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Country report

Non-discrimination

Finland

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Country report

Non-discrimination

Finland

Rainer Hiltunen

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EXECUTIVE SUMMARY

1. Introduction

Until the end of the 1980s, Finland was one of the most culturally homogeneous countries in Europe. The number of immigrants was minimal. In the 1990s a major shift from emigration into immigration took place, and the number of foreign citizens grew from 26 300 in 1990 to 168 000 in 2010. Currently the number of foreigners represents some 6 % of the total population of 5 500 000.¹

Finland is home to a number of national minorities, such as the Roma (10 000 people), Jewish, Tatar and Russian minorities, as well as the indigenous Sámi people (9 000). In addition to the traditional Finnish Roma minority, some 500 people belonging to the Roma minority come annually to Finland from Romania and Bulgaria. Their social and economic standing is much worse than the Finnish Roma minority, who have been able to maintain much of their cultural traditions such as Roma clothing and the Romani language.

Religious diversity in Finland has increased during the past 20 years, as the size of Islamic communities has grown from 30 000 to 60 000 people due to the arrival of immigrants from Muslim countries. Their percentage of the population is still less than 1 %. At present, 72 % of the population belongs to the Evangelical Lutheran Church. Other religious groups are considerably smaller, the next largest community being the Russian Orthodox Church (1 %). Around 25 % of the population do not belong to any religious community.²

A considerable change in attitudes has taken place with respect to matters relating to sexual orientation. Homosexuality was penalised in criminal law until 1971, discrimination on the basis of sexual orientation was prohibited in 1995, and in 2001 the Act on Registered Partnerships guaranteed registered same-sex couples an almost equal position on marriage. In 2014 the Parliament changed the Marriage Act and opened up marriage to include same-sex couples. The change came into force in March 2017. The Lutheran church has also accepted ministers who are homosexual or transsexual.

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

Regarding the situation of people with disabilities, the legal and political focus has remained on the specific services that people with disabilities need, i.e. on the traditional social policy approach, but not so much on equal treatment. However, the focus is gradually shifting towards a more equal rights-based approach, which the renewal of the Non-Discrimination Act in 2015 and the ratification of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol in 2016 have strengthened.

NGOs representing different discrimination grounds have for several years experienced good cooperation in their work against discrimination.

2. Main legislation

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

¹ <http://www.stat.fi/tup/maahanmuutto/index.html>.

² https://www.tilastokeskus.fi/tup/suoluk/suoluk_vaesto.html.

Section 6 of the Constitution³ provides for equality and prohibits discrimination. The main thrust of this constitutional guarantee of non-discrimination is to ensure formal equality, i.e. the principle that people in similar circumstances are to be treated similarly, but it also aims to reach full, substantive equality in practice.

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

The Non-Discrimination Act,⁴ which entered into force on 1 January 2015, is the main instrument transposing the EU directives on equal treatment (the Racial Equality Directive and the Employment Equality Directive) into national law. The current Non-Discrimination Act repealed the prior Non-Discrimination Act, which was in force from 2004 to 2014.

Substantially, the Non-discrimination Act offers the protection required by the two EU directives on equal treatment, and in many respects it goes beyond the minimum requirements set forth in them.

The Penal Code⁵ has two provisions on discrimination. The first covers discrimination, inter alia, in the provision of services and in the discharge of public duties, while the second covers discrimination in the field of employment. There is a considerable amount of case law under the first provision, mainly regarding ethnic discrimination. Punishment for discrimination laid down by law is in the form of fines or imprisonment for up to six months. In practice the sentence for discrimination has been fines.

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

The Åland Islands, which is an autonomous Swedish-speaking province of Finland with about 29 000 inhabitants and has legislative powers in certain particular subject areas such as employment, education and social welfare, has adopted its own set of non-discrimination laws. These laws prohibit discrimination on the grounds of ethnic origin, religion and belief, disability, age, sex and sexual orientation. The legislation in the Åland Islands complies with the directives.

3. Main principles and definitions

The Non-Discrimination Act expanded the scope of protection against discrimination. The Act is applicable to all public and private activities, excluding private life, family life and practice of religion. The protection against discrimination is equal regardless of whether the discrimination is based on origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.

Proportionate differential treatment that aims at advancing genuine equality or preventing or reducing effects of discrimination is not discrimination according to the Non-Discrimination Act.

³ The Constitution (731/1999) [perustuslaki].

⁴ The Non-Discrimination Act (1325/2014) [Yhdenvertaisuuslaki].

⁵ The Penal Code [rikoslaki (39/1889)].

The Non-Discrimination Act sets an obligation to promote equality to public authorities, education providers, educational institutes and employers. These are required to draw up a plan to promote equality. The obligation to draw up an equality plan concerns employers who regularly have a staff of at least 30 employees. In this way the national legislation goes beyond the minimum requirements laid down in the directives.

Public authorities, education providers and employers must, where necessary, make reasonable accommodations to ensure that employees with disabilities have equal access to services, work or education and training. Persons with disabilities must also have equal access to goods and services. The disability of a person must be taken into account in provision of services, for example, by arranging accessible passage for those who need it whenever possible. Employers were already obliged under the former legislation to make reasonable accommodations, but this was a new obligation for providers of goods and services, such as hotels, restaurants and retailers.

The Non-Discrimination Act carefully follows the wording and concepts of the EU directives on equal treatment (the Racial Equality Directive and the Employment Equality Directive) in the majority of the definitions used in the Non-Discrimination Act.

The definition of direct discrimination (if someone is treated less favourably than the way another person is treated, has been treated or would be treated in a comparable situation) and indirect discrimination (where an apparently neutral provision, criterion or practice puts a person at a particular disadvantage compared with other persons) are directly derived from the directives.

Also, in employment differential treatment is only allowed within the exception provided in the directives for genuine and determining occupational requirements. It is further required that the treatment is based on the nature of the particular occupational activities concerned or of the context in which they are carried out providing that the treatment is proportionate.

Where the Finnish Non-Discrimination Act differs from the directives in their scope of applicability is the general justification for differential treatment in areas outside employment. According to the Non-Discrimination Act's definition of direct discrimination, differential treatment is justified if the treatment is based on legislation and the treatment has an acceptable aim and the means used are in due proportion for achieving this aim.

The Non-Discrimination Act sets a duty to provide reasonable accommodation in order to provide a person with disabilities with equal access to authorities, and to receive education as well as goods and services. This obligation to reasonable accommodation extends to authorities, those providing education and those providing goods and services, but there is no duty to provide reasonable accommodation in respect of other grounds in the public or the private sector.

In employment the employer is liable for reasonable accommodation in order to provide a person with disabilities equal access to employment, cope at work and advance in their career. Failure to meet the duty of reasonable accommodation is directly defined as discrimination in the Non-Discrimination Act.

4. Material scope

The Non-Discrimination Act expands the material scope of protection against discrimination. The act is applied to all public and private activities, excluding private life, family life and the practice of religion. This means that all activity of authorities (both governmental and municipal), education, providing goods and services and employment is included in the scope of the act.

Therefore in employment the scope includes, whatever the branch of activity and at all levels of the professional hierarchy, in both private and public sectors: conditions for access to employment, to self-employment or to occupation including selection criteria; recruitment and working conditions and promotion; vocational guidance; all types of vocational training and retraining; and membership of and involvement in an organisation of workers or employers.

As the scope extends to all activity of authorities and all provision of goods and services it includes among other situations: education; social and health services; social benefits and advantages; military or civilian service, including voluntary military service for women; and provision of housing and other supply of services and goods available to the public.

The material scope of the act does not differ depending on the protected grounds for discrimination. Discrimination is similarly prohibited on the five grounds protected in the directives: ethnic origin,⁶ age, disability, religion or belief and sexual orientation, as well as on other grounds included in the Finnish Non-Discrimination Act: nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.

The protection offered is primarily for natural persons and legal persons are not protected as a general rule. The liability for discrimination applies to both natural and legal persons.

The laws adopted by the Åland Islands ban discrimination on the grounds of ethnic origin, religion and belief, disability, age and sexual orientation as follows: discrimination in the area of employment is prohibited on all grounds; discrimination in the area of health and social services is prohibited on the grounds of ethnic origin, religion and belief and sexual orientation; discrimination in the areas of education and provision of goods and services is prohibited on the grounds of ethnicity, religion and belief, disability and sexual orientation.

5. Enforcing the law

As regards areas covered by the Non-Discrimination Act, a victim of discrimination may turn to the Non-Discrimination Ombudsman for advice and assistance in having the discrimination examined. Persons who consider that they have been discriminated against may also ask the Ombudsman to lead conciliation proceedings. In cases other than employment the Ombudsman may issue statements on any discrimination case submitted to him. The statements of the Ombudsman are not legally binding.

The National Non-Discrimination and Equality Tribunal may prohibit the continuation of conduct that is contrary to the prohibition of discrimination or victimisation or confirm a settlement between the parties. The tribunal does not have jurisdiction in employment. The decisions of the tribunal are binding, but can be appealed against in Administrative Court. The tribunal may also order a party to fulfil its obligations by imposing a conditional fine. An order for the payment of conditional fine is given in separate proceedings on request of the applicant in case the prohibition order is not followed.

As regards employment, compliance by employers with anti-discrimination law is supervised by the Occupational Health and Safety Authority. It may receive communications from employees and carry out on-site inspections in the private sector, and if it considers that there are probable grounds to suspect that discrimination, as defined in the Penal Code, has taken place, it must report the case to a public prosecutor. In other less severe cases of discrimination the Occupational Health and Safety Authority can issue an improvement notice. The improvement notices issued by the Occupational Health and Safety Authorities are legally binding.

⁶ The Non-Discrimination Act uses the term 'origin', which is defined in the government proposal as including ethnic origin, national origin, social origin, race and colour of skin.

As regards the exercise of public powers, employment, education and provision of goods and services, a victim of discrimination may file a claim, in a district court, for compensation under the Non-Discrimination Act. The payment of compensation is not connected to criminal liability. Compensation that has been awarded in recent years ranges from EUR 500 to EUR 10 000. The compensation level has been significantly lower in cases where the discrimination has occurred in providing services, such as in restaurants and so on, and the compensation level has generally been higher in employment.

When applying the Non-Discrimination Act the burden of proof shifts from the complainant to the respondent. First it is up to the complainant to establish facts from which it may be presumed that the prohibition of discrimination has been violated then it is for the defendant to demonstrate that the prohibition of discrimination has not been violated.

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

Only the victims of discrimination and not, for example, NGOs acting in support or on behalf of the victims of discrimination can initiate and have a legal standing in discrimination cases in courts. But an organisation with an interest in advancing equality and the Non-Discrimination Ombudsman have a right to bring a specific case before the National Non-Discrimination and Equality Tribunal if the person who considers that he or she has been discriminated against gives his or her consent to this.

Some human rights NGOs provide expert advice to the victims on how to bring legal action and they have used situation testing in exposing discrimination. The use of statistical evidence is possible, but since the evaluation of the evidence is based on free weighing, it is always up to the court what, if any, weight will be given to such evidence.

Discrimination is an offence punishable under the Penal Code⁷ most importantly in the provision of goods and services and employment. A person found guilty of discrimination may be convicted to fines or to imprisonment for up to six months. Most of the discrimination cases to which the Penal Code has been applied have dealt with denial of access to restaurants or other places open to the public on the grounds of ethnic origin. There have also been some cases where the Penal Code prohibition has been applied to discrimination based on religion, sexual orientation or disability.

6. Equality bodies

To meet the requirements of the Racial Equality Directive the Ombudsman for Minorities was set up in 2001 to provide assistance to victims of ethnic discrimination. From the beginning of 2015 the name of that Ombudsman was changed to the Non-Discrimination Ombudsman and the competences were expanded to cover all grounds of discrimination except gender and gender identity, which remain the task of the Equality Ombudsman.

The designated tasks of the Ombudsman include assisting the victims of discrimination in pursuing their complaints concerning discrimination, assisting in planning the promotion of equality, giving general recommendations in preventing discrimination, conducting independent surveys concerning discrimination, publishing independent reports and promoting equality and taking measures to advance reconciliation in following the Non-Discrimination Act.

⁷ The Penal Code [*rikoslaki* (39/1889)], Chapter 11 Section 11 and Chapter 47 Section 3.

In individual cases the Ombudsman can also give a justified statement on the prevention, continuation or repetition of discrimination unless the question falls within the competences of the Occupational Health and Safety Authorities – i.e. employment.

The National Non-Discrimination and Equality Tribunal does not carry out the tasks specified in article 13 of the Racial Equality Directive, and should therefore not be considered as a 'body for the promotion of equal treatment' in accordance with the said provision. The tribunal is an independent and impartial judicial body whose decisions are binding and can be appealed against.

7. Key issues

The Non-Discrimination Act, which was in force until the end of 2014, required authorities to purposefully and methodically foster equality and draw up a plan for the fostering of ethnic equality (equality plan). The current Non-Discrimination Act extends this duty to cover all grounds and extends the responsibility from authorities to education providers and to those employers who employ more than 30 employees. According to the entry-into-force provisions of the Non-Discrimination Act, the deadline for drawing up equality plans was 1 January 2017.

The equality plans will have to evaluate the realisation of equality and are supposed to cover all protected grounds of discrimination in the Non-Discrimination Act (origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics). These measures form the most significant combination of positive action in Finnish society. Equality plans covering multiple grounds have been drafted in hundreds of municipalities, other authorities, companies and lots of other organisations such as NGOs and student unions. In their equality plans organisations and companies have been analysing how their services and functions meet the actual needs of various clients, what kind of reasonable accommodations are needed and how equality in the workplace can be secured.

The legislative process of renewing the Non-Discrimination Act was exceptionally long and difficult. It started in 2003 when the Parliament required, while passing the first Non-Discrimination Act, legislation that would bring all discrimination grounds to the same level of protection as employment.

The Government proposal that was finally presented to the Parliament in 2014 would have weakened the concept of direct discrimination in areas where EU anti-discrimination directives are not applicable, but this was not approved by the Parliament. After the Constitutional Law Committee had consulted academics and NGOs, the Parliament accepted a strengthened prohibition of direct discrimination, where differential treatment is allowed only if it has an acceptable aim from the perspective of human rights and if the means used are appropriate and necessary for achieving this aim.

The concept of direct discrimination used in areas where EU anti-discrimination directives are applicable is unique. It generally justifies differential treatment, such as on the basis of ethnic origin, if the treatment is based on legislation and has an acceptable aim and the means used are in due proportion for achieving this aim.

During the preparation of the new Non-Discrimination Act one of the major disagreements was about the competences of the Non-Discrimination Ombudsman in employment. Unlike in most European Union member states, the former equality body of Finland, the Ombudsman for Minorities, did not have a major role in combating discrimination in employment. After the European Union had started infringement procedures against Finland, the legislative compromise was to grant the forming Non-Discrimination Ombudsman a possibility to give a recommendation on the prevention of discrimination in

employment. The specific interpretation of the prohibition of discrimination in employment remains the responsibility of the Occupational Health and Safety Authorities.

In analysing whether the available sanctions are effective, proportionate and dissuasive as required by the directives, the following elements can be summarised. On the one hand, victims can obtain redress in the form of compensation, initiate criminal law proceedings and obtain an order of cessation from the Non-Discrimination and Equality Tribunal. On the other hand, some particularly robust remedies, such as reinstatement, are not available. As the compensation for discrimination can only be requested in the District Court the risk of having to pay the legal cost of the defendant greatly affects the real possibilities of seeking remedies against discrimination.

RÉSUMÉ

1. Introduction

La Finlande a été jusqu'à la fin des années 1980 l'un des pays les plus homogènes d'Europe sur le plan culturel. Le nombre d'immigrants y était minime. Un changement s'est opéré au cours des années 1990: l'immigration a pris le pas sur l'émigration et le nombre de citoyens étrangers est passé de 26 300 en 1990 à 168 000 en 2010. Le nombre d'étrangers représente aujourd'hui 6 % environ de l'ensemble de la population (5 500 000 habitants).⁸

La Finlande abrite un certain nombre de minorités nationales telles que les minorités rom (10 000 personnes), juive, tatare et russe ainsi que le peuple indigène des Sámi (9 000 personnes). Outre la minorité rom finlandaise traditionnelle, quelque 500 Roms arrivent chaque année en Finlande en provenance de Roumanie et de Bulgarie: ils sont dans une situation sociale et économique beaucoup plus précaire que les membres de la minorité rom finlandaise, lesquels sont parvenus à maintenir largement leurs traditions culturelles (tenues vestimentaires et langue romani en particulier).

La diversité religieuse s'est accentuée en Finlande au cours des vingt dernières années avec des communautés islamiques passant de 30 à 60 000 personnes par suite de l'arrivée d'immigrants en provenance de pays musulmans. Leur pourcentage reste cependant inférieur à 1 % de la population. À l'heure actuelle, 72 % de la population appartient à l'Église évangélique luthérienne. Les autres groupes religieux sont sensiblement plus restreints, le plus important d'entre eux étant l'Église orthodoxe russe (1 %). Environ 25 % des Finlandais ne font partie d'aucune communauté religieuse.⁹

Un changement considérable a été observé au niveau des attitudes vis-à-vis des questions d'orientation sexuelle. L'homosexualité était érigée en infraction pénale jusqu'en 1971. La discrimination fondée sur l'orientation sexuelle a été interdite en 1995 et la loi de 2001 sur les partenariats enregistrés a conféré aux couples de même sexe un statut pratiquement équivalent au mariage. En 2014, le Parlement a modifié la loi sur le mariage et ouvert celui-ci aux couples homosexuels. Cet amendement a pris ses effets en mars 2017. L'Église luthérienne accepte désormais des pasteurs homosexuels ou transsexuels.

La discrimination liée à l'âge est généralement perçue comme une réalité en Finlande. Un sondage a montré qu'un tiers des personnes interrogées estimaient qu'une discrimination fondée sur l'âge survenait «fréquemment» ou «de temps à autre» sur leur lieu de travail. Le contentieux judiciaire en la matière reste cependant peu abondant.

En ce qui concerne la situation des personnes souffrant d'un handicap, l'objectif politique et juridique reste axé sur les services spécifiques dont les personnes handicapées ont besoin – autrement dit sur une approche traditionnelle de politique sociale plutôt que sur l'égalité de traitement. On observe toutefois une réorientation progressive vers une approche fondée davantage sur l'égalité des droits, que la réforme de la loi sur la non-discrimination en 2015 et la ratification de la convention des Nations unies relative aux droits des personnes handicapées et de son protocole facultatif en 2016 ont renforcée.

Des ONG représentant différents motifs de discrimination entretiennent depuis plusieurs années de bonnes relations de coopération dans le cadre de leur action contre la discrimination.

⁸ <http://www.stat.fi/tup/maahanmuutto/index.html>.

⁹ https://www.tilastokeskus.fi/tup/suoluk/suoluk_vaesto.html.

2. Législation principale

Les principales dispositions en matière de discrimination figurent dans la Constitution, la loi sur la non-discrimination et le code pénal. On trouve également une interdiction de discrimination dans de nombreux actes législatifs au titre de clause générale.

L'article 6 de la Constitution¹⁰ consacre l'égalité et interdit la discrimination. L'idée maîtresse de cette garantie constitutionnelle est d'assurer une égalité formelle, autrement dit de consacrer le principe selon lequel les personnes doivent être traitées de façon similaire dans des situations similaires; mais également de parvenir concrètement à une égalité totale et véritable.

L'interdiction constitutionnelle de discrimination peut être directement invoquée en justice, et l'interprétation des lois ordinaires doit lui être conforme. La disposition constitutionnelle interdisant la discrimination a été principalement appliquée jusqu'ici à des situations impliquant l'usage du pouvoir des autorités publiques, mais elle peut également concerner, dans certains cas, les relations entre parties privées.

La loi sur la non-discrimination,¹¹ qui a pris ses effets le 1^{er} janvier 2015, est le principal instrument transposant en droit interne les directives de l'UE relatives à l'égalité de traitement (directive sur l'égalité raciale et directive sur l'égalité dans le domaine de l'emploi). L'actuelle loi sur la non-discrimination abroge la loi antérieure du même nom, qui a été en vigueur de 2004 à 2014.

La loi sur la non-discrimination offre substantiellement la protection exigée par les deux directives européennes relatives à l'égalité de traitement, et va même à de nombreux égards au-delà de leurs exigences.

Le code pénal¹² comporte deux dispositions concernant la discrimination. La première vise notamment la discrimination dans l'offre de services et dans l'exercice de charges publiques, tandis que la seconde vise la discrimination dans le domaine de l'emploi. Il existe une jurisprudence considérable invoquant la première disposition, principalement concernant la discrimination ethnique. La discrimination est sanctionnée par la loi sous la forme d'amendes et de peines d'emprisonnement pouvant atteindre six mois. Dans la pratique, elle est sanctionnée par des amendes.

Les principales dispositions nationales de lutte contre la discrimination interdisent toutes, de manière explicite ou implicite, la discrimination fondée sur un large éventail de motifs, y compris l'âge, l'origine ethnique et raciale, la religion, les convictions, l'orientation sexuelle et le handicap. L'égalité des sexes est abordée dans la Constitution et dans le code pénal, ainsi que dans une loi séparée d'application générale, à savoir la loi relative à l'égalité entre femmes et hommes. La législation finlandaise n'aborde pas explicitement la question de la discrimination multiple.

Les îles Åland, une province finlandaise autonome de langue suédoise qui compte 29 000 habitants environ et possède un pouvoir législatif dans certains domaines particuliers tels que l'emploi, l'enseignement et la protection sociale, ont adopté leur propre ensemble de lois antidiscrimination. Ces lois interdisent la discrimination fondée sur les motifs de l'origine ethnique, de la religion et des convictions, du handicap, de l'âge, du sexe et de l'orientation sexuelle. La législation des îles Åland est conforme aux directives.

¹⁰ La Constitution (731/1999) [*perustuslaki*].

¹¹ La loi sur la non-discrimination (1325/2014) [*Yhdenvertaisuuslaki*].

¹² Le code pénal (39/1889) [*rikoslaki*].

3. Principes généraux et définitions

La loi sur la non-discrimination élargit le champ de protection contre la discrimination. Elle s'applique à toutes les activités publiques et privées, à l'exclusion de la vie privée, de la vie familiale et de la pratique religieuse. La protection est la même quel que soit le motif de discrimination: origine, âge, handicap, religion, convictions, orientation sexuelle, nationalité, langue, opinions, activité politique, activité syndicale, relations familiales, état de santé ou autre caractéristique personnelle.

Aux termes de cette loi, une différence de traitement proportionnée, destinée à faire progresser une véritable égalité ou à prévenir ou réduire des effets discriminatoires, n'est pas constitutive d'une discrimination.

La loi sur la non-discrimination impose aux autorités publiques, aux prestataires de services éducatifs, aux établissements d'enseignement et aux employeurs une obligation de promouvoir l'égalité. Les employeurs occupant régulièrement 30 personnes au moins sont tenus dans le cadre de cette obligation de définir un plan de promotion de l'égalité. La législation nationale va ainsi au-delà des exigences minimales visées par les directives.

Les autorités publiques, les prestataires de services éducatifs et les employeurs doivent, s'il y a lieu, procéder à des aménagements raisonnables pour assurer aux travailleurs handicapés une égalité d'accès aux services, au travail ou à l'enseignement et la formation. Les personnes handicapées doivent également bénéficier d'une égalité d'accès aux biens et aux services. Le handicap d'une personne doit être pris en compte dans le cadre de la prestation de services (aménagement si possible d'un passage accessible à ceux qui en ont besoin, par exemple). L'ancienne loi obligeait déjà les employeurs à procéder à des aménagements raisonnables, mais il s'agit ici d'une nouvelle obligation à l'intention des fournisseurs de biens et de services tels que les hôtels, les restaurants et les commerçants.

La loi sur la non-discrimination respecte scrupuleusement le libellé et les concepts des directives de l'UE relatives à l'égalité de traitement (la directive sur l'égalité raciale et la directive sur l'égalité dans le domaine de l'emploi) en ce qui concerne la plupart des définitions qu'elle contient.

La définition de la discrimination directe (situation dans laquelle une personne est traitée moins favorablement qu'une personne n'est traitée, n'a été traitée ou ne serait traitée dans une situation comparable) et celle de la discrimination indirecte (situation dans laquelle une disposition, un critère ou une pratique apparemment neutre défavorise particulièrement une personne par rapport à d'autres) sont directement tirées des directives.

De même, une différence de traitement en matière d'emploi est uniquement admise dans le cadre de la dérogation prévue par les directives en rapport avec les exigences professionnelles véritables et déterminantes. Il est exigé en outre que le traitement se fonde sur la nature des activités professionnelles spécifiquement visées ou du contexte dans lequel elles s'exercent, et que le traitement en question soit proportionné.

C'est en ce qui concerne la justification générale d'une différence de traitement dans des domaines en dehors de l'emploi que la loi finlandaise sur la non-discrimination diffère des directives en termes de champ d'application. En vertu de la définition de la discrimination directe contenue dans la loi nationale, un traitement différencié est justifié s'il se fonde sur la législation, s'il a un objectif acceptable et si les moyens utilisés sont dûment proportionnés à la réalisation de cet objectif.

La loi sur la non-discrimination contient une obligation d'aménagement raisonnable visant à ce qu'une personne handicapée bénéficie d'une égalité d'accès aux administrations publiques, d'un enseignement et de biens et de services. Cette obligation d'aménagement

raisonnable s'étend aux pouvoirs publics, aux prestataires de services éducatifs et aux fournisseurs de biens et de services, mais aucune obligation de ce type n'est prévue pour les autres motifs, que ce soit dans le secteur public ou le secteur privé.

Dans le domaine professionnel, l'employeur est tenu de procéder à un aménagement raisonnable pour qu'une personne handicapée puisse avoir un accès égal à l'emploi, effectuer son travail et progresser dans sa carrière. Un non-respect de l'obligation d'aménagement raisonnable est directement défini comme une discrimination par la loi sur la non-discrimination.

4. Champ d'application matériel

La loi sur la non-discrimination étend le champ matériel de la protection contre la discrimination. Elle s'applique à toutes les activités publiques et privées, à l'exclusion de la vie privée, de la vie familiale et de la pratique religieuse – ce qui implique que le champ d'application de la loi couvre toute activité des autorités (gouvernementales et municipales), l'éducation, la fourniture de biens et de services, et l'emploi.

Dans le domaine de l'emploi, ce champ d'application couvre donc, quelle que soit la branche d'activité et quel que soit le niveau de la hiérarchie professionnelle, tant dans le secteur privé que dans le secteur public: les conditions d'accès à l'emploi, à l'emploi indépendant ou au travail, y compris les critères de sélection; le recrutement et les conditions de travail ainsi que la promotion; l'orientation professionnelle; tous les types de formation professionnelle et de recyclage; et l'affiliation et l'engagement dans une organisation de travailleurs ou d'employeurs.

Étant donné qu'il s'étend à l'ensemble de l'activité des autorités et à l'ensemble de la fourniture de biens et de services, le champ d'application de la loi sur la non-discrimination inclut entre autres: l'enseignement; les services sociaux et de santé; les prestations sociales et avantages sociaux; le service militaire ou civil, y compris le service militaire volontaire pour les femmes; et la fourniture de logements ou d'autres services et biens mis à la disposition du public.

Le champ d'application matériel de la loi ne varie pas selon le motif protégé: la discrimination est interdite de la même manière pour les cinq motifs visés par les directives – à savoir l'origine ethnique,¹³ l'âge, le handicap, la religion et les convictions, et l'orientation sexuelle – et pour les autres motifs couverts par la loi finlandaise sur la non-discrimination: la nationalité, la langue, les opinions, l'activité politique, l'activité syndicale, les relations familiales, l'état de santé et toute autre caractéristique personnelle.

La protection offerte concerne principalement les personnes physiques, et les personnes morales ne sont, en règle générale, pas couvertes. La responsabilité d'une discrimination s'applique à la fois aux personnes physiques et aux personnes morales.

Les lois adoptés par les îles Åland interdisent comme suit la discrimination fondée sur l'origine ethnique, la religion et les convictions, le handicap, l'âge et l'orientation sexuelle: la discrimination dans le domaine de l'emploi est interdite pour tous les motifs; la discrimination dans le domaine des services sociaux et de santé est interdite lorsqu'elle se fonde sur l'origine ethnique, la religion et les convictions, et l'orientation sexuelle; la discrimination dans les domaines de l'éducation et de la fourniture de biens et de services est interdite lorsqu'elle se fonde sur l'origine ethnique, la religion et les convictions, le handicap et l'orientation sexuelle.

¹³ La loi sur la non-discrimination utilise le terme «origine», défini dans la proposition gouvernementale comme incluant l'origine ethnique, l'origine nationale, l'origine sociale, la race et la couleur de la peau.

5. Mise en application de la loi

Pour ce qui concerne les domaines couverts par la loi sur la non-discrimination, une victime de discrimination peut s'adresser au Médiateur finlandais pour la non-discrimination afin d'obtenir des conseils et une assistance en vue de l'examen de son cas. Une personne estimant avoir fait l'objet d'une discrimination peut également demander au Médiateur de mener une procédure de conciliation. En dehors du domaine de l'emploi, le Médiateur peut faire une déclaration sur toute affaire qui lui est soumise – laquelle déclaration n'est pas juridiquement contraignante.

Le Tribunal national contre la discrimination et pour l'égalité peut interdire la poursuite d'un comportement enfreignant l'interdiction de discrimination ou de rétorsions, ou confirmer un règlement entre les parties. Le Tribunal n'est pas compétent en matière d'emploi. Ses décisions sont exécutoires, mais peuvent faire l'objet d'un appel auprès de la Cour administrative. Le Tribunal peut également ordonner à une partie de remplir ses obligations en lui imposant une amende conditionnelle. Une ordonnance de paiement de cette amende conditionnelle est prononcée dans le cadre d'une procédure distincte à la demande de la partie requérante, au cas où l'injonction d'interdiction n'est pas suivie d'effet.

Dans le domaine de l'emploi, le respect de la loi sur la non-discrimination par les employeurs est contrôlé par l'autorité pour la sécurité et la santé au travail. Celle-ci peut recevoir des communications émanant de salariés et procéder à des inspections sur place dans le secteur privé. Au cas où elle estime qu'il existe des motifs probables de suspicion quant à une discrimination (telle que décrite par le code pénal), l'autorité en question doit le signaler à un procureur. Lorsque les faits discriminatoires sont moins graves, l'autorité pour la sécurité et la santé au travail peut émettre une notification d'amélioration – laquelle revêt un caractère exécutoire.

En ce qui concerne l'exercice de l'autorité publique, l'emploi, l'éducation et la fourniture de biens et de services, une victime de discrimination peut réclamer, en vertu de la loi sur la non-discrimination, une indemnisation auprès d'un tribunal de district. Le versement de l'indemnité n'est pas lié à une responsabilité pénale. Les montants alloués ces dernières années vont de 4 000 à 10 000 euros. Leur niveau a été sensiblement moins élevé lorsque la discrimination concernait la prestation de services (dans des restaurants, par exemple) et généralement plus élevée dans le cadre de l'emploi.

L'application de la loi sur la non-discrimination s'accompagne d'un renversement de la charge de la preuve, qui passe de la partie requérante à la partie défenderesse. Il appartient d'abord à la partie requérante d'établir les faits conduisant à présumer un non-respect de l'interdiction de discrimination; il incombe ensuite à la partie défenderesse de démontrer que l'interdiction de discrimination n'a pas été violée.

Lorsqu'une décision discriminatoire est prise dans le cadre de l'exercice d'une autorité publique, la victime de discrimination peut faire appel à la procédure en rectification ou à toute autre voie de recours ordinaire. Elle peut également se tourner vers le Médiateur parlementaire ou le Chancelier de la justice pour porter plainte. Ces instances ne sont pas habilitées à modifier ou annuler une décision particulière, mais elles peuvent intenter une action contre un fonctionnaire et/ou émettre un avis sur l'interprétation correcte de la loi.

Seules les victimes – et non, par exemple, des ONG agissant en soutien ou au nom des victimes – peuvent engager des poursuites et ester en justice dans une affaire de discrimination. Mais une organisation ayant un intérêt à faire progresser l'égalité, de même que le Médiateur pour la non-discrimination, ont le droit de porter une affaire spécifique devant le Tribunal national contre la discrimination et pour l'égalité à condition que la personne s'estimant lésée y consente.

Certaines ONG de défense des droits de l'homme fournissent des conseils d'expert aux victimes concernant les modalités d'une action en justice, et ont utilisé des tests de situation pour faire état de la discrimination. L'utilisation de preuves statistiques est possible mais, étant donné que l'appréciation des preuves se fonde sur une libre pondération, il appartient toujours à la juridiction saisie de décider du poids – éventuel – qu'elle accorde à ce type d'élément probant.

La discrimination est un délit punissable au titre du code pénal,¹⁴ surtout dans le cadre de l'emploi et de la fourniture de biens et de services. Une personne déclarée coupable de discrimination peut être condamnée à des amendes ou à une peine d'emprisonnement allant jusqu'à six mois. La plupart des affaires de discrimination auxquelles le code pénal a été appliqué concernaient un refus d'accès à des restaurants ou autres lieux ouverts au public en raison de l'origine ethnique. L'interdiction contenue dans le code pénal a également été appliquée, dans quelques cas, à une discrimination fondée sur la religion, l'orientation sexuelle ou le handicap.

6. Organismes de promotion de l'égalité de traitement

Afin de satisfaire aux exigences de la directive sur l'égalité raciale, la Finlande a institué en 2001 le Médiateur pour les minorités, chargé d'aider les victimes de discrimination ethnique. Le nom de ce Médiateur a été changé début 2015 pour devenir le Médiateur pour la non-discrimination; ses compétences ont été étendues afin de couvrir tous les motifs de discrimination hormis le genre et l'identité de genre, qui continuent de relever du mandat du Médiateur pour l'égalité.

Les tâches assignées au Médiateur comprennent une aide aux victimes de discrimination pour engager une procédure, une assistance au niveau de la planification de la promotion de l'égalité, la formulation de recommandations générales en matière de prévention de la discrimination, la réalisation d'études indépendantes concernant la discrimination, la publication de rapports indépendants et la promotion de l'égalité, et l'adoption de mesures visant à favoriser la conciliation dans l'application de la loi sur la non-discrimination.

Le Médiateur peut également, dans des situations particulières, faire une déclaration motivée à propos de la prévention, de la continuation ou de la répétition d'une discrimination, à moins que la question relève de la compétence des autorités finlandaises pour la sécurité et la santé au travail, à savoir l'emploi.

Le Tribunal national contre la discrimination et pour l'égalité n'effectue pas les tâches spécifiées à l'article 13 de la directive sur l'égalité raciale, et ne peut dès lors être considéré comme un «organisme pour la promotion de l'égalité de traitement» tel que visé par ledit article. Le Tribunal est une instance judiciaire indépendante et impartiale dont les décisions sont exécutoires et peuvent faire l'objet d'un appel.

7. Points essentiels

La loi sur la non-discrimination en vigueur jusqu'à fin 2004 exigeait des autorités qu'elles renforcent délibérément et systématiquement l'égalité et qu'elles élaborent un plan de promotion de l'égalité ethnique (plan de promotion de l'égalité). La loi actuelle étend cette obligation à tous les motifs de discrimination ainsi qu'aux prestataires de services éducatifs et à tous les employeurs occupant plus de trente personnes. Les dispositions d'entrée en vigueur de la loi sur la non-discrimination fixent au 1^{er} janvier la date limite pour l'élaboration des plans de promotion de l'égalité.

Ces plans devront évaluer la mise en œuvre de l'égalité et sont censés couvrir tous les motifs protégés visés par la loi sur la non-discrimination (origine, âge, handicap, religion,

¹⁴ Code pénal (39/1889) [*rikoslaki*], chapitre 11, article 11, et chapitre 47, article 3.

convictions, orientation sexuelle, nationalité, langue, opinion, activité politique, activité syndicale, relations familiales, état de santé ou autre caractéristique personnelle). Ces mesures constituent la principale combinaison d'actions positives au sein de la société finlandaise. Des plans en faveur de l'égalité couvrant des motifs multiples ont été élaborés par des centaines de municipalités, d'autres autorités, des entreprises et toute une série d'organisations telles que des ONG et des associations étudiantes. Les organisations et entreprises ont analysé dans ce contexte la manière dont leurs services et fonctions répondent aux besoins réels de différents clients; quels sont les types d'aménagement raisonnable nécessaires; et comment l'égalité peut être garantie sur le lieu de travail.

Le processus législatif de réforme de la loi sur la non-discrimination a été exceptionnellement long et difficile. Il a démarré en 2003 lorsque le Parlement a requis, lors de l'adoption de la première loi sur la non-discrimination, une législation faisant en sorte que tous les motifs de discrimination bénéficient du même niveau de protection que l'emploi.

La proposition gouvernementale finalement présentée au Parlement en 2014 aurait affaibli le concept de discrimination directe dans les domaines auxquels les directives antidiscrimination de l'UE ne s'appliquent pas, et le Parlement ne l'a pas approuvée. Après que la Commission du droit constitutionnel ait consulté des universitaires et des ONG, le Parlement a accepté une interdiction renforcée de discrimination directe autorisant uniquement un traitement différencié s'il a un objectif acceptable dans une perspective de droits de l'homme et si les moyens utilisés sont appropriés et nécessaires pour l'atteindre.

Le concept de discrimination directe appliqué dans les domaines relevant du champ d'application des directives antidiscrimination de l'UE est unique: il justifie de façon générale le traitement différencié, sur la base de l'origine ethnique notamment, lorsque le traitement en question se fonde sur la législation, qu'il poursuit un but légitime et que les moyens utilisés pour atteindre ce but sont dûment proportionnés.

L'un des grands points de désaccord survenus lors de la préparation de la nouvelle loi sur la non-discrimination concernait les compétences du Médiateur pour la non-discrimination dans le domaine de l'emploi. À l'inverse de la plupart des États membres de l'Union européenne, l'ancien organisme finlandais en charge de l'égalité, à savoir le Médiateur pour les minorités, ne jouait pas de rôle majeur dans la lutte contre la discrimination dans l'emploi. Après que l'Union européenne ait lancé des procédures d'infraction à l'encontre de la Finlande, le compromis législatif a consisté à donner au futur Médiateur pour la non-discrimination la possibilité de formuler une recommandation concernant la prévention de la discrimination en matière d'emploi. L'interprétation spécifique de l'interdiction de discrimination dans l'emploi continue de relever de la compétence de l'autorité en charge de la sécurité et de la santé au travail.

L'analyse quant au caractère efficace, proportionné et dissuasif des sanctions exigé par les directives permet de dégager les éléments suivants: d'une part, les victimes peuvent obtenir réparation sous la forme d'une indemnité, engager une procédure pénale et obtenir une ordonnance de cessation de l'infraction de la part du Tribunal contre la discrimination et pour l'égalité. D'autre part, plusieurs types de réparation particulièrement robustes, telle la réintégration, ne sont pas disponibles. Du fait qu'une indemnisation pour discrimination peut exclusivement être réclamée devant un tribunal de district, le risque de devoir payer les frais de justice encourus par la partie défenderesse réduit fortement les possibilités réelles d'intenter un recours contre une discrimination.

ZUSAMMENFASSUNG

1. Einleitung

Bis Ende der 1980er Jahre war Finnland eines der homogensten Länder Europas. Die Zahl der Einwanderer war minimal. In den 1990ern wandelte sich das Land vom Auswanderungs- zum Einwanderungsland und die Anzahl ausländischer Staatsbürger stieg von 26 300 im Jahr 1990 auf 168 000 im Jahr 2010. Derzeit stellen ausländische Staatsbürger rund 6 % der Gesamtbevölkerung von 5 500 000.¹⁵

Finnland ist Heimat einiger nationaler Minderheiten wie z. B. Roma (10 000 Personen), Juden, Tataren und Russen sowie der indigenen Samen (9000). Zusätzlich zur traditionellen finnischen Roma-Gemeinschaft kommen jährlich rund 500 Roma aus Rumänien und Bulgarien nach Finnland. Ihre soziale und wirtschaftliche Lage ist wesentlich schlechter als die der finnischen Roma-Minderheit, die einen Großteil ihrer kulturellen Traditionen wie z. B. Trachten und die Romani-Sprache bewahren konnten.

In den letzten 20 Jahren hat die religiöse Vielfalt in Finnland zugenommen und aufgrund der Einwanderung aus islamischen Ländern ist die muslimische Gemeinschaft von 30 000 auf 60 000 Mitglieder gewachsen. Ihr Anteil an der Bevölkerung liegt aber immer noch unter 1 %. Derzeit gehören 72 % der Bevölkerung der evangelisch-lutherischen Kirche an. Die anderen religiösen Gemeinschaften sind wesentlich kleiner, die zweitgrößte Glaubensgemeinschaft ist die russisch-orthodoxe Kirche (1 %). Rund 25 % der Bevölkerung gehören keiner Glaubensgemeinschaft an.¹⁶

Bei Fragen der sexuellen Ausrichtung haben sich die gesellschaftlichen Einstellungen stark gewandelt. Homosexualität wurde bis 1971 strafrechtlich verfolgt. Im Jahr 1995 wurde Diskriminierung aufgrund der sexuellen Ausrichtung verboten und 2001 gewährte das Gesetz eingetragenen Partnerschaften gleichgeschlechtlicher Paare eine Rechtsstellung, die im Wesentlichen der einer Ehe entspricht. 2014 reformierte das Parlament das Ehegesetz und machte die Ehe auch für gleichgeschlechtliche Paare zugänglich. Das überarbeitete Gesetz ist im März 2017 in Kraft getreten. Auch die lutherische Kirche akzeptiert inzwischen homosexuelle oder transsexuelle Seelsorger.

Es gilt als Tatsache, dass Altersdiskriminierung in Finnland existiert. In einer Umfrage gab jeder dritte Befragte an, dass Diskriminierung aufgrund des Alters an seiner Arbeitsstelle „häufig“ oder „gelegentlich“ vorkommt. Es gibt jedoch nur wenige Fälle, in denen vor Gericht gegen Altersdiskriminierung geklagt wurde.

In Bezug auf Menschen mit Behinderungen liegt der rechtliche und politische Schwerpunkt weiterhin auf den speziellen Dienstleistungen, die behinderte Menschen benötigen, d. h. auf dem traditionellen sozialpolitischen Ansatz und weniger auf dem Konzept der Gleichbehandlung. Der Schwerpunkt verschiebt sich jedoch schrittweise hin zu einem stärker menschenrechtsbasierten Ansatz, der durch die Reform des Antidiskriminierungsgesetzes im Jahr 2015 und die Ratifizierung der UN-Behindertenrechtskonvention und des Fakultativprotokolls im Jahr 2016 gestärkt wurde.

NROs, die sich in verschiedenen Diskriminierungsbereichen engagieren, arbeiten seit vielen Jahren erfolgreich im Kampf gegen Diskriminierung zusammen.

2. Wichtigste Rechtsvorschriften

Die wichtigsten Bestimmungen zum Thema Diskriminierung sind in der Verfassung, im Antidiskriminierungsgesetz und im Strafgesetzbuch verankert. Außerdem ist ein Verbot von Diskriminierung in vielen Rechtsvorschriften als allgemeine Bestimmung enthalten.

¹⁵ <http://www.stat.fi/tup/maahanmuutto/index.html>.

¹⁶ https://www.tilastokeskus.fi/tup/suoluk/suoluk_vaesto.html.

Artikel 6 der Verfassung¹⁷ regelt die Gleichstellung und verbietet Diskriminierung. Diese verfassungsmäßige Garantie der Nichtdiskriminierung gewährleistet vor allem eine formale Gleichstellung, d. h. dass Menschen in einer vergleichbaren Situation gleich behandelt werden, sie bezweckt jedoch auch eine vollständige und wesentliche praktische Gleichstellung.

Das in der Verfassung verankerte Diskriminierungsverbot kann direkt vor Gericht geltend gemacht werden und nachgeordnete Gesetze müssen gemäß diesem Verbot ausgelegt werden. Bisher wurden die in der Verfassung verankerten Diskriminierungsbestimmungen vor allem genutzt, um gegen Handlungen der öffentlichen Hand zu klagen, doch dies könnte in wenigen Fällen auch Auswirkungen auf die Beziehungen zwischen privaten Parteien haben.

Das Antidiskriminierungsgesetz,¹⁸ das am 1. Januar 2015 in Kraft trat, ist das wichtigste Rechtsinstrument zur Umsetzung der EU-Richtlinien zur Gleichbehandlung (Richtlinie zur Gleichbehandlung ohne Unterschied der „Rasse“ und Richtlinie zur Gleichbehandlung im Bereich der Beschäftigung) in finnisches Recht. Es trat an die Stelle des vorherigen Antidiskriminierungsgesetzes, das von 2004 bis 2014 in Kraft war.

Im Wesentlichen bietet das Antidiskriminierungsgesetz den von den Gleichbehandlungsrichtlinien der EU geforderten Schutz und geht in vielen Punkten über die dort festgelegten Mindestanforderungen hinaus.

Das Strafgesetzbuch¹⁹ hat zwei Bestimmungen über Diskriminierung. Die erste betrifft unter anderem Diskriminierung bei der Bereitstellung von Dienstleistung und die Ausübung staatlicher Pflichten, die andere bezieht sich auf Diskriminierung im Arbeitsleben. Zur ersten Bestimmung gibt es ein umfassendes Fallrecht, insbesondere in Bezug auf ethnische Diskriminierung. Die gesetzliche Strafe für Diskriminierung ist eine Geldstrafe oder eine Haftstrafe von bis zu sechs Monaten. In der Praxis wurden bisher ausschließlich Geldstrafen verhängt.

Alle wichtigen finnischen Diskriminierungsbestimmungen verbieten, explizit oder implizit, Diskriminierung aufgrund zahlreicher Diskriminierungsgründe wie Alter, „Rasse“ oder ethnischer Zugehörigkeit, Religion, Weltanschauung, sexueller Ausrichtung und Behinderung. Die Gleichstellung der Geschlechter ist in der Verfassung, im Strafgesetzbuch und in einem eigenen Gesetz mit weitem Anwendungsbereich, dem Gesetz über die Gleichstellung von Frau und Mann, verankert. Das finnische Recht hat keine ausdrücklichen Bestimmungen zur Mehrfachdiskriminierung.

Åland, eine autonome schwedischsprachige Region Finnlands mit rund 29 000 Einwohnern und einer eigenen Gesetzgebung in bestimmten Bereichen wie Beschäftigung, Bildung und Sozialfürsorge, hat eigene Antidiskriminierungsgesetze verabschiedet. Diese Gesetze verbieten Diskriminierung aufgrund von ethnischer Zugehörigkeit, Religion und Weltanschauung, Behinderung, Alter, Geschlecht und sexueller Ausrichtung. Die Gesetze von Åland entsprechen den europäischen Richtlinien.

3. Wichtigste Grundsätze und Begriffe

Das Antidiskriminierungsgesetz hat den Schutz vor Diskriminierung ausgeweitet. Das Gesetz gilt für alle öffentlichen und privaten Bereiche mit Ausnahme des Privatlebens, Familienlebens und der Religionsausübung. Das Schutzniveau vor Diskriminierung ist immer gleich, unabhängig davon, ob die Diskriminierung aufgrund von Herkunft, Alter, Behinderung, Religion, Weltanschauung, sexueller Ausrichtung, Nationalität, Sprache,

¹⁷ Verfassung (731/1999) (*perustuslaki*).

¹⁸ Antidiskriminierungsgesetz (1325/2014) (*Yhdenvertaisuuslaki*).

¹⁹ Strafgesetzbuch (*rikoslaki* (39/1889)).

Überzeugung, politischer Aktivität, gewerkschaftlicher Aktivität, familiären Beziehungen, Gesundheitszustand oder anderen persönlichen Merkmalen erfolgt.

Eine verhältnismäßige Ungleichbehandlung, mit der eine wirkliche Gleichstellung erzielt oder die Folgen von Diskriminierung ausgeglichen werden sollen, gilt nach dem Antidiskriminierungsgesetz nicht als Diskriminierung.

Das Antidiskriminierungsgesetz verpflichtet staatliche Stellen, Bildungsträger, Bildungsinstitute und Arbeitgeber zur Förderung der Gleichstellung. Dazu müssen diese einen Gleichstellungsplan ausarbeiten. Jeder Arbeitgeber, der regelmäßig mindestens 30 Arbeitnehmer beschäftigt, muss einen Gleichstellungsplan erstellen. Darin geht das finnische Recht über die Mindestanforderungen der Richtlinien hinaus.

Staatliche Stellen, Bildungsträger und Arbeitgeber müssen, wenn nötig, angemessene Vorkehrungen treffen, mit denen gewährleistet ist, dass Menschen mit einer Behinderung den gleichen Zugang zu Dienstleistungen, Beschäftigung und beruflicher Bildung erhalten. Außerdem muss Menschen mit Behinderungen der gleichberechtigte Zugang zu Gütern und Dienstleistungen ermöglicht werden. Bei der Bereitstellung von Dienstleistungen muss die Behinderung einer Person berücksichtigt werden, beispielsweise durch barrierefreie Wege. Arbeitgeber waren bereits nach dem alten Gesetz zu angemessenen Vorkehrungen verpflichtet, neu war diese Pflicht für die Anbieter von Gütern und Dienstleistung wie Hotels, Restaurants und Händler.

Das Antidiskriminierungsgesetz folgt bei den meisten Begriffsbestimmungen eng dem Wortlaut und den Begriffen der EU-Richtlinien zur Gleichbehandlung (Richtlinie zur Gleichbehandlung ohne Unterschied der „Rasse“ und Richtlinie zur Gleichbehandlung im Bereich der Beschäftigung).

Die Definitionen von unmittelbarer Diskriminierung (wenn eine Person in einer vergleichbaren Situation eine weniger günstige Behandlung erfährt, als eine andere Person erfährt, erfahren hat oder erfahren würde) und mittelbarer Diskriminierung (wenn dem Anschein nach neutrale Vorschriften, Kriterien oder Verfahren Personen gegenüber anderen Personen in besonderer Weise benachteiligen können) wurden direkt aus den Richtlinien übernommen.

Im Bereich Beschäftigung ist eine Ungleichbehandlung ausschließlich aufgrund von wesentlichen und entscheidenden beruflichen Anforderungen gemäß den Vorgaben der Richtlinien erlaubt. Außerdem muss die Ungleichbehandlung aufgrund der Art der speziellen beruflichen Tätigkeit oder der Bedingungen ihrer Ausübung notwendig und angemessen sein.

Das finnische Antidiskriminierungsgesetz unterscheidet sich von den Richtlinien insofern, dass Ungleichbehandlung auch außerhalb des Arbeitslebens gerechtfertigt werden kann. Gemäß der Definition von unmittelbarer Diskriminierung im Antidiskriminierungsgesetz ist eine Ungleichbehandlung gerechtfertigt, wenn die Behandlung einer Rechtsvorschrift entspricht, einen rechtmäßigen Zweck verfolgt und die Mittel zur Erreichung dieses Zwecks angemessen sind.

Das Antidiskriminierungsgesetz enthält eine Pflicht zu angemessenen Vorkehrungen, die Menschen mit Behinderungen den gleichen Zugang zu Behörden, zu Bildung sowie zu Gütern und Dienstleistungen ermöglichen. Diese Pflicht zu angemessenen Vorkehrungen gilt für Behörden, Bildungsträger und für die Anbieter von Gütern und Dienstleistungen, jedoch nicht im Hinblick auf andere Gründe für öffentliche oder private Bereiche.

Im Arbeitsleben ist der Arbeitgeber verpflichtet, angemessene Vorkehrungen zu treffen, um Menschen mit Behinderungen den gleichberechtigten Zugang zur Beschäftigung, die Ausübung eines Berufes und den beruflichen Aufstieg zu ermöglichen. Die

Vernachlässigung dieser Pflicht zu angemessenen Vorkehrungen ist im Antidiskriminierungsgesetz als Diskriminierung definiert.

4. Sachlicher Geltungsbereich

Das Antidiskriminierungsgesetz dehnt den sachlichen Geltungsbereich des Antidiskriminierungsschutzes aus. Das Gesetz gilt für alle öffentlichen und privaten Bereiche mit Ausnahme des Privatlebens, Familienlebens und der Religionsausübung. Das heißt, dass alle behördlichen Tätigkeiten (staatlich und kommunal), Bildung, Bereitstellung von Gütern und Dienstleistungen und Beschäftigung unter den Anwendungsbereich des Gesetzes fallen.

Deshalb gilt das Gesetz für alle Personen in öffentlichen und privaten Bereichen unabhängig von Tätigkeitsfeld und beruflicher Position in Bezug auf: die Bedingungen beim Zugang zu Beschäftigung, selbständiger und unselbständiger Erwerbstätigkeit – einschließlich der Auswahlkriterien, Einstellung, Arbeitsbedingungen und beruflichen Aufstieg, Berufsberatung, alle Formen der Berufsausbildung, beruflichen Weiterbildung und Umschulung und die Mitgliedschaft und Mitwirkung in einer Arbeitnehmer- oder Arbeitgeberorganisation.

Da unter das Gesetz auch alle behördlichen Tätigkeiten und die Bereitstellung von Gütern und Dienstleistungen fallen, gilt es unter anderem für folgende Bereiche: Bildung, Sozial- und Gesundheitsdienste, soziale Vergünstigungen, Militär- oder Zivildienst einschließlich des freiwilligen Militärdienstes für Frauen, Bereitstellung von Wohnraum und sonstige Versorgung mit Dienstleistungen und Gütern, die der Öffentlichkeit zur Verfügung stehen.

Der sachliche Geltungsbereich des Gesetzes ist für alle geschützten Diskriminierungsgründe gleich. Diskriminierung ist nach dem finnischen Antidiskriminierungsgesetz aufgrund der fünf in den Richtlinien genannten Diskriminierungsgründe (ethnische Zugehörigkeit,²⁰ Alter, Behinderung, Religion oder Weltanschauung und sexuelle Ausrichtung) sowie aufgrund von Nationalität, Sprache, Überzeugung, politischer Aktivität, gewerkschaftlicher Aktivität, familiären Beziehungen, Gesundheitszustand und anderer persönlicher Eigenschaften gleichermaßen verboten.

Der Schutz gilt vor allem für natürliche Personen, juristische Personen sind in der Regel nicht geschützt. Allerdings sind sowohl natürliche als auch juristische Personen für Diskriminierung haftbar.

Die Gesetze der Region Åland verbieten Diskriminierung aufgrund von ethnischer Zugehörigkeit, Religion und Weltanschauung, Behinderung, Alter und sexueller Ausrichtung in folgendem Umfang: im Arbeitsleben ist Diskriminierung wegen aller Diskriminierungsgründe verboten, Diskriminierung im Gesundheits- und Sozialdienst ist aufgrund von ethnischer Zugehörigkeit, Religion und Weltanschauung und sexueller Ausrichtung verboten, Diskriminierung in der Bildung und beim Zugang zu Gütern und Dienstleistungen ist aufgrund von ethnischer Zugehörigkeit, Religion und Weltanschauung, Behinderung und sexueller Ausrichtung verboten.

5. Rechtsdurchsetzung

Im Geltungsbereich des Antidiskriminierungsgesetzes können sich Opfer von Diskriminierung an den Antidiskriminierungs-Ombudsmann wenden, der sie bei der Durchsetzung ihrer Rechte berät und unterstützt. Personen, die sich als Opfer von Diskriminierung fühlen, können den Ombudsmann auch um ein Schlichtungsverfahren bitten. Außerhalb des Arbeitslebens kann der Ombudsmann zu jedem Diskriminierungsfall,

²⁰ Das Antidiskriminierungsgesetz verwendet den Begriff „Herkunft“, der gemäß der Definition der Regierungsvorlage ethnische Herkunft, nationale Herkunft, soziale Herkunft, rassische Zugehörigkeit und Hautfarbe umfasst.

der ihm vorgelegt wird, ein Gutachten abgeben. Die Gutachten des Ombudsmanns sind rechtlich nicht bindend.

Das Nationale Schiedsgericht für Nichtdiskriminierung und Gleichstellung kann Handlungen, die gegen das Verbot von Diskriminierung bzw. Viktimisierung verstoßen, verbieten oder eine Einigung zwischen den Parteien bestätigen. Es hat keine Zuständigkeit im Bereich Beschäftigung. Die Entscheidungen des Schiedsgerichts sind bindend, man kann jedoch gegen die Entscheidungen beim Verwaltungsgericht Berufung einlegen. Das Schiedsgericht kann eine Partei auch durch eine bedingte Geldstrafe zur Erfüllung ihrer Verpflichtungen zwingen. Wenn die Untersagungsverfügung nicht eingehalten wird, kann der Betroffene die Verhängung einer bedingten Geldstrafe in einem gesonderten Verfahren beantragen.

Im Arbeitsleben werden Verstöße von Arbeitgebern gegen das Antidiskriminierungsgesetz von der Arbeitsschutzbehörde verfolgt. In der Privatwirtschaft kann sie Beschwerden von Arbeitnehmern entgegen nehmen und vor Ort Inspektionen durchführen. Wenn sie Anhaltspunkte für Diskriminierung im Sinne des Strafgesetzbuchs findet, muss sie den Fall an die Staatsanwaltschaft übergeben. In weniger schweren Fällen von Diskriminierung kann die Arbeitsschutzbehörde Verbesserungsvorschläge machen. Diese Verbesserungsvorschläge der Arbeitsschutzbehörden sind rechtlich bindend.

Bei der Ausübung staatlicher Gewalt, im Arbeitsleben, Bildungswesen und beim Zugang zu Gütern und Dienstleistungen können Opfer von Diskriminierung bei einem ordentlichen Gericht auf eine Entschädigung nach dem Antidiskriminierungsgesetz klagen. Die Zahlung einer Entschädigung ist nicht mit einer strafrechtlichen Haftung verknüpft. Die in den letzten Jahren zugesprochenen Entschädigungssummen lagen zwischen 500 und 10 000 Euro. In Fällen, in denen die Diskriminierung bei der Erbringung von Dienstleistungen stattfand, z.B. in Restaurants usw., war die Höhe der Entschädigung deutlich niedriger, im Beschäftigungsbereich war die Höhe der Entschädigung in der Regel dagegen höher.

Bei Klagen nach dem Antidiskriminierungsgesetz geht die Beweislast vom Kläger auf den Beklagten über. Zunächst muss der Kläger Beweise vorlegen, die nahe legen, dass ein Verstoß gegen das Diskriminierungsverbot stattgefunden hat. Dann muss der Beklagte nachweisen, dass er nicht gegen das Diskriminierungsverbot verstoßen hat.

Wenn bei der Ausübung staatlicher Gewalt eine diskriminierende Entscheidung getroffen wurde, können die Diskriminierungsopfer ein Berichtigungsverfahren oder ein anderes reguläres Beschwerdeverfahren einleiten. Sie können aber auch beim parlamentarischen Ombudsmann oder beim Justizkanzler eine Beschwerde einreichen. Diese Stellen können einzelne Entscheidungen zwar nicht ändern oder aufheben, sie können jedoch ein Verfahren gegen den Beamten einleiten und/oder ein Gutachten zur korrekten Rechtsauslegung erstellen.

Vor Gericht können nur die Opfer der Diskriminierung Klagen wegen Diskriminierung einreichen und vor Gericht vertreten, nicht jedoch beispielsweise NROs, die das Opfer unterstützen oder in seinem Namen handeln. Eine Organisation mit einem Interesse an der Förderung der Gleichstellung und der Antidiskriminierungs-Ombudsmann sind jedoch berechtigt, einen konkreten Fall vor das Nationale Schiedsgericht für Nichtdiskriminierung und Gleichstellung zu bringen, wenn die Person, die diskriminiert wurde, ihre Einwilligung gibt.

Einige Menschenrechtsorganisationen unterstützen Opfer durch juristische Beratung bei ihrer Klage und haben bereits Situationstests verwendet, um Diskriminierung nachzuweisen. Die Verwendung statistischer Daten ist möglich, aber es liegt immer im Ermessen des Gerichts, ob und wie stark derartige Beweise gewichtet werden.

Diskriminierung ist ein Straftatbestand nach dem Strafgesetzbuch,²¹ insbesondere bei der Bereitstellung von Gütern und Dienstleistungen und im Arbeitsleben. Personen, die einer Diskriminierung für schuldig befunden wurden, können zu einer Geldstrafe oder zu bis zu sechs Monaten Haft verurteilt werden. Im Großteil der Diskriminierungsfälle, die nach dem Strafgesetzbuch verhandelt wurden, ging es um die Verweigerung des Zugangs zu Restaurants oder anderen öffentlichen Orten aufgrund der ethnischen Zugehörigkeit. Es gab jedoch auch strafrechtlich relevante Fälle von Diskriminierung aufgrund von Religion, sexueller Ausrichtung oder Behinderung.

6. Gleichbehandlungsstellen

Um die Anforderungen der Richtlinie zur Gleichbehandlung ohne Unterschied der „Rasse“ zu erfüllen, wurde im Jahr 2001 die Stelle des Ombudsmann für Minderheiten eingerichtet, der Opfer von ethnischer Diskriminierung unterstützen soll. Seit Anfang 2015 hat der Ombudsmann den Titel Antidiskriminierungs-Ombudsmann und seine Zuständigkeiten wurden auf alle Diskriminierungsgründe außer Geschlecht und Geschlechtsidentität ausgeweitet, für die weiterhin der Gleichstellungs-Ombudsmann zuständig ist.

Zu den Aufgaben des Ombudsmanns gehören die Unterstützung von Diskriminierungsopfern bei entsprechenden Klagen vor Gericht, die Planung von Maßnahmen zur Förderung der Gleichstellung, allgemeine Empfehlungen zur Verhinderung von Diskriminierung, die Durchführung unabhängiger Studien, die Veröffentlichung unabhängiger Berichte und allgemein die Förderung der Gleichstellung und einvernehmlicher Maßnahmen zur Umsetzung des Antidiskriminierungsgesetzes.

In konkreten Fällen kann der Ombudsmann ein begründetes Gutachten zur Prävention, Fortsetzung oder Weiterführung von Diskriminierung erstellen, sofern der Fall nicht in die Zuständigkeit der Arbeitsschutzbehörden fällt, also in den Bereich Beschäftigung.

Das Nationale Schiedsgericht für Nichtdiskriminierung und Gleichstellung ist nicht für die in Artikel 13 der Richtlinie zur Gleichbehandlung ohne Unterschied der „Rasse“ genannten Aufgaben zuständig und gilt damit im Sinne dieses Artikels nicht als „Stelle, deren Aufgabe darin besteht, die Verwirklichung des Grundsatzes der Gleichbehandlung zu fördern“. Das Schiedsgericht ist ein unabhängiges und unparteiisches richterliches Organ, dessen Entscheidungen bindend sind und gegen die Berufung eingelegt werden kann.

7. Zentrale Punkte

Das bis Ende 2014 geltende Antidiskriminierungsgesetz verpflichtete die Behörden, Gleichstellung gezielt und methodisch zu fördern und einen Plan zur Förderung der ethnischen Gleichstellung (Gleichstellungsplan) zu erstellen. Das geltende Antidiskriminierungsgesetz dehnt diese Pflicht auf alle Gründe aus und erweitert die Verantwortung von Behörden auf Bildungsanbieter und Arbeitgeber, die mehr als 30 Mitarbeiter beschäftigen. Nach den Inkrafttretensbestimmungen des Antidiskriminierungsgesetzes war die Frist für die Erstellung von Gleichstellungsplänen der 1. Januar 2017.

Die Gleichstellungspläne müssen die Verwirklichung der Gleichstellung bewerten und sollen alle im Antidiskriminierungsgesetz geschützten Diskriminierungsgründe (Herkunft, Alter, Behinderung, Religion, Weltanschauung, sexuelle Orientierung, Nationalität, Sprache, Meinung, politische Aktivität, Gewerkschaftstätigkeit, Familienbeziehungen, Gesundheitszustand oder andere persönliche Merkmale) abdecken. Diese Maßnahmen bilden die wichtigste Kombination von positiven Maßnahmen in der finnischen Gesellschaft. Gleichstellungspläne, die mehrere Gründe umfassen, wurden in Hunderten von Gemeinden, Behörden, Unternehmen und Organisationen (NROs, Studentenverbände

²¹ Strafgesetzbuch (*rikoslaki* (39/1889)), Kap. 11 Art. 11 und Kap. 47 Art. 3.

usw.) erstellt. In ihren Gleichstellungsplänen haben Organisationen und Unternehmen analysiert, wie ihre Dienstleistungen und Tätigkeiten die realen Bedürfnisse unterschiedlicher Kunden erfüllen, welche angemessenen Vorkehrungen notwendig sind und wie die Gleichstellung am Arbeitsplatz gewährleistet werden kann.

Das gesetzgeberische Verfahren zur Reformierung des Antidiskriminierungsgesetzes war außergewöhnlich langwierig und problematisch. Es begann bereits 2003, als das Parlament bei der Verabschiedung des ersten Antidiskriminierungsgesetzes ein Gesetz forderte, dass für alle Diskriminierungsgründe in allen Bereichen dasselbe Schutzniveau vorsieht wie im Bereich Beschäftigung.

Der Gesetzentwurf der Regierung, der dem Parlament 2014 endlich vorgelegt wurde, schwächte den Begriff der unmittelbaren Diskriminierung in allen Bereichen, die nicht unter die Antidiskriminierungsrichtlinien der EU fallen. Diesen Entwurf lehnte das Parlament ab. Nach Konsultationen des Verfassungsrechtsausschusses mit Wissenschaftlern und NROs akzeptierte das Parlament ein verstärktes Verbot von unmittelbarer Diskriminierung, bei dem Ungleichbehandlung nur dann zulässig ist, wenn sie ein unter Menschenrechtsaspekten rechtmäßiges Ziel verfolgt und die eingesetzten Mittel zur Erreichung dieses Ziels angemessen und erforderlich sind.

Der Begriff der unmittelbaren Diskriminierung in Bereichen, die unter die Antidiskriminierungsrichtlinien der EU fallen, ist einzigartig. Sie erlaubt Ungleichbehandlung, z. B. aufgrund der ethnischen Zugehörigkeit, grundsätzlich, wenn die Behandlung einer Rechtsvorschrift entspricht, einen rechtmäßigen Zweck verfolgt und die Mittel zur Erreichung dieses Zwecks angemessen sind.

Bei den Vorarbeiten zum neuen Antidiskriminierungsgesetz war einer der wichtigsten Streitpunkte die Zuständigkeit des Antidiskriminierungs-Ombudsmanns für den Bereich Beschäftigung. Anders als in den meisten anderen EU-Mitgliedstaaten spielte die frühere finnische Gleichbehandlungsstelle, der Ombudsmann für Minderheiten, keine wichtige Rolle im Kampf gegen Diskriminierung im Arbeitsleben. Nachdem die Europäische Union ein Vertragsverletzungsverfahren gegen Finnland eingeleitet hatte, bestand der gesetzgeberische Kompromiss darin, dem früheren Antidiskriminierungs-Ombudsmann die Möglichkeit zu geben, Empfehlungen zur Prävention von Diskriminierung im Arbeitsleben auszusprechen. Die konkrete Auslegung des Diskriminierungsverbots im Bereich Beschäftigung bleibt in der Zuständigkeit der Arbeitsschutzbehörde.

Um einzuschätzen, ob die verfügbaren Sanktionen wirksam, verhältnismäßig und abschreckend sind, wie von den Richtlinien gefordert, können die folgenden Punkte zusammengefasst werden: Einerseits können Opfer Schadenersatzansprüche geltend machen, strafrechtlich Anzeige erstatten und eine Verfügung des Schiedsgerichts für Nichtdiskriminierung und Gleichstellung beantragen. Andererseits sind besonders wirksame Rechtsmittel, wie die Wiedereinstellung, nicht verfügbar. Da Entschädigungen für Diskriminierung nur vor dem Amtsgericht eingeklagt werden können, schränkt das Risiko, die Rechtskosten der Gegenpartei zahlen zu müssen, den Rechtsschutz gegen Diskriminierung in der Praxis stark ein.

INTRODUCTION

The national legal system

The main provisions pertaining to discrimination have been laid down in the Constitution, the Non-Discrimination Act and the Criminal Code. As a general clause, a prohibition on discrimination is also included in many statutory acts. Section 6 of the Constitution provides for equality and prohibits discrimination. The main thrust of this constitutional guarantee of non-discrimination is to ensure formal equality, i.e. the principle that people in similar circumstances are to be treated similarly, but it also aims to reach full, substantive equality in practice. The constitutional prohibition of discrimination may be directly invoked in courts, and regular laws are to be interpreted in accordance to it.

The Non-Discrimination Act entered into force on 1 February 2004. It was repealed at the end of 2014 and a new act with the same name – the Non-Discrimination Act - entered into force on 1 January 2015. The Non-Discrimination Act is the main instrument transposing the EU directives on equal treatment (the Racial Equality Directive and the Employment Equality Directive) into national law.

The scope of the Non-Discrimination Act is wide, covering both public and private activities, but excluding private life, family life and the practice of religion. Protection is provided on the grounds of origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.

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

Gender equality is addressed in the Constitution and in the Criminal Code, and in a separate law of general application, the Act on Equality between Women and Men.

The Åland Islands, which is an autonomous province of Finland, has exclusive legislative competence over certain material areas covered by the two directives as concerns its territory. The division of legislative competence between the Åland Islands and the Finnish state goes as follows: the Åland Islands have competence over matters relating to e.g. civil servants employed by the Province of Åland or one of the municipalities in the Åland Islands, healthcare, social welfare, education, self-employment, promotion of employment, and some aspects of the provision of services (e.g. transport services); the Finnish state has competence over matters such as private employment including those employed by the authorities of the Åland Islands or one of the municipalities as employees, not civil servants, some parts of the provision of services, such as banking, and criminal and procedural law, including rules on burden of proof.

Therefore, some parts of the equality legislation that was adopted in Finland in order to transpose the two directives are not applicable with respect to the Åland Islands, which is why it was necessary for the Åland Islands to adopt its own equality legislation. The latter piece of legislation entered into force on 1 December 2005. The two sets of legislation differ to a great extent from each other, partly because of the different terminology used. The Åland Islands legislation was drafted in Swedish while the legislation adopted by the Finnish state was drafted in Finnish; the legislative environment of the two sets of law are completely different, although much of the law adopted by the Finnish state is also applicable in the Åland Islands.

List of main legislation transposing and implementing the directives

The main pieces of legislation transposing and implementing the two anti-discrimination directives are:

- Non-Discrimination Act (1325/2014) [*Yhdenvertaisuuslaki*],²² date of adoption 30 December 2014; entry into force 1 January 2015; grounds protected: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics; material scope: both public and private activities, excluding private life, family life and the practice of religion
- Act on the Non-Discrimination Ombudsman (1326/2014) [*Laki yhdenvertaisuusvaltuutetusta*],²³ date of adoption 30 December 2014; entry into force 1 January 2015; grounds protected: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics; material scope: both public and private activities, excluding private life, family life and the practice of religion
- Act on the Non-Discrimination and Equality Tribunal (1327/2014) [*Laki yhdenvertaisuus- ja tasa-arvolautakunnasta*],²⁴ date of adoption 30 December 2014; entry into force 1 January 2015; grounds protected: gender, gender identity, origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics; material scope: both public and private activities, excluding private life, family life and the practice of religion
- Provincial Act on Prevention of Discrimination in the Province of Åland (66/2005) [*Landskapslag om förhindrande av diskriminering i landskapet Åland*], date of adoption 10 November 2005, entry into force 1 December 2005; grounds protected: ethnic belonging, religion and other conviction, age, disability and sexual disposition, material scope: applicable in the Åland Islands; civil servants employed by the ÅI or by one of the ÅI's municipalities, schools, social care and health care, some aspects of the provision of goods and services.²⁵

In the Finnish legislative system, Government proposals (pertinent preparatory works or *travaux préparatoires*) are an important source of information for interpreting the legislation. The Government proposal for a particular legislative act is not legally binding but is frequently used by courts and academics in explaining and interpreting the concepts and purpose of a particular piece of legislation. As the text of non-discrimination legislation is also concise and often does not include definitions, the definitions mentioned in respective Government proposals are frequently referred to in this report.

²² The Non-Discrimination Act (1325/2014) [*Yhdenvertaisuuslaki*], <http://www.finlex.fi/fi/laki/ajantasa/2014/20141325> (All links checked 10.3.2018).

²³ Act on the Non-Discrimination Ombudsman (1326/2014) [*Laki yhdenvertaisuusvaltuutetusta*], <http://www.finlex.fi/fi/laki/ajantasa/2014/20141326>.

²⁴ Act on the Non-Discrimination and Equality Tribunal (1327/2014) [*Laki yhdenvertaisuus- ja tasa-arvolautakunnasta*], <http://www.finlex.fi/fi/laki/ajantasa/2014/20141327>.

²⁵ Provincial Act on Prevention of Discrimination in the Province of Åland (66/2005) [*Landskapslag om förhindrande av diskriminering i landskapet Åland*] http://old.regeringen.ax/.composer/upload/modules/lagar/afs2005_nr66.pdf.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Finnish constitution includes the following articles dealing with non-discrimination:

- Section 6(1) of the Constitution [*Perustuslaki* (731/1999)]²⁶ is a general clause: 'Everyone is equal before the law'.
- Section 6(2) defines the prohibition of discrimination and the protected grounds: 'No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.'
- Section 6(3): is a children's rights article: 'Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to them to a degree corresponding to their level of development.'

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives. The constitutional anti-discrimination provisions are directly applicable. Section 6 is widely held to be the best example of a constitutional right that is directly applicable. Section 6 has been invoked in courts.²⁷

The constitutional equality clauses can be enforced against private actors (as well as against the state). Although the primary thrust of Section 6 is to ensure equal treatment in the use of public powers, Section 6 may in some situations have a bearing on relationships between private parties as well. Mostly this effect takes place through statutory law which implements the constitutional principle of equal treatment, although in some situations Section 6 may be more 'directly applicable', e.g. as a ground for claiming damages or as a ground for determining that a specific clause of an agreement is to be considered 'unjust'.²⁸

²⁶ The Constitution [*Perustuslaki* (731/1999)] <http://www.finlex.fi/fi/laki/ajantasa/1999/19990731>.

²⁷ See e.g. Pekka Hallberg in Hallberg et al, '*Perusoikeudet*' [Basic Rights], WSOY 1999, pp. 704, 717, 719; Kortteinen – Makkonen, *Oikeutta rasismien ja syrjinnän uhreille – Etnisen syrjinnän vastainen käsikirja* ['Justice to the Victims of Racism and Discrimination – a Manual Against Ethnic Discrimination']. Ihmisoikeusliitto 2000.

²⁸ Martin Scheinin, 'Yhdenvertaisuus ja syrjinnän kieltä' [Equality and the Prohibition of Discrimination], in Hallberg et al, *Perusoikeudet* [Basic Rights], WSOY 1999, p. 260; Timo Makkonen, *Syrjinnän vastainen käsikirja*. IOM Helsinki 2003, p. 101.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

Section 8 of the Non-Discrimination Act lists the grounds of discrimination but does not define them in the text of the statute. This is due to two reasons. Most importantly, discrimination is prohibited by an open-ended list of grounds, first listing 13 grounds explicitly (origin, age, disability, religion or belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health) and then referring to 'other personal characteristics' as prohibited grounds of discrimination. Therefore, it is not crucial to define the prohibited grounds of discrimination in a precise way as any 'personal characteristic' is thought to cover the situation anyway.

Second, the Government proposal²⁹ (pertinent preparatory works or *travaux préparatoires*) for the Non-Discrimination Act defines the grounds for discrimination referring also to the recent case law of the Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECHR).³⁰

The Government proposal explains that there is no change in the definitions of the grounds of unlawful discrimination between the repealed Non-Discrimination Act and the Non-Discrimination Act, which came into force from 2015. There is no case law on applying the repealed act to indicate that the definitions of the grounds protected in the Racial Equality Directive and the Employment Equality Directive would have a narrower interpretation in the new act than in the directives.

The Finnish term for sexual orientation was in the repealed Non-Discrimination Act and in the Finnish translation of Directive 2000/78/EY '*sukupuolinen suuntautuminen*' which can also be translated as 'gender orientation'. In the current Non-Discrimination Act the term for sexual orientation has been changed into '*seksuaalinen suuntautuminen*' which is more commonly used in general discussion and preferred by the National Lesbian, Gay, Bisexual, Transgender, Intersex organisation. The Government proposal does not define sexual orientation any further, but it is generally understood to include homosexual, heterosexual or bisexual orientation.

The term for ethnic origin in the repealed Non-Discrimination Act was 'ethnic or national origin'. This term has been replaced in the current Non-Discrimination Act as regards the word 'origin'. It is defined in the Government proposal as including ethnic origin, national origin, social origin,³¹ race and colour of skin.³² There is no doubt that the concepts of race and ethnic origin are to be interpreted as being included in the concept of origin as used in the Non-Discrimination Act.

²⁹ Pages 66-68 of the Government proposal on the Non-Discrimination Act 19/2014 [*Hallituksen esitys yhdenvertaisuuslaiksi 19/2014 vp*] <http://www.finlex.fi/fi/esitykset/he/2014/20140019>.

³⁰ The Government proposal refers to the CJEU decision of *HK Danmark* (C-335/11 and C-337/11, 11.4.2013) when explaining the relationship between state of health and disability, and to the ECHR decision in *Hode and Abdi* (6.12.2012) when explaining the concept of 'other personal characteristics'.

³¹ The term 'social origin' [*yhteiskunnallinen alkuperä*] is also used in the Government proposition for the Constitution (HE309/1993). The proposition for the Constitution uses the term with reference to the International Covenant on Civil and Political Rights, where 'social origin' is used in Article 2.

³² Page 66 of the Government proposal on the Non-Discrimination Act.

The Government proposal explains that the prohibition of discrimination on the ground of age would protect all ages, young as well as grown up.³³

On the definition of religion and belief, the Government proposal explains that the difference between these two is not always easy to distinguish, although belief is connected more to conviction than to religion. It is further defined that the belief protected in the Non-Discrimination Act is required to be permanent to a certain extent.³⁴ Other terms included in the list of prohibited discrimination grounds in the act such as 'opinion' and 'political activity' complement the protection against discrimination on the basis of an individual's views and values.

The Government proposal explains that the definition of health in the Non-Discrimination Act refers to both physical and mental health. The Government proposal refers to the Court of Justice of the European Union decision HK Danmark (C-335/11 and C-337/11) and explains that an illness combined with long-lasting effects preventing participation in employment can also be considered a disability.³⁵

On disability, the Government proposal briefly explains that there is no unambiguous definition in Finnish legislation. The Government proposal then refers to the UN Convention on the Rights of Persons with Disabilities by stating that, according to Article 1 of that convention, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Additionally, the Government proposal mentions that disability can be congenital or it can be caused by accident.³⁶

2.1.2 Multiple discrimination

In Finland, prohibition of multiple discrimination is not included in the law. The requirement for specific prohibition of multiple discrimination and clarifying who should supervise this prohibition was one of the disagreements in preparing the recent overall renewal of the Non-Discrimination Act.³⁷ Neither the Government proposal nor the Employment and Equality Committee report give reasons why multiple discrimination was not addressed in the Non-Discrimination Act.

In Finland, the following case law deals with multiple discrimination: the Rovaniemi Appeal Court confirmed the decision of the Oulu District Court when it awarded compensation separately on the basis of gender discrimination (applying the compensation statutes of the Equality Act) and on the basis of disability discrimination (applying the compensation statutes of the Non-Discrimination Act). The City of Oulu, which lost the case in the District Court, had stated in the Appeal Court that compensation cannot be awarded based on both acts as there was only one discriminatory act when the visually impaired claimant was not reinstalled to her previous position after returning from maternity leave.³⁸

³³ Page 66 of the Government proposal on the Non-Discrimination Act.

³⁴ Page 66 of the Government proposal on the Non-Discrimination Act.

³⁵ Page 67 of the Government proposal on the Non-Discrimination Act.

³⁶ Page 67 of the Government proposal on the Non-Discrimination Act.

³⁷ See Review on Comments on Government proposal on the Renewal on Non-Discrimination Act [Yhdenvertaisuuslainsäädännön uudistamista koskeva hallituksen esitys, Lausuntotiivistelmä], Ministry of Justice, Helsinki 2013; https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76496/omml_46_2013_lausuntotiiv_18_s.pdf?sequence=1.

³⁸ Rovaniemi Appeal Court 23.10.2014, 483/23.10.2014, S13/536.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Finland, Section 8 of the Non-Discrimination Act prohibits discrimination based on the perception or assumption of what a person is:

'Discrimination is prohibited, regardless of whether it is based on a fact or assumption concerning the person him/herself or another.'

b) Discrimination by association

In Finland, Section 8 of the Non-Discrimination Act, prohibits discrimination based on association with persons with particular characteristics. It is clearly stated in the Government proposal for the act that explicit prohibition of discrimination by association in the Non-Discrimination Act is to be interpreted in line with the Coleman case (C-303/06, 17.7.2008).³⁹

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

a) Prohibition and definition of direct discrimination

In Finland, direct discrimination is prohibited in Section 8 of the Non-Discrimination Act.

Direct discrimination is defined in Section 10 of the Non-Discrimination Act as:

'if a person⁴⁰ ... is treated less favourably than another person was treated, is treated or would be treated in a comparable situation.'

b) Justification of direct discrimination

There are two general concepts around the justification of direct discrimination and one regarding employment in the Non-Discrimination Act. The first one is applicable to situations governed by the Racial Equality Directive, education in general or when using public power or performing public administrative tasks. The second one applies to all other situations except employment. The third one applies to employment including recruitment and self-employment.

- In the situations governed by the Racial Equality Directive, education in general, when using public power or performing public administrative tasks, the following applies: differential treatment is allowed only if the treatment is based on legislation, the treatment has an acceptable aim and the means used are in due proportion for achieving this aim.⁴¹
- This general justification of direct discrimination in situations governed by the Racial Equality Directive does not derive from the directive and may be too widely formulated. The Government proposal for the Non-Discrimination Act lists safeguards that would prevent legislation or applying discriminatory acts or other legislation.⁴² These include the Constitutional Law Committee's task to analyse the constitutionality of legislative proposals and their relation to international human

³⁹ Page 68 in the Government proposal on the Non-Discrimination Act 19/2014.

⁴⁰ In the unofficial translation provided by the Ministry of Justice, the English word 'person' is used when defining the concept of direct discrimination. The original word 'jotakuta' in the text of the Act in Finnish can be interpreted to include groups as well as individuals.

⁴¹ Section 11(1) of the Non-Discrimination Act, in Finnish: *Erilainen kohtelu ei ole syrjintää, jos kohtelu perustuu lakiin ja sillä muutoin on hyväksyttävä tavoite ja keinot tavoitteen saavuttamiseksi ovat oikeasuhtaisia.*

⁴² Page 71 in the Government proposal on the Non-Discrimination Act.

rights treaties⁴³ and the courts' responsibility not to apply acts in conflict with the Constitution.⁴⁴

- In other situations it is not required that differential treatment is based on legislation, but then the aim needs to be acceptable from the perspective of basic rights and human rights and the means used are in due proportion for achieving this aim.⁴⁵
- In employment, differential treatment is allowed based on genuine and determining occupational requirements, age and habitual residence. Occupational requirements are explained later in part 4.1. and differential treatment based on age in part 4.7.1.
- Differential treatment in employment is possible also on the basis of habitual residence if: 'it has a justified purpose that is objectively and appropriately founded and derives from employment policy, labour market or vocational training or some other comparable justified objective, or when the differential treatment arises from age limits adopted in qualification for retirement or invalidity benefits within the social security system.'⁴⁶

2.2.1 Situation testing

a) Legal framework

In Finland, equality laws and procedural laws do not refer to situation testing. Therefore, the permissibility of testing is in practice determined by the general provisions of the law. For instance, the Criminal Code, through the concept of fraud, does not preclude the use of situation testing.

Courts are at liberty to freely regard as admissible any type of evidence. This principle is embodied in Chapter 17, Section 2 of Code of Judicial Procedure [*oikeudenkäymiskaari* (4/1734)],⁴⁷ Paragraph 1 of which provides that '[a]fter having carefully evaluated all the facts that have been presented, the court shall decide what is to be regarded as the truth in the case'.

b) Practice

In Finland, situation testing is used in practice. Several criminal proceedings (e.g. on discrimination) have been initiated on the basis of situation tests, which implies the permissibility of the method. There are, however, no known instances where situation testing would have been conducted *ex post facto* (after the alleged discrimination took place) to gather evidence to support a claim of discrimination: the method itself and the weight of evidence thereby occasioned have not been up for legal evaluation yet. There are no reasons to assume that the permissibility of situation testing would depend on the ground concerned.

The first record of situation testing in discrimination was when a Finnish NGO (the Finnish League for Human Rights) conducted situation testing in the autumn of 2002 to investigate whether restaurants deny entry to persons belonging to minorities (testers were of foreign

⁴³ Section 74 of the Constitution.

⁴⁴ Section 106 of the Constitution.

⁴⁵ Section 11(2) of the Non-Discrimination Act, in Finnish: Erilainen kohtelu on kuitenkin oikeutettua siinäkin tapauksessa, että kohtelun oikeuttamisperusteista ei ole säädetty, jos kohtelulla on perus- ja ihmisoikeuksien kannalta hyväksyttävä tavoite ja keinot tavoitteen saavuttamiseksi ovat oikeasuhtaisia.

⁴⁶ This rather exceptional detail – differential treatment because of habitual residence – in the otherwise quite exception-free Non-Discrimination Act originates from a statement by the Deputy Chancellor of Justice who criticised a municipality in Finland for providing summer jobs only to those young people who live in the municipality without legal bases for this action.

Section 12(2) of Non-Discrimination Act, in Finnish: 'Ikään tai asuinpaikkaan perustuva erilainen kohtelu on lisäksi oikeutettua, jos kohtelulla on objektiivisesti ja asianmukaisesti perusteltu työllisyyspoliittinen tai työmarkkinoita koskeva tavoite taikka jos erilainen kohtelu johtuu eläke- tai työkyvyttömyysetuuksien saamisedellytykseksi vahvistetuista ikärajoista.'

⁴⁷ Code of Judicial Procedure [*oikeudenkäymiskaari* (4/1734)]
<http://www.finlex.fi/fi/laki/ajantasa/1734/17340004000>.

origin or Roma and were accompanied by people of the majority ethnic group). On the basis of this investigation 11 crime reports on discrimination were filed with the police. In six of these cases discrimination was found and the accused were sentenced to fines. In four cases the public prosecutor decided not to bring charges and one case failed because it was not brought before the court within the time limit prescribed by the law.

Also private individuals have occasionally conducted testing experiments. For instance, a group of Roma conducted situation testing in the city of Pori in July 2006 in order to investigate whether they were allowed entry into local restaurants. Each one of the tested 16 restaurants denied entry to the members of the test group while allowing entry to the members of the majority population. Criminal charges were brought against 13 persons but only three of them were convicted, because other defendants were able to establish that one or more of the Roma testers had in fact been denied entry for legitimate reasons, i.e. because of their prior inappropriate conduct at the restaurants concerned.

Sometimes journalists use situation testing as a means to describe the prevalence of discrimination. In autumn 2013, the Finnish television programme 'Eyewitness' [*Silminnäkijä*] showed how three test persons (one a native Finn, one with a Somali background and one with a Russian background) were treated while applying for a job, trying to get into a restaurant and trying to rent an apartment. The results of the test showed a suspicion of discrimination in all these situations. A day after the programme was broadcast on television, the Ombudsman for Minorities asked the police to investigate whether the prohibition of discrimination in the Criminal Code had been breached. In October 2016 the Helsinki District Court sentenced the doorman who had denied entry to the persons with Somali and Russian backgrounds to pay EUR 300 in fines and EUR 1 600 in compensation to the victims of discrimination.

Information is not always available on whether a discrimination complaint originated from situation testing. In recent years the Non-Discrimination and Equality Tribunal has had several cases of denial of access to goods and services or events because of disability (the cases relating to access to political events are detailed in chapter 12.2 below). The cases in which a person using a wheelchair tried to access political discussions arranged by different political parties but did not succeed in entering them were probably situation tests.

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

a) Prohibition and definition of indirect discrimination

In Finland, indirect discrimination is prohibited in Section 8 of the Non-Discrimination Act.

It is defined in Section 13 of the Non-Discrimination Act. The definition of indirect discrimination follows the definition in the directives:

'if an apparently neutral rule, criterion or practice puts a person⁴⁸ at a disadvantage compared with others'

b) Justification test for indirect discrimination

The definition of a justification test for indirect discrimination is in Section 13 of the Non-Discrimination Act and carefully follows the definition in the directives:

⁴⁸ In the unofficial translation provided by the Ministry of Justice, the English word 'person' is used when defining the concept of indirect discrimination. The original word '*jonkun*' in the text of the Act in Finnish can be interpreted to include groups as well as individuals. Section 13 in Finnish: '*Syrjintä on välillistä, jos näennäisesti yhdenvertainen sääntö, peruste tai käytäntö saattaa jonkun muita epäedullisempaan asemaan henkilöön liittyvän syyn perusteella.*'

'unless that rule, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'⁴⁹

It is clearly stated in the Government proposal for the act that the interpretation of the act must happen following the jurisprudence of the Court of Justice of the European Union and other international human rights bodies, including the European Court of Human Rights.⁵⁰

c) Comparison in relation to age discrimination

The Non-Discrimination Act does not specify how a comparison is to be made in relation to age discrimination.

2.3.1 Statistical evidence

a) Legal framework

In Finland, there are national rules permitting data collection under Sections 11 and 12 of the Personal Data Act [*henkilötietolaki* 523/1999]. According to Section 11 the processing of sensitive data is prohibited. Personal data are deemed to be sensitive, if they relate to or are intended to relate to:

1. race or ethnic origin;
2. the social, political or religious affiliation or trade-union membership of a person;
3. a criminal act, punishment or other criminal sanction;
4. the state of health, illness or disability of a person or the treatment or other comparable measures directed at the person;
5. the sexual preferences or sex life of a person; or
6. the social welfare needs of a person or the benefits, support or other social welfare assistance received by the person.

The prohibition of gathering sensitive data affects the possibilities of producing statistical data for designing positive action measures even if statistical data without personal information is not prohibited. It is noticeable that age is not considered to constitute sensitive data.

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

The procedural laws do not specifically address this issue. Normally courts are at liberty to freely regard as admissible any type of evidence, including statistics. This principle is embodied in Chapter 17, Section 2 of Code of Judicial Procedure, Paragraph 1 of which provides that

'after having carefully evaluated all the facts that have been presented, the court shall decide what is to be regarded as the truth in the case.'

b) Practice

In Finland, statistical evidence in order to establish indirect discrimination is used in practice. Indeed, statistical evidence has been presented in the courts, deemed admissible and used *in ratio decidendi*.⁵¹

⁴⁹ The latter part of Section 13 in Finnish reads: '*paitsi jos säännöllä, perusteella tai käytännöllä on hyväksyttävä tavoite ja tavoitteen saavuttamiseksi käytetyt keinot ovat asianmukaisia ja tarpeellisia.*'

⁵⁰ Page 68 of the Government proposal on the Non-Discrimination Act.

⁵¹ See e.g. KHO 2001:38, KHO 2006:93 and KKO 2004:59.

But there have been only a few cases that have involved the use of statistical analysis, and even in these cases the analyses have been rather straightforward and simple. These cases have dealt with age discrimination.⁵²

The use of statistical evidence may be more widespread in the area of gender discrimination, although no data are available for the purposes of making comparisons. It does not appear to be the case that there would be any reluctance towards using statistical evidence in courts; if data are available it will likely be deemed admissible as evidence. The issue of statistical evidence is not subject to discussion at the national level, and it cannot be foreseen at this time that evolution in other countries would change this situation because this evolution has not itself been a subject of national discussion either.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Finland, harassment is prohibited in national law in Section 8 of the Non-Discrimination Act, where it explicitly constitutes a form of discrimination.

It is defined in Section 14 of the Non-Discrimination Act as follows:

‘The deliberate or de facto infringement of the dignity of a person is harassment if the infringing behaviour relates to a reason referred to in Section 8(1), and as a result of the reason, a degrading or humiliating, intimidating, hostile or offensive environment towards the person is created by the behaviour.’

According to Section 8(2), harassment constitutes discrimination, as referred to in the Non-Discrimination Act. Therefore, the burden of proof provisions defined in Section 28 of the Act apply also to harassment.

The personal and material scope of the prohibition of harassment is explained in the Government proposal⁵³ on the Non-Discrimination Act of 2015. The proposal outlines that harassment which addresses a group of people is also prohibited, so the harassment therefore does not need to be addressed to a particular individual. According to the proposal, talks, gestures, facial expressions, e-mails or the presenting of inappropriate material can all count as harassment.

The Government proposal also refers to the decision of the Supreme Administrative Court from 9 March 2011,⁵⁴ in which the question was whether broadcasting a programme (called ‘Romano-TV’) on national television breached the prohibition of harassment (and discrimination) in the Non-Discrimination Act. The court decided that broadcasting a TV programme is included in the concept of ‘service’, where discrimination is prohibited. The court also examined whether the programme violated the dignity of the Roma population in Finland. This was important as it confirmed the principle that the prohibition of harassment in providing services extends to groups, not just individuals.

b) Scope of liability for harassment

In Finland, where harassment is perpetrated by an employee the employer and the employee are liable. Section 14(2) of the Non-Discrimination Act especially defines it as discrimination if the employer neglects to take the action it can after being informed of

⁵² E.g. cases KHO 2001:38 and KHO 2006:93 involved simple statistical analyses of the treatment received by people of different ages.

⁵³ Page 78, Government proposal on the Non-Discrimination Act.

⁵⁴ Supreme Administrative Court, 09.03.2011, Reference number 588, Ref. 3870/1/09.

harassment of an employee.⁵⁵ It is not clear if a similar lack of reaction is automatically seen as discrimination if it happens e.g. in schools.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Finland, instructions to discriminate are prohibited in Section 8 of the Non-Discrimination Act, where instructions or orders to discriminate are defined as discrimination. Instructions are not defined in the act itself, but the Government proposal opens up the definition. According to the *travaux préparatoires* instructions, guidelines or orders that relate to or create discrimination are discrimination if the person giving instructions, guidelines or orders has a power to impose these obligations.⁵⁶

In Finland, instructions explicitly constitute a form of discrimination even if the instructions have not been followed.⁵⁷

b) Scope of liability for instructions to discriminate

In Finland, both the instructor and the discriminator are liable. When considering the consequences of discrimination, i.e. the obligation to pay compensation to the victim, the general principles of law applicable in the Finnish legal system determine the responsibility. As a general rule an employer is liable for the action or lack of action by an employee.⁵⁸

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 Finland, the duty to provide reasonable accommodation for people with disabilities is included in the law. It is defined in the Non-Discrimination Act. According to Section 15(1), the employer is obliged to provide reasonable accommodation in order to provide a person with disabilities with equal access to employment and to allow them to manage their work tasks and advance in their career.

Section 15(2) of the Non-Discrimination Act defines the elements that need to be taken into account in assessing the reasonableness of the accommodation:

- the needs of the person with disabilities;
- the size, financial position and the nature and extent of activity of the employer;
- estimated costs for reasonable accommodation measures;
- financial support available for reasonable accommodation measures.

The employer also has a special duty to give a written explanation to a person with disabilities who considers that they have been discriminated against in a recruitment situation or during employment.⁵⁹

⁵⁵ Section 14(2) reads in Finnish: 'Työnantajan menettelyä on pidettävä syrjintänä, jos työnantaja saatuaan tiedon siitä, että työntekijä on joutunut työssään 1 momentissa tarkoitetun häirinnän kohteeksi, laiminlyö ryhtyä käytettävissään oleviin toimiin häirinnän poistamiseksi.'

⁵⁶ Page 69, Government proposal on the Non-Discrimination Act.

⁵⁷ Page 69, Government proposal on the Non-Discrimination Act.

⁵⁸ Chapter 3 — Vicarious liability of employers and public corporations, Section 1(1) states: 'An employer shall be vicariously liable in damages for injury or damage caused by an employee through an error or negligence at work' Tort Liability Act (412/1974) <http://www.finlex.fi/fi/laki/ajantasa/1974/19740412>.

⁵⁹ Non-Discrimination Act, Section 15(3).

b) Practice

Although the duty to provide reasonable accommodation for people with disabilities has been in place since 2004, the practical implementation of this duty is not well documented and the case law on breaches of the duty is scarce. This is partly because the body supervising the duty of reasonable accommodation – the Occupational Safety and Health Authority – and the trade unions representing the workers do not actively publish detailed information on their work against discrimination.

Some case law does exist. The Rovaniemi Appeal Court⁶⁰ confirmed that not reinstating a visually impaired teacher after her return from maternity leave was discrimination on the basis of disability and awarded the teacher compensation. The employer (City of Oulu) claimed that the teacher no longer had the ability to work in the school. Her task would have been to teach a special class for severely disabled children. The employer explained that because of her limited eyesight, she could have not observed the behaviour and health of the children. The employer also explained that she had not previously taught such a demanding group of pupils. The court noted that the employer had not made any attempt to follow their duty to make reasonable accommodation in order for the teacher to continue her work at the school and considered this alone to establish discrimination according the Non-Discrimination Act.

The regional Southern Finland Occupational Safety and Health Authority publishes information on its activities against discrimination. The latest⁶¹ available information relates to 2016. According the report⁶² there were four cases in 2016 where employers neglected their duty to make reasonable accommodation and therefore discriminated against the person with disabilities. In one case a person with hearing disability had applied for several open jobs in a company. The company, who did not hire the applicant, had not considered making reasonable accommodation for the jobs. In the second case, a person was diagnosed with multiple sclerosis. The employer did not renew the person's temporary employment contract and questioned the ability of the employee to continue performing their tasks at work. In the third case, the employer did not allow the employee to use the help of others (such as the employee's personal assistant or trainees) to perform the work duties that the employee could not perform without help because of their disability. In the fourth case, the employer had neglected the requests of the employee for assistance because of their disability and had also failed to consider alternative accommodation.

The report does not say whether the views of the Occupational Safety and Health Authority resulted in any sanctions against the employers or compensation to those who were denied reasonable accommodation.

c) Definition of disability and non-discrimination protection

The definition of disability is the same in claiming reasonable accommodation and in the statutes that provide non-discrimination protection.

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

In Finland, Section 15 of the Non-Discrimination Act sets out a duty to provide reasonable accommodation in order to provide a person with disabilities equal access to the services

⁶⁰ Rovaniemi Appeal Court, 23.10.2014, 483/23.10.2014, S13/536.

⁶¹ Available information checked 11.03.2018.

⁶² Occupational Health and Safety Authority (2017), *Syrjinnän kiellon valvonta Etelä-Suomessa vuonna 2016*, Työsuojeluhallinto 6/2017 (published 27.03.2017) http://www.tyosuojelu.fi/documents/14660/2642702/Raportti_062017_Syrjinnän+kiellon+valvonta/4664d3cc-abef-fbd9-11fc-47cd1c642965.

that authorities⁶³ provide and to receive education as well as goods and services. This obligation to reasonable accommodation extends to authorities, those providing education and public and private providers of goods and services.

The elements that need to be taken into account in assessing reasonable accommodation are the same inside and outside the field of employment:

- the needs of the person with disabilities;
- the size, financial position and the nature and extent of activity of the actor;
- the estimated costs for reasonable accommodation measures;
- the financial support available for reasonable accommodation measures.⁶⁴

There have been several decisions by the Non-Discrimination and Equality Tribunal that have interpreted the reasonable accommodation duties in the current Non-Discrimination Act, which came into force on 1 January 2015. As the Tribunal does not have authority with regard to employment, all the decisions are outside that field. In many of the decisions, the issue has involved access to goods and services when using a wheelchair. In its decisions, the tribunal has stated, for example, that in arranging a marketing or public relations event, wheelchair access to a sauna should have been arranged for the individual who requested it. Consequently, the tribunal found discrimination in the case in the form of failure to make reasonable accommodation.⁶⁵ On the other hand – given the particular circumstances in the street outside a currency exchange office – there was found to be no discrimination when these services were not available to a wheelchair-using customer, as it was not possible to take reasonable accommodation measures at the time.⁶⁶

The Non-Discrimination and Equality Tribunal confirmed in 2015 that the duty to provide reasonable accommodation cannot be overruled by referring to the need to comply with the requirements of other legislation. The tribunal also confirmed that the duty on reasonable accommodation extends to the decision-making process of the authority in deciding, for example, on financial benefits. The case in question concerned a disabled student who was denied the use of unemployment benefit for studying.⁶⁷

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

In Finland, failure to meet the duty of reasonable accommodation is directly defined as discrimination as part of the definition of discrimination in the Non-Discrimination Act.⁶⁸ Failure to meet the duty of reasonable accommodation has the same consequences as other forms of discrimination, i.e. the duty to pay financial compensation.⁶⁹ The Non-Discrimination and Equality Tribunal cannot order a particular accommodation to be made, but it can forbid the continuation of discrimination, i.e. denial of reasonable accommodation, and it may impose a conditional fine to enhance its prohibition or order.⁷⁰

⁶³ Section 4 of the Non-Discrimination Act has definitions for the concepts used in the Act. According to Section 4(1): 'In this Act, an authority means central and local government authorities, independent bodies governed by public law and parliamentary agencies, as well as authorities in the province of Åland when the latter apply State legislation. The provisions on an authority also apply to other instances discharging a public administrative function.'

⁶⁴ The Non-Discrimination Act, Section 15.

⁶⁵ Non-Discrimination and Equality Tribunal decision, 146/2016, 25.11.2016, <http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/RBNIT854R/YVTLTK-tapausseloste-25.11.2016-esteettomyys-markkinointitempaus.pdf>.

⁶⁶ Non-Discrimination and Equality Tribunal decision, 47/2015, 31.03.2016 <http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/Rpkxlemev/YVTLtk-tapausseloste-31.3.2016-rahamvaihtopalvelu-liikuntavammaisen.pdf>.

⁶⁷ Non-Discrimination and Equality Tribunal decision, 14.12.2015, 21/2015 http://yvtltk.fi/material/attachments/ytaltk/tapausselosteet/tapausselosteet2015/GA3R XRkIL/YVTLtk-tapausseloste-14_12_2015-kohtuulliset_mukautukset-TE_toimisto.pdf.

⁶⁸ The Non-Discrimination Act, Section 8.

⁶⁹ The Non-Discrimination Act, Section 28.

⁷⁰ The Non-Discrimination Act, Section 20(3).

The statutes concerning shifting the burden of proof also apply to situations that involve assessing reasonable accommodation duties.

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

In Finland, there is no duty in the Non-Discrimination Act to provide reasonable accommodation in respect of grounds other than disability in either the public or private sector.

However, the obligation set in the Constitution on authorities to 'guarantee the observance of basic rights and liberties'⁷¹ can be interpreted to require authorities to alter their procedures in order to lower the threshold of equal access for all.

Additionally, Chapter 2 of the Non-Discrimination Act sets a general requirement for authorities, education providers and employers to promote equality on all grounds.⁷² This requirement is of a more general nature than the duty to provide reasonable accommodation for people with disabilities. Even if the requirement to promote equality is intended to change the situation of groups of people in unequal situations, it is possible for the individual to use it to support her/his claim for more equal treatment.⁷³

g) Accessibility of services, buildings and infrastructure

In Finland, national law requires new services available to the public, new buildings and new infrastructure to be designed and built in a disability-accessible way.⁷⁴ The Government proposal for the Non-Discrimination Act clearly distinguishes accommodation measures from the requirements of the Land Use and Building Act and Decree. Nevertheless, the Non-Discrimination and Equality Tribunal, which interprets the Non-Discrimination Act, found in a decision that failure to comply with the Land Use and Building Act by using a wheelchair-accessible toilet as storage space constituted discrimination as prohibited in the Non-Discrimination Act.⁷⁵

In Finland, the Non-Discrimination Act does not contain a general duty to provide accessibility by anticipation for people with disabilities. In the Government proposal⁷⁶ it is

⁷¹ The Constitution of Finland, Section 22 - Protection of basic rights and liberties reads: 'The public authorities shall guarantee the observance of basic rights and liberties and human rights.'

⁷² Chapter 2, The Non-Discrimination Act,
Section 5, Authorities' duty to promote equality
(1) The authorities shall evaluate the realisation of equality in their activities and take necessary measures to promote the realisation of equality. These measures shall be effective, expedient and proportionate, taking into account the authorities' operating environment, resources and other circumstances.

Section 6, Duty of the education provider to promote equality

(1) The education provider and the educational institution maintained by it shall evaluate the realisation of equality in their activities and take necessary measures to promote the realisation of equality. These measures shall be effective, expedient and proportionate, taking into account the educational institution's operating environment, resources and other circumstances.

Section 7, Employer's duty to promote equality

(1) The employer must assess the realisation of equality in the workplace and, taking into account the needs of the workplace, develop the working conditions as well as the methods complied with in the selection of personnel and in making decisions concerning the personnel. These measures shall be effective, expedient and proportionate, taking into account the operating environment, resources and other circumstances.

⁷³ The Non-Discrimination and Equality Tribunal, in its decision on the treatment of same-sex female couples in assisted reproductive treatment provided by public healthcare, decided that the doctors had neglected their duty to promote equality as provided for by Section 5 of the Non-Discrimination Act.
http://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/6QoS5xOf9/YVTltk-tapausseloste-9.12.2016-hedelmoityshoidot_L.pdf.

⁷⁴ Land Use and Building Act [*Maankäyttö- ja rakennuslaki* (132/1999)], Section 117(3), Land Use and Building Decree [*Maankäyttö- ja rakennusasetus* (895/1999)], Section 53.

⁷⁵ Non-Discrimination and Equality Tribunal decision 60/2015, 31.03.2016
http://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/sVsmhPsxl/YVTltk-tapausseloste-31_3_2016-ravintolapalvelu-liikuntavammaisen.pdf.

⁷⁶ Page 81, Government proposal on the Non-Discrimination Act.

stated that the starting point is the needs of a person with a disability in individual situations. On the other hand, the Government proposal explains that for those providing goods and services for a wide audience it can be required that they prepare in advance for most common adaptation needs e.g. for visually impaired and physically disabled persons.⁷⁷

h) Accessibility of public documents

There is no general legal requirement to translate documents into Braille.

According to Section 17(3) of the Constitution, 'The rights of persons using sign language and of persons in need of interpretation or translation aids owing to disability shall be guaranteed by an act.' The Act on Interpretation Services⁷⁸ guarantees for deaf people at least 180 hours, and for deafblind people at least 360 hours, of interpretation services yearly and the interpretation needed for secondary education.

⁷⁷ Page 81, Government proposal on the Non-Discrimination Act.

⁷⁸ Section 6 of the Act on Interpretation Services [*Laki vammaisten henkilöiden tulkkauspalvelusta* (133/2010)] <http://www.finlex.fi/fi/laki/ajantasa/2010/20100133>.

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 Finland, there are no residence or citizenship/nationality requirements for protection under the Non-Discrimination Act, which transposes the directives. Therefore the act could also be invoked by an undocumented person or illegal immigrant, for example.

3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)

a) Protection against discrimination

In Finland, the personal scope of the Non-Discrimination Act (Section 8) does not cover legal persons for the purpose of protection against discrimination. As a general rule, only natural persons are protected. The Government proposal⁷⁹ and the Parliament's Employment and Equality Committee Opinion⁸⁰ both stress that in some exceptional cases protection may extend to protecting legal persons. The Government proposal gives an example of discriminating against an association or religious community that can have a direct effect on the natural persons forming these legal persons.⁸¹

b) Liability for discrimination

In Finland, Section 2(1) of the Non-Discrimination Act defines that the act is applicable in both public and private activities. This means that the act covers both natural and legal persons for the purpose of liability for discrimination.

Section 2(2) of the Non-Discrimination Act defines that only legal acts that fall within the scope of private affairs and family life are exempt from the scope of applicability of the act.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Finland, the Non-Discrimination Act, does not cover legal persons for the purpose of protection against discrimination. As a general rule, only natural persons are protected, therefore the protection does not extend to public sector bodies. The Government proposal⁸² and the Parliament's Employment and Equality Committee Opinion⁸³ give examples of exceptional cases when protection may extend to legal persons. All these examples are of private sector actors such as associations or religious communities.

b) Liability for discrimination

In Finland, Section 2 of the Non-Discrimination Act covers the private and public sectors including public bodies for the purpose of liability for discrimination.

⁷⁹ Page 67-68, Government proposal on the Non-Discrimination Act.

⁸⁰ Page 4, Parliament Employment and Equality Committee <https://www.eduskunta.fi/pdf/TyVM+11/2014>.

⁸¹ Page 68, Government proposal on the Non-Discrimination Act.

⁸² Page 67-68, Government proposal on the Non-Discrimination Act.

⁸³ Page 4, Parliament Employment and Equality Committee <https://www.eduskunta.fi/pdf/TyVM+11/2014>.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Finland, Section 2 of the Non-Discrimination Act applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, military service, holding statutory office, for the five grounds. The definition of employer in Section 4 is wide and includes employment in the private and public sectors, contract workers and trainees in the workplace.

As the scope of the act is wide, covering 'both public and private activities' (Section 2), the act does not make any references to or specifications about the material scope of the act. Accordingly there is no reference to self-employment. But when defining the justification for direct discrimination in Section 11(2)(2), the Non-Discrimination Act refers to:

- conditions for access to self-employment or means of livelihood, and support for business activities;
- membership and involvement in an organisation of workers or employers or other organisations whose members carry out a particular profession, including the benefits provided by such organisations;
- thereby indirectly confirming that these situations are included in the material scope of the act.

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 Finland, the material scope of the Non-Discrimination Act as defined in Section 2 prohibits discrimination in the following areas: 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.

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

In Finland, the Non-Discrimination Act, as defined in Section 2, prohibits discrimination in the following areas: working conditions including pay and dismissals, for all five grounds and for both private and public employment.

3.2.3.1 Occupational pensions constituting part of pay

As the scope of the act is wide, covering 'both public and private activities' (Section 2), the act does not make any references to or specifications about the material scope of the act. Accordingly there is no reference to occupational pensions constituting part of pay, but considering the wide scope of the act there is nothing to suggest that occupational pensions would not be covered by the prohibition of discrimination.

In Finland, occupational pensions are arranged in the form of social insurance that employers are obliged to arrange for employees. The insurance is paid from the employee's salary by means of an automatic deduction that is performed by the employer. The amount of occupational pension, as well as the whole system in itself, is strictly regulated by law, by the Act on Employee's Pension [*työntekijän eläkelaki* (395/2006)],⁸⁴ which leaves no

⁸⁴ Employees Pensions Act [*työntekijän eläkelaki* (395/2006)],
<http://www.finlex.fi/fi/laki/ajantasa/2006/20060395>.

room for discretion for employers. The amount of salary directly dictates the amount of occupational pension.

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 Finland, the Non-Discrimination Act, as defined in Section 2, applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

As the scope of the act is wide, covering 'both public and private activities' (Section 2), the act does not make any references to or specifications about the material scope of the act. Accordingly there is no reference to training, guidance or retraining, but considering the wide scope of the act there is nothing to suggest that these would not be covered by the prohibition of discrimination.

The Non-Discrimination Act clearly applies to both employment and education and makes no difference to protected grounds when applying to employment and education.

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 Finland, the Non-Discrimination Act, at Section 8, explicitly lists trade union activity as one of the prohibited grounds for differential treatment. Therefore, membership of and involvement in workers' organisations is included in the material scope of the Non-Discrimination Act for all five grounds and for both private and public employment. The term used, 'trade union activity', does not include membership or involvement in employers' organisations. As the list of prohibited grounds of differential treatment is not exhaustive and includes the term 'other personal characteristics', it is clear that membership or involvement in employers' organisations is included in the material scope of the Non-Discrimination Act. The Government proposal gives participating NGO activities as one of the examples of what is included under the term 'personal characteristics'.

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

In Finland, the Non-Discrimination Act, includes social protection, including social security and healthcare as formulated in the Racial Equality Directive. In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds for discrimination. Therefore, all grounds mentioned in the act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.

The Non-Discrimination and Equality Tribunal confirmed in 2015 that the duty on reasonable accommodation for people with disabilities extends to the decision-making process of the authority in deciding, for example, on social security benefits.⁸⁵

⁸⁵ Non-Discrimination and Equality Tribunal decision: 14.12.2015, 21/2015
http://yvtltk.fi/material/attachments/ytaltk/tapausselosteet/tapausselosteet2015/GA3R XRkIL/YVTltk-tapausseloste-14_12_2015-kohtuulliset_mukautukset-TE_toimisto.pdf.

3.2.6.1 Article 3.3 exception (Directive 2000/78)

There is no direct reference in the Non-Discrimination Act to exceptions enabled in article 3.3 of the Employment Equality Directive. As explained in part 2.2.b and later in parts 4.1 and 4.7.1, the only justification for differential treatment in employment must be based on genuine and determining occupational requirements (4.1.), age (4.7.1.) or habitual residence (2.2.b). Exceptions allowing differential treatment based on age may be relevant in regard to payments made by state schemes in relation to different retirement ages.

Section 12(2) of the Non-Discrimination Act allows differential treatment in employment because of age if:

'it has a justified purpose that is objectively and appropriately founded and derives from employment policy, labour market or vocational training or some other comparable justified objective, or when the differential treatment arises from age limits adopted in qualification for retirement or invalidity benefits within the social security system.'⁸⁶

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

In Finland, the Non-Discrimination Act prohibits discrimination with regard to social advantages as formulated in the Racial Equality Directive. As the scope of the act is wide, referring to 'both public and private activities' (Section 2), the act does not make any references to or specifications about the material scope of the act. The former Non-Discrimination Act⁸⁷ explicitly mentioned social advantages as formulated in the Racial Equality Directive in the material scope of the act. The announced goal of the current Non-Discrimination Act was to extend the material scope of the legislation to all private and public activity.⁸⁸ Therefore, nothing leads to the conclusion that the act is not intended to cover this requirement in the directives.

In Finland, the lack of definition of social advantages does not raise problems.

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds for discrimination. Therefore, all grounds mentioned in the act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.⁸⁹

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

In Finland, Section 2 of the Non-Discrimination Act prohibits discrimination with regard to education as formulated in the Racial Equality Directive. As the scope of the act is wide, referring to 'both public and private activities' (Section 2), the act does not make any references to or specifications about the material scope of the act. However, the act makes a distinction between those who have a legislation-based position in providing education as opposed to when education is provided as part of providing goods and services (such as language courses, etc.) Only in the former case is there a special duty to purposefully and methodically foster equality.⁹⁰

⁸⁶ Section 12(2) of the Non-Discrimination Act reads in Finnish: *'Ikään tai asuinpaikkaan perustuva erilainen kohtelu on lisäksi oikeutettua, jos kohtelulla on objektiivisesti ja asianmukaisesti perusteltu työllisyyspoliittinen tai työmarkkinoita koskeva tavoite taikka jos erilainen kohtelu johtuu eläke- tai työkyvyttömyysetuuksien saamisedellytykseksi vahvistetuista ikärajoista.'*

⁸⁷ Non-Discrimination Act, Section 2(2)(2).

⁸⁸ Page 36, Government proposal on the Non-Discrimination.

⁸⁹ There is no age-related justification for differential treatment in social advantages e.g. in granting invalidity benefits. The only age-related exceptions are in employment – see 4.7.1.

⁹⁰ Section 6 of the Non-Discrimination Act.

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds for discrimination. Therefore, all grounds mentioned in the act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.

During 2016 the Non-Discrimination Ombudsman highlighted in particular the discrimination people with disabilities face in accessing education.⁹¹ There is no information available to suggest that migrants would be especially affected because of discrimination either in access to education or during education. The Non-Discrimination Act provides equal support against discrimination on the grounds of ethnicity, nationality and migrant background, as well as against the most common type of discrimination in education, namely harassment and bullying in schools.

a) Pupils with disabilities

In Finland, the general approach to education for pupils with disabilities does not raise problems. The educational policy has been based on the principle of community schooling since the early 1980s. According to this principle students attend school in their own residential area and there is no segregation of pupils with disabilities.⁹² The general principle of inclusion is accepted as a basis for educational policy, but some critics point out that too many students are transferred to special needs education classes because of the attitude of the teachers.⁹³ There is no information available on the number of children with disabilities in mainstream and segregated education but of all children aged 13-15 years, 2.9 % study in segregated education.⁹⁴

b) Trends and patterns regarding Roma pupils

In Finland, there are specific patterns in education regarding Roma pupils such as a high dropout rate. The situation regarding the basic education of Roma pupils was studied for the first time by the National Board of Education in 2000–01. In 2010–11, the National Board of Education conducted a follow-up study by interviewing a total of 240 Roma children and young people in the age group for receiving basic education, as well as their guardians. Responses to an online questionnaire were received from 1 341 school principals.

The first study on the basic education of Roma pupils conducted by the National Board of Education indicated that the problems related to school attendance faced by Roma children are associated with having to repeat the year and numerous absences. A significant number of Roma children received special needs teaching, and they participated in pre-primary education less often than children belonging to the majority population. Dropping out of school was also more common than in the majority population. The study also found that Roma children did well in arts and crafts, that they were sociable, and that they had good manners.

⁹¹ See press release on possibilities of using a guide dog while attending education <https://www.syrjinta.fi/fi/-/opaskoiran-kaytto-kiellettiin-yhdenvertaisuusvaltuutettu-teki-tarkastuksen-kansanopistoon> and press release on refusal to allow a student to start their studies with a sign language interpreter. <https://www.syrjinta.fi/fi/-/yhdenvertaisuusvaltuutettu-tyytyvainen-syrjintatuomioon-ja-hyvitykseen-kuuron-opiskelijan-tapauksessa-syrjinta-loukkaa-aina-syvasti-ihmisarvoa->.

⁹² Finnish National Board of Education http://www.edu.fi/erityinen_tuki/yhteinen_koulu_kaikille.

⁹³ Prof. Timo Saloviita http://users.jyu.fi/~saloviit/tutkimus/inclusion.html#INKLUUSIO_MEILL%C4_JA_MUUALLA.

⁹⁴ Statistics Finland, *Statistics on student education, 2016* http://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/StatFin_kou_erop/statfin_erop_pxt_003.px/?rxid=4ce1198f-fb50-4e8a-a569-fdb0ea65eefa.

The follow-up study⁹⁵ points to positive trends, for example in attending pre-primary education and teaching of the Romani language, and in successful cooperation between Roma homes and schools. Roma children continue to participate in pre-primary education less often than children of the majority population, but their participation rate has gone up significantly in 10 years. While an increasing share of Roma pupils are doing well in basic education, one out of five of all Roma pupils continue to have significant problems in their school attendance.

Roma students' high absence rate has been identified as a factor that impedes their success at school. The absences are often caused by family reasons. The National Board of Education's study shows, however, that Roma children are more easily persuaded to stay at home for various reasons than children of the majority population. In interviews with Roma pupils, bullying at school also came to light to some extent as a cause of unauthorised absences.⁹⁶ Neither the Non-Discrimination Ombudsman nor its predecessor Ombudsman for Minorities published information on cases of discrimination at schools, although the Ombudsman for Children has published a study on the welfare of Roma children.⁹⁷

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 Finland, Section 2 of the Non-Discrimination Act prohibits discrimination in the following areas: access to and supply of goods and services as formulated in the Racial Equality Directive.

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds for discrimination. Therefore, all grounds mentioned in the act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.

In recent years, direct discrimination against the Roma, for example in shops, has been combatted increasingly effectively. This is due to two reasons. First, the Penal Code provisions against discrimination have been increasingly followed by the police, prosecutors and the courts in cases where the victims have been Roma. For example, the Non-Discrimination Ombudsman has trained the prosecutors (who also guide the police in their investigations) on bringing charges of discrimination as prohibited in the Penal Code to courts. Also, although the burden of proof does not shift from the complainant to the respondent in criminal cases, the courts are less likely to accept the respondent's explanations for differential treatment, such as confusion with another person who has earlier misbehaved while using the services of the respondent. Secondly, the courts have increasingly applied the Non-Discrimination Act in criminal cases brought in front of them and consequently have awarded financial compensation to victims of discrimination in addition to fines imposed on the perpetrators.⁹⁸

⁹⁵ Finnish National Board of Education, *Romanioppilaiden perusopetuksen tilannekatsaus 2010–2011 ja toimenpide-ehdotukset*, Reports 2011:26 http://www.oph.fi/download/140023_Romanioppilaiden_perusopetuksen_tilannekatsaus_2010-2011_ja_toimenpide-ehdotukset.pdf.

⁹⁶ 'Steering and monitoring of the implementation of the national policy on Roma. Working group report.' Ministry of Social Affairs and Health, Finland, 2014.

⁹⁷ Pekka Junkala & Sanna Tawah: 'More Similar than Different.' Helsinki 2009. The Welfare of Roma Children and Youth and the Realisation of their Rights in Finland, <http://lapsiasia.fi/wp-content/uploads/2015/04/romanilasten-hyvinvointi.pdf>.

⁹⁸ See e.g. the court decisions (Helsinki Appeal Court 1825/23.10.2017 and Kainuu District Court 550/2.11.2017) explained further in chapter 12.2 on case law.

3.2.9.1 Distinction between goods and services available publicly or privately

Section 2(2) of the act defines that only legal acts that fall within the scope of private affairs and family life are exempt from the scope of applicability of the act. In the Government proposal⁹⁹ for the act it is further defined, for example, that putting a flat up for rent is included in the sphere of prohibition of discrimination.

Even if the material scope of the Non-Discrimination Act is wide and only legal acts that fall within the scope of private affairs and family life are exempt from the scope of applicability of the act, there are some restrictions on the right to compensation because of discrimination. According to Section 23 of the Non-Discrimination Act, the person who has been discriminated against is entitled to receive compensation only from the authority, employer, education provider or supplier of goods or services who has discriminated against them. Therefore, compensation cannot be received from a manufacturer who has produced inaccessible goods, for instance.¹⁰⁰

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

In Finland, the Non-Discrimination Act prohibits discrimination with regard to housing as formulated in the Racial Equality. As the scope of the act is wide, referring to 'both public and private activities' (Section 2), the act does not make any references to or specifications about its material scope.

The former Non-Discrimination Act¹⁰¹ explicitly mentioned housing as formulated in the Racial Equality Directive in the material scope of the act. The announced goal of the current Non-Discrimination Act was to extend the material scope of the legislation to all private and public activity.¹⁰² Therefore, nothing leads to the conclusion that the act is not intended to cover this requirement in the directives.

In the Government proposal¹⁰³ for the Act, it is further defined that putting a flat up for rent is included in the sphere of prohibition of discrimination. The duty to provide reasonable accommodation in order to provide a person with disabilities with equal access to goods and services extends to public and private providers of goods and services. What is reasonable accommodation depends on, among other things, the size, financial position and the nature and extent of activity of the actor concerned.¹⁰⁴ Therefore, an individual landlord who only has one apartment to rent could be required to make smaller modifications than a company that is making a substantial profit by renting many apartments.

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds for discrimination. Therefore, all grounds mentioned in the act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.

There is nothing to suggest that migrants benefit differentially from the protection of anti-discrimination legislation compared with nationals who face discrimination because of their ethnic origin, for example. As the Non-Discrimination Act prohibits discrimination equally on grounds of nationality and ethnic origin, there are no specific policies that aim to address discrimination against migrants.

⁹⁹ Page 56, Government proposal on the Non-Discrimination Act 19/2014.

¹⁰⁰ See 6.5(a) below on applicable sanctions in cases of discrimination.

¹⁰¹ Non-Discrimination Act, Section 2(2)(2).

¹⁰² Page 36, Government proposal on the Non-Discrimination Act.

¹⁰³ Page 56, Government proposal on the Non-Discrimination Act.

¹⁰⁴ The Non-Discrimination Act [*Yhdenvertaisuuslaki*], Section 15.

There is not yet any case law from the courts in the area of housing involving the current Non-Discrimination Act. The statistics of the Non-Discrimination Ombudsman regarding housing discrimination show that 10.2 % of the discrimination cases reported to the Ombudsman were on housing discrimination.¹⁰⁵ There is no detailed information available on which discrimination grounds the complaints of housing discrimination were based on. In May 2017, the Ombudsman sent and published on her website a letter¹⁰⁶ to apartment rental agents, in which she highlighted that the prohibition on discrimination extends to apartments and houses for rent and to apartment rental agents. It is generally believed that most housing discrimination in the private housing sector is directed to visible minorities, such as ethnic minorities. In her letter, the Ombudsman mentions discrimination based on ethnic origin and sexual orientation. Discrimination against the Roma is often referred to in respect of public housing. There are no references to the discrimination experiences of migrants in housing.

3.2.10.1 Trends and patterns regarding housing segregation for Roma

In Finland, there are patterns of housing discrimination against the Roma. This was highlighted by a study published by the Ombudsman for Minorities in 2013 on the discrimination faced by the Roma.¹⁰⁷ The study showed that almost half, some 48.5 %, of the Roma respondents who have been active on the housing market, have experienced discrimination on the ground of their ethnic origin when applying for rental housing financed through state subsidies, typically rental housing belonging to the municipality or city.

Although Roma people have rarely informed the Ombudsman for Minorities about discrimination experienced when seeking privately financed rental housing, the survey responses indicated that discrimination is experienced on the so-called private housing market even more often than when applying for rented housing from a municipality or city. More than half of respondents – 54.7 % – noted that they have been discriminated against on the grounds of their ethnic origin when attempting to rent or buy housing on the private housing market.¹⁰⁸

Housing segregation does not appear to be a major problem for the Roma. Part of the reason for this may be that Finland is a large country and the Roma community is small. Housing discrimination against the Roma, especially as regards private rentals and to some extent municipal housing, is widespread.¹⁰⁹

¹⁰⁵ Page 12 and 14, Ombudsman for Non-Discrimination, *Annual Report 2016*. The Ombudsman had 91 cases of housing discrimination in 2016, taking all discrimination grounds in the Non-Discrimination Act into consideration. In 2015, the number of cases concerning housing was 67. The statistics for 2017 have not been published yet (situation checked 11.03.2018).
<https://www.syrjinta.fi/documents/10181/0/Vuosikertomus+2016/792ec552-e8ef-4beb-81f9-49b35f3720ae>.

¹⁰⁶ Letter published 02.05.2017 <https://www.syrjinta.fi/-/yhdenvertaisuusvaltuutetun-kirje-vuokravalituspalveluille>.

¹⁰⁷ Page 5 'Being Different In Everyday Life – Survey On Roma's Experiences Of Discrimination', Helsinki, 2013, http://www.syrjinta.fi/documents/10181/10850/54366_romanitutkimus_tiiivistelma_eng_final.pdf/555a7857-41b2-48f2-848b-224c5a32f665.

¹⁰⁸ Page 5 'Being Different In Everyday Life – Survey On Roma's Experiences Of Discrimination', Helsinki, 2013, http://www.syrjinta.fi/documents/10181/10850/54366_romanitutkimus_tiiivistelma_eng_final.pdf/555a7857-41b2-48f2-848b-224c5a32f665.

¹⁰⁹ Roma housing discrimination cases from previous years are presented in previous reports such as <http://www.humanconsultancy.com/downloads/193-finland-2012-country-report-on-measures-to-combat-discrimination>.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Finland, Section 12 of the Non-Discrimination Act provides an exception for genuine and determining occupational requirements. The wording of Section 12(1) states that a difference of treatment is justified 'if the treatment is founded on genuine and determining requirements concerning the type of occupational tasks and their performance, and the treatment is proportionate to achieve the legitimate objective.'

There is very little case law on employment discrimination and most of it concentrates on whether the employment contract has been terminated on the bases allowed in employment legislation. Even if the claim is that the contract has been terminated on a discriminatory basis (i.e. on grounds of health) instead of because of a justified need to reduce personnel, the concept of genuine and determining occupational requirements is rarely interpreted in these cases.¹¹⁰

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

In Finland, the Non-Discrimination Act does not provide for an exception for employers with an ethos based on religion or belief.

However, in the Government proposal the question is addressed in conjunction with the questions of genuine and determining occupational requirement and it includes a reference to article 4(2) of the Directive 2000/78.¹¹¹ The Government proposal cites the article 4(2) definition that a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement. Additionally, the Government proposal states that 'setting such a requirement cannot lead to discrimination on another ground.'¹¹²

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

In Finland, the Non-Discrimination Act does not provide an exception for the armed forces in relation to age or disability discrimination (article 3(4), Directive 2000/78).

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Finland, the Non-Discrimination Act does not include exceptions relating to difference of treatment based on nationality.

¹¹⁰ There does not seem to have been systematic information gathering or any analysis of employment discrimination (or genuine and determining occupational requirements) in Finland. This may be due to the fact that the Non-Discrimination Ombudsman, who produces studies and information on discrimination in areas of life other than employment, is not authorised to work with employment discrimination claims. Also the conciliation agreements between employers and trade unions representing employees in discrimination cases are usually confidential. In 2014 The Ministry of Employment and the Economy published a study entitled 'Reporting on Employment Discrimination in Finland'. <https://tem.fi/documents/1410877/2859687/Ty%C3%B6syrjinn%C3%A4n+seuranta+suomessa+18122014.pdf>. The follow-up to the recommendations made on developing the reporting of employment discrimination is not available.

¹¹¹ In the Government proposal the question is addressed in conjunction with the questions of genuine and determining occupational requirement and it includes a reference to article 4(2) of the Directive 2000/78.

¹¹² Page 72, Government proposal on the Non-Discrimination Act.

In Finland, nationality (as in citizenship) is explicitly mentioned as a protected ground in Section 8 of the Non-Discrimination Act.

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

Nationality is one of the explicitly prohibited grounds of discrimination recognised by the Non-Discrimination Act.

The issue of the overlap and interface between nationality and ethnic origin as a ground of discrimination has not been tackled expressly in the national legislation or the preparatory works. There have been a few cases where the national Discrimination Tribunal of Finland has opined that discrimination on the ground of (foreign) nationality may constitute indirect ethnic discrimination since the majority of foreign nationals have an ethnic origin other than Finnish.¹¹³

The Constitution and the Criminal Code prohibit discrimination on the basis of 'national origin', which refers to past, not present (ethno-national) status.

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

a) Benefits for married employees

In Finland, it would constitute unlawful discrimination under Section 8 of the Non-Discrimination Act if an employer provided benefits only to those employees who were married. This would constitute discrimination on the basis of family relationships, which is a protected ground in the act.

b) Benefits for employees with opposite-sex partners

In Finland, it would constitute unlawful discrimination under Section 8 of the Non-Discrimination Act if an employer provided benefits only to those employees with opposite-sex partners. This would constitute discrimination based on sexual orientation, and possibly also based on family relationships.¹¹⁴

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

a) Exceptions in relation to disability and health/safety

In Finland, there are no exceptions in relation to disability and health and safety (article 7(2), Directive 2000/78) in the Non-Discrimination Act.

The Non-Discrimination Act or any of the other non-discrimination laws do not specifically address the issue. Health and safety issues at work are governed by the Occupational Health and Safety Act [*työturvallisuuslaki* (738/2002)],¹¹⁵ which entered into force in January 2003.

¹¹³ See e.g. the decision of the Tribunal of 28.09.2006.
http://yvtltk.fi/material/attachments/ytaalk/sltkntapausselostet2006/Ij1hQO2MR/42294_SLTK-tapausselostet_28082006_L.pdf.

¹¹⁴ In an earlier case, in which the employment contract of a lesbian editor-in-chief was terminated, the Supreme Court found that there had been direct discrimination on the basis of both sexual orientation and family relationships. The contract was terminated before the period of employment started because the company became aware that the editor-in-chief was living with another woman and had given false information on the gender and political activity of her spouse. Supreme Court decision KKO 2015:14, <http://korkeinoikeus.fi/fi/index/ennakkopaatokset/precedent/1433846010211.html>. For further information of the case in English see <http://www.equalitylaw.eu/downloads/2880-finland-supreme-court-precedent-on-employment-discrimination-84-kb>.

¹¹⁵ Section 10 of the Health and Safety Act [*työturvallisuuslaki* (738/2002)].
<http://www.finlex.fi/fi/laki/ajantasa/2002/20020738>.

According to the Occupational Health and Safety Act, primary responsibility for protection of occupational health and safety lies with the employer, who must act in cooperation with the employees. The employer shall systematically and adequately analyse and identify the hazards and risk factors caused by the work, the working premises, other aspects of the working environment and the working conditions. If, according to this assessment, the work may cause a particular risk of injury or illness, such work shall be carried out only by an employee who is competent and personally suitable for it or by another employee under the direct supervision of such an employee.¹¹⁶ This requirement is absolute (non-negotiable) in nature.

According to Section 12 of the Occupational Health and Safety Act, employers shall take into account disabled employees and their capacities when designing the work environment and/or planning the work, from the point of view of occupational health and safety. The Non-Discrimination Act did not bring any changes to the legislation in this area.

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

4.7.1 Direct discrimination

In Finland, the Non-Discrimination Act does not provide a general exception for direct discrimination on age.

a) Justification of direct discrimination on the ground of age

In Finland, it is possible, in specified circumstances, to justify direct discrimination on the ground of age.

In Finland, Section 12(2) of the Non-Discrimination Act provides an exception for direct discrimination on age only in employment.

Section 12(2) defines that differential treatment in employment is possible on the basis age if:

‘the treatment has an objectively and appropriately justified employment policy purpose or a purpose concerning the labour market, or if the different treatment is attributable to the age limits adopted for qualification for retirement or invalidity benefits.’¹¹⁷

The wording of Section 12(2) follows rather closely the wording of article 6 of the Employment Equality Directive. What is notable, however, is that the Non-Discrimination Act has omitted the reference to the requirement that that the means used to achieve legitimate aims must be ‘appropriate and necessary’.

It may be argued that the principle of proportionality (which the requirement of appropriate and necessary means basically boils down to) is a fundamental legal principle of the Finnish legal system, and it is to be taken into consideration when interpreting, in this case, whether a certain conduct or policy is in breach of Section 12(2) of the Non-Discrimination Act. However, Section 12(2) refers only to the aim of the treatment, which thus does not invite a full examination of whether the requirements of the proportionality principle have been followed.

¹¹⁶ Section 11 of the Health and Safety Act.

¹¹⁷ Section 12(2) of Non-Discrimination Act, in Finnish: *‘Ikään tai asuinpaikkaan perustuva erilainen kohtelu on lisäksi oikeutettua, jos kohtelulla on objektiivisesti ja asianmukaisesti perusteltu työllisyyspoliittinen tai työmarkkinoita koskeva tavoite taikka jos erilainen kohtelu johtuu eläke- tai työkyvyttömyysetuuksien saamisedellytykseksi vahvistetuista ikärajoista.’*

Again, the situation would have been clearer if the law had incorporated an express reference to the requirement that the means employed have to be 'appropriate and necessary', so that it would have been clear that it is not enough to establish that the conduct in question had a legitimate aim. As it is, the present text does not, at least on a literal interpretation, allow for a full proportionality assessment.

b) Permitted differences of treatment based on age

In Finland, Section 12(2) of the Non-Discrimination Act permits differences of treatment based on age for some activities within the material scope of Directive 2000/78.

Section 12(2) defines that differential treatment in employment is possible on the basis of age only if the treatment is attributable to the age limits adopted for qualification for retirement or invalidity benefits.

A couple of examples arise from current legislation. A specific act exists that governs employment relationships of young employees, who are defined in the act as being those who are employed and under 18 years.

The Act on Young Employees [*laki nuorista työntekijöistä* (998/1993)]¹¹⁸ makes specific provisions with regard to, for example, the maximum working time allowed and occupational health and security.

According to that act, a 15-year-old person (or older) may conclude and terminate an employment contract (Section 3 of the act), while an employment contract of someone younger than 15 may be concluded or terminated by his or her legal guardian.

Under the Employment Contract Act [(*työsopimuslaki* (55/2001), as amended by laws up to 304/2004)],¹¹⁹ the length of a general notice period, after the passing of which an employment contract is terminated, depends on the duration of the employment relationship, and therefore often indirectly also on age (provisions concerning these matters are laid down in the Employment Contracts Act, Chapter 6, Section 3).

A law that makes distinctions on the basis of age cannot be challenged in abstracto to see if it is compatible with the Non-Discrimination Act. Such an examination of compatibility may become an issue only in particular (concrete) contexts in connection to a legal proceeding brought forward by a claimant under the applicable laws, in particular the Non-Discrimination Act.

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

In Finland, Section 12(2) of the Non-Discrimination Act allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for in article 6(2) of Directive 2000/78.

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

In Finland, there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for persons with caring responsibilities to ensure their protection.

¹¹⁸ The Act on Young Employees [*laki nuorista työntekijöistä* (998/1993)].

¹¹⁹ The Employment Contract Act [*työsopimuslaki* (55/2001), as amended by laws up to 304/2004] <http://www.finlex.fi/fi/laki/ajantasa/2001/20010055>.

The Act on Young Employees, which is to be applied to those who are under 18 and employed, demands that employers must ensure that the work carried out by a young employee is not detrimental to his or her physical or mental health and that a young employee is given the necessary guidance with a view to ensuring occupational health and safety (Sections 9 and 10 of the act).

As regards pregnant employees, the Employment Contracts Act provides that necessary accommodations to work and the work environment, including temporary reassignment of the employee if necessary, need to be taken if the health of the employee or the embryo is at risk (Chapter 2, Section 3(2) of the act). The act also contains special provisions with regard to maternity, paternity and parental leave (Chapter 4, Section 1), work during maternity or parental allowance terms (Chapter 4, Section 2), different kinds of childcare leave (Chapter 4, Sections 3-6) and absence for compelling family reasons (Chapter 4, Section 7).

4.7.3 Minimum and maximum age requirements

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

Section 2 of the Act on Young Employees stipulates that a person who is at least 15 years of age may be employed provided that he or she has completed compulsory education. A person who is 14 years of age may be employed subject to certain conditions, and someone younger than that may be employed under strict conditions and with a specific permission from the pertinent authorities and only for specific purposes, e.g. as a child actor in a film. According to the act, a 15-year-old (or older) may conclude and terminate an employment contract (Section 3 of the act), while an employment contract of someone younger than 15 may be concluded or terminated by his or her legal guardian.

Section 8 of the Act on Civil Servants [*virkamieslaki* (750/1994)]¹²⁰ stipulates that a civil servant must be at least 18 years of age. As an exception to this main rule, a person who is at least 15 years of age and who has completed compulsory schooling, can be assigned a post as a civil servant provided that the nomination is considered appropriate in light of the carrying out of the functions of the particular position.

4.7.4 Retirement

a) State pension age

In Finland, there is no state pension age at which individuals must begin to collect their state pensions. According to Section 10 of the National Pension Act [*kansaneläkelaki* (568/2007)]¹²¹ a person is entitled to a state old-age pension at an age that depends on her or his year of birth. The lowest pension age is 63 years for those who were born before 1954, gradually rising to 65 years for those who were born in 1964. The pension age for those born after 1965 has not been confirmed yet, but will be set by governmental decree. Whether a person is entitled to this pension depends on the amount of other benefits (including other types of pensions) that she or he receives. A pension must in any case be applied for.

The fact that a person receives an old-age pension does not preclude her or him from working. A person may also postpone the application of the pension, in which case she or he is entitled to an increase in the amount of the pension.

¹²⁰ The Act on Civil Servants [*virkamieslaki* (750/1994)] <http://www.finlex.fi/fi/laki/ajantasa/1994/19940750>.

¹²¹ The National Pension Act [*kansaneläkelaki* (568/2007)] <http://www.finlex.fi/fi/laki/ajantasa/2007/20070568>.

b) Occupational pension schemes

In Finland, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. This age depends on a person's year of birth. The lowest pension age is 63 years for those who were born before 1954, gradually rising to 65 years for those who were born in 1964. The pension age for those born after 1965 has not been confirmed yet, but will be set by governmental decree.

If an individual wishes to work longer, payments from occupational pension schemes can be deferred. Such a choice increases the amount of pension one will receive later on. The old-age pension does not start automatically, but must be applied for.

Those whose employment relationship is governed by the Self-Employed Persons' Pensions Act or the Farmers' Pensions Act do not need to stop working to be eligible to receive a pension. This group includes self-employed persons and farmers. Other employees are required to retire from their jobs to be eligible to receive the old-age pension, but this is without prejudice to their right to conclude new employment contracts.

The applicable employee pension law depends on the insured person's place of work and type of employment.¹²² A single person can enjoy several types of pension simultaneously, including the national (i.e. state) old-age pension and an employment-related old-age pension.

c) State imposed mandatory retirement ages

In Finland, there is a state-imposed mandatory retirement age, but the employer and the employee can agree to continue the employment contract. The rules regarding retirement age and pension have been amended in the past 15 years in an attempt to attract employees to stay longer in working life.

Section 6(1)(a) of the Act on Employment Contracts specifies that the employment relationship ends without further notice at the end of the calendar month during which the employee reaches 68-70 years (depending on what year the employee was born), unless the employer and employee agree otherwise. If an employee decides to retire before turning 68, she or he is in practice expected to terminate his or her employment contract, which can then take place after the passing of a certain period of time. The act is applicable with respect to those persons who are not self-employed or employed as civil servants.

As regards civil servants, Section 35 of the Act on State Civil Servants specifies that the general retirement age is 68-70 years, depending on what year the civil servant was born. As regards municipal office-holders, Section 34 of the Act on Municipal Office Holders specifies that the employment relationship ends without further notice at the end of the calendar month during which the office holder reaches 68-70 years depending on what year the civil servant was born, unless a new fixed term has been agreed to between the parties.

d) Retirement ages imposed by employers

In Finland, 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.

¹²² These laws cover both public and private sector employment and self-employment: Employees' Pensions Act (TyEL), Seamen's Pensions Act (MEL), Farmers' Pensions Act (MYEL), Self-Employed Persons' Pensions Act (YEL), State's Pension Act (VaEL), Local Government Pensions Act (KuEL) and Evangelical Lutheran Church's Pension Act (KiEL).

Retirement ages or ages at which the termination of an employment contract is possible can be set by employment contract or collective contract. A condition on retirement age can be included in an employment contract that is for 'an indefinite term'. The validity of a condition regarding retirement age is assessed in accordance with the provision regarding unreasonable terms in Section 10(2) of the Employment Contracts Act. In accordance with Section 25 of the Non-Discrimination Act, courts may, in cases that are being processed by them, change or ignore contractual terms that are contrary to the prohibition of discrimination.

Employers cannot, however, unilaterally impose a particular retirement age, as this could in some circumstances constitute discrimination on the basis of age.

It should however be noted that many employers have adopted particular internal rules that deal with retirement ages, and that employers and employees often agree to include these rules in their employment contracts.

e) Employment rights applicable to all workers irrespective of age

The legislation against dismissal¹²³ applies to all instances of dismissal, but the termination of the employment contract due to an employee reaching 68-70 years is not regarded as 'dismissal', and therefore the law on protection against dismissal does not apply in that regard. If the employer and the employee agree on continuation of employment after the employee has reached the retirement age of 68-70 years, the ordinary provisions regarding protection against unjustified dismissal apply to the termination of such an agreement. The relevant laws do not differentiate between women and men.

f) Compliance of national law with CJEU case law

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

In November 2011 the Supreme Administrative Court decided that a Decree on Police Administration, which set a lower obligatory retirement age for those policemen who belong to the management of the Central Bureau of Investigation, was discriminatory and against Directive 2000/78. In the academic comments on this decision there has been no reference to other decrees or acts that would set a lower obligatory retirement age without objectively and reasonably justified aim, by appropriate and necessary means. This does not, of course, mean that such cases could not arise. Also after *Hörnfeldt* [C-1141/11] it is not clear whether the aims that led to the setting of the general compulsory retirement age of 68 to 70 years in Finland would be seen as justified and required by the directive.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Finland, national law permits age or seniority to be taken into account in selecting workers for redundancy.

Section 7(1) of the Employment Contracts Act demands that the laying off or dismissal of employees may be based only on 'appropriate and weighty reasons'.

The act does not regulate more precisely the factors on the basis of which selection of workers for redundancy can be made. However, it is clear that these factors may not be discriminatory. Under case law, it is also clear that the decision of an employer not to take

¹²³ Chapter 7 of the Act on Civil Servants and Chapter 7 of the Employment Contract Act.

seniority into account when laying off or dismissing employees cannot be successfully challenged on the grounds that the employer should have taken seniority into account.

b) Age taken into account for redundancy compensation

In Finland, national law provides for compensation for redundancy. This compensation may be affected by the age of the worker.

Compensation for redundancy is to be paid only in situations where the laying off or dismissal was based on grounds that breach the Employment Contracts Act, for instance, if the decision was based on discriminatory considerations or if there were genuinely no grounds for redundancy. The compensation must be equivalent to the pay due for a minimum of three months or a maximum of 24 months.

Depending on the reason for terminating the employment relationship, the following factors must be taken into account in determining the amount of compensation: estimated time without employment and estimated loss of earnings, the remaining period of a fixed-term employment contract, the duration of the employment relationship, the employee's age and chances of finding employment corresponding to his or her vocation or education and training, the employer's procedure for terminating the contract, any motive for termination originating on the part of the employee, the general circumstances of the employee and the employer, and other comparable matters.¹²⁴

As the age of the employee is only one factor in considering compensation for the damage caused by the dismissal, the legislation seems to be in conjunction with the proportionality required by Article 6 of Directive 2000/78.

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 Finland, 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 Finland, other exceptions to the prohibition of discrimination (on any ground) provided in the Non-Discrimination Act are as follows:

In addition to the exceptions related to discrimination on the ground of age, as described above, Section 12(2) of the Non-Discrimination Act allows for differential treatment because of domicile.¹²⁵ This exception is clearly outside the scope of the directives, however.

Positive action is allowed under Section 9, according to which:

'Proportionate differential treatment that aims to promote de facto equality, or to prevent or remove the disadvantages attributable to discrimination, does not constitute discrimination.'

¹²⁴ Chapter 12 Section 2 of the Employment Contracts Act.

¹²⁵ According to Section 12(2) of the Non-Discrimination Act: 'Different treatment based on age or domicile is also justified if the treatment has an objectively and appropriately justified employment policy objective or an objective concerning the labour market' [-]. The reference to domicile (habitual residence) was added to the Non-Discrimination Act in the Parliament to allow municipalities to provide jobs for those persons living in the municipality.

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

a) Scope for positive action measures

In Finland, positive action in respect of all grounds of discrimination including origin, religion or belief, disability, age or sexual orientation, is provided for in Section 9 of the Non-Discrimination Act.

Section 9 states:

‘Proportionate differential treatment that aims to promote de facto equality, or to prevent or remove the disadvantages attributable to discrimination, does not constitute discrimination.’

Furthermore, the act obliges all public authorities and those private sector organisations using public power or performing public administrative tasks, education providers and those employers who employ more than 30 employees, to take steps to foster equality.¹²⁶ In this way the national legislation goes beyond the minimum requirements laid down in the Article 13 directives.

b) Main positive action measures in place on national level

The Non-Discrimination Act, which was in force until the end of 2014, required authorities to purposefully and methodically foster equality and draw up a plan for the fostering of ethnic equality (equality plan). The current Non-Discrimination Act extends this task to cover all grounds and extends the responsibility from authorities to education providers and to those employers who employ more than 30 employees. These measures form the most significant combination of positive action in Finnish society. According to the entry-into-force provisions of the Non-Discrimination Act, the deadline for drawing up equality plans was 1 January 2017.

The equality plans are supposed to cover all protected grounds of discrimination in the Non-Discrimination Act (origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics), and they do not require up-to-date statistical information about employees' different characteristics. Therefore, the baseline of the equality plans differs from that of gender equality plans, which are required to include statistical information about women and men in different jobs and about their pay.

According to Section 5 of the Non-Discrimination Act it is the responsibility of an authority to evaluate the realisation of equality in their activities and take necessary action to foster equality. Taking into consideration the operational environment, resources and other circumstances, the measures promoting equality must be effective, practical and proportional. The authority must have a plan of necessary measures to foster equality. This task of equality planning does not extend to the Lutheran or Orthodox Church or those private companies using public power or performing public administrative tasks that employ fewer than 30 employees. The Non-Discrimination Ombudsman supervises compliance with equality planning tasks.

Section 6 of the act sets a similar requirement for those providing education and the educational institutions. This means that schools need to have an equality plan taking into consideration all discrimination grounds and measures to improve the equality of students. These plans have also included ways to develop schools and universities to be more

¹²⁶ Section 6 of the Non-Discrimination Act.

accessible in the process of selecting students, providing more translations and interpretation services and preventing and tackling discrimination in services.¹²⁷

Section 7 of the Non-Discrimination Act requires employers to evaluate the realisation of equality in the workplace and, taking into consideration the needs of the workplace, to improve the working conditions and processes relating to recruitment and to decision-making pertaining to employees. Taking into consideration the operational environment, resources and other circumstances, the measures promoting equality must be effective, practical and proportional. It is the task of the Occupational Health and Safety Authorities to supervise employers' compliance with the equality planning tasks.

In accordance with Section 22 of the Constitution, all authorities are under a specific duty to guarantee the observance of basic rights and liberties and human rights. This provision obliges, for example, the legislator and the judiciary to actively secure the de facto realisation of rights, which may necessitate the taking into account of the specific situation of vulnerable groups.

The Act on Equality Between Women and Men [*laki naisten ja miesten tasa-arvosta* (609/1986)] contains the only express positive action duty existing in the Finnish anti-discrimination legislation by requiring that all public committees and other public bodies shall, as a main rule, be composed of representatives of both sexes - at least by 40 % each (Section 4a of the act, as amended).

Several campaigns and projects have been carried out to ease the integration of migrants and in particular to promote their integration in employment. The Ministry of Economic Affairs and Employment has a Centre of Expertise in Immigrant Integration,¹²⁸ which produces research and training in particular for municipalities with a central role in the integration of migrants into Finnish society.

¹²⁷ See e.g. the Equality Planning Guide for Schools published by the Ministry of the Interior, 2013 <http://yhdenvertaisuus.fi/documents/5232670/5376058/Oppia+kaikille+suomi/09dd5121-d98e-487c-9acf-ee768620da0e/Oppia+kaikille+suomi.pdf>.

¹²⁸ See <http://kotouttaminen.fi/etusivu>.

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 Finland, the following procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation).

Several procedures for enforcing the principle of equal treatment exist depending on the domain of life in which the breach occurred. As regards all grounds covered by the two directives:

As regards, *inter alia*, employment, education, the provision of goods and services, the exercise of public powers and the arranging of public meetings, a victim of discrimination may bring criminal charges. Discrimination is considered a crime under public prosecution in the Criminal Code. This means, *inter alia*, that after a victim of discrimination has filed a crime report to the police, the police have to investigate the matter under the leadership of a prosecutor (pre-trial investigation).

As regards the exercise of public powers, employment, education and the provision of goods and services, a victim of discrimination may file a claim, in a district court, for compensation under the Non-Discrimination Act. The payment of compensation is not connected to criminal liability.

As regards areas covered by the Non-Discrimination Act, a victim of discrimination may turn to the Non-Discrimination Ombudsman for advice and assistance in having the discrimination examined. Persons who consider that they have been discriminated against may also ask the Ombudsman to lead conciliation proceedings. In cases other than employment the Ombudsman may issue statements on any discrimination case submitted to him. The statements of the Ombudsman are not legally binding.

The National Non-Discrimination and Equality Tribunal may confirm a settlement between the parties or prohibit the continuation of a conduct that is contrary to the prohibition of discrimination or victimisation. The tribunal does not have jurisdiction in employment. The decisions of the tribunal are binding, but can be appealed against in Administrative Court. The tribunal may also order a party to fulfil its obligations by imposing a conditional fine. An order for the payment of the conditional fine is given in separate proceedings on request of the applicant in case the prohibition order is not followed.

As regards employment, compliance by employers with anti-discrimination law is supervised by the Occupational Health and Safety Authority. It may receive communications from employees, and carry out on-site inspections in the private sector, and if it considers that there are probable grounds to suspect that discrimination, as defined in the Criminal Code, has taken place, it must report the case to a public prosecutor. In other less severe cases of discrimination the Occupational Health and Safety Authority can issue an improvement notice.¹²⁹ The improvement notices that the Occupational Health and Safety Authorities issue are legally binding. Discriminatory provisions included in an employment contract may be annulled or amended by an ordinary court or by a Labour Court if the matter deals with a collective agreement.

In case a discriminatory decision is made in the exercise of public powers, a victim of discrimination may make use of the rectification procedure or some other ordinary channel

¹²⁹ Section 13, Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces [*Laki työsuojelun valvonnasta ja työpaikan työsuojeluyhteistoiminnasta* (44/2006)].

of appeal. In such situations a person who considers himself wronged can also file a complaint to the Parliamentary Ombudsman or the Chancellor of Justice of the Government. However, these overseers of legality do not have the power to amend the decisions of authorities on the basis of complaints, or to award damages in a legally binding way, but they may, for example, issue admonitions or order criminal prosecution against a public official.

Victims of discrimination can, of course, use their right to appeal to a court against a discriminatory decision or make a complaint to a higher supervisory authority, e.g. in social and health care or education.

b) Barriers and other deterrents faced by litigants seeking redress

The services of the Non-Discrimination Ombudsman, the National Non-Discrimination and Equality Tribunal, the Occupational Health and Safety Authority and the Parliamentary Ombudsman or the Chancellor of Justice are free of charge and are meant to be used even without the help of a lawyer. Claiming compensation because of discrimination must be done in district courts and involve the risk of paying the respondents' legal fees if the case is lost, which in practice deters those seeking redress from claiming compensation for discrimination.

c) Number of discrimination cases brought to justice

In Finland, only limited statistics are available on the number of cases relating to discrimination that are brought to justice.

The first available statistics on the activities of the Non-Discrimination Ombudsman regarding her work against discrimination, for example, relate to 2016. The statistics for 2017 are not available yet.¹³⁰

In 2016, the Ombudsman processed a total of 891 discrimination cases¹³¹, which was 80 % more than previous year. It seems that following the expansion of the mandate of the Ombudsman at the beginning of 2015, more and more victims of discrimination are turning to the Ombudsman. In 2015, the number cases processed by the Ombudsman had already increased by 73 %. In 2016, the most common ground for reported instances of discrimination continued to be origin (212 cases). The next biggest group of discrimination cases was discrimination based on disability (187 cases). All prohibited grounds of discrimination were covered in the complaints (language: 44 cases; age: 79 cases; nationality: 81 cases; state of health: 60 cases; religion or belief: 37 cases; sexual orientation: 27 cases; opinion or political activity or trade union activity: 14 cases; and family relationships: 10 cases).¹³²

The increase in the number of reported cases of discrimination and the fact that all grounds are represented show that groups other than ethnic minorities, such as sexual minorities and people with disabilities, have been making use of the services of the Non-Discrimination Ombudsman.

The Occupational Health and Safety Authorities do not publish national statistics. Their latest available data is from 2016¹³³ and showed that the biggest of the five regional

¹³⁰ Latest statistics checked 23.03.2018.

¹³¹ Page 12, Ombudsman for Non-Discrimination, *Annual Report 2016*, <https://www.syrjinta.fi/documents/10181/0/Vuosikertomus+2016/792ec552-e8ef-4beb-81f9-49b35f3720ae>

¹³² Page 15, Ombudsman for Non-Discrimination, *Annual Report 2016*, <https://www.syrjinta.fi/documents/10181/0/Vuosikertomus+2016/792ec552-e8ef-4beb-81f9-49b35f3720ae>

¹³³ Supervision of the prohibition of discrimination in the Southern Finland Division of the Occupational Safety and Health Administration [*Syrjintäkieltojen valvonta Etelä-Suomen aluehallintoviraston työsuojelun vastualueella*], 2016, latest statistics checked 23.03.2018 <http://yhdenvertaisuus.fi/documents/5232670/5376058/Etelä-Suomen+AVI+työsuojelu+2016>

divisions (the Southern Finland Division) received 109 cases relating to discrimination in 2016. The majority of the cases related to health issues (45 cases), 13 cases concerned nationality, language or origin, 8 cases were about age discrimination, 2 cases were about sexual orientation discrimination and 3 cases concerned disability discrimination. The Southern Finland Division monitors 44 % of Finnish wage earners/workplaces.

d) Registration of discrimination cases by national courts

In Finland, 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 Finland, associations, organisations and trade unions are not entitled to act on behalf of victims of discrimination in courts, but they can bring a discrimination case to the National Non-Discrimination and Equality Tribunal in cases other than employment.

As a general rule in the Finnish legal system, both natural and legal persons such as registered associations (NGOs, trade unions) have legal status and therefore can have rights and obligations. However, only those whose rights or obligations are directly at stake can have legal standing in court in a particular case. Therefore, interested organisations do not have legal standing in discrimination cases and they may not bring legal action on behalf of victims of discrimination or become third parties or even (usually) act as an *amicus curiae*. Instead, bodies such as NGOs provide training on how to combat discrimination in public transport or youth work.¹³⁴

In accordance with Section 21 of the Non-Discrimination Act, an organisation with an interest in advancing equality or the Non-Discrimination Ombudsman have a right to bring a specific case before the National Non-Discrimination and Equality Tribunal if the person who considers that they have been discriminated gives his or her consent to this. The Non-Discrimination Ombudsman or the organisation with an interest in advancing equality then becomes the party in the case. The Government proposal does not set any specific requirements as to what an 'organisation with an interest in advancing equality' may be, but opens up the concept with examples, such as a human rights association or an association representing consumers or social partners.¹³⁵

b) Engaging in support of victims of discrimination

As explained above, in Finland, associations, organisations and trade unions are not entitled to act in support of victims of discrimination in courts, but they can initiate a case with the National Non-Discrimination and Equality Tribunal in issues other than employment.

The Non-Discrimination Act requires that a court must, in cases concerning the application of the Act, allow the Non-Discrimination Ombudsman the opportunity to be heard insofar as the matter pertains to the authority of the Ombudsman. Additionally, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges for discrimination (Chapter 11, Section 11 of the Criminal Code).

In practice, the courts send a notice to the Office of the Non-Discrimination Ombudsman and inform her of the opportunity to be heard in court in relation to the case or to send her written opinion on the case.

¹³⁴ See, for example, the work of the Finnish League for Human Rights, <https://ihmisoikeusliitto.fi/english/> and <https://ihmisoikeusliitto.fi/miten-puuttua-syrjintaan-ja-hairintaan-nuorisotyossa/>.

¹³⁵ Page 87, Government proposal on the Non-Discrimination Act.

c) Actio popularis

In Finland, 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 (*actio popularis*).

As a general rule in the Finnish legal system, both natural and legal persons such as registered associations (NGOs, trade unions) have legal status and therefore can have rights and obligations. However, only those whose rights or obligations are directly at stake can have legal standing in court in a particular case. Therefore, interested organisations do not have legal standing in discrimination cases and they may not bring legal action on behalf of victims of discrimination or become third parties or even (usually) act as an *amicus curiae*. Organisations can only provide legal representation to alleged victims through a power of attorney, but cannot pursue matters on their behalf.

The exception to the above is the right of the Non-Discrimination Ombudsman to be heard as an *amicus curiae*.¹³⁶ A court must, in a case concerning the application of the Non-Discrimination Act, allow the Non-Discrimination Ombudsman the opportunity to be heard insofar as the matter pertains to the authority of the Ombudsman. Additionally, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges for discrimination (Chapter 11, Section 11 of the Criminal Code).

d) Class action

In Finland, national law does not allow 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.

Class action has been possible only in relation to disputes between consumers and entrepreneurs since October 2007, and only the Consumer Ombudsman can take the matter to court as a class action.¹³⁷ In theory the Consumer Ombudsman could also initiate class action claims in discrimination cases on the provision of goods and services.

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

In Finland, Section 28 of the Non-Discrimination Act requires a shift of the burden of proof from the complainant to the respondent. According to Section 28 it is up to the defendant to demonstrate that the prohibition of discrimination has not been violated, if the complainant establishes facts from which it may be presumed that the prohibition of discrimination has been violated.

The provision does not apply to criminal cases, but does apply to proceedings in applying the Non-Discrimination Act before the Discrimination Tribunal, before the ordinary courts (e.g. to a claim for compensation according to Section 23 of the Non-Discrimination Act) and in relation to the Occupational Health and Safety Authorities. It does not, however, apply to proceedings brought under acts other than the Non-Discrimination Act, such as the Tort Liability Act [*vahingonkorvauslaki* (412/1974)].

The general interpretation of the burden of proof is that it is not sufficient to claim that differential treatment has happened because of a protected ground such as disability or sexual orientation. As a rule the claimant must produce some indications that differential treatment was due to the prohibited ground of discrimination after which the burden of proof shifts to respondents. There is no precedent on the question of shift in the burden of proof yet.

¹³⁶ Section 27, Non-Discrimination Act.

¹³⁷ Act on Class Action [*ryhmäkannelaki* (444/2007)].

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

In Finland, there are legal measures of protection against victimisation in Section 16 of the Non-Discrimination Act.

Section 16 provides that no one may be placed in an unfavourable position or treated in such a way that he or she suffers adverse consequences because of having complained or taken action to safeguard equality.

The personal and material scope of this provision is wide. The law applies, first of all, not just to employers or the person who the complainant has complained about, but to any person who takes action in response to the action by the complainant.¹³⁸ No necessary personal connection to the (alleged) discrimination is needed. Secondly, the scope of persons protected from victimisation is wide: not only is the (alleged) victim of discrimination protected, but so are all those who have engaged in the proceedings or who have been involved in support of the victim, including witnesses, legal counsels and representatives of NGOs who have provided advice or other assistance to the victim.

Thirdly, the range of protected actions taken in response to victimisation is wide. It covers bringing legal action to a court, ombudsman, discrimination tribunal or any other competent authority, in addition to which the filing of a complaint or a crime report, or even the contacting of a human rights organisation or a lawyer, is covered.¹³⁹

A person who has suffered victimisation may be awarded compensation in accordance with Section 23 of the Non-Discrimination Act. The reversed burden of proof applies in assessing victimisation.

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

Section 23 of the Non-Discrimination Act provides the victim of discrimination or the person who has been the target of victimisation with a right to compensation from the authority, employer or provider of education, training, goods or services who has engaged in discrimination or targeted victimisation.

The award of compensation is without prejudice to the possibility of obtaining damages under the Tort Liability Act or some other law. However, it is possible to make simultaneously an alternative/additional claim based on the Tort Liability Act, but it will be applied independently.

Discrimination is an offence punishable under Sections 11:11 and 47:3 of the Criminal Code. The former provision prohibits discrimination, *inter alia*, in the provision of services and the latter prohibits discrimination in employment. Under both provisions a person found guilty of discrimination may be convicted to fines or to imprisonment for up to six months.

Under Section 25 of the Non-Discrimination Act, a court may amend or ignore contractual terms that are contrary to the prohibition of discrimination or victimisation. If circumstances so warrant, a court may also amend other parts of the contract or declare the contract void. No restorative measures, such as the reinstatement of employment, are available in Finnish legislation.

¹³⁸ Page 83, Government proposal on the Non-Discrimination Act.

¹³⁹ Page 83, Government proposal on the Non-Discrimination Act.

The National Non-Discrimination and Equality Tribunal may issue an order for injunctive relief, i.e. to prohibit the continuation or repetition of discrimination in its sphere of authority i.e. outside employment. The tribunal may also order a party to fulfil its obligations by imposing a conditional fine. The decisions of the tribunal show that the conditional fine has been used especially in situations where the discrimination is still ongoing or it may be expected to be repeated. The typical conditional fine set has been EUR 5 000 but, depending on the financial situation of the defendant, it has sometimes been higher, as the next example shows.

When the Non-Discrimination and Equality Tribunal prohibited a bank from discriminating against a blind customer by denying her the entry passwords needed to use a bank account electronically, the Tribunal also imposed a conditional fine of EUR 50 000 to enforce compliance with its injunction.¹⁴⁰ The formulation of the Tribunal decision prohibits the bank from continuing with the discrimination not only against the applicant who brought the issue to the Tribunal, but also against other (future) customers in a similar situation. Therefore, the decisions of the Tribunal may have a more general impact beyond the individual's situation.

b) Ceiling and amount of compensation

There is no minimum or maximum amount of compensation under the Non-Discrimination Act. In Section 24(1) it is stated that the amount of compensation must be in line with the severity of the act and consideration shall be given to the type and extent of the discrimination and its duration.

There is no data available on what kind of compensation claims have been presented in the district courts or on whether the compensation level has changed since the current Non-Discrimination Act came into force on 1 January 2015. Between 2008 and 2011, 15 cases of discrimination were decided by district courts. Courts found discrimination in 10 of the cases and awarded compensation in all of them. The compensations awarded ranged from EUR 4 000 to EUR 10 000. The medium compensation awarded was EUR 5 500.¹⁴¹

c) Assessment of the sanctions

The question whether the available sanctions are, or are likely to be, effective, proportionate and dissuasive, is difficult to answer for the following reasons:

The range of remedies and sanctions is limited but may possibly be considered sufficient. On the one hand, victims can obtain redress in the form of compensation, initiate criminal law proceedings and obtain an order of cessation from the National Non-Discrimination and Equality Tribunal. The National Non-Discrimination and Equality Tribunal cannot order a particular accommodation to be made, but it can forbid the continuation of discrimination (i.e. denial of reasonable accommodation) and may impose a conditional fine to enhance its prohibition or order. On the other hand, some particularly robust remedies, such as reinstatement, are not available.

As the compensation for discrimination can only be requested in a district court the risk of having to pay the legal cost of the defendant greatly affects the real possibilities of seeking remedies against discrimination.

¹⁴⁰ The Non-Discrimination and Equality Tribunal, 14.12.2015, 31/2015, published online 28.01.2016 at http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/tapausselosteet2015/Rnklycoyt/YVTltk-tapausseloste-14_12_2015-kohtuulliset_mukautukset-verkkopankkitunnukset.pdf.

¹⁴¹ Aaltonen et. al p. 42 in *'Riitelemien on pienelle ihmiselle raskasta'* – a study commissioned by the Ministry of the Interior, 2013 <http://julkaisut.valtioneuvosto.fi/handle/10024/79035>.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Section 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

The office of the Ombudsman for Minorities was created in preparation for transposing the directives in 2001, and later amended in 2004. In conjunction with replacing the old Non-Discrimination Act with the new Non-Discrimination Act in 2015, the name and scope of work for the Ombudsman was changed by the Non-Discrimination Ombudsman Act, which is now the official name of the Ombudsman.

The Non-Discrimination Ombudsman supervises compliance with the Non-Discrimination Act with regard to all grounds of discrimination mentioned in the act (origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics), although not in relation to employment. Compliance with the provisions on equality in working life in individual cases is supervised by the occupational safety authorities, which are not considered to be equality bodies

The Ombudsman's office is administratively attached to the Ministry of Justice. There is no separate governing body. The independent status of the Ombudsman has an express legal basis under Section 1 of the Non-Discrimination Ombudsman Act.

The National Non-Discrimination and Equality Tribunal does not have responsibility for the tasks specified in article 13 of the Racial Equality Directive, and should therefore not be considered as a 'body for the promotion of equal treatment' in accordance with the said provision. The tribunal is an independent and impartial judicial body whose decisions are binding and can be appealed against.

- b) Political, economic and social context for the designated body

Equality is frequently expressed in public debates as an important value in Finnish society. Equality itself is therefore seldom questioned, but what constitutes equality (e.g. in relation to sexual orientation) seems to develop over time and be an issue of debate in society.

The Non-Discrimination Ombudsman is generally recognised as an expert authority on equality and minority issues in Finland and is therefore often invited to speak as an expert in parliamentary committees, in the media and at public events, such as seminars and training events. The Non-Discrimination Ombudsman is well respected in society, but is sometimes seen by certain groups in society to have extreme views on advancing equality.

In political life there has been some active opposition to the existence and public financing of the Ombudsman. In 2016, the youth league of the third biggest political party (True Finns) suggested that the function of the Non-Discrimination Ombudsman should be abolished. In 2017, the True Finns put a fiscal initiative to the Parliament that the yearly financing of the Ombudsman from the state budget should be lowered to EUR 100 000 from the current amount of EUR 1.4 million. The initiative did not result in any changes in the Ombudsman's budget.

The level of financing of the Ombudsman has remained stable in the state budget since 2015, when the budget was increased due to the expansion of the mandate and tasks of the Ombudsman. The Ombudsman has criticised the level of resources as insufficient, given that the number of cases brought to the Ombudsman has quadrupled in the three years following the expansion of the mandate.

c) Institutional architecture

The main task of the Non-Discrimination Ombudsman is to supervise compliance with the Non-Discrimination Act and to carry out other tasks given to equality bodies in the Racial Equality Directive. The Non-Discrimination Ombudsman does not form part of another body or authority, but the Ombudsman does have tasks that are not directly connected to its position as the equality body, as required by the Racial Equality Directive. These tasks are to act as National Rapporteur of Human Trafficking (as recommended in Directive 2011/36/EU) and as the body for Monitoring Removal from the Country (as required by Directive 2008/115/EY).

The office of the Non-Discrimination Ombudsman has a staff of 16 permanent officials (including the Ombudsman and administrative staff). Only one person among the permanent staff works on issues other than equality and non-discrimination (she works on issues related to human trafficking). In addition to the permanent staff, the Ombudsman employs between two and five temporary researchers and project staff every year.

The equality and anti-discrimination work takes up most of the attention and resources of the Ombudsman and the area of work that the Ombudsman is most well-known for is on equality.

d) Status of the designated body/bodies – general independence

i) Status of the body

The Non-Discrimination Ombudsman is an independent authority. It is administratively connected to the Ministry of Justice. This means that the head of the office, the Ombudsman, is nominated by the Council of State by the proposition of the Ministry of Justice. The Ministry of Justice also decides on the Ombudsman's budget, based on the funds allocated in the state budget for similar (small) authorities. As part of this process, the Ministry of Justice and the Non-Discrimination Ombudsman agree yearly on the goals and resources of the Ombudsman.

There is no separate governing body for the Non-Discrimination Ombudsman and the Ombudsman makes independent decisions on its actions and use of resources within the limits of the budget. The Ombudsman also recruits its own staff. The Ombudsman presents its yearly report to the Ministry of Justice and every four years to the Parliament. The yearly report to the ministry usually describes the actions taken by the Ombudsman in the past year and is directed towards the general public (media, NGOs, authorities). There is no approval mechanism for the reports by the ministry, indicating the independence of the Ombudsman. The report to the Parliament usually includes the Ombudsman's recommendations for the Parliament to require legislative action from the Government.

ii) Independence of the body

The independent status of the Ombudsman has an express legal basis in Section 1 of the Non-Discrimination Ombudsman Act.

There are no indications that the ministry would try to influence the independent decision making of the Ombudsman. The Ombudsman also regularly criticises the proposals or activities of the ministries. When evaluating the independence of the Ombudsman, the daily activities of the Ombudsman seem uninfluenced and independent. The yearly negotiations and performance agreement on the goals and results of the activity can be seen to limit the

body's independence, particularly as the Government has emphasised that the goals of the Government should be reflected in the performance agreements with the authorities.

e) Grounds covered by the designated body/bodies

The grounds that the Non-Discrimination Ombudsman is authorised to deal with are: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics.

The majority of the resources of the office of the Ombudsman are used to investigate and intervene in discrimination cases. The Ombudsman has emphasised that, given the number of grounds, it has not organised its work based on the grounds, but rather on areas of life. This means that cases on providing goods and services, for example, are dealt with by the same members of staff, regardless of the ground of discrimination. When recruiting new staff, the Ombudsman has communicated that it wants to ensure that the office has personnel who have previous experience working with minority groups, such as ethnic minorities, people with disabilities and sexual minorities.

The Ombudsman provides data in the annual report on the cooperation between different groups representing minority groups, such as religious minorities, sexual minorities, people with disabilities and migrant organisations. The question of discrimination against migrants and ethnic minorities is well represented in the work of the Ombudsman, probably as a continuation of the work of the previous Ombudsman for Minorities, whose work concentrated on ethnic minorities and migrants.

The office has received cases based on all grounds in its mandate. The most common reasons for contacting the office relate to discrimination based on origin and disability. There have also been cases where intersectional discrimination has been recognised.

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

i) Independent assistance to victims

In Finland, the Non-Discrimination Ombudsman does have the competence to provide independent assistance to victims. This competence has some limitations in cases relating to employment because the Ombudsman does not have the authority to supervise compliance with the Non-Discrimination Act in employment. In all other cases except those relating to employment, the Ombudsman can (according to Section 19(2) of the Non-Discrimination Act) issue 'a reasoned opinion to prevent actions contrary to this Act, or to prevent continuation or repetition thereof'. Therefore, this kind of assistance for victims is not available in cases relating to employment.

The Ombudsman usually starts by contacting the opposite side – the person or body that is claimed to have discriminated against the victim – for information or their view on what has happened. Based on this information, together with the information from the victim, the Ombudsman can advise the victim on her/his rights where discrimination has happened. This role in requesting information is not open to the Ombudsman in cases relating to employment.

It is usually victims who bring cases to the attention of the Ombudsman. The Ombudsman can also start an investigation *ex officio*, either without a direct contact or by requesting permission from the victim, e.g. in cases that have been raised by the media.

The independent assistance of the Ombudsman comprises a wide range of supporting actions: the Ombudsman can mediate between the parties for reconciliation, make a public or private statement on the discrimination in the case, take the case to the National Non-Discrimination and Equality Tribunal for prohibition of the discrimination on behalf of the victim or assist the victim in the district court, for example, in claiming compensation.

Some assistance is available in cases relating to employment. The Ombudsman can mediate between the parties for reconciliation in employment cases, but the Ombudsman cannot request information, e.g. from the employer. As explained above, the Ombudsman cannot issue a reasoned opinion on the existence of discrimination in employment, but can give general recommendations in employment. The Ombudsman can assist the victim in the district court, but cannot take an employment case to the Non-Discrimination and Equality Tribunal for prohibition of discrimination.

- **Independence**
The assistance provided by the Ombudsman is independent and often progressive, meaning that the Ombudsman tries to find interpretations of the legislation that will provide the greatest protection for victims of discrimination.

The Ombudsman independently analyses the facts of what has happened to see whether it can be presumed that discrimination has occurred. Although the Ombudsman is sometimes criticised in the media for having views on advancing equality that are too extreme, there is no significant pressure or threat to affect the independent decision-making capacity of the Ombudsman.

- **Effectiveness**
The Ombudsman has a wide range of supporting actions available, from mediation to taking the case to the National Non-Discrimination and Equality Tribunal. The opinions of the Ombudsman are not legally binding. The effectiveness of assistance varies, as in some cases more powerful remedies are needed, such as the option for the Tribunal to award compensation for discrimination. The effectiveness of the Ombudsman is limited in questions relating to employment due to the lack of investigative power that the Ombudsman has in employment.

The Ombudsman has provided independent assistance to the victims of discrimination for many years. The yearly increase in the cases brought to the attention of the Ombudsman has made the Ombudsman more selective in using resources to assist the victims, given that the office's resources have stayed at the same level for many years. It is clear that if the number of people contacting the Ombudsman continues to rise, the Ombudsman cannot continue to give independent assistance to all those needing it without an increase in its resources.

The decision on how far the victim is assisted is based on assessing the effectiveness of potential actions by the Ombudsman. In the effectiveness assessment, the Ombudsman analyses both the importance of assistance for the individual and the effect of the case in changing public attitudes towards discrimination. The exact selection process and criteria is not very transparent.

It appears that the Ombudsman can currently simultaneously assist individuals who have experienced discrimination and draw the general

public's attention to problems of inequality in an effective way. The Ombudsman has less impact on issues related to employment because of the restrictions on the authority of the Ombudsman in employment.

- Resources
The resources available to the Ombudsman has remained at the same level despite the dramatic rise in the number of complaints to the Ombudsman. This means that the Ombudsman has less resources to investigate individual cases of discrimination.

ii) Independent surveys and reports

In Finland, the Non-Discrimination Ombudsman does have the competence to conduct independent surveys and publish independent reports. The Ombudsman usually produces one or two reports yearly. These usually include survey data and recommendations for improving the rights of vulnerable groups in society and combatting the discrimination they face. In recent years these reports have included the situation of people with disabilities, the Roma, the Russian minority and the rights of people seeking asylum.

The selection of groups for the subject of the reports seems to be based on an independent analysis of the Ombudsman on the needs and the expected outcome of the reporting. Since the resources available for this task are limited, the Ombudsman has also used additional available funding, e.g. from the annual Government fund for analysis, assessment and research.¹⁴² As these projects are subject to the Government's approval, this naturally limits the independent decision making of the Ombudsman on what to research.

- Independence
The surveys and reports are produced in an independent manner and often try to highlight less visible problems in equality and non-discrimination.
- Effectiveness
The surveys are often rather limited in relation to the number of people interviewed for the study. Reports of surveys are effective in highlighting the discrimination and problems faced by the minority group and make recommendations both to authorities and private actors on how to improve the situation.

It is questionable whether the Ombudsman can fulfil the task of reporting in employment as the office lacks information on the experiences of those facing discrimination. This is due to people not turning to the Ombudsman for assistance because it lacks a mandate in employment.

- Resources
The resources available for surveys and reports have clearly been limited as the static budget of the Ombudsman has been used to tackle the rising number of discrimination cases brought to the Ombudsman.

iii) Independent recommendations

In Finland, the Non-Discrimination Ombudsman does have the competence to issue independent recommendations on discrimination issues. This competence has some limitations in cases relating to employment since the Ombudsman

¹⁴² <http://tietokayttoon.fi/en/applying-for-funding>.

does not have the authority to supervise compliance with the Non-Discrimination Act in employment. These limitations are explained below.

According to Section 19(2) of the Non-Discrimination Act, in individual cases the Ombudsman can give a justified statement on the prevention of, continuation of or repetition of discrimination unless the question falls within the competences of the Occupational Health and Safety Authorities, i.e. employment. In those cases the Ombudsman can only give 'general recommendations' (section 19(1) of the Non-Discrimination Act).

The Ombudsman also takes into account the European legislation and international treaties binding Finland (such as the Convention on the Rights of Persons with Disabilities). The starting point of the statements is usually to find a reconciliation agreement between the parties, including a public expression of apology for the discrimination and financial compensation to the victim. The view of the Ombudsman is often accepted by all parties involved and it seems that the Ombudsman can act efficiently both in response to individual acts of discrimination and in generating more general changes in attitudes towards greater equality in society.

As part of its role in making recommendations, the Ombudsman is often heard in Parliament committees and in ministries when drafting legislation.

- **Independence**
The recommendations that the Ombudsman makes are independent and often represent the maximum protection available in the interpretation of the legislation. There is no apparent pressure from the Government or other political actors in formulating the views and recommendations of the Ombudsman and the Ombudsman can formulate her recommendations in an independent manner.
- **Effectiveness**
The limitations of the rights of the Ombudsman to request information from employers and the limited right of the Ombudsman to give only 'general recommendations' in the field of employment seriously limits the effectiveness of the Ombudsman in the field of employment.
- **Resources**
The level of resources available to the Ombudsman has remained the same despite the dramatic rise in the number of complaints to the Ombudsman. This means that the Ombudsman has fewer resources for independent recommendations.

iv) Other competences

The Ombudsman also has a duty to promote the exchange of information, education and training on equal treatment and non-discrimination. The Ombudsman is often invited to give lectures and presentations on her work and on advancing equality. The Ombudsman is also regularly consulted by the ministries when preparing legislation and appears before Parliament.

v) Positive duties

Chapter 2 (Promotion of equality) of the Non-Discrimination Act requires all public authorities and those private sector organisations using public power or performing public administrative tasks, education providers and those

employers who employ more than 30 employees, to have a plan for necessary measures for the promotion of equality.

The Non-Discrimination Ombudsman can, as stated in Section 19 of the Non-Discrimination Act, assist in above-mentioned planning of the promotion of equality and also make general recommendations on preventing discrimination and promoting equality.

The Non-Discrimination Ombudsman may bring a matter concerning the neglect of planning obligations – failure to draw up an equality plan - to be handled by the National Non-Discrimination and Equality Tribunal, which can impose a conditional fine to enhance the planning obligation. The Ombudsman does not have authority to supervise the planning obligations of employers as the Ombudsman does not have any authority in employment.

g) Legal standing of the designated body/bodies

In Finland, the Non-Discrimination Ombudsman does not have legal standing to bring discrimination complaints on behalf of identified or non-identified victims to court. The Ombudsman can only bring cases on behalf of victims to the National Non-Discrimination and Equality Tribunal on issues other than employment.

Although the Ombudsman cannot bring discrimination complaints on behalf of victims to court, the Ombudsman can act as the legal assistant for the victim. According to the Non-Discrimination Ombudsman Act (Section 7, Legal Aid) the Ombudsman can assist or order a lawyer from the office of the Ombudsman to assist the victim of discrimination in the court for securing his or her rights. In practice, this is exceptional and has happened only a couple of times during the 15 years of the existence of the Non-Discrimination Ombudsman and its predecessor, the Ombudsman for Minorities. In one case, the Ombudsman represented a Roma couple in seeking financial compensation in a district court after the Non-Discrimination Tribunal found that they had been discriminated against. In the second case, the Ombudsman represented a conscientious objector and in the third case the Ombudsman represented a victim of human trafficking. There are no limitations on the Ombudsman acting as a legal assistant representing people who have contacted her in relation to any of her tasks (including being the National Rapporteur on Human Trafficking). Acting as a legal assistant is also possible in employment related cases.

In accordance with Section 21 of the Non-Discrimination Act, the Non-Discrimination Ombudsman has a right to bring a specific case before the National Non-Discrimination and Equality Tribunal, with the consent of the person who considers that they have been discriminated against. The wording of the act implies that the Non-Discrimination Ombudsman cannot bring a case without a victim to the Tribunal.

The Ombudsman cannot bring complaints *ex officio* to court, but a court must, in cases concerning the application of the Non-Discrimination Act outside employment, allow the Non-Discrimination Ombudsman the opportunity to be heard insofar as the matter pertains to the authority of the Ombudsman (Section 27, Hearing of the Non-Discrimination Ombudsman). Additionally, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges for discrimination based on the Criminal Code.

h) Quasi-judicial competences

In Finland, the Non-Discrimination Ombudsman is not a quasi-judicial institution.

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

In Finland, the Non-Discrimination Ombudsman does register the total number of inquiries and complaints of discrimination it has received yearly. This data is available to the public through yearly reports of the Ombudsman available on the website of the Ombudsman. However, the Ombudsman does not distinguish between inquiries and complaints of discrimination in the data it publishes. All questions, inquiries and reports of discrimination are reported as 'cases' or 'complaints'. Moreover, no detailed information is given on the number of decisions or other outcomes.

The available data includes information on the number of cases each year, what ground of discrimination the cases were based on and in what field the suspected discrimination took place. As an example of such data, in 2015, 496 cases of discrimination were reported to the Ombudsman and in 2016 it was 891 cases. The most common reason for discrimination reported to the Ombudsman in 2016 was (ethnic) origin – 212 cases. In 2016, the majority of discrimination cases involved authorities (223 complaints about municipalities and 126 about the State), but private enterprises, such as service providers, were involved in 318 cases of suspected discrimination. In 2016, 116 of the complaints submitted concerned social and health care services, 91 complaints concerned housing, 84 complaints concerned education and 144 complaints related to the workplace and working life."

j) Planning

The Non-Discrimination Ombudsman has a strategic plan that is specified each year with an annual work plan. The plans are discussed yearly in the performance agreement negotiations between the Ombudsman and the Ministry of Justice. The Ombudsman publishes yearly a report to the Ministry of Justice and a report to the Parliament every four years.

There has been no external evaluation on the work of the Ombudsman, but in preparation for the renewal of the Non-Discrimination Act (during 2007-2014) the experiences of the work of the Ombudsman for Minorities was analysed for developing the legislation.¹⁴³ The most important outcome was the expansion of the mandate of the Ombudsman from ethnicity related discrimination only, to providing support for the victims of discrimination on all grounds of discrimination.

The plans of the Ombudsman indicate a strategic approach in combatting discrimination. The annual work plan enables rotating subjects to become the interest of the Ombudsman. The plans appear to strike a good balance between the Ombudsman's two major duties: supporting the victims of discrimination and supporting the change to a more equal society.

k) Stakeholder engagement

The Advisory Board on Non-Discrimination establishes the basis of stakeholder engagement for the Ombudsman. The board is set up by the Non-Discrimination Ombudsman Act, in order to exchange information between authorities and relevant stakeholders. The board is composed of the Non-Discrimination Ombudsman (who is the chairperson) and 37 other members 'representing significant expertise in combatting discrimination' – as defined in the Government decree. The current members of the board represent civil society associations such as the Finnish League of Human Rights and Amnesty International Finland, public bodies such as the Ministry of Justice and the Ministry of the Interior, the organisation representing local government, representatives of service providers and employees such as the Confederation of Finnish Industries and trade unions.

¹⁴³ See e.g. Government Proposal on the Non-Discrimination Act 19/2014vp and Equality Committee Report 2009
https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76195/omkm_2009_4_yhdenvertaisuuslakiehdotus.pdf?sequence=1&isAllowed=y.

The Advisory Board on Non-Discrimination has furthermore established three subcommittees to expand participation beyond the members of the board: the subcommittee on the affairs of foreign nationals, the subcommittee for affairs of the disabled and the subcommittee for working life.

The board and the subcommittees meet several times a year for discussions on the work of the Ombudsman and important subjects (legislative proposals, studies etc.) for advancing equality.

The Ombudsman regularly meets a wide range of other stakeholders, such as other authorities, religious groups, NGOs, and providers of goods and services. Usually these meetings are arranged in conjunction with solving the discrimination cases brought to the attention of the Ombudsman.

l) Accessibility

- The Ombudsman has an accessible and publicly visible office, although it is not possible to visit the office without prior appointment. The customer service of the Ombudsman can be contacted by telephone, by filling out a form on the website, by sending a letter or e-mail or through a chat-service on the website.
- The Ombudsman does not have local or regional offices but has trained the offices of Victim Support Centres to provide counselling in discrimination cases.
- The Ombudsman does not conduct outreach actions to local areas or communities but has had outreach projects to reach groups that do not otherwise regularly contact the Ombudsman, such as people of Somalian origin.
- The Ombudsman has procedures in place to identify and respond to the access needs of at least some specific complainants. The Ombudsman provides interpretation in different languages, including sign language, and uses an induction loop in meetings. It is possible to register a case of discrimination using any language in a letter or, in case of illiteracy, even without writing.
- The Ombudsman seems to care about its accessibility to customers. However, it may well be that customers are not aware of these accommodations.

m) Roma and Travellers

The predecessor of the Non-Discrimination Ombudsman, the Ombudsman for Minorities considered the Roma as the most discriminated group in Finland. The current Non-Discrimination Ombudsman has continued the close cooperation with the Roma community in Finland. However, given that the sphere of action for the Non-Discrimination Ombudsman is much wider than that of its predecessor, it is clear that Roma questions do not get the same visibility in the work of the Non-Discrimination Ombudsman. The Roma continue to bring cases to the Non-Discrimination Ombudsman, but there have been no similar projects directed only towards the Roma in the work of Non-Discrimination Ombudsman.

8 IMPLEMENTATION ISSUES

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

An Advisory Board on Non-Discrimination (*yhdenvertaisuusasioiden neuvottelukunta*) was established by a Government decree¹⁴⁴ in January 2016, and was set up for a three-year period from 15 October 2016 to 14 October 2019. The Advisory Board is composed of the Non-Discrimination Ombudsman as the chairman and 37 other members 'representing significant expertise in combatting discrimination' – as their characteristics are defined in the Government decree. The Government decree does not provide any further information on the selection criteria for the members of the Advisory Board, but among the organisations represented on the Advisory Board are key ministries, social partners and NGOs representing all grounds of discrimination in the sphere of activity of the Ombudsman. The Board does not have any decision-making role, but it works as a communications network between the Ombudsman, civil society and authorities.

The Unit for Democracy, Language Affairs and Fundamental Rights within the Ministry of Justice maintains the Equality.fi website, which provides resources for authorities, organisations and those interested in equality and non-discrimination. The website includes training material, together with information on legislation, research, ongoing campaigns and different minorities.¹⁴⁵

There are a number of bodies that deal with discrimination/equality in relation to Roma. These include, most importantly, the Advisory Board on Romani Affairs (RONK), which was established in 1956, and the Advisory Board for Ethnic Relations. The task of the Advisory Board on Romani Affairs is to enhance the equal participation of the Roma population in Finnish society, to improve their living conditions and socio-economic status, and to promote their culture. The Advisory Board on Romani Affairs functions in conjunction with the Ministry of Social Affairs and Health. There are also four regional advisory boards for Roma affairs that act at the regional level. The Advisory Board for Ethnic Relations seeks to promote interaction between Finland's ethnic minorities and the authorities, NGOs, political parties and social partners, and to provide the ministries with immigrant and minority policy expertise in the interests of promoting an ethnically equal and diverse society. There are also three regional advisory boards for ethnic relations.

An effort to take the Roma into account has also been made in the area of dissemination of information, and some of the available materials are specifically targeted at the Roma or at employers with a view to promoting employment opportunities for Roma.¹⁴⁶

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

a) Mechanisms

Section 25 of the Non-Discrimination Act provides that any discriminatory contractual terms and statutes of a company, association or trust are void. A court may, in a case that is being processed by it, change or ignore contractual terms that are contrary to the prohibition of discrimination if it would be unreasonable to apply the contract otherwise unaffected.

¹⁴⁴ Government Decree on the Advisory Board on Non-Discrimination [*Valtioneuvoston asetus yhdenvertaisuusasiain neuvottelukunnasta* (39/2016)]
<https://www.edilex.fi/saaduskokoelma/20160039.pdf>.

¹⁴⁵ <http://yhdenvertaisuus.fi/en/frontpage>.

¹⁴⁶ See e.g. www.equality.fi and www.romanit.fi.

b) Rules contrary to the principle of equality

As regards the former Non-Discrimination Act (21/2004), which was in force until 31 December 2014, there were no laws, regulations or rules contrary to the principle of equality as regulated by that act and the directives. The Non-Discrimination Act, which came into force on 1 January 2015, has a wider scope of applicability. During its first three years of application, there have been no reports of any regulations or rules that may be contrary to the principle of equality as prescribed in the Non-Discrimination Act.

9 COORDINATION AT NATIONAL LEVEL

The responsibility for developing non-discrimination policies and legislation lies with the Unit for Democracy, Language Affairs and Fundamental Rights at the Ministry of Justice.

The Ministry of Justice set up a working group in October 2015, with representatives from all ministries. The aim of the group was to prepare a National Action Plan on Fundamental and Human Rights. On 16 February 2017, the Government took a decision in principle to accept the National Action Plan on Fundamental and Human Rights for 2017–2019.

The objective of the action plan is to promote the obligation of the public authority to guarantee the observance of basic rights and liberties and human rights as stipulated in Section 22 of the Constitution. The measures taken under the action plan are designed to work on identified problems with fundamental and human rights and to complement the work being carried out in various policy sectors to promote fundamental and human rights.

The main areas on which the national action plan focuses are fundamental and human rights education, equality, the right to self-determination and fundamental rights and digitalisation. The action plan includes a total of 43 projects, which are spread across the administrative branches of all ministries.

10 CURRENT BEST PRACTICES

- Equality planning.¹⁴⁷

The Non-Discrimination Act of 2004 required authorities and those providing education to draw up a plan for the fostering of ethnic equality. The reform of the Non-Discrimination Act in 2015 extended this requirement to companies employing more than 30 employees. In addition, the scope of the equality plan was widened to include all discrimination grounds protected by the Non-Discrimination Act. Equality plans must evaluate the realisation of equality and were required to be drawn up by the end of 2016. Equality plans covering multiple grounds have been drafted in hundreds of municipalities, other authorities, companies and lots of other organisations such as NGOs and student unions, even though for many bodies it is voluntary. In the plans, organisations and companies have been analysing how their services and functions meet the actual needs of various clients, what kind of reasonable accommodations are needed and how equality in the workplace can be secured. The Non-Discrimination Ombudsman may bring a matter concerning the failure to draw up an equality plan to the National Non-Discrimination and Equality Tribunal, which can order the authority or education provider to fulfil the obligation within a reasonable time. The Tribunal may impose a conditional fine to enhance its order.
- The Discrimination Free¹⁴⁸ Zone campaign is an information campaign to combat discrimination. It enables organisations and work communities to declare their commitment to the principle of non-discrimination.

The organisation declaring itself a Discrimination Free Zone completes an online declaration form and receives in exchange a Discrimination Free Zone sign, which must be displayed somewhere on its premises for all to see. The idea of the campaign is to make commitment to equality visible. Such a declaration is a signal to employees, job-seekers and customers that the organisation welcomes everyone irrespective of gender, age, ethnic background, religion or belief, opinion, state of health, disability or sexual orientation. Already more than 1 000 work communities and organisations around Finland have joined the campaign.
- The Diversity Charter¹⁴⁹

For years, FIBS (Finnish Business and Society), a corporate responsibility network, has been gathering interested companies to develop their work on diversity. The companies have signed the Diversity Charter, which shows their commitment to equal opportunities and diversity in their staff and the goods and services that they offer to general public. Their work of arranging diversity trainings and seminars is widely recognised among the business community and those NGOs representing groups vulnerable to discrimination.
- Discrimination research and monitoring¹⁵⁰

The Discrimination Monitoring Group consists of representatives from a number of public authorities, research institutes, NGOs, and equality, gender equality and independent bodies. Currently the group is organised by the Ministry of Justice. The group has commissioned yearly studies on discrimination in different areas of life bringing discrimination, which is often hidden, to the public discussion and to the knowledge of the responsible authorities.
- The Non-Discrimination Ombudsman's right to be heard as an amicus curiae¹⁵¹

According to the Non-Discrimination Act, the Non-Discrimination Ombudsman must be allowed to be heard in court when a discrimination case (not concerning employment) is being decided there. Additionally, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges for

¹⁴⁷ See <http://www.yhdenvertaisuus.fi/yhdenvertaisuussuunnittelu/>.

¹⁴⁸ See e.g. <http://yhdenvertaisuus.fi/syrjinnastavapaa.fi> or the example of a taxi company as a Discrimination Free Zone <http://tervetuloakyytiin.fi/>.

¹⁴⁹ See <http://www.fibsy.fi/fi/palvelut/monimuotoisuusverkosto/monimuotoisuussitoumus>.

¹⁵⁰ See <http://yhdenvertaisuus.fi/syrjintatieto.fi>.

¹⁵¹ Section 27, Non-Discrimination Act.

discrimination (Chapter 11, Section 11 of the Criminal Code). This statute has become an important tool for making the Ombudsman aware of all case law regarding discrimination. Additionally, it allows the Ombudsman to ensure that courts are aware of recent jurisdiction and levels of compensation when deciding on discrimination cases.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

- The general justification of direct discrimination in situations governed by the Racial Equality Directive does not derive from the directive and may be too widely formulated. Section 11(1) of the Non-Discrimination Act legislates for a general justification definition that applies in situations governed by the Racial Equality Directive:
'differential treatment is only allowed if the treatment is based on legislation, the treatment has an acceptable aim and the means used are in due proportion for achieving this aim.'¹⁵²

11.2 Other issues of concern

- The compensation for discrimination can only be requested in a district court where the risk of having to pay the legal cost of the claimant greatly affects the real possibilities of seeking remedies against discrimination. In its report on the Non-Discrimination Act the Constitutional Law Committee of the Parliament proposed that the National Non-Discrimination and Equality Tribunal should be able to decide on the compensation.¹⁵³ The Employment and Equality Committee of the Parliament, however, did not amend the Government proposal in this regard.
- The Non-Discrimination Ombudsman and the National Non-Discrimination and Equality Tribunal do not have a role in interpreting the Non-Discrimination Act in regard to employment. The Constitutional Law Committee of the Parliament considered this to be problematic, considering how central the area employment is to safeguarding equal treatment.¹⁵⁴ The Constitutional Law Committee considered it important that the Employment and Equality Committee study the possibilities for safeguarding expertise and unity in this respect. The European Commission has had a dialogue with Finland on the issue of whether this legislative framework fulfils the requirements of the directives.
- Associations or organisations working for the benefit of victims do not have any major role to play in judicial or administrative processes. They do not have any general *locus standi* to take a case to court to pursue a matter in their own name, not even with the consent of the complainant. Neither can associations become third parties to such proceedings or act as an *amicus curiae*. This state of affairs arises from national legislation on rules of procedure.

¹⁵² See 2.2. above for direct discrimination justification.

¹⁵³ Page 10. Constitutional Law Committee's report 31/2014
https://www.eduskunta.fi/FI/vaski/Lausunto/Documents/pevl_31+2014.pdf.

¹⁵⁴ Page 10. Constitutional Law Committee's report 31/2014.

12 LATEST DEVELOPMENTS IN 2017

12.1 Legislative amendments

There were no relevant legislative amendments in 2017.

12.2 Case law

Name of court: Helsinki Appeal Court

Date of decision: 23.10.2017

Names of the parties: not available

Reference number: R16/1825

Link: Not available

Brief summary: Three customers belonging to the Roma minority were denied service when they arrived at a restaurant. The restaurant personnel later explained that they suspected that the claimants had earlier committed a theft in the restaurant and therefore they had decided not to serve them. The Helsinki District Court as first instance court had acquitted the restaurant personnel of the discrimination charges raised against them based on the Penal Code. The Helsinki Appeal Court considered it implausible that the defendant would have immediately recognised the claimants to be the perpetrators as she later was not able to give detailed information about the perpetrators. The appeal court emphasised that the service provider would need to be assured that denial of service was based on the same individual's previous unacceptable behaviour and not on a possible confusion of the person with another person belonging to same ethnic group. The appeal court sentenced the defendants to pay fines of EUR 620 in total for breaching the prohibition of discrimination in the Penal Code and awarded EUR 800 per person for compensation as set in the Non-Discrimination Act.

Name of court: Kainuu District Court

Date of decision: 2.11.2017

Names of the parties: not available

Reference number: R17/550

Link: Not available

Brief summary: A Roma couple had been told on the phone that there were rooms available in the hotel. When they arrived to check in to the hotel they were told that the hotel did not accept Roma customers because of negative experiences in serving them. The district court sentenced the defendant to pay fines of EUR 180 for breaching the prohibition of discrimination in the Penal Code and awarded EUR 600 per person for compensation as set in the Non-Discrimination Act.

Name of court: Turku Administrative Court

Date of decision: 16.2.2017

Names of the parties: not available

Reference number: 17/0067/2

Brief summary: Turku Administrative Court upheld the decision of the National Non-Discrimination and Equality Tribunal where the tribunal prohibited a bank from discriminating against a blind customer by not giving the passwords needed to use her bank account in Braille or another form that she could use. The Tribunal decision is explained in the country report for 2016, page 73 (<https://www.equalitylaw.eu/downloads/3874-finland-country-report-non-discrimination-2016-pdf-1-40-mb>). The court stated that electronic banking services are important for persons with disabilities and the bank should have made reasonable accommodation measures, e.g. by providing the passwords in Braille.

Name of court: Turku Administrative Court

Date of decision: 18.5.2017

Names of the parties: not available

Reference number: 00622/16/1205

Brief summary: Turku Administrative Court upheld the decision of the National Non-Discrimination and Equality Tribunal where the Tribunal prohibited a restaurant from discriminating against a customer with disabilities. The customer had inquired about the location of an accessible toilet, but had been told that the toilet was not available at the time. In the administrative court, the restaurant claimed that there was an accessible toilet in the restaurant at the time, but the restaurant was not able to show that the customer had been correctly informed where to find the toilet. Therefore the administrative court did not change the decision of the Tribunal and prohibited the restaurant from continuing discrimination. The court referred to both direct and indirect discrimination in the decision.

Name of court: The National Non-Discrimination and Equality Tribunal

Date of decisions: 21.11.2017

Names of the parties: not available

Reference numbers: 258/2017, 292/2017 and 315/2017

Link:

http://www.yvtltk.fi/fi/index/materiaalit/tapausselosteet_3/tapausselosteet2017_1.html

Brief summary: The Non-Discrimination and Equality Tribunal found that there had been discrimination in three similar situations when a person who used a wheelchair was not able to attend political discussion meetings that had been arranged by different political parties in conjunction with the forthcoming municipal elections. The Tribunal considered that arranging meetings open to the general public in non-accessible places and not researching whether accessible meeting venues were available was indirect discrimination on the basis of disability. The Tribunal prohibited the parties from continuing discrimination against any person with disabilities.

Name of court: The National Non-Discrimination and Equality Tribunal

Date of decisions: 21.11.2017

Names of the parties: not available

Reference numbers: 278/2017

Link:

http://www.yvtltk.fi/fi/index/materiaalit/tapausselosteet_3/tapausselosteet2017_1.html

Brief summary: A person using a wheelchair was not able to follow the plenary sessions of the Parliament due to temporary renovation work in the Parliament building. The National Non-Discrimination and Equality Tribunal considered that it could be assumed that the prohibition of indirect discrimination had been violated. Therefore it was the duty of Parliament to show that the treatment of people using a wheelchair was based on a legitimate aim and the means for achieving the aim are appropriate and necessary. The Parliament was able to show that the renovation was a legitimate aim and the fact that it was possible to follow sessions in a separate, accessible location in the Parliament building (and on the internet) showed that the means chosen to guarantee the rights of people using a wheelchair were appropriate and necessary. Therefore the Tribunal concluded that no discrimination had occurred.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Finland
Date: 1 January 2018

Title of legislation (including amending legislation)	Title of the law: Non-Discrimination Act ¹⁵⁵ Abbreviation: NDA Date of adoption: 30.12.2014 Entry into force: 1.1.2015 Latest amendments: No Web link: http://www.finlex.fi/fi/laki/ajantasa/2014/20141325 Grounds protected: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.
	Civil/administrative/criminal law: Civil law
	Material scope: both public and private activities, excluding private life, family life and practice of religion
	Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate
Title of legislation (including amending legislation)	Title of the law: Non-Discrimination Ombudsman Act Abbreviation: - Date of adoption: 30.12.2014 Entry into force: 1.1.2015 Latest amendments: No Web link: http://www.finlex.fi/fi/laki/ajantasa/2014/20141326 Grounds covered: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics
	Civil/administrative/criminal law: Administrative law
	Material scope: both public and private activities, excluding private life, family life and practice of religion
	Principal content: creation of a specialised body
Title of legislation (including amending legislation)	Title of the law: The Criminal Code of Finland Abbreviation: Criminal Code Date of adoption: 19.12.1889 Entry into force: 1.1.1891 Latest amendments: 1287/2016, coming into force 1.1.2017 Web link: https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001 Grounds protected: race, national or ethnic origin, skin colour, language, sex, age, family ties, sexual preference, inheritance, disability or state of health, or religion, political orientation, political or industrial activity or another comparable circumstance
	Civil/administrative/criminal law: Criminal law
	Material scope: Discrimination (Chapter 11, Section 11) provision of goods and services, exercise of official authority or in the arrangement of a public amusement or meeting. Employment Discrimination (Chapter 47, Section 3) employment
	Principal content: prohibition of discrimination

¹⁵⁵ The old Non-Discrimination Act (which was in force 2001-2014) was repealed by the Non-Discrimination Act from the beginning of 2015, expanding the protection to cover all grounds of discrimination.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Finland
Date: 1 January 2018

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	5.5.1989	10.5.1990	None	Yes	Yes
Protocol 12, ECHR	4.11.2000	17.12.2004	None	Yes	Yes
Revised European Social Charter	3.5.1996	21.6.2002	None	Ratified collective complaints protocol? Yes	Yes, to the extent the rights provided in ESC, as revised, are justiciable
International Covenant on Civil and Political Rights	11.10.1967	19.10.1975	None	Yes	Yes
Framework Convention for the Protection of National Minorities	1.2.1995	3.10.1997	None	Not applicable	Yes, to the extent the rights provided are justiciable (in practice extremely limited)
International Covenant on Economic, Social and Cultural Rights	11.10.1967	19.10.1975	None	Not applicable	Yes, to the extent the rights provided are justiciable
Convention on the Elimination of All Forms of Racial Discrimination	6.10.1966	14.7.1970	None	Yes	Yes

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Elimination of Discrimination Against Women	17.7.1980	4.9.1986	None	Yes	Yes
ILO Convention No. 111 on Discrimination	25.6.1958	23.4.1970	None	Not applicable	Yes
Convention on the Rights of the Child	26.1.1990	20.6.1991	None	Not applicable	Yes
Convention on the Rights of Persons with Disabilities	30.3.2007	10.6.2016	None	Yes	Yes

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