigenous group of people in Norway, and constitute between 50 000 and 65 000 people. Other national minorities include Jews (approximately 1 100 people), Kvens/ people with Finnish descent (approximately 10 000-15 000 people). Approximately 700 persons belong to the traditional group of Roma people. No exact figure is available for *Romani* (travellers) in Norway, but estimates put the number at around a few thousand people.²

About 75% Norwegians are members of the protestant state church,³ the other religions groups of a certain size are Islamic associations, the Roman Catholic church and the Pentecostal church.⁴ Figures found in official statistics include 141,027 belonging to Islam, 296 521 "other" Christians (that is Christians not belonging to the Norwegian Church), 157 997 Buddhists, and 88 216 belonging to a belief organisation.⁵

Correct and reliable figures for the number of disabled people in Norway are difficult to find. Figures from the National Health Survey of 1985 estimates that 479 000 people between 16 and 67 years were disabled. Additionally there are 41 000 disabled people under 16 years, and 292 000 people over 67 years. The estimate corresponds to a percentage of disabled at 18.8 % of the population and working age (16-66 years).⁶ A recent survey assumes that there are approximately 700.000 people over 16 years that is 15.5 % of the population, that have some kind of reduced functional, psychological or cognitive ability.⁷ The official employment statistics give a figure of 585 000 employable persons with a disability (i.e. approximately 10 % of the total population). Only about 254 000 are in fact employed.⁸

744 696 persons are 66 years or older, out of a population of 5 213 985.⁹ No reliable official figures on sexual orientation exist, although it is assumed that about 3-5 % of the

¹ As of 01.01.16, see Statistics Norway at <http://www.ssb.no/folkemengde/> (In Norwegian, accessed 14.03.2016).

² Statistics from Statistics Norway and the Governmental Action Plan to promote equality and prevent ethnic discrimination 2009-2012.

³ See <https://kirken.no/nb-NO/om-kirken/medlemskap/om-medlemsskapet/> (in Norwegian, accessed 14.03.2016) and http://www.ssb.no/kultur-og-fritid/statistikker/kirke_koetra/aar (in Norwegian, accessed 14.03.2016).

⁴ See <http://www.ssb.no/kultur-og-fritid/artikler-og-publikasjoner/norge-et-sekulaert-samfunn> (In Norwegian accessed on 14.03.2016). Religious affiliation is not registered officially through national statistics, thus the numbers are based on information about membership given by each religious group themselves.

⁵ According to figures from Statistics Norway stating members of religious- and belief associations outside the Norwegian (protestant) church according to membership funding by the State per 01.01.2015, see <http://www.ssb.no/kultur-og-fritid/statistikker/trosamf> (In Norwegian accessed on 14.03.2016). A complete membership list for each organisation outside the Norwegian Church according to the state membership funding annually is found on the webpage of the Ministry of Culture, <https://www.regjeringen.no/no/tema/religion-og-livssyn/tros-og-livssynssamfunn/innsiktsartikler/antall-tilskuddsberettigede-medlemmer-i-/id631507/> (accessed 14.03.2016)

⁶ See Norwegian Official Report NOU 1998:18 Det er bruk for alle (*All are useful*) chapter 9.6.5.

⁷ See report from Statistics Norway På like vilkår? Helse og levekår blant personer med nedsatt funksjonsevne (*On equal terms? Health and life conditions among people with reduced ability*), at http://www.ssb.no/emner/03/01/10/rapp_201020/rapp_201020.pdf (accessed 13.04.2015).

⁸ As per statistics from 2 quarter, 2015 at <http://www.ssb.no/arbeid-og-lonn/statistikker/akutu> (in Norwegian, accessed on 14.03.2016).

⁹ See annual statistics by 01.01.2015 from Statistics Norway on population, at <http://www.ssb.no/befolkning/statistikker/folkemengde> (In Norwegian, accessed on 14.03.2016).

population has a sexual orientation other than the normative heterosexual. This corresponds to roughly 240 000 persons in Norway.¹⁰

The legal system is inspired by the roman legal system, and has a three-level court system which handles both criminal and civil law. Statutory provisions (formal legislation through acts and their regulations) interpreted through the legal preparatory works and case law are the primary sources of law invoked in Norwegian courts of law and in respect of Norwegian administrative agencies, although international legislation, especially EU law, is increasingly being invoked in concrete cases, including in discrimination cases.

2. Main legislation

Norway has ratified most of the major international instruments combating discrimination, with the notable exception being Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Constitution article 98 reads since June 2014: *"All people are equal under the law. No human being must be subject to unfair or disproportional differential treatment"*.¹¹

The Human Rights Act¹² incorporates a number of treaties on human rights into the domestic legal system on a general basis in which the conventions prevail over any other conflicting statutory provision.¹³ The International Convention on Elimination of All Forms for Racial Discrimination (ICERD) is not incorporated into the Human Rights Act, but into the Anti-discrimination Act (ADA), the legal consequence being that ICERD does not prevail over other statutory provisions in case of conflict, but has to be decided through an interpretation. The UN CRPD (the Disability Convention) was ratified on 3 July 2013.¹⁴ It is not incorporated into the Anti-Discrimination and Accessibility Act – (AAA), however, the Equality and Discrimination Ombudsman is responsible for the supervision of the national implementation of the convention, similar to the national supervisory system of the ICERD and CEDAW.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives. The constitutional anti-discrimination provisions are directly applicable. The constitutional equality clauses can be enforced both against State actors and private actors.

The legislative framework for anti-discrimination legislation is otherwise well developed, however difficult to access as its legislative base is derived from five general main different legislative acts, as well as found in specialised legislation.

¹⁰ According to figures given in an e-mail dated 07.01.2013 from LLH - The Norwegian Lesbian, Gay, Bisexual and Transgender organisation to the author.

¹¹ See <https://stortinget.no/globalassets/pdf/constitutionenglish.pdf>. (Accessed 14.03.2016). The preparatory works to the constitutional clause is: Dok 16 (2011-2012) Report on Human Rights in the Constitution from the Constitutional Committee to the Storting (Parliament), Chapter 6 see <http://www.stortinget.no/Global/pdf/Dokumentserien/2011-2012/dok16-201112.pdf>. (Accessed 14.03.2016).

¹² Act Relating to the Status of Human Rights in Norwegian Law of 21.05.1999 no 30 (*Menneskerettsloven*).

¹³ The International Convention on Racial Discrimination is incorporated in the Anti-discrimination act (ADA), but the convention will in conflicting cases not automatically prevail. The lack of including the ICERD in the Human Rights Act has been repeatedly criticised by the NGOs working on anti-discrimination.

¹⁴ See Prop. 106 S (2011-2012) Proposition to the *Stortinget* (proposal for Parliamentary resolution) on Consent to ratification of the UN Convention of 13 December 2006 on the rights of Persons with Disabilities and Prop 105 L 2011-2012 on Changes to the Anti-Discrimination Ombud's Act on the supervision of implementation of the UN Convention on the Rights of Persons with Disabilities.

The key pieces of anti-discrimination legislation consists of the Gender Equality Act (GEA),¹⁵ the Anti-Discrimination Act (ADA) covering ethnicity, religion and belief¹⁶ the Anti-discrimination and Accessibility Act (AAA) covering disability,¹⁷ and the Working Environment Act (WEA) covering age, political views, membership in trade unions, part-time and temporary work,¹⁸ as well as specialised legislation (the seamen's act and housing acts). These acts were revised and aligned on 21 June 2013 upon the enactment of the Sexual Orientation Anti-Discrimination Act (SOA) covering sexual orientation, gender identity and gender expression.¹⁹ All new acts are in force as of 1 January 2014.

Section 185 and 186 of the General Civil Penal Code (2005) contains criminal law protection against discrimination.

It is presumed that Norwegian anti-discrimination legislation is in line with the *EU acquis*. The government has committed to having as high - or higher - standards in its work against discrimination as the requirements of the EU.²⁰ However, as the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated. This protection has been reinforced by the Supreme Court in recent judgments. In Rt-2012-424 para 30, the Supreme court underlined that "although there is no legal commitment to incorporate the Employment Equality Directive in national law, it is according to established practice from the Supreme Court that the regulations of the Working Environment Act is to be interpreted and implemented in accordance with the Employment Equality Directive" (*authors' translation*). Supreme Court case Rt-2012-219 was in its content similar to the facts in the ECJ case C-447/09 (*Prigge*). The Supreme Court underlined in para 46 that the standards of the Working Environment Act shall be interpreted to be compatible with the Employment Equality Directive.²¹

The 2013 revision of the discrimination legislation aimed to harmonise and clarify the key definitions and ensure a similar protection for all discrimination grounds. However, as key elements are taken out of the actual legal texts, and the preparatory works state that no change is intended, this is worrisome, as this might indicate that new interpretation develops over time, especially in relation to the exceptions allowed for direct discrimination.

There is a question mark regarding the Norwegian implementation in relation to the requirements of Directive 2000/43 regarding independent assistance to victims of discrimination because of racial or ethnic origin, as the Ombuds' mandate is only to provide guidance to victims of discrimination, not assistance, and free legal aid is not granted in discrimination cases.

¹⁵ The Gender Equality Act (GEA) of 21.06.2013 No 59, in force as of 01.01.2014, at <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-059-eng.pdf>. This act replaces the previous Gender Equality Act (GEA) of 09.06.1978 No 45 (*Likestilling*). Key concepts remain similar in the previous and current version.

¹⁶ The Anti-Discrimination Act (ADA) of 21.06.2013 No 60, in force as of 01.01.2014, at <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-060-eng.pdf>. This act replaces the Anti-Discrimination Act of 03.06.2005 No 33 on Prohibition of discrimination based on ethnicity, religion etc. (*Diskrimineringsloven*). Key concepts remain similar in the previous and current version.

¹⁷ The Anti-Discrimination and Accessibility Act – (AAA) of 21.06.2013 No 61, in force as of 01.01.2014 at <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-061-eng.pdf>. This act replaces the previous Act of 20.06.2008 No 42 relating to a prohibition against discrimination on the basis of disability (*tilgjengelighetsloven*). Key concepts remain similar in the previous and current version.

¹⁸ Working Environment Act (WEA) of 17.06.2005 No 62, last amended by law of 21.06.2013 No 61, in force as of 01.01.2014. Recent amendments are not included in the translation at: <http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156>.

¹⁹ The Sexual Orientation Anti-Discrimination Act (SOA) of 21.06.2013 No 59, in force as of 01.01.2014. Translation at: <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-058-eng.pdf>.

²⁰ Government White Paper on Strengthened protection against discrimination in working life, NOU 2003:2 *Skjerpet vern mot diskriminering i arbeidslivet*, p. 7.

²¹ See Rt 2012-424 paragraph 30, and Rt 2012-219. Similar statements were expressed in the other key Supreme Court decisions regarding age discrimination: Rt 2011-964, Rt 2011-609 and Rt 2010-202.

3. Main principles and definitions

Norwegian anti-discrimination legislation addresses the following grounds of discrimination within all sectors: gender, ethnicity, national origin, descent, skin colour, language, religion or belief, sexual orientation and disability. Discrimination based on political views, membership of a trade union and age is covered within working life.

Direct and indirect discrimination, harassment, instructions to discriminate are defined in line with Directives 2000/43 and 2000/78. Discrimination is defined in ADA section 6, AAA section 5,²² SOA section 5 and WEA section 13-1. In WEA section 13-1, the concepts of direct and indirect discrimination are not defined, but are discussed in the preparatory works.²³ Harassment is prohibited by ADA section 9, AAA section 8, SOA section 8 and WEA section 13-1(2). Instructions to discriminate are prohibited in ADA section 11, AAA section 10, SOA section 10 and WEA section 13-1(2).

Reasonable accommodation duties as well as provisions on sheltered/ semi-sheltered accommodation are provided for in the AAA.

Discrimination by association is covered through the ADA section 6 for ethnicity, religion and belief, AAA section 5 for disability, and SOA section 5 for sexual orientation.

Perceived or assumed discrimination is covered by national discrimination legislation if the perception or assumption has actually resulted in a less favourable treatment of the person.

There are no legal rules per se in the field of anti-discrimination dealing with a situation of multiple discrimination. "Multiple discrimination" is not explicitly prohibited in (non-discrimination) statutory legislation or statutory legal instruments. Both the Equality Ombud and Equality Tribunal have a mandate to handle cases relating to cross grounds/ multiple grounds discrimination, mainly in relation to gender and age, as well as gender and religion (hijab).

Protection against victimisation is found in AAA section 9, ADA section 10, SOA section 9 and WEA section 2-5.

In all different pieces of anti-discrimination legislation - the AAA, ADA, SOA and the WEA - a general exception for genuine and determining occupational requirements is accepted under the general framework for lawful discrimination. In working life, exceptions for employers with an ethos based on religion or belief is as a general rule not accepted. However, employers with an ethos based on religion or belief may require that employees follow this religion or belief, provided that this is a genuine and determining occupational requirement in line with the general exception to the act.

4. Material scope

National legislation applies in principle to all sectors of public and private employment and occupation, including contract work, self-employment, military service, and holding statutory office.

The scope of discrimination protection in the GEA, ADA, SOA and AAA apply to all sectors, and covers each of the specific grounds covered by the directives. The ADA, SOA and the AAA apply to all areas of society except for family life and personal relationships.

²² The prohibition against discrimination relates to discrimination on the grounds of a present disability, assumed disability, past disability, possible future disability as well as discrimination of a person due to their relationship with a person with a disability.

²³ Ot.prp nr 49 (2004-2005), chapter 25 (in Norwegian):
<http://www.regjeringen.no/nb/dep/aid/dok/regpubl/otprp/20042005/otprp-nr-49-2004-2005-/25.html?id=397026> (accessed 14.03.2016)

The WEA covers only employment: it applies to undertakings that engage employees, unless otherwise explicitly provided by the act. The provisions of the chapter also cover the employers' selection and treatment of self-employed and contract workers. Age is thus not protected outside the employment field.

All aspects of employment, from the initial advertisements of posts until the termination of the work contract, are covered by existing legislation. National law does not explicitly provide for an exception for the armed forces or the police, prison or emergency services in relation to age or disability discrimination. There are no exceptions in relation to disability for health and safety.

5. Enforcing the law

Cases alleging instances of discrimination may either be brought before an ordinary court or be brought to the national machinery set up to assess cases of discrimination: The Equality and Anti-Discrimination Ombud (the Equality Ombud) and the Equality and Anti-Discrimination Tribunal (the Equality Tribunal).

As a general rule, the procedures for addressing discrimination issues are the same for employment in the private and public sectors. Sanctions according to the ADA, AAA, SOA and WEA that are enforced by the civil courts consist of liability for damages/compensation/redress awarded to the claimant of discrimination. There are no upper limits for compensation, nor are there rules for calculation provided in the national legal framework. Sanctions according to criminal law consist of penalties.

The key procedural principle in Norwegian civil courts is the free evaluation of evidence by the courts in the course of the case as presented in courts. All kinds of evidence may be used, however, evidence may only be presented on facts which may be of importance for the ruling to be made. The scale and the scope of the presentation need to be proportionate in relation to the importance of the dispute. In civil cases before the courts, the procedural rules for evidence are the same in discrimination cases as in other cases.

Situation testing is not defined specifically in the law, as the law is silent on this issue. However, based on the principle of free evaluation of evidence by the courts, national law permits the use of situation testing in court for all discrimination grounds.

National law permits the use of statistical evidence to establish indirect discrimination, however, it is not necessary to prove if indirect discrimination has happened or not, as the assessment that has to be made according to national legislation is whether or not an action or non-action has had a negative result for the individual or the group.

The rule of shared burden of proof applies for all grounds of discrimination, including reasonable accommodation, harassment, victimisations and instructions to discriminate.

Associations may be used as agents in administrative proceedings and act on behalf of victims. The requirement is that the organisation must have a "*purpose, wholly or partly, to oppose discrimination*" according to the grounds as prohibited by law", see ADA section 27, AAA section 32, SOA section 25 and WEA section 13-10. Actions by associations are discretionary.

More than 95% of all cases on discrimination are handled by the Equality Ombud and the Equality Tribunal. They cannot award compensation and only in very specific circumstances impose fines. Few cases are handled annually by normal courts. This low rate of court litigation is among other factors due to the risks and costs involved in litigation, and the difficulties in obtaining free legal aid in discrimination cases. A key case handled by Supreme court in 2015 is Rt-2015-1313, regarding the coverage of Anti-Discrimination

Ombud Act (AOT) section 12.²⁴ The supreme court concluded that a decision by the Equality Tribunal that finds that the case before it is not a breach of the discrimination acts cannot be brought before the courts relying on the AOT § 12. The Supreme court pointed out that a decision by the Equality Tribunal does not have legal effects to the extent that the Equality Tribunal can be sued to change its decision. However, the AOT does not preclude the employee from establishing a lawsuit against the employer, alleging discrimination, for the full examination by the court.

6. Equality bodies

The Equality Ombud and its appeal body the Equality Tribunal constitute the administrative independent equality bodies set up to hear individual complaints to possible breaches of the non-discrimination legislation. The Ombud and Tribunal are a free low-threshold complaint system, and are alternative dispute mechanisms outside the judicial system, addressing cases of discrimination.

The appointment, method of organisation, competencies and authority of these bodies are regulated in the Anti-Discrimination Ombud Act - AOT. The independence of the bodies is stipulated in law, and they are independent in their functions. The Equality Ombud has a dual role in working for equality, by enforcing the laws as well as proactively promoting equality and combating discrimination. As a law enforcer, the Equality Ombud issue opinions on complaints concerning breaches of statutes and provisions within the Ombud's sphere of activity, and provides advice and guidance with regard to the legislation within its mandate. The statements of opinions are not legally binding and may not be subject of enforcement, however it is assumed that they should be adhered to by public bodies. The Equality Ombud shall seek to secure the parties' voluntary compliance with this opinion.

The Ombud conducts independent surveys, publishes independent reports and makes recommendations on issues relating to discrimination. Every year the Ombud publishes annual reports and relevant reports on the status of equality.

The Equality Ombud is funded by annual grants financed by the Ministry of Children, Equality and Social Inclusion. Even though the Ombud is nominated by the Ministry and her staff is public officials her independence is not questioned in Norway, as her mandate is clarified by law, and she is not to be instructed by the ministry. The funds allocated through the State budget for 2015 as income for the Ombud was NOK 53.981.000,- (approximately €5.997.888,-), which is apart from the currency rate slide similar to previous budgets.

The Equality Tribunal is the appeal body of the Equality Ombud. Its members are appointed by the Ministry of Children, Equality and Social Inclusion for a term of four years, with the possibility for reappointment. The chairperson and deputy chairperson shall fulfil the requirements prescribed for judges. The members are chosen because of their skills on discrimination issues. The Equality Tribunal has a secretariat, whose staff are public employees.

The Equality Ombud provides independent guidance and counselling to victims within the framework of providing information. The Ombud is impartial when dealing with complaints. According to the AOT, the Ombud shall not represent the party in external proceedings. Therefore, the Ombud does not act as a legal representative or legal practitioner for victims. Neither the Ombud nor the Tribunal is entitled to take cases to court independently of a person individually complaining. It is a weakness of the Equality Ombud in relation to the task listed in Directive 2000/43: neither she, nor anyone else, have the specific role of providing independent assistance to victims of discrimination. Until 2006, the Centre

²⁴ See AOT - Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal (The Anti-Discrimination Ombud Act), of 10.06.2005 No 40, <http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-on-the-Equality-and-Anti-Discrim.html?id=451952>.

against Ethnic Discrimination (SMED) provided legal aid to victims of ethnic discrimination, but when the Centre became a part of the 'new' Equality Ombud, the legal aid scheme was revoked. The fact that there is no legal aid scheme offered specifically to provide independent assistance to victims and to address discrimination because of ethnicity is a flaw with the current system with one holistic Equality Ombud covering all grounds.

Although there are very few Romas and travellers in Norway, the Equality Ombud has repeatedly addressed some of the key issues seen in relation to Roma and Travellers. In her report to the UN CERD Committee, the Equality Ombud addressed the areas of critical concern: that the Roma's access to basic rights is denied unless the traditional way of life is discontinued.²⁵ In relation to schooling, the Ombud is concerned that the travellers are being made responsible for the consequences of the failure to adjust Norwegian school policy to the traditional manner of travelling. The Romas are furthermore systematically denied access to camp sites and restaurants on the grounds that they belong to a national minority. At the policy level, the Ombud has thus been a voice in the Norwegian public speaking for the Roma.

7. Key issues

In Norway, the key legal issues on measures to combat discrimination based on race/ ethnic origin, religion/ belief, sexual orientation, disability and age include:

- A new act covering sexual orientation and transgender in all areas was enacted in 2013 and in force as of 1 January 2014. The amendment to harmonise and ensure a similar protection for all grounds might lead to unclarity in the legal coverage, as the former very narrow exception to the definition of direct discrimination might be widened and not interpreted as narrow as before.
- Although a full overhaul of the anti-discrimination legislation was done in 2013, and in force as of 1 January 2014, a new proposal for one comprehensive new legislation was sent on public hearing in October 2015.²⁶
- The only legislative amendment of relevance adopted in 2015 was lifting the age limit in the WEA section 15-13a to extend the 70-year limit to 72 years, as well as prohibiting internal business plans etc. to set lower mandatory retirement age than 70 years.
- It might be questioned if victims of discrimination in reality have necessary access to justice/efficient sanctions and remedies. Statistics on discrimination cases in Norway show that although the courts do handle discrimination cases, and although the number of cases handled by courts is increasing, the by far overwhelming number of discrimination cases in Norway is channelled through the administrative bodies, the Equality Ombud and the Equality Tribunal. This has in particular consequences in relation to an assessment of compliance with EU law in terms of sanctions, as the Equality Ombud/Tribunal does not enforce the clauses relating to sanctions in the form of liability for damages/ redress/ compensations. A proposal that the Equality Tribunal be given powers to award damages for non-economic loss in cases where a breach of the principle against discrimination has been stated was forwarded in 2011.
- Norwegian implementation regarding the requirements of Directive 2000/43 on legal aid to victims of discrimination because of ethnicity might be questioned, as there is not a scheme under the legal aid act to afford victims of discrimination because of ethnicity legal aid. Although the Equality- and Discrimination Ombud has a duty to provide guidance and counselling to victims of discrimination, the role of the Equality Ombud is not to provide individual assistance to victims of discrimination nor legal aid to individuals, but to assess the case in order to establish whether discrimination

²⁵ See Ombud's Input to the Committee on the Elimination of Racial Discrimination (CERD) 2010, at http://www.ldo.no/Global/Rapporter/CERDreport_PDF.pdf.

²⁶ See <https://www.regjeringen.no/no/dokumenter/horing---forslag-til-felles-likestillings--og-diskrimineringslov/id2458435/> (Accessed on 14.03.2016) (in Norwegian).

has occurred or not. A proposal to include discrimination as an area through which to obtain free legal aid has been in process since 2009.

- The continuous updating of the regulations on sheltered and semi-sheltered accommodation/ universal access.

RÉSUMÉ

1. Introduction

La Norvège a une population relativement homogène de 5,2 millions d'habitants. Le pays compte approximativement 698 550 immigrés et 149 657 personnes nées dans le pays de parents immigrés. Ces deux groupes forment ensemble environ 16,3 % de la population totale. Le pays compte également 538 000 personnes vivant sur son territoire sans avoir la citoyenneté norvégienne.²⁷ Le groupe autochtone le plus important de Norvège est le peuple sami (entre 50 et 65 000 personnes). Les autres minorités nationales sont notamment les Juifs (1 100 personnes environ) et les Kvènes/personnes d'ascendance finlandaise (10 à 15 000 personnes environ). Les membres du groupe traditionnel des Roms sont plus ou moins 700. On ne dispose pas de chiffre précis en ce qui concerne les gens du voyage mais ils seraient quelques milliers en Norvège.²⁸

L'Église protestante d'État rassemble 75 % environ des Norvégiens²⁹ – les autres groupes religieux d'une certaine importance étant des associations islamiques, l'Église catholique romaine et l'Église pentecôtiste.³⁰ Les chiffres figurant dans les statistiques officielles font état de 141 027 personnes affirmant leur appartenance à l'islam, de 296 521 «autres» chrétiens (c'est-à-dire des chrétiens n'appartenant pas à l'Église de Norvège), de 157 997 bouddhistes et de 88 216 personnes appartenant à une organisation confessionnelle.³¹

Il est difficile de trouver des chiffres précis et fiables quant au nombre de personnes handicapées en Norvège. On a estimé sur la base des chiffres de l'enquête nationale de 1985 sur la santé que 479 000 personnes âgées de 16 à 67 ans étaient handicapées. Il convient d'y ajouter 41 000 personnes handicapées de moins de 16 ans et 292 000 personnes de plus de 67 ans. Cette estimation correspond à un taux de 18,8 % de personnes au sein de la population en âge de travailler (16-66 ans).³² Une récente étude conduit à penser que 700 000 personnes environ de plus de 16 ans, soit 15,5 % de la population, souffrent d'une forme ou d'une autre de déficience fonctionnelle, psychologique ou cognitive.³³ Les statistiques officielles de l'emploi font état de 585 000 personnes handicapées aptes au travail (soit 10 % environ de l'ensemble de la population). Seules 254 000 environ d'entre elles occupent effectivement un emploi.³⁴

²⁷ Au 1^{er} janvier 2016, voir l'Office statistique de Norvège sur <http://www.ssb.no/folkemengde/> (en norvégien, consulté le 14 mars 2016).

²⁸ Chiffres en provenance de l'Office statistique de Norvège et du Plan d'action gouvernemental 2009-2012 pour la promotion de l'égalité et la prévention de la discrimination ethnique.

²⁹ Voir <https://kirken.no/nb-NO/om-kirken/medlemskap/om-medlemsskapet/> (en norvégien, consulté le 14 mars 2016) et http://www.ssb.no/kultur-og-fritid/statistikker/kirke_koetra/aar (en norvégien, consulté le 14 mars 2016).

³⁰ Voir <http://www.ssb.no/kultur-og-fritid/artikler-og-publikasjoner/norge-et-sekulaert-samfunn> (en norvégien, consulté le 14 mars 2016). L'affiliation religieuse n'étant pas officiellement enregistrée dans les statistiques nationales, les chiffres se basent sur les informations communiquées par les différents groupes confessionnels eux-mêmes concernant le nombre de leurs membres.

³¹ Selon les chiffres de l'Office statistique de Norvège établissant les membres d'organisations religieuses et confessionnelles en dehors de l'Église (protestante) de Norvège sur la base du financement par l'État (fixé en fonction du nombre de membres) au 1^{er} janvier 2015, voir <http://www.ssb.no/kultur-og-fritid/statistikker/trosamf> (en norvégien, consulté le 14 mars 2016). Une liste complète des effectifs de chaque organisation en dehors de l'Église de Norvège en fonction du financement public (calculé sur la base du nombre de membres) annuel peut être consultée sur la page web du ministère de la Culture, <https://www.regjeringen.no/no/tema/religion-og-livssyn/tros-og-livssynssamfunn/innsiktsartikler/antall-tilskudsberettigede-medlemmer-i-/id631507/> (consulté le 14 mars 2016).

³² Voir le chapitre 9.6.5 du rapport officiel norvégien NOU 1998:18 *Det er bruk for alle* (Tous sont utiles).

³³ Voir le rapport de l'Office statistique de Norvège *På like vilkår? Helse og levekår blant personer med nedsatt funksjonsevne* (À égalité? Santé et conditions de vie des personnes moins valides) sur http://www.ssb.no/emner/03/01/10/rapp_201020/rapp_201020.pdf (consulté le 13 avril 2015).

³⁴ Selon les statistiques du 2^e trimestre 2015 sur <http://www.ssb.no/arbeid-og-lonn/statistikker/akutu> (en norvégien, consulté le 14 mars 2016).

Le pays compte 744 696 personnes de 66 ans et plus sur une population de 5 213 985 habitants.³⁵ Il n'existe aucune statistique officielle fiable concernant l'orientation sexuelle, mais on suppose que 3 à 5 % environ de la population a une orientation sexuelle autre que l'hétérosexualité normative – ce qui correspond approximativement à 240 000 personnes en Norvège.³⁶

L'ordre juridique s'inspire du droit romain et comporte un système judiciaire à trois niveaux qui traite à la fois les affaires relevant du droit pénal et celles relevant du droit civil. Les dispositions légales (législation formellement adoptée sous la forme de lois et de règlements d'application) sont les sources de droit prioritairement invoquées devant les juridictions norvégiennes et vis-à-vis des instances administratives nationales, même si la législation internationale, et celle de l'UE en particulier, est de plus en plus souvent invoquée dans des cas concrets, en ce compris dans des affaires de discrimination.

2. Législation principale

La Norvège a ratifié la plupart des grands instruments internationaux de lutte contre la discrimination avec une exception notoire, à savoir le Protocole n° 12 à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales.

L'article 98 de la Constitution dispose depuis juin 2014 que «Toutes les personnes sont égales devant la loi. Aucun être humain ne peut faire l'objet d'un traitement inéquitable ou d'une différence de traitement disproportionnée».³⁷ (Traduction libre)

La loi sur les droits de l'homme³⁸ incorpore dans l'ordre juridique interne une série de traités relatifs aux droits de l'homme avec pour base générale que les conventions prévalent sur toute autre disposition réglementaire contraire.³⁹ La Convention internationale sur l'élimination de toutes les formes de discrimination raciale n'a pas été incorporée dans la loi sur les droits de l'homme, mais dans la loi antidiscrimination, avec pour effet juridique que la Convention ne prévaut pas sur les autres dispositions réglementaires en cas de conflit, lequel doit dès lors être résolu en procédant à une interprétation. La Convention des Nations unies relative aux droits des personnes handicapées (Convention sur le handicap) a été ratifiée le 3 juillet 2013.⁴⁰ Elle n'a pas été intégrée dans la loi sur la non-discrimination et l'accessibilité. Il incombe toutefois au Médiateur en charge de l'égalité et de la lutte contre la discrimination de surveiller la mise en œuvre de cette Convention en Norvège, de façon analogue au système national de surveillance de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale et de la Convention des Nations unies sur l'élimination de toutes les formes de discrimination à l'égard des femmes.

³⁵ Voir les statistiques annuelles de population au 1^{er} janvier 2015 (Office statistique de Norvège) sur <http://www.ssb.no/befolkning/statistikker/folkemengde> (en norvégien, consulté le 14 mars 2016).

³⁶ Selon les chiffres communiqués à l'auteur par l'organisation norvégienne LGBT dans un courriel daté du 7 janvier 2013.

³⁷ Voir <https://stortinget.no/globalassets/pdf/constitutionenglish.pdf> (consulté le 14 mars 2016). Les travaux préparatoires en vue de la clause constitutionnelle portent la référence Dok 16 (2011-2012) (Chapitre 6 du rapport sur les droits de l'homme dans la Constitution présenté par la commission constitutionnelle au Storting (Parlement)) – voir <http://www.stortinget.no/Global/pdf/Dokumentserien/2011-2012/dok16-201112.pdf> (consulté le 14 mars 2016).

³⁸ Loi n° 30 du 21 mai 1999 sur les droits de l'homme (*Menneskerettsloven*).

³⁹ La Convention internationale sur l'élimination de toutes les formes de discrimination raciale a été intégrée à la loi antidiscrimination, mais la Convention ne prévaut pas automatiquement s'il y a conflit. La non-inclusion de cette Convention dans la loi sur les droits de l'homme a été critiquée à de multiples reprises par les ONG engagées dans la lutte contre la discrimination.

⁴⁰ Voir la proposition de résolution parlementaire soumise au Storting (Prop. 106 S (2011-2012)) concernant l'approbation de la ratification de la Convention des Nations unies du 13 décembre 2006 relative aux droits des personnes handicapées ainsi que la proposition de résolution parlementaire Prop 105 L 2011-2012 concernant la modification de la loi sur le Médiateur antidiscrimination portant sur la surveillance de la mise en œuvre de la Convention des Nations unies relative aux droits des personnes handicapées.

Ces dispositions s'appliquent à tous les domaines couverts par les directives avec un champ d'application matériel plus large que celles-ci. Les dispositions constitutionnelles antidiscrimination sont directement applicables. Les clauses constitutionnelles relatives à l'égalité peuvent être invoquées à la fois contre des agents de l'État et contre des acteurs privés.

Le cadre législatif antidiscrimination est par ailleurs bien développé, même si son accès s'avère difficile en raison de l'ancrage de sa base législative dans cinq grandes lois générales différentes ainsi que dans une législation spécialisée.

La législation antidiscrimination comprend la loi sur l'égalité entre les hommes et les femmes,⁴¹ la loi antidiscrimination couvrant l'origine ethnique, la religion et les convictions,⁴² la loi sur la non-discrimination et l'accessibilité couvrant le handicap⁴³ et la loi sur l'environnement de travail couvrant l'âge, les opinions politiques, l'appartenance à des organisations syndicales, le travail à temps partiel et le travail temporaire,⁴⁴ ainsi que des actes législatifs spécialisés (loi sur les gens de mer et loi sur le logement). Ces différentes lois ont été révisées et harmonisées le 21 juin 2013 lors de l'adoption de la loi antidiscrimination relative à l'orientation sexuelle couvrant l'orientation sexuelle, l'identité de genre et l'expression de genre.⁴⁵ Toutes sont entrées en vigueur le 1^{er} janvier 2014.

Les articles 185 et 186 du Code général civil et pénal (2005) prévoient une protection pénale contre les discriminations.

La législation antidiscrimination norvégienne est présumée conforme à l'acquis de l'UE. Le gouvernement s'est engagé à appliquer, dans le cadre de sa lutte contre les discriminations, des normes aussi élevées – voire plus élevées – que celles imposées par l'UE.⁴⁶ Étant donné toutefois que les directives antidiscrimination (2000/78 et 2000/43) n'ont pas été incorporées dans l'Accord sur l'Espace économique européen (EEE), les dérogations spécifiquement admises par les directives n'ont pas été clairement formulées. La protection à cet égard a été renforcée par de récents arrêts de la Cour suprême. Ainsi cette dernière souligne-t-elle dans son arrêt Rt-2012-424, point 30, que «même en l'absence d'engagement juridique de transposer la directive relative à l'égalité en matière d'emploi en droit interne, la pratique habituelle de la Cour suprême veut que les réglementations de la loi sur l'environnement de travail soient interprétées et appliquées conformément à ladite directive» (traduction libre). L'affaire Rt-2012-219 devant la Cour suprême était, en termes de contenu, similaire aux faits de l'affaire C-447/09 devant la CJUE (*Prigge*). La Cour suprême a souligné au point 46 de son arrêt qu'il convenait

⁴¹ Loi n° 59 du 21 juin 2013 sur l'égalité entre les hommes et les femmes, en vigueur depuis le 1^{er} janvier 2014 (<http://www.ub.uio.no/ujur/ulovdata/lov-20130621-059-eng.pdf> – en anglais). Cette loi remplace la loi n° 45 du 9 juin 1978 (*Likestilling*). Les principaux concepts sont similaires dans l'ancienne et la nouvelle version.

⁴² Loi antidiscrimination n° 60 du 21 juin 2013, en vigueur depuis le 1^{er} janvier 2014 (<http://www.ub.uio.no/ujur/ulovdata/lov-20130621-060-eng.pdf> – en anglais). Cette loi remplace la loi antidiscrimination n° 33 du 3 juin 2005 relative à l'interdiction de discrimination fondée sur l'origine ethnique, la religion etc. (*Diskrimineringsloven*). Les principaux concepts sont similaires dans l'ancienne et la nouvelle version.

⁴³ Loi n° 61 du 21 juin 2013 sur la non-discrimination et l'accessibilité, en vigueur depuis le 1^{er} janvier 2014 (<http://www.ub.uio.no/ujur/ulovdata/lov-20130621-061-eng.pdf> – en anglais). Cette loi remplace la loi n° 42 du 20 juin 2008 relative à l'interdiction de discrimination fondée sur le handicap (*tilgjengelighetsloven*). Les principaux concepts sont similaires dans l'ancienne et la nouvelle version.

⁴⁴ Loi n° 62 du 17 juin 2005 sur l'environnement de travail, modifiée en dernier lieu par la loi n° 61 du 21 juin 2013, en vigueur depuis le 1^{er} janvier 2014. Les récents amendements ne figurent pas dans la traduction anglaise sur <http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156>.

⁴⁵ Loi antidiscrimination n° 59 du 21 juin 2013 relative à l'orientation sexuelle, en vigueur depuis le 1^{er} janvier 2014. Traduction anglaise sur <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-058-eng.pdf>.

⁴⁶ Livre blanc du gouvernement sur le renforcement de la protection contre la discrimination dans la vie professionnelle, NOU 2003:2 *Skjerpet vern mot diskriminering i arbeidslivet*, p. 7.

d'interpréter les normes énoncées dans la loi sur l'environnement de travail comme compatibles avec la directive relative à l'égalité en matière d'emploi.⁴⁷

La révision de la législation antidiscrimination effectuée en 2013 visait à harmoniser et à préciser les principales définitions, et à assurer une protection similaire pour tous les motifs de discrimination. Certaines inquiétudes sont cependant suscitées du fait que des éléments essentiels sont retirés des textes proprement juridiques et qu'il a été annoncé dans le cadre des travaux préparatoires qu'aucun changement n'était envisagé: ceci pourrait indiquer qu'une nouvelle interprétation se développe au fil du temps, en ce qui concerne les dérogations autorisées en matière de discrimination directe plus particulièrement.

Une interrogation subsiste quant à la mise en œuvre par la Norvège des exigences de la directive 2000/43 concernant l'assistance indépendante aux victimes de discrimination fondée sur l'origine raciale ou ethnique, étant donné que le mandat du Médiateur consiste uniquement à fournir des conseils – et non pas une assistance – aux victimes de discrimination, et qu'une aide juridique gratuite n'est pas allouée dans le cadre d'affaires de discrimination.

3. Principes généraux et définitions

La législation antidiscrimination norvégienne couvre les motifs de discrimination ci-après dans tous les secteurs: genre, origine ethnique, origine nationale, ascendance, couleur de la peau, langue, religion ou convictions, orientation sexuelle et handicap. La discrimination fondée sur les opinions politiques, l'appartenance à un syndicat et l'âge est couverte dans le cadre de la vie professionnelle.

La discrimination directe et indirecte, le harcèlement et l'injonction de discriminer sont définis conformément aux directives 2000/43 et 2000/78. La discrimination est définie à l'article 6 de la loi antidiscrimination, à l'article 5 de la loi sur la non-discrimination et l'accessibilité⁴⁸, à l'article 5 de la loi sur l'orientation sexuelle et à l'article 13-1 de la loi sur l'environnement de travail. Dans ce dernier cas, les concepts de discrimination directe et indirecte ne sont pas définis, mais sont examinés dans les travaux préparatoires.⁴⁹ Le harcèlement est interdit par l'article 9 de la loi antidiscrimination, par l'article 8 de la loi sur la non-discrimination et l'accessibilité, par l'article 8 de la loi relative à l'orientation sexuelle et par l'article 13-1(2) de la loi sur l'environnement de travail. L'injonction de discriminer est respectivement interdite par l'article 11, l'article 10, l'article 10 et l'article 13-1(2) de ces mêmes lois.

Des obligations d'aménagement raisonnable et des dispositions en matière de logement protégé/semi-protégé sont prévues par la loi sur la non-discrimination et l'accessibilité. La discrimination par association est couverte par l'article 6 de la loi antidiscrimination pour ce qui concerne l'origine ethnique, la religion et les convictions; par l'article 5 de la loi sur la non-discrimination et l'accessibilité pour ce qui concerne le handicap; et par l'article 5 de la loi relative à l'orientation sexuelle pour ce qui concerne ce motif.

La discrimination perçue ou présumée est couverte par la législation nationale pour autant que la perception ou la présomption se soient effectivement traduites par un traitement moins favorable de la personne visée.

⁴⁷ Voir Rt 2012-424, point 30, et Rt 2012-219. Des affirmations analogues figurent dans d'autres décisions importantes de la Cour suprême concernant la discrimination fondée sur l'âge: Rt 2011-964, Rt 2011-609 et Rt 2010-202.

⁴⁸ L'interdiction de discrimination couvre la discrimination fondée sur un handicap actuel, un handicap supposé, un handicap passé et un handicap futur éventuel, ainsi que la discrimination à l'égard d'une personne en raison de sa relation avec une personne handicapée.

⁴⁹ Ot.prp n° 49 (2004-2005) chapitre 25:

<http://www.regjeringen.no/nb/dep/aid/dok/regpubl/otprp/20042005/otprp-nr-49-2004-2005-/25.html?id=397026> (en norvégien, consulté le 14 mars 2016).

Aucune règle juridique antidiscrimination ne traite en soi d'une situation de discrimination multiple et ce type de discrimination n'est expressément interdit ni par la législation antidiscrimination ni par d'autres instruments réglementaires. Le Médiateur pour l'égalité et le Tribunal pour l'égalité sont l'un et l'autre habilités à traiter d'affaires de discriminations «croisées»/de discrimination fondée sur plusieurs motifs, le plus souvent le genre et l'âge, mais aussi le genre et la religion (hijab).

La protection contre les rétorsions est prévue à l'article 9 de la loi sur la non-discrimination et l'accessibilité, à l'article 10 de la loi antidiscrimination, à l'article 9 de la loi relative à l'orientation sexuelle et à l'article 2-5 de la loi sur l'environnement de travail.

Les différentes lois relevant de la législation antidiscrimination – la loi sur la non-discrimination et l'accessibilité, la loi antidiscrimination, la loi relative à l'orientation sexuelle et la loi sur l'environnement de travail – prévoient toutes une dérogation pour ce qui concerne les exigences professionnelles véritables et déterminantes dans le cadre général de la discrimination légitime. En ce qui concerne la vie professionnelle, la dérogation pour les employeurs ayant une éthique religieuse ou autre n'est pas admise en règle générale, mais les employeurs concernés peuvent exiger que leur personnel adhère à la religion ou la conviction en question pour autant qu'il s'agisse d'une exigence professionnelle véritable et déterminante conforme à la dérogation générale aux dispositions de la loi.

4. Champ d'application matériel

La législation nationale s'applique en principe à tous les secteurs d'emploi et de travail publics et privés, y compris le travail contractuel, le travail indépendant, le service militaire et l'occupation d'un poste statutaire.

La protection contre la discrimination prévue par la loi sur l'égalité entre les hommes et les femmes, la loi antidiscrimination, la loi relative à l'orientation sexuelle et la loi sur la non-discrimination et l'accessibilité s'applique à tous les secteurs, et couvre chacun des motifs spécifiquement visés par les directives. La loi antidiscrimination, la loi relative à l'orientation sexuelle et la loi sur la non-discrimination et l'accessibilité s'appliquent à tous les domaines de la vie en société hormis la vie familiale et les relations personnelles.

La loi sur l'environnement de travail vise uniquement l'emploi: elle s'applique aux entreprises qui engagent du personnel, sauf disposition contraire qu'elle contiendrait explicitement. Les dispositions du chapitre concerné couvrent également la sélection et le traitement réservé par les employeurs aux travailleurs indépendants et contractuels. L'âge n'est pas protégé en dehors du domaine de l'emploi.

La législation en vigueur couvre tous les aspects de l'emploi depuis l'annonce initiale indiquant la vacance de poste jusqu'à la résiliation du contrat de travail. La législation nationale ne contient pas de dérogation explicite pour les forces armées ou la police, l'encadrement pénitentiaire ou les services d'urgence en rapport avec la discrimination fondée sur l'âge ou le handicap. Aucune exception n'est prévue en rapport avec le handicap pour ce qui concerne la santé et la sécurité.

5. Mise en application de la loi

Les plaintes alléguant une discrimination peuvent être introduites auprès d'une juridiction ordinaire ou d'un mécanisme national spécifiquement institué pour les cas de discrimination: le Médiateur en charge de l'égalité et de la lutte contre la discrimination (Médiateur pour l'égalité) et le Tribunal antidiscrimination (Tribunal pour l'égalité).

En règle générale, les mêmes procédures sont appliquées dans le secteur privé et dans le secteur public en cas de discrimination en matière d'emploi. Les sanctions prévues par la

loi antidiscrimination, la loi sur la non-discrimination et l'accessibilité, la loi relative à l'orientation sexuelle et la loi sur l'environnement de travail et appliquées par les juridictions civiles consistent principalement à octroyer des dommages-intérêts/une indemnisation/une réparation à la victime. L'indemnisation n'est pas plafonnée et le cadre législatif national ne fixe aucune règle pour la calculer. Les sanctions relevant du droit pénal consistent en amendes.

Le principe de procédure fondamental des juridictions civiles norvégiennes est leur libre appréciation des preuves qui leur sont soumises pendant le déroulement de l'affaire. Tous les types de preuve sont admis à condition que les éléments probants présentés portent sur des faits susceptibles d'être importants pour la décision à prononcer. L'ampleur et la portée de la présentation doivent être proportionnées à l'importance du litige. Dans les affaires relevant des juridictions civiles, les règles de procédure en matière de preuve sont les mêmes qu'il s'agisse d'une affaire de discrimination ou d'une affaire de toute autre nature.

Le test de situation n'est pas spécifiquement défini par la loi, qui reste muette à ce sujet. En vertu toutefois du principe de la libre appréciation des preuves par les cours et tribunaux, la législation nationale permet le recours au test de situation en justice pour tous les motifs de discrimination.

La législation nationale autorise l'utilisation de preuves statistiques pour établir une discrimination indirecte; ceci dit, il n'est pas nécessaire de démontrer l'existence ou l'inexistence d'une discrimination indirecte, étant donné qu'il s'agit, en vertu de la législation nationale, d'établir si une action ou une inaction a eu ou non un impact négatif sur la personne ou le groupe en question.

La règle du partage de la charge de la preuve s'applique à tous les motifs de discrimination, y compris l'aménagement raisonnable, le harcèlement, les rétorsions et l'injonction de discriminer.

Des associations peuvent servir d'intermédiaires dans des procédures administratives et agir au nom des victimes pour autant que leur activité ait pour finalité unique ou partielle de lutter contre les discriminations fondées sur les motifs interdits par la loi (voir l'article 27 de la loi antidiscrimination, l'article 32 de la loi sur la non-discrimination et l'accessibilité, l'article 25 de la loi relative à l'orientation sexuelle et l'article 13-10 de la loi sur l'environnement de travail). Les poursuites engagées par des associations ont un caractère discrétionnaire.

Plus de 95 % de l'ensemble des affaires de discrimination sont traitées par le Médiateur pour l'égalité et le Tribunal pour l'égalité. Ils ne sont pas habilités à accorder d'indemnisation, et peuvent uniquement imposer des amendes dans des cas très spécifiques. Les juridictions ordinaires sont saisies de quelques cas seulement chaque année – ce contentieux très peu abondant s'expliquant entre autres par les risques et les coûts liés aux poursuites en justice ainsi que par la difficulté d'obtenir une assistance juridique gratuite dans le cadre d'une affaire de discrimination. La Cour suprême a prononcé en 2015 un arrêt majeur (Rt-2015-1313) concernant le champ d'application de l'article 12 de la loi sur le Médiateur antidiscrimination.⁵⁰ Elle a conclu en l'espèce qu'une décision du Tribunal pour l'égalité établissant que l'affaire dont il est saisi n'enfreint pas les lois antidiscrimination ne peut être portée en justice en invoquant le dit article 12. La Cour suprême rappelle qu'une décision du Tribunal pour l'égalité n'a pas d'effets juridiques dans la mesure où le Tribunal ne peut être poursuivi en vue de faire modifier sa décision. La loi sur le Médiateur antidiscrimination n'empêche cependant pas le salarié de poursuivre

⁵⁰ Voir la loi n° 40 du 10 juin 2005 sur le Médiateur pour l'égalité et la non-discrimination et le Tribunal pour l'égalité et la non-discrimination (loi sur le Médiateur antidiscrimination), <http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-on-the-Equality-and-Anti-Discrim.html?id=451952>.

l'employeur en justice pour discrimination, afin que cette allégation fasse l'objet d'un examen complet par la juridiction compétente.

6. Organismes de promotion de l'égalité de traitement

Le Médiateur pour l'égalité et son instance d'appel, le Tribunal pour l'égalité, sont les organes administratifs indépendants institués pour entendre les plaintes de citoyens alléguant une présomption de non-respect de la législation antidiscrimination. Le Médiateur et le Tribunal forment un système de recours gratuit à seuil peu élevé qui offre une voie alternative de règlement des litiges en dehors du système judiciaire, et qui peut être saisi en cas de discrimination.

Leur désignation, leur mode d'organisation, leurs compétences et leur autorité sont régis par la loi sur le Médiateur antidiscrimination. L'indépendance de ces instances dans l'exercice de leurs fonctions est consacrée par la loi. Le Médiateur a un double rôle dans la mesure où il œuvre à l'égalité en faisant appliquer les lois, mais également en menant une campagne proactive de promotion de l'égalité et de lutte contre la discrimination. En sa qualité de responsable de l'application des lois, le Médiateur pour l'égalité donne des avis sur des plaintes relatives à des violations de lois et de dispositions relevant de sa compétence, et fournit des conseils et des orientations concernant la législation dans les limites de son mandat. Les opinions formulées ne sont pas juridiquement contraignantes et ne peuvent faire l'objet de mesures d'exécution, mais il est supposé qu'elles seront prises en compte par les instances publiques. Le Médiateur pour l'égalité s'efforce d'obtenir le respect volontaire de son opinion par les parties concernées.

Le Médiateur procède à des études indépendantes, publie des rapports indépendants et formule des recommandations sur toutes les questions liées aux discriminations. Il publie un rapport annuel ainsi que des rapports faisant chaque année un état des lieux de la situation en matière d'égalité.

Le Médiateur pour l'égalité est financé par des subventions annuelles allouées par le ministère de l'Enfance, de l'égalité et de l'insertion sociale. Bien que le médiateur/la médiatrice soit nommé(e) par le ministère et que son personnel soit composé de fonctionnaires, son indépendance n'est pas mise en question, étant donné que son mandat est défini par la loi et qu'il/elle ne peut recevoir d'instructions du ministère. Les ressources allouées au Médiateur par le budget de l'État se sont élevées en 2015 à 53 981 000 NOK (5 997 888 euros environ), soit un montant similaire aux budgets antérieurs en dehors de la dépréciation monétaire.

Le Tribunal pour l'égalité est l'instance d'appel des décisions du Médiateur. Ses membres sont nommés par le ministère de l'Enfance, de l'égalité et de l'insertion sociale pour un mandat renouvelable de quatre ans. Le président et le vice-président doivent répondre aux mêmes exigences que celles imposées aux juges. Les membres sont choisis en raison de leurs compétences en matière de discrimination. Le Tribunal pour l'égalité a un secrétariat, dont le personnel est constitué de fonctionnaires.

Le Médiateur pour l'égalité fournit, dans le cadre de l'apport d'informations, des orientations et conseils indépendants aux victimes. Il traite les plaintes en toute impartialité. En vertu de la loi qui l'institue, le Médiateur ne représente pas une partie requérante dans le cadre de procédures extérieures. Il n'agit donc pas en qualité de représentant légal ou d'avocat des victimes. Ni le Médiateur ni le Tribunal ne sont habilités à intenter une action en justice indépendamment du dépôt d'une plainte par un particulier. Il s'agit d'une lacune au niveau du Médiateur pour l'égalité par rapport à la mission spécifiée dans la directive 2000/43 dans la mesure où ni lui ni personne d'autre n'est spécifiquement chargé d'apporter une assistance aux victimes de discrimination. Jusqu'en 2006, le Centre de lutte contre la discrimination ethnique (SMED) apportait une aide juridique aux victimes de discrimination ethnique mais cette fonction a été supprimée au moment de l'intégration

du Centre dans le «nouveau» Médiateur pour l'égalité. L'absence de système prévoyant une aide juridique spécifiquement offerte aux victimes et axée sur la discrimination fondée sur l'origine ethnique est un défaut du régime actuel basé sur un Médiateur général pour l'égalité en charge de tous les motifs.

Bien que les Roms et les gens du voyage soient peu nombreux en Norvège, le Médiateur pour l'égalité s'est penché à plusieurs reprises sur certaines problématiques clés les concernant. Dans son rapport au CERD, la médiatrice pour l'égalité aborde des préoccupations majeures, tel le refus aux Roms d'accéder aux droits fondamentaux s'ils n'abandonnent pas leur mode de vie traditionnel.⁵¹ En ce qui concerne la scolarité, elle s'inquiète de ce que les gens du voyage soient rendus responsables des conséquences d'une incapacité d'adapter la politique scolaire norvégienne au mode de vie traditionnel itinérant. L'accès à des sites de campement et à des restaurants est en outre systématiquement refusé aux Roms parce qu'ils appartiennent à une minorité nationale. Au niveau des politiques, le Médiateur fait donc entendre la voix des Roms dans le public norvégien.

7. Points essentiels

Les principales questions juridiques concernant les mesures de lutte contre la discrimination fondée sur la race/l'origine ethnique, la religion/les convictions, l'orientation sexuelle, le handicap et l'âge portent en Norvège sur les points suivants:

- Une nouvelle loi couvrant l'orientation sexuelle et la transsexualité dans tous les domaines a été adoptée en 2013 et a pris ses effets au 1^{er} janvier 2014. L'amendement destiné à harmoniser et à assurer une protection similaire pour tous les motifs pourrait être cause d'un manque de clarté en termes de couverture juridique, étant donné que l'exception antérieure, très étroite, à la définition de la discrimination directe pourrait se trouver élargie et ne plus être interprétée de manière aussi restrictive qu'auparavant.
- Bien que la législation ait fait l'objet d'une refonte complète en 2013 avec entrée en vigueur au 1^{er} janvier 2014, une nouvelle proposition de législation-cadre unique totalement remaniée a été transmise pour audience publique en octobre 2015.⁵²
- Le seul amendement législatif important adopté en 2015 a consisté à faire passer de 70 à 72 ans la limite d'âge visée à l'article 15-13a de la loi sur l'environnement de travail, et à interdire des plans d'entreprise internes, etc. fixant un âge de départ obligatoire à la retraite inférieur à 70 ans.
- On peut s'interroger sur le point de savoir si les victimes de discrimination bénéficient effectivement de l'accès voulu à la justice/à des sanctions et réparations efficaces. Les statistiques concernant les affaires de discrimination en Norvège montrent que, même si les juridictions sont de plus en plus fréquemment saisies d'affaires de ce type, l'immense majorité des affaires de discrimination sont gérées via des instances administratives, le Médiateur pour l'égalité et le Tribunal pour l'égalité. Cette situation a des répercussions particulières sur l'évaluation de la conformité au droit de l'UE en termes de sanctions, étant donné que le Médiateur/Tribunal pour l'égalité n'applique pas les clauses relatives aux sanctions en octroyant des dommages-intérêts/réparations/indemnités. Une proposition visant à ce que le Tribunal pour l'égalité soit habilité à attribuer des dommages-intérêts pour préjudice moral en cas de violation établie du principe antidiscrimination a été présentée en 2011.
- La mise en œuvre par la Norvège des exigences de la directive 2000/43 pour ce qui concerne l'aide juridique aux victimes de discrimination fondée sur l'origine ethnique pourrait poser question dans la mesure où rien n'est prévu par la loi sur l'aide juridique concernant l'octroi de ce type d'aide aux victimes de cette forme de

⁵¹ Voir la contribution de la médiatrice au comité des Nations unies pour l'élimination de la discrimination raciale (CERD), 2010, sur http://www.ido.no/Global/Rapporter/CERDreport_PDF.pdf.

⁵² Voir <https://www.regjeringen.no/no/dokumenter/horing---forslag-til-felles-likestillings--og-diskrimineringslov/id2458435/> (en norvégien, consulté le 14 mars 2016).

discrimination. Si le Médiateur en charge de l'égalité et de la lutte contre la discrimination a l'obligation de fournir des orientations et des conseils aux victimes de discrimination, son rôle ne consiste pas à apporter une assistance individuelle à des victimes de discrimination ni une aide juridique à des particuliers, mais à évaluer les cas dont il est saisi pour déterminer s'il y a eu discrimination ou non. Une proposition visant à inclure la discrimination en tant que domaine pouvant donner à droit à une aide juridique gratuite est en cours depuis 2009.

- La mise à jour permanente des réglementations relatives aux logements protégés et semi-protégés /l'accès universel.

ZUSAMMENFASSUNG

1. Einleitung

Norwegen ist ein relativ homogenes Land mit rund 5,2 Millionen Einwohnern. In Norwegen leben ungefähr 698 550 Immigranten und 149 657 Menschen, die in Norwegen geboren wurden, deren Eltern aber Immigranten sind. Diese beiden Gruppen machen zusammen rund 16,3 % der Gesamtbevölkerung aus. In Norwegen leben 538 000 Menschen, die nicht die norwegische Staatsbürgerschaft besitzen.⁵³ Die Samen stellen die größte indigene Bevölkerungsgruppe Norwegens, zu der 50 000 bis 65 000 Personen gehören. Weitere nationale Minderheiten sind Juden (rund 1100) und Kvenen bzw. finnischstämmige Personen (ungefähr 10 000–15 000). Rund 700 Personen gehören zur traditionellen Bevölkerungsgruppe der Roma. Zur Anzahl der *Romani* (Fahrenden) in Norwegen liegen keine Zahlen vor, sie wird jedoch auf wenige Tausend geschätzt.⁵⁴

Rund 75 % der Norweger sind Mitglied der protestantischen Staatskirche,⁵⁵ weitere wichtige religiöse Gruppen sind Islamverbände, die römisch-katholische Kirche und die Pfingstkirche.⁵⁶ Nach offiziellen Zahlen gehören 141 027 Menschen dem Islam an, 296 521 „anderen“ christlichen Kirchen (d. h. nicht der norwegischen Staatskirche), 157 997 sind Buddhisten und 88 216 Mitglieder einer anderen Glaubensgemeinschaft.⁵⁷

Korrekte und zuverlässige Zahlen zur Anzahl der behinderten Menschen in Norwegen sind schwer zu erhalten. Laut der Nationalen Gesundheitsstudie von 1985 waren damals schätzungsweise 479 000 Menschen zwischen 16 und 67 Jahren behindert. Außerdem gab es 41 000 behinderte Personen unter 16 Jahren und 292 000 über 67 Jahren. Dies entspricht einem Anteil von 18,8 % der Bevölkerung im arbeitsfähigen Alter (16-66 Jahre).⁵⁸ Eine jüngere Untersuchung schätzt, dass heute rund 700 000 Personen über 16 Jahren, d. h. 15,5 % der Bevölkerung, eine körperliche, psychische oder geistige Einschränkung haben.⁵⁹ Laut offizieller Beschäftigungsstatistik gibt es 585 000 erwerbsfähige Personen mit Behinderung (etwa 10 % der Bevölkerung). Nur rund 254 000 sind tatsächlich erwerbstätig.⁶⁰

⁵³ Stand vom 01.01.2016, siehe Statistics Norway unter <http://www.ssb.no/folkemengde/> (in norwegischer Sprache, letzter Zugriff am 14.03.2016).

⁵⁴ Zahlen von Statistics Norway und aus dem Aktionsplan der Regierung zur Förderung der Gleichstellung und zum Kampf gegen ethnische Diskriminierung 2009-2012.

⁵⁵ Siehe <https://kirken.no/nb-NO/om-kirken/medlemskap/om-medlemsskapet/> (in norwegischer Sprache, letzter Zugriff am 14.03.2016) und http://www.ssb.no/kultur-og-fritid/statistikker/kirke_koetra/aar (in norwegischer Sprache, letzter Zugriff am 14.03.2016).

⁵⁶ Siehe <http://www.ssb.no/kultur-og-fritid/artikler-og-publikasjoner/norge-et-sekulaert-samfunn> (in norwegischer Sprache, letzter Zugriff am 14.03.2016). Die Religionszugehörigkeit wird von offiziellen staatlichen Statistiken nicht erfasst, daher basieren die Mitgliederzahlen auf den Angaben der religiösen Gemeinschaften.

⁵⁷ Nach Zahlen von Statistics Norway zur Mitgliedschaft in anderen Religions- und Weltanschauungsgemeinschaften als der norwegischen (protestantischen) Kirche auf Basis der staatlichen Mittel, die der Staat pro Mitglied bereitstellt (Stand: 1. Januar 2015), siehe <http://www.ssb.no/kultur-og-fritid/statistikker/trosamf> (in norwegischer Sprache, letzter Zugriff am 14.03.2016). Ein vollständiges Mitgliedsverzeichnis aller Organisationen außerhalb der Norwegischen Kirche auf der Grundlage der jährlichen staatlichen Mitgliedszuschüsse ist auf der Webseite des Kultusministeriums zu finden: <https://www.regjeringen.no/no/tema/religion-og-livssyn/tros-og-livssynssamfunn/innsiktsartikler/antall-tilskuddsberettigede-medlemmer-i/id631507/> (letzter Zugriff am 14.03.2016).

⁵⁸ Siehe die Norwegische Staatliche Untersuchung NOU 1998:18 "Det er bruk for alle" (Jeder ist nützlich), Kapitel 9.6.5.

⁵⁹ Siehe den Bericht von Statistics Norway "På like vilkår? Helse og levekår blant personer med nedsatt funksjonsevne" (Gleichberechtigt? Gesundheit und Lebensbedingungen von Menschen mit Behinderung), unter http://www.ssb.no/emner/03/01/10/rapp_201020/rapp_201020.pdf (letzter Zugriff am 13.04.2015).

⁶⁰ Laut statistischer Angaben für das 2. Quartal 2015 unter <http://www.ssb.no/arbeid-og-lonn/statistikker/akutu> (in norwegischer Sprache, letzter Zugriff am 14.03.2016).

Von einer Gesamtbevölkerung von 5 213 985 sind 744 696 Personen 66 Jahre oder älter.⁶¹ Zur sexuellen Ausrichtung liegen keine offiziellen Zahlen vor, es wird jedoch geschätzt, dass etwa 3-5 % der Bevölkerung von der normativen heterosexuellen Ausrichtung abweichen. Das entspricht rund 240 000 Menschen.⁶²

Das Rechtssystem ist vom römischen Recht inspiriert und verfügt über ein dreistufiges Gerichtssystem, das für das Straf- und Zivilrecht zuständig ist. Rechtsakte (formelle Gesetzgebung durch Gesetze und Verordnungen), die durch die gesetzgeberischen Vorarbeiten und die Rechtsprechung ausgelegt werden, sind die wichtigste Rechtsquelle vor norwegischen Gerichten und in norwegischen Behörden, obwohl sich Kläger in konkreten Fällen, auch beim Thema Diskriminierung, verstärkt auf internationales Recht und insbesondere auf EU-Recht berufen.

2. Wichtigste Gesetze

Norwegen hat die meisten wichtigen internationalen Rechtsinstrumente ratifiziert, mit denen Diskriminierung bekämpft wird. Eine bemerkenswerte Ausnahme ist jedoch das 12. Protokoll zur Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten.

Seit Juni 2014 hat Artikel 98 der norwegischen Verfassung folgenden Wortlaut: „Vor dem Gesetz sind alle Menschen gleich. Kein Mensch darf ungerecht behandelt oder unverhältnismäßig benachteiligt werden.“⁶³

Das Gesetz über den Status der Menschenrechte im norwegischen Recht⁶⁴ überführt mehrere Menschenrechtsabkommen in norwegisches Recht und verleiht diesen Abkommen Vorrang vor jeder anderen rechtlichen Bestimmung.⁶⁵ Das Internationale Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung (ICERD) ist nicht im Gesetz über den Status der Menschenrechte im norwegischen Recht enthalten, sondern wird durch das Antidiskriminierungsgesetz (ADG) eingeführt. Deshalb hat das ICERD bei Konflikten nicht automatisch Vorrang vor anderen Bestimmungen, sondern die Rangfolge muss jeweils im Einzelfall entschieden werden. Die UN-Behindertenrechtskonvention wurde am 3. Juli 2013 ratifiziert.⁶⁶ Sie ist nicht Teil des Antidiskriminierungs- und Barrierefreiheitsgesetzes (ABG), allerdings überwacht die Ombudsstelle für Gleichbehandlung und Diskriminierung die Umsetzung der Konvention in Norwegen. Für das ICERD und CEDAW gibt es ähnliche Überwachungssysteme.

Unter diese Bestimmungen fallen alle durch die Richtlinien vorgegebenen Bereiche. Ihr sachlicher Geltungsbereich geht über den Geltungsbereich der Richtlinien hinaus. Die

⁶¹ Siehe die jährliche Bevölkerungsstatistik von Statistics Norway, Stand 01.01.2015 unter <http://www.ssb.no/befolkning/statistikker/folkemengde> (in norwegischer Sprache, letzter Zugriff am 14.03.2016).

⁶² Nach Angaben von LLH, dem Norwegischen Verband von LGBT-Personen, gegenüber der Verfasserin vom 07.01.2013.

⁶³ Siehe <https://stortinget.no/globalassets/pdf/constitutionenglish.pdf> (letzter Zugriff am 14.03.2016). Die Vorarbeiten zu diesem Verfassungsartikel sind zusammengefasst in: Dokument 16 (2011-2012) Bericht des Verfassungsausschusses des *Storting* (Parlament) über Menschenrechte in der Verfassung, Kapitel 6, siehe <http://www.stortinget.no/Global/pdf/Dokumentserien/2011-2012/dok16-201112.pdf> (letzter Zugriff am 14.03.2016).

⁶⁴ Gesetz über den Status der Menschenrechte im norwegischen Recht vom 21.05.1999 Nr. 30 (*Menneskerettsloven*).

⁶⁵ Das Internationale Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung ist Teil des Antidiskriminierungsgesetzes (ADG), hat aber im Konfliktfall nicht automatisch Vorrang vor anderen Rechtsakten. Die Tatsache, dass das ICERD keinen Teil des Menschenrechtsgesetzes bildet, wurde wiederholt von NRO kritisiert, die sich gegen Diskriminierung engagieren.

⁶⁶ Siehe Prop. 106 S (2011-2012) Antrag an das *Storting* (Antrag auf Entschließung durch das Parlament) auf Beschluss der Ratifizierung des UN-Übereinkommens vom 13. Dezember 2006 über die Rechte von Menschen mit Behinderungen und Prop. 105 L 2011-2012 auf Änderung des Gesetzes über eine Ombudsstelle für Antidiskriminierung bezüglich der Überwachung der Umsetzung des UN-Übereinkommens über die Rechte von Menschen mit Behinderungen.

Antidiskriminierungsbestimmungen der Verfassung sind direkt anwendbar. Die Gleichbehandlungsbestimmungen der Verfassung können sowohl gegen staatliche als auch gegen private Akteure geltend gemacht werden.

Der Rechtsrahmen im Bereich Antidiskriminierung ist im Übrigen gut entwickelt, jedoch nur schwer zu erfassen, weil seine gesetzliche Grundlage aus fünf unterschiedlichen allgemeinen Rechtsakten und Spezialgesetzen besteht.

Die wichtigsten Elemente des Antidiskriminierungsrechts sind das Geschlechtergleichstellungsgesetz (GG),⁶⁷ das Antidiskriminierungsgesetz (ADG), das ethnische Herkunft, Religion und Weltanschauung abdeckt,⁶⁸ das Antidiskriminierungs- und Barrierefreiheitsgesetz (ABG), das Behinderung abdeckt,⁶⁹ das Arbeitsschutzgesetz (ASG), das Alter, politische Überzeugung, Mitgliedschaft in Gewerkschaften sowie Teilzeit- und Leiharbeit abdeckt,⁷⁰ sowie weitere Spezialgesetze (Seefahrtsgesetz und Wohnraumgesetze). Eine überarbeitete und vereinheitlichte Fassung dieser Gesetze wurde am 21. Juni 2013 verabschiedet, als auch das Gesetz über sexuelle Ausrichtung und Antidiskriminierung (GSA) in Kraft trat, das sich mit sexueller Ausrichtung, Geschlechteridentität und dem Ausdruck von Geschlechtlichkeit befasst.⁷¹ Alle neuen Gesetze traten zum 1. Januar 2014 in Kraft.

Artikel 185 und Artikel 186 des Strafgesetzbuchs (2005) gewähren strafrechtlichen Schutz vor Diskriminierung.

Es wird davon ausgegangen, dass das norwegische Antidiskriminierungsrecht dem Besitzstand der EU entspricht. Die Regierung hat sich verpflichtet, in ihrer Arbeit gegen Diskriminierung mindestens die Anforderungen der EU zu erfüllen oder sogar darüber hinaus zu gehen.⁷² Da die Gleichbehandlungsrichtlinien (2000/78 und 2000/43) jedoch nicht Teil des EWR-Abkommens sind, wurden die in den Richtlinien vorgesehenen Ausnahmeregelungen nicht klar formuliert. Das Oberste Gericht hat den Schutz vor Diskriminierung in aktuellen Urteilen gestärkt. In Paragraph 30 des Urteils zur Sache Rt-2012-424 betonte das Oberste Gericht: „Obwohl keine rechtliche Verpflichtung zur Überführung der Gleichbehandlungsrahmenrichtlinie in nationales Recht besteht, entspricht es der ständigen Praxis des Obersten Gerichts, dass die Bestimmungen des Arbeitsschutzgesetzes in Übereinstimmung mit der Gleichbehandlungsrahmenrichtlinie auszulegen und umzusetzen sind“. Die Sache Rt-2012-219 des Obersten Gerichts ähnelt inhaltlich der Rechtssache C-447/09 (*Prigge*) des EuGH. Das Oberste Gericht betonte in Paragraph 46, dass bei der Auslegung der Normen des Arbeitsschutzgesetzes die Gleichbehandlungsrahmenrichtlinie zugrunde zu legen ist.⁷³

⁶⁷ Geschlechtergleichstellungsgesetz (GG) vom 21.06.2013 Nr. 59, in Kraft seit 01.01.2014, unter <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-059-eng.pdf>. Dieses Gesetz trat an die Stelle des vorherigen Geschlechtergleichstellungsgesetzes Nr. 45 vom 9.06.1978 (*Likestilling*). Die wichtigsten Begriffe sind in beiden Fassungen ähnlich definiert.

⁶⁸ Antidiskriminierungsgesetz (ADG) Nr. 60 vom 21.06.2013, in Kraft seit 01.01.2014, unter <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-060-eng.pdf>. Dieses Gesetz trat an die Stelle des Antidiskriminierungsgesetzes Nr. 33 vom 03.06.2005 über das Verbot von Diskriminierung aufgrund der ethnischen Herkunft, Religion usw. (*Diskrimineringsloven*). Die wichtigsten Begriffe sind in beiden Fassungen ähnlich definiert.

⁶⁹ Antidiskriminierungs- und Barrierefreiheitsgesetz (ABG) Nr. 61 vom 21.06.2013, in Kraft seit dem 01.01.2014 unter <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-061-eng.pdf>. Dieses Gesetz trat an die Stelle des Gesetzes Nr. 42 vom 20.06.2008 über das Verbot von Diskriminierung aufgrund von Behinderungen (*tilgjengelighetsloven*). Die wichtigsten Begriffe sind in beiden Fassungen ähnlich definiert.

⁷⁰ Arbeitsschutzgesetz (ASG) Nr. 62 vom 17.06.2005, aktuelle Fassung Nr. 61 vom 21.06.2013, in Kraft seit dem 01.01.2014. Die neuesten Änderungen sind in der englischen Übersetzung unter <http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156> noch nicht berücksichtigt.

⁷¹ Gesetz über sexuelle Ausrichtung und Antidiskriminierung (GSA) Nr. 59 vom 21.06.2013, in Kraft seit 01.01.2014. Englische Übersetzung unter: <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-058-eng.pdf>.

⁷² Weißbuch der Regierung über einen stärkeren Schutz vor Diskriminierung im Arbeitsleben, NOU 2003:2 *Skjerpet vern mot diskriminering i arbeidslivet*, S. 7.

⁷³ Siehe Sache Rt 2012-424 Paragraph 30 und Sache Rt 2012-219. Ähnlich äußerte sich das Oberste Gericht in Sachen, in denen es um Altersdiskriminierung ging: Rt 2011-964, Rt 2011-609 und Rt 2010-202.

Durch die Überarbeitung der Antidiskriminierungsgesetze im Jahr 2013 sollten die wichtigsten Begriffsbestimmungen harmonisiert und verdeutlicht werden, um bei sämtlichen Diskriminierungsgründen ein ähnliches Schutzniveau zu gewährleisten. Allerdings wurden wichtige Elemente aus den Rechtstexten entfernt, obwohl laut den Vorarbeiten keine inhaltliche Änderung beabsichtigt ist. Dies ist ein Problem, weil es darauf hinweist, dass sich nach und nach eine neue Auslegungspraxis entwickelt, insbesondere in Bezug auf die erlaubten Ausnahmen bei unmittelbarer Diskriminierung.

Es ist fraglich, ob Norwegen den Opfern von Diskriminierung aufgrund der Rasse oder ethnischen Herkunft die in der Richtlinie 2000/43 geforderte unabhängige Unterstützung gewährt, weil die Ombudsstelle lediglich die Aufgabe hat, Opfer von Diskriminierung zu beraten und nicht zu unterstützen und weil in Diskriminierungsfällen keine kostenlose Verfahrenshilfe gewährt wird.

3. Wichtige Grundsätze und Begriffe

Das norwegische Antidiskriminierungsrecht deckt in allen sozialen Bereichen die folgenden Diskriminierungsgründe ab: Geschlecht, ethnische und nationale Herkunft, Abstammung, Hautfarbe, Sprache, Religion oder Weltanschauung, sexuelle Ausrichtung und Behinderung. Diskriminierung aufgrund der politischen Überzeugung, Mitgliedschaft in einer Gewerkschaft und des Alters ist im Arbeitsleben verboten.

Die Begriffsbestimmungen von unmittelbarer und mittelbarer Diskriminierung, Belästigung und Anweisung zur Diskriminierung entsprechen den Richtlinien 2000/43 und 2000/78. Der Begriff Diskriminierung wird im ADG Art. 6, ABG Art. 5⁷⁴, GSA Art. 5 und ASG Art. 13-1 definiert. In Art. 13-1 ASG werden unmittelbare und mittelbare Diskriminierung nicht näher bestimmt, die Begriffe werden jedoch in den Vorarbeiten behandelt.⁷⁵ Belästigung wird durch ADG Art. 9, ABG Art. 8, GSA Art. 8 und ASG Art. 13-1(2) verboten. Anweisung zur Diskriminierung wird durch ADG Art. 11, ABG Art. 10, GSA Art. 10 und ASG Art. 13-1(2) verboten.

Die Pflicht zu angemessenen Vorkehrungen sowie Bestimmungen zu geschützten bzw. halbgeschützten Beschäftigungsformen sind im ABG geregelt.

Diskriminierung durch Assoziierung ist in Bezug auf ethnische Herkunft, Religion und Weltanschauung durch Art. 6 des ADG abgedeckt, in Bezug auf Behinderungen durch Art. 5 des ABG und in Bezug auf sexuelle Ausrichtung durch Art. 5 des GSA.

Gefühlte oder vermutete Diskriminierung ist im norwegischen Recht verboten, wenn diese Gefühle oder Vermutungen dazu geführt haben, dass eine Person tatsächlich weniger günstiger behandelt wurde.

Für Fälle, in denen eine Mehrfachdiskriminierung vorliegt, gibt es keine eigene Regelung. „Mehrfachdiskriminierung“ ist in den Gesetzen (zur Nichtdiskriminierung) oder Rechtsinstrumenten nicht ausdrücklich verboten. Die Gleichbehandlungsombudsstelle und das Gleichbehandlungsschiedsgericht sind beide berechtigt, Fälle von Diskriminierung aus mehreren Gründen zu prüfen, vor allem in Bezug auf Geschlecht und Alter sowie Geschlecht und Religion (Hidschab).

Schutz vor Viktimisierung gewähren ABG Art. 9, ADG Art. 10, GSA Art. 9 und ASG Art. 2-5.

⁷⁴ Das Verbot von Diskriminierung bezieht sich auf Diskriminierung aufgrund einer bestehenden, vermuteten, früheren und möglichen Behinderung sowie auf Diskriminierung von Personen, aufgrund deren Beziehung zu einem Menschen mit Behinderung.

⁷⁵ Ot.prp nr 49 (2004-2005), Kapitel 25 (in norwegischer Sprache): <http://www.regjeringen.no/nb/dep/aid/dok/regpubl/otprp/20042005/otprp-nr-49-2004-2005-/25.html?id=397026> (letzter Zugriff am 14.03.2016).

In allen Antidiskriminierungsgesetzen – dem ABG, ADG, GSA und ASG – ist eine Ausnahme vom Diskriminierungsverbot vorgesehen, wenn die Ungleichbehandlung in wesentlichen und entscheidenden beruflichen Anforderungen begründet ist. Im Arbeitsleben ist im Allgemeinen keine Ausnahmeregelung für Arbeitgeber vorgesehen, deren Ethik sich auf einer Religion oder Weltanschauung gründet. Diese Arbeitgeber können jedoch verlangen, dass ihre Mitarbeiter dieser Religion oder Weltanschauung angehören, sofern dies gemäß der allgemeinen Ausnahmebestimmung aufgrund wesentlicher und entscheidender beruflicher Anforderungen erfolgt.

4. Sachlicher Anwendungsbereich

Die nationale Gesetzgebung gilt grundsätzlich für jedes Beschäftigungs- und Auftragsverhältnis in der Privatwirtschaft und der öffentlichen Hand, einschließlich Vertragsarbeit, selbständiger Beschäftigung, Militärdienst und gesetzlichen Ämtern.

Die Gesetze GG, ADG, GSA und ABG umfassen alle Sektoren und sämtliche in den Richtlinien genannten Diskriminierungsgründe. ADG, GSA und ABG gelten für alle Bereiche des gesellschaftlichen Lebens mit Ausnahme des Familienlebens und persönlicher Beziehungen.

Das ASG betrifft nur das Arbeitsleben: Es gilt für alle Maßnahmen, die durch Mitarbeiter durchgeführt werden, sofern diese im Gesetz nicht ausdrücklich ausgeschlossen sind. Außerdem fällt auch die Auswahl und Behandlung von selbständig Beschäftigten und Leiharbeitern unter die Bestimmungen des Gesetzes. Alter ist nur im Arbeitsleben ein Schutzgrund.

Das bestehende Recht regelt alle Aspekte von Beschäftigungsverhältnissen, von der Stellenausschreibung bis zur Kündigung. Das norwegische Recht nimmt die Streitkräfte, die Polizei, den Strafvollzug oder die Rettungsdienste nicht ausdrücklich vom Verbot der Diskriminierung aufgrund des Alters oder einer Behinderung aus. Auch beim Arbeitsschutz gibt es keine Ausnahmen in Bezug auf Behinderungen.

5. Rechtsdurchsetzung

Klagen wegen mutmaßlicher Diskriminierung können entweder vor ein ordentliches Gericht oder vor eine der Stellen gebracht werden, die Norwegen zur Überprüfung von Diskriminierungsfällen eingerichtet hat: die Ombudsstelle für Gleichstellung und Antidiskriminierung (Gleichstellungsombudsstelle) und das Schiedsgericht für Gleichstellung und Antidiskriminierung (Gleichstellungsschiedsgericht).

Im Allgemeinen werden Diskriminierungsklagen in der Privatwirtschaft und im öffentlichen Sektor nach demselben Verfahren geprüft. Zivilgerichte können dem Geschädigten gemäß dem ADG, ABG, GSA und AG Schadensersatz bzw. Entschädigungen zuerkennen. Die norwegischen Gesetze legen keine Obergrenze für die Höhe der Entschädigung und keine Regeln zur deren Berechnung fest. Bei einer strafrechtlichen Behandlung können Geldstrafen verhängt werden.

Ein wichtiger Verfahrensgrundsatz bei norwegischen Zivilgerichten ist die freie Beweiswürdigung des Gerichts während des Verfahrens. Es können alle möglichen Beweise verwendet werden, jedoch nur für Tatsachen, die für die Entscheidung des Gerichts von Bedeutung sein können. Der Umfang der Beweisaufnahme muss der Bedeutung des Rechtsstreits entsprechen. Für Diskriminierungsfälle gelten dieselben Regeln wie für jedes andere Verfahren vor einem Zivilgericht.

Testing-Verfahren sind in den Gesetzen nicht ausdrücklich zugelassen, weil die Gesetze sich zu diesem Thema nicht äußern. Nach dem Grundsatz der freien Beweiswürdigung der

Gerichte sind Testing-Verfahren jedoch in allen Fällen von Diskriminierung vor Gericht zulässig.

Das norwegische Recht erlaubt auch die Nutzung von statistischen Daten zum Nachweis von mittelbarer Diskriminierung. Allerdings muss nach norwegischem Recht nicht nachgewiesen werden, dass eine mittelbare Diskriminierung stattgefunden hat, sondern es wird geprüft, ob sich eine Handlung oder Unterlassung auf einen Einzelnen oder eine Gruppe nachteilig auswirkt.

Für alle Diskriminierungsgründe und auch für die Prüfung, ob angemessene Vorkehrungen getroffen wurden oder ob eine Belästigung, Viktimisierung oder Anweisung zur Diskriminierung vorliegt, gilt die Regel der geteilten Beweislast.

Verbände können sich an Verwaltungsverfahren beteiligen und im Namen des Opfers tätig werden. Voraussetzung ist, dass die Organisation „ganz oder teilweise dem Zweck dient, Diskriminierung zu bekämpfen“, die aufgrund der gesetzlich verbotenen Gründe erfolgt, siehe Artikel 27 ADG, Art. 32 ABG, Art. 25 GSA und Art. 13-10 AG. Die Verbände können dabei nach eigenem Ermessen handeln.

Über 95 % aller Diskriminierungsfälle werden von der Gleichstellungsombudsstelle und vom Gleichstellungsschiedsgericht behandelt. Diese Stellen können keine Entschädigung zuerkennen und nur unter ganz bestimmten Umständen Geldbußen verhängen. Pro Jahr werden nur wenige Fälle vor einem ordentlichen Gericht verhandelt. Die geringe Zahl der Gerichtsverfahren lässt sich unter anderem mit den Risiken und Kosten von Gerichtsprozessen erklären und damit, dass in Diskriminierungsfällen nur selten Prozesskostenhilfe gewährt wird. Ein besonders wichtiger Fall, mit dem sich der Oberste Gerichtshof im Jahr 2015 befasste, war Rt-2015-1313, in dem es um den Geltungsbereich von Artikel 12 des Gesetzes über die Ombudsstelle für Antidiskriminierung (GOA) ging.⁷⁶ Der Gerichtshof kam zu dem Schluss, dass eine Entscheidung des Gleichstellungsschiedsgerichts, in der festgestellt wird, dass in dem jeweiligen Fall kein Verstoß gegen die Antidiskriminierungsgesetze vorliegt, nicht unter Berufung auf § 12 GOA gerichtlich angefochten werden kann. Die Entscheidungen des Schiedsgerichts für Gleichstellungsfragen, so der Gerichtshof, haben nicht in dem Maße Rechtswirkung, dass gegen das Schiedsgericht auf Änderung seiner Entscheidung geklagt werden kann. Das GOA schließt jedoch nicht aus, dass der Arbeitnehmer/die Arbeitnehmerin den Arbeitgeber/die Arbeitgeberin wegen Diskriminierung verklagt, um den Fall von einem Gericht umfassend prüfen zu lassen.

6. Gleichbehandlungsstellen

Die Gleichstellungsombudsstelle und ihre Berufungsinstanz, das Gleichstellungsschiedsgericht, sind verwaltungstechnisch unabhängige Gleichbehandlungsstellen, die eingerichtet wurden, um die Klagen von Einzelpersonen wegen mutmaßlicher Verstöße gegen das Diskriminierungsverbot zu prüfen. Ombudsstelle und Schiedsgericht sind kostenlose und leicht zugängliche Beschwerdestellen, bei denen Diskriminierungsfälle außergerichtlich behandelt werden.

Ernennung, Organisation, Zuständigkeiten und Rechte dieser Stellen sind im Gesetz über die Ombudsstelle für Antidiskriminierung (GOA) geregelt. Die Stellen agieren unabhängig und diese Unabhängigkeit ist auch gesetzlich festgelegt. Die Gleichstellungsombudsstelle hat eine Doppelfunktion. Sie überwacht die Einhaltung der Gesetze und setzt sich aktiv für die Förderung der Gleichstellung und den Kampf gegen Diskriminierung ein. Als Hüter der Gesetze urteilt die Gleichstellungsombudsstelle über Klagen wegen Verstößen gegen die

⁷⁶ Siehe Gesetz über die Ombudsstelle für Gleichstellung und Antidiskriminierung und das Schiedsgericht für Gleichstellung und Antidiskriminierung (Gesetz über die Ombudsstelle für Antidiskriminierung, GOA) Nr. 40 vom 10.06.2005, <http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-on-the-Equality-and-Anti-Discrim.html?id=451952>.

Gesetze und Vorschriften, die unter seine Zuständigkeit fallen, und gibt Ratschläge und Empfehlungen zu diesen Rechtsakten. Ihre Urteile sind nicht rechtsverbindlich und können nicht durchgesetzt werden, allerdings wird vorausgesetzt, dass öffentliche Stellen sich an ihre Empfehlungen halten. Die Gleichstellungsombudsstelle muss die Parteien dazu bringen, sich freiwillig ihrem Urteil zu beugen.

Die Ombudsstelle führt unabhängige Untersuchungen durch, veröffentlicht Berichte und spricht Empfehlungen zum Thema Diskriminierung aus. Jedes Jahr veröffentlicht die Ombudsstelle einen Jahresbericht und andere Berichte über den Stand der Gleichstellung.

Die Ombudsperson für Gleichstellungsfragen wird durch jährliche Mittelzuweisungen aus dem Ministerium für Kinder, Gleichstellung und soziale Eingliederung finanziert. Obwohl die Ombudsperson vom Ministerium ernannt wird und ihre Mitarbeiter Beamte sind, wird ihre Unabhängigkeit in Norwegen nicht bezweifelt, weil ihr Mandat rechtlich klar geregelt und sie gegenüber dem Ministerium nicht weisungsgebunden ist. Im Staatshaushalt für 2015 waren für die Ombudsstelle 53 981 000 NOK (rund 5 997 888 EUR) veranschlagt, was – abgesehen vom schlechteren Umrechnungskurs – den früheren Budgets gleicht.

Das Gleichstellungsschiedsgericht ist die Berufungsinstanz der Gleichstellungsombudsstelle. Seine Mitglieder werden vom Ministerium für Kinder, Gleichstellung und soziale Eingliederung für eine Amtszeit von vier Jahren ernannt, die später verlängert werden kann. Vorsitzende/r und stellvertretende/r Vorsitzende/r des Gerichts müssen für ein Richteramt qualifiziert sein. Die Mitglieder werden aufgrund ihrer Erfahrungen im Bereich Diskriminierung ausgewählt. Das Gleichstellungsschiedsgericht hat ein Sekretariat, das mit Angestellten des öffentlichen Dienstes besetzt ist.

Die Gleichstellungsombudsstelle berät Opfer von Diskriminierung und stellt ihnen sachdienliche Informationen zur Verfügung. Die Ombudsstelle ist bei der Prüfung von Klagen unparteiisch. Gemäß dem GOA darf die Ombudsstelle keine Partei bei externen Verfahren vertreten. Deshalb fungiert die Ombudsstelle nicht als Rechtsbeistand oder Anwalt der Opfer. Weder die Ombudsstelle noch das Schiedsgericht dürfen Fälle eigenständig vor Gericht bringen, wenn niemand Klage eingereicht hat. Hier erfüllt die Ombudsperson für Gleichstellungsfragen nicht alle Aufgaben, die in der Richtlinie 2000/43 genannt sind; weder sie noch eine andere Stelle gewähren Opfern von Diskriminierung eine unabhängige Unterstützung. Bis 2006 bot die Zentralstelle gegen ethnische Diskriminierung (SMED) Rechtsbeistand für Opfer von ethnischer Diskriminierung. Als die Zentralstelle jedoch in die „neue“ Gleichstellungsombudsstelle integriert wurde, wurde das Rechtshilfesystem abgeschafft. Das Fehlen eines Rechtshilfesystems, das Opfern von Diskriminierung unabhängige Unterstützung anbietet und gezielt Diskriminierung aufgrund der ethnischen Herkunft bekämpft, ist ein Fehler im aktuellen System, in dem eine umfassende Gleichstellungsombudsstelle für alle Diskriminierungsgründe zuständig ist.

Obwohl in Norwegen nur wenige Roma und Reisende leben, hat die Ombudsperson für Gleichstellungsfragen wiederholt auf Probleme im Zusammenhang mit Roma und Reisenden hingewiesen. In ihrem Bericht an den UN-Ausschuss für die Beseitigung der Rassendiskriminierung hat die Ombudsperson das wichtigste Problem angesprochen: dass den Roma zahlreiche Grundrechte verweigert werden, wenn sie ihren traditionellen Lebensstil nicht aufgeben.⁷⁷ Die Ombudsperson befürchtet, dass die Reisenden dafür verantwortlich gemacht werden, wenn es der norwegischen Schulpolitik nicht gelingt, sich an eine traditionell mobile Lebensweise anzupassen. Die Roma werden außerdem systematisch von Campingplätzen und aus Restaurants verwiesen, weil sie einer nationalen Minderheit angehören. Auf politischer Ebene war die Ombudsstelle daher eine Stimme für die Roma in der norwegischen Öffentlichkeit.

⁷⁷ Siehe den Bericht der Ombudsperson an den UN-Ausschuss für die Beseitigung der Rassendiskriminierung (CERD) von 2010, unter http://www.ido.no/Global/Rapporter/CERDreport_PDF.pdf.

7. Wichtige Punkte

Die wichtigsten rechtlichen Themen bei der Bekämpfung von Diskriminierung aufgrund von Rasse bzw. ethnischer Herkunft, Religion oder Weltanschauung, sexueller Ausrichtung, Behinderung und Alter in Norwegen sind:

- Ein neues Gesetz zum Schutz vor Diskriminierung aufgrund der sexuellen Ausrichtung und der sexuellen Identität in allen Lebensbereichen, es wurde 2013 verabschiedet und trat zum 1. Januar 2014 in Kraft. Die Neufassung, durch die die Antidiskriminierungsgesetze harmonisiert und für alle Diskriminierungsgründe derselbe Schutz eingeführt wurde, könnte zu Unklarheiten über den rechtlichen Geltungsbereich führen, weil die frühere, sehr eng gefasste Ausnahmeregel vom Verbot der unmittelbaren Diskriminierung nun möglicherweise großzügiger ausgelegt wird.
- Obwohl 2013 eine vollständige Überarbeitung des Antidiskriminierungsgesetzes erfolgte, die seit 1. Januar 2014 in Kraft ist, wurde im Oktober 2015 ein neuer Entwurf für ein neues, umfassendes Gesetz vorgelegt und eine öffentliche Anhörung durchgeführt.⁷⁸
- Die einzige einschlägige gesetzliche Änderung, die 2015 beschlossen wurde, war die Anhebung der Altersgrenze in Artikel 15-13a Arbeitsschutzgesetz von 70 auf 72 Jahre sowie das Verbot, in internen Businessplänen usw. ein obligatorisches Renteneintrittsalter von unter 70 Jahren festzuschreiben.
- Es ist fraglich, ob Opfer von Diskriminierung wirklich den notwendigen Zugang zu Gerechtigkeit bzw. wirksamen Sanktionen und Rechtsmitteln haben. Statistische Daten über Diskriminierungsfälle in Norwegen zeigen, dass die Gerichte zwar Diskriminierungsfälle verhandeln und immer mehr Fälle vor Gericht kommen. Dennoch wird die große Mehrzahl der Diskriminierungsfälle in Norwegen durch die zuständigen Verwaltungsstellen, die Gleichstellungsombudsstelle und das Gleichstellungsschiedsgericht, bearbeitet. Dies wirft insbesondere die Frage auf, ob Norwegen bei den Sanktionen dem EU-Recht folgt, weil die Ombudsstelle und das Schiedsgericht dem Opfer nicht wie vorgegeben Schadenersatzleistungen bzw. Entschädigungen zusprechen können. 2011 wurde vorgeschlagen, dass das Gleichstellungsschiedsgericht in Fällen, in denen ein Verstoß gegen den Grundsatz der Gleichbehandlung festgestellt wurde, eine Entschädigung für immaterielle Verluste zuerkennen kann.
- Es ist fraglich, ob Norwegen Opfern von Diskriminierung aufgrund der ethnischen Herkunft den in Richtlinie 2000/43 vorgeschriebenen Rechtsschutz gewährt, weil es nach dem Rechtsbeihilfegesetz kein System gibt, das Opfern von Diskriminierung aufgrund der ethnischen Herkunft Rechtshilfe gewährt. Obwohl die Gleichstellungsombudsstelle und das Gleichstellungsschiedsgericht Opfern von Diskriminierung Beratung und Informationen bereitstellen, ist es nicht Aufgabe der Ombudsstelle, Opfer individuell zu unterstützen oder ihnen Rechtsbeistand zu gewähren. Die Stelle prüft nur, ob das Opfer diskriminiert wurde oder nicht. Seit 2009 wird an einer Gesetzesänderung gearbeitet, durch die auch in Diskriminierungsfällen eine kostenlose Rechtshilfe gewährt wird.
- Laufende Überarbeitung der Regeln über geschützte und halbgeschützte Beschäftigungsformen bzw. Barrierefreiheit.

⁷⁸ Siehe <https://www.regjeringen.no/no/dokumenter/horing--forslag-til-felles-likestillings--og-diskrimineringslov/id2458435/> (letzter Zugriff am 14.03.2016) (in norwegischer Sprache).

INTRODUCTION

The national legal system

The Norwegian legal system is inspired by the roman legal system, and has a three-level court system that handle both criminal and civil law. Statutory provisions (formal legislation through acts and their regulations) interpreted through the legal preparatory works and case law are the primary sources of law invoked in Norwegian courts of law and in respect of Norwegian administrative agencies, although international legislation, both EU and ECHR law, is increasingly being invoked in concrete cases.

Discrimination cases may be brought before the ordinary courts.

The key administrative procedure to handle discrimination cases is however the Equality and Anti-Discrimination Ombud (the Equality Ombud)⁷⁹ with its appeal body the Equality and Anti-Discrimination Tribunal⁸⁰ (hereinafter referred to as the Equality Tribunal). The appointment, method of organisation and authority of these bodies are regulated in the Anti-Discrimination Ombud Act - AOT.⁸¹

Of some relevance to anti-discrimination law is also the Labour Court, which deals with disputes between trade unions that include the interpretation, validity and existence of collective agreements and cases of breach of collective agreements – to the extent anti-discrimination provisions are included in the collective agreements.⁸²

List of main legislation transposing and implementing the directives

The legislative framework for anti-discrimination legislation is well developed, however difficult to access as its legislative base is derived from five general main different legislative acts as well as found in specialised legislation. The key pieces of anti-discrimination legislation consist of the Gender Equality Act (GEA),⁸³ the Anti-Discrimination Act (ADA) on ethnicity, religion and belief,⁸⁴ the Anti-discrimination and Accessibility Act (AAA) on disability,⁸⁵ and the Working Environment Act (WEA) on age,⁸⁶ as well as specialised legislation (the seamen's act and housing acts). These acts were

⁷⁹ See <http://www.ldo.no/en/> (accessed 10 March 2016).

⁸⁰ See <http://www.diskrimineringsnemnda.no/wips/1808551378/> (accessed 10 March 2016).

⁸¹ As per the Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal of 10 June 2005 No. 40 (*Diskrimineringsombudsloven*). (AOT) The Act came into force in 1979, and amended several times, last by law 2013-06-21-61 in force as of 1 January 2014. The recent amendments are not included in the translated version of the act, see: <http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-on-the-Equality-and-Anti-Discrim.html?id=451952> (accessed 10 March 2016).

⁸² See <http://www.arbeidsretten.no/index.php?&module=Pagesetter&func=viewpub&tid=4&pid=18&topic=1&tpl=forside&newlang=eng> (accessed 10 March 2016).

⁸³ The Gender Equality Act (GEA) of 21 June 2013 No. 59, in force as of 1 January 2014, at <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-059-eng.pdf>. This act replaces the previous Gender Equality Act (GEA) of 9. June 1978 No. 45 (*Likestilling*). Key concepts remain similar in the previous and current version (accessed 10 March 2015).

⁸⁴ The Anti-Discrimination Act (ADA) of 21 June 2013 No 60, in force as of 1 January 2014, at <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-060-eng.pdf> (accessed 10 March 2016). This act replaces the Anti-Discrimination Act of 3. June 2005 No 33 on Prohibition of discrimination based on ethnicity, religion etc (*Diskrimineringsloven*). Key concepts remain similar in the previous and current version.

⁸⁵ The Anti-Discrimination and Accessibility Act – (AAA) of 21 June 2013 No. 61, in force as of 1 January 2014 at <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-061-eng.pdf> (accessed 10 March 2016). This act replaces the previous Act of 20 June 2008 No 42 relating to a prohibition against discrimination on the basis of disability (*tilgjengelighetsloven*). Key concepts remain similar in the previous and current version.

⁸⁶ Working Environment Act (WEA) of 17 June 2005 No 62, last amended by law of 21 June 2013 No 61, in force as of 01.01.2014. Recent amendments are not included in the translation at: <http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156> (accessed 10 March 2016).

revised and aligned on 21 June 2013 upon the enactment of the Sexual Orientation Anti-Discrimination Act (SOA) on sexual orientation, gender identity and gender expression.⁸⁷

In terms of specialised legislation, the Ship Labour Act chapter 10 provides protection against discrimination in the employment relationship of seamen on the basis of political views, membership of a trade union, sexual orientation, disability or age.⁸⁸ Specialised legislation also includes prohibiting discrimination on the grounds of ethnicity, sexual orientation or disability in four different Acts regarding housing legislation (see below point 3.2.10).

Section 185 and 186 of the General Civil Penal Code⁸⁹ contains criminal law protection against discrimination. Section 185 concerns hateful expressions emphasising more clearly that racist expressions with insulting effects are punished by law. Section 186 penalises the refusal of providing goods and services as well as admission to public performance/exhibition/gathering. The provisions in the penal code are only applicable in relation to discrimination because of skin colour or national or ethnic origin, religion or life stance or sexual orientation or lifestyle and disability.

A proposal for one comprehensive anti-discrimination legislation was presented by the Ministry of Children and Equality for the public in October 2015 and sent on a public hearing.⁹⁰ This proposal builds upon the work of the government appointed Discrimination Commission, using the Government White Paper on Comprehensive protection against discrimination (NOU 2009:14) as their starting point.

It is presumed that Norwegian anti-discrimination legislation is in line with the EU *acquis*, although the Non-discrimination Directives (2000/78 and 2000/43) are not incorporated in the EEA agreement. However, the government has committed to having as high - or higher - standards in its work against discrimination as the requirements of the EU.⁹¹ This protection has been reinforced by the Supreme Court in recent judgments. In Rt 2012-424 para 30, the Supreme court underlined that 'although there is no legal commitment to incorporate the Employment Equality Directive in national law, it is according to established practice from the Supreme Court established that the regulations of the Working Environment Act are to be interpreted and implemented in accordance with the Employment Equality Directive' (*authors' translation*). Supreme Court case Rt 2012-219 was in its content similar to the facts in the ECJ case C-447/09 (*Prigge*). The Supreme Court underlined in para 46 that the standards of the Working Environment Act shall be interpreted to be compatible with the Employment Equality Directive.⁹²

Directive 2000/78 is thus implemented through the Working Environment Act (WEA)⁹³ chapter 13 on political views, membership of a trade union, sexual orientation and age,⁹⁴ and in the Anti-discrimination and Accessibility Act (AAA) originally in force as of 1 January

⁸⁷ The Sexual Orientation Anti-Discrimination Act (SOA) of 21 June 2013 No 59, in force as of 1 January 2014. Translation at: <http://www.ub.uio.no/ujur/ulovdata/lov-20130621-058-eng.pdf> (accessed 10 March 2016).

⁸⁸ The Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (The Ship Labour Act) chapter 10, in force as of 01 January 2014. See <https://www.sjofartsdir.no/en/legislation/laws/ship-labour-act/> (accessed 10 March 2016).

⁸⁹ See Penal Act of 20 May 2005 no. 28 in force as of 1 October 2015. No English version exists as of 10 March 2016.

⁹⁰ See <https://www.regjeringen.no/no/dokumenter/horing---forslag-til-felles-liestillings--og-diskrimineringslov/id2458435/> (accessed 10 March 2016)

⁹¹ Government White Paper on Strengthened protection against discrimination in working life, NOU 2003:2 *Skjerpet vern mot diskriminering i arbeidslivet*, p. 7.

⁹² See Rt. 2012-424 paragraph 30, and Rt. 2012-219.

⁹³ Act relating to working environment, working hours and employment protection, etc. (Working Environment Act) (WEA) of 17 June 2005 no 62, see <http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156> as amended 14 December 2012 (accessed 10 March 2016).

⁹⁴ The discrimination clauses in force as of 2004 in the previous WEA.

2009 covering disability.⁹⁵ Protection against discrimination because of disability is found in the AAA, although elements of protecting the continued physical and psychological working environment of people with reduced functional ability is also found in the Working Environment Act (WEA) chapter 4, imposing general accommodation duties.⁹⁶ Directive 2000/78 is also implemented through the Sexual Orientation Anti-Discrimination Act (SOA).⁹⁷ Directive 2000/43 was originally implemented by the Act on prohibition of discrimination based on ethnicity, religion and belief (the Anti-Discrimination Act - ADA) covering ethnicity, national origin, descent, skin colour, language, religion or belief, in force as of 1 January 2006.⁹⁸ The latter acts were all assessed against the Directives 2000/78 and 2000/43 before enactment. Upon the revision and harmonisation of the anti-discrimination legislation enacted in June 2013, the relationship with the directives was also assessed.⁹⁹ However, as the Non-discrimination Directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the Employment Equality Directive art 4§1, 4§2 and art 6§1 have not been clearly articulated.

The 2013 revision of the discrimination legislation aimed to harmonise and clarify the key definitions and ensure a similar protection for all discrimination grounds. However, as key elements are taken out of the actual legal texts, and the preparatory works state that no change is intended, this is worrisome, as this might indicate that new interpretation develops over time, especially in relation to the exceptions allowed for direct discrimination.

There is a question mark regarding the Norwegian implementation in relation to the requirements of Directive 2000/43 regarding independent assistance to victims of discrimination because of racial or ethnic origin. The Ombuds' mandate is only to provide guidance to victims of discrimination, not assistance. Free legal aid is not granted in discrimination cases, see point 7 e) below. An assessment of the structure and the mandate of the equality bodies was carried out in 2015.¹⁰⁰ This report was delivered to the Ministry of Children, Equality and Social Inclusion in March 2016.¹⁰¹

⁹⁵ Act relating to working environment, working hours and employment protection, etc. (Working Environment Act) (WEA) of 17 June 2005 no. 62, see <http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156> as amended 14 December 2012 (accessed 10 March 2016).

⁹⁶ Anti-Discrimination and Accessibility Act – (AAA) of 21 June 2013 No 61, in force as of 1 January 2014.

⁹⁷ The Sexual Orientation Anti-Discrimination Act (SOA) of 21 June 2013 No 59, in force as of 1 January 2014.

⁹⁸ The Anti-Discrimination Act (ADA) of 21 June 2013 No 60, in force as of 1 January 2014.

⁹⁹ See the legal preparatory works; Proposition to Parliament, Prop. 88 L (2012-2013) *Diskrimineringslovgivningen*.

¹⁰⁰ See (in Norwegian) <https://www.regjeringen.no/no/aktuelt/utredning-av-handhevingssystemet-pa-likestillings--og-ikke-diskrimineringsområdet/id2424524/> (accessed 10 March 2016).

¹⁰¹ See (in Norwegian) <https://www.regjeringen.no/no/aktuelt/utredning-av-handhevingssystemet-pa-diskrimineringsområdet/id2478335/> (accessed 10 March 2016).

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Norwegian constitution has a specific clause protecting against discrimination, article 98, and a general human rights clause, article 92.

The Constitution article 98 reads: *'All people are equal under the law. No human being must be subject to unfair or disproportional differential treatment.'*¹⁰²

Article 92 of the Constitution proclaims that *'The authorities of the State shall respect and ensure the human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway.'* The Human Rights Act¹⁰³ incorporates a number of important treaties on human rights - including the International Convention on Elimination of All Forms of Discrimination of Women - into the domestic legal system on a general basis in which the Conventions prevail over any other conflicting statutory provision.¹⁰⁴ The International Convention on Elimination of All Forms of Racial Discrimination (ICERD) is not incorporated into the Human Rights Act, but into the Anti-discrimination Act (ADA), the legal consequence being that ICERD does not prevail over other statutory provisions in case of conflict, but has to be decided through an interpretation. The UN CRPD (the Disability Convention) was ratified on 3 July 2013.¹⁰⁵ It is not incorporated into the Anti-Discrimination and Accessibility Act – (AAA), however, the Equality and Discrimination Ombudsman is responsible for the supervision of the national implementation of the Convention, similar to the national supervisory system of the ICERD and CEDAW.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

The constitutional anti-discrimination provisions are directly applicable.

The constitutional equality clauses can be enforced both against State actors and private actors.

¹⁰² See <https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf> (accessed 10 March 2016). The preparatory works to the constitutional clause is: Dok 16 (2011-2012) Report on Human Rights in the Constitution from the Constitutional Committee to the Storting (Parliament), Chapter 6, see <http://www.stortinget.no/Global/pdf/Dokumentserien/2011-2012/dok16-201112.pdf> (accessed 10 March 2016).

¹⁰³ Act Relating to the Status of Human Rights in Norwegian Law of 21 May 1999 no 30 (*Menneskerettsloven*).

¹⁰⁴ The International Convention on Racial Discrimination is incorporated in the Anti-discrimination act (ADA), but the Convention will in conflicting cases not automatically prevail. The lack of including the ICERD in the Human Rights Act has been repeatedly criticised by the NGOs working on anti-discrimination.

¹⁰⁵ See Prop. 106 S (2011–2012) Proposition to the *Stortinget* (proposal for Parliamentary resolution) on Consent to ratification of the UN Convention of 13 December 2006 on the rights of Persons with Disabilities and Prop 105 L 2011–2012 on Changes to the Anti-Discrimination Ombud's Act on the supervision of implementation of the UN Convention on the Rights of Persons with Disabilities.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

Norwegian anti-discrimination legislation provides a basis to address the following grounds of discrimination within all sectors: gender, ethnicity (including national origin, descent, skin colour, and language), religion or belief, sexual orientation and disability under the GEA, ADA, SOA and AAA.

Discrimination based on age, political views, membership of a trade union, as well as part-time and temporary work is covered within working life under the WEA.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

National law on discrimination has the following definitions:

i) Racial origin

The grounds for discrimination in the ADA cover ethnicity, religion and belief.¹⁰⁶ This does not imply a change in the understanding of the main concepts and definitions.¹⁰⁷ *Race or racial origin* is not specified as a separate distinction in the ADA, as the starting point for combating racism is to eliminate the idea that people can be divided into different races, in line with preamble no. 6 of Directive 2000/43. Discrimination based on perceptions of a person's race is regarded as discrimination based on ethnicity.¹⁰⁸

ii) Ethnic origin

The content of the term *ethnicity* is vague, and provision is made for some exercise of discretion by the enforcing agencies in defining the reach of the term's boundary zone. According to the ADA original Preparatory works, the term has both a subjective and objective content, and it is pointed out that the terms culture and ethnicity are closely linked:¹⁰⁹

'The term culture describes certain characteristics common to people belonging to a defined group that are not possessed by other groups, or not to the same extent. Such characteristics may be a shared language, shared values, shared religion, shared moral codex and shared basis of experience. Where the term ethnicity is concerned about relations, and the individual's or group's sense of being different from other individuals or groups, are at centre stage.

...

In addition, the term ethnicity could encompass objective differences which can be verified such as place of birth, place of upbringing, language, religion etc. The objective differences mentioned may incidentally also underlie the subjective experience of being different or alike.'

Thus skin colour and language are closely linked to and subsumed under the concept ethnicity. The preparatory works also make it clear that *national origin* and *descent*, as grounds for discrimination, are closely associated with the term ethnicity: these grounds

¹⁰⁶ Until 1 January 2014, the ADA specifically covered the following grounds: ethnicity, national origin, descent, skin colour, language, religion or belief. These are still covered, but not spelled out in the legal text, as the ADA now expressly cover ethnicity, religion and belief. In relation to language, setting demands for language testing without a concrete individual assessment related to the actual position constitutes discrimination as per the Ombuds' case no 14/153 of 14 May 2014.

¹⁰⁷ See the legal preparatory works; Proposition to Parliament, Prop. 88 L (2012-2013) *Diskrimineringslovgivningen*.

¹⁰⁸ According to the *travaux préparatoires* to the ADA, Proposition No 33 (2004-2005) to the Odelsting, page 89.

¹⁰⁹ See *travaux préparatoires* to the ADA: Proposition to the Storting No. 33 (2004-2005) page 87-88.

could include place of birth, non-Norwegian country background, the place where one was brought up or from which one has one's background, and relationships in the broad sense. Nationality as a ground is subsumed under the ground 'ethnicity', and as such protected under ethnicity (see below). Statelessness is also covered.¹¹⁰

iii) Religion or belief

The ADA covers discrimination because of religion or belief. The legal preparatory works specify that the wording follows the wording of Directive 2000/78, and that both having and not having a religion or belief is covered.¹¹¹ 'Religion' is not defined in the preparatory works, but it is specified that the word 'belief' is specifically chosen to underline that all kinds of life-stance beliefs are covered, not only those linked to a specific line of religious thinking. Political opinion is not protected as a 'belief', but is specifically protected in the Working Environment Act.

iv) Disability

The Norwegian definition of disability in the AAA is not limited to professional life, but formulated in the legislative preparatory works as 'reduced functional ability either regarding physical, mental or cognitive abilities'.¹¹² This definition is not specifically included in the act. The definition of disability in the AAA in relation to professional life is understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life, in line with the judgment of the European Court in the *Joined Cases C-335/11 and C-337/11 Skouboe Werge and Ring*, Paragraph 38. The social element of the reduced functional ability and the interaction with the environment in working life is also covered by the employer's general duty of accommodation in the WEA section 4-6. The Norwegian definition of disability is much wider than the definition of disability in the EU directives.¹¹³ Although neither the AAA and the WEA specifically recognize the social model of disability fully in line with the CPRD, the Norwegian definition is more in line with a social model than Directive 2000/78.

v) Age

The definition of age does not have limits upwards or downwards. Discrimination based on age will thus encompass discrimination because of high age and because of low age.¹¹⁴

vi) Sexual orientation

The definition of sexual orientation is an overarching concept that covers heterosexual, homosexual and bisexual orientation. Upon the enactment of the SOA in 2013, gender identity and gender expression were included as protected grounds.¹¹⁵ This is defined in

¹¹⁰ See decision of the Equality Ombud in case no 09/892 of 3 May 2012.

¹¹¹ See *travaux préparatoires* to the WEA, NOU 2003:2 Skjerpet vern mot Diskriminering i arbeidslivet page 36.

¹¹² See *travaux préparatoires* to the AAA, NOU 2005:8 Likeverd og tilgjengelighet (Equal worth and accessibility) page 162-163.

¹¹³ For more information on the concept of disability, see a report on the right to reasonable accommodation – a summary (Forbudet mot diskriminering på grunn av nedsatt funksjonsevne. Rett til individuell tilrettelegging for arbeidstakere og arbeidssøkere med nedsatt funksjonsevne – en oppsummering) from the Equality and Anti-Discrimination Ombud, published in Norwegian in April 2014, available at <http://www.ldo.no/globalassets/brosjyrer-handboker-rapporter/diverse-pdf1/diverse-pdf/oppsummering-individuell-tilrettelegging-270314.pdf> (accessed on 10 March 2016) On page 33 it is stated that: «it is important to note that the ECJ in the judgment of 2013 interprets the definition of disability much wider than previously in light of the CPRD, in line with the dynamic interpretation of the definition that the Convention asks for in its preamble litra e. This is as such more in line with Norwegian case law, which may make further case law (from the ECJ) more adapted to and relevant for Norwegian conditions'. (Translated to English by author).

¹¹⁴ See *travaux préparatoires* to the WEA, NOU 2003:2 Skjerpet vern mot Diskriminering i arbeidslivet page 16.

¹¹⁵ See the SOA legal preparatory works; Proposition to Parliament, Prop. 88 L (2012-2013) chapter 16.

the SOA by reference to the *travaux préparatoires* to the act, which are in Norway key to the definitions in the legal text.

2.1.2 Multiple discrimination

In Norway, prohibition of multiple discrimination is not included in the law.

There are no legal rules per se in the field of anti-discrimination which deal with situations of multiple discrimination. 'Multiple discrimination' is not explicitly prohibited in (non-discrimination) statutory legislation or statutory legal instruments, however it is assumed that multiple discrimination is currently covered by the discrimination legislation.

An official report from 2011 on the structure for (gender) equality suggested that a specific national provision be included in the GEA to cover multiple discrimination in relation to gender.¹¹⁶ This was not carried through in the recent revision of the discrimination legislation. The government thought it unnecessary to have a specific rule regarding multiple discrimination, as multiple discrimination is already prohibited through practice, in the case law detailed below. They also pointed to the mandate of the Equality Ombud as stated in the AOT regulations, which states the Ombuds' duty to secure a multidimensional approach or dimension to be considered.¹¹⁷

Both the courts and the Equality Ombud and the Equality Tribunal have handled cases relating to cross grounds/ multiple grounds discrimination, mainly in relation to gender and age, as well as gender and religion (hijab).¹¹⁸ The Ombud handled 15 cases in 2012 which involved cases of multiple discrimination.¹¹⁹ The annual reports for 2013 and 2014 do not specify the number of cases involving multiple discrimination.¹²⁰

The national court system has handled only two cases where multiple discrimination has been claimed. Both cases concerned gender and age. Both had been handled by the Equality Ombud before being brought to court. In the most recent case, a 61 year old male social worker claimed to be subject to discrimination because of gender and age, as he was not selected to participate in an interview for a position at the local Welfare office on a small island called Smøla. The applicant was well known by the employers. The case was brought before the Equality Ombud, who agreed that he had been subject to discrimination because of age, as did the court of first instance. Neither found discrimination because of gender. Both the court of appeal and the Supreme Court found that he had not been selected for interview because the employer sought to recruit someone with a different

¹¹⁶ See NOU 2011:18 Structure for equality (in English) accessible at https://www.regjeringen.no/globalassets/upload/bld/nou18_ts.pdf (accessed 10 March 2016).

¹¹⁷ See the legal preparatory works; Proposition to Parliament, Prop. 88 L (2012-2013). *Diskrimineringslovgivningen*, page 93.

¹¹⁸ See the Ombuds' cases no 07/627, 08/1528, 08/01351, 09/526 and 13/1307 of 29 April 2014. The Tribunal's cases on hijab and gender are no 26/2009, 08/2010 and 2/2014. The latter case signals a new line of reasoning within the Tribunal which runs counter to previous legal understanding of the Ombud and the Tribunal regarding direct discrimination because of religion. The exception for direct discrimination is broadened regarding religion. Furthermore, the Tribunal has accepted in this case that the secular and value-neutral orientation of the needs of the employer be given priority before the right of Muslim women to be able to wear their religious symbols within employment. There has been no case tried before the ordinary courts yet on this issue. The Ombud and Tribunal assess all cases regarding hijab cases both on the grounds of religion (direct discrimination) and gender (indirect discrimination). The previous Gender Equality Board of Appeals handled a case on gender and hijab, case no 8/2001 assessing indirect discrimination because of gender, as religion was not a protected ground by law in 2001.

¹¹⁹ See the Ombud's annual report for 2012 (in Norwegian) at http://www.ldo.no/globalassets/brosjyrer-handboker-rapporter/rapporter_analyser/rapporter_diverse/ldo-arsrapport-2012.pdf (accessed 10 March 2016).

¹²⁰ See the Ombud's annual report for 2013 (in Norwegian) at http://www.ldo.no/globalassets/brosjyrer-handboker-rapporter/rapporter_analyser/2013arsrapport.pdf (accessed 10 March 2016). For the Ombud's annual report for 2014 (in Norwegian) see http://www.ldo.no/globalassets/brosjyrer-handboker-rapporter/rapporter_analyser/arsmeldinger/2014-arsmelding_ldo_web.pdf (accessed 10 March 2016).

professional profile than social work. Thus, age was not the reason for the non-selection of him to participate in an interview.¹²¹

The other case had already been handled by both the Equality Ombud and Equality Tribunal, and was brought to the court of first instance because of the employer's non-compliance with the statement of the Equality Tribunal.¹²² A county, recruiting new staff was alleged of discriminating against a female worker in the fire brigade because of her age and gender, in contravention to the GEA and the WEA. The case concerned a female worker aged 41, employed on a part-time basis in the fire brigade. She subsequently applied for a longer, full-time vacancy, and then a full-time position with a fixed term. A male worker aged 27 less qualified was employed in the position that the woman had applied for. The ads announcing the position had the following formulation: 'applicants should be between 27 and 35 years of age.' The Tribunal and the Court found that the woman was discriminated against both on the grounds of gender and age, and a compensation of € 37.500, - (NOK 300.000, -) for economical loss as well as € 18.759, - (NOK 150.000, -) for non-pecuniary damage was awarded. The employer, the county, did not take the case to the appellate court, and the judgment is final.

The Equality Tribunal Case no 1/2008 was the first case to explicitly address multiple discrimination. Two women with an Asian background tried to book a hotel room in Oslo. The women were refused a room at the hotel, as the women's home address was in the Oslo area, based on written guidelines permitting staff to refuse access to people domiciled in Oslo and its environs. When assessing the case, the Tribunal found circumstances which gave grounds to believe that the hotel had attached negative importance to the women's gender and ethnic background, and that the hotel was unable to substantiate that there were other circumstances than gender and ethnicity behind the two women being refused a room.¹²³

The Equality Tribunal case 46/2011 concerned gender and disability. A woman who was suspected of having anorexia, an eating disorder, had been refused entrance to the gym where she exercised, unless she provided a medical certificate stating that she was healthy. She claimed that she was subject to multiple discrimination and harassment from the personal trainers employed by the gym. The Tribunal assessed the case both according to the question of indirect discrimination according to gender according to the GEA articles 3 and 8a, and direct discrimination because of disability according to AAA articles 4 and 6. No discrimination was proven.

No damages have been awarded in the above cases, as the Ombud/Equality Tribunal are not empowered to award damages.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Norway, the following national law (including case law) prohibits discrimination based on perception or assumption of what a person is:

Disabled, as per the AAA section 5(1)2, of another ethnicity or religion as per the ADA section 6(1)3, has a certain sexual orientation as per SOA section 5(1)2 and a certain age as per the WEA section 13-1 - if the perception or assumption has actually resulted in a

¹²¹ See Rt-2012-424 as described in annex 3 below.

¹²² Øst-Finnmark Court of first instance. Judgment of 17 March 2010 in case no 09-136827TVI-OSFI, and the Equality and Anti-Discrimination Tribunal, Case number 8/2008.

¹²³ The full text in English of the case can be accessed at:
<http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/501748867.pdf>,
<http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/62958820.doc>.

worse/ less favourable treatment of the person. If the perception or assumption has had no (negative) impact on the person concerned, discrimination has not occurred.

b) Discrimination by association

In Norway, the following national law (including case law) prohibits discrimination based on association with persons with particular characteristics:

Discrimination by association (discrimination of a person due to their relationship with a person) with a disability, ethnicity, religion or belief and sexual orientation is explicitly covered in ADA section 6(1),¹²⁴ SOA section 5(1) and AAA section 5(1)3, the latter which reads:

'The prohibition shall also apply to discrimination on the basis of the disability of a person with whom the person who is discriminated against has a connection.'

Norwegian national legislation is in line with the European Court judgment in case C-303/06 *Coleman*.

Discrimination by association is covered for the grounds disability, ethnicity, religion or belief as well as sexual orientation, but not covered in the WEA, for the discrimination ground age.

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Norway, direct discrimination is prohibited in national law. It is defined.

Direct discrimination is defined similarly for all legal grounds except age. See ADA section 6(2), AAA section 5(2) and SOA section 5(2).¹²⁵ The current general rule regarding the prohibition against discrimination reads as follows in the AAA section 5(2): 'Direct differential treatment' shall mean an act or omission that has the purpose or effect that a person is treated worse than others in the same situation, and that is due to disability.' The complainant may rely on a hypothetical comparator.

In WEA section 13-1, the concepts of direct and indirect discrimination are not defined, but the concepts are discussed and defined in the preparatory works.¹²⁶

In the most recent legal preparatory works,¹²⁷ it is stated that the purpose of the 2013 revision of the legal text is not to make significant changes in the understanding of the

¹²⁴ In the original legal preparatory works to the ADA: proposition no 33 (2004-2005) to the Odelsting on new legislation on discrimination on ethnicity, chapter 19 p. 205 and point 9.2.8.2 p 92, proposed that the ADA would also cover discrimination by association, but this was not included by Parliament in the enacted legislation in force 2006. However, based on the recommendation in the NOU 2009:24 pp 186-188, the proposal was again included, and this time enacted, see legal preparatory works; Proposition to Parliament, Prop. 88 L (2012-2013) *Diskrimineringslovgivningen* page 85.

¹²⁵ Direct discrimination was previously defined in Norwegian law as when a person is treated less favourably than another has been or would be treated in a comparable situation. Direct discrimination was thus defined in such a way to cover a situation where the purpose/ objective or effect of an act or omission is such that persons or enterprises are treated less favourably than others are, have been or would have been treated in a corresponding situation on such grounds as are covered by the actual legislation. In the current legal preparatory works, it is stated that the purpose of the current revision of the legal text is not to make significant changes in the understanding of the law, see Proposition to Parliament, Prop. 88 L (2012-2013) page 82.

¹²⁶ The definitions are not specified in the WEA chapter 13 but are discussed in its preparatory works, Ot. Prp. Nr. 49 (2004-2005) chapter 25.

¹²⁷ Proposition to Parliament, Prop. 88 L (2012-2013).

law, and as such it must be assumed that also the current definition complies with those given in the directives.

It is not worrisome that direct discrimination is defined more broadly for age, rather it is worrisome that the Norwegian former very strict prohibition on direct discrimination is being widened because of the widening scope of accepted direct discrimination because of age.

b) Justification of direct discrimination

In Norway, as a starting point, neither the ADA, AAA, SOA nor WEA permits justification of direct discrimination, neither generally, nor in relation to particular grounds, except with regard to genuine and determining occupational requirements. However, the wording of the legal texts after the 2013 revision has created an unclarity in relation to the extent of possible exceptions that were not an issue earlier. The 2013 revision of the legal texts removed the definition on direct discrimination in the legal text itself. This is particular so in relation to gender, but also the other grounds: researchers are worried that the former very clear and narrow exceptions for direct discrimination will be undermined by not having clear definitions on direct discrimination in the legal acts themselves.¹²⁸

The only accepted exceptions in relation to direct discrimination are those linked to genuine and determining occupational requirements, see point 4.1 below.

2.2.1 Situation testing

a) Legal framework

In Norway, situation testing is permitted in national law.

It is assumed that national law permits the use of situation testing in court for all discrimination grounds. Situation testing is not defined specifically, as the law is silent on this issue.

The key procedural principle in Norwegian civil courts is the free evaluation of evidence by the courts in the course of the case as presented in courts. The provisions on evidence apply to the factual basis for the ruling in the case, see section 21-2(1) of the Act of 17 June 2005 no. 90 relating to mediation and procedure in civil disputes (The Dispute Act).¹²⁹ Evidence consists according to Norwegian law both of oral presentations, witness declarations and written statements made for the purpose of the case. Evidence may be presented on facts which may be of importance for the ruling to be made. The scale and the scope of the presentation need to be proportionate in relation to the importance of the dispute. In civil cases before the courts, the procedural rules for evidence are the same in discrimination cases as in other cases. If a relevant and grounded study on situation testing exists, a claimant would normally use this as evidence in court. Evidence brought that expands the case in an unnecessary manner may have adverse consequences for the costs of litigation.

b) Practice

In Norway, situation testing is used in practice.

¹²⁸ See Strand, Vibeke Blaker (2014). Ligestillingsloven 2013 og forenklingssjuss – en trussel mot individvernet? Kvinnerettslig skriftserie/ Studies in Women's Law at <http://www.jus.uio.no/ior/forskning/omrader/kvinnerett/publikasjoner/skriftserien/dokumenter/nr-96-vibeke-blaker-strand.pdf> (accessed on 10 March 2016).

¹²⁹ Official translation at <http://www.ub.uio.no/ujur/ulovdata/lov-20050617-090-eng.pdf> (accessed 10 March 2016).

Both public institutions and NGOs such as the National Association for the Disabled, and the Norwegian Centre against Racism have carried out various small examples of situation testing regarding accessibility to publicly available clubs and bars etc. on the grounds of ethnicity and disability, and forwarded these to the Ombud for complaints and further study. An example of this is the Ombuds' case no 13/1874 of 14 April 2014, in which a bar in Oslo was found to discriminate on the basis of ethnicity when they treated controllers from the municipal business board (næringsetaten) differently. The two control groups consisted of one group in which the three persons were ethnic Norwegians, the other group consisted of three persons with ethnic origin from Togo and Algeria. Both groups were equally well dressed. The group with non-Norwegian ethnicity was refused entrance.

An academic comprehensive study was released in 2012, in which situation testing was used as a research method.¹³⁰ The study showed that job seekers with Norwegian names have a better chance of actually being called for an interview and thus securing employment than applicants with more unfamiliar names. Applicants with Pakistani names stand a 25% lesser chance of getting called to an interview. The researchers sought to examine discrimination in the workplace by sending out 1,800 fictitious job applications in response to real job ads in six different lines of business. For each ad, the researchers replied with one application using a Norwegian name and another using a Pakistani-sounding name. The fictitious applicants were given near-identical profiles in terms of age, skills and work experience. All of the would-be applicants fulfilled the minimum criteria for the job and had perfect, native-level Norwegian language skills. The report found that men with Pakistani names are more often discriminated against than any women. Private sector employers are more likely than their public sector counterparts to reject an applicant with a Pakistani name.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Norway, indirect discrimination is prohibited in national law. It is defined.

The ADA section 6(2), AAA section 5(2) and SOA section 5(2) prohibits indirect discrimination. These clauses have a similar definition (wording) regarding their protected grounds. The definition is similar to the directives.

The prohibitions read as follows:

'Discrimination shall mean direct and indirect differential treatment that is not lawful pursuant to section 6 or section 7'... 'Indirect differential treatment shall mean any apparently neutral provision, condition, practice, act or omission that results in persons being put in a worse position than others, and that occurs on the basis of sexual orientation, gender identity or gender expression' (SOA section 5(2)).'

The WEA section 13-1(1) reads:

'Direct and indirect discrimination on the basis of political views, membership of a trade union and age is prohibited.'

¹³⁰ *Diskriminerings omfang og årsaker. Etniske minoriteters tilgang til norsk arbeidsliv* (The reasons and extent of discrimination. Ethnic minorities' access to the Norwegian employment sector), ISF Report 2012:1. The study was carried out jointly by Arnfinn H. Midtbøen from the Institute for Social Research (ISF) and Jon Rogstad from the Institute for Labour and Social Research (Fafo), financed by the Ministry for Children, Equality and Family affairs, at (in Norwegian): [http://www.samfunnsforskning.no/samfunnsforskning.no/Publikasjoner/Rapporter/2012/2012-001/\(language\)/nor-NO](http://www.samfunnsforskning.no/samfunnsforskning.no/Publikasjoner/Rapporter/2012/2012-001/(language)/nor-NO) (accessed on 10 March 2016).

Indirect discrimination is not defined in the WEA itself, but it is discussed and specified in the legal preparatory works that the definitions follow Directive 2000/78 art 2 no 2 b).¹³¹

b) Justification test for indirect discrimination

The test to be satisfied to justify indirect discrimination is similar in all the different pieces of anti-discrimination legislation. See ADA section 7, SOA section 6 and AAA section 6 on 'lawful differential treatment':

'Differential treatment shall not breach the prohibition against discrimination if it has an objective purpose, it is necessary to achieve the purpose, and the negative impact of the differential treatment on the person or persons whose position will worsen is reasonably proportionate in view of the intended result.'

Thus, differential treatment that is necessary in order to achieve a legitimate aim, and which does not involve a disproportionate intervention in relation to the person or persons so treated is not regarded as discrimination.

In the WEA, the test is found in section 13-3(2):

'Discrimination that is necessary to the achievement of a just cause, and does not involve disproportionate intervention in relation to the person or persons so treated is not in contravention of the prohibition against indirect discrimination, discrimination on the basis of age or discrimination against an employee who works part-time or on a temporary basis.'

What constitutes a legitimate aim is based on an evaluation of the justification of the aim assessed in each concrete case. The action chosen must be relevant, true, necessary and proportionate in relation to the aim in order for indirect discrimination to be justified.

The legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law.

The legal preparatory works to the ADA, AAA and SOA state that the possibility for differential treatment in working life is in particular narrow and limited.¹³²

The test used to justify indirect discrimination is derived from the Bilka-case, and thus is compatible with the origins of the directives. The legal preparatory works to the acts all point directly to the understanding of the directives.

c) Comparison in relation to age discrimination

The WEA does not specify how a comparison in relation to age discrimination is to be made. This was explicitly omitted by the lawmakers, as they stated that each case will have to be assessed on its own merits, and thus, they did not want to specify how the comparison should be made, as this is left to the courts to decide.¹³³

2.3.1 Statistical evidence

a) Legal framework

¹³¹ See the *travaux préparatoires* to the WEA, Proposition to the Odelsting no 104 (2002-2003), section 8.3.5.4, p. 36.

¹³² See Proposition to Parliament, Prop. 88 L (2012-2013) p. 87.

¹³³ See the *travaux préparatoires* to the WEA, Proposition to the Odelsting no 104 (2002-2003), section 8.3.5.4, p. 37.

In Norway, there are no national rules permitting data collection. However, there is a general prohibition against the collection of sensitive personal information in Norwegian law which classifies information regarding ethnic background, religious or political views, health information, sexual relationships and membership in trade unions as sensitive information according to the Personal Data Act (PDA) section 2 no 8.¹³⁴ The purpose of the PDA is to protect natural persons from violation of their right to privacy through the processing of personal data. Once data is classified as sensitive according to the PDA, there are rules on how to process these data in section 9. One of the items articulated is that the processing is necessary for the establishment, exercise of defence of a legal claim (section 9(1) lit e). There is a clear exception in section 9(2) for non-profit associations and foundation to process sensitive personal data in the course of their activities relating to members or persons who voluntarily have regular contact with the association. These have to consent to the handling of their data.

In Norway, statistical evidence is permitted used in courts by national law in order to establish indirect discrimination.

National law permits the use of statistical evidence to establish indirect discrimination, however, it is not necessary to prove if indirect discrimination has happened or not, as the assessment that has to be made according to national legislation is whether or not an action or non-action has had a negative result for the individual or the group.¹³⁵ The use of statistical evidence is however often a practical necessity, as the prohibition on indirect discrimination attempts to protect individuals against a systemic group identification that leads to unintended negative results for the individual or the group. In order to prove indirect discrimination at an individual level, the use of statistical data will often constitute a practical necessity in order to prove that discrimination has occurred. The law does not have a specific provision regarding statistical evidence – it is considered as all other forms of evidence.

There are no specific conditions for statistical evidence to be admissible in court,

b) Practice

In Norway, statistical evidence in order to establish indirect discrimination is used in practice, but its use is not widespread, as there are few discrimination cases brought before ordinary courts.

There is no current debate on ethical or methodology issues on statistical data as evidence in court. This is probably because there are so few court cases concerning discrimination cases, and in the few cases where statistical data have been used, this has not caused problems or been debated. To the author's knowledge there has not been a discussion on European strategic litigation issue in public discussion fora.

The case law as yet in this area is sparse. There are examples where statistical data was used in a Supreme Court case on age and retirement,¹³⁶ as well as on gender and work-related pensions.¹³⁷ The significance attributed to this data by the Supreme Court in its judgment was low.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

¹³⁴ Personal Data Act of 14 April 2000 no 31. See <http://www.ub.uio.no/ujur/ulovdata/lov-20000414-031-eng.pdf> (accessed 10 March 2016).

¹³⁵ See the *travaux préparatoires* to the AAA, Proposition to the Odelsting no 44 (2007-2008) p. 101.

¹³⁶ Supreme Court judgment of 29 June 2011 (Rt-2011-964 *Gjensidige*).

¹³⁷ Supreme Court judgment of 27 November 2003 (Rt-2003-1657 *Braathens*).

In Norway, harassment is prohibited in national law. It is defined.

The various acts on anti-discrimination prohibit harassment within the grounds their particular act covers, see ADA section 9, AAA section 8 SOA section 8 and WEA section 13-1(2).¹³⁸

The general definitions are similar in the various bits of legislation: By harassment is meant acts, omissions or statements that seem or aim to seem offensive, frightening, hostile, degrading or humiliating. The subjective view of the person is an element in determining if the act is seen to constitute harassment, as well as a more 'objective' standard assessing if a reasonable person would view the action as 'seeming' offensive. In terms of disability the prohibition against harassment covers harassment on the basis of a present disability, assumed disability, past disability or possible future disability, as well as the harassment of a person on the basis of this person's relationship with a person with a disability. It is also prohibited to be an accessory to any breach of the prohibition against discrimination. The acts all provide a specific duty on employers and the managements of organisations and educational institutions that they shall within their areas of responsibility, prevent and seek to prevent harassment occurring. The definitions are equivalents to those of the directives as stated in the tables below.

Section 185 of the General Civil Penal Code¹³⁹ contains criminal law protection against discrimination, and concerns hateful expressions emphasising more clearly that racist expressions with insulting effects are punished by law. The provisions in the Penal Code are applicable in relation to discrimination because of skin colour or national or ethnic origin, religion or life stance, sexual orientation, and disability. Disability was included upon the enforcement of the 2005 Penal Act on 1 October 2015.

The legal preparatory works to the prohibition emphasise that the concept of harassment shall be construed in accordance with the general concept of harassment in the WEA section 4-3 third paragraph.¹⁴⁰ This provision contains a general requirement that workers should not 'be subject to harassment or other improper conduct.' Harassment protection pursuant to § 4-3 thus also includes harassment related to factors other than the grounds protected by discrimination rules. The provision is part of the requirements of the psychosocial work environment and is a continuation of the now obsolete Working Environment Act (1977) § 12. Case law regarding the provision related to general harassment (previously WEA section 12 and current WEA section 4-3) is thus of relevance for the understanding of the concept of discriminatory harassment.¹⁴¹

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Norway, the employer and/or the employee is liable.

The scope of liability for discrimination (including harassment) is wide. Employers and service providers such as landlords, schools and hospitals may be held liable for the actions

¹³⁸ Specific for sexual harassment is that it also covered by the GEA, but not enforced by the Equality Ombud and Tribunal. Sexual harassment shall be enforced by the courts of law.

¹³⁹ See Penal Act of 20 May 2005 no. 28. The text of the Penal Code is not translated to English, but reads (author translation): 'Any person who wilfully or through gross negligence publicly utters a discriminatory or hateful expression shall be liable to fines or imprisonment for a term not exceeding three years. The use of symbols shall also be deemed to be an expression. Any person who aids and abets such an offence shall be liable to the same penalty. A discriminatory or hateful expression here means threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone because of his or her a) skin colour or national or ethnic origin, b) religion or life stance, c) homosexuality, lifestyle or orientation or d) disability'.

¹⁴⁰ See Ot.prp. no 88L (2012-2013) page 162 which refers to the previous preparatory works, in particular Ot.prp no 35 (2004-2005) page 38 on gender equality and Ot.prp no 104 (2002-2003 pp 34-35) on the WEA.

¹⁴¹ See the *travaux préparatoires*' special notes to the actual provision (§ 13-1) in the Proposition to the Odelsting. No. 49 (2004-2005) on the WEA.

of employees. Service providers cannot be directly held liable for actions of third parties such as tenants, clients or customers, as long as the service provider has not been directly involved in the incident or instruction.

The individual harasser or discriminator may also be held liable for discrimination. If an employee harasses co-workers, the harassment may according to the circumstances constitute grounds for dismissal or summary dismissal. In a Supreme Court judgment of 18 March 2002, Rt-2002-273, a professor had (sexually) harassed co-workers and students. This behaviour constituted justified reason for summarily dismissal.¹⁴²

Trade unions or other general trade/ professional associations can be held liable for actions of their members only if the member operates in the name of the union or if key members of the union have been responsible for the instruction.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Norway, instructions to discriminate are prohibited in national law. Instructions are defined. Definitions are equivalent to those of the directive.

Instructions relating to discrimination or harassment is prohibited, see ADA section 11, AAA section 10, SOA section 10 and WEA section 13-1(2). It is also prohibited to instruct anyone to carry out an act of reprisal. It is furthermore prohibited to be an accessory to instructions to discriminate, that is to assist or support instructions to discriminate.

To consider an action to be an instruction, a relationship of subordination, obedience or dependency must exist between the instructor and the person receiving it.¹⁴³ In a workplace, it will therefore be a case of instruction if a manager asks a subordinate to discriminate against another employee at the same level as the subordinate. However, if an employee asks another employee to discriminate, this demand will normally not be considered as an instruction in the legal sense, however inappropriate. The instructions must contain a specific order that one or more persons shall be discriminated. For example, if a manager asks a middle manager to ensure that the unionised employees are assigned to the unpopular shifts this would constitute an illegal instruction. Another example is where a manager at a club instructs gatekeepers that people with disabilities, wheelchair users or people with a particular skin colour should not be allowed.

In Norway, instructions do explicitly constitute a form of discrimination.

b) Scope of liability for instructions to discriminate

In Norway, the instructor and/or the discriminator are/is liable.

Legal persons/employers are liable for the actions and omissions of their employees according to the specific sanctions posed in each of the Acts as well as by general tort law.

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

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

¹⁴² Although at that time in accordance with the Act on Public Employees (1983) section § 15 first paragraph, but the arguments of the case remain valid.

¹⁴³ See the *travaux préparatoires* to the previous WEA, Proposition to the Odelsting No. 104 (2002-2003) section 8.3.5.6.

In Norway, the duty to provide reasonable accommodation in the field of employment is included in the law. The measures to be implemented under the duty to provide reasonable accommodation are not defined in the AAA itself.

The duty to provide reasonable accommodation for people with disabilities is specified in AAA section 26 which provides a right of individual accommodation in employment relationships. The AAA refers to a right of 'individual accommodation' and does not mention the word 'reasonable'. The previous legal text referred to 'reasonable' accommodation (WEA § 13-5). The wording in the AAA is meant to have the same content as in the WEA.¹⁴⁴ In practice, WEA § 4-6 is often used in conjunction with AAA article 26 before the courts, as they have an overlapping application.

The text of section 26(1) reads:

'Workers and job applicants with disabilities shall have a right to suitable individual accommodation of their workplaces and work tasks to ensure that they can obtain or retain a job, have access to training and other skills development, and perform and have the opportunity to advance in their work in the same way as other people.'

Any breach of the obligation to ensure individual accommodation is to be regarded as discrimination.

Employers are expected to individually accommodate workplaces and tasks in order to ensure that employees or job-seekers with disabilities can obtain or retain a job, have access to training and other measures to develop their competence and can carry out and have an opportunity to advance in their work in the same way as other people. The law states that the requirement is a 'suitable' accommodation. The specific accommodation measures shall be assessed in relation to the individual person with the disability. The wording is intended to show that the assessment of the required accommodation measures needs to be assessed concretely against the situation, the need for the accommodation and the benefit for those who have needs for accommodation.¹⁴⁵

In addition to the specific protection afforded to disabled workers according to the AAA, the WEA contains a general duty for employers to provide reasonable accommodation for workers who due to physical or psychological impairments need this, see WEA section 4-6 concerning adaptation for employees with reduced capacity to work.

b) Practice

Reasonable accommodation is only framed as an obligation where the accommodation will not entail an 'disproportionate burden'. When considering whether the accommodation leads to a disproportionate burden, particular importance is to be attached to the effect of the accommodation on the dismantling of disabling barriers, the necessary costs of the accommodation and the undertaking's resources.¹⁴⁶ There is beyond these elements to be assessed not a single test of what constitutes a 'disproportionate burden'.

'Reasonable': What the duty is to provide reasonable individual accommodation needs thus to be considered in relation to each person with a disability. In this assessment, relevant factors are the planned duration of the relationship between responsible party and the individual disabled person, as well as the kind of/degree of disability and the time frame

¹⁴⁴ Ot.prp. no. 44 (2007-2008) page 183.

¹⁴⁵ See Ot.prp. no. 88L (2012-2013) page 182 which refers to the previous preparatory works, in particular Ot.prp. no. 44 (2007-2008) chapter 10.6.4 on pages 180 and following, and chapter 18 page 263.

¹⁴⁶ See the *travaux préparatoires* to the AAA, Proposition to the Odelsting No. 44 (2007-2008) p 263-265. Relevant cases from the Equality Tribunal that gives guidance on a possible 'norm' for individual accommodation are cases 21/2007, 40/2009, 22/2011 and 74/2014. The latter case did not find a breach to the AAA.

of the accommodation. Other factors that may be used in the legal assessment are to what extent the arena for adaptation is an essential part of that person's life, as well as the benefit for the person with disabilities.¹⁴⁷ There are practical examples the extent of accommodation required in the workplace as shown in the cases of the Ombud and the Tribunal, as well as in the court cases on dismissal, in which employers may be questioned about their accommodation according to the WEA section 4-6.

'Undue/ disproportionate burden': In assessing whether the arrangement involves an undue burden, factors to be assessed include what effect the dismantling of disabling barriers will have, the costs of the actual accommodation and the resources of the enterprise. The cost is a fundamental factor in determining whether the measure should be considered as an undue burden or not. The extent to which public support is available is another factor. There is a stricter requirement – and expectations – for accommodation – posed on a large and resourceful enterprise, than the requirements posed to a smaller firm. The same applies in relation to municipalities of different sizes and different economic situations.

What may be regarded as a disproportionate/ undue burden must be seen in the context of what a reasonable accommodation entails. The cost should not be viewed in isolation from the resources of the enterprise, but also seen in relation to the individual beneficiaries of such accommodation arrangements. Another factor to be taken into consideration is if others can benefit from the measure. One measure that only marginally improves the situation for one person is easier perceived as an undue burden, if this measure cannot be used for others.

The assessment factors referred to above are not limited to cover only the persons working life, as the right to individual accommodation covers also municipal services as per the AAA section 16 and schools and educational institutions according to the AAA section 17, see below chapter d).

c) Definition of disability and non-discrimination protection

Under Norwegian law, the definition of disability for the purposes of claiming reasonable accommodation is similar to the one for claiming protection from non-discrimination in general.

d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

Norwegian legislation provides for a duty to provide a reasonable accommodation for people with disabilities also in select area outside of employment. The AAA provides in its section 17 for schools and educational institutions to individually accommodate teaching locations and the teaching in order to ensure that pupils and students with disabilities obtain equal training and educational opportunities.

Similarly, the municipalities provide individual accommodation for children at kindergartens in order to ensure that children with disabilities obtain equal opportunities for development and activity. This is also 'within reason'.

The municipality shall provide individual accommodations with regard to a range of services pursuant to the Health and Care Services Act in a way that is permanent for the individual in order to ensure that persons with disabilities obtain an equal service, as per the AAA section 16.

¹⁴⁷ See the *travaux préparatoires* to the AAA, Proposition to the Odelsting No. 44 (2007-2008) p 263-265.

These duties are also imposed if not causing a 'disproportionate burden'. The definition of 'disproportionate burden' in this context, as contained in legislation and developed in case law does not differ from the definition used with regard to employment.

Outside the areas mentioned above, there are no other duties to accommodate at an individual level.

e) Failure to meet the duty of reasonable accommodation for people with disabilities

In Norway, failure to meet the duty of reasonable accommodation counts as discrimination, as per the AAA section 12 which states that:

'Breach of the duty to ensure universal design pursuant to section 13 or the duty to ensure individual accommodation in section 16, 17 and 26 shall constitute discrimination.'

The justification defence is related only to the standard of 'within reason' as described above. The potential sanction in relation to individual accommodation is within working life economic compensation and compensation for non-monetary damage to the person discriminated against. The burden of proof is shifted to the employer/responsible upon showing that there are reasons to believe that discrimination has occurred, as per AAA section 30 on the burden of proof which reads:

'Discrimination shall be assumed to have occurred if: circumstances apply that provide grounds for believing that discrimination has occurred, and the person responsible fails to substantiate that discrimination did not in fact occur. This shall apply in the case of alleged breaches of...c) the rules on individual accommodation in sections 16, 17 and 26.'

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

In Norway, there is no duty to provide reasonable accommodation in respect of other grounds in the public and/or the private sector.

g) Accessibility of services, buildings and infrastructure

In Norway, national law requires require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way.

The AAA section 13 contains a general duty to provide accessibility for people with disabilities by anticipation, in Norway called 'universal design'. A breach of the obligation to ensure universal design is regarded as discrimination under the law. Public undertakings are to make active, targeted efforts to promote universal design within the undertaking. The same applies to private undertakings that offer goods or services to the general public. By 'universal design' is meant to design the main solution regarding physical conditions so that it may be used by as many people as possible irrespective of their physical functioning. Public and private undertakings that offer goods or services to the general public are obliged to ensure the universal design of the undertaking's normal function provided this does not entail an undue burden for the undertaking. When assessing whether the design or accommodation entails an undue burden, particular importance shall be attached to the effect of the accommodation on the dismantling of disabling barriers, if the main business function is of a public nature, the necessary costs associated with providing the accommodation, the undertaking's resources, whether the normal function of the undertaking is of a public nature, safety considerations and cultural heritage

considerations. The list of elements does not exclude that they may be attached to other relevant considerations.¹⁴⁸

It is not to be regarded as discrimination if the undertaking meets specific provisions laid down in statutes or regulations concerning the content of the obligation to implement universal design.

The AAA has a general rule that 'The King in Council' may issue regulations concerning the content of the obligation to ensure universal design in areas that are not covered by the requirements of, or pursuant to, other legislation. The regulations are developed by the relevant Ministry, and after subsequent public hearings and preparation of legislative preparatory works, sanctioned by the King in Council, i.e. the Ministers and King in Council. Such regulations have not yet been issued, seven years after the act came into force.

A failure to comply with such legislation can and has been relied upon in discrimination cases assessed by the Equality Ombud based on the legislation transposing Directive 2000/78.¹⁴⁹

There are no cases tried before the courts as of yet.

h) Accessibility of public documents

National law does not require public services to translate some or all of their documents in braille. People with sight impairments have a right to assistance from an interpreter for reading and writing, as per the Act on Social Services of 28 February 1997 No 19 section 10-7 and its Regulation on support to reading and writing assistance of 14 April 1997 No 319 (FOR-1997-04-15-319).

Translation in sign languages is provided in all public services when so requested. People with hearing impairments have a right to demand their expenses in relation to a sign-language interpreter covered both to be able to function optimally in working life and in their every-day chores. They have a right to free sign language services in relation to higher education at universities, at the workplace and in relation to medical appointments, social and cultural activities, see Act on Social Services of 28 February 1997 No 19 section 10-7 and its specific Regulation on support for sign language assistance for the hearing impaired of 15 April 1997 No 320. (FOR-1997-04-15-320).

¹⁴⁸ See Proposition No. 44 to the Storting *On the law prohibiting discrimination on the basis of disability* (2007-2008) pp. 261.

¹⁴⁹ See for example the following cases of the Equality Ombud: cases 10/2005, 10/2006, 10/2008 (all concerning access to fitting rooms in stores selling clothes), case 10/2224 (lack of technical hearing aids in the reception of a division within the public hospital dealing with deaf patients), case 11/62 (a blind person was refused access to a café with his dog), case 10/1930 (lack of universal access to an electrical appliances store), case 09/169 (lack of universal access to public cinema), 09/473 (lack of access to the first floor of the county town hall). Case 10/1158 (lack of universal access to restaurant).

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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 Norway, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. However, citizenship/nationality requirements are also not a ground for protection, but nationality often will fall under the scope of ethnicity, if negative value is placed on non-Norwegian citizenship.

This has been specifically raised as an issue in relation to the protection of the Anti-Discrimination Act (ADA): Citizenship is not explicitly mentioned as a basis for discrimination under the Anti-Discrimination Act. Hence requiring Norwegian citizenship does not fall within the prohibition of direct discrimination in section 4 first paragraph of the Act. Discrimination based on citizenship is however discussed in the Act's preparatory works, which states that discrimination based on citizenship may be subject to the prohibition against indirect discrimination based on ethnicity.¹⁵⁰ It is left to the enforcement agencies to determine the point at which discriminatory treatment based on citizenship comes under the prohibition of indirect discrimination based on ethnicity etc. The Tribunal or the courts must assess each case on its own merits. A case involving the requirement of Norwegian citizenship was handled by the Equality Tribunal in its case no. 18/2006, as described below (see point 3.2.10).

3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)

a) Natural and legal persons

In Norway, the personal scope of anti-discrimination law covers (certain) natural and/or legal persons for the purpose of protection against discrimination.

Norwegian law on non-discrimination covers as starting point only human beings, see ADA section 6(2), WEA section 13-2, AAA section 5(2) and SOA section 5(2). The acts formally do not distinguish between natural persons and legal persons, except for ethnicity, religion and belief, where both physical and legal entities are specifically covered.¹⁵¹

In Norway, the personal scope of anti-discrimination law covers only certain legal persons for the purpose of liability for discrimination. In terms of protection against discrimination, legal persons are covered through the ADA section 6(2), but not through the other acts. Legal persons are liable for discrimination under the ADA section 6(2), WEA section 13-2, AAA section 5(2) and SOA section 5(2). The Ombud has accepted complaints from legal entities, in which it has been clear that the reason for possible discrimination is the discrimination ground related to the members of the entities.

b) Private and public sector including public bodies

In Norway, the personal scope of national law covers private and public sector including public bodies for the purpose of protection against discrimination and for the purpose of liability for discrimination, see the ADA section 2, WEA section 13-2, AAA section 2 and the SOA section 2.

¹⁵⁰ See the *travaux préparatoires* to the ADA, Proposition to the Odelsting No. 33 (2004-2005) page 88.

¹⁵¹ This as a result of an intervention in Parliament when the law was enacted, see deliberations of the Odelsting 19 April 2005 and Besl. O. No 67 (2004-2005). This proposal was not explained or substantiated further. The current preparatory works, Proposition to Parliament, Prop. 88 L (2012-2013) discuss the issues relating to physical and legal entities in chapter 8.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Norway, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, military service, holding statutory office, for the five grounds.

The scope of discrimination protection in the ADA, AAA and SOA apply to all sectors, also all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office, see ADA section 2, AAA section 2 and SOA section 2. That covers each of the specific grounds covered by the directives. The WEA applies to undertakings that engage employees, unless otherwise explicitly provided by the Act, see WEA section 13-2(1). The provisions of the anti-discrimination chapter of the WEA also cover the employers' selection and treatment of self-employed and contract workers, see WEA section 1-2(1).

3.2.2 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 Norway, national legislation includes 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 for the five grounds in both private and public sectors as described in the directives.

The scope of discrimination in employment under all the different acts (ADA section 16; AAA section 21, SOA section 15 and WEA section 13-2) covers all aspects of employment from the initial advertisements of posts until the termination of the work contract, such as pay and working conditions, training and other forms of competence development, appointment, relocation and promotion.

Given the full factual scope of the ADA, AAA and SOA (AAA section 2, ADA section 2, SOA section 2), the acts cover access to occupation. The WEA – that is age – covers specifically training and other forms of competence development, see WEA section 13-2(1)b, but does not specifically cover access to occupation.

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

In Norway, national legislation includes working conditions including pay and dismissals, for all five grounds and for both private and public employment.

National law on discrimination include working conditions including pay and dismissals, see ADA section 16; AAA section 21, SOA section 15 and WEA section 13-2.

3.2.3.1 Occupational pensions constituting part of pay

Occupational pensions are covered by the provisions of both the AAA, SOA and the WEA, as the different acts applies to all aspects of employment including pay and working conditions, see AAA section 21, SOA section 15 and WEA section 13-1(c).

There is no case law pertaining to the access to occupational pensions because of alleged discrimination based on sexual orientation, age or disability. This does not mean that challenges do not exist. As an overhaul of the pensions system is in the process of taking place, it is probable that cases will arise concerning the accrual of pension credits between

67 and 70 years. Currently, a number of systems stop the accrual of pension credits at 67, which used to be the general retirement age (as opposed to maximum limits) (see below point 4.7.1 c). The legality of some of these systems in relation to Directive 2000/78 is at present thus unclear, as this aspect has not been assessed in preparatory works to my knowledge.

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

In Norway, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

Given the full factual scope of the ADA, AAA and SOA (AAA section 2, ADA section 2, SOA section 2) as described above, the acts cover all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience. The WEA – that is age – covers specifically training and other forms of competence development, see WEA section 13-2(1)b.

3.2.5 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 Norway, national legislation includes 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.

Membership in an organisation of workers or employers, or any organisation whose members carry on a particular profession, are covered as a separate ground for discrimination in relation to employment and covered in the WEA, see WEA section 13-2(3).

Access to 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 – cannot be refused based on ethnicity or disability or the other grounds, however, there is a specific right in the WEA that the benefits offered by the organisation cannot be claimed by non-members, see WEA section 13-2(4).

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

In Norway, national legislation includes social protection, including social security and healthcare as formulated in the Racial Equality Directive.

ADA section 2, AAA section 2 and SOA section 2 covers social protection, including social security and health care. Age is not covered, as age discrimination is only covered within employment.

Most legislation, including that on social security, is neutral in terms of the existing grounds for discrimination. This is a challenge in contexts where for example men and women's choices in reality are different because of stereotypical gender roles in society, or where choices made by the minority population of specific ethnic or religious groups makes it difficult for the individuals of this group to access the protection afforded to the majority population. The result of these kinds of neutral systems without proactive measures might thus lead to differences in results because of individual choices. A system of neutral

legislation leaves little room for compensating results of stereotypical individual choices based on gender, ethnicity, religion, disability etc. A challenge in terms of addressing discrimination in social security thus becomes an issue of defining what is meant by „discrimination’ and „equality’ in the intersection of anti-discrimination legislation and social security.

3.2.6.1 Article 3.3 exception (Directive 2000/78)

The WEA – age – does not extend to social security, and is as such in line with the exception in Directive 2000/78, article 3(3). As the Non-discrimination Directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated.

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

In Norway, national legislation includes social advantages as formulated in the Racial Equality Directive.

The ADA section 2, AAA section 2 and SOA section 2 cover all sectors of society, thus also all forms of social advantages, that is benefits that may be provided by either public or private actors to people because of their employment or residence status. Discrimination in this area will be unlawful. Age as a discrimination ground is only covered in employment and benefits deriving from employment.

There are a number of benefits in Norway that are needs-based under the social security scheme, for example funeral-support, family allowances etc. To the author’s knowledge there is little indication that any of these either are discriminatory or have a discriminatory effect.

Prohibition of discrimination because of age is limited to discrimination in working life, and does not cover social advantages. Discrimination in relation to social advantages outside working life will thus not be unlawful on the grounds of age.

In Norway, the lack of definition of social advantages does not raise problems, given that the protection against discrimination covers any discrimination that may arise.

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

In Norway, national legislation includes education as formulated in the Racial Equality Directive.

The anti-discrimination legislation on ethnicity, religion or belief, disability and sexual orientation, see ADA section 2, AAA section 2 and SOA section 2s also covers all aspects of education including all types of schools, both public and private, given the full factual scope of these acts as described above. Age is not covered.

a) Pupils with disabilities

In Norway, the general approach to education for pupils with disabilities does not raise problems.

The general approach to education for children with disabilities in Norway attempts both to handle the needs of disabled children within the mainstream public education system, but has also a network of segregated ‘special’ education for those children unable to benefit from a more ‘mainstream’ approach.

All children have a right to free education in Norway, as stated in the Education Act.¹⁵² Formal compulsory education starts normally the calendar year the child turns six years, and last until the child has completed the tenth school year, see section 2-1. Children have the right to go to school in the community where they live as per section 8-1 and to belong to a group, as per section 8-2. One exception is made for deaf students with sign language as their first language, as they are given the right to special instruction and education, see section 2-6.

The school has a general duty to adapt all education and instruction for each student, depending on the individuals' abilities and aptitudes. If this special adaptation is not enough, and does not give each individual pupil sufficient educational training, the pupil will be entitled to special education, see section 5-1. The act contains specific rules for the assessment and allocation of special education. The parents may request that the school carries out sufficient surveys and tests to determine if the student needs special education. Involved in this assessment is the Educational Psychology Service (PP) established by local authorities. The PP-service (or DPI) is an expert and advisory body for nurseries and schools. Their tasks are to provide psychology services to help municipalities and counties to ensure tailor-made options for pupils with special needs, and provide for the preparation of expert evaluation of the child. National guidelines form the basis for the assessment to be made.

An individual education plan (IEP) is prepared for each pupil who receives special education, see section 5-5. This plan should describe the objectives for the education, its content and scope. The IEP should both specify how the pupils' training differs from the normal curriculum, as well as specify how the education should be conducted.

The State has also developed special expertise about educational provision for children, adolescents and adults with major special needs through a National Support System for Special Needs Education (Statped).¹⁵³

The challenge in Norway is practical aspects related to giving disabled children an equal education. Despite well-developed legislation in the field of education, the practical implementation is not always optimal for disabled children. This is partly because well-intended administrative decisions are not always complied with, as well as lack of necessary resources, and lack of qualified personnel.¹⁵⁴

b) Trends and patterns regarding Roma pupils

In Norway, there are no specific patterns existing in education regarding Roma pupils such as segregation. There is no segregated schooling for Roma children, as they are registered in the school district to go to school where their registered address is. There is however a scheme enabling net-based education (long-distance learning) for Roma students to enable them to study while travelling with their families during the school-year.

¹⁵² See the Act on Education of primary and secondary education of 17 July 1998 No 61, see <http://www.ub.uio.no/ujur/ulovdata/lov-19980717-061-eng.pdf> (accessed on 10 March 2016).

¹⁵³ See <http://www.statped.no/Spraksider/In-English/> (accessed on 10 March 2016).

¹⁵⁴ See Wendelborg, C. og Tøssebro, J. (2010): *Marginalisation processes in inclusive education in Norway – a longitudinal study of classroom participation*. Disability and Society, 25 (6), 701-714. See also a number of reports in Norwegian: «Rett til spesialundervisning i praksis? En rapport om spesialundervisning i grunnskolen og videregående skole», The Norwegian Federation of Organisation of Disabled People (FFO) FFOs rettighetssenter 2008 at http://ffo.no/globalassets/rapporter/rapport_spesialundervisning.pdf, Else Leona McClimans (in Norwegian) *Utviklingen av funksjonshemmedes rettssituasjon de siste 10 år*, FFO politisk notat 2/2013 at: <http://ffo.no/globalassets/ffo-mener/politiske-notat/utviklingen-av-funksjonshemmedes-rettigheter-politisk-notat.pdf>, Thomas Nordahl og Rune Sarroma Hausstätter (2009) *Spesialundervisningens forutsetninger, innsatser og resultater. Situasjonen til elever med særskilte behov for opplæring i grunnskolen under Kunnskapsløftet*, Høgskolen i Hedmark. The report: *Hvorfor blir det sånn? Kartlegging av hvordan kommuner organiserer opplæring for elever med funksjonsnedsettelse og lærevansker*, Norges Handikapforbund Oslo, November 2013.

The governmental action plan to improve the situation of the Roma in Oslo also includes elements related to schooling.¹⁵⁵ This includes both specific education in Norwegian as well as mother-language training according to the education act section 2-8 and the private education act section 3-5, however data from the Education information system shows that no Roma children uses this right, as referred in the action plan. These figures might be misleading, as the counting is taking place annually by 1 October, when many Roma still are travelling. A project on the right to adult education for Roma in Oslo is referred to in the action plan as a positive initiative. The initiatives in schools include giving children computers for remote-distance education, home education and production of relevant educational material. There are 71 registered Roma pupils in 22 schools in Oslo, out of a total Roma population in Norway of about 700 persons. These services extend in principle to immigrant Roma children as well. However, a key issue in Norway in relation to Romanian Roma is that they visit Norway on a tourist visa and leave the country when their tourist visa expires.

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

In Norway, national legislation includes access to and supply of goods and services as formulated in the Racial Equality Directive.

The anti-discrimination legislation on ethnicity, religion or belief, disability and sexual orientation also covers access to and supply of goods and services, given the full factual scope of these acts as described above, see ADA section 2, AAA section 2, and SOA section 2. Age is not covered.

3.2.9.1 Distinction between goods and services available publicly or privately

In Norway national law distinguishes between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association). There has been a number of cases on this before the Ombud and Equality Tribunal.¹⁵⁶

The legislation on discrimination on ethnicity, religion or belief, disability and sexual orientation covers as a starting point goods and services, and does in principle not distinguish between goods and services available to the public (such as in shops, restaurants or banks) and those available only privately, limited to members of a private association. A number of cases pertaining to discrimination of persons with disabilities in restaurants have been handled by the Equality Ombud. In case no 09/1352 as well as in case no 10/360, blind persons were refused entrance to a restaurant with their dogs, which was assessed as discrimination. In case 09/1852, some persons with psychological impairments and their assistants were refused entrance to a café, which was also considered discrimination. The Equality Tribunal found in case 29/2014 and case 8/2015 that the claimants had been discriminated against as they were refused entry into a bar because of their impaired sight.¹⁵⁷ Refusal of entrance into bars and restaurants is by anecdotal evidence an area where a lot of discriminatory practice takes place.

There is a general exception both in the ADA, AAA and SOA, that it does not cover family life and personal relationships. In the legal preparatory works to the legislation, it was

¹⁵⁵ See (in Norwegian) http://www.regjeringen.no/nb/dep/fad/dok/rapporter_planer/planer/2009/Handlingsplan-for-a-bedre-levekarene-for-rom-i-Oslo.html?id=594315 (accessed 10 March 2016).

¹⁵⁶ According to the annual report of the Equality Ombud for 2014, out of a total of 1525 inquiries, 229 were related to goods and services. Out of 207 complaints (cases), 34 concerned goods and services. In Norwegian at http://www.ido.no/globalassets/brosjyrer-handboker-rapporter/rapporter_analyser/arsmeldinger/2014-arsmelding_ido_web.pdf (accessed on 10 March 2016). Figures for 2015 are not published per 10 March 2016.

¹⁵⁷ Ombudsmans case numbers 29/2014 and case 8/2015.

specified that small local clubs and associations that are not directed towards the public, but only directed toward limited groups of people are assumed to fall under the exception of 'purely personal relationships'.¹⁵⁸ These include poker games, a reading circle or small closed friendship-clubs. If the goods and services are directed towards the public in general, the prohibition against discrimination exists.

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

In Norway, national legislation includes housing as formulated in the Racial Equality Directive.

Directive 2000/43 article 3(1)h has in Norway been implemented by including specific provisions in four different Acts on housing: The Tenancy Act (*husleieloven*) section 1-8, the Housing Cooperative Act (*burettslagslova*) section 1-5, the Property Ownership Act (*eierseksjonsloven*) section 3a and the Act relating to housing Cooperatives (*bustadbyggjelagslova*) section 1-4. Through these acts, discrimination based on gender, ethnicity, religion or belief, sexual orientation or disability is prohibited. Age is not covered.

The Tenancy Act states that the above mentioned grounds cannot be considered just cause for refusing to accept a lease, sub-lease, or a member of a household, and for transferring a lease to another person. Furthermore, these grounds cannot be invoked for terminating a lease. The act covers rentals for private, public and business purposes. The prohibition against discrimination does not apply to letting a room in one's own home. This is linked to the general scope of the ADA, as it does not cover private and personal relations.¹⁵⁹

The Housing Cooperative Act, the Property Ownership Act and the Act relating to housing Cooperatives prohibit conditions being set for becoming a unit owner that may function discriminatory based on the abovementioned grounds.

In its case 5/2013, the Tribunal found that a female couple had been discriminated against as a landlord cancelled a viewing of a farm house that was for rental on his farm.

The prohibition against discrimination according to the housing acts does not include selling a dwelling, that is, the relationship between the vendor and the buyer. The selling of dwellings is covered by the ADA, and is in practice the area in which a small number of cases have been assessed: No cases regarding housing discrimination has yet been taken to court, but the Equality Ombud and Equality Tribunal has heard some cases.

The Equality Tribunal Case no. 18/2006 concerned a housing advert posted by a private landlord on the national webpage used for selling and letting houses (www.FINN.no) website stated; '*only Norwegian citizens need apply*'. The advert was for a two-bedroom flat in a four-family house. The flat had a private entrance. The landlord did not live in the flat himself. The landlord stated that he had not previously made Norwegian citizenship a requirement in his housing adverts, but wished to do so provided it was not unlawful. The landlord stated that his key concern is that his flats are properly looked after, that rent is paid punctually and that requisite guarantees are provided. He emphasised that his interests were purely financial, as where Norwegian citizens are concerned he can seek assistance from the enforcement officer to recover rental arrears, and that it is far simpler to obtain enforceable eviction and to collect money owed in the wake of a tenancy, for example by execution charge, attachment of earnings etc., and that he can claim

¹⁵⁸ As per the *travaux préparatoires* to the ADA, Proposition to the Odelsting No. 33 (2004-2005) p. 204, and the *travaux préparatoires* to the AAA, Proposition to the Odelsting Ot. Prp. Nr 44 (2007-2008) p. 78 and the *travaux préparatoires* to the SOA, Proposition to Parliament, Prop. 88 L (2012-2013) p. 59.

¹⁵⁹ It follows from the Anti-Discrimination Act's preparatory works – Proposition to the Odelsting no. 33 (2004-2005) – that the exception in regard to family life and personal relationships is to be interpreted narrowly. Letting a room in one's own house is excluded from the scope of the act, whereas the letting of independent flats not occupied by the owner himself falls within the scope of the act. This is reiterated in Proposition to Parliament, Prop. 88 L (2012-2013) p. 59.

compensation from Norwegian citizens for any damage they have caused. Furthermore, he argued that the requirement of Norwegian citizenship falls outside the scope of the Anti-Discrimination Act's prohibition of discrimination. The Tribunal found that although citizenship is not explicitly mentioned as a basis for discrimination under the Anti-Discrimination Act, the preparatory works left the enforcement agencies to determine the point at which discriminatory treatment based on citizenship comes under the prohibition of indirect discrimination based on ethnicity etc. As the right to housing is a key welfare good, and the Norwegian housing rental market features a substantial element of private letting, a possible exclusion of persons from the rental market is a heavy burden for those affected. Thus, the Tribunal found that the requirement of Norwegian citizenship leads, or can lead, to persons of non-Norwegian descent, origin or ethnic background being put at a particular disadvantage compared with ethnic Norwegians. Hence the requirement entailed indirect discrimination in breach of the ADA on grounds of ethnicity, nationality and descent. The Tribunal also ordered the landlord to halt his discriminatory advertising and letting practice. The landlord was ordered to within 14 days of receiving notification of the decision of the Tribunal confirm in writing that the discriminatory letting practice will cease and that future housing adverts will be formulated in accordance with the rules of the Tenancy Act and the ADA.

The Equality Tribunal has furthermore handled 2 cases of discrimination because of ethnicity, in which the vendor of the real estate sold the property to a (Norwegian) bidder even though a higher bid from a non-ethnic Norwegian was received. In one of the cases, no 7/2007,¹⁶⁰ the Equality Tribunal found it proved that the sale was not related to the bidders ethnicity, whilst it found a breach of the ADA in case no 22/2007.¹⁶¹ No sanction was imposed.

Regulations have been approved under the Act on Planning and Building¹⁶² regarding housing accessible to people with disabilities and older people.

3.2.10.1 Trends and patterns regarding housing segregation for Roma

In Norway there are no patterns of housing segregation and discrimination against the Roma.

¹⁶⁰ See <http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/1025051586.doc> for an English version text of the case.

¹⁶¹ See <http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/713306804.doc> for an English version text of this case.

¹⁶² Act relating to planning and the processing of building application/ building of 27 June 2008 no. 71.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Norway, national legislation provides for an exception for genuine and determining occupational requirements.

The ADA section 17, SOA section 17 and the WEA section 13-3(1) provide a general exception which includes genuine and determining occupational requirements. This exception is in general in compliance with article 4 of Directive 2000/43 and article 4(1) of Directive 2000/78. There is no such exception in the AAA. As the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated in national law as such in relation to the directives.

There is no exception for genuine and determining occupational requirements for disability.

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

In Norway, national law provides for an exception for employers with an ethos-based on religion or belief.

Before the revision of the ADA in force as of 1 January 2014, there was a general specific exception to the scope of the ADA relating to:

‘actions and activities carried out under the auspices of religious and belief communities and enterprises with a religious or belief-related purpose, if the actions or activities are significant for the accomplishment of the community’s or the enterprise’s religious or belief-related purpose.’

In the 2013 revision of the ADA, this specific exception was discontinued, so that the exception for employers with an ethos based on religion or belief now follows the general rule found in ADA section 7 on lawful differential treatment. In the legal preparatory works before the revision, it was specified that this does not imply a change. The right of religious organisations to set their own teachings, religious rituals, religious education and choice of religious leaders will still be accepted as a part of the lawful differential treatment under the ADA.¹⁶³

In working life, as a general rule, exceptions for employers with an ethos-based on religion or belief are not accepted. However, employers with an ethos-based on religion or belief may require that employees follow this religion or belief, provided that this is a genuine and determining occupational requirement in line with the general exception to the act. This would be the case for religious/confessional positions, as per the ADA section 17.

The scope of this exception is specified in relation to the advertisements of these position, as it is specified that employers may ask information regarding the applicants’ stance on religious or cultural issues if the nature of the position so requires, or if it is part of the purpose of the enterprise concerned to promote specific religious or cultural views and the stance of the employee will be significant for the accomplishment of the said purpose, see ADA section 17(2). For the Norwegian church, it follows from the Church Act that the Norwegian church as an employer have the right to require that their employees are members of the church for confessional/ religious positions, as per the Church Act section 29.¹⁶⁴

¹⁶³ See Proposition to Parliament, Prop. 88 L (2012-2013) chapter 12.4.2.2 page 88.

¹⁶⁴ See the Church Act of 7 June 1996 No. 31.

For general employment in positions in religious organisations that have no bearing on the organisation itself, it will not be allowed to neither ask nor emphasise religious affiliation. This is for example the case with positions as care-takers or cleaners in churches/religious organisations. There is no case law from courts on this, but has been specified by the cases brought before the Equality Ombud in several cases.¹⁶⁵

As the Non-discrimination Directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated in national law as such in relation to the directives.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Norway, there are no specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination. (*e.g. organisations with an ethos-based on religion v. sexual orientation or other ground*), although the Equality Ombud in her handbook on religion at work¹⁶⁶ has a specific page devoted to the interface between religion and sexual orientation.

c) Religious institutions affecting employment in state funded entities

In Norway, religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job, both when that job is in a state entity, or in an entity financed by the State. It is accepted that all churches, including the (previous state) Lutheran church¹⁶⁷ may require a particular religious belief when hiring priests and religious leaders, but cannot demand a particular religious affiliation related to positions that do not have a religious content. The assessment used is similar to that used for exceptions to the protections against discrimination in general.

The Equality Ombud has issued a statement concerning kitchen work in a religious boarding school.¹⁶⁸ The school is a private evangelical school, and requires that all staff at the school share the same view. The Equality Ombud found that this requirement was a breach of the ADA, as people with another view than Christianity were placed in a worse position as the advertisement for the position stated that only Christians will be considered for the position. The Equality Ombud assessed if having a Christian belief was necessary to achieve a legitimate aim. The school argued that all staff at school must have a Christian belief, as they might act as discussion partners or 'counsellors' for its pupils. The Equality Ombud found that although it was possible that such a function may be part of the position, this was not the key part of the job, and not relevant in terms of this concrete job, thus the school could not demand a specific faith for positions working in the kitchen. The Ombud came to the opposite conclusion in relation to teachers. Assessing a different school, the Equality Ombud found that religious boarding school was allowed to ask its teachers to have a Christian belief, as this was seen as a requirement for fulfilling the positions.¹⁶⁹

There is no case law from national courts on this.

¹⁶⁵ See Ombud's case no 08/1023 on a cleaner in an evangelical Lutheran church (not accepted), case no 10/779 on gymnastics teacher in a religious (Christian/ Lutheran) boarding school (accepted), case no 10/761 on teachers in Spanish/ maths/ computer science in a private Christian (Lutheran) high school (accepted).

¹⁶⁶ See <http://www.ldo.no/nyheiter-og-fag/brosjyrar-og-publikasjonar/brosjyrer/Religion-og-arbeid/> (accessed 10 March 2016).

¹⁶⁷ The Norwegian Lutheran church was until a Constitutional change in 2012 the Norwegian State church. The publicly (State) appointed Church Board ('*Statens særskilte kirkestyre*') was abolished on 21 May 2012, however the State sees it as its responsibility to support the Lutheran church as a religious organisation, and to support other religious organisations and belief-organisations equally.

¹⁶⁸ See case no 10/761, statement of 4 January 2012.

¹⁶⁹ See case no. 10/779.

This possibility for selection is provided by national law as described above. This legislation has to the author's knowledge only been influenced by Directives 2000/78 and 2000/43 and not been influenced by international agreements such as agreements with the Holy See or other religious institutions such as the (previous) Norwegian Lutheran state church.

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

In Norway, national legislation provides for an exception for the armed forces in relation to age (Article 3(4), Directive 2000/78).

National law provides for an exception for the armed forces in relation to age discrimination as the Armed Forces' Employment Act of 2 July 2004 no 59 section 4(2) states that 'Officers and enlisted crew are exempt from the prohibition on age discrimination according to WEA section 13-1.' In the legal preparatory works to the WEA, it was stated that:

'the directive gives an opportunity for national legislation to provide for an exception for the armed forces in relation to age or disability discrimination. This gives an opportunity to, but not a duty to except the armed forces. The context of directive 3 no 3 and 4 is not explicitly included in the legislative proposal. The reason for this is that these provisions contain rules that are not a natural part of the provisions of the WEA.'¹⁷⁰

The AAA on disability discrimination does not contain a specific exception for the armed forces, neither is this addressed in the legal preparatory works. To be admitted into the armed forces requires the incumbent to undergo a number of tests, including health tests, which results in persons with disabilities being hindered from these positions if they are not able to fulfil these tests. However, the duty for individual accommodation will apply also within these sectors.

There is no specific disability-related exception. However, the general health requirement excludes disabled recruits from being allowed entry into the armed forces.

The question of disability-discrimination in the armed forces has never been tried before the courts, although an attempt was made by the association for people with ADHD. This was not successful, as current recruits with ADHD are not given an individual assessment for being able to enter military service, but is by virtue of their diagnosis categorised as being unfit for war-time service. The Equality Tribunal had found that the guidelines governing the introduction scheme for military recruits in the armed forces were not discriminatory for recruits with ADHD. The Tribunal presumed in its decision that all recruits – also those with a disability – would be subject to an individual assessment of their merits. As recruits with a disability are excluded from further assessment because of their disability, the organisation challenged the presumption that the Tribunal's decision built on, and asked that the decision be found invalid. The association ADHD Norway initiated a case against the State/the Equality and Anti-Discrimination Tribunal for the Oslo City court, claiming that the Tribunal's decision in its case number 25/2011 on the assessment of the introduction course for military recruits in the armed forces were invalid. As the introduction scheme was marginally changed after the decision of the Tribunal, the Appellate court in case number LB-2013-142603 rejected the case, as they found that the decision of the Tribunal was not a live controversy: the facts upon which the decision of the Tribunal was based was bygone, and not relevant for the situation today. The dispute was by verdict rejected from court assessment based on a lack of a genuine need to have the case determined, as per the RDA section 1-3. This verdict was appealed to Supreme Court, who in its case Rt. 2014-480 found that the Tribunal did not have a mandate to

¹⁷⁰ See the *travaux préparatoires* to the previous WEA on equality in employment, Proposition to the Odelsting No. 104 (2002-2003) section 8.1.2 s 23.

make a decision in the case, and that the Tribunal – erroneously – had made a decision where it should have issued an opinion. An opinion is not possible to refer to the courts.

As the Non-discrimination Directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated in national law as such in relation to the directives.

4.4 Nationality discrimination (Article 3(2))

As the Non-discrimination Directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated as such in relation to the directives.

a) Discrimination on the ground of nationality

In Norway, national law does not include exceptions relating to difference of treatment based on nationality.

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

Nationality, in the sense of citizenship, is not included in the definitions of discrimination grounds of the ADA.¹⁷¹

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

National law through the ADA section 1 protected 'national origin' as a ground for discrimination, not nationality. National origin includes also the stateless, as it is not focusing on which nationality, but national origin other than Norwegian. Nationality – other than Norwegian – is in reality thus a protected ground through judicial interpretation, within the frame of 'national origin' or 'ethnicity' as the protected ground.

Similarly, also people who lack a nationality- the stateless - can have their case heard. The Equality Ombud assessed the question of indirect discrimination against a stateless employee on the basis of ethnicity.¹⁷² As the employee was not entitled to a Norwegian personal id-number, he was rejected a permanent access card for working in a business leasing employees to other employers, thus he was fired. The employer (the leasing company) claimed that the dismissal/ rejection was based on the fact that the employee as an asylum-seeker did not have personal id-number, and thus could not be registered in the internal tax and salary systems of the firm. The Ombud considered that the requirement to have a personal id-number/ social security number was an apparently neutral rule. Nevertheless, the lack of a personal id-number led to the person being put in a worse position than others. There was a clear connection between his lack of personal identity and his national origin. The company later changed its practice so that people who lack personal id-number/ social security number, but hold a DUF number (a registration number issued by the immigration board) and work permit can take up employment in the company.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

In Norway, it would constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married. This is based on the fundamental

¹⁷¹ See Government White Paper NOU 2002:12 Legal protection against ethnic discrimination page 34.

¹⁷² Equality Ombud case no 09/892, statement of 3 May 2012.

principle of fairness/ just cause developed by case law and now also found in the general equality-clause in the Constitution, article 98. The Constitution article 98 reads: *'All people are equal under the law. No human being must be subject to unfair or disproportional differential treatment'*.

b) Benefits for employees with opposite-sex partners

In Norway it would constitute unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners (see SOA article 2).

4.6 Health and safety (Article 7(2) Directive 2000/78)

a) Exceptions in relation to disability and health/safety

In Norway, there are no specific exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78), other than the general justifications in relation to direct and indirect discrimination as described above in point 2.2 b) and 2.3 b).

As the Non-discrimination Directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated as such in relation to the directives.

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

4.7.1 Direct discrimination

In Norway national law provides an exception for direct discrimination on age, as per the WEA 13-3(1).

a) Justification of direct discrimination on the ground of age

In Norway, it is possible, both generally, and in specified circumstances, to justify direct discrimination on the ground of age.

The general exception in the WEA states that discrimination that has a just cause, does not involve disproportionate intervention in relation to the person or persons so treated and that is necessary for the performance of work or profession, shall not be regarded as discrimination, as per the WEA section 13-3(1).

The test is in principle compliant with the test used by the Court of Justice in the Mangold case, as the Norwegian Supreme Court has referred explicitly to the test of the Mangold case in its first judgment on age discrimination.¹⁷³

b) Permitted differences of treatment based on age

In Norway, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78, as per the WEA section 13-3. In practice, the most contested article has been WEA section 15-13a, which allows for the possibility of terminating employment on account of age, see below point 4.7.4 d).

There have been a number of court cases regarding the legality of age limits, including the Supreme Court judgment of 14 February 2012, Rt-2012-219, the 'helicopter'-judgment. Could the employer based on collective agreement require that its helicopter pilots retire at age 60? Ten helicopter pilots sued the employer claiming to continue their employment

¹⁷³ See Supreme Court judgment of 18 February 2010, Rt-2010-202 (*Nye Kystlink*).

relationship after age 60 - even though an obligation to retire at age 60 followed from the interpretation of their collective agreement. The Supreme Court referred to its earlier case law in which it is stated that the national Working Environment Act shall be interpreted so as to be compatible with Directive 2000/78/EU on equal treatment in employment, even though this directive is not a part of the EEA agreement. The Court found that following the *Prigge* judgment, safety or health reasons cannot justify the 60-year age limit for helicopter pilots. The Supreme Court did not assess whether the other purposes of the age limit that were highlighted - the interests of a dignified retirement, the rapid career advancement of younger pilots and protecting a good pension scheme - were justifiable in this context, as these other purposes were not sufficiently weighty to require that pilots stopped working at the age of 60.

This in contrast to a previous Supreme Court judgment of 5 May 2011 Rt-2011-609, HR-2011-910-A (*SAS-pilotene*) described below in point 4.7.5a.

Protection against age-discrimination is currently provided in Norway within working life, in line with Directive 2000/78. A legal study carried out during autumn 2014 assessed whether age as a discrimination ground should be expanded beyond the field of employment, as previously proposed by the European Commission in its document COM 2008(426) final proposing a new non-discrimination directive. The report concludes that it should. The report makes an analysis of a variety of different age-limits outside the field of employment. One of the findings was that there were many more minimum age requirements than maximum age requirements.¹⁷⁴ A subsequent report presented in January 2016 assessing the costs linked to such a proposal recommended that age as a discrimination ground should follow the limitations proposed in the proposed EU directive.¹⁷⁵

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In Norway, national law allows occupational pension schemes to fixed ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2).

There is a maximum age for retirement at 70 years for a number of professions, see below point 7.4.7 c. The WEA states that dismissal before 72 years because of having reached the right to a pension according to the National Insurance Act shall not be objectively justified, see WEA section 15-13a.¹⁷⁶ It is thus implicitly accepted by the WEA section 15-13a that a person may be dismissed because of age at 72 years. In reality this means that it is acceptable to dismiss a person on the ground of age alone from 72 years and onwards. In reality, this is applicable only for employees in the private sector, as public officials have a retirement age at 70 years.¹⁷⁷

¹⁷⁴ See Else Leona McClimans, Helga Aune og Malin Ranheim: Utredning av behovet for et utvidet vern mot diskriminering på grunn av alder, (in Norwegian) at

<https://www.regjeringen.no/contentassets/7378a753b77d4b3b8a50151b5b3d35bb/aldersutredning.pdf>.

¹⁷⁵ See Oslo Economics; Utredning av kostnader og nytte av et vern mot aldersdiskriminering utenfor arbeidslivet, (in Norwegian)

<https://www.regjeringen.no/contentassets/aa98957f50dd4343a408396d34c7bf58/samfunnsokonomisk-analyse-aldersdiskriminering.pdf>.

¹⁷⁶ This age limit was extended as per 1 July 2015 from 70 to 72 years. Preparatory works to the change is Prop. 48L (2014-2015) Endringer i arbeidsmiljøloven og allmenngjøringsloven (arbeidstid, aldersgrenser, skatt, mv).

¹⁷⁷ According to the Act on Age Limits for Public Officials of 21 December 1956 no. 1 section 2.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

In Norway, there are no special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection.

4.7.3 Minimum and maximum age requirements

In Norway, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training.

The maximum age requirement in the public sector is at 70 years, as per the Act on Age Limits for Public Officials of 21 December 1956 no 1 section 2. In private sector employment there is no maximum age requirement by law, but the protection against 'just cause' in dismissals is lifted at the age of 72 years, as per the WEA section 15-13a.

There are in general no minimum age limits in Norway regarding access to employment, however a number of positions or access to training positions require that the employee be a major (i.e. above 18 years) in order to handle money. There is no minimum age of entry into public sector employment, as employment in this sector to a large degree is governed by qualification requirements. There are some select positions in public employment with minimum age requirements: Supreme court judges must be 30 years, judges of the appellate courts must be 25 and assistant/deputy judges 21 years, as per the Act on Courts of 13 August 1915 no 5 § 54. There is an age minimum of 20 years to work as a lawyer, as per the Act on Courts of 13 August 1915 no 5 § 218 b.

4.7.4 Retirement

a) State pension age

In Norway, there is a state pension age, at which individuals must begin to collect their state pensions¹⁷⁸. This can be deferred if an individual wish to work longer. Also, a person can in part collect a pension and still work.

In theory, if pensioners have a full right to pension, pensioners may start to collect state pensions when they are between 62 and 75 years. The general state pension age is set at 67 years. In order to start pension earlier than 67 years, the pensioner must have had sufficiently high pension credits.

The collection of state pensions can be deferred until 70 years for employment in the state. The pensioner can choose to work part-time and get part-time pension.

There is no relevant case law linked to state pension age and the accrual of pensions.

b) Occupational pension schemes

In Norway, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

The 'normal' pension age is 67 years, based on the previous regulations in the Act on National Social Insurance, in which this was the age when the state pensions were available. Amendments to the National Insurance have made it possible to start advance pension at 62 years, and to defer payment until 75 years. If an individual wish to work

¹⁷⁸ See National Insurance Act of 28 February 1997 no. 19, section 19-4.

longer, payments from the occupational pension schemes can be deferred. The individual can collect a part-time pension and still work partly or fully.

c) State imposed mandatory retirement ages

In Norway, there is a state-imposed mandatory retirement age at 70 years for state workers according to the the Act on Age Limits for Public Officials of 21 December 1956 no 1 section 2. This is generally applicable, but there are also exceptions, such as for the armed forces and other sectors with a lower mandatory retirement age.¹⁷⁹

These lower mandatory retirement ages are in the process of being evaluated, as the ages differ. Furthermore, the justification for the lower mandatory retirement ages are neither similar, nor always clear. The legitimacy of these lower mandatory retirement ages have not been scrutinized against the justification required by Directive 2000/78 article 6 no 1, but this will – hopefully – be carried out in the current evaluation.

Two key judgements were passed in 2015 concerning state imposed mandatory retirement ages, both related to health workers, LB-2014-29065 and LG-2014-189475. In both cases, the appellate court found the lower mandatory retirement ages acceptable. When assessing the case, the court in both cases relied heavily on the criteria set out in directive 2000/78 article 4(1) and the cases by the ECJ. Please see section 12.2 below for a fuller account of these cases.

d) Retirement ages imposed by employers

In Norway, national law permits employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally through limits set by the firm itself, if within the limits of Directive 2000/78.

WEA section 15-13a gives a possibility for the employer to terminate an employment when the employee turns 72 years old. Lower age limits may be accepted on the basis of law, contract or collective bargaining if the limit is objectively justified and not disproportionate as per WEA section 13-3(2).

An age limit of 67 years decided by the firm, practiced consistently and laid down in the internal regulations was accepted by the Supreme Court in its judgment Rt-2011-964 (*Gjensidige*). The opposite was found in a judgment of 5 March 2014 of the Borgarting Appellate Court (case LB-2013-144423), where a similar, mandatory retirement age imposed by the employer at 67 years was found invalid. The latter case concerned the validity of the employer's termination of the employee's employment at age 67 in accordance with the age limit established unilaterally in the firm stating a retirement age at 67 years. The appellate court found that the age limit of 67 years was not widely known among the employees. One of the conditions that jurisprudence has lined up to accept a lower mandatory retirement age limit than 70 years, was thus not met. The employer termination of the employment contract was thus invalid, and the employee was awarded compensation for economic losses sustained. WEA section 15-13a.

The mandatory imposed age limits set by employers cannot now be lower than 70 years, according to a legislative change in force as per 1 July 2015.

e) Employment rights applicable to all workers irrespective of age

¹⁷⁹ Most age limits for state employees were approved by the Parliament in 1995, see St.prp nr 38 (1994-1995 *Om aldersgrenser for offentlige tjenestemenn m.fl.*, and Innst. S nr 77 (1995-1996).

Legislation on protection against unjustified dismissal applies to workers under 70 years, see WEA section 15-13a(1)1. This age limit was extended to 72 years, see Prop 48L (2014-2015).

f) Compliance of national law with CJEU case law

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

National legislation is in general in line with the CJEU case law, as demonstrated by the Supreme Court judgment of 14 February 2012 Bjørn Nybø and others vs CHC Helicopter Service AS, Rt-2012-219, which fully built on the CJEU judgment in case C-447/09 Prigge case.

It may however be pointed out as areas of concern that the lower mandatory retirement ages for certain professions, as well as the acceptance of the right of employers to mandatory and unilaterally impose retirement ages for company employees may not always be in line with the justification required by Directive 2000/78/EC and the practice of the CJEU.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Norway, national law does not permit age or seniority to be taken into account in selecting workers for redundancy

National law does not explicitly permit age or seniority to be taken into account when selecting workers for redundancy, as this must be assessed in each case against the limitations set by Directive 2000/78. Traditionally, in trade union agreements, seniority is often used as one of the criteria to select those to be continued in employment.

However, an important element to be included in the employer's assessment of whom to make redundant is the social consequences of a possible redundancy. The right of an employee to receive a full pension, may be used as an argument for selection for redundancy, thus a number of employees have found themselves redundant at an early age, for example 62 years, which is when it is possible to ask for agreement-based retirement-packages.

A Supreme Court judgment from 2011 accepted that 10 airline pilots were lawfully dismissed when turning 60 years, as part of a selection process for redundancy. The Supreme Court concluded that the selection of the dismissed pilots was based on considerations that were justifiable under the WEA section 15-7, that is, an economical need for dismissals and the use of specified criteria – here – that the pilots were eligible for pension. The Supreme Court found that if one in a concrete situation chooses to base the selection process for redundancies on other criteria than tenure, this cannot in itself lead to the decision being ill founded. In this concrete setting, age was seen as a justifiable consideration, and thus, the pilots were not subject to age-based discrimination when chosen for redundancy.¹⁸⁰ This judgment is in my view not in accordance with Directive 2000/78. In similar cases in Sweden and Denmark concerning the same airline, the conclusion was the opposite: that the pilots were subject to discrimination, and entitled to compensation.¹⁸¹

b) Age taken into account for redundancy compensation

¹⁸⁰ See Rt-2010-609 of 5 May 2011.

¹⁸¹ See judgment of the Swedish Labour Court in cases [AD-2011-37](#) and judgment [B-1271-11](#) of the Østre Landsrett Court of second instance in Denmark.

In Norway, national law does not provide in principle provide compensation for redundancy. However, national legislation concerning the paid periods of notice according to the law give longer periods of notice based on seniority, thus an element of compensation for age is given, see WEA section 15-3.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

National law includes no exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. However, it is important to keep in mind that as the Non-discrimination Directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated as such in relation to the directives.

4.9 Any other exceptions

In Norway, there are no other exceptions to the prohibition of discrimination (on any ground) provided in national law.

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

a) Scope for positive action measures

In Norway, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is provided for in national law.

Positive differential treatment is permitted both in the ADA section 8, AAA section 7, SOA section 7 and WEA section 13-6 on preferential treatment, which means that positive action is permitted for all discrimination grounds. The 2013 legal revision changed the wording of the legal text from positive action to 'positive differential treatment', but no changes to the substantial content was intended. Although the wording in the different Acts is somewhat different, it is assumed that it covers the area of the EU acquis. Positive differential treatment will not breach the prohibition against differential treatment if the differential treatment is suited to promote the purpose of the act, the negative impact of the differential treatment on the person whose position will worsen is reasonably proportionate in view of the intended result, and the differential treatment will cease when its purpose has been achieved. In the WEA, the term used is 'preferential/ special treatment', but the content is intended to be the same.

The legislative scope for positive action in Norway has been interpreted as very narrow, based on the ECJ court rulings on gender as well as the EFTA court case against Norway (E-1/02). It may be questioned whether article 5 of RED is fulfilled as the directive itself does not implicate the narrow scope that the EFTA court has interpreted in relation to gender.

b) Main positive action measures in place on national level

A number of measures for positive action exists in Norway, as described and defined in the various national action plans referred to in chapter 9. The most frequently used measure in working life is the introduction of quotas.

A pilot project undertaken by the Ministry of Government Administration and reform and the Directorate for Public Management and eGovernment involves a moderate quota system in favour of non-ethnic Norwegians when hiring into 12 state enterprises.

The State may give priority to applicants with disabilities according to the Civil Service Act, which gives persons with disabilities rights to positive action in employment. When recruiting to positions in the State, the employer must take into account the special rules in the Civil Service Act in addition to the provisions of the Working Environment Act. If there are qualified disabled applicants for a position, at least one of the applicants with a disability must always be called for interview. The disabled applicant seeking to rely on the right to being called for an interview must disclose his disability in the application. The employer may also choose to hire an applicant with disabilities, even if there are better qualified applicants for the position. This is often called 'radical positive action', and increases the possibilities of persons with disabilities to be hired.

Only two cases regarding positive action have been handled in the court system, both concerning the appointment of women.¹⁸²

One of the few cases with the Equality Ombud concerning positive action measures in an area other than gender is case no 10/508. A large state Directorate established in 2010 a trainee programme aiming to recruit more employees with a non-Western background. The trainee programme was a part of a strategy to increase staff diversity to around 5%

¹⁸² Case no Rt-2014-831, LB-2011-198142 Borgarting Appellate Court judgment of 7 July 2011, Oslo city court case TOSLO-2010-152539, Equality Tribunal case 33/2009, and Oslo Municipal Court of 8 July 2010 (TOSLO-2010-7432) (court of first instance) case and Equality Tribunals' decision case 23/2009.

non-Westerners before 2012. The trainee-programme was tailored for 8 persons during 18 months. As the positions were not open for applications to persons with a Western background, the Ombud found that the requirements as found in the ECJ court cases on gender discrimination must be used as a guiding also for the assessment under Directive 2000/43 and Norwegian legislation. The Ombud found that the requirement of proportionality was not fulfilled, and the programme thus did not qualify as positive action/ a temporary special measure under ADA section 8.

The Tribunal came to the opposite conclusion in its case 8/2014, in which a trainee programme by the National Broadcasting Service (NRK) that includes positive action of ethnic minorities, in which 5 positions are reserved for multi-cultural journalists, was found to be within the remit of ADA section 8.¹⁸³

No ordinary court cases address positive action measures in other areas than gender.

There are to the author's knowledge no positive action measures in relation to religion, age or sexual orientation.

There are no explicit positive action measures in favour of the Roma, but a number of initiatives and projects have been initiated according to the national plan of action.

¹⁸³ An English translation of the case is found on <http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/b1843c64667de13100a761a94de822f9.docx> (Accessed 11 March 2016).

6 REMEDIES AND ENFORCEMENT

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

In Norway, as a general rule, the procedures for addressing discrimination issues are the same for employment in the private and public sectors.

a) Available procedures for enforcing the principle of equal treatment

In Norway, there are no special procedures for enforcing the principle of equal treatment, as this follows general legal principles.

For matters within the scope of the WEA; the law itself has a special procedure to be followed in WEA chapter 17, which gives a number of clear timelines.

For the enforcement of the ADA and AAA within the ordinary civil courts, discrimination cases follow the 'normal' procedural rules for civil cases as stated in the Dispute Act.¹⁸⁴

There are no specific procedural rules when forwarding a case to the administrative/alternative dispute mechanism, the Equality Ombud and the Equality Tribunal, other than those posed in the AOT, described below in chapter 7.

The only existing criminal procedures that exist are those linked to the Penal Code section 185 and 186 on hateful expressions and refusal of providing goods and services. These are applicable in relation to discrimination because of skin colour or national or ethnic origin, religion or life stance, sexual orientation or lifestyle and disability, not age or gender.

b) Barriers and other deterrents faced by litigants seeking redress

The low rate of court litigation in Norway is among other factors due to the risks and costs involved in litigation, and the difficulties in obtaining free legal aid in discrimination cases.

It is not a procedural requirement to be represented by a lawyer or legal practitioner in court, as it is given as a right – but not a duty – to use counsel. The key costs of the judicial proceedings in civil cases are, however, the fees linked to legal counsel – that is, the fee of the lawyer. Where a claimant/ victim is not represented by legal counsel, the judge has an extended/ specific duty to advise the complainant/ victim of procedural matters that might be of relevance to the case. The court also has a duty to assist the complainant/ victim in setting up a proper writ summons to start the case, and to assist in making an appeal, as long as the complainant/ victim appears in court and asks for assistance.

There is furthermore a large economical risk linked to costs of proceedings. The general rules on costs of proceedings in discrimination cases before the ordinary courts are found in the Dispute Act chapter 20, and are applicable also in discrimination cases. The general rule is that the successful party is entitled to full compensation for his legal costs from the opposite party, as per the Dispute Act section 20-2(1). The court can exempt the opposite party from liability for legal costs in whole or in part if the court finds that 'weighty grounds' justify exemptions, see section 20-2(3). There is also a possibility, in exceptional cases, to share the cost of litigation between the parties even if the main case is lost. This has only happened in very few discrimination cases: in a case of March 2012, the Supreme Court found that the losing party to a case did not have to pay due to the uneven level between the parties, irregularities in the handling of the case during the hiring process and the importance of the case for the claimant.¹⁸⁵ In an unpublished case from the Oslo municipal

¹⁸⁴ See Act of 17 June 2005 no 90 relating to mediation and procedure in civil disputes (The dispute act), see <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-20050617-090-eng.pdf>.

¹⁸⁵ See HR-2012-580-A, Supreme Court judgment of 5 March 2012.

court (first instance) the judge found that the claimant who claimed to be discriminated against based on age – despite losing the case – had a due reason to have the case tried in court, as she considered herself the victim of discrimination. The court stated that ‘there must be a possible option to have the case tried in court even though this belief was unfounded’.¹⁸⁶ Similar views were expressed in another case in the Appellate court regarding discrimination on the basis of disability (blindness) in which the claimant lost the case but where the employer was partly to blame for the events that led to the dispute.¹⁸⁷ A claimant who was led to believe by trade union representatives that he might be subject to discrimination because of his non-Norwegian background, lost his case. He was in the court of first instance ordered to pay the full costs of the opposite party. He appealed the case to the appellate court. He lost the case there as well, and the appellate court ordered him to pay the costs of the opposite party in relation to the case in the appellate court. He was however acquitted of paying the cost of litigation for the opposite party in the court of first instance, as the opposite party could be reproached for bringing action, and was thus partly to blame for the action sought.¹⁸⁸

c) Number of discrimination cases brought to justice

In Norway, there are neither official statistics on the number of cases related to discrimination brought to justice, that is a court, nor are there to the author’s knowledge statistics kept by others on court cases.

All Supreme Court cases, most Appeal court cases and select cases from the courts of first instance are published electronically on the website www.lovdata.no. All are published electronically and accessible through a subscription. The Supreme Court cases are published electronically and posted on the publicly accessible part of the website (not requiring subscription) for 30 days after judgment. The published cases are tagged – among other things – based on the legal Act. It is thus possible to find and register discrimination cases that have been handled by the appellate court and the Supreme Court. As www.lovdata.no only publishes select cases from the court of first instance, Lovdata does not give a full accurate picture of the total of discrimination cases. The selection of judgments published from the courts of first instance is carried out partly by the court itself who forwards the judgments to Lovdata, and in part by staff at Lovdata.

A significant increase in discrimination cases before the lower instance courts have taken place since 2008, as key legislation in this area has only come into force in recent years (ADA in 2006 and AAA in 2009).¹⁸⁹ Since 2008, only eight discrimination cases have been considered by the Supreme Court, all on age discrimination. There has been only one case according to the AAA before the ordinary courts that have been published, and one case that was dismissed.

The total number of court cases on discrimination cases remains sparse, especially compared with the volume of cases brought before the Equality Ombud. The Equality Ombud and the Equality Tribunal have detailed annual statistics for their work. More than 95% of all cases on discrimination are handled by them. See chapter 7, point g below.

¹⁸⁶ Judgment of 29 June 2007 in case 07-036427 TVI/OTIR/10.

¹⁸⁷ See the Eidsivating Appellate Court/ court of second instance, judgment of 6 July 2007 (Case LE-2006-189239), the ‘music teacher judgment’. This judgment was passed before the enactment of the AAA, thus the merits of the case was assessed according to the WEA, where disability was included as a ground of discrimination before the AAA was enacted in 2009.

¹⁸⁸ Borgarting Appellate Court/ Court of second instance, judgment of 27 January 2003 (Case LB-2002-44) (*Sporveissaken*).

¹⁸⁹ A study carried out in 2008 for the publicly appointed committee that prepared the Government White Paper on Comprehensive protection against discrimination NOU 2009:14, gathered both published and previously non-published court material on discrimination cases. Between 1978 and 2008, approximately 51 legal disputes in the area of discrimination issues – mainly on gender – were handled by the civil courts. See Else Leona McClimans: *Rettspraksis om diskrimineringslovgivning*, (Court cases concerning discrimination legislation, Diskrimineringslovutvalget, 2008).

Statistics thus show that although the courts do handle discrimination cases, and although the number of cases handled by courts is slowly increasing, the overwhelming number of discrimination cases in Norway is channelled through the administrative bodies, the Ombud and the Tribunal. This has in particular consequences in relation to an assessment of compliance with EU law in terms of sanctions, as the Equality Ombud/ Tribunal does not have the power to enforce the clauses relating to sanctions in the form of liability for damages/ redress/ compensations (see below).

d) Registration of discrimination cases by national courts

In Norway, discrimination cases are not registered as such by national courts, but may be found on the subscription-service www.lovdata.no categorized among other things according to the Act invoked in the judgment. The judgments are available for the general public on www.lovdata.no for free the first month after publication, but are after this period only available by subscription.

Court cases are all published in Norwegian. There is no systematic translation of cases in Lovdata, although a fair number of criminal cases are in fact translated to English (or another language) if the claimant does not understand Norwegian. This translation is in most cases arranged by the lawyers of either the defence or the victim, and paid for by the Court Administration. An attempt to translate several key opinions and decisions by the Equality Ombud and the Equality Tribunal was made some years ago, however this practice was abandoned.¹⁹⁰

Discrimination cases brought before the Equality Ombud and the Equality Tribunal are anonymised and published for public perusal for free on their webpages, as described below in chapter 7, point g.

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

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

In Norway, associations/organisations/trade unions are entitled to act on behalf of victims of discrimination.

In general, persons of legal age (18 years) have procedural capacity and can act on their own in court, see Dispute Act section 2-2. Both physical persons, and legal entities, including the State, municipal and county authorities have the capacity to sue and be sued, see section 2-1(1). Organisations that are not legal entities in the form of a foundation etc. have the capacity to sue and be sued to the extent justified by an overall assessment where the court assesses issues such as if the organisation has a permanent organisational structure, if there are formalised membership arrangements, the purpose of the organisation and the subject matter of the action, see section 2-1(2).

Associations, including organisations or trade unions, are entitled to act on behalf of victims of discrimination with a specific power of attorney from the person or company or organisation in court. However, the actual victim (the party to the case) must be present in court to give testimony during the main hearing as per the Dispute Act section 9-15. A key principle in Norwegian courtrooms is the oral hearing and the immediate presentation of evidence.

In discrimination cases, the right of associations to be used as agents in administrative proceedings and act on behalf of victims is expressly stated. The requirement is that the

¹⁹⁰ See the webpage of the Equality Tribunal where summaries of cases are found in English as well as selection of cases translated to English at <http://www.diskrimineringsnemnda.no/wips/1529714557/>.

organisation must have a '*purpose, wholly or partly, to oppose discrimination*' according to the grounds as prohibited by law', see ADA section 27, AAA section 32, SOA section 25 and WEA section 13-10. This rule supplements the rules concerning the individual rights of associations to act on their own (see below) and the right of organisations to act on behalf of their members. The dispute act governs the rights to stand on behalf of and in support of in courts. The right of organisations to act as legal representatives under the anti-discrimination acts is more limited to representation before the Ombud and Tribunal.

A key issue for bringing a case to court is that the claimant – also if it is an association – must show a genuine need to have the claim determined against the defendant, which is a legal interest.¹⁹¹ The 'genuine need' shall be determined based on a total assessment of the relevance of the claim and the parties' connection to the claim, see the Dispute Act section 1-3(2). This is in reality a criterion for direct interest in a case in order to be a party to the case. An element of having 'direct interest' in a case is that the case is a live controversy and should not be based on a bygone fact.¹⁹² The procedural rules before court are not different in civil discrimination cases.

A person appointed by and with links to an organisation whose purpose is, wholly or partially, to work to prevent discrimination on the basis of disability or religion/ ethnicity may be used as a legal representative in cases heard by the courts. This does however not apply in relation to the Supreme Court. The court may refuse to accept the authorisation of a legal representative if the court believes there is a danger that the legal representative does not have sufficient qualifications to safeguard the party's interests satisfactorily. A legal representative shall, along with an authorisation as stated in section 3-4 of the Dispute Act, at the same time submit written information from the organisation regarding the legal representative's qualifications, see AAA section 32(2), ADA section 32(2) and SOA 25(2).

There are no special rules on the shifting burden of proof where associations are engaged in proceedings – the rules are the same no matter who the claimant is.

Action by associations is discretionary. There are no rules establishing that associations have a legal duty to act under specific circumstances, unless they themselves have taken on a particular assignment on behalf of specific victim(s) to act on behalf of them.

Associations may engage in both civil and administrative proceedings according to the general rules of the Public Administration Act section 12¹⁹³ and the Dispute Act.

¹⁹¹ According to a legal dictionary (Ronald Craig: Norsk Engelsk ordbok, Universitetsforlaget 2010 (3 utg)) the concept legal interest according to Norwegian law has two aspects: 1) a requirement that the claimant and defendant have a sufficient connection to the subject matter in dispute and 2) a requirement that the dispute be a live controversy, it neither moot nor hypothetical.

¹⁹² The verdict of the Supreme Court in the ADHD-case is illustrating for the procedural complications of taking a case to court, Rt. 2014-480. The association ADHD Norway initiated a case against the State/ The Equality and Anti-Discrimination Tribunal for the Oslo City court, claiming that the Tribunal's decision in its case number 25/2011 on the assessment of the introduction course for military recruits in the armed forces were invalid. The Tribunal had found that the guidelines governing the introduction scheme for military recruits in the armed forces were not discriminatory for recruits with ADHD. The Tribunal presumed in its decision that all recruits – also those with a disability – would be subject to an individual assessment of their merits. As recruits with a disability are excluded from further assessment because of their disability, the organisation challenged the presumption that the Tribunals' decision built on, and asked that the decision be found invalid. As the introduction scheme was marginally changed after the decision of the Tribunal, the Appellate court in case number LB-2013-142603 rejected the case, as they found that the decision of the Tribunal was not a live controversy: the facts upon which the decision of the Tribunal was based was bygone, and not relevant for the situation today. The dispute was by verdict rejected from court assessment based on a lack of a genuine need to have the case determined, as per the RDA section 1-3. This verdict was appealed to Supreme Court, who found that the Tribunal did not have a mandate to make a decision in the case, and that the Tribunal – erroneously – had made a decision where it should have issued an opinion. It is not possible to refer an opinion to the courts, and the case was rejected.

¹⁹³ Act relating to procedure concerning the public administration (Public Administration Act) of 10 February 1967.

As a main rule, associations have no legal standing alone within criminal law but have in some limited manner a right to raise a private criminal case against someone. This is seldom used in general, and the author has never heard of a discrimination case in which this possibility has been used.

b) Engaging in support of victims of discrimination

In Norway, associations/organisations/trade unions are entitled to act in support of victims of discrimination.

Associations, as well as organisations and trade unions, are entitled to act in support of victims of discrimination through co-counsel/ third-party intervention, as per the Dispute Act section 15-7.

Where entities act on behalf of or in support of victims, they need a written specific power of attorney to legitimate them and authorize them in relation to the court/ the Equality Ombud/the Equality Tribunal. There are no specific requirements regarding the form or content of this power of attorney.

There are special provisions on victim consent in cases where obtaining formal authorization is problematic, such as by minors (i.e. persons under 18 years) and persons under guardianship. The Act on Guardianship of 26 March 2010 no 9 gives the possibility to legally incapacitate a person, but never to a greater extent than absolutely necessary and always tailored to the persons' circumstance.

c) Actio popularis

In Norway, national law allows associations / organisations / trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (actio popularis).

Organisations and associations have a right of action in their own name in relation to matters that fall within their purpose and normal scope, on the condition that they have a 'genuine need' to have the claim determined, see DA section 1-4(1). These have an action right both in their own name as well as are entitled to act on behalf or in support of victims.

There is thus no need to have a specific victim to support or represent, although it is necessary to prove some kind of membership. The fact that a formalized membership structure exists will easier demonstrate and classify the organisation as one with legal capacity to sue and be sued according to the law. 'Ad- hoc' organisations, that is organisations established in order to forward a particular case of litigation, or other organisations that may be termed 'mayfly-organisations' will not in itself have legal capacity to sue and be sued. Case law has widely accepted associations and cooperatives acting under one common name.¹⁹⁴

The organisations that have a right of action in their own name may use all proceedings under the dispute resolution act. The rules on the shifting burden of proof under the anti-discrimination legislation are also applicable to organisations and associations.

d) Class action

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

¹⁹⁴ See the *travaux préparatoires* to the Dispute Act, Norwegian Official Report NOU 2001:32 Rett på sak point 2.2.2.1.

National law allows associations to act in the interest of more than one individual victim. Since 2008, with the implementation of the new Dispute Act, there is a possibility to collectively take cases to court, in so-called class actions, with specific procedural rules according to the Dispute Act chapter 35.

A class action may be brought by any person who fulfils the conditions for class membership or by an organisation, an association or a public body charged with promoting a specific interest. In the preparatory works to the Dispute Resolution Act, discrimination cases are given as an example of the kind of cases where class action might be suitable.¹⁹⁵ Trade unions and NGOs working on discrimination cases are entitled to file a class action claim, as per the Dispute Act section 35-1. Official documents and legal preparatory works have assumed that the Ombud is also able to bring a class action suit concerning discrimination to courts, however she has not made use of that possibility so far.¹⁹⁶

As a general rule, victims must be identified, both in general civil and criminal cases. This is similar in class actions, where concrete victim of discrimination must be identified in most instances. The exception may be in the kind of class action where not all members of the class are required to be made known by name, see section 35-2.

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

In Norway, national law permits a partial shift of the burden of proof from the complainant to the respondent

The rule of shared burden of proof applies for all grounds of discrimination, including reasonable accommodation, harassment, victimisations and instructions to discriminate, see ADA section 24, AAA section 30, SOA section 23 and WEA section 13-8.

In cases concerning dismissals according to labour law procedural rules, it is a general principle that the employer must substantiate that the dismissal is based upon the correct facts. Other than this, in civil cases - as a general rule - the burden of proof is on the claimant. This is why the shifting burden of proof as implemented in the discrimination legislation is thus important. In all discrimination cases, if there are circumstances that give '*reason to believe*' that there has been direct or indirect differential treatment in contravention with the said legislation, such differential treatment shall be assumed to have taken place unless the person responsible proves on a balance of probabilities that such differential treatment nonetheless did not take place. The revised Norwegian legal texts as found in the ADA, AAA and SOA now states that:

'discrimination shall be assumed to have occurred if circumstances apply that provide grounds for believing that discrimination has occurred, and the person responsible fails to substantiate that discrimination did not in fact occur.'

If the claimant gives '*reason to believe*' that discrimination has occurred, the burden of proof shifts to the employer/ the discriminator. If the employer/discriminator fails to fulfil the burden of proof, discrimination is assumed to have occurred.

What is meant by '*reason to believe*' for the burden of proof to be reversed is interpreted by the Equality Tribunal to mean that the allegation must be '*supported by the chain of events and the external circumstances of the case which necessitates an assessment of the specifics of the case*'.¹⁹⁷

¹⁹⁵ See Ot.prp nr 51 (2004-2005) s 322.

¹⁹⁶ See Government White Paper on Gender and Pay. Facts, analysis and measures, NOU 2008:6 *Kjønn og lønn*, p 114.

¹⁹⁷ See the Equality Tribunal case 26/2006, in which the said quote was used by the dissenting member of the Tribunal. Although the rest of the Tribunal in this particular case did not agree with the dissenting member, the said quote has later been referred to by the Ombud and Tribunal in a number of subsequent cases.

In an article by the previous head of the Equality Tribunal and the head of its Secretariat, the conclusion is that the current rules on reversal on the burden of proof are useful and fulfil the EU requirements.¹⁹⁸ This conclusion is shared with the author of this report. As the practice of the Ombud and Tribunal has not changed based on the new wording of the legislation, the revised text is also being line with the EU requirements.

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

In Norway, there are legal measures of protection against victimisation.

Protection against retaliation/ acts of reprisals/ victimisation is implemented through the ADA section 10, AAA section 9, SOA section 9 and WEA section 2-5. In all discrimination cases, if there are circumstances that give reason to believe that there has been direct or indirect differential treatment in contravention with the discrimination legislation, such differential treatment shall be assumed to have taken place unless the person responsible proves on a balance of probabilities that such differential treatment nonetheless did not take place. This applies equally to situations of reprisals and victimisation. It is not permitted to retaliate against any person who has submitted a complaint regarding a breach of provisions of the discrimination legislation, or who has stated that a complaint may be submitted. There is a limitation to this right, and that is in instances where the complainant has acted with gross negligence. The protection against victimisation applies correspondingly to witnesses or someone who helps the victim of discrimination to bring a complaint, for example a workers' representative.

As the regulation on victimisation is relatively new, both the Ombud and Equality Tribunal have dealt with a limited number of cases in which victimisation is alleged. The Equality Tribunal has handled a total of eight cases where victimisation was one of the issues raised.¹⁹⁹ The Tribunal case 27/2008 was subsequently taken to the Oslo municipal court by the accused of the reprisal, the municipality of Oslo, where the decision of the Tribunal in its case 27/2008 was overruled by the court. The court found that the refusal to employ a male nurse was due to his personal abilities, and that he was not subject to reprisals or victimisation from the former employer, as the decision to refuse to use his services as a nurse was taken before he brought the case to the Ombud and Tribunal.²⁰⁰ In a case on discrimination because of age and gender, the female complainant was subject to victimisation in breach of the GEA and WEA section 2-5 and 13-8.²⁰¹ The Ombud handled in 2013 a case in which a witness to harassment claimed that he was subject to reprisals from his employer for having supported a victim of harassment. Immediately afterwards he was deprived of his position as shift supervisor. The Ombud found that there was a causal link between the deprivation and his support to the harassed victim.²⁰² The Ombud has furthermore handled an interesting case concerning reprisal regarding an instance of notification about sexual harassment.²⁰³

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

¹⁹⁸ See Syse, Aslak, og Geir Helgeland: Reglene om delt bevisbyrde i norsk diskrimineringsrett («*The rules on the shared burden of proof in Norwegian discrimination law*»), in Aune, Fauchald, Lilleholt og Michalsen (red): Arbeid og Rett, Festskrift til Henning Jakhellns 70-årsdag, Cappelen DAMM 2009.

¹⁹⁹ See Tribunal cases 27/2008 (gender), 30/2009 (disability and ethnicity), 43/2010 (ethnicity), 20/2011 (ethnicity), 48/2011 (disability), 29/2012 (disability) and 50/2012 (disability) and 21/2013 (gender).

²⁰⁰ Oslo municipal court, first instance judgment of 27 October 2009 (TOSLO-2009-72697).

²⁰¹ See judgment from the Øst-Finnmark tingrett of 17 March 2010, case number TOSFI-2009-136827.

²⁰² Case no 12/314 of 6 May 2013 (in Norwegian) at <http://www.ldo.no/no/Klagesaker/Arkiv/2013/12314-Vitne-utsatt-for-gjengjeldelse-grunnet-bistand-i-en-trakasseringssak-/>. (Accessed 10 March 2016)

²⁰³ Case no 08/1177 of 6 January 2009 as referred in (in Norwegian) the annual report of the Ombud, Praxis 2008.

Sanctions according to the ADA, AAA, SOA and WEA that are enforced by the civil courts consist of liability for damages/ compensation/ redress awarded to the claimant of discrimination. Sanctions according to criminal law consist of penalties. Sanctions are in general equally applicable in private and public employment. Sanctions cover in general all discrimination grounds in all fields, except age, which is only covered in the field of employment.

There are a number of general rules on compensation in Norwegian legislation which are applicable in discrimination cases. Compensation in Norwegian law is awarded either for fault-based liability (*culpa*) or for liability without fault. These ordinary rules are the rules on compensation set mainly by the Act relating to Compensation,²⁰⁴ as well as by the non-statutory customary rules on compensatory damages. These also include a number of general rules to limit liability.

The rules on compensation in discrimination cases were revised and harmonized in 2013 so that liability is similar in all legislative acts.²⁰⁵ The reason for these changes were to make Norwegian legislation more in line with the requirements of the EU directives in relation to compensation irrespective of if the employer can be blamed for the discrimination in employment.

Access to compensation differs slightly in the various acts depending on if the discrimination takes place inside or outside employment: According to ADA section 25(1) and 2, a person who is discriminated may claim compensation for non-economic loss and compensation for economic loss upon being discriminated. In an employment relationship, liability exists irrespective of whether the employer can be blamed for the discrimination; see WEA section 13-9. The liability is with the employer. In other sectors of society, liability exists only if the person who has committed the discriminatory act can be blamed for it. This is similarly stated in AAA section 31(2) and SOA section 25(1) and (2).

According to the AAA section 25(1), a job applicant or employee may demand redress for non-economic loss for a contravention of the general rule on prohibition of discrimination irrespective of the employer's culpability. This is also the case for breaches to of the rules on reasonable accommodation in AAA sections 16, 17 and 26. There is no right to demand redress for non-economic loss for a contravention of the right to universal design in AAA sections 13-15.

Regarding non-economic loss damages, all acts contain the general rule that compensation shall be set at an amount that is reasonable in view of the scope and nature of the harm, the relationship between the parties and the circumstances otherwise, see ADA section 25(3), AAA section 31(3), SOA section 24 and WEA section 13-9.

The acts contain a right to claim compensation for non-economic loss and compensation for economic loss under the general principles of the law of damages, see ADA section 25(4), AAA section 31(3) and SOA section 24(3) 9.

Preliminary injunction on the right to remain in position: A practical form of 'sanction' often claimed by victims of discrimination in employment is the right to remain in the position until the case has been finally decided in Court.

²⁰⁴ Act relating to Compensation of 13 June 1969 No 26.

²⁰⁵ See Proposition to Parliament, Prop. 88 L (2012-2013) p. 97.

This has been granted on one occasion related to age discrimination in the context of interlocutory judgments,²⁰⁶ but refused by Supreme Court,²⁰⁷ and in later cases by the Appellate Court.²⁰⁸

ADA section 26 provides penalties in the form of fines or imprisonment for up to three years towards the perpetrators for a gross discrimination that has been committed jointly by several persons. This is in relation to discrimination on the following grounds: ethnicity, religion or belief. Any person who wilfully and jointly with at least two other persons commits a serious contravention or is accessory to a serious contravention of parts of the ADA shall be liable to fines or imprisonment for a term not exceeding three years. Furthermore, there is a specific clause on repeated behaviour, in as such that any person who has previously been sentenced to a penalty for contravention of the present provision may be liable to a penalty even if the contravention is not serious. When assessing whether a contravention is serious, particular importance is attached to the degree of manifest fault, whether the contravention was racially motivated, whether it is in the nature of harassment, whether it constitutes an offence against the person or serious violation of a person's mental integrity, whether it is liable to create fear and whether it was committed against a person under the age of 18. Before instituting a prosecution for such offences, an assessment shall be made of whether it will be sufficient to impose an administrative sanction in the form of an order or fine. In the ADA, the limit for imprisonment is three years. To the author's knowledge, this sanction has not been used. This might be an indication that, as a sanction, given that it is never used, does not comply with the criteria set by the ECJ of being sufficiently dissuasive.

The crime statistics do not tag information regarding whether 'hate motivation' is an aggravating circumstance, and therefore there is no way of knowing whether, or the extent of, the usage of this provision in the Norwegian courtrooms.

Sanctions according to the ADA, AAA, SOA and WEA that are enforced by the Equality Ombud and Equality Tribunal: The Equality Tribunal has a limited competence to give administrative order - that is to order an act to be stopped or remedied or other measures that are necessary to ensure that discrimination, harassment, instructions or reprisals cease and to prevent their repetition, see AOT section 7.²⁰⁹ Breaches to the duty of accommodation (individual accommodation/ universal design) is regarded as discrimination, and may be ordered to be stopped or remedied. The Equality Tribunal may set a time limit for compliance with the order. The Tribunal shall state the grounds for an administrative decision at the time the decision is made. Furthermore, the Equality Tribunal may make an administrative decision to impose a coercive fine to ensure implementation of orders pursuant to section 7, if the time limit for complying with the order is exceeded, see AOT section 8(1). The coercive fine begins to run if a new time limit for complying with the order is exceeded, and shall normally run until the order has been complied with. The Tribunal may reduce or waive a fine that has been imposed when special reasons warrant

²⁰⁶ For example, verdict of 19 November 2009 by the Oslo municipal court first instance in case no 09-143503TVI-OTIR/02.

²⁰⁷ The Supreme Court did not in its decision Rt 2011-974/ HR-2011-1294-A of 29 June 2011 give the claimant the right to continue her position when addressing the possible discriminatory aspects of a retirement age set unilaterally by the company at age 67. Supreme Court stated that allowing the claimant the preliminary right to remain in position in these kinds of litigation would reduce the content of these age limits.

²⁰⁸ Borgarting Appellate court verdict of 18 June 2014 in case number LB-2014-56188 (Mediaas-saken).

²⁰⁹ The Tribunal referred in its case no 47/2013 to its decision in case 58/2010 in September 2011 to the failure of the local public transport company in Oslo to properly mark its stairways and steps in contrasting colours to assist the sight-impaired in line with the Anti-Discrimination and Accessibility Act section 9 on universal design/ universal accommodation constituted discrimination. An order to remedy the situation was not given, however, the secretariat of the Tribunal followed this case closely. Given that the company during autumn 2013 still had not fulfilled its duty to properly mark all its steps at its stations, the Ombud brought the case before the Tribunal (again). The Tribunal ordered remedies within a given time limit (31 December 2014) to comply with AAA requirement on universal design/ universal accommodation. The Tribunal furthermore warned the company that a failure to fulfil the orders remedy might imply that the Tribunal issue a coercive fine to ensure implementation of its order.

doing so. The coercive fine shall accrue to the State. An administrative decision to impose a coercive fine constitutes grounds for enforcement. The Tribunal shall state the grounds for an administrative decision to impose a coercive fine at the time the decision is made. So far, the Tribunal has not made use of its mandate to impose a coercive fine, although it has been discussed in two instances of illegal employment announcements made by the same company. A coercive fine has thus yet to be issued, even in cases of repetitive offences.

The Tribunals' decision in its case 44/2009 of 12 March 2010, which was a follow-up to its case 10/2006 is an illustration of this: In the latter case, a position at a Dry-Cleaner's in Oslo was announced vacant in the Norwegian national newspaper *Aftenposten* asking for 'Mature female aged 30-50 years is encouraged to apply for the vacancy in our Dry-Cleaner's at Røa'. Both the Ombud and the Tribunal found the announcement a breach of age and gender. As the company had used a similar announcement previously, and the firm is a large, professional employer with 17 branch offices in the Oslo area, the Tribunal ordered that similar advertisements should be stopped. The Tribunal issued an order with a specific time limit for compliance to ensure that a similar advertisement would not be used again. Thereafter the Tribunal received a notice from the firm confirming that the advertisement would not be used again. In its recent case, the dry cleaners' announcement in 2009 was for a 'mature woman'. The case was brought to the Tribunal from the Ombud on her own initiative, asking whether or not the current announcement was a breach of the 2006 order of the Tribunal. The Tribunal also discussed if a breach of the order should result in a fine in accordance with the Anti-discrimination Ombuds' Act section 13, or another form of reaction. The Tribunal again ordered the announcement stopped, and that the company collaborate with the Ombud in the wording of coming announcements, but did not issue a fine.

In practice thus, the mandate to make use of fines is more a coercive tool, as this sanction never has been used.²¹⁰ The lack of use is a problem. The efficiency of this sanction may thus be questioned.

b) Ceiling and amount of compensation

There are no upper limits for compensation, nor are there rules for calculation provided in the national legal framework. The compensation shall as a rule give compensation for actual loss.

In the sparse court cases that exist, compensation has only been awarded in two Supreme Court cases, both which concerns discrimination because of membership in trade unions.

In its judgment of 28 March 2014, the Eidsivating Appellate court awarded in case number LE-2013-113570 '*Gate Gourmet 2*' compensation amount to real economic loss because of discrimination because of membership in a trade union. The Supreme Court had in its case Rt-2011-1755 *Gate Gourmet*, found that these employees had been discriminated against in violation of the general rule in the Working Environment Act § 13-1 first paragraph because jobseekers who were members of another union got preferential hiring. The 50 complainants were awarded NOK 5000, - (€ 625) in non-monetary damage for discrimination incurred. In subsequent cases for the Øvre Romerike district court (12-073184TVI-OVRO of 23 April 2013) and the Eidsivating appellate court, the claimants were awarded compensation for incurred loss. The compensation to all claimants totaled more than NOK 8.000.000, - (approximately € 1.000.000).

In the other case where compensation was awarded, Rt 2001-248 *Olderdalen*, NOK 100,000, (approximately € 12.000) was awarded to the claimants as economical loss because of discrimination due to political affiliation. The WEA of the time did not contain a

²¹⁰ In its case 7/2012, the Tribunal warned the hotel that if they did not follow-up the order given within the deadline of 1 January 2014, a coercive fine might be issued.

clause specifically on liability for economical loss, thus the sanctions used for gender discrimination was referred to as comparable.

In the other cases before Supreme Court, compensation has either not been claimed, or the case was lost and compensation thus not awarded.

Apart from these judgments, compensation has been awarded in only four lower court cases: three concerning discrimination because of gender/ pregnancy,²¹¹ one concerning age and gender. All concern employment relations.²¹² Interestingly, the non-pecuniary compensation for the discrimination has been set above NOK 100.000 (approximately € 12.000) in the three recent cases. This is considered a high compensation when for example compared with the level of compensation in cases of unjustified dismissals within employment.

There is no statistical information available concerning the average amount of compensation available to victims.

The fact that the Equality Ombud and the Equality Tribunal cannot award compensation has been criticised. In an in-depth study, in which victims of discrimination were interviewed, the victims expressed disappointment that despite the Ombud's assessment that discrimination had taken place, the Ombud had no powers to award compensation. The victims themselves had an impression that the sanctions enforced by the Ombud to be more encompassing than they in reality are.²¹³

A state appointed committee proposed in 2011 that the Equality Tribunal be given powers to award damages for non-economic loss in cases concerning a breach of the prohibition against discrimination.²¹⁴ This was not followed through in the 2013 revision of the anti-discrimination legislation, however, the Parliamentary Committee enacting the legislation specifically asked the government to study alternative possibilities to establish a low-threshold structure for compensation for non-economic loss within the framework of the anti-discrimination legislation. In this regard, the Committee asked the Government to assess how the Equality Tribunal functions as a complaint mechanism, and which changes in the Tribunals' *modus operandi*, composition and resources that might be necessary to ensure the rule of law should the Tribunals mandate be extended to include powers to award compensation for non-monetary loss in discrimination cases.²¹⁵

c) Assessment of the sanctions

The sanctions as formulated in the legislation and adopted in Norway are formally satisfactory in relation to EU directives *per se* to address problems of discrimination. A challenge with the Norwegian system as described above is not the sanctions alone, but the enforcement system. As more than 90% of all discrimination cases each year are handled by the Ombud alone, with the inherent limitation that she is not able to award damages for breaches to the act, persons who are discriminated against are not awarded

²¹¹ These are: Court of Second Instance/ Hålogaland Appellate Court, Judgment of 21 January 2009 LH-2008-99829 (*Bang-saken*), Oslo municipal court judgment of 17 November 2006 case no TOSLO-2006-52718 and Court of second instance/ Eidsivating Appellate court 12 December 1994, case no LE 1994-892 (*Lufthansa*).

²¹² Judgment of Øst-Finnmark Court of first instance - judgment of 17 March 2010 in case no 09-136827TVI-OSFI (age and gender).

²¹³ Fjordholm, Fin Skre: '- Er det meg, er det han, eller hva er det? - Opplevelse og rettsregler i diskriminertes møte med Likestillingsombudet' ('Is it me, is it him, or what's the problem? Rules and experiences from encounters with the Equality Ombud'. Kvinnerettslig skriftserie nr. 69/2007, Universitetet i Oslo, accessible at http://www.jus.uio.no/ior/forskning/omrader/kvinneverett/publikasjoner/skriftserien/dokumenter/69_Fjordholm.pdf (accessed 10 March 2016).

²¹⁴ See (in Norwegian) NOU 2011:18 Structure for Equality <http://www.regjeringen.no/nb/dep/bld/dok/nouer/2011/nou-2011-18.html?id=663064> (accessed 10 March 2016).

²¹⁵ See Innst. 441 L (2012-2013) to the Parliament from the Parliamentary Committee on family and culture, page 21 (In Norwegian).

compensation for discriminatory treatment unless they take their case to the ordinary court system. This is both very expensive and cumbersome. Access to legal aid is sparse for this group, thus not giving them efficient access to justice in discrimination cases.

The oral hearing in court may also give a different result, as the court will hear the case again in full, and not use the findings of the Ombud and Tribunal alone.²¹⁶

Furthermore, current legislation contains sanctions: liability for damages/ compensation/ redress, penalties and administrative orders - that is to order an act to be stopped or remedied or other measures that are necessary to ensure that discrimination, harassment, instructions or reprisals cease and to prevent their repetition - that are seldom used. This makes sanctions in practice less effective than their legislative potential is.

²¹⁶ The judgment of Hålogaland Appellate Court in case number LH-2014-27941 of 27 June 2014 underscores this point. A man claimed to have been subject to discrimination because of disability when he was not offered a position as a handling agent in the Norwegian National Collection Agency, and claimed compensation according to the (previous) AAA section 17. His complaint had previously been handled both by the Ombud and by the Equality Tribunal, who both found that there was reason to believe that the employer had placed weight on his disability to his disadvantage when he was not considered for the position he had applied for (see Tribunal case no. 8/2012 of 25 October 2012). The court found that he was not discriminated because of his disability. The Court found, based on the witnesses and other evidence provided in court, that A's personal abilities were decisive when he was not hired for the job. The court found that there was no evidence in the case that his disability was decisive. The Court points in this context especially to two conditions. Firstly, that it was not necessary with adaptations of the work situation, since both an elevating table and chair is standard at all workstations. Secondly, that collection agency at the time of the appointment also offered two people positions who at the time of the application was on sick leave. The employer had furthermore relatively many employees with disabilities, some with considerably greater disabilities than A.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

A specialised body exists for the promotion of equal treatment irrespective of racial or ethnic origin: the Equality- and Anti-discrimination Ombud²¹⁷ with its appeal instance the Equality Tribunal.²¹⁸ The Ombud enforce prohibition of discrimination based on all grounds covered by legislation as mentioned above.

The appointment, method of organisation and authority of these bodies are regulated in the Anti-Discrimination Ombud Act - AOT.²¹⁹

- b) Status of the designated body/bodies – general independence

The Equality Ombud and the Equality Tribunal are alternative dispute mechanisms outside the judicial system, addressing cases of discrimination. The Ombud and Tribunal are a free low-threshold complaint system.

The Equality Ombud and -Tribunal are professionally independent central government bodies. The competencies of the Ombud and the Tribunal are derived from the AOT. The independence of the bodies is stipulated in law, and they are independent in their functions.²²⁰

The Equality Ombud has a dual role in working for equality, by enforcing the law as well as proactively promoting equality and combating discrimination. As a law enforcer, the Equality Ombud issue opinions on complaints concerning breaches of statutes and provisions within the Ombud's sphere of activity, and provides advice and guidance with regard to the legislation within its mandate. The Equality Ombud is funded by annual grants financed by the Ministry of Children, Equality and Social Inclusion, but cannot be instructed by the Ministry. The Equality Ombud herself is appointed by the Ministry. The employees of the Equality Ombud are public officials. Even though the Ombud is nominated by the Ministry and her staff is public officials her independence is not questioned in Norway, as her mandate is clarified by law, and she is not to be instructed by the Ministry.

The funds allocated through the State budget for 2015 as income for the Ombud was NOK 53.981.000, - (approximately € 5.997.888, - 1 €= 9 NOK, -).²²¹ 62 people work at the Ombuds' office, including the Ombud herself.

The Equality Tribunal is the appeal body of the Equality Ombud. Its members are appointed by the Ministry of Children, Equality and Social Inclusion for a term of four years, with the possibility for reappointment. When the members and deputy members are appointed for the first time, half of them shall be appointed for a term of two years. The chairperson and deputy chairperson shall fulfil the requirements prescribed for judges. The members are

²¹⁷ <http://www.ldo.no/en/> (accessed 10 March 2016).

²¹⁸ <http://www.diskrimineringsnemnda.no/wips/2094117726/> (accessed 10 March 2016).

²¹⁹ The AOT - Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal of 10 June 2005 No 40 (Diskrimineringsombudsloven).

²²⁰ See AOT - Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal (The Anti-Discrimination Ombud Act), of 10 June 2005 No 40, <http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-on-the-Equality-and-Anti-Discrim.html?id=451952> (accessed 10 March 2016).

²²¹ As per the undated letter from the Ministry informing about the allocation, published (in Norwegian) on 23 January 2015 at: <https://www.regjeringen.no/contentassets/11d82e8f80db44d78be1c0b5b451f003/tildelingsbrev-til-likestillings--og-diskrimineringsombudet-2015.pdf> The amount in € is significantly lower in 2015 than in 2014, this is due to the currency exchange rate and does not cover the reality: the budgeted amount is about the same for 2014 and 2015. (Accessed 9 March 2016).

appointed after suggestions from different stakeholders, and chosen because of their academic skills on discrimination issues. When handling the cases, the members are divided into two divisions with five members each. The chair and the deputy chair of the tribunal participate in both divisions to ensure a consistency of the Tribunal's practice in law. The Equality Tribunal has a secretariat of four persons. The secretariat staff are public employees, as per the AOT regulations section 9.

c) Grounds covered by the designated body/bodies

The Equality Ombud and Tribunal monitor and contribute to ensure compliance with the provisions in the anti-discrimination legislation. Her mandate covers all legislative discrimination grounds covered by the ADA (ethnicity, religion and belief), AAA (disability), SOA (sexual orientation), WEA (age and political view), (gender), the relevant rules in the select housing legislation and the Ship Labour Act chapter 10, see AOT section 1(2). The mandate of the Ombud also involves ensuring that Norwegian legislation and administration practice is in accordance with Norway's obligations according to the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Elimination of Racial Discrimination and UN Convention on the Rights of People with Disabilities (CRPD), see AOT section 1(3).

d) Competences of the designated body/bodies – and their independent exercise

The Ombud's function of promoting equality and developing expertise entails the following tasks in accordance with the AOT regulations section 1:²²²

- a. *A proactive role*: The Ombud shall play a proactive role in promoting equality and combating discrimination, and shall monitor developments in society with a view to exposing and calling attention to matters that counteract equality and equal treatment.
- b. *Influencing attitudes and behaviour*: The Ombud shall help to raise awareness of equality and equal treatment and actively promote changes in attitudes and behaviour. The Ombud shall play an active part in giving the general public information about status and challenges.
- c. *Support and guidance*: The Ombud shall provide information, support and guidance in efforts to promote equality and counteract discrimination in the public, private and voluntary sectors.
- d. *Advisory service on ethnic diversity in working life*: The Ombud shall provide advice and guidance on ethnic diversity in working life to employers in the public and private sectors. The service shall be provided free of charge and be adapted to the needs of the individual employer. Furthermore, the Ombud shall help to disseminate examples of good practices and to increase knowledge of methods for promoting ethnic diversity in working life.
- e. *Expertise*: The Ombud shall have an overview of and provide knowledge and help to develop expertise on and documentation of equality and equal treatment, as well as monitor the nature and extent of discrimination.
- f. *Forum*: The Ombud shall serve as a meeting place and information centre for a broad public and facilitate collaboration between actors who work to combat discrimination and promote equality.

The key characteristic of the Ombud is her independent and impartial role as a law enforcer: she provides free legal advice on equality and anti-discrimination legislation to victims of discrimination and anyone else who contacts the Ombud, such as employers, employee organisations, interest groups, government agencies and the general public. This function implies that the Ombud can do independent surveys, reports and

²²² Forskrift om organisasjon og virksomhet for Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda, FOR-2013-12-18-1613 (in Norwegian), in force 1 January 2014.

recommendations. This guidance includes information about how the legislation should be interpreted and what possibilities victims have if they experience discrimination, according to the AOT regulations section 2 and the Public Administration Act.²²³ The duty to provide guidance encompasses all relevant matters related to the case, including guidance about the current statutes and regulations and common practice in the administrative sphere in question, and rules of procedure, especially those concerning rights and duties pursuant to the Public Administration Act. If possible, the Ombud should also draw attention to circumstances that may be of particular importance for the result in the specific case. In addition, the Ombud also has the duty to provide guidance in discrimination cases that are not within the Ombud's scope, see AOT section 3. The Ombud conducts independent surveys, publishes independent reports and makes recommendations on issues relating to discrimination. Every year the Ombud publishes annual reports and relevant reports on the status of equality.

A person who claims to be a victim of discrimination because of any of the discrimination grounds covered by law may bring the complaint to the Equality Ombud, who will investigate the complaint by demanding information and documentation from the responsible party, see the AOT section 3, fourth paragraph. The Ombud will give counsel and guidance to the victim, but not independent assistance in the sense of being the spokesperson of the victim. The Ombud will undertake a legal assessment of whether or not discrimination has occurred if the victim brings a complaint forward. The work of the Equality Ombud is based on written statements, and on the principle of contradiction between the parties involved in the case, in which each party is allowed to hear the arguments of the other party and be given opportunity to refute the information. The Ombud may in addition to handling complaints, take up cases on her own initiative, or on the basis of an application from other persons. 'Anyone' may bring a case before the Ombud. Trade unions, NGOs or other similar bodies are regarded as 'anyone' These parties may also file claims in class actions, as mentioned above.

The great weakness of the Equality Ombud in relation to the task listed in Directive 2000/43 is that neither she, nor anyone else, have the specific role of providing independent assistance to victims of discrimination that will enable them to have access to remedies in accordance with Directive 2000/43 article 15. As the Equality Ombud has the role as a law enforcer, she will not provide individual independent assistance to each victim – she will decide on the merits of the case. Until 2006, the Centre against Ethnic Discrimination (SMED) provided legal aid to victims of ethnic discrimination, but when the Centre became a part of the new Equality Ombud, the legal aid scheme was revoked. The Ombud is impartial when dealing with complaints and is an alternative to filing a lawsuit in discrimination cases. According to the Anti-Discrimination Ombud Act, the Ombud shall not represent the party in external proceedings. Therefore, the Ombud does not act as a legal representative or legal practitioner for victims. Neither the Ombud nor the Tribunal is entitled to take cases to court independently of a person individually complaining. The fact that there is no legal aid scheme offered specifically to address discrimination because of ethnicity is a flaw with the current system with one holistic Equality Ombud covering all grounds. This has been reported earlier, and the author agrees with this observation.²²⁴

e) Legal standing of the designated body/bodies

In Norway, the designated body in theory have legal standing to bring discrimination complaints on behalf of identified victim(s) or to intervene in legal cases concerning discrimination.

²²³ The public Administration act is available in English at: <http://www.ub.uio.no/ujur/ulovdata/lov-19670210-000-eng.pdf>. (Accessed 10 March 2016).

²²⁴ Anne Therese Sortebekk, Country Fiche Norway for Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, August 2010, point 55.

According to the general Dispute Act section 1-4(2), also public bodies charged with promoting specific interests may in the same manner bring an action in order to safeguard the interests that fall within their purpose and normal scope. This should in theory open for the possibility of the Equality Ombud and the Equality Tribunal to bring cases to court, although this has never been done in practice, as the Equality Ombud considers her role to be that of an impartial legal enforcer, not as an agent for litigation.

The Equality Ombud has however provided co-counsel in court on two occasions, in accordance with mandate given in the dispute resolution act section 3-7 to provide co-counsel.²²⁵ There are no fixed rules or regulations deciding when the Equality Ombud may provide co-counsel in court – this is decided on a case-by-case basis.

f) Quasi-judicial competences

In Norway, the Equality Ombud and Tribunal are a quasi-judicial institution.

In individual complaints to the Equality Ombud, a victim must be identified. However, complaints can also be handled where no individual is identified. Cases brought before the Ombud by a person who is not a party to the case shall only be dealt with by the Ombud if the party whose rights were infringed consents to this. If special considerations warrant doing so, the Ombud may nonetheless deal with such a case, even if consent has not been given.

Following written investigations, the Equality Ombud will evaluate whether or not the prohibition against discrimination has been violated after having received the parties' arguments in writing and will conclude if a breach is found or not. Where a breach of legislation is found, the Ombud will often recommend the party who has been in breach of the law to correct the wrong, for example by making a recommendation to the employer/responsible to pay a compensation. In many cases, the employers will follow the Ombud's recommendation and obey her suggestion for redress to avoid the case being taken to the Equality Tribunal or court. As agreements on compensation following such procedures are private, neither statistics as to the level of compensation nor the number of agreements exist.

The decision of the Equality Ombud is not a legal binding administrative decision, but is a statement as to how the Ombud evaluates the case seen in relation to the discrimination legislation. However, a party not satisfied with the Ombud's statement, may appeal it to the Equality Tribunal.²²⁶ Also, if one of the parties does not comply with the Ombud's recommendation, the dispute may be referred to the Equality Tribunal by either of the parties or by the Ombud herself. This is a mechanism/ sanction being increasingly applied by the Ombud to ensure fulfilment of her statement. The Equality Tribunal may also demand that certain cases which have been handled by the Ombud may be brought before the Tribunal, see AOT section 6 second paragraph. This opportunity has almost never been used.

The Equality Tribunal is a permanent body which has been entrusted by law to exercise its functions. Its composition is defined by law, see AOT section 5. It must apply the law and is an independent body, as its members are external appointees, selected on personal merit. Furthermore, its procedure is adversarial and similar to procedure in court in that, *inter alia*, there is normally both a written procedure and an oral hearing before a decision is

²²⁵ Co-counsel by the Ombudsman was carried out in the case of the Hålogaland Appellate Court LH-2008-99829 (*Bang-saken* – non-employment because of pregnancy) and the judgment of Øst-Finnmark Court of first instance - judgment of 17 March 2010 in case no 09-136827TVI-OSFI (age and gender).

²²⁶ The Parliamentary Ombud stated in a landmark decision of 1993 that public authorities who do not wish to comply with the statements of the Ombud have a duty to appeal the case to the Tribunal for a final decision. A non-appeal to the Tribunal by public authorities is seen as an implicit acceptance of the Ombud's conclusions.

made. Finally, its decisions are binding upon the private parties before it, as per the AOT section 7.

Neither the Equality Ombud, nor the Tribunal has the right according to the law to award damages or financial compensation. Where a party does not pay compensation voluntarily, the victim may bring an ordinary complaint before the courts, as described above.

The Ombud and the Tribunal may with the exceptions provided below not bring cases before the courts. The equality bodies' powers of investigation are wide. Public authorities are under obligation to provide all necessary information to fulfil its obligation to ensure the fulfilment of the discrimination legislation, see AOT section 11. The obligation of public authorities to provide information overrides their obligation to secrecy. Both the Ombud and the Tribunal are entitled to make the necessary investigations to fulfil their obligations in ensuring the Acts fulfilment. If necessary they may also require assistance from the police, and meeting of evidence at the courts may also be ordered.

Sanctions may be imposed, as described above, but are seldom used. The decision of the Tribunal may not be appealed, but the case may be taken to court for a full hearing of the case, in which the statements/ decisions of the Ombud/Tribunal are used. The decision of the Ombud/Tribunal are in general well respected, however, it is only recently that the Ombud systematically started to monitor her own work in terms of the parties' compliance with her decisions.

A specific issue for Norway as an EEA country, is that Norway can only refer prejudicial questions regarding cases on equal treatment and discrimination to the EFTA court, and not to the CJEU. A question that have arisen – but not yet tried in practice - is to what extent national anti-discrimination bodies/ equality bodies can be seen as a 'court or tribunal' and thus be able to request for advisory opinions/ preliminary rulings regarding cases on equal treatment and discrimination to the EFTA court. There has been an assumption that the Equality Tribunal would be considered a 'court' according Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. Both the Norwegian Labour Court²²⁷ and the Norwegian Market Council²²⁸ have been accepted by the EFTA court as requesting parties.

g) Registration by the body/bodies of complaints and decisions

In Norway, both the Ombud and the Tribunal register the number of complaints and decisions (by ground, field, type of discrimination, etc.). These data are available to the public. The Tribunal publish all its cases – anonymised - on its webpage, see www.diskrimineringsnemnda.no. The Ombud publishes all cases in which she gives a reasoned opinion. These opinions are published on her webpage in an anonymous form, see www.ldo.no. The opinions are all published in Norwegian.

The Equality Ombud received in 2014 in total 1526 inquiries.²²⁹ Of these 207 were registered as complaint-based case work. Of these 207 cases, 22 were related to age, 35 to ethnicity (including language), 71 to disability, 52 to gender, 3 to religion, 4 to sexual orientation and 16 related to 'other'. A new category was introduced in 2014 in which 4 complaints were related to gender identities and gender expressions.²³⁰

h) Roma and Travellers

²²⁷ See EFTA court case E 02/2000.

²²⁸ See EFTA court case E-8/94 and 9/94.

²²⁹ See the Equality Ombuds' annual report for 2014 (in Norwegian) at <http://www.ldo.no/nyheter-og-fag/brosjyrer-og-publikasjoner/Arsrapporter/arsrapport-2014/> (accessed 9 March 2016).

²³⁰ See the Equality Ombuds' annual report for 2013 (in Norwegian) at http://www.ldo.no/globalassets/brosjyrer-handboker-rapporter/rapporter_analyser/2013arsrapport.pdf (accessed 10 April 2015). Figures for 2014 were not published at the time of access.

Although there are very few Romas and travellers in Norway, the Equality Ombud has repeatedly addressed some of the key issues seen in relation to Roma and Travellers, and been given praise for their role in fighting discrimination against the Roma.²³¹ This is done mainly within the framework of her mandate to ensure that Norwegian legislation and administration practice is in accordance with Norway's obligations according to the UN Convention on the Elimination of all forms of Racial Discrimination.

In Norway, the Roma population is very small. Every year an increased influx of Roma people, mainly from Romania, come to Norway on a tourist visa to beg in the streets of the larger cities. During 2013 and 2014, the Ombud spoke in a number of public debates against a proposal to criminalize begging and introduce notification requirements for beggars to report to the police. This proposal came as a result of an attempt to control and limit the influx of Roma. Although the proposed legislation is neutral, it specifically targets the Roma tourists. This proposal was withdrawn by the government in early February 2015.

In terms of concrete complaints, there are in general few complaints from the Roma, and the few that have been made have not always resulted in a statement confirming that discrimination in fact has happened. As the cases often have been situations where words have been contrary, it has been difficult to establish the facts of the case. This may be illustrated by the Tribunal's case 19/2009, in which a Roma family had complained about denied access to a camping site. The Equality Ombud had found that they had been subject to discriminatory treatment, but the Equality Tribunal found that discrimination had not taken place. The complainants belong to the Roma (Gypsies/ Travellers). In summer 2008 he tried with his wife and adult son to check in at a campground. They arrived at the campsite with two large cars: a Chevrolet Tahoe and a Chevrolet pick-up, as well as two large caravans. The family was offered to stay within the campsite, however they were asked to park their cars outside the campsite. The complainant and his family regarded the request to park outside the site as a rejection, and thus decided not to stay at the campsite. The complainant claimed he was given limited access to the campsite because of their ethnic background as travellers. The campsite claims that all guests with big cars are asked to park their cars outside the campsite due to reconstruction, and that the complainant was not treated differently than others. The Tribunal did not find indications that the person was treated differently because he was a Roma, and found that there had not been a breach of the act.

²³¹ See NGO Shadow Report 2010 - Supplementing and Commenting on Norway's Combined 19th/20th Periodic Report Submitted by Norway under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination, page 42-43 to be downloaded from <http://www.antirasistisk-senter.no/innlegg-ved-overrekkelse-av-rasimerapport/>. The subsequent shadow report, covering Norway's 20/21 periodic report can be found here in English: <http://www.antirasistisk-senter.no/alternativ-rapport-til-fns-rasediskrimineringskomite-cerd-2015/>. Issues of Roma are addressed in the reports point 160-165. The Ombud has also addressed the situation of Roma in her shadow report to the CERD committee, which is found in English here: http://www.ldo.no/globalassets/03_nyheter-og-fag/publikasjoner/cerd-2014_web_engelsk_ny1.pdf (accessed 9 March 2016).

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

The Ombud has a specific duty to disseminate information about legal protection against discrimination, see AOT regulations section 1. Additionally, public authorities have a general proactive duty according to the ADA sections 13-15, AAA sections 18-20 and SOA sections 12-14 to make active, targeted and systematic efforts to promote non-discrimination policies and measures regarding ethnicity, sexual orientation and disability in all sectors of society. This includes dissemination of information. A similar proactive duty is also required from employers with more than 50 employees.

A general proactive duty is not imposed on public authorities in relation to age as found in the WEA, of relevance for Directive 2000/78.

Although there are no formal rules in the anti-discrimination legislation on dissemination of information, social dialogue or dialogue with NGOs by the authorities, there is a wide tradition in Norway to regularly undertake public consultations with NGOs and social partners. NGOs and social partners are in general invited to participate in referee groups when new legal proposals are being drafted, and are also recipients of White Papers and law proposals for consultative purposes before an Act is enacted. The various action plans initiated (see below chapter 9) are in general drafted and implemented in close collaboration with NGOs and social partners.

Various bodies have been established to encourage dialogue between the authorities and citizens, such as The Contact Committee between Immigrants and the Authorities (KIM), which is both an advisory body and a forum for dialogue.

There are a number of initiatives made in relation to promoting dialogue between social partners to give effect to the principle of equal treatment through workplace practices, codes of practice, workforce monitoring. This is done both through initiatives by the Ministry, the Equality Ombud as well as trade unions, the latter for example described in previous EU reports.²³² Its real effect in terms of effectiveness in relation to the principle of equal treatment has however been questioned, most recently in the official report NOU 2011:18 Structure for Equality, chapter 7.²³³ While it is acknowledged that Norwegian working life has a long tradition of institutionalised cooperation between the labour market organisations, this established cooperation is limited when it comes to gender equality, thus the establishment of a forum to discuss equality in working life is proposed. One of the forum's main goals will be to help follow-up the duty to make active efforts and report stipulated in the anti-discrimination legislation.

Although there are very few Romas and travellers in Norway, the Equality Ombud has repeatedly addressed some of the key issues seen in relation to Roma and Travellers, and been given praise for their role in fighting discrimination against the Roma.²³⁴

²³² See for example the report Trade Union Practices on anti-discrimination and diversity, report for the EC DG 4 (2010) at <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=580&type=2&furtherPubs=no> (accessed 10 March 2016).

²³³ See <http://www.regjeringen.no/nb/dep/bld/dok/nouer/2011/nou-2011-18.html?id=663064> (in Norwegian). For an English summary of the report, see https://www.regjeringen.no/globalassets/upload/bld/nou18_ts.pdf (accessed 10 March 2016).

²³⁴ See NGO Shadow Report 2010 - Supplementing and Commenting on Norway's Combined 19th/20th Periodic Report Submitted by Norway under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination, page 42-43 to be downloaded from <http://www.antirasistisk-senter.no/innlegg-ved-overrekkelse-av-rasismereport/>.

In her 2010 report to the UN CERD committee, the Equality Ombud addressed the areas of critical concern: that the Roma's access to basic rights is denied unless the traditional way of life is discontinued. In relation to schooling, the Ombud is concerned that the travellers are being made responsible for the consequences of the failure to adjust Norwegian school policy to the traditional manner of travelling. The Roma people are furthermore systematically denied access to camp sites and restaurants on the grounds that they belong to a national minority. In her 2014 report to the UN CERD committee, the Ombud reiterated her previous concerns related to schooling and housing, but also included warnings about increased negative media stereotyping on Roma tourists coming to Norway, leading to defamation of the group as a whole.²³⁵ At the policy level, the Ombud has thus been a voice in the Norwegian public speaking out against the discrimination of the Roma.

The Roma National Association in Norway (Taternes Landsforening)²³⁶ is used as a dialogue point for organised interaction between the Equality Ombud as well as with different ministries. This includes among others the Ministry of Children, Equality and Social Inclusion, the Ministry of Labour, the Ministry of Education, the Ministry of Government Administration, the Ministry of Health and Care Services and the Ministry of Local Government and Regional Development. A key challenge in the Norwegian setting in relation to Roma is that they are very few (approximately 700 persons nationwide), and that little knowledge exists about the discrimination both at an individual and structural level that they face. The Norwegian State Housing Bank is thus in the process of carrying out a survey of living conditions and settlement for the Roma people in order to create a knowledge base on this issue, within the framework of the Government Plan of Action to Promote Equality and Prevent Ethnic Discrimination.²³⁷

The governmental action plan to improve the situation of the Roma is limited to Oslo, as this is where most Roma have a connection/ resides a larger share of their time.²³⁸ The Government aims through this action plan to develop measures to allow real opportunities for the Roma to use already established welfare systems, within education, employment, health and housing.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Mechanisms

Before implementing international legislation in Norway, the national legislation was reviewed to ensure compliance. Furthermore, the legislation contains a specific clause that provisions laid down in collective agreements, regulations, bylaws etc. shall be declared null and void if in breach of the WEA section 13-9(2). An agreement in breach of the ADA or the GEA was also assumed void by the Tribunal in a case.²³⁹

For collective agreement, if a provision is found to be against the law, it shall be declared null and void by the Labour Court so that the compensation that shall be paid goes back to the moment the invalid provision was put in force.²⁴⁰

A challenge is posed in relation to the 'normal' principles of interpretation in law, where the traditional principles of interpretation are used, such as *lex specialis* etc. This was demonstrated in the Supreme Court judgment of 18 February 2010, where the seaman's

²³⁵ See http://www.ldo.no/globalassets/brosjyrer-handboker-rapporter/rapporter_analyser/rapporter_diverse/cerdreport_pdf.pdf (accessed 10 March 2016).

²³⁶ See <http://www.taterne.com/> (in Norwegian).

²³⁷ See https://www.regjeringen.no/globalassets/upload/bld/rapporter/2010/cedaw_rapporten/annex_14.pdf (in English, accessed on 10 March 2016).

²³⁸ See http://www.regjeringen.no/nb/dep/fad/dok/rapporter_planer/planer/2009/Handlingsplan-for-a-bedre-levestandard-for-rom-i-Oslo.html?id=594315. (In Norwegian, accessed 10 March 2016).

²³⁹ See the Equality Tribunal case number 26/2009.

²⁴⁰ See for instance The Labour Court judgment ARD-1990-148 – Bio Engineers.

act was referred to as *lex specialis* in relation to non-discriminatory clauses, and a 62-year retirement age for seamen thus accepted.²⁴¹

b) Rules contrary to the principle of equality

There are no known laws or regulations or rules that are contrary to the principle of equality still in force, as in theory all legislative areas are assessed before the implementation of new directives and acts. However, the case work of the Equality Ombud shows a number of breaches to the act, so full compliance cannot be claimed.

²⁴¹ Supreme Court Judgment Rt 2010 s 202, (HR-2010-00303-A) (*Kystlink*).

9 COORDINATION AT NATIONAL LEVEL

The Ministry for Children, Equality and Social Inclusion is responsible for dealing with anti-discrimination in relation to the grounds covered by the ADA, SOA and AAA.

The Ministry for Labour and Social Affairs is responsible for dealing with the anti-discrimination provisions of the WEA, those related to age. Additionally, they are responsible for the work on an inclusive working life, which is targeted at employees temporarily or permanently disabled and measures to promote their return to paid employment. A job strategy for young people with disabilities was presented in January 2012.²⁴²

There was a Government Plan of Action to Promote Equality and Prevent Ethnic Discrimination (2009–2012).²⁴³ There was also a Government Plan of Action for improving the quality of life for lesbians, gays, bisexuals and trans persons 2009-2012,²⁴⁴ which is currently in the process of being updated.²⁴⁵ The action plan for improved accessibility and promoting universal design for people with disabilities called 'Norway Universally accessible 2025: on accessibility and universal design 2009-2013'²⁴⁶ has been followed up with a new action plan for universal design 2015-2019.²⁴⁷ The governmental action plan to improve the situation of the Roma is limited to Oslo, as this is where most Roma has a connection.²⁴⁸ The Government aims through this action plan to develop measures to allow real opportunities for the Roma to use already established welfare systems within areas such as education, employment, health and housing.

There are also a number of sector-specific action plans, such as

- The Action plan for Sami languages 2009-2014, and the Action Plan to improve the living conditions for Norwegian Roma people, both coordinated by the Ministry of Labour.
- The strategy plan on Equal education in practice. Strategy for better learning and greater participation by linguistic minorities in day-care centres (kindergarten), schools and education 2007-2009, coordinated by the Ministry of Education addressing ethnic discrimination, The action plan for integration and social inclusion of the immigrant population.

²⁴² See, <https://www.regjeringen.no/en/dokumenter/jobstrategy/id657116/> in English, accessed 11 March 2016.

²⁴³ For the action plan (in Norwegian), see https://www.regjeringen.no/globalassets/upload/bld/planer/2009/hpl_etnisk_diskriminering.pdf (accessed 11 March 2016). This action plan was evaluated in 2013, see Kristian Rose Tronstad, Marit Ekne Ruud and Siri Nørve, *Evaluering av handlingsplanen for å fremme likestilling og hinder etnisk diskriminering*, NIBR-rapport 2013:11.

²⁴⁴ See (in English) <https://www.regjeringen.no/globalassets/upload/bld/homofile-og-lesbiske/hplhbtseptember2008eng.pdf>, accessed 11 March 2016.

²⁴⁵ A new plan for LGBT for 2016-2019 is being prepared, see, <https://www.regjeringen.no/no/aktuelt/ny-handlingsplan-pa-lhbt-feltet/id2424106/>. The Minister has as a part of developing this plan, invited civil society to what is called input-meetings, see <https://www.regjeringen.no/no/aktuelt/lhbt-innspillsmote/id2460312/> (accessed 11 March 2016).

²⁴⁶ See https://www.regjeringen.no/globalassets/upload/bld/homofile200q20lesbiske/universell_utforming.pdf (in Norwegian, accessed 11 March 2016).

²⁴⁷ See The Government's Action Plan for Universal Design 2015-2019 at https://www.regjeringen.no/contentassets/565cb331b0ee4bb4b997157a543a51d4/the-governments-action-plan-for-universal-design-20152019_q-1233-e.pdf (in English, accessed 13 June 2016).

²⁴⁸ See http://www.regjeringen.no/nb/dep/fad/dok/rapporter_planer/planer/2009/Handlingsplan-for-a-bedre-levetkarene-for-rom-i-Oslo.html?id=594315 (in Norwegian, accessed 11 March 2016).

10 CURRENT BEST PRACTICES

- The scope of the anti-discrimination legislation: most discrimination grounds cover all areas except family life. Age, is currently only covered in employment.
- The active equality efforts of the ADA, AAA and SOA gives a duty for public authorities employers and educational institutions to make active, targeted and systematic efforts to promote equality within the different grounds.
- Rules on employers disclosure duty regarding pay, to try to minimize pay gaps because of ethnicity, disability or sexual orientation.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

It is presumed that Norwegian anti-discrimination legislation is in line with the EU *acquis*, although the Non-discrimination Directives (2000/78 and 2000/43) are not incorporated in the EEA agreement. However, the government has committed to having as high - or higher - standards in its work against discrimination as the requirements of the EU. This protection has been underlined by Supreme Court judgments. The legal consequence of the directives not being incorporated into the EEA agreement is that the directives will not prevail in conflict, as the gender directives do.

The current amendment in all discrimination legislation to harmonise and ensure a similar protection for all grounds might lead to unclarity in the legal coverage, as the former very narrow exception to the definition of direct discrimination might be widened and not interpreted as narrow as before, as the exception to the definition of direct discrimination under the WEA on age is interpreted to be much wider than that of the GEA and the AAA (see above chapter 2.2 b)). The existing proposal for one comprehensive act is worrisome, as it narrows the focus of the aim of both the GEA and the AAA in relation to its material scope.

Norwegian implementation regarding the requirements of Directive 2000/43 on legal aid to victims of discrimination because of ethnicity might be questioned, as there is not a scheme under the legal aid act to afford victims of discrimination because of ethnicity legal aid. Although the Equality- and Discrimination Ombud has a duty to provide guidance and counselling to victims of discrimination, the role of the Equality Ombud is not to provide individual assistance to victims of discrimination nor legal aid to individuals, but to assess the case in order to establish whether discrimination has occurred or not.

An area in which case law may arise relates to the access to occupational pensions because of alleged discrimination based on sexual orientation, age or disability. A recent overhaul of the pensions system is in the process of taking place, which may lead to cases concerning the accrual of pension credits between 67 and 70 years, as currently, a number of systems stop the accrual of pension credits at 67, which is the general retirement age (as opposed to maximum limits). The legality of some of these systems in relation to directive 2000/78 is at present unclear.

Finally, it might be questioned if victims of discrimination in reality have necessary access to justice / efficient sanctions and remedies. Statistics on discrimination cases in Norway show that although the courts do handle discrimination cases, and although the number of cases handled by courts is increasing, the by far overwhelming number of discrimination cases in Norway is channelled through the administrative bodies, the Equality Ombud and the Equality Tribunal.

The courts have since the adoption of the ADA and SOA not handled any cases concerning discrimination because of race/ ethnic origin, religion/ belief or sexual orientation.

The fact that most cases on discrimination is handled through the administrative bodies has in particular consequences in relation to an assessment of compliance with EU law in terms of sanctions, as the Equality Ombud/ Tribunal does not enforce the clauses relating to sanctions in the form of liability for damages/ redress/ compensations. The fact that the Equality Ombud and the Equality Tribunal cannot award compensation has been criticised, and it has been proposed that the Equality Tribunal be given powers to award damages for non-economic loss in cases concerning a breach of the prohibition against discrimination. This will lead to a more efficient sanctioning of breaches to the non-discrimination legislation.

11.2 Other issues of concern

- The barriers in getting access to justice for discrimination consist mainly of the expense related to forwarding a case: the cost of bringing a case and the lack of legal aid schemes that covers discrimination is a practical barrier for most discrimination grounds, maybe with the exception of age.
- Age is protected only within employment, and thus in line with Directive 2000/78, but has a much narrower scope than the other discrimination grounds in Norway.
- 2015 has shown an increased tendency of the Equality Tribunal in either rejecting or dismissing cases that are brought before it regarding the assessment of possible conflicts between the anti-discrimination legislation and other legislation.²⁴⁹

²⁴⁹ See for example LDN-2014-73 and LDN-2015-21.

12 LATEST DEVELOPMENTS IN 2015

12.1 Legislative amendments

The only legislative amendment of relevance adopted in 2015 was lifting the age limit in the WEA section 15-13a to extend the 70-year limit to 72 years, as well as prohibiting internal business plans etc. to set lower mandatory retirement age than 70 years.

Although a full overhaul of the anti-discrimination legislation was done in 2013, and in force as of 1 January 2014, a new proposal for one comprehensive new legislation was sent on public hearing in October 2015.²⁵⁰

The legislation on hate crime in the penal code of 2005 in force as of 1 October 2015 explicitly covers disability as well as ethnicity, religion and sexual orientation. This has led to increased awareness in media on hate crime.

12.2 Case law

Name of the court: Supreme Court verdict

Date of decision: 1 December 2015

Name of the parties: The State/ the Equality Tribunal vs A

Reference number: Rt-2015-1313

Address of the webpage: (www.lovdata.no - available by subscription only)

Brief summary: The case before Supreme Court concerned the coverage of the AOT section 12. The background of the case was a man claiming to be discriminated against because of a lack of individual accommodation as per the AAA. He forwarded his case to the Equality Ombud, who found that he had been discriminated against, as his employer, the Norwegian Postal Service, had not ensured that he was given a reasonable individual accommodation. He was thus not considered for a vacant temporary post, nor was he considered for extra shifts. His employer brought the statement of the Ombud before the Equality Tribunal, who in its case LDN-2014-9 did not find that discrimination had occurred. The complainant thus challenged the decision of the Equality Tribunal before the ordinary courts. The supreme court concluded that a decision by the Equality Tribunal that finds that the case before it is not a breach of the discrimination acts cannot be brought before the courts relying on the AOT § 12. The Supreme court pointed out that a decision by the Equality Tribunal does not have legal effects to the extent that the Equality Tribunal can be sued to change its decision. However, the AOT does not preclude the employee from establishing a lawsuit against the employer, alleging discrimination, for the full examination by the court. The employer will be bound by a court judgement.

Name of the court: Supreme Court - verdict

Date of decision: 28 April 2015

Name of the parties: A vs Norwegian Industry

Reference number: Rt-2015-460

Address of the webpage: (www.lovdata.no - available by subscription only)

Brief summary: The trade union Norwegian Industry has an employer-imposed retirement age limit for its employees at 67 years. A female lawyer reached 67 years in 2013. Her employment was thus terminated. She believed the age limit was discriminatory, as per the WEA section 13-1 and section 15-13a, and brought the issue before the Ombud who found the age limit discriminatory. The employer brought the statement of the Ombud before the Equality Tribunal. Before the case was assessed by the Equality Tribunal, the employer appealed the case before the ordinary court of first instance, claiming that the employee did not have a right to continue in her post, nor a right to return to work while the case was assessed. The court of first instance found that the employer had a legal

²⁵⁰ See <https://www.regjeringen.no/no/dokumenter/horing---forslag-til-felles-likestillings--og-diskrimineringslov/id2458435/> (accessed 14 March 2016) (in Norwegian).

interest in establishing such a case. Both the Appellate court (Borgarting Appellate Court in verdict of 13. February 2015 LB-2015-14646) and Supreme Court found, contrary to the Court of first instance, that the employer did not have a legal interest in the determination of the lawsuit against the employee, who had resigned from her position. She had neither claimed a right to continue in her post, nor a right to return to her post. That the employee had brought the question of the legality of the age limit to the Ombudsman for an assessment of the age limit did not entail a submission of a 'claim' neither for reinstatement or permission to continue working. The employer had no real need for judgment for this claim, and the lawsuit was rejected, as per the Dispute Act section 1-3, second paragraph.

Name of the court: Borgarting Appellate court (court of 2. Instance) - judgment

Date of decision: 6 February 2015

Name of the parties: X county vs A

Reference number: LB-2014-29065

Address of the webpage: (www.lovdato.no - available by subscription only)

Brief summary: The case addressed whether or not the termination of employment as a result of a lower mandatory retirement age, set at 65 years for subordinate nurses in the Nurses Pension Act section 6 was in violation of the prohibition against age discrimination in the WEA section 13-1, cf. section 13-3 and section 15-13a and directive 2000/78/EC article 4 and 6. The age limit for supervisors or nurses in administrative positions is 70 years according to the act. The appellate court took as a starting point that the requirements of the WEA are the same as those of the directive. The Appellate court assessed first if the lower retirement age is based on a legitimate aim. Although the aim of the act is not specified neither in the act itself nor in the preparatory works to the act, the court said that seen in context, the central purpose of the specific age limit is related to the physical and psychological strain of the job that the regular physical contact with patients and clients entail. The age limit also has an aspect related to the safety of patients, as the nurses need to keep abreast of professional developments and keep a sharp vigilance in each case. The latter aspect is not seen as being a legitimate aim in accordance with the directive article 6(1) but in line with article 4(1). Also the strain of the profession is seen to fall under article 4(1), as the possession of certain physical and mental capabilities, capabilities that deteriorate with age, is a regular professional requirement for subordinate nurses who have extensive contact with patients and clients. The Court of Appeal thus found that the special age limit was permitted age discrimination in accordance with the exceptions of the WEA and the EU directives.

Name of the court: Gulating Appellate court (court of 2. Instance) - judgment

Date of decision: 11 September 2015

Name of the parties: A vs. Stavanger county

Reference number: LG-2014-189475

Address of the webpage: (www.lovdato.no - available by subscription only)

Brief summary: The case addressed whether or not the termination of employment as a result of a lower mandatory retirement age, set at 65 years for subordinate nurses in the Nurses Pension Act section 6 was in violation of the prohibition against age discrimination in the WEA section 13-1, cf. section 13-3 and section 15-13a and directive 2000/78/EC article 4 and 6. The lower age limit of 65 years may be extended pursuant to a collective agreement until 67 years if the employee is not entitled to a full pension. The parties to the case did not agree whether the exception should be assessed using article 4(1) or 6(2) in directive 2000/78 as its starting point. The court stated that it considered the exceptions on age discrimination in relation to WEA section 13-3 first paragraph and article 4 as well as WEA section 13-3 second paragraph, depending on the nature of the underlying aim of the discrimination. Citing the ECJ *Prigge* judgment and case LB-2014-29065, it found that the stress involved for nurses is a regular professional requirement because of the nature of the context in which they are exercised. The age limit is justified by the rigours and strain of the profession, as well as the consideration to patient safety. The age limit is linked to a good pension scheme for nurses, and with a possibility to continue until 67 years if necessary for the pension plan. The appellate court found the age limit justified,

and could not see that the nurses as a group are affected in an unreasonable or disproportionate manner by the age limit. The Appellate Court explicitly referred to the decision of February 2015 as cited above, and pointed out that this age limit was established by law contrary to the case in February 2015 where the age limit was established by collective agreement. It is thus up to the legislature to change the law. The appeal to Supreme Court were not accepted, see HR-2015-2505-U of 15 December 2015.

Select cases from the Equality and Anti-Discrimination Tribunal

Name of the court: Equality and Anti-Discrimination Tribunal

Date of decision: 15 September 2015

Name of the parties: not available

Reference number: Case No 21/2015

Address of the webpage: *(in Norwegian only)*

<http://diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/37ee43321ae7adacb1ea694270c08fe1.pdf>

Brief summary: The question before the Tribunal was if the Ministry of labour and social affairs violates the ADA article 6 or the GEA article 5 as the spouses/ cohabitants of foreigners who are expelled from Norway are not covered by the benefits of the National Insurance act (Folketrygdloven) chapter 15 giving rights to single parents. The claimant claimed to be subject to discrimination based on ethnicity because she is not entitled to a number of benefits that single parents are entitled to, as well as gender discrimination, because she does not have access to these benefits. The Tribunal dismissed the case, as the Tribunal found that it did not have the mandate to handle the case according to the AOT article 6(3), as the case concerns a possible instance of contradiction between the acts concerned.

Name of the court: Equality and Anti-Discrimination Tribunal

Date of decision: 25 September 2015

Name of the parties: not available

Reference number: Case No 8/2015

Address of the webpage: *(in Norwegian only)*

<http://diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/dd7041609eed4fe2c1695bbd84cabcef.pdf>

Brief summary: The question before the Tribunal was is A was discriminated against because of her disability when she first was denied entrance to the bar, then refused alcohol. As Norwegian licensing regulations prohibit that a bar serves alcohol to drunk clients, the bar had refused the women serving as they thought she was drunk, which her behaviour was not due to alcohol but her disability. The Tribunal found that the client was discriminated against as the bar had not fulfilled their burden of proof.

Name of the court: Equality and Anti-Discrimination Tribunal

Date of decision: 15 September 2015

Name of the parties: not available

Reference number: Case No 73/2014

Address of the webpage: *(in Norwegian only)*

<http://diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/415d9572ae4b7792913f8168d2bb0d29.pdf>

Brief summary: The question before the Tribunal was if the Ministry of Children and Equality violates the ADA article 6 or the GEA article 5 as the spouses/ cohabitants of foreigners who are expelled from Norway are not covered by the benefits of the Child benefits act (*barnetrygdloven*) giving extra economic support to single parents. The claimant claimed to be subject to discrimination based on ethnicity because she is not entitled to receive the same benefits that single parents are entitled to, as well as gender discrimination, because she does not have access to this benefit. A single parent with a child under 18 years of age is entitled to a higher child benefit, i.e. child benefit for one child more than he or she actually has. This right lapses if the parent gets married, has

cohabited for at least 12 of the last 18 months or has a child with a cohabitant. The Tribunal dismissed the case, as the Tribunal found that it did not have the mandate to handle the case according to the AOT article 6(3), as the case concerns a possible instance of contradiction between the acts concerned.

Select cases from the Equality and Anti-Discrimination Ombud

There were no cases brought by Roma and Travellers in 2015 to the authors' knowledge.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Norway

Date: 31 December 2015

Title of legislation (including amending legislation)	Title of the Law: The Anti-Discrimination Act on Prohibition of discrimination based on ethnicity, religion etc (<i>Diskrimineringsloven</i>) Abbreviation: ADA Date of adoption: 21 June 2013 No 60 Latest amendments: 1 October 2015 Entry into force: 1 January 2014 Web link: http://www.ub.uio.no/ujur/ulovdata/lov-20130621-060-eng.pdf Grounds covered: ethnicity, religion or belief.
	Civil law
	Material scope: Cover all areas except personal and family affairs
	Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate within select grounds.
Title of legislation (including amending legislation)	Title of the Law: The Working Environment Act (WEA) on Working environment, working hours and employment protection, etc. (<i>Arbeidsmiljøloven</i>), Chapter 13 Abbreviation: WEA Date of adoption: 15 June 2005 Latest amendments: 1 January 2014 for Chapter 13 Entry into force: 1 January 2006 Web link: http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156 (English version as per December 2012, not updated) Grounds protected: Age (covers also part-time/ temporary work, political affiliation and membership in trade unions)
	Civil law
	Material scope: Public and private employment.
	Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate within select grounds.
Title of legislation (including amending legislation)	Title of the Law: The Anti-Discrimination and Accessibility Act on Prohibition against discrimination on the basis of disability (<i>Tilgjengelighetsloven</i>) Abbreviation: AAA Date of adoption: 21 June 2013 No. 61 Latest amendments: - Entry into force: 1 January 2014 Web link: http://www.ub.uio.no/ujur/ulovdata/lov-20130621-061-eng.pdf Grounds protected: Disability
	Civil law
	Material scope: Cover all areas except personal and family affairs
	Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate within select grounds.
	Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate within select grounds.
Title of legislation	Title of the Law: Sexual Orientation Anti-Discrimination Act Abbreviation: SOA Date of adoption: 21 June 2013 No 59

(including amending legislation)	Latest amendments: - Entry into force: 1 January 2014 Web link: http://www.ub.uio.no/ujur/ulovdata/lov-20130621-058-eng.pdf Grounds protected: Sexual orientation
	Civil law
	Material scope: Cover all areas except personal and family affairs
	Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate within select grounds.
Title of legislation (including amending legislation)	Title of the law: Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Abbreviation: AOT Date of adoption: 10 June 2005 No 40 Latest amendments: 21 June 2013 Entry into force: 1 January 2006 Web link: https://www.regjeringen.no/en/dokumenter/The-Act-on-the-Equality-and-Anti-Discrim/id451952/ (English version as per 2007) Grounds covered: -
	Civil/administrative law
	Material scope: Rules on the organisation and activities of the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal
	Principal content: Creation of a specialised body
Title of legislation (including amending legislation)	Title of the law: Act relating to the strengthening of the status of human rights in Norwegian law (The Human Rights Act) Abbreviation: HRA Date of adoption: 21 May 1999 No. 30 Latest amendments: 9 May 2014 No. 9 Entry into force: 21 May 1999 Web link: http://www.ub.uio.no/ujur/ulovdata/lov-19990521-030-eng.pdf Grounds covered: -
	Civil law
	Material scope: Incorporates select human rights instrument into Norwegian law
	Principal content: Strengthening the status of human rights

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Norway

Date: 31 December 2015

Instrument	Date of signature (if not signed please indicate) Dd/mm/Yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	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)	04.11.1950	15.01.1952	No	Yes	Yes, through Human Rights Act
Protocol 12, ECHR	Not signed	Not ratified	N/A	N/A	N/A
Revised European Social Charter	Yes	07.05.2001	Has accepted 80 of the revised charter's 98 paragraphs	Collective complaints protocol ratifies 20.03.1997	No
International Covenant on Civil and Political Rights	20.03.1968	13.09.1972	No	Yes	Yes, through Human Rights Act
Framework Convention for the Protection of National Minorities	Yes	17.09.1999	No	N/A	No
International Covenant on Economic, Social and Cultural Rights	20.03.1968	13.09.1972	No	No	Yes, through Human Rights Act
Convention on the Elimination of All Forms of Racial Discrimination	21.11.1969	06.08.1970	No	No	Yes, through the Anti-Discrimination Act
Convention on the Elimination of Discrimination	17.07.1980	21.05.1981	No	Yes	Yes, directly through Human Rights Act

Instrumen t	Date of signature (if not signed please indicate) Dd/mm/ Yyyy	Date of ratificatio n (if not ratified please indicate) Dd/mm/ yyyy	Derogations / reservations relevant to equality and non- discriminatio n	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
tion Against Women					
ILO Convention No. 111 on Discriminati on	Yes	24.09.1959	No	N/a	No
Convention on the Rights of the Child	26.01.1990	08.01.1991	No	Yes	Yes, through Human Rights Act
Convention on the Rights of Persons with Disabilities	30.03.2007	01.07.2013	No derogation or reservation made, but 'interpretative declarations' to articles 12 and 14 on fully supported decision- making arrangements and compulsory treatment are made by the Norwegian government (similar to those of Australia) which are especially relevant to people with psycho-social disabilities	No	No

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- one copy:
via EU Bookshop (<http://bookshop.europa.eu>);
- more than one copy or posters/maps:
from the European Union's representations (http://ec.europa.eu/represent_en.htm);
from the delegations in non-EU countries
(http://eeas.europa.eu/delegations/index_en.htm);
by contacting the Europe Direct service (http://europa.eu/europedirect/index_en.htm)
or calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (*).

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Priced publications:

- via EU Bookshop (<http://bookshop.europa.eu>)

