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Country report

Non-discrimination

Iceland

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Country report

Non-discrimination

Iceland

Guðrún D. Guðmundsdóttir

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CONTENTS

EXECUTIVE SUMMARY	5
RÉSUMÉ	13
ZUSAMMENFASSUNG	22
INTRODUCTION	32
1 GENERAL LEGAL FRAMEWORK	36
2 THE DEFINITION OF DISCRIMINATION	38
2.1 Grounds of unlawful discrimination explicitly covered	38
2.1.1 Definition of the grounds of unlawful discrimination within the directives	38
2.1.2 Multiple discrimination	39
2.1.3 Assumed and associated discrimination	39
2.2 Direct discrimination (Article 2(2)(a))	39
2.2.1 Situation testing	40
2.3 Indirect discrimination (Article 2(2)(b))	40
2.3.1 Statistical evidence	41
2.4 Harassment (Article 2(3))	41
2.5 Instructions to discriminate (Article 2(4))	42
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	42
3 PERSONAL AND MATERIAL SCOPE	48
3.1 Personal scope	48
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)	48
3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)	48
3.1.3 Private and public sector, including public bodies (Article 3(1))	48
3.2 Material scope	49
3.2.1 Employment, self-employment and occupation	49
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))	49
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	50
3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	50
3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))	51
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	51
3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)	52
3.2.8 Education (Article 3(1)(g) Directive 2000/43)	52
3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)	54
3.2.10 Housing (Article 3(1)(h) Directive 2000/43)	54
4 EXCEPTIONS	56
4.1 Genuine and determining occupational requirements (Article 4)	56
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	56
4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)	56
4.4 Nationality discrimination (Article 3(2))	56
4.5 Work-related family benefits (Recital 22 Directive 2000/78)	57

4.6	Health and safety (Article 7(2) Directive 2000/78)	57
4.7	Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	58
4.7.1	Direct discrimination	58
4.7.2	Special conditions for young people, older workers and persons with caring responsibilities	59
4.7.3	Minimum and maximum age requirements	59
4.7.4	Retirement	60
4.7.5	Redundancy	62
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)	62
4.9	Any other exceptions	62
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)	63
6	REMEDIES AND ENFORCEMENT	64
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	64
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)	66
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78) ..	68
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)	68
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)	68
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)	71
8	IMPLEMENTATION ISSUES	74
8.1	Dissemination of information, dialogue with NGOs and between social partners	74
8.2	Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)	74
9	COORDINATION AT NATIONAL LEVEL	75
10	CURRENT BEST PRACTICES	78
11	SENSITIVE OR CONTROVERSIAL ISSUES	79
11.1	Potential breaches of the directives (if any)	79
11.2	Other issues of concern	82
12	LATEST DEVELOPMENTS IN 2017	83
12.1	Legislative amendments	83
12.2	Case law	83
	ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION	86
	ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS	90

EXECUTIVE SUMMARY

1. Introduction

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

In recent years, a strengthened human rights dialogue has brought the position of various vulnerable groups and minorities to the fore. However, a 2014 study on attitudes to equality and discrimination in the workplace reveals that 86 % of those polled thought that people were discriminated against on one of the following grounds: gender (63.8 %), national origin (55.1 %), age (44.1 %), disability (38.6 %), race (38.8 %), sexual orientation (22.4 %) and religion/beliefs (20.5 %).¹

The formal legal status of people with disabilities is good, although, in practice, they habitually suffer discrimination concerning their rights to education, housing and participation in public life, and form a large proportion of those living in poverty. According to the leading disability rights organisation, disability benefits are not adequate for a life of dignity, and only a quarter of people with disabilities are in work. Building and planning regulations require public buildings to be accessible. However, this is not always the case and sanctions are rare. No important judgments concerning disability were issued in 2017 but mention should be made of an important 2015 case brought by a deafblind young person. The Reykjavik District Court ruled that state funding for and the organisation of sign language interpreting services was inadequate and discriminatory and was in breach of the right to minimum assistance as enshrined in the Constitution and in the equality provisions of administrative law. The state will have to increase its funding for these services and make legislative changes to define what constitutes minimum rights and adequate services when it comes to the right to sign language interpreting.² Such changes are yet to be made.

In 2017, another young person brought a case to the Supreme Court asking for the decision to deny her free sign language interpreting services for a summer camp stay abroad to be annulled. The Supreme Court found that the decision had been lawful and proportionate, based on the available funds, as the cost would have amounted to 18 % of the Centre's budget for the period of July-September 2017. Paying for A's interpreting needs would have emptied the coffers and been discriminatory towards other applicants in need of free sign language interpreting services.³

The Labour Directorate estimates that at the end of 2017 foreign citizens in Iceland numbered approximately 38 000 or 11 % of all inhabitants, meaning that the number of immigrants increased by 25 % in 2017. This percentage has never been higher. Significantly more men than women have moved to the country in the past three years. Poles are the most numerous, representing 46 % of foreign citizens on 1 January 2017. Lithuanians accounted for 8 %, Germans approximately 4 % and small numbers of people of various nationalities compose the rest.⁴

¹ Arnardóttir, E. and Haraldsson, R. H. (2014), *Uppruni og fjölbætt mismunun, Ísafjörður: Fjölmenningssetur*.

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

³ Supreme Court of Iceland, *Áslaug Yr Hjartardóttir v. the Communication Centre for the Deaf and Hard of Hearing and the Icelandic State*, Case No. 464/2017, 9 November 2017.

⁴ Iceland Statistical Agency, *Press Release on Population*, 16 June 2017. Available at: <https://hagstofa.is/utgafur/frettasafn/mannfjoldi/mannfjoldi-eftir-bakgrunni-2017>.

The number of children of immigrant origin has increased steadily from 2004, in both kindergartens and compulsory education. In 2015, 2 435 kindergarten pupils had a mother tongue other than Icelandic, as did 3 543 compulsory education pupils. Limited reading literacy of Icelandic hampers the studies of many of these children and the low number of youngsters of immigrant origin graduating from high school is a serious problem.⁵

In 2016, 18.7 % of children in need of assistance from the Child Protection Services were of immigrant origin and 53 % of the women staying in the Shelter for Victims of Domestic Violence were foreigners. A total of 31 % of the women seeking general assistance at the shelter were foreigners; 14 % from EEA countries and 17 % from third countries. The fact that a disproportionate number of immigrant women seek assistance does not necessarily mean that violence against them is more common than towards Icelandic women, rather this may reflect the fact that they have weaker support networks, so they are forced to seek assistance from the shelter instead of from friends or family.⁶

In general, the government has concluded that Icelandic society is becoming increasingly diverse and that welfare services need to adapt to address this new reality.⁷ It is also notable that, on average, the income of immigrants is lower than that of the general population and only a small minority hold jobs where their education is fully utilised; the majority work in construction, tourism, cleaning and care services. In 2017, of those with university degrees, 2/3 worked in low-skilled jobs, e.g. shop work and services; only 27 % did specialised or office work. Similarly, only 25 % of unemployed foreign nationals had previously held jobs in the field they had trained for. Unemployment among foreign nationals is higher than for Icelandic-born citizens. The Directorate of Labour estimated the rate at 4.5 % in 2017 compared to 2.2 % for the total population. Poles are the most afflicted, with 6 % on average in 2017. However, long-term unemployment of immigrants is the same as for locals.⁸

According to a study conducted by the Multicultural Centre, one in five immigrants in Iceland experiences negative attitudes on a regular basis because of their origin. Of those participating in the study, 77 % were of the view that they had experienced negative attitudes because of their limited knowledge of Icelandic and 54 % thought that negative attitudes towards them were based on their origin or nationality. It is an issue of concern that 14 % had experienced negative attitudes when interacting with staff at nursery schools, and 19 % when interacting with primary school staff. As part of the study, public officials were also polled. Some 55 % of state officials thought that immigrants are sometimes or often met with prejudice in their dealings with public bodies and 43 % of municipal employees were of the same view.⁹

There are no specific legal provisions sanctioning age discrimination in the labour market. Limited research has been carried out on this topic, but the labour market participation of older people in Iceland is among the highest in all the OECD countries. However, discrimination regarding employment is apparent, especially in correlation with gender. A 2011 Eurobarometer study demonstrates that Icelanders have witnessed or experienced

⁵ Multicultural Centre, *Statistical Information on Foreign Citizens and Immigrants in Iceland 2016* ['Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016'], September 2016, p. 20.

⁶ Multicultural Centre, *Statistical Information on Foreign Citizens and Immigrants in Iceland 2016* ['Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016'], September 2016, p. 28.

⁷ *Aðgerðir til að vinna gegn fátækt; tillögur byggðar á skýrslunni Farsæld; Baráttan gegn fátækt á Íslandi*. (2013). Reykjavík: Velferðarráðuneytið.

⁸ Directorate of Labour, *Foreign Citizens in the Icelandic Labour Market 2012-2017*, ['Erlendir ríkisborgarar á íslenskum vinnumarkaði 2012-2017'], January 2018, p. 4.

⁹ Arnardóttir, E. and Haraldsson, R. H. (2014). *Uppruni og fjölþætt mismunun, Ísafjörður: Fjölmenningarsetur*.

more discrimination because of older age than the EU average: in the workplace, in relation to access to education and training, and in their leisure time.¹⁰

On a positive note, although sexual orientation is not a specially protected ground in the field of employment, Icelandic legislation setting out the rights of homosexual people is one of the world's most progressive: all marriages have the same legal status, same-sex couples can adopt children and lesbians are able to take advantage of artificial insemination. One of the last remaining hurdles was the opposition of the National Church of Iceland (the Lutheran state church) to conducting the same religious ceremonies for heterosexual and same-sex marriages. Priests who are against gay marriage were allowed, referring to their religious conscience, to refuse to conduct marriage ceremonies for same-sex couples. According to the Bishop of Iceland, only a very small minority of priests hold such views and in 2015 the National Church Congress adopted a resolution which bars priests from refusing to conduct same-sex marriage ceremonies. In general, attitudes towards LGBTQIA people are very liberal and Gay Pride celebrations are a time of family festivities in Reykjavik. In addition, the legal status of transgender people was significantly strengthened through the Act on the Judicial Status of Transgender Persons No. 57/2012. A related positive development in 2014 was the amendment of the General Penal Code No. 19/1940 to include gender identity as a ground for discrimination. Despite liberal attitudes, a small minority still holds traditional views. Two ground-breaking cases on hate speech towards homosexual people were decided by the Supreme Court in 2017.¹¹ This is a positive development as hateful comments have until now been taken lightly; the convictions stress that hate speech is a crime for which perpetrators risk prosecution.

The number of registered religious organisations grew from 14 in 1991 to 48 in 2017. Of these, more than half are Christian denominations. Some 69.9 % of the nation belongs to the National Church of Iceland. Catholics constitute 3.8 % and, of the non-Christian minority faiths, Ásatrú (the Norse pagan faith), Zuists, Buddhists and Muslims are the largest denominations. Siðmennt, the ethical humanists, have been gaining ground in recent years and just over 15.2 % of the population are undefined or are not members of religious organisations. No research has been carried out on the extent of discrimination in the workplace based on religion or belief, but in 2009, 23.4 % of Icelanders thought that general discrimination based on religion or belief was common.¹²

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

2. Main legislation

Iceland is party to the European Economic Area (EEA) Agreement and is thus obliged to adopt the EU *acquis* related to the single market. Directives 2000/43/EC and 2000/78/EC were not incorporated into the EEA Agreement and have therefore not been transposed

¹⁰ *Virkni aldraðra* (2011). Eurobarometer study, accessible on the website of the Ministry of the Interior: www.velferdarraduneyti.is/media/frettatengt2012/Eurobarometer-active-ageing-2012.pdf, p. 2.

¹¹ Supreme Court of Iceland, *The Prosecutor v. Sveinbjörn Styrmir Gunnarsson*, Case No. 577/2017, 14 December 2017 and *The Prosecutor v. Carl Jóhann Lilliendahl*, Case No. 415/2017, 14 December 2017.

¹² Capacent Gallup (2009). *Könnun um viðhorf til mismununar*. Reykjavík: Velferðarráðuneytið and Mannréttindaskrifstofa Íslands.

into domestic law. The European Commission does not consider Icelandic legislation as being in line with the directives, as 'no detailed protection against discrimination is provided in the labour market nor is there any comprehensive legislation in force prohibiting discrimination on grounds of racial or ethnic origin outside the labour market'.¹³

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

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

The Act on the Affairs of Persons with Disabilities guarantees, inter alia, the right to equality, the right to receive assistance to be enabled to live and work in society and the right to general national and municipal services as well as access to public spaces. The law also provides for positive action measures: people with disabilities have preference over other applicants for government employment when they are equally qualified. A recent positive development is the ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on 20 September 2016. Legislative amendments to bring Icelandic legislation in line with the provisions of the CRPD will significantly improve the legal status of people with disabilities.

The European Convention on Human Rights, which has been incorporated into domestic law, stipulates that the enjoyment of the rights and freedoms set forth in it shall be secured without discrimination. The UN Convention on the Rights of the Child has also been incorporated into national law, setting out similar provisions. The General Penal Code, the Act on Administrative Procedure and the acts on primary schools, media and postal and municipal services also contain provisions touching upon equality and non-discrimination. In addition, the Act on the EEA Agreement prohibits discrimination based on citizenship in relation to the provisions of the agreement, and the transposition of the relevant EU directives has led to the prohibition of discrimination regarding temporary and part-time employment as compared to full-time employment.

3. Main principles and definitions

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

¹³ European Commission: *DG Enlargement Screening report Iceland*. Chapter 19 – Social policy and employment. 17 October 2011.

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

4. Material scope

Directives 2000/43/EC and 2000/78/EC have not been transposed into national law and no comprehensive anti-discrimination law applies to all sectors of public and private employment and occupations with regard to the grounds listed in the directives. Discriminatory acts in the private sector could possibly fall under the scope of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried. For the public sector, the Act on Administrative Procedure No. 37/1993 — prohibiting discrimination between individual parties based on views concerning, inter alia, race, colour, national origin, religion, political opinion, social status or family — could apply.

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

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

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

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

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

5. Enforcing the law

Directives 2000/43/EC and 2000/78/EC have not been transposed into national law. No specific procedures have been established to deal with discrimination on the grounds enumerated in the directives. The sole discrimination complaints body, the Gender Equality Complaints Committee, deals with gender discrimination only. Numerous administrative procedures are in place with the aim of guaranteeing citizens the right of recourse vis-à-vis public authorities, including non-discrimination. The Act on Administrative Procedure No. 37/1993 guarantees the right to lodge an appeal against decisions made by administrative authorities, such as public institutions or committees. All the decisions of public bodies, or bodies vested with public authority, are subject to review by a higher authority, unless otherwise provided for by law. The decisions of independent authorities may in some cases be reviewed by ministers or special review boards/committees. Mention should be made of the recently established Immigration and Asylum Appeals Board. Its objective includes ensuring an independent review of all the decisions of the Directorate of Immigration that were taken on the basis of the Act on Foreign Nationals No. 96/2002. The Board began receiving cases on 1 January 2015. In early November 2017, it had published 650 decisions, mainly dealing with asylum decisions made by the Directorate of Immigration. In some instances, decisions made by local authorities may be referred to the relevant ministry. Furthermore, complaints concerning discriminatory administrative decisions can be brought to the Parliamentary Ombudsman. Finally, the courts are competent to review any decision taken by the executive.

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

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

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

No discrimination cases relating directly to the scope of the directives were decided in 2017. However, two ground-breaking Supreme Court judgments concerning hate-speech towards LGBTQIA people are a watershed for the LGBTQIA movement in Iceland. In April 2015, Samtökin'78, the leading LGBTQIA rights organisation in Iceland, filed complaints against ten people because of hateful remarks made on a radio show and on-line after the council of Hafnarfjörður Municipality decided to provide LGBTQIA education in its schools with the assistance of Samtökin'78. The complaints fell under the jurisdiction of the Reykjavík Police and two other police districts. In September 2015, the Reykjavík Police dismissed the complaints without investigation, considering the remarks to be constitutionally protected free speech (Article 73 of the Icelandic Constitution). Samtökin'78 appealed this decision and in November 2015 the State Prosecutor ruled that

the complaints should be investigated. In November 2016, the State Prosecutor brought eight cases concerning violations of the hate speech provision of the General Penal Code No. 19/1940 to the District Courts. The District Courts acquitted one of the accused as the statute of limitations had passed. Five others were acquitted as intent was not proven and their comments were considered to fall within the remit of free-speech protected by the Constitution and the ECHR. In two appealed cases, the Supreme Court disagreed with the very narrow interpretation of the hate speech provision and overturned the acquittals. In a third case, the accused was found to have publicly insulted homosexual people and expressed prejudice, but the comments were not injurious enough to amount to hate speech.

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

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

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

6. Equality bodies

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

The Icelandic Human Rights Centre has assumed many of the functions of a national human rights institution (NHRI), albeit without the relevant powers, independence and financing having been established by statute. The Multicultural Centre is charged with facilitating communication between individuals from different backgrounds and enhancing the services provided to foreign citizens residing in Iceland and to those interested in moving to Iceland. The Centre assists those seeking information about daily life in Iceland, provides

information about the administration and is of service to foreign citizens moving to or from the country.

International human rights monitoring bodies have called for the establishment of an NHRI in Iceland and the government has pledged to do so to, *inter alia*, monitor the implementation of the CRPD as per Article 33 and to comply with the recommendations of international human rights monitoring bodies. In July 2016, the Ministry of the Interior opened a consultation on a draft bill on the establishment of an Icelandic NHRI, but this work has petered out.

7. Key issues

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

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

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

No key legislative developments related to anti-discrimination are to be reported. The last government identified the adoption of anti-discrimination legislation in accordance with Article 5 of the CRPD and Directives 2000/43/EC and 2000/78/EC, along with the establishment of an NHRI, as an obligation stemming from the ratification of the CRPD. In July 2016, the Ministry of the Interior opened a consultation on a draft bill on the establishment of an Icelandic NHRI on its website, but this work petered out.

In April 2017, the Minister of Social and Equality Affairs presented two draft bills on equal treatment; one in relation to race and ethnic origin, and the other on equal treatment in the workplace covering race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics. The bills proposed that the Centre for Gender Equality would be charged with implementation and monitoring of the legislation and that the Gender Equality Complaints Committee would receive complaints. The bills were presented in Parliament and opened for consultation by stakeholders. Unfortunately, the government collapsed before the bills could progress. The bills will be presented again in 2018.

No discrimination cases relating directly to the scope of the directives were decided in 2017. However, two ground-breaking Supreme Court judgments concerning hate speech towards LGBTQIA people represented a watershed for the LGBTQIA movement in Iceland.

RÉSUMÉ

1. Introduction

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

Le renforcement du dialogue sur les droits de l'homme met en évidence depuis quelques années la situation de divers groupes et minorités vulnérables. Une étude consacrée en 2014 aux attitudes en matière d'égalité et de discrimination sur le lieu de travail révèle cependant que 86 % des personnes interrogées considèrent qu'il existe une discrimination fondée sur l'un des motifs suivants: genre (63,8 %), origine nationale (55,1 %), âge (44,1%), handicap (38,6 %), race (38,8 %), orientation sexuelle (22,4 %) et religion/convictions (20,5 %).¹⁴

Les personnes handicapées bénéficient officiellement d'une bonne protection juridique en droit islandais même si, dans la pratique, elles se heurtent couramment à une discrimination en termes de droits à l'éducation, au logement et à la participation à la vie publique, et forment une proportion importante de la population vivant dans la pauvreté. Selon la principale organisation de défense des droits des personnes handicapées, les prestations liées à l'invalidité ne suffisent pas pour vivre dans la dignité, et un quart seulement des personnes handicapées exercent une activité professionnelle. Les réglementations en matière de construction et d'urbanisme exigent que les bâtiments publics soient accessibles, mais elles ne sont pas toujours appliquées et les sanctions sont rares. Aucun arrêt majeur en rapport avec le handicap n'a été prononcé en 2017, mais il convient de mentionner une importante affaire introduite en 2015 par une jeune personne sourde et aveugle, dans laquelle le tribunal de district de Reykjavik a dit pour droit que le financement public et l'organisation des services d'interprétation en langue des signes étaient inadéquats et discriminatoires, et violaient le droit à une assistance minimale consacré par la Constitution et par les dispositions du droit administratif en matière d'égalité. L'État est tenu d'accroître son financement de ces services et de procéder à des modifications législatives pour définir ce qui constitue des droits minima et des services adéquats lorsqu'il s'agit du droit à une interprétation en langue des signes.¹⁵ Ces changements doivent encore être effectués.

En 2017, une autre jeune personne a saisi la Cour suprême en réclamant l'annulation de la décision de lui refuser des services gratuits d'interprétation en langue des signes dans le cadre d'un camp d'été à l'étranger. La Cour suprême a considéré que la décision prise était légale et proportionnée compte tenu des fonds disponibles, étant donné que les frais auraient représenté 18 % du budget du Centre pour la période juillet-septembre 2017. La prise en charge financière des besoins d'interprétation de A aurait vidé les caisses et aurait été discriminatoire vis-à-vis d'autres candidats requérant des services gratuits d'interprétation en langue des signes.¹⁶

La Direction du travail estime que les ressortissants étrangers étaient environ 38 000 en Islande fin 2017, ce qui représente 11 % de l'ensemble de la population et une hausse de 25 % du nombre d'immigrés en 2017 – un pourcentage qui n'a jamais été aussi élevé. Les femmes ont été sensiblement plus nombreuses que les hommes à venir dans le pays au

¹⁴ Arnardóttir, E. & Haraldsson, R. H. (2014), *Uppruni og fjölbætt mismunun*, Ísafjörður: Fjölmenningssetur.

¹⁵ Tribunal de district de Reykjavik, *Snædís Rán Hjartardóttir c. le Centre de communication pour les sourds et malentendants et l'État islandais* et, en réserve, la ville de Reykjavik, affaire n° E-327/2015, 30 juin 2015.

¹⁶ Cour suprême d'Islande, *Áslaug Ýr Hjartardóttir c. le Centre de communication pour les sourds et malentendants et l'État islandais*, affaire n° 464/2017, 9 novembre 2017.

cours des trois dernières années. Les Polonais forment le groupe le plus important avec 46 % des ressortissants étrangers au 1^{er} janvier 2017. Les Litvaniens en représentaient 8 % et les Allemands approximativement 4 % – le solde comprenant une série de nationalités présentes en petits nombres sur le territoire islandais.¹⁷

Le nombre d'enfants d'origine immigrée a régulièrement augmenté à partir de 2004 à la fois dans l'enseignement préscolaire et dans l'enseignement obligatoire. En 2015, on recensait 2 435 élèves de l'enseignement préscolaire et 3 543 élèves de l'enseignement obligatoire ayant une autre langue maternelle que l'islandais. La maîtrise limitée de la lecture de l'islandais entrave les études de bon nombre de ces enfants, et le faible nombre de jeunes d'origine immigrée obtenant un diplôme de l'enseignement secondaire est une problématique très préoccupante.¹⁸

En 2016, 18,7 % des enfants ayant besoin de l'assistance des services de protection de l'enfance étaient d'origine immigrée et 53 % des femmes séjournant dans le Foyer-refuge pour victimes de violence domestique étaient étrangères. Un total de 31 % des femmes se présentant au Foyer en quête d'une assistance générale étaient des ressortissantes étrangères (14 % originaires de pays de l'EEE et 17 % originaires de pays tiers). Le nombre disproportionné de femmes immigrées demandant de l'aide ne signifie pas nécessairement une violence plus courante à leur égard qu'à l'égard de femmes islandaises: il signifierait plutôt que ces femmes n'ont d'autre choix que de s'adresser au Foyer-refuge au lieu de demander de l'aide à des amis ou à des membres de leur famille car elles ne disposent pas de réels réseaux de soutien.¹⁹

Le gouvernement a tiré pour conclusion générale que la société islandaise connaît une diversification croissante et que les services d'aide sociale doivent s'adapter à cette nouvelle réalité.²⁰ Il convient également de souligner que le revenu des immigrés est, en moyenne, inférieur à celui de la population en général et que seule une petite minorité d'entre eux occupent des emplois dans lesquels ils valorisent pleinement leur formation; la plupart d'entre eux travaillent dans les secteurs de la construction, du tourisme, du nettoyage et des soins. En 2017, les deux-tiers des titulaires d'un diplôme universitaire occupaient des emplois peu qualifiés (commerces et services notamment); 27 % seulement effectuaient un travail spécialisé ou de bureau. De même, seuls 25 % des ressortissants étrangers au chômage avaient antérieurement occupé un emploi dans le domaine pour lequel ils s'étaient formés. Le taux de chômage est plus élevé parmi les ressortissants étrangers que parmi les citoyens nés en Islande. Selon les estimations de la Direction du travail, il s'établissait à 4,5 % en 2017 contre 2,2 % pour l'ensemble de la population. Les Polonais sont les plus touchés avec 6 % en moyenne la même année. Le taux de chômage de longue durée des immigrés est toutefois identique à celui de la population de souche.²¹

Selon une étude réalisée par le Centre multiculturel, un immigré sur cinq fait régulièrement l'objet en Islande d'attitudes négatives en raison de son origine. Parmi les participants à l'étude, 77 % considèrent que ces attitudes négatives sont liées à leur connaissance limitée de la langue islandaise et 54 % qu'elles se fondent sur leur origine ou leur nationalité. Il est préoccupant inquiétant de noter que 14 % des personnes interrogées se sont heurtées

¹⁷ Institut national de la statistique, *Communiqué de presse sur la population*, 16 juin 2017. Disponible sur: <https://hagstofa.is/utgafur/frettasafn/mannfjoldi/mannfjoldi-eftir-bakgrunni-2017>.

¹⁸ Centre multiculturel, *Information statistique sur les ressortissants étrangers et les immigrés en Islande 2016* [Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016], septembre 2016, p. 20.

¹⁹ Centre multiculturel, *Information statistique sur les ressortissants étrangers et les immigrés en Islande 2016* [Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016], septembre 2016, p. 28.

²⁰ *Aðgerðir til að vinna gegn fátækt; tillögur byggðar á skýrslunni Farsæld; Baráttan gegn fátækt á Íslandi*. (2013). Reykjavík: Velferðarráðuneytið.

²¹ Direction du travail, *Ressortissants étrangers sur le marché islandais du travail 2012-2017* [Erlendir ríkisborgarar á íslenskum vinnumarkaði 2012-2017], janvier 2018, p. 4.

à des attitudes négatives lors d'interactions avec le personnel d'écoles maternelles et 19 % lors d'interactions avec le personnel d'écoles primaires. Un sondage a également été réalisé auprès de fonctionnaires dans le cadre de cette étude: il révèle que selon quelque 55 % des agents de l'État, les immigrés font parfois, voire souvent, l'objet de préjugés dans leurs rapports avec des organismes publics, et que 43 % des employés municipaux partagent cet avis.²²

Aucune disposition légale ne sanctionne spécifiquement la discrimination fondée sur l'âge sur le marché du travail. Peu d'études ont été réalisées à ce sujet, mais le taux de participation des Islandais plus âgés au marché du travail est parmi les plus élevés de tous les pays de l'OCDE. Une discrimination en matière d'emploi n'en est pas moins manifeste, en rapport avec le genre plus particulièrement. Une étude Eurobaromètre de 2011 montre que les Islandais ont été les témoins ou ont personnellement expérimenté une discrimination fondée sur l'âge qui dépasse la moyenne de l'UE, à la fois sur le lieu de travail, en matière d'accès à l'éducation et à la formation, et dans le cadre de leurs loisirs.²³

Sur une note plus positive, bien que l'orientation sexuelle ne soit pas un motif spécifiquement protégé dans le domaine de l'emploi, la législation islandaise établissant les droits des personnes homosexuelles est l'une des plus progressistes au monde: tous les mariages ont le même statut juridique; les couples de même sexe peuvent adopter des enfants; et les lesbiennes peuvent bénéficier d'une insémination artificielle. L'un des derniers obstacles était l'opposition de l'Église d'Islande (Église d'État de confession luthérienne) à la célébration de cérémonies religieuses identiques pour les mariages hétérosexuels et homosexuels. Il était admis que, se référant à leur conscience religieuse, des prêtres demeurent opposés au mariage homosexuel et refusent de célébrer le mariage de couples de même sexe. Selon l'Évêque d'Islande, seule une très faible minorité de prêtres sont dans ce cas et, en 2015, le Congrès de l'Église nationale a adopté une résolution qui interdit aux prêtres de refuser de célébrer des mariages homosexuels. L'attitude à l'égard des personnes LGBTQIA est, de façon générale, très libérale et la Gay Pride est une journée de festivités familiales à Reykjavik. De surcroît, le statut juridique des personnes transgenres a été considérablement renforcé par la loi n° 57/2012 relative à ces personnes. Une évolution positive connexe est intervenue en 2014 avec l'inclusion dans le code pénal général n° 19/1940 de l'identité de genre en tant que motif de discrimination. Ces attitudes libérales n'empêchent pas qu'une petite minorité de la population maintienne des positions traditionnelles. La Cour suprême s'est prononcée en 2017 dans deux affaires sans précédent portant sur un discours haineux envers des personnes homosexuelles.²⁴ Il s'agit d'une évolution positive car les propos haineux avaient été pris à la légère jusqu'ici; les condamnations soulignent que le discours haineux est un délit dont les auteurs peuvent faire l'objet de poursuites.

Le nombre d'organisations religieuses enregistrées est passé de 14 en 1991 à 48 en 2017. Plus de la moitié d'entre elles sont de confession chrétienne. Quelque 69,9 % de la nation adhèrent à l'Église d'Islande. Les catholiques représentent 3,8 % et, parmi les confessions minoritaires non chrétiennes, l'Ásatrú (paganisme nordique), le zuisme, le bouddhisme et l'islam sont les plus représentées. Siðmennt, société éthique des humanistes en Islande, a gagné en importance ces dernières années tandis qu'un peu plus de 15,2 % de la population sont «indéfinis» ou n'appartiennent à aucune organisation religieuse. Aucune étude n'a été consacrée à l'ampleur de la discrimination fondée sur la religion ou les convictions sur le lieu de travail, mais 23,4 % des Islandais estimaient en 2009 qu'une discrimination générale fondée sur ce motif était courante dans le pays.²⁵

²² Arnardóttir, E. & Haraldsson, R. H. (2014). *Uppruni og fjölpætt mismununar*, Ísafjörður: Fjölmenningarsetur.

²³ *Virkni aldraðra* (2011). Étude Eurobaromètre qui peut être consultée sur le site web du ministère de l'intérieur: www.velferdarraduneyti.is/media/frettatengt2012/Eurobarometer-active-ageing-2012.pdf, p. 2.

²⁴ Cour suprême d'Islande, *Ministère public c. Sveinbjörn Styrmir Gunnarsson*, affaire n° 577/2017, 14 décembre 2017; et *Ministère public c. Carl Jóhann Lilliendahl*, affaire n° 415/2017, 14 décembre 2017.

²⁵ Capacent Gallup (2009). *Könnun um viðhorf til mismununar*. Reykjavík: Velferðarráðuneytið and Mannréttindaskrifstofa Íslands.

En 2013, le conseil municipal de Reykjavik a finalement attribué un terrain à l'Association musulmane d'Islande en vue de la construction d'une mosquée. La première demande de l'Association à cette fin remonte à 2000. Il s'agit d'une évolution positive, mais les signes de la montée d'un sentiment anti-islamique en Islande suscitent aujourd'hui certaines préoccupations. En novembre 2013, un groupe a déposé des têtes de porcs et un coran ensanglanté sur le terrain prévu pour la mosquée. Une personne a été identifiée, mais l'enquête a été clôturée sans donner lieu à aucune poursuite. Il est plus déconcertant encore de constater que, lors des dernières élections municipales en 2014, le Parti progressiste a gagné huit points de pourcentage et deux sièges au conseil municipal de Reykjavik en appuyant notamment sa campagne sur une plateforme anti-islamique et en déclarant qu'il fallait retirer l'attribution de terrain pour la mosquée. Il est encourageant de constater cependant que les deux conseillers municipaux n'ont fait, depuis leur entrée en fonction, aucune promotion active de causes racistes ou anti-islamiques.

2. Législation principale

Étant signataire de l'Accord sur l'Espace économique européen (EEE), l'Islande est tenue d'adopter l'acquis de l'UE pour ce qui concerne le marché unique. Les directives 2000/43/CE et 2000/78/CE n'ont pas été incorporées dans cet Accord et n'ont donc pas été transposées en droit interne. La Commission européenne estime que la législation islandaise n'est pas conforme aux directives parce qu'aucune protection précise contre la discrimination n'est prévue sur le marché du travail et qu'aucune législation générale en vigueur n'interdit la discrimination fondée sur l'origine raciale ou ethnique en dehors du marché du travail.²⁶

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

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

La loi sur les personnes handicapées garantit entre autres le droit à l'égalité, le droit de bénéficier d'une assistance permettant de vivre et de travailler au sein de la société, le droit aux services généraux nationaux et municipaux, et le droit d'accès aux espaces publics. La loi prévoit également des mesures d'action positive: à qualification égale, la préférence est accordée à des personnes souffrant d'un handicap plutôt qu'à d'autres candidats à l'obtention d'un emploi dans la fonction publique. La ratification de la Convention des Nations unies relative aux droits des personnes handicapées (CDPH) le 20 septembre 2016 constitue une avancée récente positive. Les amendements législatifs destinés à harmoniser la législation islandaise avec les dispositions de la CDPH va considérablement améliorer le statut juridique des personnes handicapées.

²⁶ Commission européenne: *DG Enlargement Screening report Iceland. Chapter 19 – Social policy and employment*. 17 octobre 2011.

La Convention européenne des droits de l'homme, qui a été transposée en droit national, dispose que la jouissance des droits et des libertés qu'elle énonce s'exerce sans discrimination. La Convention des Nations unies relative aux droits de l'enfant a également été transposée dans l'ordre juridique interne et contient des dispositions similaires. Le code pénal général, la loi sur les procédures administratives et les actes relatifs aux écoles primaires, aux médias et aux services municipaux comportent également des dispositions touchant l'égalité et la non-discrimination. De surcroît, la loi relative à l'Accord EEE interdit la discrimination fondée sur la citoyenneté en rapport avec les dispositions de l'Accord, et la transposition des directives pertinentes de l'UE a donné lieu à l'interdiction d'une discrimination liée à l'occupation d'un emploi temporaire ou à temps partiel par rapport à un emploi à temps plein.

3. Principes généraux et définitions

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

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

4. Champ d'application matériel

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

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

La législation nationale ne prévoit pas en matière de sécurité sociale et de soins de santé d'exceptions fondées sur la religion ou les convictions, l'âge, le handicap ou l'orientation sexuelle; elle n'établit pas non plus de distinction entre les biens et services mis à la disposition du public et ceux mis à la disposition de membres d'associations privées. Des

prescriptions interdisant la discrimination fondée sur la race ou l'origine ethnique en rapport avec les «avantages sociaux» font défaut mais, dans le secteur public, ce type de discrimination pourrait constituer un non-respect du principe d'égalité codifié dans la loi sur les procédures administratives. Dans le secteur privé, un recours pourrait invoquer l'article 26 sous b) de la loi n° 50/1993 sur les dommages-intérêts, lequel dispose qu'une indemnisation peut être octroyée pour préjudice causé par une infraction portant atteinte à la liberté, la paix, l'honneur ou la personne de la victime.

Pour ce qui est de l'interdiction de discrimination dans le domaine éducatif, la loi n° 91/2008 sur l'enseignement primaire requiert, en ce qui concerne l'organisation des études et l'instruction, ainsi qu'en ce qui concerne la production et la sélection du matériel pédagogique, qu'un effort spécial soit fait pour que tous les élèves bénéficient des mêmes chances en termes d'enseignement et qu'ils aient la possibilité de choisir les disciplines et les approches pédagogiques de leur propre apprentissage. Les objectifs et pratiques d'enseignement devraient veiller à prévenir la discrimination fondée sur l'origine, le genre, l'orientation sexuelle, la résidence, la classe sociale, la religion, l'état de santé, le handicap ou la situation en général. Les enfants handicapés devraient suivre leur scolarité dans des écoles ordinaires en bénéficiant d'une assistance, s'il y a lieu.

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

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

5. Mise en application de la loi

Les directives 2000/43/CE et 2000/78/CE n'ont pas été transposées en droit interne. Aucune procédure n'a été spécifiquement instituée pour traiter des discriminations fondées sur les motifs qui y sont énumérés. Seul organisme chargé des plaintes pour discrimination, la Commission des plaintes en matière d'égalité de genre ne peut être saisie qu'en cas de discrimination fondée sur ce motif. Plusieurs procédures administratives sont en place pour garantir le droit de recours des citoyens à l'encontre d'autorités publiques, y compris en cas de discrimination. La loi n° 37/1993 sur les procédures administratives confère le droit de faire appel de décisions prises par des autorités administratives telles que des institutions ou des commissions publiques. Sauf disposition contraire de la loi, toutes les décisions émanant d'instances publiques ou d'instances dotées de l'autorité publique sont soumises au contrôle d'une instance supérieure. Les décisions émanant d'autorités indépendantes peuvent, dans certains cas, faire l'objet d'un contrôle de la part de ministres ou de conseils/commissions spécialement institués à cette fin. Il convient de signaler la création récente d'une Commission d'appel de l'immigration et de l'asile, chargée notamment de procéder à l'examen indépendant de toutes les décisions prises par la Direction de l'immigration sur la base de la loi n° 96/2002 relative aux ressortissants étrangers. La Commission a commencé à recevoir des recours à partir du 1^{er} janvier 2015. Début novembre 2017, elle avait publié 650 décisions portant pour la plupart sur des décisions prises en matière d'asile par la Direction de l'immigration. Il peut arriver aussi que des décisions prises par des autorités locales soient référées au ministère concerné. Des plaintes concernant des décisions administratives discriminatoires peuvent en outre être déposées auprès du Médiateur parlementaire. Enfin, les juridictions sont habilitées à contrôler toute décision prise par le pouvoir exécutif.

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

Une association peut saisir la justice pour obtenir la reconnaissance de certains droits de ses membres ou pour libérer ses membres de certaines obligations, pour autant que la sauvegarde des intérêts en jeu fasse partie intégrante de son mandat. Rares sont cependant les organisations nationales qui ont suffisamment de ressources pour venir en aide à des victimes de discrimination – à ce jour seules des organisations représentant les intérêts de personnes handicapées ont fait cette démarche en rapport avec les motifs couverts par les directives – et les affaires de ce type ne sont généralement pas portées à l'attention du grand public. Le renversement de la charge de la preuve n'est pas prévu et il n'a pas encore été fait usage du test de situation ni de statistiques.

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

Aucune décision n'a été prononcée en 2017 dans des affaires de discrimination relevant directement du champ d'application des directives. Deux arrêts sans précédent rendus par la Cour suprême concernant le discours haineux envers des personnes LGBTQIA marquent néanmoins un tournant pour le mouvement LGBTQIA en Islande. Samtökin'78, principale organisation de défense des droits des personnes LGBTQIA en Islande, a déposé plainte en avril 2015 à l'encontre de dix personnes en raison de remarques haineuses prononcées lors d'une émission de radio et en ligne après que le conseil municipal de Hafnarfjörður ait décidé de dispenser des cours sur la thématique LGBTQIA dans ses écoles avec l'appui de Samtökin'78. Les plaintes relevaient de la compétence de la police de Reykjavik et d'autres districts de police. En septembre 2015, la police de Reykjavik a rejeté les recours sans enquête, estimant que les remarques bénéficiaient de la protection constitutionnelle de la liberté d'expression (article 73 de la Constitution islandaise). Samtökin'78 a fait appel de cette décision et en novembre 2015 le ministère public a déclaré que les plaintes devaient faire l'objet d'une enquête. En novembre 2016, le ministère public a saisi les tribunaux de district dans huit cas relatifs au non-respect de la disposition du code pénal général n° 19/1940 concernant le discours haineux. Lesdits tribunaux ont acquitté l'un des accusés car le délai de prescription était échu. Cinq autres ont été acquittés parce que l'intention n'a pas été démontrée et que leurs propos ont été considérés comme relevant du champ d'application de la liberté de parole protégée par la Constitution et la CEDH. Dans deux cas ayant fait l'objet d'un appel, la Cour suprême a rejeté l'interprétation très étroite de la disposition relative au discours haineux et annulé les acquittements. Dans un troisième cas, il a été établi que l'accusé avait publiquement insulté des personnes homosexuelles et exprimé des préjugés, mais que les propos tenus n'étaient pas suffisamment injurieux pour être assimilés à un discours haineux.

Des sanctions ne sont pas explicitement prévues pour les cas de discrimination fondée sur les motifs énumérés dans les directives, mais la discrimination peut entraîner une responsabilité civile, à laquelle les règles générales s'appliquent. Les tribunaux peuvent décider qu'un acte particulier ou une omission particulière doit faire l'objet d'une réparation, et attribuer des dommages-intérêts matériels à la victime. Le non-respect des

dispositions du code pénal général relatives au discours haineux et à la discrimination en termes de services et d'accès à des lieux publics est passible d'amendes ou d'une peine d'emprisonnement pouvant aller respectivement jusqu'à deux ans et demi et jusqu'à six mois. Le non-respect de l'interdiction d'insultes publiques à l'encontre des convictions ou de la religion de communautés confessionnelles légalement constituées est passible pour sa part d'amendes et d'une peine d'emprisonnement de trois mois maximum. Il convient de noter que les articles 125 et 180 n'ont encore jamais été invoqués.

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

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

6. Organismes de promotion de l'égalité de traitement

Aucun organisme n'a été institué pour promouvoir l'égalité et la non-discrimination en rapport avec les motifs de la race et de l'origine ethnique, de la religion et des convictions, de l'âge, du handicap ou de l'orientation sexuelle. Aucune commission des droits de l'homme n'a davantage été instituée et le seul organisme en place dans ce domaine, à savoir la Commission des plaintes en matière de genre, traite uniquement des questions d'égalité hommes-femmes. Le Médiateur parlementaire peut être saisi pour sa part d'affaires d'égalité/de discrimination liées à une procédure administrative.

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

Des organes internationaux de contrôle des droits de l'homme ont réclamé la création d'une INDH en Islande, et le gouvernement a pris un engagement dans ce sens en vue notamment de surveiller la mise en œuvre de la CDPH conformément à l'article 33 et de se conformer aux recommandations des organes internationaux de contrôle des droits de l'homme. Le ministère de l'intérieur a ouvert en juillet 2016 une consultation concernant un projet de loi sur la mise en place d'une INDH en Islande, mais le processus s'est essouffé.

7. Points essentiels

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

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

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

Aucune avancée législative majeure n'est à signaler en rapport avec la lutte contre les discriminations. Le dernier gouvernement a considéré l'adoption d'une législation antidiscrimination conforme l'article 5 de la CDPH et aux directives 2000/43/CE et 2000/78/CE, de même que la mise en place d'une INDH, comme une obligation découlant de la ratification de la CDPH. En juillet 2016, le ministère de l'intérieur a ouvert sur son site web une consultation concernant un projet de loi sur la mise en place d'une INDH en Islande, mais le processus s'est essouffé.

En avril 2017, le ministre des affaires sociales et de l'égalité a présenté deux projets de loi relatifs à l'égalité de traitement, l'un en rapport avec la race et l'origine ethnique, et l'autre portant sur l'égalité de traitement sur le lieu de travail et couvrant la race, l'origine ethnique, la religion, les opinions, le handicap, l'aptitude réduite au travail, l'âge, l'orientation sexuelle et l'identité de genre, l'expression de genre et les spécificités de genre. Les projets de lois proposaient que le Centre pour l'égalité des sexes soit chargé de la mise en œuvre et du suivi de la législation, et que la Commission des plaintes en matière d'égalité de genre soit saisie des griefs. Ils ont été soumis au parlement et ouverts à la consultation des parties prenantes – mais le gouvernement est malheureusement tombé avant que le processus puisse avancer. Ces projets de loi seront à nouveau présentés en 2018.

Aucune décision n'a été prononcée en 2017 dans des affaires de discrimination relevant directement du champ d'application des directives. Deux arrêts sans précédent rendus par la Cour suprême concernant le discours haineux envers des personnes LGBTQIA ont néanmoins marqué un tournant pour le mouvement LGBTQIA en Islande.

ZUSAMMENFASSUNG

1. Einleitung

Die isländische Bevölkerung ist weitgehend homogen und monokulturell. In der Vergangenheit waren geschlechtsbezogene Diskriminierungen am stärksten ausgeprägt. Obwohl isländische Frauen ein relativ hohes Maß an Gleichberechtigung genießen, gibt es noch immer eine nachweisbare Diskrepanz zwischen ihrem hohen Bildungsstand, ihren hohen Qualifikationen und ihrem Status auf dem Arbeitsmarkt und in der Gesellschaft als Ganzes.

In den letzten Jahren hat ein verstärkter Menschenrechtsdialog die Situation verschiedener schutzbedürftiger Gruppen und Minderheiten in den Vordergrund gerückt. Eine Studie von 2014 über die Einstellung zum Thema Gleichbehandlung und Diskriminierung am Arbeitsplatz zeigte jedoch, dass 86 % der Befragten der Meinung waren, dass Menschen basierend auf einem der folgenden Gründe diskriminiert werden: Geschlecht (63,8 %), Nationalität (55,1 %), Alter (44,1 %), Behinderung (38,6 %), „Rasse“ (38,8 %), sexuelle Orientierung (22,4 %) und Religion/Glaube (20,5 %).²⁷

Der formal-rechtliche Status von Menschen mit Behinderungen ist gut, in der Praxis werden sie, was ihr Recht auf Bildung, Wohnraum und Teilnahme am öffentlichen Leben betrifft, jedoch häufig diskriminiert, und sie stellen einen großen Teil der in Armut lebenden Menschen. Nach Angaben der führenden Organisation für die Rechte von Menschen mit Behinderungen reichen Invalidenleistungen nicht aus, um ein Leben in Würde zu führen und nur ein Viertel der Menschen mit Behinderungen geht einer Beschäftigung nach. Bau- und Planungsvorschriften erfordern, dass öffentliche Gebäude für Rollstuhlfahrer zugänglich sind. Dies ist jedoch nicht immer der Fall, aber es kommt nur selten zu Sanktionen. 2017 wurden keine wichtigen Urteile zum Thema Behinderung gefällt, erwähnt werden sollte aber ein wichtiges Verfahren aus dem Jahr 2015, in dem eine taubblinde Person geklagt hatte. Das Bezirksgericht Reykjavík entschied, dass die staatliche Finanzierung und Organisation von Gebärdensprachdolmetscherdiensten unzureichend und diskriminierend sei und gegen das in der Verfassung und in den Gleichheitsvorschriften des Verwaltungsrechts verankerte Recht auf ein Mindestmaß an Unterstützung verstoße. Der Staat wird mehr finanzielle Mittel für diese Dienste zur Verfügung stellen und gesetzliche Änderungen vornehmen müssen, um festzulegen, was Mindestrechte und angemessene Dienstleistungen sind, wenn es um den Rechtsanspruch auf Gebärdensprachverdolmetschung geht.²⁸ Bislang stehen diese Änderungen noch aus.

2017 erhob eine weitere Person Klage beim Obersten Gerichtshof und beantragte, die Entscheidung, ihr den kostenlosen Gebärdensprachdolmetscherdienst für ein Sommerferienlager im Ausland zu verweigern, aufzuheben. Der Oberste Gerichtshof kam zu dem Ergebnis, dass die Entscheidung, ausgehend von den verfügbaren Mitteln, rechtmäßig und angemessen war, da sich die Kosten auf 18 % des Budgets des Zentrums für den Zeitraum Juli-September 2017 belaufen hätten. Die Bezahlung des Dolmetscherdienstes für A hätte die Kasse geleert und andere Antragsteller, die einen kostenlosen Gebärdensprachdolmetscherdienst benötigen, diskriminiert.²⁹

Nach Schätzungen der Direktion für Arbeit lebten Ende 2017 etwa 38 000 ausländische Staatsbürger in Island und stellten damit 11 % der Gesamtbevölkerung. Dies bedeutete, dass die Zahl der Zugewanderten im Jahr 2017 um 25 % gestiegen war. Dieser Prozentsatz

²⁷ Arnardóttir, E. und Haraldsson, R. H. (2014), *Uppruni og fjölþætt mismunun, Ísafjörður: Fjölmenningarsetur.*

²⁸ Bezirksgericht Reykjavík, *Snædís Rán Hjartardóttir gegen das Kommunikationszentrum für Gehörlose und Schwerhörige und den Isländischen Staat sowie ersatzweise die Stadt Reykjavík*, Rechtssache Nr. E-327/2015, 30. Juni 2015.

²⁹ Oberster Gerichtshof Islands, *Áslaug Ýr Hjartardóttir / Kommunikationszentrum für Taube und Schwerhörige und isländischer Staat*, Rechtssache Nr. 464/2017, 9. November 2017.

ist so hoch wie noch nie. In den letzten drei Jahren sind deutlich mehr Männer als Frauen in das Land gekommen. Polnische Zugewanderte stellten am 1. Januar 2017 mit 46 % aller ausländischen Staatsbürger die größte Gruppe. Litauer machten 8 % aus, Deutsche etwa 4 %; der Rest setzt sich aus kleinen Gruppen unterschiedlicher Nationalitäten zusammen.³⁰

Die Zahl der Kinder mit Migrationshintergrund ist seit 2004 sowohl in den Kindergärten als auch im Pflichtschulbereich stetig gestiegen. 2015 hatten 2435 Kindergartenkinder sowie 3543 Schülerinnen und Schüler im Pflichtschulbereich eine andere Muttersprache als Isländisch. Die eingeschränkte Lesekompetenz in der isländischen Sprache behindert die Lernfortschritte vieler dieser Kinder, und die geringe Zahl junger Leute mit Migrationshintergrund, die Abitur machen, ist ein ernsthaftes Problem.³¹

2016 hatten 18,7 % der Kinder, die Hilfe von den Kinderschutzbehörden benötigten, einen Migrationshintergrund und waren 53 % der Frauen, die in der Anlaufstelle für Opfer häuslicher Gewalt untergebracht waren, Ausländerinnen. Insgesamt 31 % der Frauen, die in der Anlaufstelle um allgemeine Hilfe nachsuchten, waren Ausländerinnen, 14 % kamen aus EWR-Ländern und 17 % aus Drittländern. Die Tatsache, dass eine unverhältnismäßig hohe Zahl von Zuwanderinnen um Hilfe nachsucht, bedeutet nicht zwangsläufig, dass diese Frauen häufiger Opfer von Gewalt werden als isländische Frauen. Vielmehr kann dies Ausdruck der Tatsache sein, dass diese Frauen über schwächere Unterstützungsnetzwerke verfügen, so dass sie gezwungen sind, in der Anlaufstelle um Hilfe nachzusuchen anstatt bei Freunden oder der Familie.³²

Insgesamt ist die Regierung zu dem Schluss gekommen, dass die isländische Gesellschaft immer vielfältiger wird und dass die sozialen Dienste und Einrichtungen sich diesen neuen Gegebenheiten anpassen müssen.³³ Auffallend ist auch, dass das Einkommen von Zugewanderten im Durchschnitt niedriger ist als das der Allgemeinbevölkerung und nur die wenigsten einer Beschäftigung nachgehen, die ihrem Ausbildungsstand voll entspricht; die meisten arbeiten auf dem Bau, im Tourismus, im Reinigungsgewerbe oder im Pflege- und Betreuungssektor. 2/3 der Zugewanderten mit Hochschulabschluss arbeiteten 2017 in gering qualifizierten Berufen, z.B. im Einzelhandel oder im Dienstleistungsgewerbe; nur 27 % übten Facharbeiten oder Bürotätigkeiten aus. Auch hatten nur 25 % der erwerbslosen Ausländer zuvor einen Arbeitsplatz in dem Bereich gehabt, für den sie ausgebildet worden waren. Unter Ausländerinnen und Ausländern ist die Arbeitslosigkeit höher als unter isländischstämmigen Staatsbürgern. Nach Schätzungen der Direktion für Arbeit lag die Quote 2017 bei 4,5 %, im Vergleich zu 2,2 % bei der Gesamtbevölkerung. Polen sind mit durchschnittlich 6 % im Jahr 2017 am stärksten betroffen. Die Langzeitarbeitslosigkeit ist bei den Zugewanderten jedoch genauso hoch wie bei den Einheimischen.³⁴

Einer Studie des Multikulturellen Zentrums zufolge erlebt jeder fünfte Zuwanderer in Island regelmäßig aufgrund seiner Herkunft negative Einstellungen und Verhaltensweisen ihm gegenüber. 77 % der Studienteilnehmer waren der Meinung, dass sie aufgrund ihrer begrenzten Kenntnisse der isländischen Sprache negative Einstellungen und Verhaltensweisen erlebt hatten, 54 % glaubten, dass negative Einstellungen ihnen gegenüber auf ihrer Herkunft oder Nationalität basierten. Besorgniserregend ist, dass 14 %

³⁰ Isländische Statistikbehörde, *Pressemitteilung zum Thema Bevölkerung*, 16. Juni 2017; abrufbar unter: <https://hagstofa.is/utgafur/frettasafn/mannfjoldi/mannfjoldi-eftir-bakgrunni-2017>.

³¹ Multikulturelles Zentrum, *Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016* (Statistische Daten über ausländische Staatsbürger und Zuwanderer in Island 2016), September 2016, S. 20.

³² Multikulturelles Zentrum, *Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016* (Statistische Daten über ausländische Staatsbürger und Zuwanderer in Island 2016), September 2016, S. 28.

³³ *Aðgerðir til að vinna gegn fátækt; tillögur byggðar á skýrslunni Farsæld; Baráttan gegn fátækt á Íslandi*. (2013). Reykjavík: Velferðarráðuneytið.

³⁴ Direktion für Arbeit, *Erlendir ríkisborgarar á íslenskum vinnumarkaði 2012-2017* (Ausländische Staatsbürger auf dem isländischen Arbeitsmarkt 2012-2017), Januar 2018, S. 4.

im Kontakt mit Kindergartenpersonal und 19 % im Kontakt mit Grundschulpersonal negative Einstellungen erlebt hatten. Im Rahmen der Studie wurden auch Staatsbedienstete befragt. Rund 55 % dieser Gruppe waren der Meinung, dass Zugewanderte in ihrem Umgang mit staatlichen Stellen manchmal oder häufig mit Vorurteilen zu kämpfen haben, eine Ansicht, die von 43 % der kommunalen Angestellten geteilt wurde.³⁵

Es gibt keine speziellen gesetzlichen Bestimmungen für die Sanktionierung von Altersdiskriminierung auf dem Arbeitsmarkt. Forschung zu diesem Thema wurde nur in begrenztem Umfang durchgeführt, jedoch zählt die Erwerbsbeteiligung älterer Menschen in Island zu einer der höchsten der OECD-Länder. Augenscheinlich gibt es jedoch Diskriminierung im Beschäftigungsbereich, vor allem in Verbindung mit dem Geschlecht. Eine Eurobarometer-Studie des Jahres 2011 zeigt, dass die Isländer mehr Altersdiskriminierung erlebt oder erfahren haben als der EU-Durchschnitt: am Arbeitsplatz, in Bezug auf den Zugang zu allgemeiner und beruflicher Bildung sowie in der Freizeit.³⁶

Positiv zu vermerken ist, dass, auch wenn sexuelle Orientierung im Bereich der Beschäftigung kein spezieller Schutzgrund ist, die isländischen Vorschriften über die Rechte von Homosexuellen zu den weltweit fortschrittlichsten gehören: alle Ehen haben den gleichen rechtlichen Status, gleichgeschlechtliche Paare können Kinder adoptieren und Lesben können sich künstlich befruchten lassen. Eine der letzten verbliebenen Hürden war der Widerstand der Nationalen Kirche Islands (die lutherische Staatskirche) gegen die Durchführung der gleichen religiösen Zeremonien für heterosexuelle und gleichgeschlechtliche Eheschließungen. Priestern, die gegen die Homo-Ehe sind, war es erlaubt, sich unter Berufung auf ihr religiöses Gewissen zu weigern, gleichgeschlechtliche Paare zu trauen. Nach Ansicht des Bischofs von Island vertritt nur eine sehr kleine Minderheit der Priester solche Ansichten, und 2015 verabschiedete der Kongress der Nationalkirche eine Resolution, die es Priestern verbietet, die Trauung gleichgeschlechtlicher Paare zu verweigern. Die Einstellung gegenüber LSBTTIQ--Menschen ist im Allgemeinen sehr liberal und Gay-Pride-Paraden werden in Reykjavik wie Familienfeste gefeiert. Darüber hinaus wurde die Rechtsstellung von Transgender-Personen durch das Gesetz Nr. 57/2012 über den rechtlichen Status von Transgender-Personen erheblich gestärkt. Eine damit zusammenhängende positive Entwicklung war im Jahr 2014 die Änderung des Strafgesetzbuchs Nr. 19/1940, das nun Geschlechtsidentität als Diskriminierungsgrund enthält. Liberalen Einstellungen zum Trotz hat eine kleine Minderheit noch immer traditionelle Ansichten. Zwei wegweisende Verfahren wegen „Hassreden“ gegen Homosexuelle wurden 2017 vom Obersten Gerichtshof entschieden.³⁷ Dies ist eine positive Entwicklung, da Hasskommentare bisher auf die leichte Schulter genommen wurden; die Verurteilungen unterstreichen, dass Hassreden ein Verbrechen sind, für das die Täter strafrechtliche Verfolgung riskieren.

Die Zahl der registrierten religiösen Organisationen ist von 14 im Jahr 1991 auf 48 im Jahr 2017 gestiegen. Mehr als die Hälfte davon sind christliche Konfessionen. Rund 69,9 % der Bevölkerung gehören der Nationalkirche von Island an. Katholiken stellen 3,8 %, und unter den nichtchristlichen religiösen Minderheiten zählen Ásatrú (germanisches Neuheidentum), Zuisten, Buddhisten und Muslime zu den größten Religionsgruppen. Sidmennt, die ethischen Humanisten, haben in den letzten Jahren an Boden gewonnen, und etwas mehr als 15,2 % der Bevölkerung sind nicht näher definiert oder gehören keiner religiösen Organisation an. Untersuchungen über das Ausmaß der Diskriminierung am Arbeitsplatz aus Gründen der Religion oder der Weltanschauung wurden bislang noch nicht

³⁵ Arnardóttir, E. und Haraldsson, R. H. (2014). *Uppruni og fjölþætt mismunun, Ísafjörður: Fjölmenningarsetur.*

³⁶ *Virkni aldraðra* (2011). Eurobarometer-Umfrage, abrufbar auf der Webseite des Innenministeriums: www.velferdarraduneyti.is/media/frettatengt2012/Eurobarometer-active-ageing-2012.pdf, S. 2.

³⁷ Oberster Gerichtshof Islands, *Staatsanwaltschaft / Sveinbjörn Styrmir Gunnarsson*, Rechtssache Nr. 577/2017, 14. Dezember 2017, und *Staatsanwaltschaft / Carl Jóhann Lilliendahl*, Rechtssache Nr. 415/2017, 14. Dezember 2017.

durchgeführt, im Jahr 2009 waren jedoch 23,4 % der Isländer der Meinung, dass Diskriminierung aufgrund von Religion oder Weltanschauung häufig vorkommt.³⁸

2013 wurde dem Verband isländischer Muslime schließlich vom Stadtrat Reykjavíks ein Grundstück für den Bau einer Moschee zugewiesen. Der Verband hatte bereits im Jahr 2000 einen Antrag gestellt. Dies ist eine positive Entwicklung, jedoch stellen erste Anzeichen einer wachsenden anti-islamischen Stimmung in Island einen Grund zur Sorge dar. Im November 2013 legte eine Gruppe von Personen Schweineköpfe und einen blutigen Koran auf das für die Moschee vorgesehene Grundstück. Eine Person konnte identifiziert werden, jedoch kam es im Zuge der Untersuchung des Falles zu keiner Anklage. Noch beunruhigender ist, dass bei den letzten Kommunalwahlen 2014 die Fortschrittspartei um acht Prozentpunkte zulegte und zwei Sitze im Stadtrat von Reykjavík erhielt. Die Partei warb unter anderem auf einer anti-islamischen Plattform und forderte, die Zuteilung eines Grundstücks für die Moschee zu widerrufen. Positiv zu vermerken ist, dass beide Stadträte seit ihrem Amtsantritt weder rassistische noch antiislamische Themen aktiv unterstützt haben.

2. Wichtigste Rechtsvorschriften

Island ist Vertragspartei des Europäischen Wirtschaftsraums (EWR) und somit verpflichtet, den EU-Besitzstand in Verbindung mit dem Binnenmarkt zu übernehmen. Die Richtlinien 2000/43/EG und 2000/78/EG wurden nicht in das EWR-Abkommen aufgenommen und daher im innerstaatlichen Recht nicht umgesetzt. Die Europäische Kommission ist nicht der Ansicht, dass die isländische Gesetzgebung den Richtlinien entspricht, da „kein ausführlicher Schutz vor Diskriminierung auf dem Arbeitsmarkt vorgesehen ist und zudem keine umfassenden Rechtsvorschriften zum Verbot der Diskriminierung aus Gründen der „Rasse“ oder der ethnischen Zugehörigkeit außerhalb des Arbeitsmarktes bestehen“.³⁹

Die in der isländischen Verfassung verankerten Diskriminierungsgründe sind Geschlecht, Religion, Meinung, Nationalität, „Rasse“, Hautfarbe, finanzieller Status und Herkunft. Die Liste ist nicht abschließend, da die Bestimmung auch festlegt, dass Gleichheit vor dem Gesetz und Nichtdiskriminierung zu gewährleisten ist, unabhängig von den oben genannten Gründen und auch unabhängig vom „sonstigen Status“, was so ausgelegt werden kann, dass auch Alter erfasst wird.

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

Das Gesetz über Menschen mit Behinderungen gewährleistet unter anderem das Recht auf Gleichheit, das Recht auf Unterstützung zur Ermöglichung des Lebens und Arbeitens in der Gesellschaft, und das Recht auf allgemeine staatliche und kommunale Dienstleistungen sowie den Zugang zu öffentlichen Räumen. Das Gesetz sieht auch positive Maßnahmen vor: Menschen mit Behinderungen werden bei der Bewerbung um staatliche Stellen

³⁸ Capacent Gallup (2009), *Könnun um viðhorf til mismununar*, Reykjavík: Velferðarráðuneytið and Mannréttindaskrifstofa Íslands.

³⁹ Europäische Kommission, *DG Enlargement Screening report Iceland*, Chapter 19 – Social policy and employment, 17. Oktober 2011.

gegenüber anderen Bewerbern bevorzugt, wenn sie über die gleichen Qualifikationen verfügen. Eine aktuelle positive Entwicklung war die Ratifizierung des Übereinkommens der Vereinten Nationen über die Rechte von Menschen mit Behinderungen (CRPD) am 20. September 2016. Gesetzliche Änderungen, welche die isländischen Rechtsvorschriften mit den Bestimmungen der CRPD in Einklang bringen, werden die Rechtsstellung von Menschen mit Behinderungen erheblich verbessern.

Die Europäische Menschenrechtskonvention, die im nationalen Recht umgesetzt wurde, sieht vor, dass die festgelegten Rechte und Freiheiten ohne Diskriminierung gewährleistet werden. Die UN-Konvention über die Rechte des Kindes wurde auch im nationalen Recht umgesetzt und sieht ähnliche Bestimmungen vor. Das Strafbuch, das Verwaltungsverfahrensgesetz und die Gesetzgebungen in Bezug auf Grundschulen, Medien und Postdienstleistungen sowie kommunale Dienstleistungen enthalten allesamt Bestimmungen über Gleichheit und Nichtdiskriminierung. Darüber hinaus verbietet der Rechtsakt des EWR-Abkommens die Diskriminierung aus Gründen der Staatsangehörigkeit in Bezug auf die Bestimmungen des Abkommens, und die Umsetzung der einschlägigen EU-Richtlinien hat zu einem Verbot von Diskriminierung in Zeit- und Teilzeitarbeitsverhältnissen gegenüber Vollzeitbeschäftigung geführt.

3. Wichtigste Grundsätze und Definitionen

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

Keine der nationalen Regelungen befasst sich mit Mehrfachdiskriminierung und derartige Fälle wurden bisher auch noch nicht gerichtlich entschieden.

4. Sachlicher Geltungsbereich

Die Richtlinien 2000/43/EG und 2000/78/EG wurden nicht in nationales Recht umgesetzt und es gilt kein umfassendes Antidiskriminierungsgesetz für alle Bereiche der Beschäftigung und Berufe im öffentlichen und privaten Sektor im Hinblick auf die in den Richtlinien genannten Gründe. Diskriminierende Handlungen im privaten Sektor könnten gegebenenfalls in den Geltungsbereich des Gesetzes Nr. 50/1993 über unerlaubte Handlungen fallen, jedoch wurden bisher noch keinerlei Fälle dieser Art entschieden. Im Bereich des öffentlichen Sektors könnte das Verwaltungsverfahrensgesetz Nr. 37/1993 – Verbot der Diskriminierung zwischen einzelnen Parteien aufgrund von Ansichten über „Rasse“, Hautfarbe, Nationalität, Religion, politische Meinung, sozialen Stellung oder Familie – Anwendung finden.

Ein ausdrückliches Verbot von Diskriminierung aus den in den Richtlinien in Bezug auf Betriebsrenten und den Zugang zu allen Arten und Stufen der Berufsbildung abgedeckten Gründen ist nicht zu finden. Hinsichtlich der Mitgliedschaft und Mitwirkung in Arbeitnehmerorganisationen legt das Gesetz über die Gewerkschaften und Handelskonflikte Nr. 80/1938, das sowohl im privaten als auch im öffentlichen Sektor gilt, fest, dass allen im jeweiligen Bereich beschäftigten Arbeitnehmern die Mitgliedschaft in Gewerkschaften offensteht. Ebenso stehen Berufsverbände und Arbeitgeberorganisationen für alle in den entsprechenden Bereichen tätigen oder qualifizierten Unternehmen oder Arbeitgeber offen. Jedoch ist in diesem Sektor kein umfassendes

Antidiskriminierungsgesetz in Kraft und es besteht kein ausdrückliches Verbot der Diskriminierung im Hinblick auf die Mitgliedschaft und die Mitwirkung in Arbeitgeber- oder Arbeitnehmerverbänden oder anderen Berufsorganisationen sowie die damit verbundenen Vorteile.

Das nationale Recht sieht keine Ausnahmen für soziale Sicherheit und Gesundheitsversorgung aufgrund der Religion oder Weltanschauung, des Alters, einer Behinderung oder der sexuellen Orientierung vor; es unterscheidet auch nicht zwischen Gütern und Dienstleistungen für die Öffentlichkeit und für die Mitglieder privater Verbände. Es fehlen Bestimmungen, die eine Diskriminierung aus Gründen der „Rasse“ oder der ethnischen Zugehörigkeit in Bezug auf die „sozialen Vorteile“ verbieten, jedoch stellt eine Diskriminierung dieser Art im öffentlichen Sektor wahrscheinlich einen Verstoß gegen den Gleichheitsgrundsatz im Verwaltungsverfahrensgesetz dar. In der Privatwirtschaft könnte möglicherweise nach Artikel 26 (b) des Gesetzes Nr. 50/1993 über unerlaubte Handlungen geklagt werden, dem zufolge für Personenschäden, die sich aus unerlaubtem Fehlverhalten ergeben, das die Freiheit, den Frieden, die Ehre oder die Person des Opfers verletzt, eine Entschädigung zugesprochen werden kann.

Was das Verbot von Diskriminierung im Bereich der Bildung betrifft, so sieht das Grundschulgesetz Nr. 91/2008 vor, dass bei der Organisation und Durchführung des Unterrichts sowie bei der Vorbereitung und Auswahl von Lehrmaterial besondere Anstrengungen unternommen werden, um sicherzustellen, dass alle Schüler über die gleichen Lernmöglichkeiten verfügen und die Möglichkeit erhalten, Themen und Lernansätze auszuwählen. Ziele und Praxis des Lernens und des Unterrichts sollten darauf ausgerichtet sein, Diskriminierung aufgrund von Herkunft, Geschlecht, sexueller Orientierung, Wohnort, sozialer Zugehörigkeit, Religion, Gesundheitszustand, Behinderung oder allgemeinem Zustand zu verhindern. Kinder mit Behinderungen sollten Regelschulen besuchen und bei Bedarf Unterstützung erhalten.

In Island haben sich keine ausgewiesenen Roma niedergelassen, so dass diese von keinen Formen der Segregation oder Diskriminierung in Schulen speziell betroffen sind.

Ausdrückliche Bestimmungen, um Nichtdiskriminierung beim Zugang zu Wohnraum unabhängig von „Rasse“ oder ethnischer Zugehörigkeit zu gewährleisten, wurden nicht beschlossen. Das Gesetz über Menschen mit Behinderungen legt fest, dass Sozialdienstleistungen verfügbar sein müssen, um es Menschen mit Behinderungen zu ermöglichen, in ihren eigenen Wohnräumen oder in anderen Wohnmöglichkeiten im Einklang mit ihren Bedürfnissen und Wünschen zu leben, soweit dies möglich ist. Die kommunalen Behörden sind verpflichtet, dafür zu sorgen, dass für Menschen mit Behinderungen geeigneter Wohnraum zur Verfügung steht und die erforderlichen Dienstleistungen erbracht werden.

5. Rechtsdurchsetzung

Die Richtlinien 2000/43/EG und 2000/78/EG wurden noch nicht in nationales Recht umgesetzt. Es wurden keine besonderen Verfahren eingeführt, die sich auf die in den Richtlinien genannten Diskriminierungen beziehen. Die einzige Beschwerdestelle für Diskriminierungsoffer, der Beschwerdeausschuss für Gleichstellungsfragen, befasst sich ausschließlich mit Diskriminierungen aufgrund des Geschlechts. Es sind zahlreiche Verwaltungsverfahren vorhanden, um Bürgern das Recht zu gewährleisten, persönlich in Behörden vorstellig zu werden. Darunter fällt auch das Recht der Nichtdiskriminierung. Das Verwaltungsverfahrensgesetz Nr. 37/1993 garantiert das Recht, Beschwerde gegen Entscheidungen von Verwaltungsbehörden, wie öffentliche Institutionen oder Ausschüsse, einlegen zu dürfen. Alle Entscheidungen öffentlicher Einrichtungen oder von Stellen des öffentlichen Rechts unterliegen der Überprüfung durch eine höhere Instanz, sofern nicht anders vom Gesetz vorgesehenen. Die Entscheidungen der unabhängigen Behörden können in manchen Fällen von Ministern oder besonderen Prüfungsausschüssen überprüft

werden. Erwähnt sei der kürzlich eingerichtete Beschwerdeausschuss für Einwanderungs- und Asylfragen. Sein Ziel ist es, eine unabhängige Überprüfung aller Entscheidungen der Einwanderungsbehörde zu gewährleisten, die auf der Grundlage des Gesetzes Nr. 96/2002 über ausländische Staatsangehörige getroffen wurden. Am 1. Januar 2015 nahm der Ausschuss seine Arbeit auf. Anfang November 2017 hatte er 650 Entscheidungen veröffentlicht, in denen es vor allem um Asylentscheide der Einwanderungsbehörde ging. In einigen Fällen können durch lokale Behörden getroffene Entscheidungen dem zuständigen Ministerium vorgelegt werden. Darüber hinaus können Beschwerden über diskriminierende Verwaltungsentscheidungen vor den parlamentarischen Ombudsmann gebracht werden. Schließlich sind die Gerichte befugt, Entscheidungen der Exekutive zu überprüfen.

Die Fristen für die Anrufung von Überprüfungsausschüssen variieren und für manche gibt es gar keine Fristen. Beschwerden müssen innerhalb eines Jahres nach dem Zeitpunkt der angefochtenen Entscheidung oder des Ereignisses beim parlamentarischen Ombudsmann eingebracht werden. Durch Zivilgerichte gefällte Urteile sind verbindlich und wirksam. Die Entscheidungen des parlamentarischen Ombudsmanns sind für die Behörden nicht rechtsverbindlich und annullieren nicht automatisch eine angefochtene Entscheidung. Die Entscheidungen der Verwaltungsausschüsse sind in der Regel nicht verbindlich, mit Ausnahme des Beschwerdeausschusses für Gleichstellungsfragen, welcher verbindliche Entscheidungen treffen kann.

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

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

2017 wurden keine Diskriminierungsfälle entschieden, die in direktem Zusammenhang mit dem Anwendungsbereich der Richtlinien stehen. Zwei bahnbrechende Urteile des Obersten Gerichtshofs zum Thema „Hassreden“ gegen LSBTTIQ-Menschen stellen für die LSBTTIQ-Bewegung in Island jedoch einen Einschnitt dar. Im April 2015 stellte Samtökin'78, die führende Organisation für die Rechte von LSBTTIQ-Menschen in Island, gegen zehn Personen Anzeige wegen Hasskommentaren, die in einer Radiosendung und online gemacht wurden, nachdem der Rat der Gemeinde Hafnarfjörður beschlossen hatte, in den Schulen der Gemeinde mit Unterstützung von Samtökin'78 LSBTTIQ-Unterricht durchzuführen. Die Anzeigen fielen in die Zuständigkeit der Polizei von Reykjavík und zweier anderer Polizeireviere. Im September 2015 stellte die Polizei von Reykjavík die Verfahren ohne Untersuchung mit der Begründung ein, dass die Bemerkungen unter die verfassungsrechtlich geschützte Redefreiheit (Art. 73 der isländischen Verfassung) fielen. Gegen diese Entscheidung legte Samtökin'78 Rechtsmittel ein, und im November 2015 entschied die Staatsanwaltschaft, dass die Anzeigen untersucht werden sollten. Im November 2016 erhob die Staatsanwaltschaft in acht Fällen Anklage vor den Bezirksgerichten wegen Verstößen gegen die Bestimmung des Strafgesetzbuchs Nr. 19/1940 über „Hassreden“. Einer der Beschuldigten wurde freigesprochen, da die

Verjährungsfrist abgelaufen war. Fünf weitere wurden freigesprochen, da ihnen kein Vorsatz nachgewiesen werden konnte und davon ausgegangen wurde, dass ihre Äußerungen unter die im Rahmen der Verfassung und der EMRK geschützte Redefreiheit fielen. In zwei Berufungsfällen stimmte der Oberste Gerichtshof der sehr engen Auslegung des Hate-Speech-Paragraphen nicht zu und hob die Freisprüche auf. In einem dritten Fall wurde festgestellt, dass die beschuldigte Person homosexuelle Menschen öffentlich beleidigt und Vorurteile geäußert hatte, die Äußerungen jedoch nicht verletzend genug waren, um als Hassrede eingestuft zu werden.

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

Ziel der einzigen existierenden positiven Maßnahmen im Geltungsbereich der Richtlinien 2000/43/EG und 2000/78/EG ist es, die Position von Menschen mit Behinderungen auf dem Arbeitsmarkt zu stärken. Das Gesetz Nr. 59/1992 über Menschen mit Behinderungen zielt darauf ab, Menschen mit Behinderungen gleichzustellen und Lebensumstände zu gewährleisten, die vergleichbar mit denen anderer Bürger sind und es ihnen zu ermöglichen, ein normales Leben zu führen. Das Gesetz sieht keine Quoten vor, legt jedoch fest, dass Menschen mit Behinderungen bei Bedarf Unterstützung erhalten, um auf dem Arbeitsmarkt einer Beschäftigung nachgehen zu können. Dies soll durch spezielle persönliche Betreuung am Arbeitsplatz geschehen, sowie durch Anweisungen und Informationen für andere Arbeitnehmer. In Privatunternehmen und Institutionen, in denen dies möglich ist, sollen Menschen mit Behinderungen zudem Zugang zu beruflicher Weiterbildung haben. Jede Region soll für Menschen mit Behinderungen beschützte Arbeitsplätze auf dem regulären Arbeitsmarkt zur Verfügung stellen und beschützte Werkstätten betreiben. Beschützte Arbeitsplätze verschaffen Menschen mit Behinderungen eine vergütete Ausbildung, um es ihnen zu ermöglichen, sich am allgemeinen Arbeitsmarkt zu beteiligen, und müssen Menschen mit Behinderungen außerdem eine feste, vergütete Beschäftigung bieten. Schließlich sollte Menschen mit Behinderungen bei Stellen in der staatlichen oder kommunalen Verwaltung Vorrang eingeräumt werden, sofern ihre entsprechenden Qualifikationen denen anderer Bewerber entsprechen oder diese übersteigen.

Das isländische Recht enthält keine ausdrücklichen Vorschriften über Konsultationen mit NROs oder Sozialpartnern in Bezug auf Diskriminierung.

6. Gleichbehandlungsstellen

Es wurde keine Gleichbehandlungsstelle zur Förderung der Gleichheit und Nichtdiskriminierung aus Gründen der „Rasse“ oder der ethnischen Zugehörigkeit, der Religion oder Weltanschauung, des Alters, einer Behinderung oder der sexuellen Ausrichtung eingerichtet. Es wurde keine Menschenrechtskommission eingerichtet und die einzig bestehende Gleichbehandlungsstelle, das Zentrum für Geschlechtergleichstellung, befasst sich ausschließlich mit geschlechtsbezogenen Themen. Der parlamentarische Ombudsmann kann Fälle im Bereich der Gleichstellung und/oder Diskriminierung im Zusammenhang mit Verwaltungsverfahren behandeln.

Das isländische Zentrum für Menschenrechte hat viele der Funktionen einer nationalen Menschenrechtsinstitution übernommen, ohne dass ihre Kompetenzen, Unabhängigkeit und Finanzierung jedoch gesetzlich fixiert worden wären. Aufgabe des Multikulturellen Zentrums ist es, die Kommunikation zwischen Personen mit unterschiedlichen Hintergründen zu vereinfachen und die Dienstleistungen für ausländische Bürger mit Wohnsitz in Island sowie Personen, die nach Island ziehen wollen, zu verbessern. Das Zentrum unterstützt Menschen, die Informationen über das tägliche Leben in Island benötigen, stellt Informationen über die Verwaltungsprozesse zur Verfügung und ist ein Dienstleister für alle ausländischen Bürger, die nach Island oder ins Ausland ziehen.

Internationale Organe zur Überwachung der Menschenrechte haben die Einrichtung einer nationalen Menschenrechtsinstitution in Island gefordert, und die Regierung hat sich verpflichtet, dem nachzukommen, um unter anderem die Umsetzung der CRPD gemäß Artikel 33 zu überwachen und den Empfehlungen der internationalen Organe zur Überwachung der Menschenrechte zu entsprechen. Im Juli 2016 leitete das Innenministerium Konsultationen über einen Gesetzentwurf zur Einrichtung einer isländischen nationalen Menschenrechtsinstitution ein; diese Initiative verlief jedoch im Sande.

7. Zentrale Punkte

Offensichtliche Verstöße oder strittige Fragen, die den Geltungsbereich der Richtlinien betreffen, gibt es in Island nicht. Da keine umfassende Antidiskriminierungsgesetzgebung existiert, kommen Fälle jedoch nicht zur Anklage und diskriminierende Praktiken somit möglicherweise nicht zum Vorschein.

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

Es wurde keine Gleichbehandlungsstelle zur Förderung der Gleichheit und Nichtdiskriminierung aus Gründen der „Rasse“ oder der ethnischen Zugehörigkeit, der Religion oder Weltanschauung, des Alters, einer Behinderung oder der sexuellen Ausrichtung eingerichtet. Das Zentrum für Geschlechtergleichstellung befasst sich ausschließlich mit geschlechtsbezogener Diskriminierung.

Wesentliche Entwicklungen im Antidiskriminierungsbereich wurden nicht verzeichnet. Die letzte Regierung bezeichnete die Verabschiedung von Antidiskriminierungsvorschriften in Einklang mit Artikel 5 CRPD und den Richtlinien 2000/43/EG und 2000/78/EG sowie die Einrichtung einer nationalen Menschenrechtsinstitution als eine Verpflichtung, die sich aus der Ratifizierung der CRPD ergab. Im Juli 2016 führte das Innenministerium auf seiner Webseite eine Konsultation über einen Gesetzentwurf zur Einrichtung einer isländischen nationalen Menschenrechtsinstitution durch; diese Initiative verlief jedoch im Sande.

Im April 2017 legte der Minister für Soziales und Gleichstellung zwei Gesetzentwürfe zum Thema Gleichbehandlung vor; einer bezog sich auf „Rasse“ und ethnische Zugehörigkeit, der andere auf Gleichbehandlung am Arbeitsplatz in Bezug auf „Rasse“, ethnische Zugehörigkeit, Religion, Anschauungen, Behinderung, eingeschränkte Arbeitsfähigkeit, Alter, sexuelle Orientierung und Geschlechtsidentität, Geschlechtsausdruck und Geschlechtsmerkmale. Die Gesetzentwürfe sehen vor, dass das Zentrum für Geschlechtergleichstellung mit der Umsetzung und Überwachung der Rechtsvorschriften beauftragt werden und der Beschwerdeausschuss für Gleichstellungsfragen Beschwerden

entgegennehmen soll. Die Entwürfe wurden dem Parlament vorgelegt und es wurde eine Konsultation der Interessengruppen eingeleitet. Leider brach die Regierung auseinander, bevor die Gesetzentwürfe vorankamen. Sie sollen 2018 erneut vorgelegt werden.

Rechtsstreite wegen Diskriminierung, die sich direkt auf den Geltungsbereich der Richtlinien bezogen, wurden im Jahr 2017 keine entschieden. Zwei bahnbrechende Urteile des Obersten Gerichtshofs zum Thema „Hassreden“ gegen LSBTTIQ-Menschen stellten indes einen Wendepunkt für die LSBTTIQ-Bewegung in Island dar.

INTRODUCTION

The national legal system

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

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

The Icelandic judiciary consists of two levels: the Supreme Court and eight district courts. In May 2016, the Parliament adopted legislation that will establish a third, middle tier, the Court of Appeal, *Landsréttur*, which will commence operation on 1 January 2018. The aim is, *inter alia*, to guarantee the use of first-hand evidence in appeals procedures, in line with international human rights standards and the constitutional provision on fair trial; to lighten the workload of the Supreme Court and improve its work; and to facilitate quality judgments in technically complex cases. In addition to the district courts and the Supreme Court, the Labour Court can be convened and, exceptionally, the Impeachment Court, which addresses criminal actions brought by the Parliament against sitting and former government ministers.

The judiciary is competent to review administrative decisions and the constitutionality of legislation. It is established custom that Icelandic courts are competent to review the constitutionality of all laws. District courts, the Appeals Court and the Supreme Court may decide that legislation they find incompatible with the Constitution, e.g. its equality provisions, cannot be applied. The Supreme Court, the Appeals Court and the district courts are also competent to review decisions taken by the executive, albeit only on procedure.

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

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

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

List of main legislation transposing and implementing the directives

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

- **Constitution of the Republic of Iceland No. 33/1944** of 17 June 1944, entry into force 17 June 1944, latest amendments 18 July 2013. Grounds covered: sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. Material scope: general.
- **Act incorporating the European Convention on Human Rights into domestic law No. 62/1994** of 19 May 1994, entry into force 30 May 1994, latest amendments 1 June 2010. Grounds covered: sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Material scope: limited to rights enshrined in the ECHR.
- **Administrative Procedures No. 37/1993** of 30 April 1993, entry into force 1 January 1994, latest amendments 1 January 2013. Grounds covered: inter alia, race, colour, national origin, religion, political opinion, social status and family origins. Material scope: administrative decisions.
- **General Penal Code No. 19/1940** of 12 February 1940, entry into force 12 August 1940, latest amendments 30 September 2017. Grounds covered: nationality, colour, race, religion, sexual orientation, gender identity. Material scope: harassment and hate speech, service or provision of goods, access to any public area or place intended for public use and public insults towards religious communities.
- **Act on Primary Schools No. 91/2008** of 12 June 2008, entry into force 1 July 2008, latest amendments 1 July 2016. Grounds covered: national origin, sex, sexual orientation, residence, social class, religion, health, disability or other status. Material scope: primary education.
- **Act on the Rights of Patients No. 74/1997** of 28 May 1997, entry into force 1 July 1997, latest amendments 1 January 2015. Grounds covered: sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status. Material scope: access to healthcare.
- **Postal Service Act No. 19/2002** of 3 March 2002, entry into force 18 March 2002, latest amendments 30 September 2011. Grounds covered: political, religious or ideological belief. Material scope: postal service.
- **Act on the Media No. 38/2011** of 20 April 2011, entry into force 21 April 2011, latest amendments 12 April 2013. Grounds covered: race, sex, sexual orientation, religion, nationality, opinion or cultural, economic social or other status in society. Material scope: organisation and work of the media.
- **Act on the Affairs of Persons with Disabilities No. 59/1992** of 2 June 1992, entry into force 1 September 1992, latest amendments 31 December 2016. Grounds covered: disability. Material scope: living conditions, employment, housing, assistance, education, etc.
- **Act on Rights Advocates for People with Disabilities No. 88/2011** of 23 June 2011, entry into force 1 July 2011, latest amendments 28 October 2016. Grounds covered: disability. Material scope: social services and rights of people with disabilities.
- **Act on Municipal Social Services No. 40/1991** of 27 March 1991, entry into force 18 March 2002, latest amendments 1 January 2017. Grounds covered: disability. Material scope: social services.

- **Act on the Affairs of the Elderly No. 125/1999** of 31 December 1999, entry into force 11 January 2000, latest amendments 31 December 2017. Grounds covered: age. Material scope: services, housing, healthcare, etc.
- **Act Amending Laws relating to the Judicial Status of Homosexual Persons No. 65/2006** of 14 June 2006 entry into force 27 June 2006, no amendments. Grounds covered: sexual orientation. Material scope: equality before the law in various areas.
- **Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997** of 23 December 1997 entry into force 1 July 1998, latest amendments 31 December 2017. Grounds covered: health, age, civil status, family size or gender. Material scope: non-discrimination in access to occupational pension schemes.
- **Act on Workers' Terms of Employment and Pensions No. 55/1980** of 9 June 1980 entry into force 16 June 1980, latest amendments 30 June 2010. Grounds covered: sex, nationality and length of contract. Material scope: non-discrimination in terms of employment.
- **Act incorporating the Convention on the Rights of the Child into domestic law No. 19/2013** of 20 February 2013, entry into force 6 March 2013, no amendments. Grounds covered: race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Material scope: limited to rights enshrined in the Convention.

The European Commission does not consider Icelandic legislation as being in line with Directives 2000/43/EC and 2000/78/EC as 'no detailed protection against discrimination is provided in the labour market or any comprehensive legislation in force prohibiting discrimination on the grounds of racial or ethnic origin outside the labour market'.⁴⁰ During his June 2016 fact-finding mission to Iceland, the Council of Europe Commissioner for Human Rights, Nils Muižnieks, reiterated previous recommendations on legislative and institutional reforms made by his predecessor in 2012,⁴¹ in relation to adopting comprehensive equal treatment legislation and creating adequate institutional mechanisms to promote its implementation in all spheres of life. Current non-discrimination provisions in Icelandic law do not protect all vulnerable groups of people to the same extent; people with disabilities, older people, members of ethnic and religious minorities and transgender people would benefit from stronger guarantees against discrimination, 'equal treatment legislation should cover all the relevant grounds of discrimination in all walks of life'.⁴²

Similarly, the European Committee of Social Rights, monitoring the implementation of the European Social Charter, has concluded that the situation in Iceland is not in conformity with the Charter as e.g. legislation prohibiting discrimination in employment on grounds other than sex is inadequate and there is no legislation explicitly prohibiting discrimination on the ground of disability in education and training.⁴³ The UN Human Rights Committee has also urged Iceland to 'take steps to adopt comprehensive anti-discrimination legislation, addressing all spheres of life and providing effective remedies in judicial and administrative proceedings'.⁴⁴ Similarly, the Committee on Economic, Social and Cultural Rights has called for comprehensive anti-discrimination legislation, adding that Iceland

⁴⁰ European Commission: *DG Enlargement Screening report Iceland*. Chapter 19 – Social policy and employment. 17 October 2011.

⁴¹ Council of Europe: Press release by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Iceland (8-10 June 2016). Available at: www.coe.int/en/web/commissioner/-/iceland-ratify-the-disabilities-convention-and-strengthen-the-human-rights-protection-system.

⁴² Council of Europe: Press release by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Iceland (7-9 January 2012). Available at: www.coe.int/web/commissioner/country-report/iceland.

⁴³ See e.g. Council of Europe: European Committee of Social Rights, *Conclusions XXI-1, Iceland, Article 1-2, Doc. XXI-1/def/ISL/1/2/EN*, 9 December 2016. Available at: <http://hudoc.esc.coe.int/eng?i=XXI-1/def/ISL/1/2/EN>.

⁴⁴ Human Rights Committee: *Concluding observations adopted by the Human Rights Committee at its 105th session*, 9-27 July 2012, Iceland, CCPR/C/ISL/CO/5.

should ensure that measures are taken to combat and prevent discrimination, especially against people with disabilities, in particular with respect to the right to education and housing, as well as social assistance.⁴⁵ Finally, the European Commission against Racism and Intolerance regularly reiterates its recommendation that the Icelandic government adopt comprehensive anti-discrimination legislation.⁴⁶

Despite these recommendations triggering some debate and government pledges to remedy the situation — draft bills on anti-discrimination were to be presented in Parliament in 2014, in 2015 and in spring 2016 — comprehensive legislation on anti-discrimination is still to be adopted. In April 2017, the Minister of Social Affairs and Equality presented two draft bills on equal treatment; one in relation to race and ethnic origin, and the other on equal treatment in the workplace covering race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics. The bills proposed that the Centre for Gender Equality would be charged with implementation and monitoring of the legislation and that the Gender Equality Complaints Committee would receive complaints. The bills were presented in Parliament and opened for consultation by stakeholders. Unfortunately, the government collapsed before the bills could progress. The bills will be presented again in 2018.

⁴⁵ Committee on Economic, Social and Cultural Rights, *Concluding observations on the fourth report of Iceland, adopted by the Committee at its 49th session (12-30 November 2012)*, E/C.12/ISL/CO/4.

⁴⁶ Council of Europe, European Commission against Racism and Intolerance, *ECRI Report on Iceland*, from 28 February 2017. Available at: http://hudoc.ecri.coe.int/eng#_Toc469293161.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

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

Article 65

Article 65, which is modelled on Article 26 ICCPR and Article 14 ECHR,⁴⁷ stipulating that: 'Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. Men and women shall have equal rights in every respect.'⁴⁸

In the explanatory notes on the draft bill to amend the Constitution, it is stated that the scope of Article 65 is wider than that of Article 14 ECHR and that it shall apply to all legislation and ensure equal protection for everyone.⁴⁹ The Supreme Court has confirmed this, interpreting the article as a broad equality provision guaranteeing not only formal equality, but also substantive equality, placing the obligation on the state to respect, protect and promote equality. An example is the Supreme Court decision of 4 February 1999,⁵⁰ where the court interpreted the provisions of the legislation on the affairs of persons with disabilities in light of Article 65 and Article 14 of the ECHR with respect to the right to education (cf. Article 2 Annex 1 ECHR) to entail the obligation of the state to ensure the same rights for people with disabilities as for other citizens. Thus interpreted, Article 65 enshrines not only the obligation to apply the law in the same manner in similar circumstances, but also the positive duty of the state to promote the rights of persons with disabilities.

A similar conclusion was reached in Case No. 125/2000,⁵¹ where the court ruled that changes made to the Social Security Act No. 100/2007,⁵² adversely affecting social security payments to persons with disabilities married to able-bodied people with an income, conflicted with Article 76(1) (the law shall guarantee everyone the assistance that they require in the case of sickness, disability, infirmity due to old age, unemployment or similar circumstances) and Article 65 of the Constitution.

The constitutional equality provision guarantees equality before the law and non-discrimination with regard to human rights regardless of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. The explanatory notes to the draft bill set out that the grounds enumerated in the article are not exhaustive; 'other status' is meant to encompass other grounds not listed in the provision, such as, for example 'health or physical state',⁵³ and sexual orientation could clearly be included, although no cases regarding discrimination based on sexual orientation have been heard. Similarly, age would clearly fall under the provision, as argued by the claimant in Supreme Court Case No. 484/2007.⁵⁴ The explanatory note further elaborates that although the aim of Article 65 is above all to ensure equality irrespective of the grounds enumerated and other status, it is not its aim to preclude legal conditions for rights or obligations from taking these grounds into account, provided that objective criteria form the basis for these conditions. Here, age limits are a relevant example.

⁴⁷ Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

⁴⁸ The Constitution of the Republic of Iceland, Act No. 33/1944, as amended.

⁴⁹ Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

⁵⁰ Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. University of Iceland*, Case No. 177/1998, 4 February 1999.

⁵¹ Supreme Court of Iceland, *Icelandic Federation of Disabled People v. Republic of Iceland*, Case No. 125/2000, 19 December 2000.

⁵² Iceland, Social Security Act [Lög um almannatryggingar], No. 100/2007, 11 May 2007.

⁵³ Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

⁵⁴ Supreme Court of Iceland, *X v. Y*, Case No. 484/2007, 25 September 2008.

Article 63

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

Article 64(1)

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

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

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

The constitutional equality clauses can be enforced against private actors (as well as against the state). The primary objective of the human rights provisions of the Constitution is to set the limits of the intervention of public authorities on individual freedoms. They thus constitute rules on the activities of public authorities, setting out their obligations vis-à-vis individuals, and are consequently binding on the state. Although most cases where the constitutional provisions come into play are brought against state actors, in recent years, the Supreme Court has heard cases brought against private actors alleging the unconstitutionality of civil law provisions or claiming that these should be interpreted in light of the human rights provisions of the Constitution. Examples include cases won by individuals against insurance companies, alleging that the provisions of tort law are in breach of the equality principle enshrined in Article 65 of the Constitution.⁵⁵ Although jurisprudence demonstrates that constitutional provisions can come into play in civil proceedings, Icelandic courts have not ruled definitively whether and to what extent private individuals and entities are bound by constitutional provisions in their relations in the field of civil law.

⁵⁵ See Supreme Court of Iceland, *Elfa þöll Grétarsdóttir v. Vátryggingafélag Íslands*, Case No. 317/1997, 4 June 1998 and Supreme Court of Iceland, *Brynjólfur Hauksson v. Tryggingamiðstöðin hf.* Case No. 10/2006, 15 June 2006.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

Discrimination on the following grounds is explicitly prohibited in national law: sex, sexual orientation, gender identity, religion, opinion, national origin, race, colour, financial status, parentage and other status.

The grounds covered in the Icelandic Constitution are sex, religion, opinion (e.g. political), national origin, race, colour, financial status and parentage. The list is non-exhaustive, as the provision also sets out that equality before the law and non-discrimination shall be ensured irrespective of the aforementioned grounds, but also irrespective of 'other status'. The explanatory notes on the draft bill to amend the Constitution set out that 'other status' is meant to encompass other grounds not listed in the provision, such as, for example, 'health or physical state'.⁵⁶ Sexual orientation could also clearly be included, although no cases regarding discrimination based on sexual orientation have been heard. Similarly, age would clearly fall under the provision, as argued by the claimant in Supreme Court Case No. 484/2007.⁵⁷ The explanatory note further elaborates that, although the aim of Article 65 is above all to ensure equality irrespective of the grounds enumerated and other status, it is not its aim to preclude legal conditions for rights or obligations from taking these grounds into account, provided that objective criteria form the basis for these conditions. Here, age limits are a relevant example.

The explanatory notes also state that the scope of Article 65 is wider than that of Article 14 ECHR, and that it shall apply to all legislation and ensure equal protection for everyone.⁵⁸ The Supreme Court has confirmed this, interpreting the article as a broad equality provision guaranteeing not only formal equality, but also substantive equality, placing an obligation on the state to respect, protect and promote equality. An example is the Supreme Court decision of 4 February 1999,⁵⁹ where the court interpreted the provisions of the legislation on the affairs of persons with disabilities in the light of Article 65 and Article 14 of the ECHR with respect to the right to education (cf. Article 2 Annex 1 ECHR) to entail the obligation of the state to ensure the same rights for people with disabilities as for other citizens. Thus interpreted, Article 65 enshrines not only the obligation to apply the law in the same manner in similar circumstances, but also the positive duty of the state to promote the rights of people with disabilities. A similar conclusion was reached in Case No. 125/2000,⁶⁰ where the court ruled that changes made to the Social Security Act No. 100/2007 that adversely affected social security payments to people with disabilities married to able-bodied people with an income conflicted with Article 76(1) (which says that the law shall guarantee everyone the assistance that they require in the case of sickness, disability, infirmity by reason of old age, unemployment or similar circumstances) and Article 65 of the Constitution.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

National law does not provide a definition of the following grounds of discrimination covered by the directives: religion or belief, disability, age, sexual orientation, race or ethnic origin, and there are no recognised ethnic or national minorities. Although no clear definition of disability or explicit prohibition of disability discrimination has been codified, Article 2 of

⁵⁶ Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

⁵⁷ Supreme Court of Iceland, *X v. Y*, Case No. 484/2007, 25 September 2008.

⁵⁸ Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

⁵⁹ Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. University of Iceland*, Case No. 177/1998, 4 February 1999.

⁶⁰ Supreme Court of Iceland, *Icelandic Federation of Disabled People v. Republic of Iceland*, Case No. 125/2000, 19 December 2000.

the Act on the Affairs of Persons with Disabilities No. 59/1992⁶¹ sets out that an individual is entitled to services and support under the act if he or she has a mental or physical disability that calls for special services or assistance, including intellectual disability, psycho-social disability, reduced mobility, visual or hearing impairment. Disability may also be the result of an accident or prolonged illness. In addition, Article 1 of the Act on the Affairs of Persons with Disabilities No. 59/1992 stipulates that in the implementation of the act, reference shall be made to the United Nations Convention on the Rights of Persons with Disabilities. This would include the concept of disability as set out in Article 1, paragraph 2 of the Convention.

The only comprehensive anti-discrimination legislation in force is in the field of gender equality: the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 (the Gender Equality Act), which is 'largely in line with the European Union *acquis*.'⁶² Anti-discrimination legislation in other fields is elementary and fragmented, as only a handful of general law provisions stemming from the constitutional equality provision are in force. These commonly do not contain an exhaustive enumeration or definitions of prohibited grounds of discrimination and are limited to a particular law sector.

2.1.2 Multiple discrimination

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

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

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

b) Discrimination by association

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

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

a) Prohibition and definition of direct discrimination

In Iceland, the only definition of direct discrimination is found in the Gender Equality Act. Direct gender discrimination is where an individual 'is, has been or would be treated less favourably than another of the opposite sex in a comparable situation.'⁶³

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

⁶¹ Iceland, Act on the Affairs of Persons with Disabilities [Lög um málefni fatlaðs fólks], No. 59/1992, 2 June 1992.

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

⁶³ Iceland, Act on Equal Status and Equal Rights of Women and Men No. 10/2008 [Lög um jafna stöðu og jafnan rétt kvenna og karla], 6 March 2008, Article 2(1).

b) Justification of direct discrimination

No explicit provisions permitting justification of direct discrimination, generally or in relation to particular grounds enumerated in the directives, are found in national legislation. The constitutional equality provision guarantees equality before the law and non-discrimination with respect to human rights regardless of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. The explanatory notes to the draft bill elaborate that although the aim of Article 65 is above all to ensure equality irrespective of the grounds enumerated and other status, it is not its aim to preclude legal conditions for rights or obligations from taking these grounds into account, provided that objective criteria form the basis for these conditions. Here age limits are a relevant example; see e.g. Supreme Court Case No. 484/2007, where the court rejected the applicant's argument that legislation setting certain age limits for in-vitro fertilisation (IVF) treatment was unlawful and in breach of the equality provision of the Constitution. The court found that age limits in relation to IVF treatment were not contrary to Article 65 of the Constitution as they were based on 'general, objective and legitimate grounds'.⁶⁴ Furthermore, the Act on the Affairs of Persons with Disabilities⁶⁵ (AAPD) provides for positive measures to promote the employment participation of people with disabilities, inter alia, in Article 32, which stipulates that people with disabilities shall have priority for jobs with the state and local authorities when they are equally or better qualified than other applicants. No similar provisions are in place in relation to age, religion or belief, race or sexual orientation.

2.2.1 Situation testing

a) Legal framework

In Iceland, the law is silent on situation testing.

b) Practice

In Iceland, situation testing is not used in practice. The Icelandic Human Rights Centre carried out one pilot test in relation to the effects of race/ethnic origin on access to bars and restaurants and job interviews but the results were not used in litigation.

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

a) Prohibition and definition of indirect discrimination

In Iceland, the only explicit prohibition and definition of indirect discrimination is found in the Gender Equality Act, under which indirect gender discrimination occurs 'where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary'.⁶⁶

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

⁶⁴ Supreme Court of Iceland, *X v. Y*, Case No. 484/2007, 25 September 2008. It should be noted that the age limits have now been abolished.

⁶⁵ Iceland, Act on the Affairs of Persons with Disabilities [*Lög um málefni fatlaðs fólks*], No. 59/1992, 1 September 1992.

⁶⁶ Iceland, Act on Equal Status and Equal Rights of Women and Men [*Lög um jafna stöðu og jafnan rétt kvenna og karla*] No. 10/2008, 6 March 2008, Article 2(2).

b) Justification test for indirect discrimination

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

c) Comparison in relation to age discrimination

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

2.3.1 Statistical evidence

a) Legal framework

In Iceland, there are national rules permitting data collection. Data collection is permitted, subject to strict conditions set out in the Act on the Protection of Privacy as regards the Processing of Personal Data No. 77/2000 (Data Protection Act).⁶⁷ The act covers all personal data, that is, information that can be traced to an individual. Processing is defined as any operation or set of operations performed on personal data. All processing must meet the criteria set out in Article 8 (consent of the data subject and other conditions). Article 9 sets out the additional criteria to be met for the processing of sensitive data, which is defined as all data concerning, inter alia, race or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health (including information on addiction) and sexual behaviour. Data on whether a person has been suspected of, indicted for, prosecuted for or convicted of a punishable offence is also considered sensitive. Article 4 of the Act on the Affairs of Persons with Disabilities sets out that the use of personal data, handled in connection with the implementation of the act, shall be in accordance with the Data Protection Act, and that it shall be ensured that access to the data is restricted and secure.

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

b) Practice

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

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Iceland, harassment is only prohibited in national law in relation to gender discrimination. The only definition is found in Article 2(3) of the Gender Equality Act, which sets out that 'gender-based harassment is any unwanted unreasonable and/or insulting behaviour, related to the gender of the person, which has the effect of violating the dignity of the person, and is continued despite clear expression that it is unwanted. The

⁶⁷ Iceland, Act on the Protection of Privacy as regards the Processing of Personal Data [Lög nr. 77/2000 um persónuvernd og meðferð persónuupplýsinga] No. 77/2000, 10 October 2011.

harassment can be physical, verbal or symbolic. A single incident can constitute harassment, if sufficiently serious.’ The Gender Equality Act also defines and prohibits sexual harassment.

In Iceland, harassment does not explicitly constitute a form of discrimination on the grounds listed in the directives. However, mention should be made of Article 233a of the General Penal Code No. 19/1940, which stipulates that any person who, by mockery, slander, insult, threat or other means, publicly attacks a person or group of persons on the grounds of their nationality, colour, race, religion, sexual orientation or gender identity shall be liable to a fine or imprisonment for a term not exceeding two years. The Supreme Court has decided three cases concerning violations of Article 233a. In the first case, it upheld the conviction of the accused for publicly attacking an anonymous group of persons by derision, vilification and denigration in a newspaper interview because of their nationality, colour and race.⁶⁸ Two ground-breaking cases were decided in 2017, where the Supreme Court overturned the Reykjavik District Court acquittals of two people charged with hate speech against homosexual people.⁶⁹ See Section 12.2.

b) Scope of liability for harassment

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

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

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

b) Scope of liability for instructions to discriminate

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

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

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

In Iceland, the duty to provide reasonable accommodation is not set out in national law and there is no definition of the term ‘reasonable accommodation’. Article 29 of the Act on

⁶⁸ Supreme Court of Iceland, *Prosecutor v. Hlynur Freyr Vigfússon*, Case No. 461/2001, 24 April 2002.

⁶⁹ Supreme Court of Iceland, *Prosecutor v. Carl Jóhann Lilliendahl*, Case No. 415/2017, 14 December 2017 and *Prosecutor v. Sveinbjörn Styrmi Gunnarsson*, Case No. 577/2017, 14 December 2017.

the Affairs of Persons with Disabilities 59/1992 simply states that people with disabilities shall be given assistance when necessary in holding jobs on the labour market. This should be done through special personal support in the workplace, as well as through information and instruction for other workers. People with disabilities should have access to vocational training in private enterprises and institutions where possible. In that event, a special agreement should be concluded, setting out, inter alia, the period of training and costs. The costs incurred because of special assistance in the workplace shall be paid by the State Treasury.

b) Practice

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

c) Definition of disability and non-discrimination protection

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

Although no clear definition of disability has been codified, Article 2 of the Act on the Affairs of Persons with Disabilities No. 59/1992 sets out that an individual is entitled to services and support under the act if he or she has a mental or physical disability that calls for special services or assistance, including intellectual disability, psycho-social disability, reduced mobility, visual or hearing impairment. Disability may also be the result of an accident or prolonged illness.

In addition, Article 1 of the Act on the Affairs of Persons with Disabilities No. 59/1992 stipulates that, in the implementation of the act, reference shall be made to the United Nations Convention on the Rights of Persons with Disabilities. This would include the concept of disability as set out in Article 1, paragraph 2, of the Convention. The United Nations Convention on the Rights of Persons with Disabilities was ratified on 23 September 2016. As a result, Icelandic legislation is to be brought into line with the provisions of the Convention e.g. through amendments to legislation on municipal services; on social services for people with disabilities; and on sex education, abortion and sterilisation. Anti-discrimination legislation in line with the directives will be adopted and a National Human Rights Institution established. This is to be done as soon as possible but no fixed time-frame has been presented.

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

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

In Iceland, there is no explicit general duty to provide reasonable accommodation for people with disabilities outside the field of employment. However, Article 7 of the Act on the Affairs of Persons with Disabilities No. 59/1992 states that people with disabilities are entitled to all general services provided by the state and the local authorities. It shall be endeavoured to provide services in accordance with the general legislation on education,

health and social services, but where the needs exceed the scope of general legislation, services shall be provided on the basis of the AAPD. The Act on Secondary Schools No. 92/2008⁷⁰ sets out a form of reasonable accommodation for students with disabilities. Article 34 stipulates that students with special needs shall be provided with assistance and the necessary equipment/accommodation as required. They should study alongside able-bodied students whenever possible.

Although there is no explicit legal provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment as such, the Supreme Court has interpreted the general equality provisions of the Constitution, the ECHR and the AAPD to include a reasonable accommodation duty. In the field of higher education, the University of Iceland is obliged to accept students with disabilities and to make the necessary arrangements and to take the general measures necessary to accommodate them and to ensure they can avail themselves of the same services as other students at the department of their choosing. This was established in the case of *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, where the court found that, although the needs of the claimant had been accommodated to some extent, the lack of general measures, a comprehensive plan or general guidelines on how to assist her had led to problems and that she had been forced to personally insist on reasonable accommodation. This entailed a breach of her personal rights and the right to education, and she was awarded non-pecuniary damages.⁷¹

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

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

Although national legislation does not contain an explicit provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment, the Supreme Court has interpreted the provisions of the legislation on the affairs of persons with disabilities in the light of Article 65 of the Constitution and Article 14 of the ECHR with respect to the right to education (cf. Article 2 Annex 1 ECHR) to entail a positive duty of the state to promote the rights of people with disabilities.⁷²

Article 42 of the Act on Municipal Social Services No. 40/1991⁷³ sets out a positive duty for the authorities to work towards ensuring equality for people with intellectual, psycho-social and physical disabilities, and towards ensuring living conditions comparable with those of other citizens. People with disabilities shall be ensured conditions that enable them to lead as normal a life as possible. There is no definition of direct or indirect discrimination enacted in relation to the protected grounds. No specific sanction for the failure to meet the duty to provide reasonable accommodation is set out in national law.

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

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

⁷⁰ Iceland, Act on Secondary Schools [*Lög um framhaldsskóla*], No. 92/2008, 12 June 2008.

⁷¹ Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. University of Iceland*, Case No. 177/1998, 4 February 1999.

⁷² Supreme Court of Iceland, *Berglind Stefánsdóttir and Félag heyrnalausra v. State Broadcasting Service*, Case No. 151/1999, 6 May 1999.

⁷³ Iceland, Act on Municipal Social Services [*Lög um félagsþjónustu sveitarfélaga*], No. 40/1991, 27 March 1991.

g) Accessibility of services, buildings and infrastructure

In Iceland, national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way. However, failure to comply with accessibility requirements would not explicitly constitute discrimination. The Icelandic Federation of Disabled People (*Öryrkjabandalag Íslands – ÖBÍ*) has called for inspections to monitor compliance with accessibility requirements to be enhanced.

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

The Planning Act No. 123/2010,⁷⁴ and the secondary legislation, Planning Regulation No. 90/2013 as amended,⁷⁵ and the Building Act No. 160/2010 and the secondary legislation, the Building Regulation No. 112/2012 as amended,⁷⁶ set out numerous requirements in relation to buildings and urban planning to ensure accessibility for people with disabilities and universal design. Article 1(e) of the Planning Act stipulates that the aim of the law is, inter alia, to ensure the professional preparation of buildings and infrastructure regarding e.g. structure and universal access, and Article 2 contains definitions of universal design and access. Article 1(e) of the Building Act stipulates that its aim is, inter alia, to ensure universal access and the provisions in Article 3 (1) and (2) contain definitions of universal access and universal design.

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

An important case where it was determined that a lack of accessibility constituted discrimination concerned the right to political participation. The Supreme Court ruled that the National Broadcasting Company (*Ríkisútvarpið – RÚV*), had a duty to interpret political candidates' speeches simultaneously into sign language on the night before elections. It was obliged to ensure equality when carrying out its legally prescribed role in relation to elections (cf. Article 15 of the Broadcasting Act No. 68/1985⁷⁷), not only in respect of candidates and political parties, but also in respect of viewers. Therefore, RÚV should arrange the broadcast of candidates' speeches in a manner accessible to deaf people (cf. also the AAPD). In this case, the court ruled that RÚV had not sufficiently justified the discrimination entailed in its decision not to provide sign-language interpreting of the candidates' speeches, as it was clear that this was technically feasible and the broadcast was to take place the day before elections.⁷⁸

h) Accessibility of public documents

The Act on the Status of the Icelandic Language and Icelandic Sign Language No. 61/2011 stipulates that Icelandic Braille is the first written language of those who rely on it for expression and communication. People using Braille are entitled to all public information in Braille⁷⁹ and have the right to ask the National Institute for the Blind, Visually Impaired and Deafblind [*Þjónustu- og þekkingarmiðstöð fyrir blinda, sjónskerta og einstaklinga með samþætta sjón- og heyrnarskerðingu*] — a public body governed by the Ministry of Welfare

⁷⁴ Iceland, Planning Act [*Skipulagslög*], No. 123/2010, 27 March 2010.

⁷⁵ Iceland, Planning Regulation [*Skipulagsreglugerð*], No. 90/2013, 16 January 2013.

⁷⁶ Iceland, Building Regulation [*Byggingarreglugerð*], No. 112/2012, 24 January 2012.

⁷⁷ Iceland, Broadcasting Act [*Útvarpslög*], No. 68/1985, 27 June 1985.

⁷⁸ Supreme Court of Iceland, *Berglind Stefánsdóttir and Félag heyrnalausra v. State Broadcasting Service*, Case No. 151/1999, Supreme Court Judgment of 6 May 1999.

⁷⁹ Iceland, Act on the status of the Icelandic language and Icelandic sign language [*Lög um stöðu íslenskrar tungu og íslensks táknmáls*] No. 61/2011, 7 June 2011, Article 3.

— to convert text to Braille when needed, free of charge. However, as all public documents and information are available in digital form, the use of refreshable Braille display or Braille terminals to access information is more common.

The Act on the status of the Icelandic language and Icelandic sign language No. 61/2011 stipulates that the Icelandic sign language is the first language of those who rely on it for expression and communication, and of their children.⁸⁰ Central and local authorities are obliged to ensure that all those who need Icelandic sign language services have access to them.⁸¹ Article 5 paragraph 4 of the Act on the Rights of Patients No. 74/1997⁸² also sets out the right to interpreting services in relation to health services.

The Communication Centre for the Deaf and Hard of Hearing⁸³ — a public body under the auspices of the Ministry of Education, Science and Culture — provides sign language interpreting services for deaf people. Interpreting services relating to all public services are provided when needed, free of charge. In the private sphere, e.g. in relation to employment issues, participation in courses and residents' association meetings, fees for interpreting services may be covered by a special state fund. In practice, private organisations providing 'public services', such as homes for the elderly, private universities and alcohol and drug rehabilitation centres, do not always consider that their institutions are obliged to cover the cost of interpreting.

An important case concerning the right to interpreting services, *Snædís Rán Hjartardóttir v. the Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavík*, was decided in June 2015.⁸⁴ Article 76, paragraph 1 of the Icelandic Constitution sets out that the law shall guarantee everyone the assistance that they require in case of sickness, disability, infirmity due to old age, unemployment or similar circumstances. Deafblind people such as the applicant rely on the services of specialised tactile sign interpreters to communicate and are entitled to certain minimum assistance regardless of means – cf. Article 76 and the equality provision of the Constitution (Article 65). The Communication Centre for the Deaf and Hard of Hearing is charged with providing sign language interpreting services for deaf and deafblind people. Interpreting services relating to all public services are to be provided where they are needed free of charge. However, in recent years, the annual allocation of funds from the state budget to the centre has not been sufficient to cover its needs. The centre's policy was to provide interpreting services on application, without any discrimination and free of charge, until the funds ran out. The result was that those in need of services early in the year got them, but those with the same or greater need applying later in the year did not.

In this case, the applicant claimed that the Communication Centre for the Deaf and Hard of Hearing had unlawfully denied free sign language interpreting from 7 October 2014. The District Court of Reykjavík found that, in all likelihood, the constitutionally protected minimum services that users were entitled to in 2014 could not be covered by the limited funds allocated to the centre. As national law did not clearly define what constitutes minimum assistance, all applications for interpreting services were accepted until the funds ran out, leaving those in need later in the year, such as the applicant, to pay for the services themselves. Because of this approach, the distinction between constitutionally protected minimum social assistance, to be provided free of charge and without discrimination, and other services which applicants paid for was blurred in the case of free

⁸⁰ Iceland, Act on the status of the Icelandic language and Icelandic sign language [*Lög um stöðu íslenskrar tungu og íslensks táknmáls*] No. 61/2011, 7 June 2011, Article 4.

⁸¹ Iceland, Act on the status of the Icelandic language and Icelandic sign language [*Lög um stöðu íslenskrar tungu og íslensks táknmáls*] No. 61/2011, Article 13.

⁸² Iceland, Act on the Rights of Patients [*Lög um réttindi sjúklinga*], No. 74/1997, 28 May 1997.

⁸³ Iceland, Act on the Communication Centre for the Deaf and Hard of Hearing [*Lög um Samskiptamiðstöð heyrnarlausra og heyrnarskertra*] No. 31/1990, 31 December 1990.

⁸⁴ Reykjavik District Court, *Snædís Rán Hjartardóttir v. the Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavík*, Case No. E-327/2015, Judgment of 30 June 2015.

sign language interpreting services. Furthermore, this procedure discriminated between applicants based on what time of year they needed the services, in violation of the equality provisions of the Constitution and constitutional and administrative law.

Taking into account the failure of the state to regulate the minimum rights of people with disabilities to adequate sign language interpreting services, the court found that the state should bear the cost of the services provided to the applicant after October 2014. Because she had been refused free interpreting services, the applicant's right to minimum assistance in accordance with Article 76, paragraph 1 of the Constitution had been violated. This right trumps provisions in the state budget governing allocations to free interpreting services. The court also awarded the applicant ISK 550 000 (approx. EUR 3 750) in non-pecuniary damages, as the state had failed to fulfil its obligation to establish a system to guarantee her minimum assistance (cf. Art. 76, para.1), resulting in a diminished quality of life and in social exclusion.⁸⁵

A recent case worth mention in this context is *Áslaug Ýr Hjartardóttir v. the Communication Centre for the Deaf and Hard of Hearing and the Icelandic State*, No.464/2017 decided on 9 November 2017. A asked that the decision of the Communication Centre for the Deaf and Hard of Hearing to deny her free sign language interpreting services for a summer-camp stay abroad be annulled. The Supreme Court agreed with the District Court that the decision had been lawful and proportionate, based on the available funds, as the cost would have amounted to 18 % of the Centre's budget for the period of July-September 2017. Paying for A's interpreting needs would have emptied the coffers and been discriminatory towards other applicants in need of free sign language interpreting services.

⁸⁵ Reykjavík District Court, *Snædís Rán Hjartardóttir v. Communication Centre for the Deaf and Hard of Hearing and the Icelandic State and, in reserve, the City of Reykjavík*, Case No. E-327/2015, 30 June 2015.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

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

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

a) Protection against discrimination

In Iceland, the personal scope of anti-discrimination law does not cover (certain) natural and/or legal persons for the purpose of protection against discrimination.

In Iceland, the directives have not been transposed and there is no general anti-discrimination legislation in force. National legislation does not provide special protection for legal persons where they suffer discrimination on the grounds of the racial or ethnic origin of their members (or on any other grounds), nor explicit provisions distinguishing between natural and legal persons for the purposes of protection against discrimination. In this context, it should be noted that any individual, association or institution, which bears rights or duties under national law, can be party to a court case.⁸⁶ The general principle concerning legal standing is that for an application to be admissible, the claimant must satisfy the requirement of having a personal, direct interest, that is, a 'legally protected interest'.

b) Liability for discrimination

In Iceland, the personal scope of anti-discrimination law does not cover (certain) natural and/or legal persons for the purpose of liability for discrimination.

The directives have not been transposed and there is no general anti-discrimination legislation in force. National legislation does not provide explicit provisions distinguishing between natural and legal persons for the purposes of liability for discrimination. In this context, it should be noted that any individual, association or institution, which bears rights or duties under national law, can be party to a court case.⁸⁷

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

a) Protection against discrimination

In Iceland, the personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.

The directives have not been transposed and there is no general anti-discrimination legislation in force. However, some discriminatory acts in relation to the protected grounds could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993,⁸⁸ although no cases of this sort have been tried. For the public sector, Article 11 of the Administrative

⁸⁶ Iceland, Act on Civil Procedure [*Lög um meðferð einkamála*] No. 91/1991, 32 December 1991, Article 16(1).

⁸⁷ Iceland, Act on Civil Procedure [*Lög um meðferð einkamála*] No. 91/1991, 32 December 1991, Article 16(1).

⁸⁸ Iceland, Tort Damages Act [*Skaðabótalög*], No. 50/1993, 19 May 1993.

Procedures Act No. 37/1993⁸⁹ stipulates that administrative authorities shall ensure legal harmony and equality in decisions, and that discrimination between individual parties based on views relating to, inter alia, race, colour, national origin, religion, political opinion, social status or family origins, is prohibited. Discrimination on the basis of nationality, colour, race, religion, sexual orientation and gender identity could also fall under the General Penal Code No. 19/1940.⁹⁰

b) Liability for discrimination

In Iceland, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination.

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

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Iceland, national legislation does not apply to all sectors of private and public employment, self-employment and occupation, including contract work, military service and holding statutory office, for the five grounds.

The directives have not been transposed into national law. No comprehensive anti-discrimination legislation applies. There is no military in Iceland.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Iceland, national legislation does not prohibit discrimination in the following areas: conditions for access to employment, self-employment or 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 the private and public sectors, as described in the directives. There are no provisions specifically prohibiting discrimination against migrants when it comes to employment. Studies show that, on average, the income of immigrants is lower than that of the general population and only a small minority hold jobs where their education is fully utilised. See 11.1 for further information.

Some discriminatory acts in relation to the aforementioned fields could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, although no cases of this sort have been tried. For the public sector, Article 11 of the Administrative Procedures Act No. 37/1993 stipulates that administrative authorities shall ensure legal harmony and equality in decisions, and that discrimination between individual parties based on views relating to,

⁸⁹ Iceland, Administrative Procedures Act [*Stjórnsýslulög*], No. 37/1993, 30 April 1993.

⁹⁰ Iceland, [*Almenn hegningarlög*], No. 19/1940, 12 February 1940.

inter alia, race, colour, national origin, religion, political opinion, social status or family origins is prohibited.

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

In Iceland, national legislation prohibits discrimination in the following areas: working conditions including pay and dismissals, for all five grounds and for both private and public employment.

The directives have not been transposed. Working conditions are, however, dealt with in the Act on Workers' Terms of Employment and Pensions No. 55/1980,⁹¹ Article 1, which stipulates that wages and other working terms agreed between the social partners shall be considered minimum terms, independent of sex, nationality or term of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement. Contracts made between individual wage earners and employers on less favourable working terms than those specified in the general collective agreement shall be void. This is a general rule, which would apply in relation to the grounds of discrimination covered by the directives. In addition, it should be noted that Article 2 of the Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997⁹² stipulates that it is prohibited to deny a person membership of an occupational pension fund on the grounds of health, age, civil status, family size or gender. Neither disability nor sexual orientation are enumerated, but disability could in some instances come under 'health'.

3.2.3.1 Occupational pensions constituting part of pay

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

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

In Iceland, national anti-discrimination legislation does not apply to vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

Access to vocational training based on the employment relationship would be governed by collective agreement and thus by the Act on Workers' Terms of Employment and Pensions

⁹¹ Iceland, Act on Workers' Terms of Employment and Pensions [*Lög um starfskjör launafólks og skyldutryggingu lífeyrisréttindi*], No. 55/1980, 9 June 1980.

⁹² Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds [*Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða*], No. 129/1997, 23 December 1997.

No. 55/1980, Article 1, which stipulates that wages and other working terms agreed between the social partners shall be considered minimum terms, independent of sex, nationality or term of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement. Contracts made between individual wage earners and employers on less favourable working terms than those specified in the general collective agreement are void. This is a general rule, which would apply in relation to the grounds of discrimination covered by the directives.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Iceland, national legislation does not prohibit discrimination in the following areas: membership of, and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

Directives 2000/78/EC and 2000/43/EC have not been transposed. The Act on Trade Unions and Trade Disputes No. 80/1938,⁹³ which applies to both the private and public sectors, sets out that membership of trade unions shall be open to all workers employed in the respective area (cf. Article 2). In practice, trade unions accept all applicants, irrespective of nationality, origin, religion or sexual orientation. Foreign nationals may stand for election and participate in union work on an equal footing with citizens. Similarly, professional associations and employers' organisations are open to all enterprises/employers operating or qualified in the respective fields. There is, however, no comprehensive anti-discrimination law in force in this sector, and no prohibition of discrimination has been enacted with regard to membership of, and involvement in, organisations for workers or employers, or other professional organisations, and related benefits.

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

In Iceland, national legislation does not explicitly prohibit discrimination in the following areas: social protection, including social security and healthcare, as formulated in the Racial Equality Directive. There are no provisions specifically prohibiting discrimination against migrants when it comes to access to social security and healthcare.

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

3.2.6.1 Article 3.3 exception (Directive 2000/78)

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

⁹³ Iceland, Act on Trade Unions and Trade Disputes [*Lög um stéttarfélög og vinnudeilur*], No. 80/1938, 11 June 1938.

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

In Iceland, national legislation does not prohibit discrimination in the following area: social advantages as formulated in the Racial Equality Directive.

The lack of definition of social advantages does not raise problems per se, as there is no legislation in place prohibiting discrimination in the provision of social advantages.

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

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

In Iceland, national legislation does not prohibit discrimination in the following area: education as formulated in the Racial Equality Directive. However, provisions on anti-discrimination can be found in a number of laws and policies and these apply to non-nationals on an equal footing with nationals. There are no special policies in place to address discrimination against non-nationals in education and no cases in this field have been adjudicated.

Article 24 of the Act on Compulsory Schools No. 91/2008⁹⁴ stipulates that in the organisation of study and instruction, and in producing and selecting study materials, special effort shall be made to ensure that all pupils have equal study opportunities and a chance to select subjects and learning approaches in their own education. The objectives and practice of study and instruction shall be organised so that discrimination on the basis of origin, gender, sexual orientation, residence, social class, religion, health condition, disability or situation in general is prevented. There are no sanctions set out for breaches of this provision.

The national curricula for primary schools, compulsory schools and upper secondary schools set out the framework and conditions for learning and teaching based on the principles of existing laws, regulations and international conventions. The curricula stipulate that equality is a fundamental pillar of the Icelandic education system. Equality shall be guaranteed in the substance of education on the one hand and the study methods and learning environment on the other. Characteristics to be taken into account include age, class, culture, origin, gender, disability, language, nationality, life views, race, religion, residence and sexual orientation.⁹⁵ There are no specific sanctions set out in this context.

In relation to integration, it should be noted that the legislation governing compulsory and secondary education (Acts Nos. 91/2008 and 92/2008) contains provisions on the rights of children with a mother tongue other than Icelandic to special classes in Icelandic as a second language, as well as support to maintain knowledge of their mother tongue through elective classes, distance learning or other means. There is no segregation in the education system. Schools should also adopt special 'reception plans' for migrant children, containing information on school activities, interpreters, etc. The number of children of immigrant origin has increased steadily from 2004, in both kindergartens and compulsory education. In 2015, 2 435 kindergarten pupils had a mother tongue other than Icelandic, as did 3 543

⁹⁴ Iceland, Act on Compulsory Schools [*Lög um grunnskóla*], No. 91/2008, 12 June 2008.

⁹⁵ The curricula can be found in English on the website of the Icelandic Ministry of Education, Science and Culture: www.menntamalaraduneyti.is/utgefing-efni/namskrar/adalnamskra-framhaldsskola/.

compulsory education pupils. Recent studies show that, despite the efforts in the education system, limited reading literacy in Icelandic hampers the studies of many of these children and the low numbers of young people of immigrant origin graduating from high school is a serious problem.⁹⁶

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

a) Pupils with disabilities

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

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

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

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

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

Although there is no explicit legal provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment, the Supreme Court has interpreted the general equality provisions of the Constitution, the ECHR and the Act on the Affairs of People with Disabilities, to include a duty to provide reasonable accommodation. In the case of *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, the Supreme Court established that the University of Iceland is obliged to accept students with disabilities and to make the necessary arrangements and to take the general measures

⁹⁶ Multicultural Centre, *Statistical Information on Foreign Citizens and Immigrants in Iceland 2016* ['Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016'], September 2016, p. 20.

necessary to accommodate them and to ensure they can avail themselves of the same services as other students, in the department of their choosing.⁹⁷ The court found that although the needs of the claimant, a student with disabilities, had been accommodated to some extent, the lack of general measures, a comprehensive plan or general guidelines on how to assist her had led to problems, and that she had been forced to personally insist on reasonable accommodation. This entailed a breach of her personal rights and the right to education and she was awarded non-pecuniary damages.

b) Trends and patterns regarding Roma pupils

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

No identified Roma have settled in Iceland, so they are not formally acknowledged as an ethnic minority. In relation to integration, it should be noted that the legislation governing compulsory and secondary education (the aforementioned Acts Nos. 91/2008 and 92/2008) contains provisions on the rights of children with a mother tongue other than Icelandic to special classes in Icelandic as a second language, as well as support to maintain knowledge of their mother tongue through elective classes, distance learning or other means. Schools should also adopt special 'reception plans' for immigrant children, containing information on school activities, interpreters, etc.

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

In Iceland, national legislation prohibits discrimination in access to and supply of goods and services as formulated in the Racial Equality Directive.

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

3.2.9.1 Distinction between goods and services available publicly or privately

In Iceland, national law does not distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association).

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

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

It should, however, be noted in this context that a 2014 study conducted by the Multicultural Centre demonstrated that 31 % of the respondents (who were immigrants), or someone close to them, had experienced negative attitudes when trying to rent an apartment.⁹⁸ Studies have shown that immigrants are more likely to live in rented housing compared to other residents. A 2015 study of Polish people (the largest immigrant group in Iceland), demonstrated that 63 % of the respondents lived in rented flats (the figure

⁹⁷ Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. University of Iceland*, Case No.177/1998, 4 February 1999.

⁹⁸ Arnardóttir, E. and Haraldsson, R. H. (2014), *Uppruni og fjölþætt mismunun, Ísafjörður: Fjölmenningarsetur*.

was 14 % for Icelandic households in 2013).⁹⁹ There is also considerable difference in housing ownership based on origin. Reykjavík, where most non-nationals live, is currently suffering a severe housing crisis. This and discriminatory attitudes have left some immigrants struggling to find adequate rented housing. When it comes to home ownership, in 2015, 81.2 % of people born in Iceland owned their homes, 20 % of them debt-free. For foreign-born citizens, the figure was 56.5 %, of whom 20 % were debt-free. When it comes to equity, there is considerable difference between foreign and Icelandic-born people; foreign nationals have 25 % less equity and the gap has been growing since 2007. Similarly, the number of Icelanders struggling with a 'housing cost burden' (40 % or more of disposable income goes towards paying for housing) has decreased from 13.1 % in 2006 to 7.9 % in 2014, while this percentage fluctuates for foreign-born inhabitants and in 2014 was approximately 8 %.¹⁰⁰ One of the actions set out in the government's National Action Plan on Immigration 2016-2019 aims to ensure that immigrants have the same access to the housing market as other residents.¹⁰¹

There is no prohibition of discrimination on the basis of disability in relation to access to housing. Chapter VI of the Act on the Affairs of Persons with Disabilities simply stipulates that social services should, as far as possible, be available to enable people with disabilities to live in their own homes, and to those using other housing options, in accordance with their needs and wishes. Municipalities must ensure that suitable housing is available and that the necessary services are provided. Special housing may be operated by NGOs or other private entities in residential areas and as close to general public services as possible. The Regulation on Home Services for Persons with Disabilities No. 369/2016 sets out in greater detail the requirements and system governing housing.¹⁰²

The Act on the Affairs of the Elderly No. 125/1999¹⁰³ aims to guarantee that older people can enjoy a normal home life for as long as possible, but that institutional services are available when necessary. These include care facilities, assisted living and flats designed to meet the needs of the elderly (cf. Article 14 of the Act on the Affairs of the Elderly). There is no explicit prohibition of discrimination on the basis of age.

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

3.2.10.1 Trends and patterns regarding housing segregation for Roma

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

⁹⁹ Ministry for Welfare, *Skýrsla félags- og húsnæðismálaráðherra um stöðu og þróun í málefnum innflytjenda árið 2016*, May 2016, p. 23.

¹⁰⁰ Multicultural Centre, *Statistical Information on Foreign Citizens and Immigrants in Iceland 2016* ['Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016'], September 2016, p. 28.

¹⁰¹ Iceland, *Parliamentary Resolution on a National Action Plan on Immigration 2016-2019* ['Þingsályktun um aðgerðaáætlun í málefnum innflytjenda 2016-2019'], adopted at the 145th Session, 20 September 2016.

¹⁰² Iceland, Regulation on Home Services for People with Disabilities [Reglugerð um þjónustu við fatlað fólk á heimili sínu] No. 369/2016, available here: www.reglugerd.is/interpro/dkm/WebGuard.nsf/key2/1054-2010.

¹⁰³ Iceland, Act on the Affairs of the Elderly [Lög um málefni aldraðra], No. 125/1999, 31 December 1999.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

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

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

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

The Act on Registered Religious Associations No. 108/1999¹⁰⁴ does not contain provisions to this end. Neither does the Act on the Status, Governing and Functioning of the National Church of Iceland No. 78/1997¹⁰⁵. However, although no explicit provision sets this condition, it is clear that to be appointed to a senior post, such as that of bishop, the incumbent would have to be a member of the National Church of Iceland.

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

In Iceland, national legislation does not provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78) as Iceland has no military.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

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

In Iceland, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law, but mention should be made of Article 1 of the Act on Workers' Terms of Employment and Pensions No. 55/1980, which sets out that wages and other conditions negotiated by social partners shall be the minimum conditions for all workers, irrespective of sex, nationality and length of contract, in the relevant occupation within the area covered by the collective agreements. Contracts setting out worse working terms than those specified in the collective agreements shall be void.¹⁰⁶

It should be noted that the European Commission expressed the view that the current rules¹⁰⁷ allowing citizens from the other Nordic countries to vote in municipal elections after a three-year residence, whilst requiring five-years' residence for other EU citizens, is

¹⁰⁴ Iceland, Act on Registered Religious Associations [*Lög um skráð trúfélög og lífsskoðunarfélög*], No. 108/1999, 28 December 1999.

¹⁰⁵ Iceland, Act on the Status, Governing and Functioning of the National Church of Iceland [*Lög um stöðu, stjórn og starfshætti þjóðkirkjunnar*], No. 78/1997, 26 May 1997.

¹⁰⁶ Iceland, Working Terms and Pension Rights Insurance Act [*Lög um starfskjör launafólks og skyldutryggingu lífeyrisréttinda*] No. 55/1980, 9 June 1980.

¹⁰⁷ Iceland, Act on General Elections for Municipal Government [*Lög um kosningar til sveitarstjórna*] No. 5/1998, 6 March 1998.

incompatible with the EU *acquis*.¹⁰⁸ So far, the government has not proposed any changes to this system.

It should be noted that the European Commission against Racism and Intolerance has urged the government to bring integration measures and services for refugees from the asylum system to similar levels as for quota refugees under the new action plan on the integration of non-nationals, especially as concerns access to housing, employment and Icelandic language classes.

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

There is no clear relationship between nationality and race or ethnic origin in the context of indirect discrimination, as indirect discrimination on these grounds has not been defined, or explicitly prohibited in national law. The Supreme Court has decided only one case concerning race and ethnic origin. The court upheld the conviction of a member of a racist organisation for publicly attacking an anonymous group of people in a newspaper interview. He was found to have derided, vilified and denigrated Africans on the basis of their nationality, colour and race. In the interview, the accused expressed his opinions on the superiority of the white race and enumerated various negative qualities he thought characterised Africans. The court ruled that his comments were clearly punishable under Article 233a of the General Penal Code, but did not elaborate on the interplay between nationality and ethnicity.¹⁰⁹

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

a) Benefits for married employees

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

b) Benefits for employees with opposite-sex partners

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

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

a) Exceptions in relation to disability and health/safety

In Iceland, there are no exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive. Article 40(b) of the Act on Health and Safety at Work No. 46/1980¹¹⁰ provides that the responsible minister may ask the

¹⁰⁸ Screening report Iceland, Chapter 23 – Judiciary and fundamental rights, 1 July 2011, available on the DG ENLARGE website: http://ec.europa.eu/enlargement/pdf/iceland/key-documents/screening_report_23_is_internet_en.pdf.

¹⁰⁹ Supreme Court of Iceland, *Prosecutor v. Hlynur Freyr Vigfússon*. Case No. 461/2001, 24 April 2002.

¹¹⁰ Iceland, Act on Health and Safety at Work [*Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum*], No. 46/1980, 28 May 1980.

Board of the Administration of Occupational Health and Safety to adopt rules on the employment of people with physical or mental disabilities for certain jobs, where their disability, disease or age may entail an increased risk of accidents or disease. To date, no regulations have been issued under this article.

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

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

4.7.1 Direct discrimination

In Iceland, there is no general provision against age discrimination. National law provides for exceptions for direct discrimination on the ground of age. The exceptions take the form of generally justified maximum and minimum age limits with reference to the occupation in question, unlike the situation dealt with by the European Court of Justice in Case C-144/04, Mangold.

a) Justification of direct discrimination on the ground of age

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

b) Permitted differences of treatment based on age

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

The general age limit for entry into the labour market is 16 years. However, to sign valid employment contracts, workers must have reached the age of majority, which is 18. The Act on Health and Safety at Work No. 46/1980 stipulates that children under the age of 15 may not be employed, except in exceptional circumstances, e.g. to participate in cultural events, sports or advertising activities.¹¹¹

Domestic law contains various provisions setting out age limits in relation to specific functions and professions. Examples include Article 33 of the Act on the Rights and Duties of State Employees No. 70/1996, which stipulates that, to be appointed or hired as a state employee, a person must have reached the age of 18. Exceptions can be made for internships, cleaning jobs, couriers and certain other roles.¹¹² Employees and public servants (including healthcare professionals) are generally to be relieved of their duties at the end of the month after they turn 70 (cf. Article 43).¹¹³ However, Article 26 of the Act on Healthcare Professionals No. 34/2012 stipulates that healthcare professionals are generally not allowed to run private clinics after the age of 75. Nevertheless, the Directorate of Health can prolong permits on application, initially for three years and then subsequently for one year at a time.

¹¹¹ Iceland, Act on Health and Safety at Work [Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum] No. 46/1980, 28 May 1980, Chapter X.

¹¹² Iceland, Act on the Rights and Duties of State Employees [Lög um réttindi og skyldur starfsmanna ríkisins] No. 70/1996, 11 June 1996, Article 6. See also the Act on Health and Safety at Work [Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum] No. 46/1980, 28 May 1980, which contains special provisions on work by young people.

¹¹³ Iceland, Act on the Rights and Duties of State Employees [Lög um réttindi og skyldur starfsmanna ríkisins] No. 70/1996, 11 June 1996, Article 43.

The Act on the Police No. 90/1996 sets a minimum age limit for entry into the Police Academy (20 years of age). Entry to senior positions (Head of National Police, Director of Police, etc.) is limited to those who have reached the age of 30. Police officers must be relieved of their duties when they reach the age of 65. The Aviation Act No. 60/1998 sets the general retirement age for professional pilots and air traffic controllers at 60, with a possible extension to 65. Similar provisions may be found in other laws governing the rights and duties of specific professions.

Article 40(b) of the Act on Health and Safety at Work No. 46/1980 provides that the Ministry of Welfare may ask the Board of the Administration of Occupational Health and Safety to adopt rules on the employment of people with physical or mental disabilities for certain jobs, where their disability, disease or age may entail an increased risk of accidents or disease. To date, the minister has not issued any regulations under this article. Some employment sectors set physical fitness requirements for workers. These include, inter alia, the Act on the Crews of Fishing Vessels, Coast Guard Vessels, Leisure and other Boats No. 30/2007¹¹⁴ and the Aviation Act No. 60/1998.¹¹⁵ These provisions clearly come into play in relation to older workers.

Rights and services for 'older people' are generally provided for people aged 67 and older. The Act on Social Security No. 100/2007, dealing with pensions, sets the age of 67 (cf. Article 17) (60 for sailors fulfilling special criteria) and the Act on the Affairs of the Elderly No. 125/1999 sets out the services to which people aged 67 and older are entitled. Act No. 113/1994 on Pensions for the Elderly sets out pensions for certain groups of retired people born in or before 1914, aged 70 years or above and for all persons falling under the law who have reached the age of 75.¹¹⁶

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

In Iceland, national law allows occupational pension schemes to fix ages for entitlement to benefits, in line with the option provided for by Article 6(2). Everyone active in the labour market is obliged to be a member of an occupational pension fund from the age of 16 to 70.¹¹⁷ Payments must be received from the funds from the age of 70 at the latest.¹¹⁸

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

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

4.7.3 Minimum and maximum age requirements

In Iceland, minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training are permitted. See 4.7.1 for more examples.

The Act on Health, and Safety at Work No. 46/1980 sets out the general rule that children under the age of 15 or in compulsory education cannot be employed. Exceptions can be made for artistic, cultural or sports events and advertisements, but if the child is under 13, the Administration of Occupational Safety and Health must grant a permit before the child

¹¹⁴ Iceland, Act on the Crews of Fishing Vessels, Coast Guard Vessels, Leisure and other Boats [*Lög um áhafnir íslenskra fiskiskipa, varðskipa, skemmtibáta og annarra skipa*], No. 30/2007, 23 March 2007.

¹¹⁵ Iceland, Aviation Act [*Lög um loftferðir*], No. 60/1998, 10 June 1998.

¹¹⁶ Iceland, Act on Pensions for the Elderly [*Lög um eftirlaun til aldraðra*] No. 113/1994, 28 June 1994, Article 2.

¹¹⁷ Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds [*Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða*] No. 129/1997, 23 December 1997, Article 1, para. 3.

¹¹⁸ Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds [*Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða*] No. 129/1997, 23 December 1997, Article 4, para. 1.

is engaged. Children aged 14 and older can participate in educational/occupational training and they can be hired for simple jobs. Children aged 13 can be hired for simple jobs, such as gardening or service jobs for a limited number of hours a week.

Young people between 16 and 18 can hold jobs suited to their age and maturity and where their health and safety is guaranteed.¹¹⁹ To sign valid employment contracts, workers must have reached the age of majority, which is 18. When children and young people work, their parents or legal guardians sign the work contracts on their behalf. The Act on the Rights and Duties of State Employees No. 70/1996 contains the general rule that, for appointment or hiring as a state employee, a person must have reached the age of 18, the age of majority in Iceland.¹²⁰ Exceptions can be made for internships, cleaning jobs, couriers and certain other roles.¹²¹

There is no fixed retirement age set out in collective agreements or law in the private sector, but public employees are to be relieved of their duties at the end of the month when they turn 70.¹²² They are, however, not barred from working part-time after the age of 70. No requirements relating to minimum and maximum ages are found in relation to training.

4.7.4 Retirement

a) State pension age

In Iceland, there is a state pension age, at which individuals must begin to collect their state pensions. The state pension scheme is regulated by the Act on Social Security No. 100/2007. The pensionable age is 67 (60 for sailors fulfilling special criteria) (cf. Article 17). The scheme provides flat-rate cover for residents, but with income-tested benefits depending on duration of residence. A person must have been resident in Iceland for at least three years between the ages of 16 and 67 to be entitled to receive a state pension. Act No. 113/1994 on Pensions for the Elderly governs pensions for certain groups of retired people born in or before 1914, aged 70 or above and for all persons falling under the law who have reached the age of 75.¹²³

An individual can collect a pension and still work, but the general rule is that their pension will be reduced. A person can also defer their pension rights until the age of 80.¹²⁴

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

¹¹⁹ Iceland, Act on Health, and Safety at Work [*Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum*] No. 46/1980, 28 May 1980, Chapter X addresses the work of children and young people.

¹²⁰ Iceland, Act on Legal Competence [*Lögræðislag*] No. 71/1997, Article 1.

¹²¹ Iceland, Act on the Rights and Duties of State Employees [*Lög um réttindi og skyldur starfsmanna ríkisins*] No. 70/1996, Article 6.

¹²² Iceland, Act on the Rights and Duties of State Employees [*Lög um réttindi og skyldur starfsmanna ríkisins*] No. 70/1996, Article 44.

¹²³ Iceland, Act on Pensions for the Elderly [*Lög um eftirlaun til aldraðra*] No. 113/1994, 28 June 1994, Article 2.

¹²⁴ Iceland, Act on Social Security [*Lög um almannatryggingar*] No. 100/2007, 11 May 2005, Article 17.

b) Occupational pension schemes

In Iceland, there is no fixed age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements, but payments must be received from the funds from the age of 70 at the latest.¹²⁵

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

There is no fixed retirement age set out in collective agreements or law in the private sector, but public employees are to be relieved of their duties at the end of the month when they turn 70.¹²⁶ They are, however, not barred from working part-time after the age of 70 and then collect reduced pensions. It is also permitted to defer collecting the pension up to the age of 72.

c) State-imposed mandatory retirement ages

In Iceland, there is a state-imposed mandatory retirement age for the public sector. There is no fixed retirement age set out in collective agreements or law in the private sector, but public employees are to be relieved of their duties at the end of the month when they turn 70.¹²⁷ They are, however, not barred from working part-time after the age of 70.

The Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997 stipulates that all employees, self-employed people and employers are obliged to ensure their pension rights through membership of an occupational pension fund from the age of 16 to 70. Contributions to pension benefits are determined in special legislation, in collective agreements, in employment contracts or by other comparable means. The general rule is that members begin to receive old-age pensions at the age of 67, but it is possible to start collecting a reduced pension as early as 60, or as late as 70, with additional benefits, depending on the funds. For state employee occupational pension funds, the general pension age is 65. The general rule is that people can work longer, either deferring pension rights until the age of 80 or receiving reduced pensions.

d) Retirement ages imposed by employers

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

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

¹²⁵ Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds [*Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða*] No. 129/1997, 23 December 1997, 11 June 1996, Article 4, para. 1.

¹²⁶ Iceland, Act on the Rights and Duties of State Employees [*Lög um réttindi og skyldur starfsmanna ríkisins*] No. 70/1996, 11 June 1996, Article 44.

¹²⁷ Iceland, Act on the Rights and Duties of State Employees [*Lög um réttindi og skyldur starfsmanna ríkisins*] No. 70/1996, 11 June 1996, Article 44.

- e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment on attaining pensionable age or another age.

- f) Compliance of national law with CJEU case law

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

4.7.5 Redundancy

- a) Age and seniority taken into account for redundancy selection

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

- b) Age taken into account for redundancy compensation

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

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

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

4.9 Any other exceptions

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

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

a) Scope for positive action measures

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

b) Main positive action measures in place at national level

The only positive measures in place, relating to the scope of Directives 2000/43/EC and 2000/78/EC, aim to strengthen the position of people with disabilities in the labour market. The Act on the Affairs of Persons with Disabilities No. 59/1992 aims to ensure equality for people with disabilities and living conditions comparable with those of other citizens, and to provide conditions that enable them to lead a normal life.¹²⁸ The act does not set quotas, but establishes that people with disabilities shall be given assistance in holding jobs in the labour market when necessary. This should be implemented through special personal support in the workplace, as well as through information and instruction for other workers. People with disabilities must also have access to vocational training in private enterprises and institutions, where this can be arranged.¹²⁹ Each region must provide sheltered work in the general labour market for people with disabilities and operate sheltered workplaces. Sheltered workplaces provide remunerated training to enable people with disabilities to participate in the general labour market and they should also provide fixed, remunerated employment for people with disabilities.¹³⁰ Lastly, people with disabilities should be given priority regarding work for the state and municipalities when their qualifications for the post are greater than or equal to those of other applicants.¹³¹

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

It should be noted that the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 sets out positive measures in relation to gender, including gender quotas for public company boards.¹³² On 1 January 2018, the Equal Pay Certification legislation will enter into force, requiring companies and institutions employing 25 or more workers to obtain annual equal pay certification. The purpose is to enforce the current legislation prohibiting gender discrimination and ensure that women and men working for the same employer are paid equal wages and enjoy equal terms of employment for the same jobs or jobs of equal value. It is envisaged that the standard could be used in relation to other discrimination grounds in the future.

¹²⁸ Iceland, Act on the Affairs of Persons with Disabilities [*Lög um málefni fatlaðs fólks*] No. 59/1992, 2 June 1992, Article 1.

¹²⁹ Iceland, Act on the Affairs of Persons with Disabilities [*Lög um málefni fatlaðs fólks*] No. 59/1992, 2 June 1992, Article 29.

¹³⁰ Iceland, Act on the Affairs of Persons with Disabilities [*Lög um málefni fatlaðs fólks*] No. 59/1992, 2 June 1992, Article 30.

¹³¹ Iceland, Act on the Affairs of Persons with Disabilities [*Lög um málefni fatlaðs fólks*] No. 59/1992, 2 June 1992, Article 32.

¹³² Iceland, Act No. 13/2010 amending the Act on Limited Liability Companies No. 2/1995 and the Act on Private Limited Companies No. 138/1994 [*Lög um breytingu á lögum um hlutafélög og lögum um einkahlutafélög (eignarhald, kynjahlutaföll og starfandi stjórnarformenn)*].

6 REMEDIES AND ENFORCEMENT

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

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

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

Judicial procedure

Discrimination could give rise to civil liability, falling under the general rules. The courts may rule that a certain act or omission¹³³ should be remedied and award the victim material damages. Moral damages can only be awarded on the basis of a specific legal provision, e.g. Article 31 of the Gender Equality Act. At the district court level, proceedings are generally initiated by the claimant filing a summons and complaint with the court. The claimant pays court fees and the case is registered. The defendant is served with a summons, which must state the facts of the case and its merits, and set out the claimant's demands and legal arguments. The summons, once issued, cannot be amended. The general principle is that all arguments must be introduced and submitted in the summons. Other arguments are excluded unless the new arguments are accepted by the defendant. Where the defendant appears before the court and holds a defence, his or her claims, facts and legal arguments shall be stated in a separate submission, which is to be filed with supporting evidence within a certain time limit. The case and dossier are then assigned to a judge. As a rule, the parties can continue to gather evidence during the proceedings if this is done without undue delay.

When the gathering of the evidence has been completed by the parties, the judge sets a date for the final hearing (trial) of the case. At the final hearing, parties and witnesses appear and give oral statements of facts. The parties plead the case orally. In civil cases, judgments are to be rendered within one month. Judgments must be in writing and contain a description of the claims and arguments of the parties, the facts, the findings of the court and its ruling. Icelandic courts are generally relatively efficient. District court case proceedings take on average approximately one year. Each party bears its own costs incurred by the litigation, but the losing party must reimburse the other party's counsel's fees. The amount is decided by the judge and, unfortunately, rarely covers the actual costs. Legal aid is available from the state for the very poor and in cases where the litigation has significant general importance or concerns significant matters relating to the employment, social status or other personal issues regarding the person in question.

Administrative procedures

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

¹³³ See, e.g. Supreme Court of Iceland, *Berglind Stefánsdóttir and the Association of the Deaf v. State Broadcasting Services*, Case No. 151/1999, 6 May 1999, where the court held, inter alia, with reference to the duty of the State Broadcasting Service to broadcast election debates set out in the Broadcasting Act, and Article 65 of the Constitution, that the State Broadcasting Service was to ensure broadcasting of such debates in sign language.

The Act on Rights Advocates for Disabled People No. 88/2011¹³⁴ stipulates that an advocate of the rights of people with disabilities shall be appointed for each service region. The advocate is charged with monitoring the situation of people with disabilities in his or her area and assists individuals when needed, e.g. in relation to personal finances, rights and services. Violations of the rights of a disabled person should be brought to the attention of the advocate, who can investigate the case in cooperation with the victim. Where needed, the advocate may ask the perpetrator to remedy the situation within a certain time limit. If the advocate's suggestions for improvements are not followed, the advocate can in some instances bring a complaint to the administrative Complaints Committee on Social Affairs and Housing or to the Ministry of Welfare. The Gender Equality Complaints Committee, a specialised committee under the Ministry of Welfare, addresses complaints alleging violations of the Gender Equality Act. In some instances, decisions by local authorities may be referred to the relevant ministry. Lastly, the courts are competent to review any decision taken by the executive.

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

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

Criminal proceedings

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

b) Barriers and other deterrents faced by litigants seeking redress

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

¹³⁴ Iceland, Act on Rights Advocates for Disabled People [*Lög um réttindagæslu fyrir fatlað fólk*], No. 88/2011, 23 June 2011.

- c) Number of discrimination cases brought to justice

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

- d) Registration of discrimination cases by national courts

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

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

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

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

Article 70 of the Constitution sets out the principle that everyone shall, for the determination of his or her rights and obligations, be entitled to the resolution of an independent and impartial court of law. This right is also guaranteed through Article 6(1) of the Act on the European Convention on Human Rights No. 62/1994.¹³⁵ According to the Act on Civil Procedure No. 91/1991, any individual, association or institution, which bears rights or duties under national law, can be party to a court case.¹³⁶ The general principle concerning legal standing is that for an application to be admissible, the claimant must satisfy the requirement of having personal, direct interest, that is, a 'legally protected interest' (*lögvarðir hagsmunir*). This rule is founded on Article 24(1) of the Act on Civil Procedure, setting out that the competence of courts is limited to issues governed by the law and Article 25(1), which states that courts do not resolve legal questions.

An exception to the rule on direct 'legally protected interest' is provided for in Article 25(3) of the Act on Civil Procedure No. 91/1991, which allows associations to apply to the courts for the recognition of certain rights of their members or to relieve their members of certain duties, if safeguarding the interests at stake forms part of the association's mandate.¹³⁷ Three conditions are thus set: that the interest at stake forms part of the association's mandate, that the case concerns the legally protected interests of the majority of the association's members, and that the case concerns the recognition of certain rights or the relief of duties. An example is a landmark case brought by the Icelandic Federation of People with Disabilities against the Icelandic State, for the recognition of the fact that it was unlawful and in breach of the Constitution to reduce social security payments to married people with disabilities based on their spouse's income, as it did not guarantee the minimum rights set out in Article 76 (the law guarantees everyone the assistance that they require in the case of sickness, disability, infirmity by reason of old age, unemployment or similar circumstances) and thus prevented those affected from fully enjoying their rights as set out in Article 65 (equality provision). The Supreme Court found in favour of the Federation, and the legislation on social security was amended to reflect the judgment.¹³⁸

Labour unions or umbrella organisations have standing on behalf of their members in labour disputes, and enterprises, institutions and non-governmental organisations can — either in their own name or on behalf of their members who consider they are victims of

¹³⁵ Iceland, Act on the European Convention on Human Rights [*Lög um mannréttindasáttmála Evrópu*], No. 62/1994, 19 May 1994.

¹³⁶ Iceland, Act on Civil Procedure [*Lög um meðferð einkamála*] No. 91/1991, 26 March 1991, Article 16(1).

¹³⁷ Iceland, Act on Civil Procedure [*Lög um meðferð einkamála*] No. 91/1991, 26 March 1991, Article 25(3).

¹³⁸ Supreme Court of Iceland, *Icelandic Federation of People with Disabilities v. Republic of Iceland*, Case No. 125/2000, 19 December 2000.

gender discrimination — submit a case to the Gender Equality Complaints Committee.¹³⁹ In practice, however, individuals bring cases to the committee. No complaints have been lodged by NGOs or associations on behalf of victims since the current gender equality law came into force in 2008.

No explicit provisions have been adopted concerning membership, e.g. on permanency or the number of members generally.¹⁴⁰ No rules stipulate that non-governmental organisations need to be registered, but they can be included in the Directorate of Internal Revenue Company Directory. This is, however, not a precondition for engaging in legal proceedings. Legitimate interest is not defined in legal statutes; it is for the courts to establish whether a 'legally protected interest' is at stake.¹⁴¹

b) Engaging in support of victims of discrimination

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

According to the Act on Civil Procedure No. 91/1991, any individual, association or institution, which bears rights or duties under national law, can be party to a court case.¹⁴² Associations may apply to the courts for the recognition of certain rights of their members or to relieve their members of certain duties, if safeguarding the interests at stake forms part of the association's mandate.¹⁴³ However, there are no explicit provisions setting out the right of organisations to act in support of victims in discrimination cases. Judicial interpretation is required on this issue but it is clear that, in any case, the victim would have to be a member of the association, which would have to have a 'legally protected interest', and a case could only be brought in order to recognise certain rights of the member or to relieve the member of certain duties.

c) Actio popularis

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

For actio popularis to be allowed, it has to be specially provided for by law. Examples include the Act on Municipal Elections No. 5/1998¹⁴⁴ that provides for complaints concerning elections, and the Act on the Review Committee on Environmental Issues and Resources No. 130/2011¹⁴⁵ which provides for actio popularis in relation to certain administrative decisions for environmental and outdoor activity organisations with at least 30 members.

¹³⁹ Iceland, Act on Equal Status and Equal Rights of Women and Men [*Lög um jafna stöðu og jafnan rétt kvenna og karla*] No. 10/2008, 5 March 2008, Article 6.

¹⁴⁰ See, however, the discussion on *actio popularis* under c), where certain criteria on membership and setup apply.

¹⁴¹ See, Supreme Court of Iceland, *Icelandic Federation of People with Disabilities v. Republic of Iceland*, Case No. 125/2000, 19 December 2000 and Supreme Court of Iceland, *Atli Jónsson et al. and the Icelandic Nature Conservation Society v. Icelandic State*, Case No. 231/2002, 12 June 2002, where a nature conservation organisation was not deemed to have a 'legally protected interest' in a case concerning an administrative decision permitting a large damming project, simply with reference to their aim of nature conservation.

¹⁴² Iceland, Act on Civil Procedure [*Lög um meðferð einkamála*] No. 91/1991, 26 March 1991, Article 16(1).

¹⁴³ Iceland, Act on Civil Procedure [*Lög um meðferð einkamála*] No. 91/1991, 26 March 1991, Article 25(3). See e.g. Supreme Court of Iceland, *Icelandic Federation of People with Disabilities v. Republic of Iceland*, Case No. 125/2000, 19 December 2000.

¹⁴⁴ Iceland, Act on Municipal Elections [*Lög um kosningar til sveitarstjórna*], No. 5/1998, 6 March 1998.

¹⁴⁵ Iceland, Act on the Review Committee on Environmental Issues and Resources [*Lög um úrskurðarnefnd umhverfis- og auðlindamála*], No. 130/2011, 28 September 2011.

d) Class action

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

Amendments made to the Act on Civil Procedure in 2010 provide for a form of class action. Three or more people who have claims against a party stemming from the same incident, situation, etc. can establish an 'action association' (*málsóknarfélag*) which can bring the case on the claimants' behalf.¹⁴⁶

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

In Iceland, national law neither requires nor permits a shift of the burden of proof from the complainant to the respondent.

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

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

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

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

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination — in law and in practice

Directives 2000/43/EC and 2000/78/EC have not been transposed. However, discrimination could give rise to civil liability, falling under the general rules. The courts may rule that a certain act or omission¹⁴⁷ should be remedied and award the victim material damages. Moral damages can only be awarded on the basis of a specific legal provision, e.g. Article 31 of the Act on Equal Status and Equal Rights of Women and Men No. 10/2008.

Complaints concerning violations of the Act on the Affairs of People with Disabilities No. 59/1992 and the Act on the Affairs of the Elderly No. 125/1999 in relation to services can

¹⁴⁶ Iceland, Act on Civil Procedure [*Lög um meðferð einkamála*] No. 19/1991, 26 March 1991, Article 19a.

¹⁴⁷ See, e.g. Supreme Court of Iceland, *Berglind Stefánsdóttir and the Association of the Deaf v. State Broadcasting Services*, Case No. 151/1999, 6 May 1999, where the court held, inter alia, with reference to the duty of the State Broadcasting Service to broadcast election debates set out in the Broadcasting Act, and Article 65 of the Constitution, that the State Broadcasting Service was to ensure broadcasting of such debates in sign language.

be brought to the Complaints Committee on Social Affairs and Housing or to the Ministry of Welfare. There are no prescribed sanctions; the committee simply decides on whether the administrative decision in question is in accordance with the law and if not, asks the institution or body to provide the service in accordance with the relevant law.

Violations of the General Penal Code provisions on hate speech and discrimination in services are subject to fines or imprisonment of up to two and a half years and six months, respectively. Violations of prohibition of public insults against the beliefs or religion of lawfully established religious communities are subject to fines or imprisonment of up to three months. Fines are determined based on the guilty party's income, assets, financial status and commitments, and other factors that may influence their ability to pay, as well as the financial gain or savings that the criminal act entailed or that had been envisaged.¹⁴⁸ The Supreme Court has convicted three people of crimes under Article 233a (none under Articles 180 or 125). In the first case, the youth and clean criminal record of the accused, the fact that the derogatory statements were made in the name of an organisation and that he did not initiate the media interview where the statements were made, was taken into account when the punishment of a fine of ISK 100 000 (approximately EUR 820) or six days in prison was issued.¹⁴⁹ In the other two cases, the perpetrators were ordered to pay fines of ISK 100 000 (approximately EUR 820).

b) Ceiling and amount of compensation

Directives 2000/43/EC and 2000/78/EC have not been transposed and no explicit provisions set out the compensation for discrimination. In the Icelandic system, there is no ceiling on the maximum amounts of damages awarded – although rules on the amounts of damages because of disability are fixed – as the aim of damages is to compensate the victim for all material damage suffered.¹⁵⁰ The Icelandic legal system does not issue punitive damages. The ordinary rules on damages would apply in cases concerning prohibited discrimination. The general principle concerning damages is that a person is liable for damages if the following conditions apply: the act is illegal and the damage done is a probable consequence of his or her actions and harms interests protected by rules on damages. Furthermore, it is also a condition that subjective mitigating factors, such as youth or limited mental capacity, do not apply.

In determining damages, the judge can consider factors such as the claimant's contributory fault and failure to mitigate loss. Ordinary damages can be reduced if justified by the situation of the respondent or in other extraordinary circumstances. In such a case, the extent and nature of the damages, the situation of the victim, the interests of the victim, insurance and other relevant factors should be taken into account.¹⁵¹

The Act on Payment from the State Treasury of Damages to Victims of Crime No. 69/1995 stipulates that the State Treasury will pay damages incurred under the General Penal Code, with some exceptions.¹⁵² The act does not apply to moral damages under Article 233a of the General Penal Code. In criminal proceedings based on Articles 233a and 180 of the General Penal Code, in theory, the court may also handle claims for damages.

¹⁴⁸ Iceland, General Penal Code [*Almenn hegningarlög*] No. 19/1940, 12 February 1940, Articles 180, 233a and 51.

¹⁴⁹ Supreme Court of Iceland, *Prosecutor v. Hlynur Freyr Vigfússon*, Case No. 461/2001, 4 April 2002.

¹⁵⁰ See e.g. Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. University of Iceland*, Case No. 177/1998, 4 February 1999, where the court ruled that the failure on the part of the University of Iceland to take adequate special measures to ensure that a student with disabilities could study there violated the legislation on the rights of persons with disabilities and Article 65 of the Constitution. The student was awarded compensation.

¹⁵¹ Iceland, Act on Damages [*Skaðabótalög*] No. 50/1993, 19 May 1993, Article 24.

¹⁵² Act on Payment from the State Treasury of Damages to Victims of Crime [*Lög um greiðslu ríkissjóðs á bóttum til þolenda afbrota*] No. 69/1995, 10 March 1995, Article 1.

Anyone who, deliberately or through negligence, violates the Gender Equality Act shall be liable to pay compensation according to the ordinary rules. Furthermore, the party in question may be sentenced to pay the affected party compensation for non-pecuniary loss, if appropriate, in addition to compensation for financial loss.¹⁵³ The majority of cases brought on the basis of the Gender Equality Act concern appointments. The Supreme Court has established that if an appointment procedure is not in accordance with the law and is conducted in an inconsiderate manner, this may give rise to a claim for moral damages.¹⁵⁴

c) Assessment of the sanctions

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

¹⁵³ Act on Equal Status and Equal Rights of Women and Men [*Lög um jafna stöðu og jafnan rétt kvenna og karla*] No. 10/2008, 6 March 2008, Article 31.

¹⁵⁴ See e.g. Supreme Court of Iceland, Judgments H1997:1544, H1999:3985, H2000:869 and Judgment of 18 March 2004 (Case No. 275/2003).

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

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

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

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

It should be noted that the European Commission against Racism and Intolerance has strongly recommended that Iceland establish a specialised body to combat racism and discrimination on the grounds of race, colour, language, religion, nationality or national or ethnic origin, which could form part of a body with wider objectives in the field of human rights generally.¹⁵⁵ Two Council of Europe Commissioners for Human Rights have also urged Iceland to adopt comprehensive equal treatment legislation and set up an effective and independent national equality body to promote its implementation.¹⁵⁶ Similarly, United Nations human rights bodies such as the United Nations Committee on the Elimination of All Forms of Discrimination against Women, the Committee on the Elimination of Racial Discrimination and the Human Rights Committee have urged Iceland to adopt anti-discrimination legislation and to formally establish a national human rights institution to, inter alia, combat racism and provide a complaints mechanism.¹⁵⁷

In July 2016, the Ministry of the Interior opened a consultation on a draft bill on the establishment of an Icelandic NHRI on its website but this work petered out. In April 2017, the Minister of Social Affairs and Equality presented two draft bills on equal treatment. The bills proposed that the Centre for Gender Equality would be charged with implementation and monitoring of the legislation and that the Gender Equality Complaints Committee would receive complaints. The bills were presented in Parliament and opened for consultation by stakeholders. Unfortunately, the government collapsed before the bills could progress. The bills will be presented again in 2018.

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

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin. There is no strong political pressure for the establishment of such

¹⁵⁵ Council of Europe, European Commission against Racism and Intolerance, *ECRI Report on Iceland*, from 28 February 2017. Available at: http://hudoc.ecri.coe.int/eng#_Toc469293161.

¹⁵⁶ Council of Europe: press release by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Iceland (8-10 June 2016). Available at: www.coe.int/en/web/commissioner/-/iceland-ratify-the-disabilities-convention-and-strengthen-the-human-rights-protection-system and press release by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Iceland (7-9 January 2012). Available at: www.coe.int/web/commissioner/country-report/iceland.

¹⁵⁷ United Nations, Committee on the Elimination of All Forms of Discrimination against Women, *Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Iceland*, CEDAW/C/ISL/CO/7-8, 2016, Committee on the Elimination of Racial Discrimination, *Concluding Observations; Iceland*, CERD/C/ISL/CO/19-20, 2010 and *Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, Iceland*, CCPR/C/ISL/CO/5.

a body as, if that had been the case, the work on anti-discrimination legislation would not have petered out in Parliament for the last few years. There has not been any significant popular debate on this issue.

c) Institutional architecture

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

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

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

e) Grounds covered by the designated body/bodies

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

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

In Iceland, there is no designated body with the competence to provide independent assistance to victims, or to conduct independent surveys and publish independent reports, or to issue independent recommendations on discrimination issues.

g) Legal standing of the designated body/bodies

In Iceland, there is no designated body for the promotion of equal treatment irrespective of racial or ethnic origin.

h) Quasi-judicial competences

In Iceland, there is no designated body for the promotion of equal treatment irrespective of racial or ethnic origin.

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

In Iceland, there is no designated body for the promotion of equal treatment irrespective of racial or ethnic origin.

j) Planning

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

k) Stakeholder engagement

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

l) Accessibility

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

m) Roma and Travellers

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

8 IMPLEMENTATION ISSUES

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

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

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

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

a) Mechanisms

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

b) Rules contrary to the principle of equality

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

9 COORDINATION AT NATIONAL LEVEL

The Ministry of Social Affairs and Equality is responsible for coordinating issues regarding anti-discrimination in relation to the grounds covered by Directives 2000/43/EC and 2000/78/EC. There is currently no anti-discrimination action plan in force and work on a comprehensive anti-discrimination law has been underway for several years. In April 2017, the Minister of Social Affairs and Equality presented two draft bills on equal treatment; one in relation to race and ethnic origin, and the other on equal treatment in the workplace covering race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics. The bills proposed that the Centre for Gender Equality would be charged with implementation and monitoring of the legislation and that the Gender Equality Complaints Committee would receive complaints. The bills were presented in Parliament and opened for consultation by stakeholders. Unfortunately, the government collapsed before the bills could progress. The bills will be presented again in 2018.

Although the directives have not been transposed into national law, Iceland has adopted various measures aimed at improving the status of the disadvantaged groups listed in the directives. Although a specific anti-racism action plan has not been adopted, the National Action Plan on Immigration 2016-2019, adopted through a parliamentary resolution on 20 September 2016, contains some measures to combat racism. One action listed is to increase research into violence against immigrants and violence in immigrant communities. The aim is to gather data that can serve as a basis for measures to combat violence, which in this context includes hate speech and harassment based on racial or ethnic origin.

Regular studies will also be carried out on the views of immigrants and Icelanders and these will be used as the basis for awareness-raising, to promote multiculturalism, combat prejudice and highlight the positive contribution of immigrants to Icelandic society. In addition, to improve access for immigrants to public services, public employees will receive multicultural-awareness training.¹⁵⁸ A special fund also exists to support research and development projects related to immigration issues. Furthermore, it has been stated that preparations are under way for the ratification of the Framework Convention for the Protection of National Minorities.

Local authorities are placing increased emphasis on immigration issues. The Icelandic Association of Local Authorities (all Icelandic municipalities are members) has adopted a policy on immigration and many municipalities have adopted individual policies based on this document.¹⁵⁹ Such policies aim to ensure that the interests of immigrants are guaranteed and that they know their rights and obligations as citizens and have easy access to municipal services. The key objectives are for immigrants to enjoy the same status as other residents and to participate fully in the community in each municipality.

Mention should also be made of the establishment of the Immigration and Asylum Appeals Board. Its objective includes ensuring an independent review of all the decisions of the Directorate of Immigration taken on the basis of the Act on Foreign Nationals No. 96/2002.¹⁶⁰ The board started receiving cases on 1 January 2015. In early November 2017, it had published 650 decisions, mainly dealing with asylum decisions made by the Directorate of Immigration.

The Act on the Affairs of Persons with Disabilities No. 59/1992 was amended in 2011 to, inter alia, transfer the responsibility for matters relating to people with disabilities from the state to local authorities on 1 January 2012. The Minister of Social Affairs and Equality is

¹⁵⁸ Icelandic, *Parliamentary Resolution on a National Action Plan on Immigration 2016-2019* [Þingsályktun um aðgerðaáætlun í málefnum innflytjenda 2016-2019], adopted at the 145th Session, 20 September 2016.

¹⁵⁹ *Stefnumótun í málefnum innflytjenda*, 2009. Available on the website of the Icelandic Association of Local Authorities: www.samband.is/media/stefnumotun-sambandsins/Stefnumotun_innflytjendur.pdf.

¹⁶⁰ Iceland, Act on Foreign Nationals No. 80/2016, Article 6.

responsible for policy-making in cooperation with the Icelandic Association of Local Authorities. The national interest associations of people with disabilities must be consulted regarding all decisions and policies that concern people with disabilities. In conjunction with the amendments to the Act on the Affairs of Persons with Disabilities, the Act on Rights Advocates for Persons with Disabilities No. 88/2011 was adopted. The law provides measures to safeguard the rights of people with disabilities and a large-scale pilot project on the implementation of personal assistance services is, in 2017, still underway.

In May 2017, the Parliamentary resolution on a new Plan of Action on Disabled Persons' Affairs 2017-2021 was adopted.¹⁶¹ The Plan stipulates that respect for diversity shall be a founding principle of Icelandic society and that disability is one facet of diversity. The human rights of people with disabilities will be strengthened, protected and guaranteed on an equal basis with others and disabled people enabled to live independently, on their own terms. People with disabilities should enjoy fundamental freedoms and their human dignity, autonomy and independence must be respected. The provisions of the CRPD will be transposed into all legislation and policy so that people with disabilities, young and old, can live an independent life with dignity. Human rights and the prohibition of discrimination will be placed at the forefront so that rights and freedoms can be enjoyed and people with disabilities will receive support for this purpose. People with disabilities will be able to make use of all public measures, e.g. in the field of housing, education, social security and in the labour market. The aims of the Plan are to:

1. ensure equal access to society;
2. increase the labour market participation of people with disabilities;
3. improve the general health of people with disabilities;
4. foster positive attitudes towards disability issues;
5. ensure equal educational opportunities for people with disabilities;
6. guarantee equal human rights, including the right to live independently;
7. ensure that services for people with disabilities foster independence and equal participation in society.

The plan sets out several actions in different fields aimed at ensuring full participation by, and equality for, people with disabilities. It includes measures to support universal design and accessibility to buildings, information and public transport. Measures to increase employment participation include studies to assess the current situation, increased cooperation with employers, counselling and support to help young people enter the labour market after graduation, individual support and the provision of aids in the workplace. Furthermore, in the field of education, the draft plan sets out several measures aimed at facilitating access to education and broadening educational opportunities for people with disabilities.

In September 2016, the United Nations Convention on the Rights of Persons with Disabilities was ratified. Several legislative acts have already been revised in order to prepare for the ratification but listed outstanding legislative amendments include the adoption of anti-discrimination legislation in accordance with Article 5 of the CRPD, Directive 2000/43/EC and 2000/78/EC and the establishment of a national human rights institution (NHRI) to, inter alia, monitor the implementation of the CRPD as per Article 33 and to comply with the recommendations of international human rights monitoring bodies. A draft bill on the establishment of an Icelandic NHRI was presented for consultation but this work has petered out.

For some time, preparations were underway to transfer responsibility for the affairs of elderly people from the state to local authorities, but the complexities arising from the

¹⁶¹ Icelandic Parliament, Resolution on a Plan of Action on Disabled Persons' Affairs 2017-2021 [*Þingsályktun um stefnu og framkvæmdaáætlun í málefnum fatlaðs fólks fyrir árin 2017-2021*]. Available on the website of the Parliament: www.althingi.is/altext/146/s/1000.html.

implementation of services for disabled people and inadequate funding from the state have undermined these efforts.

Lastly, the adoption of the Act on the Judicial Status of Transgender Persons No. 57/2012¹⁶² in 2012 was a welcome development, and in 2014 the General Penal Code No. 19/1940 was amended to include gender identity as a ground for discrimination. Article 233a stipulates that any person who, by mockery, slander, insult, threat or other means, publicly attacks a person or group of persons on the grounds of their nationality, colour, race, religion, sexual orientation or *gender identity* shall be liable to a fine or imprisonment for a term not exceeding two years. Similarly, Article 180 of the General Penal Code No. 19/1940 provides that denying a person service, or access to any public area or place intended for general public use, on account of that person's nationality, colour, race, religion, sexual orientation or *gender identity* is punishable by fines or imprisonment of up to six months.¹⁶³

¹⁶² Iceland, Act on the Judicial Status of Transgender Persons [*Lög um réttarstöðu einkstaklinga með kynáttunarvanda*], No. 57/2012, 25 June 2012.

¹⁶³ Iceland, Act amending the General Penal Code No. 19/1940, as amended (discrimination based on gender identity and protocol to the European Convention on Human Rights on cybercrime) [*Almenn hegningarlög (kynvitund)*] No. 13/2014, 10 February 2014. Available at: www.althingi.is/altext/stjt/2014.013.html.

10 CURRENT BEST PRACTICES

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

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

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

The Labour Directorate estimates that at the end of 2017 foreign citizens in Iceland numbered approximately 38 000 or 11 % all inhabitants, meaning that the number of immigrants increased by 25 % in 2017. This percentage has never been higher.¹⁶⁴ Significantly more men than women have moved to the country in the past three years. Poles are the most numerous, representing 46 % of foreign citizens on 1 January 2017. Lithuanians accounted for 8 %, Germans approximately 4 % and a small number of people of various nationalities compose the rest.¹⁶⁵

The number of children of immigrant origin has increased steadily from 2004, in both kindergartens and compulsory education. In 2015, 2 435 kindergarten pupils had a mother tongue other than Icelandic, as did 3 543 compulsory education pupils. Recent studies show that, despite the efforts in the education system, limited reading literacy of Icelandic hampers the studies of many of these children and the low number of young people of immigrant origin graduating from high school is a serious problem.¹⁶⁶

In 2016, 18.7 % of children in need of assistance from the Child Protection Services were of immigrant origin and 53 % of the women staying in the Shelter for Victims of Domestic Violence were foreigners. A total of 31 % of women seeking general assistance at the shelter were foreigners; 14 % from EEA countries and 17 % from third countries. The fact that a disproportionate number of immigrant women seek assistance does not necessarily mean that violence against them is more common than towards Icelandic women, rather this may reflect the fact that they have weaker support networks so they are forced to seek assistance from the shelter instead of from friends or family.¹⁶⁷

In general, the government has concluded that Icelandic society is becoming increasingly diverse and that welfare services need to adapt to address this new reality.¹⁶⁸ It is also notable that, on average, the income of immigrants is lower than that of the general population and only a small minority hold jobs where their education is fully utilised; the majority work in construction, tourism, cleaning and care services. In 2017, of those with university degrees, 2/3 worked in low-skilled jobs, e.g. shop work and services; only 27 % did specialised or office work. Similarly, only 25 % of unemployed foreign nationals had previously held jobs in Iceland in the field they had trained for. Unemployment among foreign nationals is higher than for Icelandic born citizens. The Directorate of Labour estimated the rate at 4.5 % in 2017 compared to 2.2 % for the total population. Poles are the most afflicted, with 6 % on average in 2017. However, long-term unemployment among immigrants is the same as for locals.¹⁶⁹

¹⁶⁴ Iceland Statistical Agency, *Press Release on Population*, 16 June 2017. Available at: <https://hagstofa.is/utgafur/frettasafn/mannfjoldi/mannfjoldi-eftir-bakgrunni-2017>.

¹⁶⁵ Directorate of Labour, *Foreign Citizens in the Icelandic Labour Market 2012-2017*, ['*Erlendir ríkisborgarar á íslenskum vinnumarkaði 2012-2017*'], January 2018, p. 2.

¹⁶⁶ Multicultural Centre, *Statistical Information on Foreign Citizens and Immigrants in Iceland 2016* ['*Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016*'], September 2016, p. 20.

¹⁶⁷ Multicultural Centre, *Statistical Information on Foreign Citizens and Immigrants in Iceland 2016* ['*Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016*'], September 2016, p. 28.

¹⁶⁸ *Aðgerðir til að vinna gegn fátækt; tillögur byggðar á skýrslunni Farsæld; Baráttan gegn fátækt á Íslandi*. (2013). Reykjavík: Velferðarráðuneytið.

¹⁶⁹ Directorate of Labour, *Foreign Citizens in the Icelandic Labour Market 2012-2017*, ['*Erlendir ríkisborgarar á íslenskum vinnumarkaði 2012-2017*'], January 2018, p. 4.

A study carried out by the Icelandic Red Cross in 2014, reveals that, of those polled, 44 % thought that people of immigrant origin were the group that suffers most prejudice in Iceland.¹⁷⁰ Another 2014 study, carried out by the Multicultural Centre, reveals that one in five immigrants experience negative attitudes on a regular basis because of their origin. Of those participating in the study, 77 % were of the view that they had experienced negative attitudes because of their limited knowledge of Icelandic and 54 % thought that negative attitudes towards them were based on their origin or nationality. It is an issue of concern that 14 % had experienced negative attitudes when interacting with staff of nursery schools and 19 % when interacting with primary school staff. As part of the study, public officials were also polled; 55 % of state officials participating in the study thought that immigrants are sometimes or often met with prejudice in their dealings with public bodies and 43 % of municipal employees were of this view. When it comes to housing, 31 % of the respondents, or someone close to them, had experienced negative attitudes when trying to rent accommodation.¹⁷¹ On a positive note, the government's National Action Plan on Immigration 2016-2019 sets out numerous actions to combat prejudice and discrimination against immigrants.¹⁷²

Similarly, in 2014 the Centre for Gender Equality conducted a study on the attitudes of heads of companies/bodies with more than 25 employees towards equality and discrimination in the Icelandic labour market and in their respective enterprises in 2013. The study reveals that 90.6 % of men thought that their workplace was very equal and 74.7 % of women were of this view. However, when asked about discrimination in the labour market in general, 86 % thought that people were discriminated against on one of the following grounds: gender (63.8 %), national origin (55.1 %), age (44.1 %), disability (38.6 %), race (38.8 %), sexual orientation (22.4 %) and religion/belief (20.5 %).¹⁷³

A comprehensive study from 2009 reveals similar trends: 56.9 % of Icelanders thought discrimination and/or harassment based on race or ethnic origin was common, 41.3 % discrimination based on sexual orientation, 35.9 % discrimination based on disability, 25.4 % age discrimination (older than 60), 25.3 % gender discrimination and 23.4 % discrimination based on religion or belief.¹⁷⁴ A Eurobarometer study published in 2011 further demonstrates that Icelanders have witnessed or experienced more discrimination because of older age than the EU average in the workplace, in relation to access to education and training, and in their leisure time.¹⁷⁵

According to a 2014 study, half of Icelandic people with disabilities live in poverty and 50 % of people with disabilities do not participate in the labour market or activities outside the home during the day. Only 20 % receive services from the municipalities; 78 % say they do not receive services, whilst 40 % find that they need services.¹⁷⁶ Another study from 2010 demonstrates that 44 % of respondents experienced some (and 26 % severe) social exclusion. Of the respondents, 45 % experienced prejudice because of their disability and 76 % experienced prejudice against people with disabilities in society in general.¹⁷⁷

¹⁷⁰ *Hvar þrengir að? Könnun á hvaða hópar í samfélaginu eigi helst undir högg að sækja*, (2014). Reykjavík: Rauði kross Íslands.

¹⁷¹ Arnardóttir, E. and Haraldsson, R. H. (2014). *Uppruni og fjölþætt mismunur*, Ísafjörður: Fjölmennningarsetur.

¹⁷² Iceland, *Parliamentary Resolution on a National Action Plan on Immigration 2016-2019* [þingsályktun um aðgerðaáætlun í málefnum innflytjenda 2016-2019], adopted at the 145th Session, 20 September 2016.

¹⁷³ Einarsdóttir, M. (2014). *Jafnrétti á vinnustöðum á Íslandi; Rannsókn á viðhorfi stjórnenda fyrirtækja til jafnréttis og mismununar*. Akureyri: Rannsóknarsetur Háskólans á Akureyri.

¹⁷⁴ Capacent Gallup (2009). *Könnun um viðhorf til mismununar*. Reykjavík: Velferðarráðuneytið and Mannréttindaskrifstofa Íslands.

¹⁷⁵ *Virkni aldraðra* (2011). Eurobarometer study, accessible on the website of the Ministry of the Interior: www.velferðarraduneyti.is/media/frettatengt2012/Eurobarometer-active-ageing-2012.pdf, p.2.

¹⁷⁶ *Fatlað fólk og öryrkjar sem íbúar sveitarfélaga* (2014). Study carried out for the Icelandic Association of Disabled People. Reykjavík: Háskóli Íslands.

¹⁷⁷ Hannesdóttir, G., Thorlacius, S. and Ólafsson, S. *Örorka og virk velferðarstefna* (2010). Reykjavík: Háskóli Íslands.

The Communication Centre for the Deaf and Hard of Hearing — a public body under the auspices of the Ministry of Education, Science and Culture — provides sign language interpreting services for deaf people. Interpreting services relating to all public services should be provided where needed, free of charge. In the private sphere, e.g. in relation to employment issues, participation in courses or residents' association meetings, fees for interpreting services can be covered by a special state fund. It should be noted that in some years not all requests for interpreting have been fulfilled as sufficient funds have not been available. It should also be stressed that disability benefits and old-age pensions are significantly lower than the minimum income considered necessary to cover normal living costs as calculated by the Ministry of Welfare.

In 2013, the Icelandic Muslim Association was finally allocated land to build a mosque by the Reykjavík City Council and is now raising funds for the construction. The association first applied in 2000. This is a positive development, but indications of growing anti-Islamic sentiment are an issue of concern. In November 2013, a group of people placed pig heads and a bloodied Koran on the plot designated for the mosque. One individual was identified, but the investigation of the case concluded without prosecution.¹⁷⁸ More disconcertingly, in the municipal elections of 2014, the Progressive Party gained eight percentage points and two seats on the Reykjavík Municipal City Council, campaigning on, inter alia, an anti-Islamic platform and stating that the allocation of land for the mosque should be withdrawn. On a positive note, the two city councillors have not actively promoted racist or anti-Islamic issues since taking office.

Religious communities have also consistently complained that the differentiated payments to registered religious organisations, on the one hand, and to the National Church of Iceland (the state church), on the other, constitute unlawful discrimination. Ásatrúarfélagið, the Norse pagan organisation, brought a court case arguing that Articles 62 and 65 of the Constitution should be interpreted together to mean that under the constitutional equality provision, it was unlawful to discriminate between religious organisations in legislation regarding financial support to them. The Supreme Court ruled that as the functions of Ásatrúarfélagið and its duties towards the community (cf. the Act on Registered Religious Associations No. 108/1999) were not comparable with those of the legally-prescribed functions and obligations of the National Church of Iceland, funding from the State Treasury to the National Church to an extent over and above that received by other religious communities did not constitute a violation of the rule of equality set out in Article 65 of the Constitution. In short, the court ruled that state support and protection for the National Church of Iceland, according to Article 62 of the Constitution, does not constitute a violation of the freedom of religion and the principle of equality.¹⁷⁹

The reality described above is not reflected in the current legislation, and no cases alleging discrimination based on race, religion, belief or age were heard in 2017.

On a positive note, although sexual orientation is not a specially protected ground in the field of employment, Icelandic legislation setting out the rights of homosexual people is one of the world's most progressive: all marriages have the same legal status, same-sex couples can adopt children and lesbians are able to take advantage of artificial insemination. One of the last remaining hurdles was the opposition of the National Church of Iceland (the Lutheran state church) to conducting the same religious ceremonies for heterosexual and same-sex marriages. Priests who are against gay marriage were allowed, referring to their religious conscience, to refuse to conduct marriage ceremonies for same-sex couples. According to the Bishop of Iceland, only a very small minority of priests hold such views and in 2015 the National Church Congress adopted a resolution which bars priests from refusing to conduct same-sex marriage ceremonies. In general, attitudes towards LGBTQIA people are very liberal and Gay Pride celebrations are a time of family

¹⁷⁸ As there was no prosecution, no case can be cited.

¹⁷⁹ Supreme Court of Iceland, *Ásatrúarfélagið v. the Icelandic State*, Case No. 109/2007, 25 October 2007.

festivities in Reykjavík. Despite liberal attitudes, a small minority still holds traditional views. Two ground-breaking cases on hate speech towards homosexual people were decided by the Supreme Court in 2017— see 12.2 *Case law* below. This is a positive development as hateful comments have until now been taken lightly. The convictions stress that hate speech is a crime for which perpetrators risk prosecution.

11.2 Other issues of concern

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

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

12 LATEST DEVELOPMENTS IN 2017

Two draft bills on equal treatment were presented in 2017; one relating to race and ethnic origin, and the other on equal treatment in the workplace covering race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics. The bills were opened for consultation by stakeholders but the government collapsed before the bills could be adopted. Nevertheless, this is the most headway work on anti-discrimination legislation has made to date. The bills will be presented again in 2018.

12.1 Legislative amendments

There were no important legislative developments related to anti-discrimination in 2017.

12.2 Case law

No discrimination cases relating directly to the scope of the directives were decided in 2017. However, two ground-breaking Supreme Court judgments concerning hate speech towards LGBTQIA people represent a watershed for the LGBTQIA movement in Iceland. In April 2015, Samtökin'78, the leading LGBTQIA rights organisation in Iceland, filed complaints against ten people because of hateful remarks made on a radio show and online after the council of Hafnarfjörður Municipality decided to provide LGBTQIA education in its schools with the assistance of Samtökin'78. The complaints fell under the jurisdiction of the Reykjavík Police and two other police districts. In September 2015, the Reykjavík Police dismissed the complaints without investigation, considering the remarks to be constitutionally protected free speech (Article 73 of the Icelandic Constitution). Samtökin'78 appealed this decision and in November 2015 the State Prosecutor ruled that the complaints should be investigated. In November 2016, the State Prosecutor brought six cases concerning violations of the hate speech provision of the General Penal Code No. 19/1940 to the District Courts.

In one case the statute of limitations had expired,¹⁸⁰ but in the remaining five the District Court acquitted the accused as it found that intent was not proven and their comments were considered to fall within the remit of free speech protected by the Constitution and the ECHR.¹⁸¹ The Supreme Court disagreed with the very narrow interpretation of the hate speech provision and overturned the acquittals in two cases which were appealed.¹⁸² In a third case, the accused was found to have publicly insulted homosexual people and expressed prejudice but the comments were not injurious enough to amount to hate speech.¹⁸³

Name of court: Supreme Court of Iceland

Date of decision: 14 December 2017

Names of the parties: The Prosecutor v. Sveinbjörn Styrmir Gunnarsson

Reference number: Case No. 577/2017

Link: www.haestirettur.is/domar/domur/?id=9ac88d78-68b1-4026-9d53-c869ea830270

Brief summary: S was charged with hate speech under Article 233a of the General Penal Code No.19/1940 because of remarks made in the comments section on a newspaper website reporting on the decision of the council of Hafnarfjörður Municipality to provide LGBTQIA education in its schools with the assistance of Samtökin'78 (the Icelandic LGBTQIA Association). The Court found, after examining the preparatory notes, the

¹⁸⁰ Reykjavik District Court, *The Prosecutor v. A*, Case No. S-834/2016, 28 April 2017.

¹⁸¹ Reykjavik District Court, *The Prosecutor v. A*, Case No. S-835/2016, 28 April 2017. Reykjavik District Court, *The Prosecutor v. A*, Case No. S-840/2016, 24 April 2017; Reykjavik District Court, *The Prosecutor v. X*, Case No. S-839/2016, 10 April 2017.

¹⁸² Supreme Court of Iceland, *The Prosecutor v. Sveinbjörn Styrmir Gunnarsson*, Case No. 577/2017, 14 December 2017 and *The Prosecutor v. Carl Jóhann Lilliendahl*, Case No. 415/2017, 14 December 2017.

¹⁸³ Supreme Court of Iceland, *The Prosecutor v. X*, Case No. 354/2017, 14 December 2017.

rationale behind Article 233a and its history, that to fall under it, comments would have to express loathing, disgust, contempt or condemnation to such a degree that they amounted to hate speech towards the person or persons at whom they were directed. The comments made by S on educating children about homosexuality and his using the word 'kynvillingur' (which can loosely be translated as 'sexual deviant') in this context was deemed to be hate speech within the scope of the provision. The Court also deemed the online venue to be a public forum and considered that the posting entailed intent, as required by the General Penal Code. When determining whether limiting the constitutionally protected freedom of expression of S was warranted, the Court found that, although the comments were part of a broader, rather unreasonable and unrestrained public debate, his comments had been grave, grossly injurious and prejudiced. Such means of expression, constituting hate speech, were completely unnecessary for S to express his opinions publicly. The Court noted that, in addition to protecting the freedom of expression, cf. Article 73 of the Constitution, the legislator had the responsibility to protect the right to respect for private and family life, cf. Article 71, and to protect those who are at risk of harassment or hate because of their situation or characteristics. The Court found that the interests that Article 233a was meant to protect were more important than the right of S to express himself in the manner he did. S was convicted and ordered to pay a fine of ISK 100 000 (approximately EUR 820).

Name of court: Supreme Court of Iceland

Date of decision: 14 December 2017

Names of the parties: The Prosecutor v. Carl Jóhann Lilliendahl

Reference number: Case No. 415/2017

Link: www.haestirettur.is/domar/domur/?id=3180406e-2245-4c88-8563-7ca65cc6bf31

Brief summary: C was charged with hate speech under Article 233a of the General Penal Code No.19/1940 because comments made online about the decision of the council of Hafnarfjörður Municipality to provide LGBTQIA education in its schools with the assistance of Samtökin'78 (the Icelandic LGBTQIA Association). The Court found, after examining the preparatory notes, the rationale behind Article 233a and its history, that to fall under it, comments would have to express loathing, disgust, contempt or condemnation to such a degree that they amounted to hate speech towards the person or persons at whom they were directed. The Court found that comments made by C were directed at homosexual people and were about homosexuality and the wording fell within the scope of Article 233a. The Court also deemed the online venue to be a public forum and considered that the posting entailed intent, as required by the General Penal Code. When determining whether limiting the constitutionally protected freedom of expression of C was warranted, the Court found that, although the comments were part of a broader, rather unreasonable and unrestrained public debate, his comments had gone far beyond the original topic of discussion and had been grave, grossly injurious and prejudiced. Such means of expression, constituting hate speech, were completely unnecessary for C to express his opinions publicly. The Court noted that, in addition to protecting the freedom of expression, cf. Article 73 of the Constitution, the legislator had the responsibility to protect the right to respect for private and family life, cf. Article 71, and protect those who are at risk of harassment or hate because of their situation or characteristics. The Court found that the interests that Article 233a was meant to protect were more important than the right of C to express himself in the manner he did. C was convicted and ordered to pay a fine of ISK 100 000 (approximately EUR 820).

Name of court: Supreme Court of Iceland

Date of decision: 14 December 2017

Names of the parties: The Prosecutor v. X

Reference number: Case No. 354/2017

Link: www.haestirettur.is/domar/domur/?id=42097e93-adaf-46de-9fc7-6e210e033a06

Brief summary: X was charged with hate speech under Article 233a of the General Penal Code No.19/1940 because of remarks made online on the decision of the council of Hafnarfjörður Municipality to provide LGBTQIA education in its schools with the assistance

of Samtökin'78 (the Icelandic LGBTQIA Association). The Court found, after examining the preparatory notes, the rationale behind Article 233a and its history, that to fall under it, comments would have to express loathing, disgust, contempt or condemnation to such a degree that they amounted to hate speech towards the person or persons at whom they were directed. The Court found that the comments insulted homosexual people and were prejudicial but that they were not injurious enough to amount to hate speech and X was acquitted.

Mention should also be made of a case concerning free sign language interpreting services to enable a deaf-blind person to go to a summer camp abroad.

Name of court: Supreme Court of Iceland

Date of decision: 9 November 2017

Names of the parties: Áslaug Ýr Hjartardóttir v. the Communication Centre for the Deaf and Hard of Hearing and the Icelandic State

Reference number: Case No. 464/2017

Link: www.haestirettur.is/default.aspx?pageid=347c3bb1-8926-11e5-80c6-005056bc6a40&id=ce2ad6f4-899f-4f84-ae6b-c3a25d63526f

Brief summary: A asked for the decision of the Communication Centre for the Deaf and Hard of Hearing to deny her free sign language interpreting services for a summer camp stay abroad to be annulled. The Supreme Court agreed with the District Court that the decision had been lawful and proportionate, based on the available funds, as the cost would have amounted to 18 % of the Centre's budget for the period of July-September 2017. Paying for A's interpreting needs would have emptied the coffers and been discriminatory towards other applicants in need of free sign language interpreting services.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation**.

Country: Iceland
Date: 1 January 2018

Title of legislation (including amending legislation)	Title of the law: Constitution of the Republic of Iceland No. 33/1944. Abbreviation: The Constitution. Date of adoption: 17.06.1944 Latest amendments: 18.07.2013 Entry into force: 17.06.1944 Web link: www.althingi.is/lagas/nuna/1944033.html . Grounds covered: Sex, religion, opinion, national origin, race, colour, financial status, parentage or other status.
	Constitution.
	Material scope: General.
	Principal content: Equality before the law and in the enjoyment of human rights.
Title of legislation (including amending legislation)	Title of the law: Act incorporating the ECHR into domestic law No. 62/1994. Abbreviation: None. Date of adoption: 19.05.1994 Latest amendments: 01.06.2010 Entry into force: 30.05.1994 Web link: www.althingi.is/lagas/144a/1994062.html . Grounds covered: Sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
	Civil law.
	Material scope: Limited to rights enshrined in the ECHR.
	Principal content: Prohibition of discrimination in the enjoyment of the rights set out in ECHR.
Title of legislation (including amending legislation)	Title of the law: Administrative Procedures Act No. 37/1993. Abbreviation: None. Date of adoption: 30.04.1993 Latest amendments: 01.01.2013 Entry into force: 01.01.1994 Web link: www.althingi.is/lagas/nuna/1993037.html . Grounds covered: Inter alia, race, colour, national origin, religion, political opinion, social status and family origins.
	Administrative law
	Material scope: Administrative decisions.
	Principal content: Prohibition of discriminatory administrative decisions.
Title of legislation (including amending legislation)	Title of the law: General Penal Code No. 19/1940. Abbreviation: None. Date of adoption: 12.02.1940 Latest amendments: 30.09.2017 Entry into force: 12.08.1940 Web link: www.althingi.is/lagas/nuna/1940019.html . Grounds covered: Nationality, colour, race, religion, sexual orientation, gender identity.
	Criminal law.
	Material scope:
	<ul style="list-style-type: none"> – Harassment and hate speech. – Services or access to any public area or place intended for general public use.

	<ul style="list-style-type: none"> – Public insults towards religious communities. <p>Principal content:</p> <ul style="list-style-type: none"> – Prohibition of harassment and hate speech. – Criminalisation of denying a person a service or access to any public area or place intended for general public use. – Criminalisation of publicly insulting a religious community.
Title of legislation (including amending legislation)	<p>Title of the law: Act on Primary Schools No. 91/2008. Abbreviation: None. Date of adoption: 12.06.2008 Latest amendments: 01.07.2016 Entry into force: 01.07.2008 Web link: www.althingi.is/lagas/nuna/2008091.html. Grounds covered: National origin, sex, sexual orientation, residence, social class, religion, health, disability or other status.</p> <p>Civil law.</p> <p>Material scope: Primary education.</p> <p>Principal content: Prohibition of discrimination in education.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Act on the Rights of Patients No. 74/1997. Abbreviation: None. Date of adoption: 28.05.1997 Latest amendments: 01.01.2015 Entry into force: 01.07.1997 Web link: www.althingi.is/lagas/nuna/1997074.html. Grounds covered: Sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status.</p> <p>Civil law.</p> <p>Material scope: Access to healthcare.</p> <p>Principal content: Prohibition of discrimination in the provision of healthcare.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Postal Service Act No. 19/2002. Abbreviation: None. Date of adoption: 03.03.2002 Latest amendments: 30.09.2011 Entry into force: 18.03.2002 Web link: www.althingi.is/lagas/nuna/2002019.html. Grounds covered: Political, religious or ideological nature.</p> <p>Civil law.</p> <p>Material scope: Postal service.</p> <p>Principal content: Prohibition of discrimination in provision of postal services.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Act on the Media No. 38/2011. Abbreviation: None. Date of adoption: 20.04.2011 Latest amendments: 12.04.2013 Entry into force: 21.04.2011 Web link: www.althingi.is/lagas/nuna/2011038.html. Grounds covered: Race, sex, sexual orientation, religion, nationality, opinion or cultural, economic social or other status in society.</p> <p>Civil law.</p> <p>Material scope: Organisation and work of the media.</p> <p>Principal content: Anti-hate speech.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Act on the Affairs of Persons with Disabilities No. 59/1992. Abbreviation: None. Date of adoption: 02.06.1992 Latest amendments: 31.12.2016 Entry into force: 01.09.1992</p>

	<p>Web link: www.althingi.is/lagas/nuna/1992059.html</p> <p>Grounds covered: Disability.</p> <p>Civil law.</p> <p>Material scope: Living conditions, employment, housing, assistance, education, etc.</p> <p>Principal content: Provision of services, assistance, etc. to people with disabilities.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Act on Municipal Social Services No. 40/1991.</p> <p>Abbreviation: None.</p> <p>Date of adoption: 27.03.1991</p> <p>Latest amendments: 01.01.2017</p> <p>Entry into force: 17.04.1991</p> <p>Web link: www.althingi.is/lagas/nuna/1991040.html.</p> <p>Grounds covered: Disability.</p> <p>Civil law.</p> <p>Material scope: Social services.</p> <p>Principal content: Provision and organisation of social services.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Act on the Affairs of the Elderly No. 125/1999.</p> <p>Abbreviation: None.</p> <p>Date of adoption: 31.12.1999</p> <p>Latest amendments: 31.12.2017</p> <p>Entry into force: 11.01.2000</p> <p>Web link: www.althingi.is/lagas/nuna/1999125.html.</p> <p>Grounds covered: Age.</p> <p>Civil law.</p> <p>Material scope: Services, housing, healthcare, etc.</p> <p>Principal content: Provision and organisation of services, housing, etc. for older persons.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Act Amending Laws relating to the Judicial Status of Homosexual Persons No. 65/2006.</p> <p>Abbreviation: None.</p> <p>Date of adoption: 14.06.2006</p> <p>Latest amendments: None.</p> <p>Entry into force: 27.06.2006</p> <p>Web link: www.althingi.is/altext/132/s/1445.html.</p> <p>Grounds covered: Sexual orientation.</p> <p>Civil law.</p> <p>Material scope: Equality before the law in various areas.</p> <p>Principal content: Amending legislation to ensure equality for homosexual persons.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997.</p> <p>Abbreviation: None.</p> <p>Date of adoption: 23.12.1997</p> <p>Latest amendments: 31.12.2017</p> <p>Entry into force: 01.07.1998</p> <p>Web link: www.althingi.is/lagas/nuna/1997129.html.</p> <p>Grounds covered: Health, age, civil status, family size or gender.</p> <p>Civil law.</p> <p>Material scope: Non-discrimination in access to occupational pension schemes.</p> <p>Principal content: Organisation, set-up and requirements for functioning of pension funds and mandatory pension insurance.</p>
Title of legislation	<p>Title of the law: Act on Workers' Terms of Employment and Pensions No. 55/1980.</p> <p>Abbreviation: None.</p>

(including amending legislation)	Date of adoption: 09.06.1980 Latest amendments: 30.06.2010 Entry into force: 16.06.1980 Web link: www.althingi.is/lagas/nuna/1980055.html . Grounds covered: Sex, nationality and length of contract.
	Labour law.
	Material scope: Non-discrimination in terms of employment.
	Principal content: Minimum wages and conditions negotiated by social partners.
Title of legislation (including amending legislation)	Title of the law: Act incorporating the Convention on the Rights of the Child into domestic law No.19/2013. Abbreviation: None. Date of adoption: 20.02.2013 Latest amendments: None. Entry into force: 06.03.2013 Web link: www.althingi.is/altext/141/s/1045.html . Grounds covered: Race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
	Civil law.
	Material scope: Limited to rights enshrined in the Convention.
	Principal content: Prohibition of discrimination in the enjoyment and respect for the rights set out in the Convention.
Title of legislation (including amending legislation)	Title of the law: Act on Rights Advocates for People with Disabilities No. 88/2011. Abbreviation: None. Date of adoption: 23.06.2011 Latest amendments: 28.10.2016 Entry into force: 01.07.2011 Web link: www.althingi.is/lagas/nuna/2011088.html . Grounds covered: Disability.
	Civil law.
	Material scope: Social services and rights of people with disabilities.
	Principal content: Establishment of system of rights advocates for people with disabilities.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Iceland
Date: 1 January 2018

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	04.11.1950	29.06.1953	No	Yes	Yes, the ECHR has been incorporated into domestic law.
Protocol 12, ECHR	04.11.2000	Not ratified.	N/A	N/A	N/A
Revised European Social Charter	04.11.1998	Not ratified.	N/A	Ratified collective complaints protocol? No	N/A
International Covenant on Civil and Political Rights	30.12.1968	22.08.1979	No	Yes	No
Framework Convention for the Protection of National Minorities	01.02.1995	Not ratified.	N/A	N/A	N/A
International Covenant on Economic, Social and Cultural Rights	30.12.1968	22.08.1979	No	No	No
Convention on the Elimination of All Forms of Racial Discrimination	14.12.1966	13.03.1967	No	Yes	No
Convention on the Elimination of Discrimina-	24.07.1980	18.6.1985	No	Yes	No

Instrument	Date of signature	Date of ratification	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 Against Discrimination Against Women					
ILO Convention No. 111 on Discrimination	29.07.1964	29.07.1963	No	N/A	No
Convention on the Rights of the Child	26.01.1990	28.10.1992	No	N/A	Yes, the Convention has been incorporated into domestic law.
Convention on the Rights of Persons with Disabilities	30.03.2007	23.09.2016	No	No	No

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