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# Country report

## Non-discrimination

Iceland

2016

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# **Country report**

# **Non-discrimination**

# **Iceland**

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## EXECUTIVE SUMMARY

### 1. Introduction

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

In recent years, a strengthened human rights dialogue has brought the position of various vulnerable groups and minorities to the fore. However, a recent study on attitudes to equality and discrimination in the workplace reveals that 86 % of those polled thought that people were discriminated against on one of the following grounds: gender (63.8 %), national origin (55.1 %), age (44.1 %), disability (38.6 %), race (38.8 %), sexual orientation (22.4 %) and religion/beliefs (20.5 %).

The formal legal status of people with disabilities is good although, in practice, they habitually suffer discrimination concerning the rights to education, housing and participation in public life, and form a large proportion of those living in poverty. According to the leading disability rights organisation, disability benefits are not adequate for a life of dignity, and only a quarter of people with disabilities are in work. Building and planning regulations require public buildings to be accessible. However, this is not always the case, and sanctions are rare. One important judgment concerning disability was issued in 2015. In a case brought by a deafblind youngster, the Reykjavik District Court ruled that state funding for and the organisation of sign-language interpreting services was inadequate and discriminatory and was in breach of the right to minimum assistance as enshrined in the Constitution and in the equality provisions of administrative law. The state will have to increase its funding for these services and make legislative changes to define what constitutes minimum rights and adequate services when it comes to the right to sign-language interpretation.<sup>1</sup>

First and second-generation immigrants comprised approximately 10 % of the population as at 1 January 2015, with Polish people constituting by far the largest group – roughly 3 % of the population. The boom years before the financial crash of 2008 saw an unprecedented rise in immigration, and at one point foreign workers constituted 10 % of the labour force. The majority were men employed in the construction industry. Many lost their jobs and, in the wake of the economic crisis, more immigrants are now unemployed. Long-term unemployment among them is more common than it is on average for Icelanders. There are indications that the number of immigrants seeking assistance from charities is growing, among other reasons because they are not adequately informed about public welfare services. Further, more children with an immigrant background are in need of assistance from the Child Protection Services. A recent study demonstrates that, on average, the income of immigrants is lower than that of the general population and only a small minority hold jobs where their education is fully utilised. A worrying trend is that youth of immigrant origin are less likely to graduate from high school and, according to a study conducted by the Multicultural Centre, one in five immigrants in Iceland experiences negative attitudes on a regular basis because of their origin. Of those participating in the study, 77 % were of the view that they had experienced negative attitudes because of their limited knowledge of Icelandic, and 54 % thought that negative attitudes towards them were based on their origin or nationality. It is an issue of particular concern that 14 % had experienced negative attitudes when interacting with staff at nursery schools, and 19 % when interacting with primary-school staff. As part of the study, public officials were also polled. Some 55 % of state officials thought that immigrants are sometimes or

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<sup>1</sup> Reykjavik District Court, *Snædís Rán Hjartardóttir v. the Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavik*, Case No. E-327/2015, 30 June 2015.

often met with prejudice in their dealings with public bodies, and 43 % of municipal employees were of the same view.

There are no specific legal provisions sanctioning age discrimination in the labour market. Limited research has been carried out on this topic, but the labour-market participation of older people in Iceland is among the highest in all the OECD countries. However, discrimination regarding employment is apparent, especially in correlation with gender. A 2011 Eurobarometer study demonstrates that Icelanders have witnessed or experienced more discrimination because of older age than the EU average: in the workplace, in relation to access to education and training, and in their leisure time.

On a positive note, although sexual orientation is not a specially protected ground in the field of employment, Icelandic legislation setting out the rights of homosexual people is one of the world's most progressive: all marriages have the same legal status, same-sex couples can adopt children and lesbians are able to take advantage of artificial insemination. One of the last remaining hurdles is the opposition of the National Church of Iceland (the Lutheran state church) to conducting the same religious ceremonies for heterosexual and same-sex marriages. Further, priests who are against gay marriage are still allowed, referring to their religious conscience, to refuse to conduct marriage ceremonies for same-sex couples. However, according to the Bishop of Iceland, only a very small minority of priests hold such views. In general, attitudes towards LGBT people are very liberal and Gay Pride celebrations are a time of family festivities in Reykjavik. In addition, the legal status of transgender people was significantly strengthened through the Act on the Judicial Status of Transgender Persons No. 57/2012. A related positive development in 2014 was the amendment of the General Penal Code No. 19/1940 to include gender identity as a ground for discrimination.

The number of registered religious organisations grew from 14 in 1991 to 43 in 2015. Of these, more than half are of a Christian denomination. Some 73.8 % of the nation belongs to the National Church of Iceland. Of the minority faiths, Ásatrú (the Norse pagan faith), Buddhists and Muslims are the largest denominations. Just over 12.7 % of the population are undefined or are not members of religious organisations. No research has been carried out on the extent of discrimination in the workplace based on religion or belief, but in 2009, 23.4 % of Icelanders thought that general discrimination based on religion or belief was common.

In 2013, the Icelandic Muslim Association was finally allocated land by Reykjavik City Council on which to build a mosque. The Association had first applied in 2000. This is a positive development, but indications of growing anti-Islamic sentiment in Iceland are an issue for concern. In November 2013, a group of people placed pig heads and a bloodied Koran on the plot designated for the mosque. One individual was identified, but the investigation of the case concluded without a prosecution. More disconcertingly, in the municipal elections of 2014, the Progressive Party gained 8 percentage points and two seats on the Reykjavik Municipal City Council campaigning on, inter alia, an anti-Islamic platform and stating that the allocation of land for the mosque should be withdrawn. On a positive note, the two city councillors have not actively promoted racist or anti-Islamic issues since taking office.

## **2. Main legislation**

Iceland is party to the European Economic Area (EEA) Agreement and is thus obliged to adopt the EU *acquis* related to the single market. Directives 2000/43/EC and 2000/78/EC were not incorporated into the EEA Agreement and have therefore not been transposed into domestic law. The European Commission does not consider Icelandic legislation as being in line with the directives, as 'no detailed protection against discrimination is provided in the labour market nor is there any comprehensive legislation in force prohibiting discrimination on grounds of racial or ethnic origin outside the labour market'.



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

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

The Act on the Affairs of Persons with Disabilities guarantees, inter alia, the right to equality, the right to receive assistance to be enabled to live and work in society, and the right to general national and municipal services as well as access to public spaces. The law also provides for positive action measures: people with disabilities shall have preference over other applicants for government employment when they are equally qualified. Preparations for ratification of the UN Convention on the Rights of Persons with Disabilities are underway. The European Convention on Human Rights, which has been incorporated into domestic law, stipulates that the enjoyment of the rights and freedoms set forth in it shall be secured without discrimination. The UN Convention on the Rights of the Child has also been incorporated into national law, setting out similar provisions. The General Penal Code, the Act on Administrative Procedure and the acts on primary schools, media and postal and municipal services also contain provisions touching upon equality and non-discrimination. In addition, the Act on the EEA Agreement prohibits discrimination based on citizenship in relation to the provisions of the agreement and the transposition of the relevant EU directives has led to the prohibition of discrimination regarding temporary and part-time employment vs. full time employment.

### **3. Main principles and definitions**

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

No national rules address multiple discrimination and no cases have been adjudicated dealing with such situations.

### **4. Material scope**

Directives 2000/43/EC and 2000/78/EC have not been transposed into national law and no comprehensive anti-discrimination law applies to all sectors of public and private employment and occupations with regard to the grounds listed in the directives. Discriminatory acts in the private sector could possibly fall under the scope of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried. For the public sector, the Act on Administrative Procedure No. 37/1993 – prohibiting discrimination between

individual parties based on views concerning, inter alia, race, colour, national origin, religion, political opinion, social status or family – could apply.

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

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

With regard to prohibition of discrimination in relation to education, the Primary School Act No. 91/2008 stipulates that in the organisation of study and instruction, and in producing and selecting study material, special efforts shall be made to ensure that all pupils have equal study opportunities and a chance to select subjects and learning approaches in their own education. The objectives and practice of study and instruction shall aim at preventing discrimination on the basis of origin, gender, sexual orientation, residence, social class, religion, health condition, disability or situation in general. Children with disabilities shall attend the general schools and have assistance, if needed.

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

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

## **5. Enforcing the law**

Directives 2000/43/EC and 2000/78/EC have not been transposed into national law. No specific procedures have been established to deal with discrimination on the grounds enumerated in the directives. The sole discrimination complaints body, the Gender Equality Complaints Committee, deals with gender discrimination only. Numerous administrative procedures are in place with the aim of guaranteeing citizens the right of recourse vis-à-vis public authorities, including non-discrimination. The Act on Administrative Procedure No. 37/1993 guarantees the right to lodge an appeal against decisions made by administrative authorities, such as public institutions or committees. All the decisions of public bodies, or bodies vested with public authority, are subject to review by a higher

authority, unless otherwise provided for by law. The decisions of independent authorities may in some cases be reviewed by ministers or special review boards/committees. Particular mention should be made of the recently established Immigration and Asylum Appeals Board. Its objective includes ensuring an independent review of all the decisions of the Directorate of Immigration that were taken on the basis of the Act on Foreigners No. 96/2002. The Board began receiving cases on 1 January 2015. By the end of 2015 it had received 244 cases. In some instances, decisions made by local authorities may be referred to the relevant ministry. Furthermore, complaints concerning discriminatory administrative decisions can be brought to the Parliamentary Ombudsman. Finally, the courts are competent to review any decision taken by the executive.

The time limits for bringing complaints to review committees vary and some have no time limits. Complaints must be brought to the Parliamentary Ombudsman within one year of the date of the disputed decision or event. Judgments made by the civil courts are binding and enforceable. The decisions of the Parliamentary Ombudsman are not legally binding on the authorities and do not automatically invalidate a disputed decision. The decisions of administrative committees are generally non-binding, except for the Gender Equality Complaints Committee, which can issue binding decisions.

An association may apply to the courts for the recognition of certain rights of its members or to relieve its members of certain duties, if safeguarding the interests at stake forms part of the association's mandate. However, few domestic organisations have the resources to assist victims of discrimination – only disability organisations have done this in relation to the grounds covered by the directives – and cases are as a rule not brought to the attention of the public. The burden of proof has not been shifted and situation testing and statistics have, to date, not been used.

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

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

The only positive measures in place relating to the scope of Directives 2000/43/EC and 2000/78/EC, aim to strengthen the position of persons with disabilities in the labour market. The Act on the Affairs of Persons with Disabilities No. 59/1992 aims to ensure equality for people with disabilities and living conditions comparable with those of other citizens, and to provide conditions that enable them to lead a normal life. The act does not set quotas, but establishes that persons with disabilities shall be given assistance in holding jobs in the labour market when necessary. This shall be done through special personal support in the workplace, as well as through information and instruction for other workers. Persons with disabilities shall also have access to vocational training in private enterprises and institutions, where this can be arranged. Each region shall provide sheltered work in the general labour market for people with disabilities and operate sheltered workplaces. Sheltered workplaces provide remunerated training to enable people with disabilities to

participate in the general labour market and they also shall provide fixed, remunerated employment for people with disabilities. Lastly, people with disabilities shall be given priority regarding work for the state and municipalities when their qualifications for the post are greater than or equal to those of other applicants.

There are no explicit provisions in national law on consultation with NGOs or social partners in relation to discrimination.

## **6. Equality bodies**

No equality body has been established to promote equality and non-discrimination on the grounds of race or ethnic origin, religion or belief, age, disability or sexual orientation. No human rights commission has been established and the sole equality body in place, the Centre for Gender Equality, deals with gender only. The Parliamentary Ombudsman may deal with cases concerning equality and/or discrimination in relation to administrative procedure. The Icelandic Human Rights Centre has assumed many of the functions of a national human rights institution (NHRI), albeit without the relevant powers, independence and financing having been established by statute. The Multicultural Centre is charged with facilitating communication between individuals of different backgrounds, and enhancing the services provided to foreign citizens residing in Iceland and to those interested in moving to Iceland. The Centre offers assistance to those seeking information about daily life in Iceland, provides information about the administration and is of service to foreign citizens moving to or from the country.

## **7. Key issues**

There are no obvious breaches or controversial issues in Iceland relevant to the scope of the directives. However, as there is no comprehensive anti-discrimination legislation in place, cases are not brought and thus discriminatory practices may not come to the fore.

The directives have not been transposed. The principle of equality is enshrined in Article 65 of the Icelandic Constitution, but there is no comprehensive anti-discrimination legislation, ensuring protection against discrimination on grounds of race or ethnic origin, religion or belief, age, disability or sexual orientation. A handful of general law provisions stemming from the constitutional equality provision are in force, but these commonly do not contain an exhaustive enumeration of prohibited grounds for discrimination and are limited to a particular law sector.

No equality body has been established to promote equality and non-discrimination on the grounds of race or ethnic origin, religion or belief, age, disability or sexual orientation. The Centre for Gender Equality deals with gender discrimination only.

The Minister for Welfare planned to present two draft bills on anti-discrimination based on the two directives in Parliament in 2014, but these did not materialise. The presentation was then planned for the autumn of 2015. The two draft bills were eventually included on the Government's list of draft legislation to be presented in Parliament in the spring of 2016.

There were no important legislative developments related to anti-discrimination in 2015. It should be noted, however, that an act amending several pieces of legislation in order to prepare for the ratification of the United Nation Convention on the Rights of Persons with Disabilities was adopted in December 2015. The legislation does not contain any new substantive rights or anti-discrimination provisions; it simply updates the terminology used when referring to people with disabilities in different pieces of legislation, e.g. 'disabled people' instead of 'handicapped' etc.

No discrimination cases relating directly to the scope of the directives were decided in 2015. However, in relation to disability, mention should be made of the Reykjavik District Court case *Snædís Rán Hjartardóttir v. The Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavik*. This is an important case, establishing that the funding and organisation of sign-language interpreting services is inadequate and discriminatory and is in breach of the right to minimum assistance as enshrined in the Constitution and in the equality provisions of administrative law. The state will have to increase its funding for these services and make legislative changes to define what constitutes minimum rights and adequate services when it comes to the right to sign-language interpretation.<sup>2</sup>

Another case worth a brief mention concerned the dismissal of a school teacher who had made homophobic remarks on his blog. The school authorities considered this hate speech incompatible with his role and responsibilities as a teacher and in breach of several rules and codes applicable to the job. The teacher argued that the dismissal was unlawful as, inter alia, it was not proven that the comments, which had been made in his free time, affected his work, and that the dismissal had not been carried out in accordance with the law and with the applicable administrative procedure. The Northern District Court ruled in the applicant's favour.<sup>3</sup> An appeal is pending.

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<sup>2</sup> Reykjavik District Court, *Snædís Rán Hjartardóttir v. the Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavik*, Case No. E-327/2015, 30 June 2015.

<sup>3</sup> Northern District Court, *The Municipality of Akureyri v. Snorri Óskarsson and the Ministry of the Interior*, Case No. E-181/2014, 10 April 2015.

## RESUME

### 1. Introduction

La population de l'Islande se caractérise par sa grande homogénéité et son caractère quasiment monoculturel. La discrimination la plus marquée a traditionnellement été fondée sur le genre et, même si les femmes islandaises bénéficient aujourd'hui d'une égalité relativement poussée, on observe encore une dichotomie incontestable entre leur niveau élevé d'instruction et de qualification et leur situation sur le marché du travail ainsi que dans la société de façon plus générale.

Le renforcement du dialogue sur les droits de l'homme met en évidence depuis quelques années la situation de divers groupes et minorités vulnérables. Une récente étude consacrée aux attitudes en matière d'égalité et de discrimination sur le lieu de travail révèle cependant que 86 % des personnes interrogées considèrent qu'il existe une discrimination fondée sur l'un des motifs suivants: genre (63,8 %), origine nationale (55,1 %), âge (44,1%), handicap (38,6 %), race (38,8 %), orientation sexuelle (22,4 %) et religion/convictions (20,5 %).

Les personnes handicapées bénéficient officiellement d'une bonne protection juridique en droit islandais même si, dans la pratique, elles se heurtent couramment à une discrimination en termes de droits à l'éducation, au logement et à la participation à la vie publique, et forment une proportion importante de la population vivant dans la pauvreté. Selon la principale organisation de défense des droits des personnes handicapées, les prestations liées à l'invalidité ne suffisent pas pour vivre dans la dignité, et un quart seulement des personnes handicapées exercent une activité professionnelle. Les réglementations en matière de construction et d'urbanisme exigent que les bâtiments publics soient accessibles, mais elles ne sont pas toujours appliquées et les sanctions sont rares. Un arrêt important en rapport avec le handicap a été prononcé en 2015. Dans une affaire introduite par une jeune sourde et aveugle, le tribunal de district de Reykjavik a dit pour droit que le financement public et l'organisation des services d'interprétation en langue des signes étaient inadéquats et discriminatoires, et violaient le droit à une assistance minimale consacré par la Constitution et par les dispositions du droit administratif en matière d'égalité. L'État est tenu d'accroître son financement de ces services et de procéder à des modifications législatives pour définir ce qui constitue des droits minima et des services adéquats lorsqu'il s'agit du droit à une interprétation en langue des signes.<sup>4</sup>

Les immigrés des première et deuxième générations représentaient 10 % environ de la population au 1<sup>er</sup> janvier 2015; les Polonais en constituent le groupe de loin le plus important avec 3 % environ de l'ensemble des habitants. Les années d'essor qui ont précédé le crash financier de 2008 ont donné lieu à une montée sans précédent de l'immigration et il fut un temps où les travailleurs étrangers représentaient 10 % de la main-d'œuvre. La majorité d'entre eux étaient des hommes occupés dans le secteur du bâtiment. Beaucoup d'immigrés ont perdu leur travail et, par suite de la crise économique, ils sont désormais plus nombreux à être sans emploi. Leur taux de chômage de longue durée est supérieur à la moyenne des Islandais. Il semblerait que le nombre d'immigrés en quête d'assistance auprès d'organisations caritatives soit également en hausse, notamment parce qu'ils manquent d'informations suffisantes concernant les services publics d'aide sociale. Le nombre d'enfants issus de l'immigration et requérant l'assistance des services de protection de l'enfance est lui aussi en augmentation. Une récente étude montre que le revenu des immigrés est, en moyenne, inférieur à celui de la population en général et que seule une petite minorité d'entre eux occupent des emplois dans lesquels ils valorisent pleinement leur formation. Il est préoccupant de constater par ailleurs que

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<sup>4</sup> Tribunal de district de Reykjavik, Hjartardóttir c. le Centre de communication pour les sourds et malentendants et l'État islandais et, en réserve, la ville de Reykjavik, affaire n° E-327/2015, 30 juin 2015.

les jeunes issus de l'immigration sont moins susceptibles que les autres d'achever l'enseignement secondaire et que, selon une étude réalisée par le Centre multiculturel, un immigré sur cinq fait régulièrement l'objet en Islande d'attitudes négatives en raison de son origine. Parmi les participants à l'étude, 77 % considèrent que ces attitudes négatives sont liées à leur connaissance limitée de la langue islandaise et 54 % qu'elles se fondent sur leur origine ou leur nationalité. Il est particulièrement inquiétant de noter que 14 % des personnes interrogées se sont heurtées à des attitudes négatives lors d'interactions avec le personnel d'écoles maternelles et 19 % lors d'interactions avec le personnel d'écoles primaires. Un sondage a également été réalisé auprès de fonctionnaires dans le cadre de cette étude: il révèle que selon quelque 55 % des agents de l'État, les immigrés font parfois, voire souvent, l'objet de préjugés dans leurs rapports avec des organismes publics, et que 43 % des employés municipaux partagent cet avis.

Aucune disposition légale ne sanctionne spécifiquement la discrimination fondée sur l'âge sur le marché du travail. Peu d'études ont été réalisées à ce sujet, mais le taux de participation des Islandais plus âgés au marché du travail est parmi les plus élevés de tous les pays de l'OCDE. Une discrimination en matière d'emploi n'en est pas moins manifeste, en rapport avec le genre plus particulièrement. Une étude Eurobaromètre de 2011 montre que les Islandais ont été les témoins ou ont personnellement expérimenté une discrimination fondée sur l'âge qui dépasse la moyenne de l'UE, à la fois sur le lieu de travail, en matière d'accès à l'éducation et à la formation, et dans le cadre de leurs loisirs.

Sur une note plus positive, bien que l'orientation sexuelle ne soit pas un motif spécifiquement protégé dans le domaine de l'emploi, la législation islandaise établissant les droits des personnes homosexuelles est l'une des plus progressistes au monde: tous les mariages ont le même statut juridique; les couples de même sexe peuvent adopter des enfants; et les lesbiennes peuvent bénéficier d'une insémination artificielle. L'un des derniers obstacles est l'opposition de l'Église d'Islande (Église d'État de confession luthérienne) à la célébration de cérémonies religieuses identiques pour les mariages hétérosexuels et homosexuels. Il est en outre admis que, se référant à leur conscience religieuse, des prêtres demeurent opposés au mariage homosexuel et refusent de célébrer le mariage de couples de même sexe. Selon l'Évêque d'Islande toutefois, seule une très faible minorité de prêtres sont dans ce cas. L'attitude à l'égard des personnes LGBT est, de façon générale, très libérale et la Gay Pride est une journée de festivités familiales à Reykjavik. De surcroît, le statut juridique des personnes transgenres a été considérablement renforcé par la loi n° 57/2012 relative à ces personnes. Une évolution positive connexe est intervenue en 2014 avec l'inclusion dans le code pénal général n° 19/1940 de l'identité de genre en tant que motif de discrimination.

Le nombre d'organisations religieuses enregistrées est passé de 14 en 1991 à 43 en 2015. Plus de la moitié d'entre elles ont une dénomination chrétienne. Quelque 73,8 % de la nation adhèrent à l'Église d'Islande. Les croyances minoritaires les plus représentées sont l'Ásatrú (paganisme nordique), le bouddhisme et l'islam. Un peu plus de 12,7 % de la population sont «indéfinis» ou n'appartiennent à aucune organisation religieuse. Aucune étude n'a été consacrée à l'ampleur de la discrimination fondée sur la religion ou les convictions sur le lieu de travail, mais 23,4 % des Islandais estimaient en 2009 qu'une discrimination générale fondée sur ce motif était courante dans le pays.

En 2013, le conseil municipal de Reykjavik a finalement attribué un terrain à l'Association musulmane d'Islande en vue de la construction d'une mosquée. La première demande de l'Association à cette fin remonte à 2000. Il s'agit d'une évolution positive, mais les signes de la montée d'un sentiment anti-islamique en Islande suscitent aujourd'hui certaines préoccupations. En novembre 2013, un groupe a déposé des têtes de porcs et un coran ensanglanté sur le terrain prévu pour la mosquée. Une personne a été identifiée, mais l'enquête a été clôturée sans donner lieu à aucune poursuite. Il est plus déconcertant encore de constater que, lors des élections municipales en 2014, le Parti progressiste a gagné huit points de pourcentage et deux sièges au conseil municipal de Reykjavik en

appuyant notamment sa campagne sur une plateforme anti-islamique et en déclarant qu'il fallait retirer l'attribution de terrain pour la mosquée. Il est encourageant de constater cependant que les deux conseillers municipaux n'ont fait, depuis leur entrée en fonction, aucune promotion active de causes racistes ou anti-islamiques.

## **2. Législation principale**

Étant signataire de l'Accord sur l'Espace économique européen (EEE), l'Islande est tenue d'adopter l'acquis de l'UE pour ce qui concerne le marché unique. Les directives 2000/43/CE et 2000/78/CE n'ont pas été incorporées dans cet Accord et n'ont donc pas été transposées en droit interne. La Commission européenne estime que la législation islandaise n'est pas conforme aux directives parce qu'aucune protection précise contre la discrimination n'est prévue sur le marché du travail et qu'aucune législation générale en vigueur n'interdit la discrimination fondée sur l'origine raciale ou ethnique en dehors du marché du travail.

Les motifs de discrimination couverts par la Constitution islandaise sont le sexe, la religion, les opinions, l'origine nationale, la race, la couleur, la situation financière et la filiation. La liste n'est pas exhaustive, étant donné que la disposition précise également que l'égalité devant la loi et la non-discrimination sont garanties par rapport à tous les motifs susmentionnés mais également par rapport à «toute autre situation», que l'on peut interpréter comme incluant l'âge.

Le seul acte législatif exhaustif actuellement en vigueur en matière de non-discrimination est la loi n° 10/2008 relative à l'égalité de statut et de droits des hommes et des femmes (loi sur l'égalité de genre), largement conforme à l'acquis de l'Union européenne. Dans d'autres domaines, l'approche anti-discrimination reste embryonnaire et fragmentée puisque seules quelques dispositions législatives générales découlant de la disposition constitutionnelle en matière d'égalité sont d'application. Elles ne contiennent généralement pas de liste exhaustive de motifs de discrimination et se limitent à un domaine particulier du droit. Des dispositions en matière d'égalité/antidiscrimination par rapport aux motifs énumérés dans les directives 2000/43/CE et 2000/78/CE figurent dans des actes relatifs aux personnes âgées et dans des actes modifiant la législation en vue d'éliminer la discrimination envers les personnes homosexuelles et transgenres.

La loi sur les personnes handicapées garantit entre autres le droit à l'égalité, le droit de bénéficier d'une assistance permettant de vivre et de travailler au sein de la société, le droit aux services généraux nationaux et municipaux, et le droit d'accès aux espaces publics. La loi prévoit également des mesures d'action positive: à qualification égale, la préférence est accordée à des personnes souffrant d'un handicap plutôt qu'à d'autres candidats à l'obtention d'un emploi dans la fonction publique. Les préparatifs en vue de la ratification de la Convention des Nations unies relative aux droits des personnes handicapées sont en cours. La Convention européenne des droits de l'homme, qui a été transposée en droit national, dispose que la jouissance des droits et des libertés qu'elle énonce s'exerce sans discrimination. La Convention des Nations unies relative aux droits de l'enfant a également été transposée dans l'ordre juridique interne et contient des dispositions similaires. Le code pénal général, la loi sur les procédures administratives et les actes relatifs aux écoles primaires, aux médias et aux services municipaux comportent également des dispositions touchant l'égalité et la non-discrimination. De surcroît, la loi relative à l'Accord EEE interdit la discrimination fondée sur la citoyenneté en rapport avec les dispositions de l'Accord, et la transposition des directives pertinentes de l'UE a donné lieu à l'interdiction d'une discrimination liée à l'occupation d'un emploi temporaire ou à temps partiel par rapport à un emploi à temps plein.



### **3. Principes généraux et définitions**

Les définitions figurant dans les directives n'ont pas été transposées en droit interne. La législation nationale ne définit pas clairement les motifs protégés et des définitions de la discrimination directe et indirecte, du harcèlement, des rétorsions, de l'injonction de discriminer et de l'aménagement raisonnable font défaut dans ce contexte. Aucune dérogation n'est expressément autorisée en ce qui concerne les organisations religieuses, et la loi est muette à propos des exigences professionnelles «essentielles et déterminantes». La législation nationale contient certaines exceptions relevant d'exigences liées à l'âge et à l'aptitude physique; elles concernent notamment les policiers, les pompiers et les gardiens de prison.

Aucune règle nationale ne porte sur la discrimination multiple et aucun arrêt n'a été rendu dans des affaires impliquant ce type de situation.

### **4. Champ d'application matériel**

Les directives 2000/43/CE et 2000/78/CE n'ont pas été transposées en droit interne; aucune législation antidiscrimination exhaustive ne s'applique à l'ensemble des secteurs de l'emploi et du travail, tant publics que privés, pour ce qui concerne les motifs qu'elles énumèrent. Des actes discriminatoires commis dans le secteur privé pourraient éventuellement relever du champ d'application de la loi n° 50/1993 sur les dommages-intérêts, mais il n'existe aucune jurisprudence. Quant au secteur public, la loi n° 37/1993 sur les procédures administratives, qui interdit la discrimination entre parties individuelles fondée entre autres sur des opinions quant à la race, la couleur, l'origine nationale, la religion, l'opinion politique, le statut social ou la famille, pourrait être invoquée.

Il n'existe aucune interdiction explicite de discrimination fondée sur les motifs visés par les directives en ce qui concerne la pension professionnelle et l'accès à la formation professionnelle de quelque type et à quelque niveau que ce soit. Quant à l'appartenance et la participation à des organisations de travailleurs, la loi n° 80/1938 sur les syndicats et les conflits du travail, applicable à la fois au secteur privé et au secteur public, dispose que l'adhésion à un syndicat est libre pour tous les travailleurs occupés dans le secteur concerné. De même, l'accès aux associations professionnelles et aux organisations patronales est ouvert à toutes les entreprises ou employeurs qui exercent leur activité ou sont qualifiés dans le domaine concerné. Aucune législation antidiscrimination n'est toutefois en vigueur à cet égard et aucune interdiction expresse de discrimination liée à l'affiliation et à la participation à des organisations de travailleurs ou d'employeurs, ou à d'autres organisations professionnelles, y compris les avantages y afférents, n'a été adoptée.

La législation nationale ne prévoit pas en matière de sécurité sociale et de soins de santé d'exceptions fondées sur la religion ou les convictions, l'âge, le handicap ou l'orientation sexuelle; elle n'établit pas non plus de distinction entre les biens et services mis à la disposition du public et ceux mis à la disposition de membres d'associations privées. Des prescriptions interdisant la discrimination fondée sur la race ou l'origine ethnique en rapport avec les «avantages sociaux» font défaut mais, dans le secteur public, ce type de discrimination pourrait constituer un non-respect du principe d'égalité codifié dans la loi sur les procédures administratives. Dans le secteur privé, un recours pourrait invoquer l'article 26 sous b) de la loi n° 50/1993 sur les dommages-intérêts, lequel dispose qu'une indemnisation peut être octroyée pour préjudice causé par une infraction portant atteinte à la liberté, la paix, l'honneur ou la personne de la victime.

Pour ce qui est de l'interdiction de discrimination dans le domaine éducatif, la loi n° 91/2008 sur l'enseignement primaire requiert, en ce qui concerne l'organisation des études et l'instruction, ainsi qu'en ce qui concerne la production et la sélection du matériel pédagogique, qu'un effort spécial soit fait pour que tous les élèves bénéficient des mêmes

chances en termes d'enseignement et qu'ils aient la possibilité de choisir les disciplines et les approches pédagogiques de leur propre apprentissage. Les objectifs et pratiques d'enseignement veilleront à prévenir la discrimination fondée sur l'origine, le genre, l'orientation sexuelle, la résidence, la classe sociale, la religion, l'état de santé, le handicap ou la situation en général. Les enfants handicapés suivent leur scolarité dans les écoles ordinaires en bénéficiant d'une assistance, s'il y a lieu.

Aucune communauté rom identifiée en tant que telle ne s'est établie en Islande de sorte qu'aucune forme de ségrégation ni de discrimination notoire n'existe dans les établissements scolaires à l'égard des Roms.

Aucune disposition n'a été expressément adoptée pour empêcher la discrimination fondée sur la race ou l'origine ethnique en termes d'accès au logement. La loi sur les personnes handicapées prévoit la mise à disposition de services sociaux à l'intention de ces personnes afin qu'elles puissent autant que possible habiter chez elles ou recourir à d'autres options de logement selon leurs besoins et leurs souhaits. Il incombe aux municipalités de veiller à ce qu'un logement adéquat et les services nécessaires soient mis à la disposition des personnes handicapées.

## **5. Mise en application de la loi**

Les directives 2000/43/CE et 2000/78/CE n'ont pas été transposées en droit interne. Aucune procédure n'a été spécifiquement instituée pour traiter des discriminations fondées sur les motifs qui y sont énumérés. Seul organisme chargé des plaintes pour discrimination, la Commission des plaintes en matière d'égalité de genre ne peut être saisie qu'en cas de discrimination fondée sur ce motif. Plusieurs procédures administratives sont en place pour garantir le droit de recours des citoyens à l'encontre d'autorités publiques, y compris en cas de discrimination. La loi n° 37/1993 sur les procédures administratives confère le droit de faire appel de décisions prises par des autorités administratives telles que des institutions ou des commissions publiques. Sauf disposition contraire de la loi, toutes les décisions émanant d'instances publiques ou d'instances dotées de l'autorité publique sont soumises au contrôle d'une instance supérieure. Les décisions émanant d'autorités indépendantes peuvent, dans certains cas, faire l'objet d'un contrôle de la part de ministres ou de conseils/commissions spécialement institués à cette fin. Il convient de signaler plus particulièrement la création récente d'une Commission d'appel de l'immigration et de l'asile, chargée notamment de procéder à l'examen indépendant de toutes les décisions prises par la Direction de l'immigration sur la base de la loi n° 96/2002 relative aux étrangers. La Commission pouvait recevoir des recours à partir du 1<sup>er</sup> janvier 2015 et avait été saisie de 244 dossiers en fin d'année. Il peut arriver aussi que des décisions prises par des autorités locales soient référées au ministère concerné. Des plaintes concernant des décisions administratives discriminatoires peuvent en outre être déposées auprès du Médiateur parlementaire. Enfin, les juridictions sont habilitées à contrôler toute décision prise par le pouvoir exécutif.

Le délai pour le dépôt d'une plainte devant une commission de contrôle varie et, dans certains cas, aucun délai n'est fixé. Les plaintes auprès du Médiateur parlementaire doivent être introduites dans les douze mois qui suivent la date de la décision contestée ou de l'événement en cause. Les arrêts rendus par les juridictions civiles sont contraignants et exécutoires. Les décisions du Médiateur parlementaire ne sont pas juridiquement contraignantes pour les autorités et n'invalident pas automatiquement la décision en cause. Les décisions des commissions administratives sont généralement non contraignantes, hormis dans le cas de la Commission des plaintes en matière d'égalité de genre, qui peut rendre des décisions ayant force de loi.

Une association peut saisir la justice pour obtenir la reconnaissance de certains droits de ses membres ou pour libérer ses membres de certaines obligations, pour autant que la sauvegarde des intérêts en jeu fasse partie intégrante de son mandat. Rares sont

cependant les organisations nationales qui ont suffisamment de ressources pour venir en aide à des victimes de discrimination – à ce jour seules des organisations représentant les intérêts de personnes handicapées ont fait cette démarche en rapport avec les motifs couverts par les directives – et les affaires de ce type ne sont généralement pas portées à l'attention du grand public. Le renversement de la charge de la preuve n'est pas prévu et il n'a pas encore été fait usage du test de situation ni de statistiques.

Le non-respect des articles 125, 180 et 233a du code pénal général donne lieu à un acte d'accusation officiel. La procédure pénale débute par une enquête menée par la police de sa propre initiative ou à la suite d'une plainte. Si l'enquête révèle qu'une infraction pénale pourrait avoir été commise, l'affaire est renvoyée au parquet. S'il estime que le grief est apparemment justifié, le procureur transmet un acte d'accusation à une juridiction de compétence générale.

Des sanctions ne sont pas explicitement prévues pour les cas de discrimination fondée sur les motifs énumérés dans les directives, mais la discrimination peut entraîner une responsabilité civile, à laquelle les règles générales s'appliquent. Les tribunaux peuvent décider qu'un acte particulier ou une omission particulière doit faire l'objet d'une réparation, et attribuer des dommages-intérêts matériels à la victime. Le non-respect des dispositions du code pénal général relatives au discours haineux et à la discrimination en termes de services et d'accès à des lieux publics est passible d'amendes ou d'une peine d'emprisonnement pouvant aller respectivement jusqu'à deux ans et demi et jusqu'à six mois. Le non-respect de l'interdiction d'insultes publiques à l'encontre des convictions ou de la religion de communautés confessionnelles légalement constituées est passible pour sa part d'amendes et d'une peine d'emprisonnement de trois mois maximum. Il convient de noter que les articles 125 et 180 n'ont encore jamais été invoqués, et qu'un seul arrêt a été prononcé en justice concernant une violation de l'article 233a.

Les seules mesures d'action positive adoptées en rapport avec le champ d'application des directives 2000/43/CE et 2000/78/CE visent à renforcer la position des personnes handicapées sur le marché du travail. La loi n° 59/1992 sur les personnes handicapées vise à garantir à celles-ci une égalité ainsi que des conditions de vie comparables à celles des autres citoyens, et à instaurer des conditions leur permettant de mener une vie normale. Cette loi ne fixe pas de quotas, mais établit que les personnes handicapées seront aidées, s'il y a lieu, à occuper un emploi sur le marché du travail. Cette assistance se concrétisera par un soutien individuel spécialement adapté sur le lieu de travail, et par la communication d'informations et d'instructions aux autres travailleurs. Les personnes handicapées peuvent également prendre part à la formation professionnelle organisée dans des entreprises et institutions privées, lorsque cela s'avère possible. Chaque région est tenue de prévoir sur le marché général du travail des emplois protégés et des ateliers protégés à l'intention des personnes handicapées. Les ateliers protégés offrent une formation rémunérée permettant aux personnes handicapées de participer au marché général du travail, ainsi que des emplois fixes et rémunérés à des personnes handicapées. Enfin, les personnes handicapées bénéficient d'une priorité pour l'obtention d'un emploi pour l'État ou l'administration municipale lorsque leur qualification pour le poste concerné est supérieure ou égale à celle d'autres candidats.

La législation nationale ne comporte aucune disposition expresse concernant la consultation des ONG ou des partenaires sociaux sur les questions de discrimination.

## **6. Organismes de promotion de l'égalité de traitement**

Aucun organisme n'a été institué pour promouvoir l'égalité et la non-discrimination en rapport avec les motifs de la race et de l'origine ethnique, de la religion et des convictions, de l'âge, du handicap ou de l'orientation sexuelle. Aucune commission des droits de l'homme n'a davantage été instituée et le seul organisme en place dans ce domaine, à savoir la Commission des plaintes en matière de genre, traite uniquement des questions

d'égalité hommes-femmes. Le Médiateur parlementaire peut être saisi pour sa part d'affaires d'égalité/de discrimination liées à une procédure administrative. Le Centre islandais des droits de l'homme assume bon nombre des fonctions d'une Institution nationale des droits de l'homme (INDH) sans pour autant que ses compétences, son indépendance et son financement aient été établis par voie législative. Le Centre multiculturel est chargé de faciliter la communication entre personnes d'origines différentes et de promouvoir les services fournis aux ressortissants étrangers résidant en Islande ou désireux de s'y installer. Le Centre offre son aide à toute personne en quête d'informations concernant la vie quotidienne en Islande; fournit des renseignements concernant l'administration; et rend des services utiles aux ressortissants étrangers qui arrivent dans le pays ou le quittent.

## **7. Points essentiels**

Il n'y a en Islande ni infraction manifeste ni sujet de controverse en ce qui concerne le champ d'application des directives. Ceci étant dit, l'absence de législation antidiscrimination exhaustive a pour effet que les instances compétentes ne sont pas saisies d'affaires liées à des pratiques discriminatoires et que celles-ci pourraient donc demeurer dans l'ombre.

Les directives n'ont pas été transposées. Le principe de l'égalité est consacré par l'article 65 de la Constitution islandaise, mais aucune législation antidiscrimination exhaustive ne garantit une protection contre la discrimination fondée sur la race ou l'origine ethnique, la religion ou les convictions, l'âge, le handicap ou l'orientation sexuelle. Une série de dispositions juridiques générales découlant de l'égalité consacrée par la Constitution sont en vigueur mais, le plus souvent, elles ne contiennent pas d'énumération complète des motifs de discrimination interdits et elles se limitent à un domaine juridique particulier.

Aucun organisme spécialisé n'a été mis en place pour promouvoir l'égalité et la non-discrimination fondée sur la race ou l'origine ethnique, la religion ou les convictions, l'âge, le handicap ou l'orientation sexuelle. Le Centre islandais pour l'égalité des sexes traite uniquement des cas de discrimination fondée sur le genre.

Le ministre du Bien-être social avait l'intention de présenter au Parlement en 2014 deux projets de loi relatifs à la non-discrimination, basés sur les deux directives, mais cela ne s'est pas concrétisé. Cette présentation a ensuite été prévue pour l'automne 2015. En définitive, les deux projets de loi ont été inclus dans la liste des projets législatifs à soumettre au Parlement au cours du printemps 2016.

Si aucun développement législatif important en rapport avec la lutte contre la discrimination n'est intervenu en 2015, il convient néanmoins de signaler l'adoption en décembre d'une loi modifiant plusieurs actes législatifs en vue de préparer la ratification de la Convention des Nations unies relative aux droits des personnes handicapées. La législation ne comporte ni nouveaux droits substantiels ni dispositions antidiscrimination nouvelles: elle se contente de mettre à jour la terminologie utilisée dans différents actes législatifs pour désigner des personnes handicapées.

Aucun arrêt relatif à une affaire de discrimination directement liée au champ d'application des directives n'a été rendu en 2015. Il convient cependant de mentionner, en rapport avec le handicap, l'affaire *Snædís Rán Hjartardóttir c. le Centre de communication pour les sourds et malentendants et l'État islandais et, en réserve, la ville de Reykjavik* dont a été saisi le tribunal de district de Reykjavik. Il s'agit d'un arrêt important qui dit pour droit que le financement public et l'organisation des services d'interprétation en langue des signes sont inadéquats et discriminatoires, et violent le droit à une assistance minimale consacré par la Constitution et par les dispositions du droit administratif en matière d'égalité. Il oblige l'État à accroître son financement de ces services et de procéder à des modifications

législatives pour définir ce qui constitue des droits minima et des services adéquats lorsqu'il s'agit du droit à une interprétation en langue des signes.<sup>5</sup>

Une autre affaire mérite d'être brièvement évoquée: elle concerne le licenciement d'un enseignant qui avait formulé des remarques homophobes sur son blog. L'administration scolaire a estimé que ce discours haineux était incompatible avec son rôle et ses responsabilités d'enseignant et enfreignait plusieurs règles et codes applicables à cette fonction. L'enseignant a soutenu que son licenciement était illégal parce que rien ne prouvait notamment que les remarques en question, formulées durant son temps libre, affectaient son travail, et parce que le licenciement n'avait pas été effectué conformément à la loi et à la procédure administrative applicable. Le tribunal de district Nord s'est prononcé en faveur du requérant.<sup>6</sup> Une procédure d'appel est en cours.

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<sup>5</sup> Tribunal de district de Reykjavik, *Snædís Rán Hjartardóttir c. le Centre de communication pour les sourds et malentendants et l'État islandais et, en réserve, la ville de Reykjavik*, affaire n° E-327/2015, 30 juin 2015.

<sup>6</sup> Tribunal du district Nord, *Municipalité d'Akureyri c. Snorri Óskarsson et le ministère de l'Intérieur*, affaire n° E-181/2014, 10 avril 2015.

## ZUSAMMENFASSUNG

### 1. Einleitung

Die isländische Bevölkerung ist weitgehend homogen und monokulturell. In der Vergangenheit kam es vor allem aus Gründen des Geschlechts zu Diskriminierungen. Obwohl isländische Frauen ein relativ hohes Maß an Gleichberechtigung genießen, gibt es noch immer eine nachweisbare Diskrepanz zwischen ihrem hohen Bildungsstand, ihren hohen Qualifikationen und ihrem Status auf dem Arbeitsmarkt und in der Gesellschaft als Ganzes.

In den letzten Jahren hat ein verstärkter Dialog zum Thema Menschenrechte die Position der verschiedenen schutzbedürftigen Gruppen und Minderheiten in den Vordergrund gerückt. Eine neue Studie über die Einstellung zum Thema Gleichbehandlung und Diskriminierung am Arbeitsplatz zeigt jedoch, dass 86 % der Befragten der Meinung ist, dass Menschen basierend auf einem der folgenden Gründe diskriminiert werden: Geschlecht (63,8 %), nationale Herkunft (55,1 %), Alter (44,1 %), Behinderung (38,6 %), Rasse (38,8 %), sexuelle Orientierung (22,4 %) und Religion/Glaube (20,5 %).

Der formal-rechtliche Status von Menschen mit Behinderungen ist gut, in der Praxis werden sie, was das Recht auf Bildung, Wohnraum und Teilnahme am öffentlichen Leben betrifft, jedoch häufig diskriminiert, und sie stellen einen großen Teil der in Armut lebenden Menschen. Nach Angaben der führenden Organisation für die Rechte von Menschen mit Behinderungen reichen Invalidenleistungen nicht aus, um ein Leben in Würde zu führen und nur ein Viertel der Menschen mit Behinderungen geht einer Beschäftigung nach. Bau- und Planungsvorschriften erfordern, dass öffentliche Gebäude für Rollstuhlfahrer zugänglich sind. Dies ist jedoch nicht immer der Fall, aber es kommt nur selten zu Sanktionen. 2015 erging ein wichtiges Urteil zum Thema Behinderung. In einem Verfahren, in dem ein gehörloser, blinder Jugendlicher geklagt hatte, entschied das Bezirksgericht Reykjavík, dass die staatliche Finanzierung und Organisation von Gebärdensprachdolmetscherdiensten unzureichend und diskriminierend sei und gegen das in der Verfassung und in den Gleichheitsvorschriften des Verwaltungsrechts verankerte Recht auf ein Mindestmaß an Unterstützung verstoße. Der Staat wird mehr finanzielle Mittel für diese Dienste zur Verfügung stellen und gesetzliche Änderungen vornehmen müssen, um festzulegen, was Mindestrechte und angemessene Dienstleistungen sind, wenn es um den Rechtsanspruch auf Gebärdensprachverdolmetschung geht.<sup>7</sup>

Am 1. Januar 2015 machten Zugewanderte der ersten und zweiten Generation rund 10 % der Bevölkerung aus, wobei polnische Zugewanderte mit rund 3 % der Bevölkerung die bei Weitem größte Gruppe waren. In den Boomjahren vor der Finanzkrise von 2008 kam es zu einem noch nie dagewesenen Anstieg der Einwanderung. Eine Zeitlang stellten die ausländischen Arbeitnehmer 10 % der Erwerbsbevölkerung dar. Die meisten waren dabei in der Bauindustrie tätige Männer. Viele verloren ihre Arbeit und infolge der Wirtschaftskrise sind heute mehr Zugewanderte arbeitslos. Sie sind im Schnitt häufiger von Langzeitarbeitslosigkeit betroffen als Isländer. Es gibt Hinweise darauf, dass die Zahl der Zugewanderten, die Hilfe von Wohltätigkeitsorganisationen beziehen wächst, unter anderem deshalb, weil sie nicht ausreichend über die öffentlichen Sozialdienste informiert werden. Des Weiteren benötigen mehr Kinder mit Migrationshintergrund Unterstützung durch den Kinderschutzdienst. Eine kürzlich durchgeführte Studie zeigt, dass das Einkommen von Zugewanderten im Durchschnitt niedriger ist als das der allgemeinen Bevölkerung, und nur eine kleine Minderheit geht einer Beschäftigung nach, bei der ihre Ausbildung voll genutzt wird. Ein besorgniserregender Trend besteht darin, dass es für Jugendliche mit Migrationshintergrund weniger wahrscheinlich ist, dass sie ein Abitur machen. Laut einer Studie des Multicultural Centre erlebt jeder fünfte Zuwanderer in Island

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<sup>7</sup> Bezirksgericht Reykjavík, *Snædís Rán Hjartardóttir gegen das Kommunikationszentrum für Gehörlose und Schwerhörige und den Isländischen Staat sowie ersatzweise die Stadt Reykjavík*, Rechtssache Nr. E-327/2015, 30. Juni 2015.

regelmäßig aufgrund seiner Herkunft negative Einstellungen und Verhaltensweisen ihm gegenüber. 77 % der Studienteilnehmer waren der Meinung, dass sie aufgrund ihrer begrenzten Kenntnisse der isländischen Sprache negative Einstellungen und Verhaltensweisen erlebt hatten, 54 % glaubten, dass negative Einstellungen ihnen gegenüber auf ihrer Herkunft oder Nationalität basierten. Ein Problem von besonderem Belang ist, dass 14 % eine negative Einstellung während einer Interaktion mit Personal in Kindergärten, und 19 % bei der Interaktion mit Grundschulpersonal erlebt haben. Im Rahmen der Studie wurden auch Beamte befragt. Rund 55 % der Staatsbeamten waren der Meinung, dass Zugewanderte in ihrem Umgang mit staatlichen Stellen manchmal oder häufig mit Vorurteilen zu kämpfen haben und 43 % der kommunalen Beamten waren derselben Ansicht.

Es gibt keine ausdrücklichen gesetzlichen Bestimmungen für die Sanktionierung bei der Altersdiskriminierung auf dem Arbeitsmarkt. Es wurde nur im begrenzten Umfang Forschung zu diesem Thema durchgeführt, jedoch zählt die Erwerbsbeteiligung älterer Menschen in Island zu einer der höchsten der OECD-Länder. Allerdings ist Diskriminierung im Bereich der Beschäftigung offensichtlich, vor allem im Zusammenhang mit dem Geschlecht. Eine Eurobarometer-Studie des Jahres 2011 zeigt, dass die Isländer mehr Altersdiskriminierung erlebt oder erfahren haben als der EU-Durchschnitt: am Arbeitsplatz, in Bezug auf den Zugang zu allgemeiner und beruflicher Bildung sowie in der Freizeit.

Positiv zu vermerken ist, dass, auch wenn sexuelle Orientierung im Bereich der Beschäftigung kein spezieller Schutzgrund ist, die isländischen Vorschriften über die Rechte von Homosexuellen zu den weltweit fortschrittlichsten gehören: alle Ehen haben den gleichen rechtlichen Status, gleichgeschlechtliche Paare können Kinder adoptieren und Lesben können sich künstlich befruchten lassen. Eine der letzten verbliebenen Hürden ist der Widerstand der Nationalen Kirche Islands (die lutherische Staatskirche) gegen die Durchführung der gleichen religiösen Zeremonien für heterosexuelle und gleichgeschlechtliche Eheschließungen. Ferner sind noch immer Priester erlaubt, die gegen die homosexuelle Ehe sind, die sich auf ihr religiöses Gewissen berufen und weigern, Trauungen für gleichgeschlechtliche Paare durchzuführen. Jedoch vertritt laut des Bischofs von Island nur eine sehr kleine Minderheit der Priester solche Ansichten. Die Einstellung gegenüber LGBT-Personen ist im Allgemeinen sehr liberal und Gay Pride-Feierlichkeiten werden in Reykjavik wie Familienfeste begangen. Darüber hinaus wurde die Rechtsstellung von Transsexuellen durch das Gesetz über den rechtlichen Status von Transgenderpersonen Nr. 57/2012 erheblich gestärkt. Eine damit zusammenhängende positive Entwicklung war im Jahr 2014 die Änderung des Strafgesetzbuchs Nr. 19/1940, das nun die Geschlechteridentität als Diskriminierungsgrund enthält.

Die Zahl der registrierten religiösen Organisationen stieg von 14 im Jahr 1991 auf 43 im Jahr 2015. Mehr als der Hälfte von diesen sind christliche Konfessionen. Etwa 73,8 % der Bevölkerung gehören der Nationalkirche von Island an. Unter den religiösen Minderheiten, zählen die Asatrú (germanisches Neuheidentum), Buddhisten und Muslime zu den größten Konfessionen. Etwas mehr als 12,7 % der Bevölkerung sind nicht näher definiert oder gehören keiner religiösen Organisation an. Es wurde bisher noch keinerlei Forschung in Bezug auf das Ausmaß der Diskriminierung am Arbeitsplatz aus Gründen der Religion oder der Weltanschauung durchgeführt, jedoch waren im Jahr 2009 23,4 % der Isländer der Meinung, dass allgemeine Diskriminierung aufgrund von Religion oder Weltanschauung stattfindet.

Im Jahr 2013 wurde dem Verband isländischer Muslime (Félag múslima á Íslandi) schließlich vom Stadtrat Reykjavíks ein Grundstück für den Bau einer Moschee zugewiesen. Der Verband hatte bereits im Jahr 2000 einen Antrag gestellt. Dies ist eine positive Entwicklung, jedoch stellen erste Anzeichen einer wachsenden anti-islamischen Stimmung in Island einen Grund zur Sorge dar. Im November 2013 legte eine Gruppe von Personen Schweineköpfe und einen blutigen Koran auf das für die Moschee vorgesehene Grundstück. Eine Person unter den Tätern konnte im Nachhinein identifiziert werden, jedoch kam es im

Zuge der Untersuchung des Falles zu keiner Anklage. Noch beunruhigender ist, dass bei den Kommunalwahlen des Jahres 2014 die Fortschrittspartei (Framsóknarflokkurinn) 8 Prozentpunkte und zwei Sitze im Reykjavíker Stadtrat erhielt. Die Partei warb unter anderem auf einer anti-islamischen Plattform und forderte, die Zuteilung eines Grundstücks für die Moschee zu widerrufen. Positiv zu vermerken ist, dass beide Stadträte seit ihrem Amtsantritt weder rassistische noch antiislamische Themen aktiv unterstützt haben.

## **2. Wichtigste Gesetze**

Island ist Vertragspartei des Europäischen Wirtschaftsraums (EWR) und somit verpflichtet, den EU-Besitzstand in Verbindung mit dem Binnenmarkt zu übernehmen. Die Richtlinien 2000/43/EG und 2000/78/EG wurden nicht in das EWR-Abkommen aufgenommen und daher im innerstaatlichen Recht nicht umgesetzt. Die Europäische Kommission ist nicht der Ansicht, dass die isländische Gesetzgebung den Richtlinien entspricht, da „kein ausführlicher Schutz vor Diskriminierung auf dem Arbeitsmarkt vorgesehen ist und zudem keine umfassenden Rechtsvorschriften zum Verbot der Diskriminierung aus Gründen der Rasse oder der ethnischen Herkunft außerhalb des Arbeitsmarktes bestehen“.

Die in der isländischen Verfassung erwähnten Gründe für Diskriminierung sind Geschlecht, Religion, Meinung, Nationalität, Rasse, Hautfarbe, finanzieller Status und Herkunft. Die Liste ist nicht vollständig, da die Bestimmungen festlegen, dass Gleichheit vor dem Gesetz und Nichtdiskriminierung zu gewährleisten seien, unabhängig von den oben genannten Gründen und auch unabhängig vom „sonstigen Status“, was auch als Einbeziehung des Alters verstanden werden kann.

Die einzige derzeit bestehende umfassende Gesetzgebung im Bereich Nichtdiskriminierung ist das Gesetz über die Gleichstellung und Gleichberechtigung von Frauen und Männern Nr. 10/2008 (Gleichstellungsgesetz), das weitgehend im Einklang mit dem Besitzstand der Europäischen Union ist. Antidiskriminierungsregelungen sind in anderen Bereichen elementar und fragmentiert, da nur eine Handvoll der allgemeinen rechtlichen Bestimmungen des verfassungsrechtlichen Gleichheitssatzes tatsächlich in Kraft ist. Diese enthalten meist keine erschöpfende Aufzählung der verbotenen Diskriminierungsgründe und sind auf einen bestimmten Rechtsbereich beschränkt. Rechtsvorschriften zur Gleichbehandlung und / oder Bekämpfung von Diskriminierung in Bezug auf die in den Richtlinien 2000/43/EG und 2000/78/EG aufgeführten Gründe können in den Gesetzen über die Angelegenheiten älterer Menschen sowie in den Rechtsakten zur Änderung der Rechtsvorschriften zur Beseitigung der Diskriminierung von Homosexuellen und Transsexuellen gefunden werden.

Das Gesetz über Menschen mit Behinderungen gewährleistet unter anderem das Recht auf Gleichheit, das Recht auf Unterstützung zur Ermöglichung des Lebens und Arbeitens in der Gesellschaft, und das Recht auf allgemeine staatliche und kommunale Dienstleistungen sowie den Zugang zu öffentlichen Räumen. Das Gesetz sieht auch positive Maßnahmen vor: Somit erhalten Menschen mit Behinderungen den Vorzug gegenüber anderen Bewerbern, sollten sie sich für eine staatliche Beschäftigung bewerben, sofern sie über die gleichen Qualifikationen verfügen. Derzeit laufen Vorbereitungen zur Ratifizierung des Übereinkommens der Vereinten Nationen über die Rechte von Menschen mit Behinderungen. Die Europäische Menschenrechtskonvention, die im nationalen Recht umgesetzt wurde, sieht vor, dass die festgelegten Rechte und Freiheiten ohne Diskriminierung gewährleistet werden. Die UN-Konvention über die Rechte des Kindes wurde auch im nationalen Recht umgesetzt und sieht ähnliche Bestimmungen vor. Das Strafgesetzbuch, das Verwaltungsverfahrensgesetz und die Gesetzgebungen in Bezug auf Grundschulen, Medien und Postdienstleistungen sowie kommunale Dienstleistungen enthalten allesamt Bestimmungen über Gleichheit und Nichtdiskriminierung. Darüber hinaus verbietet der Rechtsakt des EWR-Abkommens die Diskriminierung aus Gründen der Staatsangehörigkeit in Bezug auf die Bestimmungen des Abkommens, und die Umsetzung



der einschlägigen EU-Richtlinien hat zu einem Verbot der Diskriminierung in Bezug auf Zeit- und Teilzeitarbeit gegenüber Vollzeitbeschäftigung geführt.

### **3. Wichtigste Grundsätze und Definitionen**

Die in den Richtlinien festgelegten Definitionen wurden nicht in nationales Recht umgesetzt. Es konnten in den nationalen Rechtsvorschriften keine klaren Definitionen von geschützten Gründen für Diskriminierung gefunden werden, zudem fehlen in diesem Zusammenhang die Definitionen der unmittelbaren und mittelbaren Diskriminierung, Belästigung, Viktimisierung, Anweisung zur Diskriminierung sowie angemessene Vorkehrungen. Für religiöse Organisationen sind keine ausdrücklichen Ausnahmen vorgesehen und das Gesetz schweigt zu „wesentlichen“ und „entscheidenden“ beruflichen Anforderungen. In der nationalen Gesetzgebung können bestimmte Ausnahmen bezüglich der Altersanforderungen und körperlichen Fitness gefunden werden, so z. B. für Polizisten, Feuerwehrleute und Gefängniswärter.

Keine der nationalen Regelungen befasst sich mit Mehrfachdiskriminierung und es wurden bisher auch noch keine Fälle bezüglich solcher Situationen gerichtlich entschieden.

### **4. Sachlicher Anwendungsbereich**

Die Richtlinien 2000/43/EG und 2000/78/EG wurden noch nicht in nationales Recht umgesetzt und es gilt kein umfassendes Antidiskriminierungsgesetz für alle Bereiche der Beschäftigung und Berufe im öffentlichen und privaten Sektor im Hinblick auf die in den Richtlinien genannten Gründe. Diskriminierende Handlungen im privaten Sektor könnten gegebenenfalls in den Geltungsbereich des Gesetzes über unerlaubte Handlungen (Tort Damages Act) Nr. 50/1993 fallen, jedoch wurden bisher noch keinerlei Fälle dieser Art entschieden. Im Bereich des öffentlichen Sektors könnte das Verwaltungsverfahrensgesetz (Act on Administrative Procedure) Nr. 37/1993 - Verbot der Diskriminierung zwischen den einzelnen Parteien basierend auf Ansichten über u. a. Rasse, Hautfarbe, nationale Herkunft, Religion, politischen Meinung, sozialen Stellung oder Familie - Anwendung finden.

Es konnte kein ausdrückliches Verbot der Diskriminierung basierend auf jenen Gründen gefunden werden, die in der Richtlinie zur Betriebsrente und den Zugang zu allen Arten und Stufen der Berufsbildung abgedeckt sind. Hinsichtlich der Mitgliedschaft und Mitwirkung in Arbeitnehmerorganisationen, legt das Gesetz über die Gewerkschaften und Handelskonflikte Nr. 80/1938, das sowohl im privaten als auch im öffentlichen Sektor gilt, fest, dass allen im jeweiligen Bereich beschäftigten Arbeitnehmern die Mitgliedschaft in Gewerkschaften zusteht. Ebenso stehen Berufsverbände und Arbeitgeberorganisationen für alle in den entsprechenden Bereichen tätigen oder qualifizierten Unternehmen oder Arbeitgeber offen. Jedoch ist in diesem Sektor kein umfassendes Antidiskriminierungsgesetz in Kraft und es besteht kein ausdrückliches Verbot der Diskriminierung im Hinblick auf die Mitgliedschaft und die Mitwirkung in Arbeitgeber- oder Arbeitnehmerverbänden oder anderen Berufsorganisationen sowie die damit verbundenen Vorteile.

Das nationale Recht sieht keine Ausnahmen für soziale Sicherheit und Gesundheitsversorgung aufgrund der Religion oder Weltanschauung, des Alters, einer Behinderung oder der sexuellen Orientierung vor; es unterscheidet auch nicht zwischen Gütern und Dienstleistungen für die Öffentlichkeit und für die Mitglieder privater Verbände. Es fehlen Bestimmungen, die eine Diskriminierung aus Gründen der Rasse oder der ethnischen Herkunft in Bezug auf die „sozialen Vorteile“ verbieten, jedoch stellt eine Diskriminierung dieser Art im öffentlichen Sektor wahrscheinlich einen Verstoß gegen den Gleichheitsgrundsatz im Verwaltungsverfahrensgesetz dar. In der Privatwirtschaft könnte es zu einem Verfahren unter Artikel 26 (b) des Gesetzes über unerlaubte Handlungen (Tort Damages Act) Nr. 50/1993 kommen, wonach es zur Zahlung einer Entschädigung für

Personenschäden kommen kann, die sich aus unerlaubtem Fehlverhalten ergeben, welches die Freiheit, den Frieden, die Ehre des Opfers oder die Person selbst verletzt.

Im Hinblick auf ein Verbot der Diskriminierung in Bezug auf die Bildung, sieht das Grundschulgesetz (Primary School Act) Nr. 91/2008 vor, dass bei der Organisation und Durchführung des Unterrichts sowie bei der Vorbereitung und Auswahl von Lehrmaterial besondere Anstrengungen unternommen werden, um sicherzustellen, dass alle Schüler über die gleichen Lernmöglichkeiten verfügen und die Möglichkeit erhalten, Themen und Lernansätze auszuwählen. Die Ziele sowie die Praxis des Unterrichts und der Anweisungen sollten darauf abzielen, Diskriminierung aufgrund von Herkunft, Geschlecht, sexueller Orientierung, Wohnort, sozialer Zugehörigkeit, Religion, Gesundheitszustand, Behinderung oder Situation im Allgemeinen zu verhindern. Kinder mit Behinderungen sind berechtigt, allgemeinbildende Schulen zu besuchen und gegebenenfalls Unterstützung zu erhalten.

Es wurden bisher noch keine Roma identifiziert, die sich in Island angesiedelt hätten, so dass diese nicht von Mustern der Rassentrennung und Diskriminierung in den Schulen betroffen sind.

Es wurden keine ausdrücklichen Bestimmungen verabschiedet, um die Nichtdiskriminierung in Bezug auf den Zugang zu Wohnraum unabhängig von Rasse oder ethnischer Herkunft zu gewährleisten. Das Gesetz über Menschen mit Behinderungen (Act on the Affairs of Persons with Disabilities) legt fest, dass Sozialdienstleistungen verfügbar sein müssen, um es Menschen mit Behinderungen zu ermöglichen, in ihren eigenen Wohnräumen oder in anderen Wohnmöglichkeiten im Einklang mit ihren Bedürfnissen und Wünschen zu leben, soweit dies möglich ist. Die Gemeinden sind verpflichtet, sicherzustellen, dass für Menschen mit Behinderungen geeignete Unterkünfte zur Verfügung stehen und dass die erforderlichen Leistungen erbracht werden.

## **5. Rechtsdurchsetzung**

Die Richtlinien 2000/43/EG und 2000/78/EG wurden noch nicht in nationales Recht umgesetzt. Es wurden keine besonderen Verfahren eingeführt, die sich auf die in den Richtlinien genannten Diskriminierungen beziehen. Die einzige Beschwerdestelle für Diskriminierungsoffer, der Gleichstellungsausschuss (Gender Equality Complaints Committee), befasst sich ausschließlich mit Diskriminierungen aufgrund des Geschlechts. Es sind zahlreiche Verwaltungsverfahren vorhanden, um Bürgern das Recht zu gewährleisten, persönlich in Behörden vorstellig zu werden. Darunter fällt auch das Recht der Nichtdiskriminierung. Das Verwaltungsverfahrensgesetz (Act on Administrative Procedures) Nr. 37/1993 garantiert das Recht, Beschwerde gegen Entscheidungen von Verwaltungsbehörden, wie öffentliche Institutionen oder Ausschüsse, einlegen zu dürfen. Alle Entscheidungen öffentlicher Einrichtungen oder von Stellen des öffentlichen Rechts unterliegen der Überprüfung durch eine höhere Instanz, sofern nicht anders vom Gesetz vorgesehen. Die Entscheidungen der unabhängigen Behörden können in manchen Fällen von Ministern oder besonderen Prüfungsausschüssen überprüft werden. Erwähnt sei vor allem der kürzlich eingerichtete Beschwerdeausschuss für Einwanderungs- und Asylfragen. Sein Ziel ist es, eine unabhängige Überprüfung aller Entscheidungen der Einwanderungsbehörde zu gewährleisten, die auf der Grundlage des Ausländergesetzes Nr. 96/2002 getroffen wurden. Am 1. Januar 2015 nahm der Ausschuss seine Arbeit auf; bis Ende 2015 hatte er 244 Beschwerden entgegengenommen. In einigen Fällen können durch lokale Behörden getroffene Entscheidungen dem zuständigen Ministerium vorgelegt werden. Darüber hinaus können Beschwerden über diskriminierende Verwaltungsentscheidungen vor den parlamentarischen Ombudsmann gebracht werden. Schließlich sind die Gerichte befugt, eine durch den Vorstand getroffene Entscheidung zu überprüfen.

Die Fristen für die Vorlage vor Beschwerdeausschüssen variieren und für manche sind keine Fristen festgelegt. Beschwerden müssen innerhalb eines Jahres nach dem Zeitpunkt der

angefochtenen Entscheidung oder des Ereignisses beim parlamentarischen Ombudsmann eingebracht werden. Durch Zivilgerichte gefällte Urteile sind verbindlich und wirksam. Die Entscheidungen des parlamentarischen Ombudsmanns sind für die Behörden nicht rechtsverbindlich und annullieren nicht automatisch eine angefochtene Entscheidung. Die Entscheidungen der Verwaltungsausschüsse sind in der Regel nicht verbindlich, mit Ausnahme des Beschwerdeausschusses für Gleichstellung der Geschlechter (Gender Equality Complaints Committee), welcher verbindliche Entscheidungen treffen kann.

Verbände können bei den Gerichten eine Anerkennung bestimmter Rechte ihrer Mitglieder beantragen oder ihre Mitglieder von bestimmten Aufgaben befreien, wenn die Wahrung der auf dem Spiel stehenden Interessen Teil des Mandats des Verbands darstellt. Jedoch verfügen nur wenige inländische Unternehmen über die entsprechenden Ressourcen, um die Opfer von Diskriminierungen zu unterstützen - einzig Behindertenverbände haben diese Schritte im Zusammenhang mit den in der Richtlinie erfassten Gründen unternommen -, und in der Regel werden Fälle nicht an die Öffentlichkeit gebracht. Die Beweislast wurde nicht verschoben, Situationsanalyse und Statistiken wurden bis heute nicht verwendet.

Verstöße gegen die Artikel 125, 180 und 233a des Strafgesetzbuchs unterliegen offizieller Anklage. Strafverfahren beginnen mit einer Untersuchung durch die Polizei, zu der es entweder aus eigener Initiative oder aufgrund einer Beschwerde kommt. Wenn die Untersuchung ergibt, dass eine Straftat begangen worden sein könnte, wird die Angelegenheit einem Staatsanwalt vorgelegt. Sollte der Staatsanwalt der Ansicht sein, dass ein Prima-Facie-Fall gegen den Angeklagten vorliegt, wird durch den Staatsanwalt eine Anklageschrift bei Gericht eingebracht.

Sanktionen für Diskriminierungen, basierend auf den in der Richtlinie genannten Gründen, wurden nicht ausdrücklich festgelegt, jedoch kann Diskriminierung auf Grundlage der allgemeinen Bestimmungen zu zivilrechtlicher Haftung führen. Die Gerichte können entscheiden, dass eine bestimmte Handlung unterlassen oder eine Unterlassung behoben werden sollte und dem Opfer Schadensersatz zusprechen. Verstöße gegen die Bestimmungen des Strafgesetzbuchs in Bezug auf Hassreden und Diskriminierungen im Dienstleistungsbereich und den Zugang zu öffentlichen Räumen können zu Geldstrafen oder Freiheitsstrafen bis zu zweieinhalb Jahren und sechs Monaten führen. Verstöße gegen das Verbot öffentlicher Beleidigungen des Glaubens oder der Religion von rechtmäßig etablierten Religionsgemeinschaften können zu Geldstrafen oder Freiheitsstrafen von bis zu drei Monaten führen. Es sei darauf hingewiesen, dass die Artikel 125 und 180 noch nie angewendet wurden und dass bisher nur ein Fall betreffend einem Verstoß gegen Artikel 233a gerichtlich entschieden wurde.

Die einzigen positiven, derzeit geltenden Maßnahmen in Bezug auf den Geltungsbereich der Richtlinien 2000/43/EG und 2000/78/EG sind darauf ausgelegt, die Position von Menschen mit Behinderungen auf dem Arbeitsmarkt zu stärken. Das Gesetz über Menschen mit Behinderungen (Act on the Affairs of Persons with Disabilities) Nr. 59/1992 zielt darauf ab, Menschen mit Behinderungen gleichzustellen und Lebensumstände zu gewährleisten, die vergleichbar mit denen anderer Bürger sind und es ihnen zu ermöglichen, ein normales Leben zu führen. Das Gesetz sieht keine Quoten vor, legt jedoch fest, dass Menschen mit Behinderungen bei Bedarf Unterstützung erhalten, um auf dem Arbeitsmarkt einer Beschäftigung nachgehen zu können. Dies sollte durch spezielle persönliche Betreuung am Arbeitsplatz geschehen, sowie durch Anweisungen und Informationen für andere Arbeitnehmer. Menschen mit Behinderungen haben zudem Zugang zur Berufsausbildung in privaten Unternehmen und Institutionen, in denen dies möglich ist. Jede Region muss für Menschen mit Behinderungen geschützte Arbeit auf dem allgemeinen Arbeitsmarkt schaffen sowie geschützte Arbeitsplätze betreiben. Geschützte Arbeitsplätze stellen bezahlte Ausbildungen für Menschen mit Behinderungen zur Verfügung, um es diesen zu ermöglichen, sich am allgemeinen Arbeitsmarkt zu beteiligen, und bieten Menschen mit Behinderungen ein vergütetes, festes Arbeitsverhältnis. Schließlich sollte Menschen mit Behinderungen bei Stellen in der staatlichen oder kommunalen Verwaltung Priorität

eingerräumt werden, sofern deren Qualifikationen denen anderer Bewerber entsprechen oder sie diese übersteigen.

Es bestehen im nationalen Recht keine ausdrücklichen Bestimmungen für Konsultationen mit den NROs oder Sozialpartnern in Bezug auf Diskriminierung.

## **6. Gleichbehandlungsstellen**

Es wurde keine Gleichstellungsstelle zur Förderung der Gleichheit und Nichtdiskriminierung aus Gründen der Rasse oder der ethnischen Herkunft, der Religion oder Weltanschauung, des Alters, einer Behinderung oder der sexuellen Ausrichtung eingerichtet. Es wurde keine Menschenrechtskommission eingerichtet und die einzige bestehende Gleichstellungsstelle, das Zentrum für Gleichstellungsfragen (Centre for Gender Equality), befasst sich ausschließlich mit Diskriminierungen aus Gründen des Geschlechts. Der parlamentarische Ombudsmann kann Fälle im Bereich der Gleichstellung und/oder Diskriminierung im Zusammenhang mit Verwaltungsverfahren behandeln. Das isländische Zentrum für Menschenrechte (Icelandic Human Rights Centre) hat viele der Funktionen einer nationalen Menschenrechtsinstitution (NHRI) übernommen, jedoch ohne die durch das Gesetz festgelegten entsprechenden Befugnisse, Freiheiten und Finanzierungen. Das Zentrum für Multikultur (Multicultural Centre) ist damit beauftragt, die Kommunikation zwischen Personen mit verschiedenen Hintergründen zu vereinfachen und die Dienstleistungen für ausländische Bürger mit Wohnsitz in Island sowie Personen, die nach Island ziehen wollen, zu verbessern. Das Zentrum bietet Hilfe für alle, die Informationen über das tägliche Leben in Island benötigen, stellt Informationen über die Verwaltungsprozesse zur Verfügung und ist ein Dienstleister für alle ausländischen Bürger, die nach Island oder ins Ausland ziehen.

## **7. Wichtige Herausforderungen**

Es liegen keine offensichtlichen Verletzungen oder strittige Themen im Zusammenhang mit dem Geltungsbereich der Richtlinien in Island vor. Da keine umfassende Antidiskriminierungsgesetzgebung in Kraft ist, kommen Fälle nicht zur Anklage und diskriminierende Praktiken rücken somit möglicherweise nicht in den Vordergrund.

Die Richtlinien wurden nicht umgesetzt. Der Gleichheitsgrundsatz ist in Artikel 65 der isländischen Verfassung verankert, jedoch gibt es keine umfassende Antidiskriminierungsgesetzgebung zum Schutz gegen Diskriminierung aus Gründen der Rasse oder der ethnischen Herkunft, der Religion oder Weltanschauung, des Alters, einer Behinderung oder sexueller Orientierung. Eine Handvoll allgemeiner rechtlicher Bestimmungen des verfassungsrechtlichen Gleichheitssatzes sind in Kraft, jedoch enthalten diese keine umfassende Aufzählung der verbotenen Diskriminierungsgründe und sind auf einen bestimmten Rechtsbereich beschränkt.

Es wurde keine Gleichstellungsstelle zur Förderung der Gleichheit und Nichtdiskriminierung aus Gründen der Rasse oder der ethnischen Herkunft, der Religion oder Weltanschauung, des Alters, einer Behinderung oder der sexuellen Ausrichtung eingerichtet. Das Zentrum für Gleichstellung befasst sich ausschließlich mit Geschlechterdiskriminierung.

Der Minister für Wohlfahrt hatte geplant, dem Parlament im Jahr 2014 zwei Gesetzentwürfe zur Bekämpfung von Diskriminierung basierend auf den beiden Richtlinien vorzulegen, dazu kam es jedoch nicht. Dann sollten die beiden Gesetzentwürfe im Herbst 2015 vorgelegt werden. Schließlich wurden sie auf die Liste der Gesetzesvorlagen gesetzt, die die Regierung dem Parlament im Frühjahr 2016 vorlegen will.

2015 hat es in Bezug auf Antidiskriminierung keine wichtigen Entwicklungen in der Gesetzgebung gegeben. Im Dezember 2015 wurde jedoch ein Gesetz zur Änderung verschiedener Rechtsvorschriften verabschiedet, um die Ratifizierung des Übereinkommens der Vereinten Nationen über die Rechte von Menschen mit

Behinderungen vorzubereiten. Das Gesetz enthält keinerlei neue materielle Rechte oder Antidiskriminierungsvorschriften; es aktualisiert lediglich die Terminologie, die in verschiedenen Rechtsvorschriften verwendet wird, um sich auf Menschen mit Behinderungen zu beziehen (z. B. „behinderte Menschen“ anstatt „Behinderte“ usw.).

2015 wurden keine Diskriminierungsfälle entschieden, die in direktem Zusammenhang mit dem Anwendungsbereich der Richtlinien stehen. In Bezug auf Behinderung ist jedoch das vor dem Bezirksgericht Reykjavík verhandelte Verfahren *Snædís Rán Hjartardóttir gegen das Kommunikationszentrum für Gehörlose und Schwerhörige und den Isländischen Staat sowie ersatzweise die Stadt Reykjavík* zu erwähnen. Dieses Verfahren ist deshalb von Bedeutung, weil in ihm festgestellt wurde, dass die Finanzierung und Organisation der Gebärdensprachdolmetscherdienste unzureichend und diskriminierend ist und gegen das in der Verfassung und in den Gleichheitsvorschriften des Verwaltungsrechts verankerte Recht auf ein Mindestmaß an Unterstützung verstößt. Der Staat wird mehr finanzielle Mittel für diese Dienste zur Verfügung stellen und gesetzliche Änderungen vornehmen müssen, um festzulegen, was Mindestrechte und angemessene Dienstleistungen sind, wenn es um den Rechtsanspruch auf Gebärdensprachdolmetschung geht.<sup>8</sup>

In einem weiteren Fall, der eine kurze Erwähnung verdient, ging es um die Entlassung eines Schullehrers, der in seinem Blog homophobe Bemerkungen gemacht hatte. Die Schulbehörde war der Ansicht, dass diese Hassreden mit seiner Rolle und Verantwortung als Lehrer nicht vereinbar waren und gegen diverse für seine Tätigkeit geltenden Normen und Regeln verstießen. Der Lehrer machte geltend, die Entlassung sei rechtswidrig, da unter anderem nicht bewiesen sei, dass die Kommentare, die er in seiner Freizeit gemacht hatte, sich auf seine berufliche Tätigkeit ausgewirkt hätten, und sie sei nicht im Einklang mit den gesetzlichen Bestimmungen und dem einschlägigen Verwaltungsverfahren erfolgt. Das Bezirksgericht Nord entschied zugunsten des Klägers.<sup>9</sup> Das Berufungsverfahren ist derzeit anhängig.

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<sup>8</sup> Bezirksgericht Reykjavík, *Snædís Rán Hjartardóttir gegen das Kommunikationszentrum für Gehörlose und Schwerhörige und den Isländischen Staat sowie ersatzweise die Stadt Reykjavík*, Rechtssache Nr. E-327/2015, 30. Juni 2015.

<sup>9</sup> Bezirksgericht Nord, *Stadt Akureyri gegen Snorri Óskarsson und das Innenministerium*, Rechtssache Nr. E-181/2014, 10. April 2015.

## INTRODUCTION

### The national legal system

The Icelandic legal system is based on the civil law tradition. Principal sources of law include the Constitution of the Republic of Iceland and statutory legislation and regulations, as well as legal precedents and customary law. Iceland is party to the European Economic Area (EEA) Agreement and is thus obliged to adopt the EU *acquis* related to the single market. Directives 2000/43/EC and 2000/78/EC have not been incorporated into the EEA Agreement and have therefore not been transposed into domestic law.

The legal system is structured into legal fields (criminal law, civil law, administrative law, etc.), with many fields governed by specific procedural codes. Primary legislation consists of the Constitution and enacted acts, which take precedence over other sources of law such as regulations issued by ministers, rules, notices and other legislative decrees published in the Government Gazette. The latter, on the other hand, generally take precedence over common law, case law, analogy, collective agreements, legal principles and the tradition of culture.

The Icelandic judiciary consists of two levels: the Supreme Court and eight district courts. In addition, the Labour Court can be convened and, exceptionally, the Impeachment Court, which addresses criminal actions brought by the Parliament against sitting and former government ministers. The judiciary is competent to review administrative decisions and the constitutionality of legislation. It is established custom that Icelandic courts are competent to review the constitutionality of all laws. District courts and the Supreme Court may decide that legislation they find incompatible with the Constitution, e.g. its equality provisions, cannot be applied. The Supreme Court and the district courts are also competent to review decisions taken by the executive, albeit only on procedure.

The Parliamentary Ombudsman monitors the administrative functions of public and local authorities and safeguards the rights of the citizens vis-à-vis administrative authorities. The ombudsman shall ensure that the principle of equality is observed and that administration is conducted in conformity with the law and good administrative practice. The ombudsman investigates administrative cases based on complaints, or on his or her own initiative. The ombudsman may also examine whether laws are in conflict with the Constitution, e.g. the equality provision, or are flawed in other respects.

Iceland is a dualist country. International treaties do not automatically become domestic law when ratified; until they are incorporated into national law they are simply binding under international law. Consequently, international law that has not been incorporated into Icelandic law cannot be directly applied by the courts. It is a principle of the Icelandic legal system that domestic law shall be interpreted in accordance with international obligations, however, in cases of divergence, domestic law generally takes precedence. In recent years, the Supreme Court of Iceland has sought to interpret Icelandic law, as far as possible, in conformity with Iceland's international obligations. The court has made several references to international obligations undertaken by Iceland, and it has interpreted both the Constitution and other laws in the light of such obligations.

The European Convention on Human Rights and Fundamental Freedoms (ECHR) and the United Nations Covenant on the Rights of the Child have been incorporated into domestic law, and Iceland is party to all major human rights and International Labour Organization (ILO) conventions. In the field of anti-discrimination, Iceland has yet to ratify Protocol 12 to the ECHR, the Convention on the Rights of Persons with Disabilities (CRPD), and the Framework Convention for the Protection of National Minorities.

## List of main legislation transposing and implementing the directives

The directives have not been implemented, but below is a table listing the relevant legislation containing anti-discrimination provisions in fields related to the directives.

- **Constitution of the Republic of Iceland No. 33/1944** of 17.6.1944, entry into force 17.6.1944, latest amendments 18.7.2013. Grounds covered: sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. Material scope: general.
- **Act incorporating the European Convention on Human Rights into domestic law No. 62/1994** of 19.5.1994, entry into force 30.5.1994, latest amendments 1.6.2010. Grounds covered: sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Material scope: limited to rights enshrined in the ECHR.
- **Act on Administrative Procedures No. 37/1993** of 30.4.1993, entry into force 1.1.1994, latest amendments 1.1.2013. Grounds covered: inter alia, race, colour, national origin, religion, political opinion, social status and family origins. Material scope: administrative decisions.
- **General Penal Code No. 19/1940** of 12.2.1940, entry into force 12.8.1940, latest amendments 16.12.2015. Grounds covered: nationality, colour, race, religion, sexual orientation, gender identity. Material scope: harassment and hate speech, service or provision of goods, access to any public area or place intended for general public use and public insults towards religious communities.
- **Act on Primary Schools No. 91/2008** of 12.6.2008, entry into force 1.7.2008, latest amendments 16.12.2015. Grounds covered: national origin, sex, sexual orientation, residence, social class, religion, health, disability or other status. Material scope: primary education.
- **Act on the Rights of Patients No. 74/1997** of 28.5.1997, entry into force 1.7.1997, latest amendments 1.1.2015. Grounds covered: sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status. Material scope: access to healthcare.
- **Postal Service Act No. 19/2002** of 3.3.2002, entry into force 18.3.2002, latest amendments 30.9.2011. Grounds covered: political, religious or ideological nature. Material scope: postal service.
- **Act on the Media No. 38/2011** of 20.4.2011, entry into force 21.4.2011, latest amendments 12.4.2013. Grounds covered: race, sex, sexual orientation, religion, nationality, opinion or cultural, economic social or other status in society. Material scope: organisation and work of the media.
- **Act on the Affairs of Persons with Disabilities No. 59/1992** of 2.6.1992, entry into force 1.9.1992, latest amendments 25.7.2015. Grounds covered: disability. Material scope: living conditions, employment, housing, assistance, education, etc.
- **Act on Rights Advocates for People with Disabilities No. 88/2011** of 23.6.2011, entry into force 1.7.2011, latest amendments 16.12.2015. Grounds covered: disability. Material scope: social services and rights of people with disabilities.
- **Act on Municipal Social Services No. 40/1991** of 27.3.1991, entry into force 18.3.2002, latest amendments 16.5.2015. Grounds covered: disability. Material scope: social services.
- **Act on the Affairs of the Elderly No. 125/1999** of 31.12.1999, entry into force 11.1.2000, latest amendments 1.1.2015. Grounds covered: age. Material scope: services, housing, healthcare, etc.
- **Act Amending Laws relating to the Judicial Status of Homosexual Persons No. 65/2006** of 14.6.2006 entry into force 27.6.2006, no amendments. Grounds covered: sexual orientation. Material scope: equality before the law in various areas.
- **Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997** of 23.12.1997 entry into force 1.7.1998, latest amendments

- 1.10.2015. Grounds covered: health, age, civil status, family size or gender. Material scope: non-discrimination in access to occupational pension schemes.
- **Act on Workers' Terms of Employment and Pension No. 55/1980** of 9.6.1980 entry into force 16.6.1980, latest amendments 30.6.2010. Grounds covered: sex, nationality and length of contract. Material scope: non-discrimination in terms of employment.
  - **Act incorporating the Convention on the Rights of the Child into domestic law No. 19/2013** of 20.2.2013, entry into force 6.3.2013, no amendments. Grounds covered: race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Material scope: limited to rights enshrined in the Convention.

The European Commission does not consider Icelandic legislation as being in line with Directives 2000/43/EC and 2000/78/EC as 'no detailed protection against discrimination is provided in the labour market or any comprehensive legislation in force prohibiting discrimination on the grounds of racial or ethnic origin outside the labour market'.<sup>10</sup> The Council of Europe Commissioner for Human Rights has urged Iceland to adopt comprehensive equal treatment legislation and to set up an effective and independent national equality body to promote its implementation. The commissioner is of the opinion that the current non-discrimination provisions in Icelandic law do not protect all vulnerable groups of people to the same extent. In his report, following a fact-finding mission in 2012, he concluded that people with disabilities, older persons, members of ethnic and religious minorities and transgender persons would benefit from stronger guarantees against discrimination, stressing that 'equal treatment legislation should cover all the relevant grounds of discrimination in all walks of life'.<sup>11</sup> Similarly, the United Nations Human Rights Council and the committee monitoring the implementation of the European Social Charter have concluded that legislation prohibiting discrimination in employment on grounds other than sex is inadequate.<sup>12</sup> The UN Human Rights Committee has also urged Iceland to 'take steps to adopt comprehensive anti-discrimination legislation, addressing all spheres of life and providing effective remedies in judicial and administrative proceedings'.<sup>13</sup> Similarly, the Committee on Economic, Social and Cultural Rights has called for comprehensive anti-discrimination legislation, adding that Iceland should ensure that measures are taken to combat and prevent discrimination, especially against persons with disabilities, in particular with respect to the right to education and housing, as well as social assistance.<sup>14</sup> Finally, the European Commission against Racism and Intolerance recently reiterated its recommendation that the Icelandic Government adopt comprehensive antidiscrimination legislation.<sup>15</sup>

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<sup>10</sup> European Commission: *DG Enlargement Screening report Iceland*. Chapter 19 – Social policy and employment. 17 October 2011.

<sup>11</sup> Council of Europe: Press release by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Iceland (7-9 January 2012). Available at: [www.coe.int/web/commissioner/country-report/iceland](http://www.coe.int/web/commissioner/country-report/iceland).

<sup>12</sup> See e.g. Council of Europe, Department of the European Social Charter and the European Code of Social Security, Directorate General of Human Rights and the Rule of Law: *Fact Sheet Iceland*, April 2013.

<sup>13</sup> *Concluding observations adopted by the Human Rights Committee at its 105th session*, 9-27 July 2012, Iceland, CCPR/C/ISL/CO/5.

<sup>14</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the fourth report of Iceland, adopted by the Committee at its forty - ninth session (12-30 November 2012)*, E/C.12/ISL/CO/4.

<sup>15</sup> ECRI, *Conclusions on the Implementation of the Recommendations in Respect of Iceland Subject to Interim Follow-up*, from 9 December 2014, Available at: [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Iceland/ISL-CbC-IV-2012-001-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Iceland/ISL-CbC-IV-2012-001-ENG.pdf).



## 1 GENERAL LEGAL FRAMEWORK

### Constitutional provisions on protection against discrimination and the promotion of equality

The Icelandic Constitution includes the following articles dealing with non-discrimination:

#### Article 65

Article 65, which is modelled on Article 26 ICCPR and Article 14 ECHR,<sup>16</sup> stipulating that: 'Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. Men and women shall have equal rights in every respect.'<sup>17</sup>

In the explanatory notes on the draft bill to amend the Constitution, it is stated that the scope of Article 65 shall be wider than that of Article 14 ECHR and that it shall apply to all legislation and ensure equal protection for everyone.<sup>18</sup> The Supreme Court has confirmed this, interpreting the article as a broad equality provision guaranteeing not only formal equality, but also substantive equality, placing the obligation on the state to respect, protect and promote equality. An example is the Supreme Court decision of 4 February 1999,<sup>19</sup> where the court interpreted the provisions of the legislation on the affairs of persons with disabilities in light of Article 65 and Article 14 of the ECHR with respect to the right to education (cf. Article 2 Annex 1 ECHR) to entail the obligation of the state to ensure the same rights for persons with disabilities as for other citizens. Thus interpreted, Article 65 enshrines not only the obligation to apply the law in the same manner in similar circumstances, but also the positive duty of the state to promote the rights of persons with disabilities. A similar conclusion was reached in Case No. 125/2000,<sup>20</sup> where the court ruled that changes made to the Social Security Act No. 100/2007, adversely affecting social security payments to persons with disabilities married to able-bodied persons with income, conflicted with Article 76(1) (the law shall guarantee everyone the assistance that they require in the case of sickness, invalidity, infirmity by reason of old age, unemployment or similar circumstances) and Article 65 of the Constitution.

The constitutional equality provision guarantees equality before the law and non-discrimination with regard to human rights regardless of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. The explanatory notes to the draft bill set out that the grounds enumerated in the article are not exhaustive; 'other status' is meant to encompass other grounds not listed in the provision, such as for example 'health or physical state',<sup>21</sup> and sexual orientation could clearly be included, although no cases regarding discrimination based on sexual orientation have been heard. Similarly, age would clearly fall under the provision, as argued by the claimant in Supreme Court Case No. 484/2007.<sup>22</sup> The explanatory note further elaborates that although the aim of Article 65 is above all to ensure equality irrespective of the grounds enumerated and other status, it is not its aim to preclude legal conditions for rights or obligations from taking these grounds into account, provided that objective criteria form the basis for these conditions. Here, age limits are a relevant example.

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<sup>16</sup> Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

<sup>17</sup> The Constitution of the Republic of Iceland, Act No. 33/1944, as amended.

<sup>18</sup> Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

<sup>19</sup> Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, Case No. 177/1998, 4 February 1999.

<sup>20</sup> Supreme Court of Iceland, *Icelandic Federation of the Handicapped v. the Republic of Iceland*, Case No. 125/2000, 19 December 2000.

<sup>21</sup> Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

<sup>22</sup> Supreme Court of Iceland, *X v. Y*, Case No. 484/2007, 25 September 2008.

### **Article 63**

Article 63 of the Constitution protects the right to form religious associations and to practice religion in conformity with individual convictions. This right can be limited for the protection of morals or public order.

### **Article 64(1)**

Religious freedom is protected in Article 64(1), which states that 'no one may lose any civil or national rights on account of his or her religion, nor may anyone refuse to perform any generally applicable civil duty on religious grounds.' The right to remain outside religious associations is also protected, as well as the right to be exempt from paying dues to any religious association of which a person is not a member.

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

The constitutional anti-discrimination provisions are directly applicable. The commentary to the draft bill introducing the constitutional anti-discrimination provision explains that the aim is on the one hand to set out equality as an important policy objective and general constitutional principle, and on the other hand, to lay down a directly applicable legal provision upon which an individual can base rights in a particular case. Jurisprudence has confirmed this interpretation.

The constitutional equality clauses can be enforced against private actors (as well as against the state). The primary objective of the human rights provisions of the Constitution is to set the limits of the intervention of public authorities on individual freedoms. They thus constitute rules on the activities of public authorities, setting out their obligations vis-à-vis individuals, and are consequently binding on the state. Although most cases where the constitutional provisions come into play are brought against state actors, in recent years, the Supreme Court has heard cases brought against private actors alleging the unconstitutionality of civil law provisions or claiming that these should be interpreted in light of the human rights provisions of the Constitution. Examples include cases won by individuals against insurance companies, alleging that the provisions of tort law are in breach of the equality principle enshrined in Article 65 of the Constitution.<sup>23</sup> Although jurisprudence demonstrates that constitutional provisions can come into play in civil proceedings, Icelandic courts have not ruled definitively whether and to what extent private individuals and entities are bound by constitutional provisions in their relations in the field of civil law.

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<sup>23</sup> See Supreme Court of Iceland, *Elfa þöll Grétarsdóttir v. Vátryggingafélag Íslands*, Case No. 317/1997, 4 June 1998 and Supreme Court of Iceland, *Brynjólfur Hauksson v. Tryggingamiðstöðin hf.* Case No. 10/2006, 15 June 2006.

## **2 THE DEFINITION OF DISCRIMINATION**

### **2.1 Grounds of unlawful discrimination explicitly covered**

Discrimination on the basis of sex, sexual orientation, gender identity, religion, opinion, national origin, race, colour, financial status, parentage and other status is explicitly prohibited in different national laws.

The grounds covered in the Icelandic Constitution are sex, religion, opinion (e.g. political), national origin, race, colour, financial status, and parentage. The list is non-exhaustive, as the provision also sets out that equality before the law and non-discrimination shall be ensured irrespective of the aforementioned grounds, but also irrespective of 'other status'. The explanatory notes on the draft bill to amend the Constitution set out that 'other status' is meant to encompass other grounds not listed in the provision, such as for example 'health or physical state'.<sup>24</sup> Sexual orientation could also clearly be included, although no cases regarding discrimination based on sexual orientation have been heard. Similarly, age would clearly fall under the provision, as argued by the claimant in Supreme Court Case No. 484/2007.<sup>25</sup> The explanatory note further elaborates that, although the aim of Article 65 is above all to ensure equality irrespective of the grounds enumerated and other status, it is not its aim to preclude legal conditions for rights or obligations from taking these grounds into account, provided that objective criteria form the basis for these conditions. Here, age limits are a relevant example.

The explanatory notes also state that the scope of Article 65 shall be wider than that of Article 14 ECHR, and that it shall apply to all legislation and ensure equal protection for everyone.<sup>26</sup> The Supreme Court has confirmed this, interpreting the article as a broad equality provision guaranteeing not only formal equality, but also substantive equality, placing an obligation on the state to respect, protect and promote equality. An example is the Supreme Court decision of 4 February 1999,<sup>27</sup> where the court interpreted the provisions of the legislation on the affairs of persons with disabilities in the light of Article 65 and Article 14 of the ECHR with respect to the right to education (cf. Article 2 Annex 1 ECHR) to entail the obligation of the state to ensure the same rights for persons with disabilities as for other citizens. Thus interpreted, Article 65 enshrines not only the obligation to apply the law in the same manner in similar circumstances, but also the positive duty of the state to promote the rights of persons with disabilities. A similar conclusion was reached in Case No. 125/2000,<sup>28</sup> where the court ruled that changes made to the Social Security Act No. 100/2007 that adversely affected social security payments to persons with disabilities married to able-bodied persons with income conflicted with Article 76(1) (which says that the law shall guarantee everyone the assistance that they require in the case of sickness, invalidity, infirmity by reason of old age, unemployment or similar circumstances) and Article 65 of the Constitution.

#### **2.1.1 Definition of the grounds of unlawful discrimination within the directives**

National law does not provide a definition of any of the grounds for discrimination covered by the directives – religion or belief, disability, age, sexual orientation, race or ethnic origin. There are no recognised ethnic or national minorities. The only comprehensive anti-discrimination legislation in force is in the field of gender equality: the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 (the Gender Equality Act), which is

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<sup>24</sup> Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

<sup>25</sup> Supreme Court of Iceland, *X v. Y*, Case No. 484/2007, 25 September 2008.

<sup>26</sup> Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

<sup>27</sup> Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, Case No. 177/1998, 4 February 1999.

<sup>28</sup> Supreme Court of Iceland, *Icelandic Federation of the Handicapped v. the Republic of Iceland*, Case No. 125/2000, 19 December 2000.

'largely in line with the European Union *acquis*.<sup>29</sup> Anti-discrimination legislation in other fields is elementary and fragmented, as only a handful of general law provisions stemming from the constitutional equality provision are in force. These commonly do not contain an exhaustive enumeration or definitions of prohibited grounds for discrimination and are limited to a particular law sector.

### **2.1.2 Multiple discrimination**

In Iceland, prohibition of multiple discrimination is not included in national law and there is no case law dealing with multiple discrimination.

### **2.1.3 Assumed and associated discrimination**

#### **a) Discrimination by assumption**

In Iceland, there is no national law (including case law) prohibiting discrimination based on the perception or assumption of what a person is.

#### **b) Discrimination by association**

There is no national law (including case law) prohibiting discrimination based on association with persons with particular characteristics.

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

#### **a) Prohibition and definition of direct discrimination**

In Iceland, the only definition of direct discrimination is found in the Gender Equality Act. Direct gender discrimination is where an individual 'is, has been or would be treated less favourably than another of the opposite sex in a comparable situation.'<sup>30</sup>

Anti-discrimination legislation in other fields is elementary and fragmented, as only a handful of general law provisions stemming from the constitutional equality provision are in force. These commonly do not contain an exhaustive enumeration of grounds or definitions of prohibited direct or indirect discrimination and are limited to a particular law sector.

#### **b) Justification of direct discrimination**

No explicit provisions permitting justification of direct discrimination, generally or in relation to particular grounds enumerated in the directives, are found in national legislation. The constitutional equality provision guarantees equality before the law and non-discrimination with respect to human rights regardless of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. The explanatory notes to the draft bill elaborate that although the aim of Article 65 is above all to ensure equality irrespective of the grounds enumerated and other status, it is not its aim to preclude legal conditions for rights or obligations from taking these grounds into account, provided that objective criteria form the basis for these conditions. Here age limits are a relevant example; see e.g. Supreme Court Case No. 484/2007, where the court rejected the applicant's argument that legislation setting certain age limits for in-vitro fertilisation (IVF) treatment was unlawful and in breach of the equality provision of the Constitution. The court found that age limits in relation to IVF treatment were not contrary to Article 65

<sup>29</sup> *Commission Opinion on Iceland's Application for Membership of the European Union COM* (2010). Commission Staff Working Document. Analytical Report accompanying the Communication from the Commission to the European Parliament and the Council: 62, p. 53.

<sup>30</sup> Iceland, Act on Equal Status and Equal Rights of Women and Men No. 10/2008 [Lög um jafna stöðu og jafnan rétt kvenna og karla], 6 March 2008, Article 2(1).

of the Constitution as they were based on 'general, objective and legitimate grounds'.<sup>31</sup> Furthermore, the Act on the Affairs of Persons with Disabilities (AAPD) provides for positive measures to promote the employment participation of persons with disabilities, inter alia, in Article 32, which stipulates that people with disabilities shall have priority for jobs with the state and local authorities when they are equally or better qualified than other applicants. No similar provisions are in place in relation to age, religion or belief, race or sexual orientation.

### **2.2.1 Situation testing**

#### **a) Legal framework**

In Iceland, the law is silent on situation testing.

#### **b) Practice**

In Iceland, situation testing is not used in practice. The Icelandic Human Rights Centre carried out one testing in relation to race/ethnic origin but the results were not used in litigation.

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

#### **a) Prohibition and definition of indirect discrimination**

In Iceland, the only explicit prohibition and definition of indirect discrimination is found in the Gender Equality Act, under which indirect gender discrimination occurs 'where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary'.<sup>32</sup>

Anti-discrimination legislation in other fields is elementary and fragmented, as only a handful of general law provisions stemming from the constitutional equality provision are in force. These commonly do not contain an exhaustive enumeration of grounds or prohibitions or definitions of direct or indirect discrimination and are limited to a particular law sector.

#### **b) Justification test for indirect discrimination**

No cases concerning indirect discrimination have been heard in Iceland and the explanatory notes to the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 are silent on what test must be satisfied to justify indirect discrimination. Similarly, no case law exists where appropriate and necessary measures, pursuing a legitimate aim, were deemed to justify indirect discrimination based on age, disability, ethnic or racial origin, religion or belief or sexual orientation.

#### **c) Comparison in relation to age discrimination**

National law does not contain provisions specific to age discrimination, therefore there is no definition based on 'less favourable' treatment in relation to age discrimination.

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<sup>31</sup> Supreme Court of Iceland, *X v. Y*, Case No. 484/2007, 25 September 2008. It should be noted that the age limits have now been abolished.

<sup>32</sup> Iceland, Act on Equal Status and Equal Rights of Women and Men No. 10/2008, 6 March 2008, Article 2(2).

### 2.3.1 Statistical evidence

#### a) Legal framework

In Iceland, there are national rules permitting data collection. Data collection is permitted, subject to strict conditions set out in the Act on the Protection of Privacy as regards the Processing of Personal Data No. 77/2000 (Data Protection Act). The act covers all personal data, that is, information that can be traced to an individual. Processing is defined as any operation or set of operations performed on personal data. All processing must meet the criteria set out in Article 8 (consent of the data subject and other conditions). Article 9 sets out the additional criteria to be met for the processing of sensitive data, which is defined as all data concerning, inter alia, race or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health (including information on addiction) and sexual behaviour. Data on whether a person has been suspected of, indicted for, prosecuted for or convicted of a punishable offence is also considered sensitive. Article 4 of the Act on the Affairs of Persons with Disabilities sets out that the use of personal data, handled in connection with the implementation of the act, shall be in accordance with the Data Protection Act, and that it shall be ensured that access to the data is restricted and secure.

In Iceland, national law does not explicitly permit or prohibit the use of statistical evidence to establish indirect discrimination. In principle, statistical data collection for the purposes of litigation and positive action is allowed, subject to the conditions set out in the Data Protection Act. To date, statistical data has not been formally used to design positive action measures to promote equality and combat discrimination on the grounds enumerated in the directives.

#### b) Practice

In Iceland, statistical evidence is not used in practice in order to establish indirect discrimination.

### 2.4 Harassment (Article 2(3))

#### a) Prohibition and definition of harassment

In Iceland, harassment is only prohibited in national law in relation to gender discrimination. The only definition is found in Article 2(3) of the Gender Equality Act, which sets out that 'gender-based harassment is any unwanted unreasonable and/or insulting behaviour, related to the gender of the person, which has the effect of violating the dignity of the person, and is continued despite clear expression that it is unwanted. The harassment can be physical, verbal or symbolic. One incident can constitute harassment, if sufficiently serious.' The Gender Equality Act also defines and prohibits sexual harassment.

In Iceland, harassment does not explicitly constitute a form of discrimination on the grounds listed in the directives. However, mention should be made of Article 233a of the General Penal Code No. 19/1940, which stipulates that any person who, by mockery, slander, insult, threat or other means, publicly attacks a person or group of persons on the grounds of their nationality, colour, race, religion, sexual orientation or gender identity shall be liable to a fine or imprisonment for a term not exceeding two years. The Supreme Court has decided one case concerning a violation of Article 233a, where it upheld the conviction of the accused for publicly attacking an anonymous group of persons by derision, vilification and denigration on the basis of their nationality, colour and race in a newspaper interview.<sup>33</sup>

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<sup>33</sup> Supreme Court of Iceland, *The Prosecutor v. Hlynur Freyr Vigfússon*, Case No. 461/2001, 24 April 2002.

b) Scope of liability for harassment

There is no general anti-discrimination legislation in force specifically banning harassment. It is an established rule that an employer is liable for damage caused by any tortious acts or omissions of his or her employees in the course of their work, but no cases have been brought against employers or service providers for discriminatory acts of their workers. Employers cannot generally be held liable for the acts of third parties and, similarly, trade unions and professional associations cannot be held liable for the actions of their members.

## **2.5 Instructions to discriminate (Article 2(4))**

a) Prohibition of instructions to discriminate

In Iceland, national law does not explicitly prohibit instructions to discriminate law in relation to age, disability, racial or ethnic origin, sexual orientation or age and instructions to discriminate do not explicitly constitute a form of discrimination. There is no definition of the term 'instructions' in this regard.

b) Scope of liability for instructions to discriminate

There is no general anti-discrimination legislation in force specifically banning instructions to discriminate. It is an established rule that an employer is liable for damage caused by any tortious acts or omissions of his or her employees in the course of their work, but no cases have been brought against employers or service providers for discriminatory acts of their workers. Employers cannot generally be held liable for the acts of third parties and, similarly, trade unions and professional associations cannot be held liable for the actions of their members.

## **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

In Iceland, the duty to provide reasonable accommodation is not set out in national law and there is no definition of the term 'reasonable accommodation'. Article 29 of the Act on the Affairs of Persons with Disabilities 59/1992 simply states that persons with disabilities shall be given assistance in holding jobs on the labour market when necessary. This shall be done through special personal support at the workplace, as well as through information and instruction for other workers. People with disabilities shall have access to vocational training in private enterprises and institutions where possible. In that event, a special agreement shall be concluded, setting out, inter alia, the period of training and costs. The costs incurred because of special assistance at the workplace shall be paid by the State Treasury.

b) Practice

No explicit duty to provide reasonable accommodation is set out in national legislation thus there is no assessment to be made of 'reasonable' or 'disproportionate burden'.

c) Definition of disability and non-discrimination protection

National law does not explicitly set out the duty of employers to take reasonable measures to accommodate persons with disabilities. There is no specific definition of disability in relation to reasonable accommodation or protection from non-discrimination in general.

Although no clear definition of disability has been codified, Article 2 of the Act on the Affairs of Persons with Disabilities No. 59/1992 sets out that an individual is entitled to services and support under the act if he or she has a mental or physical disability that calls for special services or assistance; including intellectual disability, psycho-social disability, reduced mobility, sight impairment and hearing impairment. Disability may also be the result of accidents or prolonged illness. In addition, Article 1 of the Act on the Affairs of Persons with Disabilities No. 59/1992 stipulates that in the implementation of the act, reference shall be made to the United Nations Convention on the Rights of Persons with Disabilities. This would include the concept of disability as set out in Article 1, paragraph 2 of the convention. Work is currently underway to ratify the United Nations Convention on the Rights of Persons with Disabilities, which will entail bringing Icelandic legislation into line with the provisions of the convention.

According to the Social Security Act No. 100/2007, entitlement to an invalidity pension from the social security pension insurance scheme is based on the length of residence in Iceland, the age of the applicant and medical disability. Not everyone falling under the provisions of the Social Security Act will fall under the provisions of the Act on the Affairs of Persons with Disabilities. The definition of disability in this context (i.e. for entitlement to an invalidity pension) is simply a medical assessment (cf. Article 18), which states that disability must be at least 75 % long-term due to the consequences of medically recognised diseases or invalidity.

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

In Iceland, there is no explicit general duty to provide reasonable accommodation for people with disabilities outside the field of employment. However, Article 7 of the Act on the Affairs of Persons with Disabilities No. 59/1992 states that people with disabilities are entitled to all general services provided by the state and the local authorities. It shall be endeavoured to provide services in accordance with the general legislation on education, health and social services, but where the needs exceed the scope of general legislation, services shall be provided on the basis of the AAPD. The Act on Secondary Schools No. 92/2008 sets out a form of reasonable accommodation for students with disabilities. Article 34 stipulates that students with special needs shall be provided with assistance and the necessary equipment/accommodation as required. They shall study alongside able-bodied students whenever possible.

Although there is no explicit legal provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment as such, the Supreme Court has interpreted the general equality provisions of the Constitution, the ECHR and the AAPD to include a reasonable accommodation duty. In the field of higher education, the University of Iceland is obliged to accept students with disabilities and to make the necessary arrangements and to take the general measures necessary to accommodate them and to ensure they can avail themselves of the same services as other students at the department of their choosing. This was established in the case of *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, where the court found that although the needs of the claimant had been accommodated to some extent, the lack of general measures, a comprehensive plan or general guidelines on how to assist her had led to problems and that she had been forced to personally insist on reasonable accommodation. This entailed a breach of her personal rights and the right to education, and she was awarded non-pecuniary damages.<sup>34</sup>

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

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<sup>34</sup> Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, Case No. 177/1998, 4 February 1999.



In Iceland, failure to meet the duty of reasonable accommodation does not clearly count as discrimination.

Although national legislation does not contain an explicit provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment, the Supreme Court has interpreted the provisions of the legislation on the affairs of persons with disabilities in the light of Article 65 and Article 14 of the ECHR with respect to the right to education (cf. Article 2 Annex 1 ECHR), to entail a positive duty of the state to promote the rights of people with disabilities.<sup>35</sup>

Article 42 of the Act on Municipal Social Services No. 40/1991 sets out a positive duty of the authorities to work towards ensuring equality for people with intellectual, psycho-social and physical disabilities, and towards ensuring living conditions comparable with those of other citizens. Persons with disabilities shall be ensured conditions that enable them to lead as normal a life as possible. There is no definition of direct or indirect discrimination enacted in relation to the protected grounds. No specific sanction for the failure to meet the duty to provide reasonable accommodation is set out in national law.

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

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

g) Accessibility of services, buildings and infrastructure

In Iceland, national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way. However, failure to comply with accessibility requirements would not explicitly constitute discrimination.

Article 34 of the Act on the Affairs of Persons with Disabilities states that municipalities shall address the accessibility issues of people with disabilities systematically, including through the adoption of plans on improving accessibility in public buildings and service institutions, in accordance with planning and building laws and secondary legislation based thereon.

The Planning Act No. 123/2010, and the secondary legislation, Planning Regulation No. 90/2013 and Building Regulation No. 112/2012, set out numerous requirements in relation to building and urban planning to ensure accessibility for people with disabilities and universal design. Article 19(e) of the Planning Act stipulates that the aim of the law is, inter alia, to ensure the professional preparation of buildings and infrastructure regarding e.g. structure and universal access, and Article 2 contains definitions of universal design and access.

In Iceland, national law does not contain a general duty to provide accessibility by anticipation for people with disabilities.

An important case where it was determined that lack of accessibility constituted discrimination concerned the right to vote. The Supreme Court ruled that the National Broadcasting Company, Ríkisútvarpið (RÚV), had a duty to translate political candidates' speeches simultaneously into sign language on the night before elections. It was obliged to ensure equality when carrying out its legally prescribed role in relation to elections (cf. Article 15 of the Broadcasting Act No. 68/1985), not only in respect of candidates and political parties, but also in respect of viewers. Therefore, RÚV should arrange the broadcast of candidates' speeches in a manner accessible to deaf people (cf. also the

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<sup>35</sup> Supreme Court of Iceland, *Berglind Stefánsdóttir and Félag heyrnalausra v. the State Broadcasting Service*, Case No. 151/1999, 6 May 1999.

AAPD). In this case, the court ruled that RÚV had not sufficiently justified the discrimination entailed in its decision not to translate the candidates' speeches, as it was clear that this was technically feasible and the broadcast was to take place the day before elections.<sup>36</sup>

#### h) Accessibility of public documents

The Act on the Status of the Icelandic Language and Icelandic Sign Language No. 61/2011 stipulates that Icelandic braille is the first written language of those who have to rely on it for expression and communication. People using braille are entitled to all public information in braille<sup>37</sup> and have the right to ask the National Institute for the Blind, Visually Impaired and Deafblind – a public body governed by the Ministry of Welfare – to convert text to braille when needed, free of charge. However, as all public documents and information are available in digital form, the use of refreshable braille display or braille terminals to access information is more common.

The Act on the status of the Icelandic language and Icelandic sign language No. 61/2011 stipulates that the Icelandic sign language is the first language of those who have to rely on it for expression and communication, and of their children.<sup>38</sup> Central and local authorities are obliged to ensure that all those who need Icelandic sign language services have access to them.<sup>39</sup> Article 5 paragraph 4 of the Act on the Rights of Patients No. 74/1997 also sets out the right to interpretation services in relation to health services. The Communication Centre for the Deaf and Hard of Hearing – a public body under the auspices of the Ministry of Education, Science and Culture – provides sign-language interpreting services for deaf people. Interpreting services relating to all public services are provided when needed, free of charge. For the private sphere, e.g. in relation to employment issues, participation in courses and housing society meetings, fees for interpreting services may be covered by a special state fund. In practice, private organisations providing 'public services', such as homes for the elderly, private universities and alcohol and drug rehabilitation centres, do not always consider that their institutions are obliged to cover the cost of interpreting. An important case concerning the right to interpretation services, *Snædís Rán Hjartardóttir v. the Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavik*, was decided in June 2015. Article 76, paragraph 1 of the Icelandic Constitution sets out that the law shall guarantee everyone the assistance that they require in the case of sickness, invalidity, infirmity by reason of old age, unemployment or similar circumstances. Deafblind people such as the applicant rely on the services of specialised tactile sign interpreters to communicate and are entitled to certain minimum assistance regardless of means – cf. Article 76 and the equality provision of the Constitution (Art. 65). The Communication Centre for the Deaf and Hard of Hearing – a public body under the auspices of the Ministry of Education – is charged with providing sign-language interpreting services for deaf and deafblind people. Interpreting services relating to all public services are to be provided where they are needed free of charge. However, in recent years, the annual allocation of funds from the state budget to the centre has not been sufficient to cover its needs. The centre's policy is to provide interpreting services on application, without any discrimination and free of charge, until the funds run out. The result is that those in need of services early in the year get them, but those with the same or greater need applying later in the year do not. In this case, the applicant claimed that the Communication Centre for the Deaf and Hard of Hearing had unlawfully denied free sign-language interpretation from 7 October 2014. The District Court of Reykjavik found that, in all likelihood, the constitutionally protected minimum services that users were entitled to in 2014 could not be covered by the limited

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<sup>36</sup> Supreme Court of Iceland, *Berglind Stefánsdóttir and Félag heyrnalausra vsv. the State Broadcasting Service*, Case No. 151/1999, Supreme Court Judgment of 6 May 1999.

<sup>37</sup> Iceland, Act on the status of the Icelandic language and Icelandic sign language [Lög um stöðu íslenskrar tungu og íslensks táknmáls] No. 61/2011, 7 June 2011, Article 3.

<sup>38</sup> Iceland, Act on the status of the Icelandic language and Icelandic sign language No. 61/2011, 7 June 2011, Article 4.

<sup>39</sup> Iceland, Act on the status of the Icelandic language and Icelandic sign language No. 61/2011, Article 13.

funds allocated to the centre. As national law does not clearly define what constitutes minimum assistance, all applications for interpretation services are accepted until the funds run out, leaving those in need later in the year, such as the applicant, to pay for the services themselves. As a consequence of this approach, the distinction between constitutionally protected minimum social assistance, to be provided free of charge and without discrimination, and other services which applicants pay for is blurred in the case of free sign-language interpretation services. Furthermore, this procedure discriminates between applicants on the basis of what time of year they need the services, which is in violation of the equality provisions of the Constitution and constitutional and administrative law. Taking into account the failure of the state to regulate the minimum rights of people with disabilities to adequate sign-language interpreting services, the court found that the state should bear the cost of the services provided to the applicant after October 2014. Because she had been refused free interpretation services, the applicant's right to minimum assistance in accordance with Article 76, paragraph 1 of the Constitution had been violated. This right trumps provisions in the state budget governing allocations to free interpretation services. The court also awarded the applicant ISK 550 000 (approx. EUR 3 750) in non-pecuniary damages, as the state had failed to fulfil its obligation to establish a system to guarantee her minimum assistance (cf. Art. 76, para.1), resulting in a diminished quality of life and in social exclusion.<sup>40</sup>

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<sup>40</sup> Reykjavik District Court, *Snædís Rán Hjartardóttir v. the Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavik*, Case No. E-327/2015, 30 June 2015.

### **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 Iceland, the directives have not been transposed, so there are no residence or citizenship/nationality requirements for protection under national laws transposing the directives. However, general equality and non-discrimination provisions would apply to non-EEA citizens in relation to the grounds enumerated, e.g. disability, sexual orientation, race, etc.

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

###### **a) Natural and legal persons**

In Iceland, the directives have not been transposed and there is no general anti-discrimination legislation in force.

National legislation does not provide special protection for legal persons where they suffer discrimination on the grounds of the racial or ethnic origin of their members (or on any other grounds), nor explicit provisions distinguishing between natural and legal persons for purposes of protection against discrimination or liability for discrimination. In this context, it should be noted that any individual, association or institution, which bears rights or duties under national law, can be party to a court case.<sup>41</sup> The general principle concerning legal standing is that in order for an application to be admissible, the claimant must satisfy the requirement of having a personal, direct interest, that is, a 'legally protected interest'.

###### **b) Private and public sector, including public bodies**

In Iceland, the directives have not been transposed and there is no general anti-discrimination legislation in force. Some discriminatory acts in relation to the protected grounds could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, however, no cases of this sort have been tried. For the public sector, Article 11 of the Administrative Procedures Act No. 37/1993 stipulates that administrative authorities shall ensure legal harmony and equality in decisions, and that discrimination between individual parties based on views relating to, inter alia, race, colour, national origin, religion, political opinion, social status or family origins, is prohibited. Discrimination on the basis of nationality, colour, race, religion, sexual orientation and gender identity could also fall under the General Penal Code No. 19/1940.

#### **3.2 Material scope**

##### **3.2.1 Employment, self-employment and occupation**

The directives have not been transposed into national law. No comprehensive anti-discrimination legislation applies to all sectors of public and private employment, self-employment and occupation, including contract work and holding statutory office, for the five grounds. There is no military in Iceland.

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<sup>41</sup> Iceland, Act on Civil Procedure [Lög um meðferð einkamála] No. 91/1991, 32 December 1991, Article 16(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 Iceland, national legislation does not include 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.

Some discriminatory acts in relation to the aforementioned fields could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, although no cases of this sort have been tried. For the public sector, Article 11 of the Administrative Procedures Act No. 37/1993 stipulates that administrative authorities shall ensure legal harmony and equality in decisions, and that discrimination between individual parties based on views relating to, inter alia, race, colour, national origin, religion, political opinion, social status or family origins is prohibited.

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

In Iceland, national legislation does not include an explicit prohibition of discrimination in working conditions, including pay and dismissals, for all five grounds and for both private and public employment. The directives have not been transposed.

Working conditions are, however, dealt with in the Act on Workers' Terms of Employment and Pension No. 55/1980, Article 1, which stipulates that wages and other working terms agreed between the social partners shall be considered minimum terms, independent of sex, nationality or term of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement. Contracts made between individual wage earners and employers on worse working terms than those specified in the general collective agreement shall be void. This is a general rule, which would apply in relation to the grounds for discrimination covered by the directives. In addition, it should be noted that Article 2 of the Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997 stipulates that it is prohibited to deny a person membership of an occupational pension fund on the grounds of health, age, civil status, family size or gender. Neither disability nor sexual orientation is enumerated, but disability could in some instances fall under 'health'.

#### **3.2.3.1 Occupational pensions constituting part of pay**

National law does not explicitly prohibit discrimination on all the grounds covered by Directive 2000/78/EC. However, working conditions are dealt with in the Act on Workers' Terms of Employment and Pension No. 55/1980, Article 1, which stipulates that wages and other working terms agreed between the social partners shall be considered minimum terms, independent of sex, nationality or term of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement. Contracts made between individual wage earners and employers on worse working terms – including on occupational pensions constituting part of pay – than those specified in the general collective agreement are void. This is a general rule, which would apply in relation to the grounds for discrimination covered by the directives. In addition, it should be noted that Article 2 of the Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997 stipulates that it is prohibited to deny a person membership of an occupational pension fund on the grounds of health, age, civil status, family size or gender. Neither disability nor sexual orientation is enumerated, but disability could in some instances fall under 'health'.

### **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 Iceland, there is no anti-discrimination legislation in force that applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

Access to vocational training based on the employment relationship would be governed by collective agreement and thus by the Act on Workers' Terms of Employment and Pension No. 55/1980, Article 1, which stipulates that wages and other working terms agreed between the social partners shall be considered minimum terms, independent of sex, nationality or term of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement. Contracts made between individual wage earners and employers on worse working terms than those specified in the general collective agreement are void. This is a general rule, which would apply in relation to the grounds for discrimination covered by the directives.

### **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 Iceland, national legislation does not include the prohibition of discrimination in relation to membership of and involvement in organisations for workers or employers as formulated in the directives for all five grounds and for both private and public employment.

Directives 2000/78/EC and 2000/43/EC have not been transposed. The Act on Trade Unions and Trade Disputes No. 80/1938, which applies to both the private and public sectors, sets out that membership of trade unions shall be open to all workers employed in the respective area (cf. Article 2). In practice, trade unions accept all applicants, irrespective of nationality, origin, religion or sexual orientation. Foreign nationals may stand for election and participate in union work on an equal footing with citizens. Similarly, professional associations and employers' organisations are open to all enterprises/employers operating or qualified in the respective fields. There is, however, no comprehensive anti-discrimination law in force in this sector, and no prohibition of discrimination has been enacted with regard to membership of, and involvement in, organisations for workers or employers, or other professional organisations, and related benefits.

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

In Iceland, national legislation does not prohibit discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive.

Directive 2000/43/EC has not been transposed. No comprehensive legislation on discrimination has been adopted, but an anti-discrimination provision can be found relating to healthcare in Article 1 of the Act on the Rights of Patients No. 74/1997, which provides that any discrimination between patients on the grounds of sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status is prohibited. The commentary to the draft law states that 'other status' includes disability and age. In relation to social protection, Article 42 of the Act on Municipal Social Services No. 40/1991 sets out that the authorities shall work towards ensuring equality for persons with intellectual, psycho-social and physical disabilities, including living conditions comparable with those of other citizens. Persons with disabilities shall be ensured conditions that enable them to lead as normal a life as possible.

#### 3.2.6.1 Article 3.3 exception (Directive 2000/78)

National law does not set out exceptions for social security and healthcare based on religion or belief, age, disability or sexual orientation.

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

In Iceland, national legislation does not include anti-discrimination provisions on social advantages as formulated in the Racial Equality Directive. The lack of definition of social advantages does not raise problems per se, as there is no legislation in place prohibiting discrimination in the provision of social advantages.

In Iceland, national law does not contain explicit provisions prohibiting discrimination based on race or ethnic origin in relation to 'social advantages'. In the public sector, discrimination of this sort is likely to constitute a breach of the equality principle codified in Article 11 of the Act on Administrative Procedure. In the private sector, a case could possibly be brought under Article 26(b) of the Tort Damages Act No. 50/1993. The Article stipulates that compensation may be awarded for personal injury from unlawful wrongdoing, which breaches the freedom, peace, honour or person of the victim.

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

In Iceland, national legislation does not include prohibition on discrimination in education as formulated in the Racial Equality Directive. However, provisions on anti-discrimination can be found in a number of laws and policies.

Article 24 of the Act on Compulsory Schools No. 91/2008 stipulates that in the organisation of study and instruction, and in producing and selecting study material, special effort shall be made to ensure that all pupils have equal study opportunities and a chance to select subjects and learning approaches in their own education. The objectives and practice of study and instruction shall aim at preventing discrimination on the basis of origin, gender, sexual orientation, residence, social class, religion, health condition, disability or situation in general. There are no sanctions set out for breaches of this provision.

The national curricula for primary schools, compulsory schools and upper-secondary schools set out the framework and conditions for learning and teaching based on the principles of existing laws, regulations and international conventions. The curricula stipulate that equality is a fundamental pillar of the Icelandic education system. Equality shall be guaranteed in the substance of education on the one hand and the study methods and learning environment on the other. Grounds to be taken into account include age, class, culture, origin, gender, disability, language, nationality, life views, race, religion, residence and sexual orientation.<sup>42</sup> There are no specific sanctions set out in this context.

The main Icelandic universities, both public and private, have adopted comprehensive equality policies. These generally include prohibition of discrimination on the grounds of sex, sexual orientation, age, disability, colour and religion. The largest, the public University of Iceland, adds gender identity and expression, nationality, health, origin, opinion, culture and other status.

##### a) Pupils with disabilities

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

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<sup>42</sup> The curricula can be found in English on the website of the Icelandic Ministry of Education, Science and Culture: [www.menntamalaraduneyti.is/utgefid-efni/namskrar/adalnamskra-framhaldsskola/](http://www.menntamalaraduneyti.is/utgefid-efni/namskrar/adalnamskra-framhaldsskola/).

The policy on education for children with disabilities is based on the principle of inclusive education: they shall attend the mainstream schools. Article 7 of the Act on the Affairs of Persons with Disabilities No. 59/1992 stipulates that people with disabilities shall be entitled to all general services provided by central and local government. Attempts shall be made at all times to provide them with services according to general statutes in the field of education and the health services and social services. If the needs of a person with disabilities prove to be too great to be met within the framework of the general services, the person shall receive services under the Act on the Affairs of Persons with Disabilities.

Children are entitled to attend nursery school and compulsory schooling in the municipality in which they have legal residence. Article 19 of the Act on the Affairs of Persons with Disabilities stipulates that children with disabilities are entitled to schooling in general nursery schools and that they shall be provided with the necessary support to make this possible. Article 17 of the Act on Compulsory Schools No. 91/2008 stipulates that students with special needs are entitled to services in inclusive general schools, without distinction based on physical or mental ability. Pupils with disabilities shall receive support, if needed.

Secondary-school pupils with special needs shall have access to specialist assistance and study alongside other students, as far as possible (cf. Article 34 of the Act on Secondary Schools No. 92/2008). Many secondary schools have special departments, vocational study programmes and other courses specifically designed for students with disabilities. Children with hearing impairments are entitled to classes teaching the Icelandic sign language and those visually impaired are entitled to classes teaching braille.

It should be noted that in practice, the implementation of inclusive education has been challenging. Concerns have been raised that schools need more financial and human resources in order to provide pupils with disabilities the support they need to be able to study in the general education system.

Although there is no explicit legal provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment, the Supreme Court has interpreted the general equality provisions of the Constitution, the ECHR and the Act on the Affairs of People with Disabilities, to include a duty to provide reasonable accommodation. In the case of *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, the Supreme Court established that the University of Iceland is obliged to accept students with disabilities and to make the necessary arrangements and to take the general measures necessary to accommodate them and to ensure they can avail themselves of the same services as other students, at the department of their choosing.<sup>43</sup> The court found that although the needs of the claimant, a student with disabilities, had been accommodated to some extent, the lack of general measures, a comprehensive plan or general guidelines on how to assist her had led to problems, and that she had been forced to personally insist on reasonable accommodation. This entailed a breach of her personal rights and the right to education and she was awarded non-pecuniary damages.

#### b) Trends and patterns regarding Roma pupils

In Iceland, there are no specific patterns, such as segregation, existing in education regarding Roma pupils.

No identified Roma have settled in Iceland, so they are not formally acknowledged as an ethnic minority. In relation to integration, it should be noted that the legislation governing compulsory and secondary education (the aforementioned Acts No. 91/2008 and 92/2008) contains provisions on the rights of children with a foreign mother tongue to special classes in Icelandic as a second language, as well as support to maintain knowledge of their mother

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<sup>43</sup> Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, Case No.177/1998, 4 February 1999.



tongue through elective classes, distance learning or other means. Schools shall also adopt special 'reception plans' for immigrant children, containing information on school activities, interpreters, etc.

### **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 Iceland, national legislation does include access to and supply of goods and services as formulated in the Racial Equality Directive.

Article 180 of the General Penal Code No. 19/1940 provides that denying a person service, or access to any public area or place intended for general public use, on account of that person's nationality, colour, race, religion, sexual orientation or gender identity is punishable by fines or imprisonment of up to six months. Neither age nor disability is covered under this provision.

#### **3.2.9.1 Distinction between goods and services available publicly or privately**

In Iceland, national law does not distinguish 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).

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

In Iceland, national legislation does not include housing as formulated in the Racial Equality Directive. No explicit provisions have been adopted to ensure non-discrimination in relation to access to housing irrespective of race or ethnic origin.

There is no prohibition of discrimination on the basis of disability in relation to access to housing. Chapter VI of the Act on the Affairs of Persons with Disabilities simply stipulates that social services shall be available to enable people with disabilities to live in their own homes, and to those using other housing options, in accordance with their needs and wishes, as far as possible. Municipalities shall ensure that suitable housing is available and that the necessary services are provided. Special housing may be operated by NGOs or other private entities in residential areas and as close to general public services as possible. The Regulation on Home-services for Persons with Disabilities No. 1054/2010 sets out in greater detail the requirements and system governing housing.<sup>44</sup>

The Act on the Affairs of the Elderly No. 125/1999 aims to guarantee that older people can enjoy a normal home life for as long as possible, but that institutional services are available when necessary. These include geriatric homes, residences and flats designed to meet the needs of the elderly (cf. Article 14 of the Act on the Affairs of the Elderly). There is no explicit prohibition of discrimination on the basis of age.

It should be noted that the General Penal Code No. 19/1940 stipulates in Article 180 that denying a person service on account of that person's nationality, colour, race, religion sexual orientation or gender identity is punishable by fines or imprisonment of up to six months. This could include housing. No case law exists to clarify what constitutes 'service'.

#### **3.2.10.1 Trends and patterns regarding housing segregation for Roma**

In Iceland, there are no discernible patterns of housing segregation and discrimination against the Roma as no identified Roma have settled in Iceland. It should, however, be

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<sup>44</sup> Regulation on Home-services for People with Disabilities No. 1054/2010, adopted on 29 December 2010, available on the website of the Ministry of the Interior: [www.reglugerd.is/interpro/dkm/WebGuard.nsf/key2/1054-2010](http://www.reglugerd.is/interpro/dkm/WebGuard.nsf/key2/1054-2010).

noted in this context that a recent study conducted by the Multicultural Centre demonstrated that 31 % of the respondents (who were immigrants), or someone close to them, had experienced negative attitudes when trying to rent an apartment.<sup>45</sup>

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<sup>45</sup> Elsa Arnardóttir and Rúnar Helgi Haraldsson (2014). *Origin and Multiple Discrimination*. Ísafjörður: The Icelandic Multicultural Centre.

## **4 EXCEPTIONS**

### **4.1 Genuine and determining occupational requirements (Article 4)**

In Iceland, national legislation does not provide for an exception for genuine and determining occupational requirements.

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

In Iceland, national law does not provide for an exception for employers with an ethos based on religion or belief.

The Act on Registered Religious Associations No. 108/1999 does not contain provisions to this end. Neither does the Act on the Status and Functioning of the National Church of Iceland No. 31/1997. However, although no explicit provision sets this condition, it is clear that in order to be chosen for senior posts, such as a bishop, incumbents would have to be members of the National Church of Iceland.

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

Iceland has no military.

### **4.4 Nationality discrimination (Article 3(2))**

#### **a) Discrimination on the ground of nationality**

In Iceland, national law allows difference of treatment based on nationality, however, this is generally not framed in the context of an exception to the rule of equality. No provisions address discrimination based on statelessness. Iceland is not party to the 1954 and 1961 UN Statelessness Conventions.

In Iceland, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law, but mention should be made of Article 1 of the Act on Workers' Terms of Employment and Pensions No. 55/1980, which sets out that wages and other conditions negotiated by social partners shall be the minimum conditions for all workers, irrespective of sex, nationality and length of contract, in the relevant occupation within the area covered by the collective agreements. Contracts setting out worse working terms than those specified in the collective agreements shall be void.<sup>46</sup>

It should be noted that the European Commission has expressed the view that the current rules<sup>47</sup> allowing citizens from the other Nordic countries to vote in municipal elections after a three-year residence, whilst requiring five-year residence for other EU citizens, is incompatible with the EU *acquis*.<sup>48</sup>

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

There is no clear relationship between nationality and race or ethnic origin in the context of indirect discrimination, as indirect discrimination on these grounds has not been defined,

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<sup>46</sup> Iceland, Working Terms and Pension Rights Insurance Act [Lög um starfskjör launafólks og skyldutryggingu lífeyrisréttinda] No. 55/1980, 9 June 1980.

<sup>47</sup> Iceland, Act on General Elections for Municipal Government [Lög um kosningar til sveitarstjórna] No. 5/1998, 6 March 1998.

<sup>48</sup> Screening report Iceland, Chapter 23 – Judiciary and fundamental rights, 1 July 2011, available on the DG ENLARGE website: [http://ec.europa.eu/enlargement/pdf/iceland/key-documents/screening\\_report\\_23\\_is\\_internet\\_en.pdf](http://ec.europa.eu/enlargement/pdf/iceland/key-documents/screening_report_23_is_internet_en.pdf).

or explicitly prohibited, in national law. The Supreme Court has decided only one case concerning race and ethnic origin. The court upheld the conviction of a member of a racist organisation for publicly attacking an anonymous group of persons in a newspaper interview. He was found to have derided, vilified and denigrated Africans on the basis of their nationality, colour and race. In the interview, the accused expressed his opinions on the superiority of the white race and enumerated various negative qualities he thought characterised Africans. The court ruled that his comments were clearly punishable under Article 233a of the General Penal Code, but did not elaborate on the interplay between nationality and ethnicity.<sup>49</sup>

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

##### **a) Benefits for married employees**

In Iceland, it would constitute unlawful discrimination in national law if an employer only provides benefits to employees who are married. In the public sector, limiting certain benefits to married employees would constitute a breach of the principle of equality enshrined in Article 11 of the Act on Administrative Procedure and the Constitution. For the private sector, discriminatory granting of benefits could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried.

##### **b) Benefits for employees with opposite-sex partners**

In Iceland, it would constitute unlawful discrimination in national law if an employer only provides benefits to employees with opposite-sex partners. The civil status of homosexual and heterosexual partnerships is the same under national law. In the public sector, limiting certain benefits to heterosexual partners would constitute a breach of the principle of equality enshrined in Article 11 of the Act on Administrative Procedure and the Constitution. In the private sector, discriminatory granting of benefits could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried.

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

##### **a) Exceptions in relation to disability and health/safety**

In Iceland, there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78). Article 40(b) of the Act on Health and Safety at Work No. 46/1980 provides that the Ministry of Welfare may ask the Board of the Administration of Occupational Health and Safety to adopt rules on the employment of persons with physical or mental disabilities for certain jobs, where their disability, disease or age may entail an increased risk of accidents or disease. To date, the minister has not issued any regulations under this article.

There are no exceptions in national law concerning health and safety in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.).

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

##### **4.7.1 Direct discrimination**

In Iceland, national law provides for exceptions for direct discrimination on the ground of age. The exceptions take the form of generally justified maximum and minimum age limits

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<sup>49</sup> Supreme Court of Iceland, *Prosecutor v. Hlynur Freyr Vigfússon*. Case No. 461/2001, 24 April 2002.

with reference to the occupation in question, unlike the situation dealt with by the European Court of Justice in Case C-144/04, Mangold.

The general age limit for entry into the labour market is 16 years. However, to sign valid employment contracts, workers must have reached the age of majority, which is 18. The Act on Health and Safety at Work No. 46/1980 stipulates that children under the age of 15 may not be employed, except in exceptional circumstances, e.g. to participate in cultural events, sports or advertising activities.

Domestic law contains various provisions setting out age limits in relation to specific functions and professions. Examples include Article 33 of the Act on the Rights and Duties of State Employees No. 70/1996, which stipulates that, to be appointed or hired as a state employee, a person must have reached the age of 18. Exceptions can be made, in particular for internships, cleaning jobs, couriers and the like.<sup>50</sup> Employees and public servants (including healthcare professionals) are generally to be relieved of their duties at the end of the month after they turn 70 (cf. Article 43).<sup>51</sup> However, Article 26 of the Act on Healthcare Professionals No. 34/2012 stipulates that healthcare professionals are generally not allowed to run private clinics after the age of 75. However, the Directorate of Health can prolong permits on application, initially for three years and then subsequently for one year at a time.

The Act on the Police No. 90/1996 sets age limits for entry into the Police Academy (20–40 years of age), but exceptions can be made. Police officers shall be relieved of their duties when they reach the age of 65. The Aviation Act No. 60/1998 sets the general age limit for professional pilots and air traffic controllers at 60, with a possible extension to 65. Similar provisions may be found in other laws governing the rights and duties of specific professions.

Article 40(b) of the Act on Health and Safety at Work No. 46/1980 provides that the Ministry of Welfare may ask the Board of the Administration of Occupational Health and Safety to adopt rules on the employment of persons with physical or mental disabilities for certain jobs, where their disability, disease or age may entail an increased risk of accidents or disease. To date, the minister has not issued any regulations under this article. Some employment sectors set health conditions for workers. These include, inter alia, the Act on the Crews of Fishing Vessels, Coast Guard Vessels, Leisure and other Boats No. 30/2007 and the Aviation Act No. 60/1998. These provisions clearly come into play when workers age.

Rights and services for 'older people' are generally provided for people of 67 years of age and above. The Act on Social Security No. 100/2007, dealing with pensions, sets the age of 67 (cf. Article 17) (60 for seamen fulfilling special criteria) and the Act on the Affairs of the Elderly No. 125/1999 sets out the services which people aged 67 and above are entitled to. The Act No. 113/1994 on Pensions for the Elderly sets out pensions for certain groups of retired people born in or before 1914, 70 years of age or above and for all persons falling under the law who have reached the age of 75.<sup>52</sup>

#### a) Justification of direct discrimination on the ground of age

In Iceland, it is possible – generally or in specified circumstances – to justify direct discrimination on the ground of age. These exceptions take the form of generally justified maximum and minimum age limits with reference to the occupation in question and appear to be in line with Article 6, Directive 2000/78.

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<sup>50</sup> Iceland, Act on the Rights and Duties of State Employees [Lög um réttindi og skyldur starfsmanna ríkisins] No. 70/1996, 11 June 1996, Article 6. See also the Act on Health and Safety at Work [Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum] No. 46/1980, 28 May 1980, which contains special provisions on the work of youngsters.

<sup>51</sup> Iceland, Act on the Rights and Duties of State Employees No. 70/1996, 11 June 1996, Article 43.

<sup>52</sup> Iceland, Act on Pensions for the Elderly No. 113/1994, Article 2.

b) Permitted differences of treatment based on age

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

The general age limit for entry into the labour market is 16 years. However, to sign valid employment contracts, workers must have reached the age of majority, which is 18. The Act on Health and Safety at Work No. 46/1980 stipulates that children under the age of 15 may not be employed, except in exceptional circumstances, e.g. to participate in cultural events, sports or advertising activities.

Domestic law contains various provisions setting out age limits in relation to specific functions and professions. Examples include Article 33 of the Act on the Rights and Duties of State Employees No. 70/1996, which stipulates that for appointment or hiring as a state employee, a person must have reached the age of 18. Exceptions can be made, in particular for internships, cleaning jobs, couriers and the like.<sup>53</sup> Employees and public servants are to be relieved of their duties at the end of the month after they turn 70, (cf. Article 43).<sup>54</sup> Article 26 of the Act on Healthcare Professionals No. 34/2012 stipulates that healthcare professionals are generally not allowed to run clinics after the age of 75. However, the Directorate of Health can prolong permits on application, initially for three years and then subsequently for one year at a time.

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Article 40(b) of the Act on Health and Safety at Work No. 46/1980 provides that the Ministry of Welfare may ask the Board of the Administration of Occupational Health and Safety to adopt rules on the employment of persons with physical or mental disabilities for certain jobs, where their disability, disease or age may entail an increased risk of accidents or disease. To date, the minister has not issued any regulations under this article. Some employment sectors set health conditions for workers. These include, inter alia, the Act on the Crews of Fishing Vessels, Coast Guard Vessels, Leisure and other Boats No. 30/2007 and the Aviation Act No. 60/1998. These provisions clearly come into play when workers age.

Rights and services for 'older people' are generally provided for people 67 years of age and older. The Act on Social Security No. 100/2007, dealing with pensions, sets the age of 67 (cf. Article 17) (60 for seamen fulfilling special criteria) and the Act on the Affairs of the Elderly No. 125/1999 sets out the services which people 67 and older are entitled to. Act No. 113/1994 on Pensions for the Elderly sets out pensions for certain groups of retired people born in or before 1914, 70 years of age or above and for all persons falling under the law who have reached the age of 75.<sup>55</sup>

c) Occupational pension schemes' fixed ages for admission or entitlements

In Iceland, national law allows occupational pension schemes to fix ages for entitlement to benefits, in line with the option provided for by Article 6(2). Everyone active in the labour

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<sup>53</sup> Iceland, Act on the Rights and Duties of State Employees No. 70/1996, 11 June 1996, Article 6. See also Iceland, Act on Health and Safety at Work No. 46/1980, 28 May 1980, which contains special provisions on the work of youngsters.

<sup>54</sup> Iceland, Act on the Rights and Duties of State Employees No. 70/1996, 11 June 1996, Article 44.

<sup>55</sup> Iceland, Act on Pensions for the Elderly [Lög um eftirlaun til aldraðra] No. 113/1994, 28 June 1994, Article 2.

market is obliged to be a member of an occupational pension fund from the ages of 16 to 70.<sup>56</sup> Payments shall be received from the funds from the age of 70 at the latest.<sup>57</sup>

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

In Iceland, 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 Iceland, minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training are permitted.

The Act on the Rights and Duties of State Employees No. 70/1996 contains the general rule that for appointment or hiring as a state employee, a person must have reached the age of 18, the age of majority in Iceland.<sup>58</sup> Exceptions can be made, in particular for internships, cleaning jobs, couriers and the like.<sup>59</sup> There is no fixed retirement age set out in collective agreements or law in the private sector, but public employees are to be relieved of their duties at the end of the month when they turn 70.<sup>60</sup> They are, however, not barred from working part-time after the age of 70. No requirements relating to minimum and maximum age are found in relation to training and the grounds listed in the directive.

#### **4.7.4 Retirement**

##### **a) State pension age**

In Iceland, there is a state pension age, at which individuals must begin to collect their state pensions. The state pension scheme is regulated by the Act on Social Security No. 100/2007. The pensionable age is 67 (60 for seamen fulfilling special criteria) (cf. Article 17). The scheme provides flat-rate cover for residents, but with income-tested benefits depending on duration of residence. A person must have been resident in Iceland for at least three years between the ages of 16 and 67 to be entitled to receive a state pension. Act No. 113/1994 on Pensions for the Elderly governs pensions for certain groups of retired people born in or before 1914, 70 years of age or above and for all persons falling under the law who have reached the age of 75.<sup>61</sup>

An individual can collect a pension and still work, but the general rule is that their pension will be reduced. A person can also defer their pension rights until the age of 72.<sup>62</sup>

The Icelandic pension system is based on three pillars: first, a tax-financed state old-age pension (social security benefits); secondly, mandatory occupational pension funds; and thirdly, voluntary individual pension savings with tax incentives. There is no case law on retirement in relation to the directive requirements, nor are there obvious problems or conflicts with these requirements.

##### **b) Occupational pension schemes**

<sup>56</sup> Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds [Lög um skyldutryggingu lífeyrissjóða] No. 129/1997, 23 December 1997, Article 1, para. 3.

<sup>57</sup> Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997, 23 December 1997, Article 4, para. 1.

<sup>58</sup> Iceland, Act on Legal Competence No. 71/1997, Article 1.

<sup>59</sup> Iceland, Act on the Rights and Duties of State Employees No. 70/1996, Article 6.

<sup>60</sup> Iceland, Act on the Rights and Duties of State Employees No. 70/1996, Article 44.

<sup>61</sup> Iceland, Act on Pensions for the Elderly No. 113/1994, 28 June 1994, Article 2.

<sup>62</sup> Iceland, Act on Social Security [Lög um almannatryggingar] No. 100/2007, 11 May 2005, Article 23.

In Iceland, there is no fixed age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements, but payments shall be received from the funds from the age of 70 at the latest.<sup>63</sup>

If an individual wishes to work longer, payments from occupational pension schemes can be deferred. An individual can collect a pension and still work.

There is no fixed retirement age set out in collective agreements or law in the private sector, but public employees are to be relieved of their duties at the end of the month when they turn 70.<sup>64</sup> They are, however, not barred from working part-time after the age of 70 and then collect reduced pensions. It is also permitted to defer collecting the pension up to the age of 72.

c) State-imposed mandatory retirement ages

In Iceland, there is a state-imposed mandatory retirement age for the public sector. There is no fixed retirement age set out in collective agreements or law in the private sector, but public employees are to be relieved of their duties at the end of the month when they turn 70.<sup>65</sup> They are, however, not barred from working part-time after the age of 70.

The Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997 stipulates that all employees, self-employed persons and employers are obliged to ensure their pension rights through membership in an occupational pension fund from the ages of 16 to 70. Contributions to pension benefits shall be determined in special legislation, in collective agreements, in employment contracts or by other comparable means. The general rule is that members begin to receive old-age pensions at the age of 67, but it is possible to start collecting a reduced pension as early as 60, or as late as 70, with additional benefits, depending on the funds. For state employee occupational pension funds, the general pension age is 65. The general rule is that people can work longer, either deferring pension rights until the age of 70 or receiving reduced pensions.

d) Retirement ages imposed by employers

In Iceland, national law permits employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and collective bargaining.

The general retirement age is 67 in both the public and private sector, but people can work longer. In the public sector, the mandatory retirement age is 70. No specific legal provisions govern the retirement age in the private sector, which can therefore be negotiated by the employer and employee. However, the Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997 stipulates that the payment of pensions shall commence at the age of 65–70. The common retirement age is 67, but the pension funds can generally delay or expedite payments by five years at the request of the member.

e) Employment rights applicable to all workers irrespective of age

General protection against dismissals and other laws protecting workers' rights apply irrespective of age.

f) Compliance of national law with CJEU case law

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<sup>63</sup> Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997, 23 December 1997, 11 June 1996, Article 4, para. 1.

<sup>64</sup> Iceland, Act on the Rights and Duties of State Employees No. 70/1996, 11 June 1996, Article 44.

<sup>65</sup> Iceland, Act on the Rights and Duties of State Employees No. 70/1996, 11 June 1996, Article 44.



In Iceland, national legislation appears to be in line with CJEU case law on age regarding compulsory retirement, but judicial interpretation is required.

#### **4.7.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

In Iceland, national law does not explicitly permit age or seniority to be taken into account in selecting workers for redundancy. However, a national collective agreement concluded in 1990 (Icelandic: *þjóðarsátt*) provides for longer notices for employees with seniority. For those who have worked continuously for 10 years at a company, the notice is four months when the employee has reached the age of 55, five months if the employee is 60 and six months for age 63.

b) Age taken into account for redundancy compensation

In Iceland, national law provides for compensation for redundancy. This is not affected by the age of the worker.

#### **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)**

In Iceland, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

#### **4.9 Any other exceptions**

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

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

### **a) Scope for positive action measures**

In Iceland, positive action in respect of racial or ethnic origin, religion or belief, age or sexual orientation is not provided for in national law and it is unclear what scope it provides for such action, as no cases have been heard nor has any legal and/or political discussion taken place on this topic. The only positive measures in place, relating to the scope of Directives 2000/43/EC and 2000/78/EC, aim to strengthen the position of persons with disabilities in the labour market. In addition, mention should be made of the Act on Equal Status and Equal Rights of Women and Men No. 10/2008, which permits positive measures to combat gender discrimination.

### **b) Main positive action measures in place at national level**

The only positive measures in place, relating to the scope of Directives 2000/43/EC and 2000/78/EC, aim to strengthen the position of persons with disabilities in the labour market. The Act on the Affairs of Persons with Disabilities No. 59/1992 aims to ensure equality for people with disabilities and living conditions comparable with those of other citizens, and to provide conditions that enable them to lead a normal life.<sup>66</sup> The act does not set quotas, but establishes that persons with disabilities shall be given assistance in holding jobs on the labour market when necessary. This shall be done through special personal support at the workplace, as well as through information and instruction for other workers. Persons with disabilities shall also have access to vocational training in private enterprises and institutions, where this can be arranged.<sup>67</sup> Each region shall provide sheltered work in the general labour market for people with disabilities and operate sheltered workplaces. Sheltered workplaces provide remunerated training to enable people with disabilities to participate in the general labour market and they also shall provide fixed, remunerated employment for people with disabilities.<sup>68</sup> Lastly, people with disabilities shall be given priority regarding work for the state and municipalities when their qualifications for the post are greater than or equal to those of other applicants.<sup>69</sup>

No positive action measures have been taken in respect of racial or ethnic origin, religion or belief, age or sexual orientation and no cases heard. It is thus not clear whether such measures would be held compatible with the equality principle. No specific positive measures have been put in place for the benefit of Roma or other minorities. National minorities, as defined by the Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, are not present in Iceland.

It should be noted that the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 sets out positive measures in relation to gender and that in 2010 gender quotas were adopted for public company boards. Larger private companies were obliged to ensure at least 40 % representation of women on their boards by 1 September 2013 and gender equality should be taken into account when hiring managing directors.<sup>70</sup>

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<sup>66</sup> Iceland, Act on the Affairs of Persons with Disabilities [Lög um málefni fatlaðs fólks] No. 59/1992, 2 June 1992, Article 1.

<sup>67</sup> Iceland, Act on the Affairs of Persons with Disabilities No. 59/1992, 2 June 1992, Article 29.

<sup>68</sup> Iceland, Act on the Affairs of Persons with Disabilities No. 59/1992, 2 June 1992, Article 30.

<sup>69</sup> Iceland, Act on the Affairs of Persons with Disabilities No. 59/1992, 2 June 1992, Article 32.

<sup>70</sup> Iceland, Act No. 13/2010 amending the Act on Limited Liability Companies No. 2/1995 and the Act on Private Limited Companies No. 138/1994 [Lög um breytingu á lögum um hlutafélög og lögum um einkahlutafélög (eignarhald, kynjahlutföll og starfandi stjórnarformenn)].

## 6 REMEDIES AND ENFORCEMENT

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

- a) Available procedures for enforcing the principle of equal treatment

In Iceland, no specific procedures have been established to deal with discrimination on the grounds enumerated in the directives. The sole discrimination complaints body, the Gender Equality Complaints Committee, deals with gender discrimination only.

Discrimination could give rise to civil liability, falling under the general rules. The courts may rule that a certain act or omission<sup>71</sup> should be remedied and award the victim material damages. Moral damages can only be awarded on the basis of a specific legal provision, e.g. Article 31 of the Gender Equality Act. At the district court level, proceedings are generally initiated by the claimant filing a summons and complaint with the court. The claimant pays court fees and the case is registered. The defendant is served with a summons, which must state the facts of the case and its merits, and set out the claimant's demands and legal arguments. The summons, once issued, cannot be amended. The general principle is that all arguments must be introduced and submitted in the summons. Other arguments are excluded unless the new arguments are accepted by the defendant. Where the defendant appears before the court and holds a defence, his or her claims, facts and legal arguments shall be stated in a separate submission, which is to be filed with supporting evidence within a certain time limit. The case and dossier are then assigned to a judge. As a rule, the parties can continue to gather evidence during the proceedings if this is done without undue delay. When the gathering of the evidence has been completed by the parties, the judge sets a date for the final hearing (trial) of the case. At the final hearing, parties and witnesses appear and give oral statements of facts. The parties plead the case orally. In civil cases, judgments are to be rendered within one month. Judgments must be in writing and contain a description of the claims and arguments of the parties, the facts, the findings of the court and its ruling. Icelandic courts are generally relatively efficient. District court case proceedings take on average approximately one year. Each party bears its own costs incurred by the litigation, but the losing party shall reimburse the other party's council's fees. The amount is decided by the judge and unfortunately rarely covers the actual costs. Legal aid is available from the state for the very poor and in cases where the litigation has significant general importance or concerns significant matters relating to the employment, social status or other personal issues regarding the person in question.

Numerous administrative procedures are in place with the aim of guaranteeing citizens the right of recourse vis-à-vis public authorities. The Act on Administrative Procedure No. 37/1993 guarantees the right to lodge an appeal against the decisions of administrative authorities, such as public institutions or committees. All decisions by public bodies, or bodies vested with public authority, are subject to review by a higher authority, unless otherwise provided for by law. The decisions of independent authorities may in some cases be reviewed by ministers or special review boards or committees.

The Act on Rights Advocates for Disabled People No. 88/2011 stipulates that an advocate for the rights of people with disabilities shall be appointed for each service region. The advocate is charged with monitoring the situation of people with disabilities in his or her area and shall assist individuals when needed, e.g. in relation to personal finances, rights and services. Violations of the rights of a disabled person should be brought to the attention

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<sup>71</sup> See, e.g. Supreme Court of Iceland, *Berglind Stefánsdóttir and the Association of the Deaf v. the State Broadcasting Services*, Case No. 151/1999, 6 May 1999, where the court held, inter alia, with reference to the duty of the State Broadcasting Service to broadcast election debates set out in the Broadcasting Act, and Article 65 of the Constitution, that the State Broadcasting Service was to ensure broadcasting of such debates in sign language.

of the advocate, who can investigate the case in cooperation with the victim. Where needed, the advocate may ask the perpetrator to remedy the situation within a certain time limit. If the advocate's suggestions for improvements are not followed, the advocate can in some instances bring a complaint to the administrative Complaints Committee on Social Affairs and Housing or to the Ministry of Welfare. The Gender Equality Complaints Committee, a specialised committee under the Ministry of Welfare, addresses complaints alleging violations of the Gender Equality Act. In some instances, decisions by local authorities may be referred to the relevant ministry. Lastly, the courts are competent to review any decision taken by the executive.

The Parliamentary Ombudsman may receive complaints concerning discriminatory administrative decisions. The ombudsman monitors the administrative functions of public and local authorities and safeguards the rights of citizens vis-à-vis administrative authorities. The ombudsman shall ensure that the principle of equality is observed and that administration is conducted in conformity with the law and good administrative practice. The ombudsman investigates administrative cases based on complaints, or on his or her own initiative. He or she may also examine whether laws are in conflict with the Constitution, e.g. the equality provision, or are flawed in other respects.

The Ombudsman for the Citizens of Reykjavík may receive complaints concerning discriminatory administrative decisions by city authorities or bodies, although it should be noted that employment issues fall outside this mandate. The ombudsman gives complainants advice on their legal status and issues legal opinions. In addition to dealing with complaints, the Ombudsman is tasked with assisting authorities to improve their service and he or she investigates administrative cases based on complaints, based on information provided by the administration, or on his or her own initiative.

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

b) Barriers and other deterrents faced by litigants seeking redress

The lack of anti-discrimination legislation covering the scope of Directives 2000/43/EC and 2000/78/EC can be considered the main barrier for effective anti-discrimination action. In general, the high fees of lawyers and the fact that the party that loses pays costs can act as a deterrent for those wishing to bring discrimination cases before the courts. It should be noted that legal aid is means-tested and limited to the very poor. Complaints brought to complaints committees, and the Parliamentary Ombudsman and Ombudsman of the Citizens of Reykjavik are not costly, these do not call for the instruction of a lawyer and are relatively simple. It should be noted that the ombudsmen and the complaint committees generally deal with complaints concerning decisions of public bodies/authorities. However, one exception is the Gender Equality Complaints Committee, which also deals with discrimination by private bodies.

c) Number of discrimination cases brought to justice

In Iceland, there are no available statistics on the number of cases related to discrimination brought to justice.

d) Registration of discrimination cases by national courts

In Iceland, discrimination cases are not registered as such by national courts.

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

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

In Iceland, associations, organisations and trade unions are entitled to act on behalf of their members who have been victims of discrimination.

Article 70 of the Constitution sets out the principle that everyone shall, for the determination of his or her rights and obligations, be entitled to the resolution of an independent and impartial court of law. This right is also guaranteed through Article 6(1) of the Act on the European Convention on Human Rights No. 62/1994. According to the Act on Civil Procedure No. 91/1991, any individual, association or institution, which bears rights or duties under national law, can be party to a court case.<sup>72</sup> The general principle concerning legal standing is that in order for an application to be admissible, the claimant must satisfy the requirement of having personal, direct interest, that is, a 'legally protected interest' (Icelandic: *lögvarðir hagsmunir*). This rule is founded on Article 24(1) of the Act on Civil Procedure setting out that the competence of courts is limited to issues governed by the law and Article 25(1), which states that courts do not resolve legal questions.

An exception to the rule on direct 'legally protected interest' is provided for in Article 25(3) of the Act on Civil Procedure No. 91/1991, which allows associations to apply to the courts for the recognition of certain rights of their members or to relieve their members of certain duties, if safeguarding the interests at stake forms part of the association's mandate.<sup>73</sup> Three conditions are thus set: that the interest at stake forms part of the association's mandate, that the case concerns the legally protected interests of the majority of the association's members, and that the case concerns the recognition of certain rights or the relief of duties. An example is a landmark case brought by the Icelandic Federation of People with Disabilities against the Icelandic State, for the recognition of the fact that it was unlawful and in breach of the Constitution to reduce social security payments to married people with disabilities based on their spouse's income, as it did not guarantee the minimum rights set out in Article 76 (the law shall guarantee everyone the assistance that they require in the case of sickness, invalidity, infirmity by reason of old age, unemployment or similar circumstances) and thus prevented those affected from fully enjoying their rights as set out in Article 65 (equality provision). The Supreme Court found in favour of the federation, and the legislation on social security was amended to reflect the judgment.<sup>74</sup>

Labour unions or umbrella organisations have standing on behalf of their members in labour disputes, and enterprises, institutions and non-governmental organisations can – either in their own name or on behalf of their members who consider they are victims of gender discrimination – submit a case to the Gender Equality Complaints Committee.<sup>75</sup> In practice, however, individuals bring cases to the committee. No complaints have been lodged by NGOs or associations on behalf of victims since the current gender equality law came into force in 2008.

No explicit provisions have been adopted concerning membership, e.g. on permanency or the number of members generally.<sup>76</sup> No rules stipulate that non-governmental organisations need to be registered, but they can be included in the Directorate of Internal Revenue Company Directory. This is, however, not a precondition for engaging in legal

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<sup>72</sup> Iceland, Act on Civil Procedure No. 91/1991, 26 March 1991, Article 16(1).

<sup>73</sup> Iceland, Act on Civil Procedure No. 91/1991, 26 March 1991, Article 25(3).

<sup>74</sup> Supreme Court of Iceland, *Icelandic Federation of People with Disabilities v. the Republic of Iceland*, Case No. 125/2000, 19 December 2000.

<sup>75</sup> Iceland, Act on Equal Status and Equal Rights of Women and Men No. 10/2008, 5 March 2008, Article 6.

<sup>76</sup> See, however, the discussion on *actio popularis* under c), where certain criteria on membership and setup apply.

proceedings. Legitimate interest is not defined in legal statutes; it is for the courts to establish whether 'legally protected interest' is at stake.<sup>77</sup>

b) Engaging in support of victims of discrimination

In Iceland, associations, organisations and trade unions are not explicitly entitled to act in support of victims of discrimination.

According to the Act on Civil Procedure No. 91/1991, any individual, association or institution, which bears rights or duties under national law, can be party to a court case.<sup>78</sup> Associations may apply to the courts for the recognition of certain rights of their members or to relieve their members of certain duties, if safeguarding the interests at stake forms part of the association's mandate.<sup>79</sup> However, there are no explicit provisions setting out the right of organisations to act in support of victims in discrimination cases. Judicial interpretation is required on this issue but it is clear that, in any case, the victim would have to be a member of the association, which would have to have a 'legally protected interest', and a case could only be brought in order to recognise certain rights of the member or to relieve the member of certain duties.

c) Actio popularis

In Iceland, national law does not allow associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent in cases concerning discrimination falling under the scope of the directives.

For actio popularis to be allowed, it has to be specially provided for by law. Examples include the Act on Municipal Elections No. 5/1998 that provides for complaints concerning elections, and the Act on the Review Committee on Environmental Issues and Resources No. 130/2011 which provides for actio popularis in relation to certain administrative decisions for environmental and outdoor activity organisations having at least thirty members.

d) Class action

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

Amendments made to the Act on Civil Procedure in 2010 provide for a form of class action. Three or more people who have claims against a party stemming from the same incident, situation, etc. can establish an 'action association' (Icelandic: *málsóknarfélag*) which can bring the case on the claimants' behalf.<sup>80</sup>

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

In Iceland, national law does not require or permit a shift of the burden of proof from the complainant to the respondent.

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<sup>77</sup> See, Supreme Court of Iceland, *the Icelandic Federation of People with Disabilities v. the Republic of Iceland*, Case No. 125/2000, 19 December 2000 and Supreme Court of Iceland, *Atli Jónsson et al. and the Icelandic Nature Conservation Society vs the Icelandic State*, Case No. 231/2002, 12 June 2002, where a nature conservation organisation was not deemed to have a 'legally protected interest' in a case concerning an administrative decision permitting a large damming project, simply with reference to their aim of nature conservation.

<sup>78</sup> Iceland, Act on Civil Procedure No. 91/1991, 26 March 1991, Article 16(1).

<sup>79</sup> Iceland, Act on Civil Procedure, 26 March 1991, Article 25(3). See e.g. Supreme Court of Iceland, *the Icelandic Federation of People with Disabilities v. the Republic of Iceland*, Case No. 125/2000, 19 December 2000.

<sup>80</sup> Iceland, Act on Civil Procedure No. 19/1991, 26 March 1991, Article 19a.

No provisions setting out the shift of the burden of proof in discrimination cases concerning the grounds enumerated in the directives are found in national law. The Gender Equality Act provides for the shift of the burden of proof in gender discrimination cases.

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

In Iceland, there are no legal measures of protection against victimisation in relation to the protected grounds under Directives 2000/43 and 2000/78.

The only provision concerning discrimination cases and victimisation is found in Article 27 of the Gender Equality Act. Employers may not dismiss employees for demanding redress on the basis of the act. Furthermore, employers shall ensure that employees are not subjected to injustice in their work – e.g. as regards job security, terms of employment or performance assessment – on the grounds of having submitted a complaint or provided information regarding gender-based or sexual harassment, or sexual discrimination. If there is reason to believe that this provision has been violated, the employer shall demonstrate that the dismissal, or alleged injustice, is not based on the employee's demand for redress, complaint or provision of information regarding gender-based or sexual harassment, or sexual discrimination. This shall not apply if the dismissal takes place more than one year after the employee made his or her demand for redress. To date, this provision has not been applied.

#### **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

Directives 2000/43/EC and 2000/78/EC have not been transposed. However, discrimination could give rise to civil liability, falling under the general rules. The courts may rule that a certain act or omission<sup>81</sup> should be remedied and award the victim material damages. Moral damages can only be awarded on the basis of a specific legal provision, e.g. Article 31 of the Act on Equal Status and Equal Rights of Women and Men No. 10/2008.

Complaints concerning violations of the Act on the Affairs of People with Disabilities No. 59/1992 and the Act on the Affairs of the Elderly No. 125/1999 in relation to services can be brought to the Complaints Committee on Social Affairs and Housing or to the Ministry of Welfare. There are no prescribed sanctions; the committee simply decides on whether the administrative decision in question is in accordance with the law and if not, asks the institution or body to provide the service in accordance with the relevant law.

Violations of the General Penal Code provisions on hate speech and discrimination in services are subject to fines or imprisonment of up to two and a half years and six months, respectively. Violations of prohibition of public insults against the beliefs or religion of lawfully established religious communities are subject to fines or imprisonment of up to three months. Fines are determined based on the guilty party's income, assets, financial status and commitments, and other factors that may influence their ability to pay, as well as the financial gain or savings that the criminal act entailed or that had been envisaged.<sup>82</sup> The Supreme Court has only decided one case concerning Article 233a (none on Articles 180 or 125). In that case, the young age and clean criminal record of the accused, the fact that the derogatory statements were made in the name of an organisation and that he did

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<sup>81</sup> See, e.g. Supreme Court of Iceland, *Berglind Stefánsdóttir and the Association of the Deaf v. the State Broadcasting Services*, Case No. 151/1999, 6 May 1999, where the court held, inter alia, with reference to the duty of the State Broadcasting Service to broadcast election debates set out in the Broadcasting Act, and Article 65 of the Constitution, that the State Broadcasting Service was to ensure broadcasting of such debates in sign language.

<sup>82</sup> Iceland, General Penal Code [Almenn hegningarlög] No. 19/1940, 12 February 1940, Articles 180, 233a and 51.

not initiate the media interview where the statements were made, was taken into account when the punishment of a fine of ISK 100 000 (approximately EUR 700) or six days in prison was issued.<sup>83</sup>

b) Ceiling and amount of compensation

Directives 2000/43/EC and 2000/78/EC have not been transposed and no explicit provisions set out the compensation for discrimination. In the Icelandic system, there is no ceiling on the maximum amounts of damages awarded – although rules on the amounts of damages because of disability are fixed – as the aim of damages is to compensate the victim for all material damage suffered.<sup>84</sup> The Icelandic legal system does not issue punitive damages. The ordinary rules on damages would apply in cases concerning prohibited discrimination. The general principle concerning damages is that a person is liable for damages if the following conditions apply: the act is illegal, and the damage done is a probable consequence of his or her actions and harms interests protected by rules on damages. Furthermore, it is also a condition that subjective mitigating factors, such as youth or limited mental capacity, do not apply.

In determining damages, the judge can take into account factors such as the claimant's contributory fault and failure to mitigate loss. Ordinary damages can be reduced if justified by the situation of the respondent or in other extraordinary circumstances. In such a case, the extent and nature of the damages, the situation of the victim, the interests of the victim, insurance and other relevant factors should be taken into account.<sup>85</sup>

The Act on Payment from the State Treasury of Damages to Victims of Crime No. 69/1995 stipulates that the State Treasury will pay damages incurred under the General Penal Code, with some exceptions.<sup>86</sup> The act does not apply to moral damages under Article 233a of the General Penal Code. In criminal proceedings based on Articles 233a and 180 of the General Penal Code, in theory, the court may also handle claims for damages.

Anyone who, deliberately or through negligence, violates the Gender Equality Act shall be liable to pay compensation according to the ordinary rules. Furthermore, the party in question may be sentenced to pay the affected party compensation for non-pecuniary loss, if appropriate, in addition to compensation for financial loss.<sup>87</sup> The majority of cases brought on the basis of the Gender Equality Act concern appointments. The Supreme Court has established that if an appointment procedure is not in accordance with the law and is conducted in an inconsiderate manner, this may give rise to a claim for moral damages.<sup>88</sup>

c) Assessment of the sanctions

Directives 2000/43/EC and 2000/78/EC have not been transposed - no explicit provisions set out sanctions for discrimination. As very few discrimination cases have been heard, an assessment of whether sanctions are effective, proportionate or dissuasive is difficult.

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<sup>83</sup> Supreme Court of Iceland, *The Prosecutor v. Hlynur Freyr Vigfússon*, Case No. 461/2001, 4 April 2002.

<sup>84</sup> See e.g. Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, Case No. 177/1998, 4 February 1999, where the court ruled that the failure on the part of the University of Iceland to take adequate special measures to ensure that a student with disabilities could study there violated the legislation on the rights of persons with disabilities and Article 65 of the Constitution. The student was awarded compensation.

<sup>85</sup> Iceland, Act on Damages [Skaðabótalög] No. 50/1993, 19 May 1993, Article 24.

<sup>86</sup> Act on Payment from the State Treasury of Damages to Victims of Crime [Lög um greiðslu ríkissjóðs á bótum til þolenda afbrota] No. 69/1995, 10 March 1995, Article 1.

<sup>87</sup> Act on Equal Status and Equal Rights of Women and Men No. 10/2008, 6 March, 2008, Article 31.

<sup>88</sup> See e.g. Supreme Court of Iceland, Judgments H1997:1544, H1999:3985, H2000:869 and Judgment of 18 March 2004 (Case No. 275/2003).



## **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

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin. The Parliamentary Ombudsman may deal with equality and/or discrimination in relation to administrative procedure. No human rights commission is in place.

The Icelandic Human Rights Centre, an NGO, has assumed many of the functions of a national human rights institution (NHRI), albeit without the relevant powers, independence and financing being established by statute. A special Multicultural Centre, established by the state, is charged with facilitating communications between individuals of different backgrounds, and enhancing the services provided to foreign citizens residing in Iceland and to those interested in moving to Iceland. The Multicultural Centre offers assistance to those seeking information about daily life in Iceland, provides information about the administration and is of service to foreign citizens moving to or from the country.

It should be noted that the European Commission against Racism and Intolerance has strongly recommended that Iceland establish a specialised body to combat racism and discrimination on the grounds of race colour, language, religion, nationality or national or ethnic origin, which could form part of a body with wider objectives in the field of human rights generally.<sup>89</sup> The Council of Europe Commissioner for Human Rights has also urged Iceland to adopt comprehensive equal treatment legislation and set up an effective and independent national equality body to promote its implementation.<sup>90</sup> Similarly, United Nations human rights bodies such as the United Nations Committee on the Elimination of Racial Discrimination and the Human Rights Committee have urged Iceland to formally establish a national human rights institution to, inter alia, combat racism and provide a complaints mechanism.<sup>91</sup> There is currently no political debate on the need to establish a specialised body to discuss complaints concerning the grounds covered by the directives.

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

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

- c) Grounds covered by the designated body/bodies

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

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

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

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<sup>89</sup> Council of Europe, European Commission against Racism and Intolerance (ECRI): *Report on Iceland*, CRI (2012)1.

<sup>90</sup> Council of Europe: Press release by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Iceland (7-9 January 2012). Available at: [www.coe.int/web/commissioner/country-report/iceland](http://www.coe.int/web/commissioner/country-report/iceland).

<sup>91</sup> United Nations, Committee on the Elimination of Racial Discrimination, *Concluding Observations; Iceland*, CERD/C/ISL/CO/19-20, 2010 and *Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, Iceland*, CCPR/C/ISL/CO/5.

e) Legal standing of the designated body/bodies

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

f) Quasi-judicial competences

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

g) Registration by the body/bodies of complaints and decisions

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

h) Roma and Travellers

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

## **8 IMPLEMENTATION ISSUES**

### **8.1 Dissemination of information, dialogue with NGOs and between social partners**

As the directives have not been transposed, no specific action has been taken to disseminate information about legal protection against discrimination to the general public, to encourage dialogue with NGOs or to promote dialogue with social partners in line with the directives. However, in this context reference can be made to Article 1(2) of the Act on the Affairs of Persons with Disabilities No. 59/1992, where it is set out that the authorities shall ensure that the national associations of persons with disabilities shall influence all policies and decisions that have an impact on them. Similar provisions are not found in other acts governing the affairs of disadvantaged groups such as the elderly and foreigners.

There is no designated body or organisation appointed at the national level to address Roma issues.

### **8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

#### **a) Mechanisms**

As the directives have not been transposed no specific mechanisms have been put in place to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations and employers' associations do not conflict with the principle of equal treatment on the basis of Article 14 Directive 2000/43 and Article 16 Directive 2000/78.

#### **b) Rules contrary to the principle of equality**

Although Icelandic anti-discrimination legislation is fragmented and incomplete, no laws, regulations or rules in force are clearly in breach of the principle of equality with respect to the grounds enumerated in the directives.

## 9 COORDINATION AT NATIONAL LEVEL

The Ministry of Welfare and Ministry of the Interior are responsible for coordinating issues regarding anti-discrimination in relation to the grounds covered by Directives 2000/43/EC and 2000/78/EC. There is currently no anti-discrimination action plan in force and work on a comprehensive anti-discrimination law has been underway for several years. The current Minister of Welfare pledged to present two anti-discrimination bills in 2014 covering the personal and material scope of the directives, but these did not materialise. Then she envisaged that they would be presented in the Althing (Icelandic Parliament) in the autumn of 2015. This did not turn out to be the case, but the bills are on the Government's list of draft legislation to be presented at the Althing's 2016 spring session. It is envisaged that the bills will cover the material and personal scope of the EU Directives. It is not clear why the anti-discrimination bills have failed to materialise year after year, as the issue does not appear to be very controversial politically.

Although the directives have not been transposed into national law, Iceland has adopted various measures aimed at improving the status of the disadvantaged groups listed in the directives. Although a specified anti-racism action plan has not been adopted, the action plan on the issues of immigrants, adopted through a parliamentary resolution in 2008, contains some measures to combat racism. The plan describes more than 90 actions that aim to promote the integration of immigrants and their full participation in Icelandic society. Four actions in particular aim to combat prejudice and discrimination: a campaign against prejudice, education and awareness raising against prejudice, civic instruction (information package) for immigrants, and educational and awareness-raising material on gender equality issues for immigrants.<sup>92</sup> Furthermore, a special fund is operated to support research and development projects related to immigration issues. In addition, according to the Ministry of Welfare, preparations are under way for the ratification of the Framework Convention for the Protection of National Minorities.

Local authorities are also placing increased emphasis on immigration issues. The Icelandic Association of Local Authorities (all Icelandic municipalities are members) has adopted a policy on immigration and many municipalities have adopted individual policies based on this document.<sup>93</sup> Such policies aim to ensure that the interests of immigrants are guaranteed and that they know their rights and obligations as citizens and have easy access to municipal services. The key objectives are for immigrants to enjoy the same status as other residents and be able to participate fully in the community in each municipality.

Mention should also be made of the establishment of the Immigration and Asylum Appeals Board. Its objective includes ensuring an independent review of all the decisions of the Directorate of Immigration that were taken on the basis of the Act on Foreigners No. 96/2002.<sup>94</sup> The board started receiving cases on 1 January 2015. By the end of 2015 it had received 244 cases, mainly dealing with asylum decisions made by the Directorate of Immigration.

The Act on the Affairs of Persons with Disabilities No. 59/1992 was amended in 2011 to, inter alia, transfer the responsibility for the affairs of persons with disabilities from the state to local authorities on 1 January 2012. The Minister of Welfare is responsible for policymaking in cooperation with the Icelandic Association of Local Authorities. The national interest associations of people with disabilities shall be consulted with regard to all

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<sup>92</sup> Parliamentary resolution on an action plan on the affairs of immigrants of 29 May 2008. Available on the website of the Icelandic Parliament: [www.althingi.is/altext/135/s/1226.html](http://www.althingi.is/altext/135/s/1226.html).

<sup>93</sup> *Stefnumótun í málefnum innflytjenda*, 2009. Available on the website of the Icelandic Association of Local Authorities: [www.samband.is/media/stefnumotun-sambandsins/Stefnumotun\\_innflytjendur.pdf](http://www.samband.is/media/stefnumotun-sambandsins/Stefnumotun_innflytjendur.pdf).

<sup>94</sup> Article 1, Draft bill amending the Act on Foreigners No. 96/2002, Doc. 457, presented at the 143rd Session of Althing, 2013–2014. Available on the website of the Icelandic Parliament: [www.althingi.is/altext/143/s/0457.html](http://www.althingi.is/altext/143/s/0457.html).

decisions and policies that concern persons with disabilities. In conjunction with the amendments to the Act on the Affairs of Persons with Disabilities, the Act on Rights Advocates for Persons with Disabilities No. 88/2011 was adopted. The law provides measures to safeguard the rights of persons with disabilities and a large-scale pilot project on the implementation of personal assistance services is underway. Furthermore, work on the ratification of the UN Convention on the Rights of Persons with Disabilities is underway, and a comprehensive Plan of Action on Disabled Persons' Affairs was in place until the end of 2015. The plan of action takes account of the UN Convention on the Rights of Persons with Disabilities and other international human rights obligations of the Icelandic State. Emphasis is placed on human rights and the prohibition of discrimination on the basis of disability; 'disability' is a concept undergoing evolution and change, and it should be recognised that the issue of disability arises in the interaction between people with reduced function, their environment and attitudes which prevent full and active participation in society on an equal basis with others. The plan of action also takes into account recent developments in services for people with disabilities, focusing on the individual, diversity and the autonomy of persons with disabilities. The Minister of Social Affairs and Housing has established a committee to draft a new five-year action plan, which is due to enter into force in 2016. The committee is composed of representatives from disability NGOs, the Association of Local Authorities, the Ministry of Welfare and the City of Reykjavik.

For some time, preparations were underway to transfer responsibility for the affairs of elderly people from the state to local authorities, but the complexities arising from the implementation of services for disabled people and inadequate funding from the state have undermined these efforts.

Lastly, the adoption of the Act on the Judicial Status of Transgender Persons No. 57/2012 in 2012 was a welcome development, and in 2014 the General Penal Code No. 19/1940 was amended to include gender identity as a ground for discrimination. Article 233a stipulates that any person who, by mockery, slander, insult, threat or other means, publicly attacks a person or group of persons on the grounds of their nationality, colour, race, religion, sexual orientation or *gender identity* shall be liable to a fine or imprisonment for a term not exceeding two years. Similarly, Article 180 of the General Penal Code No. 19/1940 provides that denying a person service, or access to any public area or place intended for general public use, on account of that person's nationality, colour, race, religion, sexual orientation or *gender identity* is punishable by fines or imprisonment of up to six months.<sup>95</sup>

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<sup>95</sup> Iceland, Act amending the General Penal Code No. 19/1940, as amended (discrimination based on gender identity and protocol to the European Convention on Human Rights on cybercrime) [Almenn hegningarlög (kynvitund)] No. 13/2014, 10 February 2014. Available at: [www.althingi.is/alttext/stjt/2014.013.html](http://www.althingi.is/alttext/stjt/2014.013.html).

## **10 CURRENT BEST PRACTICES**

There is no comprehensive anti-discrimination legislation in place based on the directives. As a result, there are no best practice examples to be listed.

## 11 SENSITIVE OR CONTROVERSIAL ISSUES

### 11.1 Potential breaches of the directives (if any)

There are no obvious breaches or controversial issues relevant to the scope of the directives. However, as there is no comprehensive anti-discrimination legislation in place, cases are not brought and thus discriminatory practices are not made public or sanctioned.

Currently, approximately 10 % of those living in Iceland are first or second generation immigrants.<sup>96</sup> The Ministry of Welfare has established that following the economic crisis, more immigrants are now unemployed and that long-term unemployment among them is more common than it is for Icelandic citizens. There are indications that the number of immigrants seeking assistance from charities is growing, among other things because they are not adequately informed about public welfare services. In addition, more children of immigrant origin are in need of assistance from the Child Protection Services. The Ministry of Welfare has concluded that Icelandic society is becoming increasingly diverse and that welfare services need to adapt to address this new reality.<sup>97</sup> A study carried out by the Icelandic Red Cross in 2014, reveals that out of those polled, 44 % thought that people of immigrant origin were the group that suffers most prejudice in Iceland.<sup>98</sup>

A recent study carried out by the Multicultural Centre reveals that one in five immigrants experience negative attitudes on a regular basis because of their origin. Of those participating in the study, 77 % were of the view that they had experienced negative attitudes because of their limited knowledge of Icelandic and 54 % thought that negative attitudes towards them were based on their origin or nationality. It is an issue of concern that 14 % had experienced negative attitudes when interacting with staff of nursery schools and 19 % when interacting with primary-school staff. As part of the study, public officials were also polled; 55 % of state officials participating in the study thought that immigrants are sometimes or often met with prejudice in their dealings with public bodies and 43 % of municipal employees were of this view. It is also notable that the study demonstrates that on average, the income of immigrants is lower than that of the general population and only a small minority hold jobs where their education is fully utilised. When it comes to housing, 31 % of the respondents, or someone close to them, had experienced negative attitudes when trying to rent accommodation.<sup>99</sup>

Similarly, the Centre for Gender Equality conducted a study on the attitudes of heads of companies/bodies with more than 25 employees towards equality and discrimination in the Icelandic labour market and in their respective enterprises in 2013. The study reveals that 90.6 % of men thought that their workplace was very equal and 74.7 % of women were of this view. However, when asked about discrimination in the labour market in general, 86 % thought that people were discriminated against on one of the following grounds: gender (63.8 %), national origin (55.1 %), age (44.1 %), disability (38.6 %), race (38.8 %), sexual orientation (22.4 %) and religion/belief (20.5 %).<sup>100</sup>

A comprehensive study from 2009 reveals similar trends, 56.9 % of Icelanders thought discrimination and/or harassment based on race or ethnic origin was common, 41.3 % discrimination based on sexual orientation, 35.9 % discrimination based on disability, 25.4 % age discrimination (older than 60), 25.3 % gender discrimination and 23.4 %

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<sup>96</sup> *Statistical Yearbook Iceland 2015* (2015). Reykjavik: Statistics Iceland, p. 38.

<sup>97</sup> *Aðgerðir til að vinna gegn fátækt; tillögur byggðar á skýrslunni Farsæld; Baráttan gegn fátækt á Íslandi.* (2013). Reykjavik: Ministry of Welfare.

<sup>98</sup> *Hvar þrengir að? Könnun á hvaða hópar í samfélaginu eigi helst undir högg að sækja*, (2014). Reykjavik: Icelandic Red Cross.

<sup>99</sup> Elsa Arnardóttir and Rúnar Helgi Haraldsson (2014). *Origin and Multiple Discrimination*. Ísafjörður: The Icelandic Multicultural Centre.

<sup>100</sup> Marta Einarsdóttir (2014). *Jafnrétti á vinnustöðum á Íslandi; Rannsókn á viðhorfi stjórnenda fyrirtækja til jafnréttis og mismununar*. Akureyri: University of Akureyri Research Centre.

discrimination based on religion or belief.<sup>101</sup> A Eurobarometer study published in 2011 further demonstrates that Icelanders have witnessed or experienced more discrimination because of older age than the EU average in the workplace, in relation to access to education and training, and in their leisure time.<sup>102</sup>

According to a 2014 study, half of Icelandic people with disabilities live in poverty and 50 % of people with disabilities do not participate in the labour market or activities outside the home during the day. Only 20 % receive services from the municipalities; 78 % say they do not receive services, whilst 40 % find that they need services.<sup>103</sup> Another study from 2010 demonstrates that 44 % of respondents experienced some (and 26 % severe) social exclusion. Of the respondents, 45 % experienced prejudice because of their disability and 76 % experienced prejudice against people with disabilities in society in general.<sup>104</sup> The Communication Centre for the Deaf and Hard of Hearing – a public body under the auspices of the Ministry of Education, Science and Culture – provides sign-language interpreting services for deaf people. Interpreting services relating to all public services should be provided where needed, free of charge. For the private sphere, e.g. in relation to employment issues, participation in courses and housing society meetings, fees for interpreting services can be covered by a special state fund. It should be noted that in 2014 the fund was exhausted by September, so not all applications for interpretation could be covered. It should also be stressed that disability benefits and old-age pensions are significantly lower than the minimum income considered necessary to cover normal living costs as calculated by the Ministry of Welfare.

In 2013, the Icelandic Muslim Association was finally allocated land to build a mosque by the Reykjavik City Council. The association first applied in 2000. This is a positive development, but indications of growing anti-Islamic sentiment are an issue of concern. In November 2013, a group of people placed pig heads and a bloodied Koran on the plot designated for the mosque. One individual was identified, but the investigation of the case concluded without prosecution. More disconcertingly, in the municipal elections of 2014, the Progressive Party gained eight percentage points and two seats on the Reykjavik Municipal City Council campaigning on, inter alia, an anti-Islamic platform and stating that the allocation of land for the mosque should be withdrawn. On a positive note, the two city councillors have not actively promoted racist or anti-Islamic issues since taking office.

Religious communities have also complained that the differentiated payments to registered religious organisations, on the one hand, and to the National Church of Iceland (the state church), on the other, constitute unlawful discrimination. Ásatrúarfélagið, the Norse pagan denomination, brought a court case arguing that Articles 62 and 65 of the Constitution should be interpreted together to mean that under the constitutional equality provision, it was unlawful to discriminate between religious organisations in legislation regarding financial support to them. The Supreme Court ruled that as the functions of Ásatrúarfélagið and its duties towards the community (cf. the Act on Registered Religious Associations No. 108/1999) were not comparable with those of the legally-prescribed functions and obligations of the National Church of Iceland, funding from the State Treasury to the National Church to an extent over and above that received by other religious communities did not constitute a violation of the rule of equality set forth in Article 65 of the Constitution. In short, the court ruled that state support and protection for the National Church of Iceland, according to Article 62 of the Constitution, does not constitute a violation of the freedom of religion and the principle of equality.<sup>105</sup>

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<sup>101</sup> Capacent Gallup, *Könnun um viðhorf til mismununar* (2009). Reykjavik: Ministry of Welfare and the Icelandic Human Rights Centre.

<sup>102</sup> *Virgni aldraðra*, (2011). Eurobarometer study, accessible on the website of the Ministry of the Interior: [www.velferdarraduneyti.is/media/frettatengt2012/Eurobarometer-active-ageing-2012.pdf](http://www.velferdarraduneyti.is/media/frettatengt2012/Eurobarometer-active-ageing-2012.pdf), p.2.

<sup>103</sup> *Disabled people as municipal inhabitants* (2014). Study carried out for the Icelandic Association of Disabled People. Reykjavik: University of Iceland.

<sup>104</sup> *Disability and a functioning welfare policy* (2010). Reykjavik: University of Iceland.

<sup>105</sup> Supreme Court of Iceland, *Ásatrúarfélagið v. the Icelandic State*, Case No. 109/2007, 25 October 2007.



The reality described above is not reflected in the current legislation, and no cases alleging discrimination based on race, religion or belief, age or sexual orientation were heard in 2015. One important case concerning disability was heard – see *12.2 Case law* below.

### **11.2 Other issues of concern**

The directives have not been transposed. The principle of equality is enshrined in Article 65 of the Icelandic Constitution, but comprehensive anti-discrimination legislation, ensuring protection against discrimination on the grounds of race or ethnic origin, religion or belief, age, disability or sexual orientation, is lacking. A handful of general law provisions stemming from the constitutional equality provision are in force, but these commonly do not contain an exhaustive enumeration of prohibited grounds for discrimination and are limited to a particular law sector.

No equality body has been established to promote equality and non-discrimination on the grounds of race or ethnic origin, religion or belief, age, disability or sexual orientation. The Centre for Gender Equality deals with gender discrimination only.

## 12 LATEST DEVELOPMENTS IN 2015

Directives 2000/43/EC and 2000/78/EC have not yet been transposed into domestic law, although work to this end is underway. The Minister of Welfare announced that she would present two draft bills on anti-discrimination in Parliament in 2014, but these did not materialise. She then planned to present them in the autumn of 2015, but again this did not happen. The bills were then included on the Government's list of draft legislation to be presented in Parliament in the spring of 2016.

### 12.1 Legislative amendments

There were no important legislative developments related to anti-discrimination in 2015. It should be noted, however, that an act amending several pieces of legislation in order to prepare for the ratification of the United Nation Convention on the Rights of Persons with Disabilities was adopted in December 2015. The legislation does not contain any new substantive rights or anti-discrimination provisions; it simply updates the terminology used when referring to people with disabilities in different pieces of legislation, e.g. 'disabled people' instead of 'handicapped' etc.<sup>106</sup>

### 12.2 Case law

No discrimination cases relating directly to the scope of the directives were decided in 2015. However, in relation to disability, mention should be made of the case of *Snædís Rán Hjartardóttir v. The Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavik*.

**Name of court:** Reykjavik District Court

**Date of decision:** 30 June 2015

**Names of the parties:** Snædís Rán Hjartardóttir v. The Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavik

**Reference number:** Case No. E-327/2015

**Link:** [www.domstolar.is/domar/domur/?id=f20c3c58-0227-4e8b-8b8b-c1e5f50a2a86](http://www.domstolar.is/domar/domur/?id=f20c3c58-0227-4e8b-8b8b-c1e5f50a2a86)

**Brief summary:** Article 76, paragraph 1 of the Icelandic Constitution sets out that the law shall guarantee everyone the assistance that they require in the case of sickness, invalidity, infirmity by reason of old age, unemployment or similar circumstances. Deafblind people such as the applicant rely on the services of specialised tactile sign interpreters to communicate and are entitled to certain minimum assistance regardless of means – cf. Article 76 and the equality provision of the Constitution (Art. 65). The Communication Centre for the Deaf and Hard of Hearing – a public body under the auspices of the Ministry of Education – is charged with providing sign-language interpreting services for deaf and deafblind people. Interpreting services relating to all public services are to be provided where they are needed free of charge. However, in recent years, the annual allocation of funds from the state budget to the centre has not been sufficient to cover its needs. The centre's policy is to provide interpreting services on application, without any discrimination and free of charge, until the funds run out. The result is that those in need of services early in the year get them, but those with the same or greater need applying later in the year do not. In this case, the applicant claimed that the Communication Centre for the Deaf and Hard of Hearing had unlawfully denied free tactile sign interpretation from 7 October 2014. The District Court of Reykjavik found that, in all likelihood, the constitutionally protected minimum services that users were entitled to in 2014 could not be covered by the limited funds allocated to the centre. As national law does not clearly define what constitutes minimum assistance, all applications for interpretation services are accepted until the funds run out, leaving those in need later in the year, such as the applicant, to pay for the

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<sup>106</sup> Iceland, Act No. 115/2015 amending several legislative acts in order to prepare for the ratification of the UN Convention on the Rights of Persons with Disabilities of 11 December 2015 [Lög um breytingu á ýmsum lögum til undirbúnings fullgildingú samnings Sameinuðu þjóðanna um réttindi fatlaðs fólks], 11 December 2015.

services themselves. As a consequence of this approach, the distinction between constitutionally protected minimum social assistance, to be provided free of charge and without discrimination, and other services which applicants pay for is blurred in the case of free sign-language interpretation services. Furthermore, this procedure discriminates between applicants on the basis of what time of year they need the services, which is in violation of the equality provisions of the Constitution and constitutional and administrative law. Taking into account the failure of the state to regulate the minimum rights of people with disabilities to adequate sign-language interpreting services, the court found that the state should bear the cost of the services provided to the applicant after October 2014. Because she had been refused free interpretation services, the applicant's right to minimum assistance in accordance with Article 76, paragraph 1 of the Constitution had been violated. This right trumps provisions in the state budget governing allocations to free interpretation services. The court also awarded the applicant ISK 550 000 (approx. EUR 3 750) in non-pecuniary damages, as the state had failed to fulfil its obligation to establish a system to guarantee her minimum assistance (cf. Article 76, para.1), resulting in diminished quality of life and in social exclusion.

This is an important case. It has established that the funding and organisation of sign-language interpreting services is inadequate and discriminatory, which is in breach of the right to minimum assistance as enshrined in the Constitution and in the equality provisions of administrative law. The state will have to increase its funding for these services and make legislative changes to define what constitutes minimum rights and adequate services when it comes to the right to sign-language interpretation.

**Name of court:** Northern District Court

**Date of decision:** 10 April 2015

**Names of the parties:** The Municipality of Akureyri v. Snorri Óskarsson and the Ministry of the Interior

**Reference number:** Case No. E-181/2014

**Link:** [www.domstolar.is/default.aspx?pageid=347c3bb1-8926-11e5-80c6-005056bc6a40&id=a7c6f45f-ab65-4636-8fe7-57239686bda6](http://www.domstolar.is/default.aspx?pageid=347c3bb1-8926-11e5-80c6-005056bc6a40&id=a7c6f45f-ab65-4636-8fe7-57239686bda6)

**Brief summary:** This case concerned the dismissal of a school teacher who had made homophobic remarks on his blog. The school authorities considered this hate speech incompatible with his role and responsibilities as a teacher and in breach of several rules and codes applicable to the job. The teacher argued that the dismissal was unlawful as, inter alia, it was not proven that the comments, which had been made in his free time, affected his work, and that the dismissal had not been carried out in accordance with the law and with the applicable administrative procedure. He first complained to the Ministry of the Interior, which ruled in his favour. The case was then brought to the Northern District Court, which also ruled in his favour, arguing, inter alia, that it had not been established by the school authorities that the comments on the private blog demonstrated that the teacher would display discriminatory or unfair behaviour in the classroom. The dismissal was deemed unlawful. An appeal is pending.

## 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: Iceland**

**Date: 31 December 2015**

<b>Title of legislation (including amending legislation)</b>	Title of the law: Constitution of the Republic of Iceland No. 33/1944. Abbreviation: The Constitution. Date of adoption: 17.6.1944 Latest amendments: 18.7.2013 Entry into force: 17.6.1944 Web link: <a href="http://www.althingi.is/lagas/nuna/1944033.html">www.althingi.is/lagas/nuna/1944033.html</a> . Grounds covered: Sex, religion, opinion, national origin, race, colour, financial status, parentage or other status.
	Constitution.
	Material scope: General.
	Principal content: Equality before the law and in the enjoyment of human rights.
<b>Title of legislation (including amending legislation)</b>	Title of the law: Act incorporating the ECHR into domestic law No. 62/1994. Abbreviation: None. Date of adoption: 19.5.1994 Latest amendments: 1.6.2010 Entry into force: 30.5.1994 Web link: <a href="http://www.althingi.is/lagas/144a/1994062.html">www.althingi.is/lagas/144a/1994062.html</a> . Grounds covered: Sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
	Civil law.
	Material scope: Limited to rights enshrined in the ECHR.
	Principal content: Prohibition of discrimination in the enjoyment of the rights set out in ECHR.
<b>Title of legislation (including amending legislation)</b>	Title of the law: Act on Administrative Procedures No. 37/1993. Abbreviation: None. Date of adoption: 30.4.1993 Latest amendments: 1.1.2013 Entry into force: 1.1.1994 Web link: <a href="http://www.althingi.is/lagas/nuna/1993037.html">www.althingi.is/lagas/nuna/1993037.html</a> . Grounds covered: Inter alia, race, colour, national origin, religion, political opinion, social status and family origins.
	Administrative law
	Material scope: Administrative decisions.
	Principal content: Prohibition of discriminatory administrative decisions.
<b>Title of legislation (including amending legislation)</b>	Title of the law: General Penal Code No. 19/1940. Abbreviation: None. Date of adoption: 12.2.1940 Latest amendments: 16.12.2015 Entry into force: 12.8.1940 Web link: <a href="http://www.althingi.is/lagas/nuna/1940019.html">www.althingi.is/lagas/nuna/1940019.html</a> . Grounds covered: Nationality, colour, race, religion, sexual orientation, gender identity.
	Criminal law.
	Material scope:
	– Harassment and hate speech.

	<ul style="list-style-type: none"> <li>– Service or access to any public area or place intended for general public use.</li> <li>– Public insults towards religious communities.</li> </ul>
	Principal content: <ul style="list-style-type: none"> <li>– Prohibition of harassment and hate speech.</li> <li>– Criminalization of denying a person service or access to any public area or place intended for general public use.</li> <li>– Criminalization of publicly insulting a religious community.</li> </ul>
<b>Title of legislation (including amending legislation)</b>	Title of the law: Act on Primary Schools No. 91/2008. Abbreviation: None. Date of adoption: 12.6.2008 Latest amendments: 16.12.2015 Entry into force: 1.7.2008 Web link: <a href="http://www.althingi.is/lagas/nuna/2008091.html">www.althingi.is/lagas/nuna/2008091.html</a> . Grounds covered: National origin, sex, sexual orientation, residence, social class, religion, health, disability or other status.
	Civil law.
	Material scope: Primary education.
	Principal content: Prohibition of discrimination in education.
<b>Title of legislation (including amending legislation)</b>	Title of the law: Act on the Rights of Patients No. 74/1997. Abbreviation: None. Date of adoption: 28.5.1997 Latest amendments: 1.1.2015 Entry into force: 1.7.1997 Web link: <a href="http://www.althingi.is/lagas/nuna/1997074.html">www.althingi.is/lagas/nuna/1997074.html</a> . Grounds covered: Sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status.
	Civil law.
	Material scope: Access to healthcare.
	Principal content: Prohibition of discrimination in the provision of healthcare.
<b>Title of legislation (including amending legislation)</b>	Title of the law: Postal Service Act No. 19/2002. Abbreviation: None. Date of adoption: 3.3.2002 Latest amendments: 30.09.2011 Entry into force: 18.3.2002 Web link: <a href="http://www.althingi.is/lagas/nuna/2002019.html">www.althingi.is/lagas/nuna/2002019.html</a> . Grounds covered: Political, religious or ideological nature.
	Civil law.
	Material scope: Postal service.
	Principal content: Prohibition of discrimination in provision of postal services.
	Title of the law: Act on the Media No. 38/2011. Abbreviation: None. Date of adoption: 20.4.2011 Latest amendments: 12.04.2013 Entry into force: 21.4.2011 Web link: <a href="http://www.althingi.is/lagas/nuna/2011038.html">www.althingi.is/lagas/nuna/2011038.html</a> . Grounds covered: Race, sex, sexual orientation, religion, nationality, opinion or cultural, economic social or other status in society.
	Civil law.
	Material scope: Organisation and work of the media.
	Principal content: Anti-hate speech.
	Title of the law: Act on the Affairs of Persons with Disabilities No. 59/1992. Abbreviation: None.

<p>Date of adoption: 2.6.1992  Latest amendments: 25.7.2015  Entry into force: 1.9.1992  Web link: <a href="http://www.althingi.is/lagas/nuna/1992059.html">www.althingi.is/lagas/nuna/1992059.html</a>  Grounds covered: Disability.</p>
Civil law.
Material scope: Living conditions, employment, housing, assistance, education, etc.
Principal content: Provision of services, assistance, etc. to people with disabilities.
<p>Title of the law: Act on Municipal Social Services No. 40/1991.  Abbreviation: None.  Date of adoption: 27.3.1991  Latest amendments: 16.5.2015  Entry into force: 17.4.1991  Web link: <a href="http://www.althingi.is/lagas/nuna/1991040.html">www.althingi.is/lagas/nuna/1991040.html</a>.  Grounds covered: Disability.</p>
Civil law.
Material scope: Social services.
Principal content: Provision and organisation of social services.
<p>Title of the law: Act on the Affairs of the Elderly No. 125/1999.  Abbreviation: None.  Date of adoption: 31.12.1999  Latest amendments: 1.1.2015  Entry into force: 11.1.2000  Web link: <a href="http://www.althingi.is/lagas/nuna/1999125.html">www.althingi.is/lagas/nuna/1999125.html</a>.  Grounds covered: Age.</p>
Civil law.
Material scope: Services, housing, healthcare, etc.
Principal content: Provision and organisation of services, housing, etc. for older persons.
<p>Title of the law: Act Amending Laws relating to the Judicial Status of Homosexual Persons No. 65/2006.  Abbreviation: None.  Date of adoption: 14.6.2006  Latest amendments: None.  Entry into force: 27.6.2006  Web link: <a href="http://www.althingi.is/altext/132/s/1445.html">www.althingi.is/altext/132/s/1445.html</a>.  Grounds covered: Sexual orientation.</p>
Civil law.
Material scope: Equality before the law in various areas.
Principal content: Amending legislation to ensure equality for homosexual persons.
<p>Title of the law: Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997.  Abbreviation: None.  Date of adoption: 23.12.1997  Latest amendments: 1.10.2015  Entry into force: 1.7.1998  Web link: <a href="http://www.althingi.is/lagas/nuna/1997129.html">www.althingi.is/lagas/nuna/1997129.html</a>.  Grounds covered: Health, age, civil status, family size or gender.</p>
Civil law.
Material scope: Non-discrimination in access to occupational pension schemes.
Principal content: Organisation, set-up, ad requirements for functioning of pension funds and mandatory pension insurance.

	<p>Title of the law: Act on Workers' Terms of Employment and Pension No. 55/1980.  Abbreviation: None.  Date of adoption: 9.6.1980  Latest amendments: 30.6.2010  Entry into force: 16.6.1980  Web link: <a href="http://www.althingi.is/lagas/nuna/1980055.html">www.althingi.is/lagas/nuna/1980055.html</a>.  Grounds covered: Sex, nationality and length of contract.</p>
	Labour law.
	Material scope: Non-discrimination in terms of employment.
	Principal content: Minimum wages and conditions negotiated by social partners.
	<p>Title of the law: Act incorporating the Convention on the Rights of the Child into domestic law No.19/2013.  Abbreviation: None.  Date of adoption: 20.2.2013  Latest amendments: None.  Entry into force: 6.3.2013  Web link: <a href="http://www.althingi.is/altext/141/s/1045.html">www.althingi.is/altext/141/s/1045.html</a>.  Grounds covered: Race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.</p>
	Civil law.
	Material scope: Limited to rights enshrined in the Convention.
	Principal content: Prohibition of discrimination in the enjoyment and respect for the rights set out in the Convention.
	<p>Title of the law: Act on Rights Advocates for People with Disabilities No. 88/2011.  Abbreviation: None.  Date of adoption: 23.6.2011  Latest amendments: 16.12.2015  Entry into force: 1.7.2011  Web link: <a href="http://www.althingi.is/lagas/nuna/2011088.html">www.althingi.is/lagas/nuna/2011088.html</a>.  Grounds covered: Disability.</p>
	Civil law.
	Material scope: Social services and rights of people with disabilities.
	Principal content: Establishment of system of rights advocates for people with disabilities.

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country: Iceland**

**Date: 31 December 2015**

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	4.11.1950	29.06.1953	No	Yes	Yes, the ECHR has been incorporated into domestic law.
Protocol 12, ECHR	4.11.2000	Not ratified.	N/A	N/A	N/A
Revised European Social Charter	4.11.1998	Not ratified.	N/A	Ratified collective complaints protocol?  No	N/A
International Covenant on Civil and Political Rights	30.12.1968	22.08.1979	No	Yes	No
Framework Convention for the Protection of National Minorities	1.02.1995	Not ratified.	N/A	N/A	N/A
International Covenant on Economic, Social and Cultural Rights	30.12.1968	22.08.1979	No	No	No
Convention on the Elimination of All Forms of Racial Discrimination	14.12.1966	13.03.1967	No	Yes	No
Convention on the Elimination of Discrimination	24.07.1980	18.6.1985	No	Yes	No



<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Convention Against Women					
ILO Convention No. 111 on Discrimination	29.07.1964	29.07.1963	No	N/A	No
Convention on the Rights of the Child	26.01.1990	28.10.1992	No	N/A	Yes, the Convention has been incorporated into domestic law.
Convention on the Rights of Persons with Disabilities	30.03.2007	Not ratified.	N/A	N/A	N/A

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