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# Country report

## Non-discrimination

Finland

2019

including summary



Justice  
and Consumers

**EUROPEAN COMMISSION**

Directorate-General for Justice and Consumers  
Directorate D — Equality and Union citizenship  
Unit D.1 Non-discrimination and Roma coordination

*European Commission  
B-1049 Brussels*

# **Country report**

## **Non-discrimination**

Transposition and implementation at national level of  
Council Directives 2000/43 and 2000/78

### **Finland**

Rainer Hiltunen

Reporting period 1 January 2018 – 31 December 2018

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Luxembourg: Publications Office of the European Union, 2019

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PDF ISBN 978-92-76-00209-3

ISSN 2599-9176

doi:10.2838/679912

DS-BB-19-010-EN-N

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## EXECUTIVE SUMMARY

### 1. Introduction

Until the end of the 1980s, Finland was one of the most culturally homogeneous countries in Europe. The number of immigrants was minimal. There was a major shift from emigration to immigration in the 1990s, with the number of foreign citizens growing from 26 300 in 1990 to 168 000 in 2010. Currently some 7 % of the total population of 5.5 million were born outside Finland.<sup>1</sup>

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

Religious diversity in Finland has increased during the past 20 years, as the size of Islamic communities has grown from 30 000 to 60 000 people, due to the arrival of immigrants from Muslim countries. Their percentage of the population is still less than 1 %. At present, 71 % of the population belongs to the Evangelical Lutheran Church. Other religious groups are considerably smaller, the next largest community being the Russian Orthodox Church (1 %). Around 26 % of the population do not belong to any religious community.<sup>2</sup>

There has been a considerable change in attitudes towards sexual orientation: homosexuality was penalised in criminal law until 1971; discrimination on the basis of sexual orientation was prohibited in 1995; and in 2001, the Registered Partnerships Act guaranteed registered same-sex couples a status almost equal to marriage, but without the ability to take a joint family name and to adopt together. Same-sex couples were finally allowed to marry and adopt together in 2017. The Lutheran church has also accepted ministers who are homosexual or transsexual.

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

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

NGOs representing different discrimination grounds have been cooperating well in their work against discrimination for several years.

### 2. Main legislation

The main provisions pertaining to discrimination are laid down in the Constitution, the Non-Discrimination Act and the Criminal Code. A prohibition on discrimination is also included in many statutory acts as a general clause.

Section 6 of the Constitution provides for equality and prohibits discrimination.<sup>3</sup> The main thrust of this constitutional guarantee of non-discrimination is to ensure formal equality,

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

<sup>2</sup> [https://www.tilastokeskus.fi/tup/suoluk/suoluk\\_vaesto.html](https://www.tilastokeskus.fi/tup/suoluk/suoluk_vaesto.html).

<sup>3</sup> Finland, Constitution (*perustuslaki*) 731/1999.

i.e. the principle that people in similar circumstances are to be treated similarly, but it also aims to reach full, substantive equality in practice.

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

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

The Non-discrimination Act offers the protection required by the two EU directives on equal treatment, and goes beyond their minimum requirements by prohibiting discrimination in all public and private activities (excluding private life, family life and the practice of religion) on 14 different grounds.

The Criminal Code<sup>5</sup> has two provisions on discrimination where discrimination is prohibited on grounds of race, national or ethnic origin, colour, language, sex, age, family relationships, sexual orientation, state of health, religion, political orientation, political or industrial activity or another comparable circumstance. The first provision covers discrimination, inter alia, in the provision of services and in the discharge of public duties, while the second provision covers discrimination in the field of employment. There is a considerable amount of case law under the first provision, mainly regarding ethnic discrimination. Punishment for discrimination laid down by law is in the form of fines or imprisonment for up to six months. In practice, the sentences for discrimination have been fines.

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

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

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

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

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<sup>4</sup> Finland, Non-Discrimination Act (*Yhdenvertaisuuslaki*), 1325/2014.

<sup>5</sup> Finland, Criminal Code (*rikoslaki*), 39/1889.



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

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

Public authorities, education providers and employers must, where necessary, make reasonable accommodation to ensure that employees with disabilities have equal access to services, work or education and training. Persons with disabilities must also have equal access to goods and services. Disability must be taken into account in the provision of services, for example, by modifying the service to be accessible for all or arranging alternative ways of providing the service for those who need it whenever possible.

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

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

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

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

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

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

Harassment is prohibited in the Non-Discrimination Act, where it explicitly constitutes a form of discrimination. In 2018, the National Non-Discrimination and Equality Tribunal considered<sup>6</sup> that hanging a swastika/Nazi flag from a window-opening of an apartment was

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<sup>6</sup> The National Non-Discrimination and Equality Tribunal, 19.12.2018, decision 393/2018 [https://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/jFpTF4RIt/YVTltk\\_tapausseloste-19.12.2018-hairinta-hakaristolippu\\_L.pdf](https://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/jFpTF4RIt/YVTltk_tapausseloste-19.12.2018-hairinta-hakaristolippu_L.pdf).

harassment on the ground of religion and thus prohibited in the Non-Discrimination Act. The tribunal considered that the behaviour of the defendant had infringed the human dignity of the victim, who was the chairperson of the Jewish Community of Helsinki and that the defendant's behaviour related to religion. The tribunal found that the behaviour had also created a degrading or humiliating, intimidating, hostile or offensive environment for the victim.

Multiple discrimination is not explicitly prohibited in the Non-Discrimination Act, but there are cases when discrimination has been prohibited on more than one discrimination ground. In 2018, the National Non-Discrimination and Equality Tribunal considered it multiple discrimination<sup>7</sup> when a credit company refused to grant credit based on the combined effect of an applicant's gender, language, age and place of residence. A credit application was denied based on the scoring system of the credit institution company which calculated the scoring of the applicant based on the applicant's language, gender, age and place of residence, among other things, although no individual assessment of payment ability (such as income or other debts) was made. The decision was made on a statistical basis. Had the credit applicant been female, older, had Swedish as first language instead of Finnish or lived in different location, he would have been granted the credit for which he had applied. The tribunal considered the treatment of the credit applicant to be multiple, direct discrimination on grounds of gender, language, age and residence.

#### **4. Material scope**

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

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

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

As an example on the wide applicability of the Non-Discrimination Act, the National Non-Discrimination and Equality Tribunal found<sup>8</sup> in 2018 that the Helsinki Police had practised ethnic profiling while performing immigration status checks. The tribunal considered it as direct discrimination prohibited in the Non-Discrimination Act.

The material scope of the act does not differ depending on the protected grounds for discrimination. Discrimination is prohibited on the five grounds protected in the directives: ethnic origin,<sup>9</sup> age, disability, religion or belief and sexual orientation, as well as on other grounds included in the Finnish Non-Discrimination Act – nationality, language, opinion,

<sup>7</sup> The National Non-Discrimination and Equality Tribunal, 21.3.2018, decision 216/2018 [http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/45LI2c6dD/YVTltk\\_tapausseloste-21.3.2018-luotto-moniperusteinen\\_syrjinta-S-en\\_2.pdf](http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/45LI2c6dD/YVTltk_tapausseloste-21.3.2018-luotto-moniperusteinen_syrjinta-S-en_2.pdf).

<sup>8</sup> The National Non-Discrimination and Equality Tribunal, 19.12.2018, decision 337/2018 [https://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/kmnntSkOp/YVTltk\\_tapausseloste-19.12.2018-etninen\\_profilointi.pdf](https://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/kmnntSkOp/YVTltk_tapausseloste-19.12.2018-etninen_profilointi.pdf).

<sup>9</sup> The Non-Discrimination Act uses the term 'origin', which is defined in the Government proposal as including ethnic origin, national origin, social origin, race and colour of skin.

political activity, trade union activity, family relationships, state of health or other personal characteristics.

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

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

## **5. Enforcing the law**

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

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

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

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

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

If a discriminatory decision is made in the exercise of public powers, the victim of discrimination may make use of the rectification procedure (in other words requesting a new decision from the same public authority) or some other ordinary channel of appeal. They may also turn to the Parliamentary Ombudsman or the Chancellor of Justice in order to file a complaint. These bodies may not amend or annul a particular decision, but may

bring legal action against an official and/or issue their opinions on the correct interpretation of the law.

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

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

Discrimination is an offence punishable under the Criminal Code,<sup>10</sup> most importantly in the provision of goods and services and employment. A person found guilty of discrimination may be convicted and sentenced to pay a fine or to imprisonment for up to six months. Most of the discrimination cases to which the Criminal Code has been applied have dealt with denial of access on the grounds of ethnic origin to restaurants or other places open to the public. There have also been some cases where the Criminal Code prohibition has been applied to discrimination based on religion, sexual orientation or disability.

## **6. Equality bodies**

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

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

In individual cases the Ombudsman can also give a justified statement on the prevention, continuation or repetition of discrimination unless the question falls within the competences of the occupational safety and health authorities – i.e. employment.

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

In 2018, the National Non-Discrimination and Equality Tribunal gave some important decisions on the interpretation of the Non-Discrimination Act in relation to what counts as harassment and on the prohibition of ethnic profiling as discrimination. These decisions are further explained in section 12.2 of this report on case law.

## **7. Key issues**

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<sup>10</sup> Finland, Criminal Code (39/1889), Chapter 11, Section 11 and Chapter 47, Section 3.

- The Non-Discrimination Act requires authorities, providers of education and those employers who employ more than 30 employees to purposefully and methodically foster equality and draw up a plan for the fostering of equality (equality plan). The equality plans must evaluate the realisation of equality and are supposed to cover all protected grounds of discrimination in the Non-Discrimination Act (origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics).
- These measures form the most significant source of positive action in Finnish society. Equality plans covering multiple grounds have been drafted in hundreds of municipalities, other authorities, companies and lots of other organisations such as NGOs and student unions. The quality and the effectiveness of the plans varies but in many equality plans, organisations and companies have been analysing how their services and functions meet the actual needs of various clients, what kind of reasonable accommodation is needed and how equality in the workplace can be secured. The occupational safety and health authorities monitor whether employers fulfil their plans. The Non-Discrimination Ombudsman monitors public authorities and providers of education in meeting the obligation.
- The concept of direct discrimination used in areas where EU anti-discrimination directives are applicable is unique and the justification for direct discrimination may not fulfil the criteria of the anti-discrimination directives. It generally justifies differential treatment, such as on the basis of ethnic origin, if the treatment is based on legislation, has an acceptable aim and the means used are in due proportion to achieving the aim.
- Unlike in most European Union Member States, the equality body of Finland, the Non-Discrimination Ombudsman does not have a major role in combating discrimination in employment. After the European Union began infringement procedures against Finland, the Non-Discrimination Ombudsman was granted a power to make general recommendations on the prevention of discrimination in employment. The specific interpretation of the prohibition of discrimination in employment remains the responsibility of the occupational safety and health authorities.
- In analysing whether the available sanctions are effective, proportionate and dissuasive as required by the directives, it can be said that, on the one hand, victims can obtain redress in the form of compensation, initiate criminal law proceedings and obtain an order of cessation from the Non-Discrimination and Equality Tribunal, while on the other hand, some particularly robust remedies, such as reinstatement, are not available. Furthermore, as compensation for discrimination can only be requested in the district courts, the risk of having to pay the defendant's legal costs greatly affects the real possibilities of seeking remedies against discrimination.

## INTRODUCTION

### The national legal system

The main provisions pertaining to discrimination have been laid down in the Constitution, the Non-Discrimination Act and the Criminal Code. A prohibition on discrimination is also included in many statutory acts as a general clause. Section 6 of the Constitution provides for equality and prohibits discrimination.<sup>11</sup> The main thrust of this constitutional guarantee of non-discrimination is to ensure formal equality, i.e. the principle that people in similar circumstances are to be treated similarly, but it also aims to reach full, substantive equality in practice. The constitutional prohibition of discrimination may be directly invoked in courts, and regular laws are to be interpreted in accordance to it.

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

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

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

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

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

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

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<sup>11</sup> Finland, Constitution, Section 6 '(1): Everyone is equal before the law. (2): No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.'

completely different, although much of the law adopted by the Finnish state is also applicable in the Åland Islands.

### **List of main legislation transposing and implementing the directives**

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

- Non-Discrimination Act<sup>12</sup> (date of adoption 30 December 2014); grounds protected: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics; material scope: both public and private activities, excluding private life, family life and the practice of religion.
- Act on the Non-Discrimination Ombudsman<sup>13</sup> (date of adoption 30 December 2014); grounds protected: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics; material scope: both public and private activities, excluding private life, family life and the practice of religion.
- Act on the Non-Discrimination and Equality Tribunal<sup>14</sup> (date of adoption 30 December 2014); grounds protected: gender, gender identity, origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics; material scope: both public and private activities, excluding private life, family life and the practice of religion.
- Provincial Act on Prevention of Discrimination in the Province of Åland,<sup>15</sup> date of adoption 10 November 2005, grounds protected: ethnic belonging, religion and other conviction, age, disability and sexual orientation, material scope: applicable in the Åland Islands; civil servants employed by the ÅI or by one of the ÅI's municipalities, schools, social care and health care, some aspects of the provision of goods and services.

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

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<sup>12</sup> Finland, Non-Discrimination Act (*Yhdenvertaisuuslaki*) 1325/2014. Available at: <http://www.finlex.fi/fi/laki/ajantasa/2014/20141325>.

<sup>13</sup> Finland, Act on the Non-Discrimination Ombudsman (*Laki yhdenvertaisuusvaltuutetusta*), 1326/2014. Available at: <http://www.finlex.fi/fi/laki/ajantasa/2014/20141326>.

<sup>14</sup> Finland, Act on the Non-Discrimination and Equality Tribunal (*Laki yhdenvertaisuus- ja tasa-arvolautakunnasta*) 1327/2014. Available at: <http://www.finlex.fi/fi/laki/ajantasa/2014/20141327>.

<sup>15</sup> Finland, Provincial Act on Prevention of Discrimination in the Province of Åland (*Landskapslag om förhindrande av diskriminering i landskapet Åland*) 66/2005). Available at: [http://old.regeringen.ax/.composer/upload/modules/lagar/afs2005\\_nr66.pdf](http://old.regeringen.ax/.composer/upload/modules/lagar/afs2005_nr66.pdf).

## 1 GENERAL LEGAL FRAMEWORK

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

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

- Section 6(1) of the Constitution<sup>16</sup> is a general clause: 'Everyone is equal before the law'.
- Section 6(2) defines the prohibition of discrimination and the protected grounds: 'No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.'
- Section 6(3): is a children's rights article: 'Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to them to a degree corresponding to their level of development.'

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives. The constitutional anti-discrimination provisions are directly applicable. Section 6 has been invoked in courts.<sup>17</sup>

The constitutional equality clauses can be enforced against private actors (as well as against the state). Although the primary thrust of Section 6 is to ensure equal treatment in the use of public powers, Section 6 may in some situations have a bearing on relationships between private parties as well. Mostly this effect takes place through statutory law which implements the constitutional principle of equal treatment, although in some situations Section 6 may be more 'directly applicable', e.g. as a ground for claiming damages or as a ground for determining that a specific clause of an agreement is to be considered 'unjust'.<sup>18</sup>

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<sup>16</sup> Finland, Constitution (*Perustuslaki*) 731/1999 Available at: <http://www.finlex.fi/fi/laki/ajantasa/1999/19990731>.

<sup>17</sup> See e.g. Hallberg, P. (1999) 'Perusoikeudet tuomioistuimissa' (Fundamental Rights in Courts) in Hallberg et al, *Perusoikeudet* (Fundamental Rights), WSOY, pp. 704, 717, 719; Kortteinen, J., Makkonen, T. (2000), *Oikeutta rasmin ja syrjinnän uhreille – Etnisen syrjinnän vastainen käsikirja* (Justice to the Victims of Racism and Discrimination – a Manual Against Ethnic Discrimination), Ihmisoikeusliitto.

<sup>18</sup> Scheinin, M. (1999) 'Yhdenvertaisuus ja syrjinnän kieltö' (Equality and the Prohibition of Discrimination), in Hallberg et al, *Perusoikeudet*, WSOY, p. 260; Makkonen, T. (2003) *Syrjinnän vastainen käsikirja*, IOM Helsinki, p. 101.



## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

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

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

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

Secondly, the Government proposal<sup>19</sup> (pertinent preparatory works or *travaux préparatoires*) for the Non-Discrimination Act defines the grounds for discrimination referring to the recent case law of the Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECtHR).<sup>20</sup>

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

#### a) Racial or ethnic origin

The term for ethnic origin in the repealed Non-Discrimination Act was 'ethnic or national origin'. This term has been replaced in the current Non-Discrimination Act as regards the word 'origin'. It is defined in the Government proposal as including ethnic origin, national origin, social origin,<sup>21</sup> race and colour of skin.<sup>22</sup> There is no doubt that the concepts of race and ethnic origin are to be interpreted as being included in the concept of origin as used in the Non-Discrimination Act.

#### b) Religion and belief

On the definition of religion and belief, the Government proposal explains only that the difference between these two is not always easy to distinguish, although belief is connected more to conviction than to religion. It is further defined that the belief protected in the Non-Discrimination Act is required to be permanent to a certain extent.<sup>23</sup> Other terms included in the list of prohibited discrimination grounds in the act, such as 'opinion' and

<sup>19</sup> Finland, Government proposal on the Non-Discrimination Act 19/2014 (*Hallituksen esitys yhdenvertaisuuslaiksi* 19/2014 vp), pp. 66-68, <http://www.finlex.fi/fi/esitykset/he/2014/20140019>.

<sup>20</sup> The Government proposal refers to the CJEU decision of *HK Danmark* (C-335/11 and C-337/11, 11.4.2013) when explaining the relationship between state of health and disability, and to the ECtHR decision in *Hode and Abdi* (6.12.2012) when explaining the concept of 'other personal characteristics'.

<sup>21</sup> The term 'social origin' (*yhteiskunnallinen alkuperä*) is also used in the Government proposition for the Constitution (HE309/1993). The proposition for the Constitution uses the term with reference to the International Covenant on Civil and Political Rights, which uses 'social origin' in Article 2.

<sup>22</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.66.

<sup>23</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.66.

'political activity', complement the protection against discrimination on the basis of an individual's views and values.

c) Disability

On disability, the Government proposal briefly explains that there is no unambiguous definition in Finnish legislation. The Government proposal then refers to the UN Convention on the Rights of Persons with Disabilities, by stating that, according to Article 1 of that convention, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Additionally, the Government proposal mentions that disability can be congenital, or it can be caused by accident.<sup>24</sup>

The Government proposal explains that the definition of health in the Non-Discrimination Act refers to both physical and mental health. The Government proposal refers to the Court of Justice of the European Union decision *HK Danmark* (C-335/11 and C-337/11) and explains that an illness combined with long-lasting effects preventing participation in employment can also be considered a disability.<sup>25</sup>

d) Age

The Government proposal explains that the prohibition of discrimination on the ground of age would protect all ages, young as well as old.<sup>26</sup>

e) Sexual orientation

The Finnish term for sexual orientation in the repealed Non-Discrimination Act and in the Finnish translation of Directive 2000/78 was '*sukupuolinen suuntautuminen*', which can also be translated as 'gender orientation'. In the current Non-Discrimination Act, the term for sexual orientation has been changed to '*seksuaalinen suuntautuminen*', which is more commonly used in general discussion and preferred by the National Lesbian, Gay, Bisexual, Transgender, Intersex organisation. The Government proposal does not define sexual orientation any further, but in general and in case law,<sup>27</sup> it is understood to include homosexual, heterosexual or bisexual orientation.

### 2.1.2 Multiple discrimination

In Finland, multiple discrimination is not prohibited in the law. The requirement for specific prohibition of multiple discrimination and clarifying who should supervise this prohibition was one of the disagreements in preparing the recent overall renewal of the Non-Discrimination Act.<sup>28</sup> Neither the Government proposal nor the Employment and Equality Committee report give reasons why multiple discrimination was not addressed in the Non-Discrimination Act.

In Finland, the following case law deals with multiple discrimination: the Rovaniemi Appeal Court confirmed the decision of the Oulu District Court when it awarded compensation

<sup>24</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.67.

<sup>25</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.67.

<sup>26</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.66.

<sup>27</sup> See e.g. Supreme Court Decision KKO:2015:41, Chapters 31-35

<https://korkeinoikeus.fi/fi/index/ennakkopaatokset/precedent/1433846010211.html>.

<sup>28</sup> See Ministry of Justice (2013) 'Review on Comments on Government proposal on the Renewal on Non-Discrimination Act' (*Yhdenvertaisuuslainsäädännön uudistamista koskeva hallituksen esitys, Lausuntotiivistelmä*), Helsinki.

[https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76496/omml\\_46\\_2013\\_lausuntotiiv\\_18\\_s.pdf?sequence=1](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76496/omml_46_2013_lausuntotiiv_18_s.pdf?sequence=1).

separately on the basis of gender discrimination (applying the compensation statutes of the Equality Act) and on the basis of disability discrimination (applying the compensation statutes of the Non-Discrimination Act). The City of Oulu, which lost the case in the district court, stated in the appeal court that compensation cannot be awarded based on both acts, as there was only one discriminatory act, which occurred when the visually impaired claimant was not reinstated to her previous position after returning from maternity leave.<sup>29</sup>

In 2018, the Non-Discrimination and Equality Tribunal considered it multiple discrimination<sup>30</sup> when a credit company refused to grant credit based on the combined effect of an applicant's gender, language, age and place of residence. A credit application was denied on the basis of the credit company's scoring system, which calculated the scoring of the applicant based on his language, gender, age and place of residence, among other things, but without making an individual assessment of the applicant's payment ability (such as income or other debts). The decision was made on a statistical basis. Had the credit applicant been female, older, had Swedish as first language instead of Finnish, or lived in different location, he would have been granted the credit for which he had applied. The tribunal considered the treatment of the applicant to be multiple, direct discrimination on grounds of gender, language, age and residence.

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

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

In Finland, discrimination based on the perception or assumption of a person's characteristics is prohibited. According to Section 8 of the Non-Discrimination Act:

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

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

In Finland, discrimination based on association with persons with particular characteristics is prohibited in Section 8 of the Non-Discrimination Act. It is clearly stated in the Government proposal for the act that explicit prohibition of discrimination by association in the Non-Discrimination Act is to be interpreted in line with the *Coleman* case (C-303/06).<sup>31</sup>

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

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

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

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

'if a person<sup>32</sup> ... is treated less favourably than another person was treated, is treated or would be treated in a comparable situation.'

#### **b) Justification for direct discrimination**

<sup>29</sup> Rovaniemi Appeal Court, 23.10.2014, 483/23.10.2014, S13/536.

<sup>30</sup> The National Non-Discrimination and Equality Tribunal, 21.3.2018 decision 216/2018 [http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/45LI2c6dD/YVTltk\\_tapausseloste-21.3.2018-luotto-moniperusteinen\\_syrjinta-S-en\\_2.pdf](http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/45LI2c6dD/YVTltk_tapausseloste-21.3.2018-luotto-moniperusteinen_syrjinta-S-en_2.pdf).

<sup>31</sup> CJEU, judgment of 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415 and Finland, Government proposal on the Non-Discrimination Act 19/2014, p. 68.

<sup>32</sup> In the unofficial translation provided by the Ministry of Justice, the English word 'person' is used when defining the concept of direct discrimination. The original word '*jotakuta*' in the text of the act in Finnish can be interpreted to include groups as well as individuals.

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

- i. In discrimination on grounds of ethnic origin, in education in general, when using public power or performing public administrative tasks, the following applies: differential treatment is allowed only if the treatment is based on legislation, the treatment has an acceptable aim and the means used are in due proportion to achieving the aim.<sup>33</sup>

A recent example of using different elements of justification of direct discrimination is the decision of The National Non-Discrimination and Equality Tribunal in 2018.<sup>34</sup> The tribunal found that Helsinki Police had practised ethnic profiling, which the tribunal found to be direct discrimination prohibited in the Non-Discrimination Act. The tribunal considered that the object of the police - to combat street prostitution and human trafficking - is an acceptable aim needed for justification for direct discrimination. However, the means that the police used were not in due proportion to that aim and therefore there was no justification of discrimination.

This general justification of direct discrimination in situations governed by the Racial Equality Directive does not derive from the directive and may be too widely formulated. However, there is no case law indicating a violation of the directive. The Government proposal for the Non-Discrimination Act lists safeguards that would prevent legislating or applying discriminatory acts or other legislation.<sup>35</sup> These include the Parliament Constitutional Law Committee's task to analyse the constitutionality of legislative proposals and their relation to international human rights treaties<sup>36</sup> and the courts' responsibility not to apply acts in conflict with the Constitution.<sup>37</sup>

- ii. In other situations, it is not required that differential treatment be based on legislation, but in this case the aim needs to be acceptable from the perspective of fundamental rights and human rights and the means used must be in due proportion to achieving the aim.<sup>38</sup>
- iii. In employment, differential treatment is allowed based on genuine and determining occupational requirements, age and habitual residence (in other words: where you live in Finland). Occupational requirements are explained below in section 4.1 and differential treatment based on age in section 4.7.1 of this report.

Differential treatment in employment is possible also on the basis of habitual residence if:

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<sup>33</sup> Finland, Non-Discrimination Act, 1325/2014, Section 11(1). In Finnish: *'Erlainen kohtelu ei ole syrjintää, jos kohtelu perustuu lakiin ja sillä muutoin on hyväksyttävä tavoite ja keinot tavoitteen saavuttamiseksi ovat oikeasuhtaisia'*.

<sup>34</sup> The National Non-Discrimination and Equality Tribunal, 19.12.2018 decision 337/2018 [https://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/kmnntSkOp/YVTltk\\_tapausseloste-19.12.2018-etninen\\_profilointi.pdf](https://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/kmnntSkOp/YVTltk_tapausseloste-19.12.2018-etninen_profilointi.pdf).

<sup>35</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.71.

<sup>36</sup> Finland, Constitution, Section 74.

<sup>37</sup> Finland, Constitution, Section 106.

<sup>38</sup> Finland, Non-Discrimination Act, 1325/2014, Section 11(2). In Finnish: *'Erlainen kohtelu on kuitenkin oikeutettua siinäkin tapauksessa, että kohtelun oikeuttamisperusteista ei ole säädetty, jos kohtelulla on perus- ja ihmisoikeuksien kannalta hyväksyttävä tavoite ja keinot tavoitteen saavuttamiseksi ovat oikeasuhtaisia'*.

'it has a justified purpose that is objectively and appropriately founded and derives from employment policy, labour market or vocational training or some other comparable justified objective, or when the differential treatment arises from age limits adopted in qualification for retirement or invalidity benefits within the social security system.'<sup>39</sup>

### 2.2.1 Situation testing

#### a) Legal framework

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

Courts are at liberty to freely regard any type of evidence as admissible. This principle is embodied in Chapter 17, Section 2 of the Judicial Procedure Code,<sup>40</sup> Paragraph 1 of which provides that '[a]fter having carefully evaluated all the facts that have been presented, the court shall decide what is to be regarded as the truth in the case'.

#### b) Practice

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

The first record of situation testing in discrimination was when a Finnish NGO (the Finnish League for Human Rights) conducted situation testing in the autumn of 2002 to investigate whether restaurants deny entry to persons belonging to minorities (the testers were of foreign origin or Roma and were accompanied by people of the majority ethnic group). On the basis of this investigation, 11 crime reports on discrimination were filed with the police. Discrimination was found in six of the cases, and the accused were sentenced to fines. In four cases, the public prosecutor decided not to bring charges and one case failed because it was not brought before the court within the time limit prescribed by the law.

Information is not always available on whether a discrimination complaint originated from situation testing. In recent years the Non-Discrimination and Equality Tribunal has had several cases of denial of access to goods and services or events because of disability. Some of them may have originated from situation testing, such as cases in which a person using a wheelchair tried to access political discussions arranged by different political parties, but did not succeed.<sup>41</sup>

<sup>39</sup> This rather exceptional detail – differential treatment because of habitual residence – in the otherwise quite exception-free Non-Discrimination Act originates from a statement by the Deputy Chancellor of Justice who criticised a municipality in Finland for providing summer jobs only to those young people who live in the municipality, without a legal basis for this action.

Finland, Non-Discrimination Act, 1325/2014, Section 12(2). In Finnish: *'Ikään tai asuinpaikkaan perustuva erilainen kohtelu on lisäksi oikeutettua, jos kohtelulla on objektiivisesti ja asianmukaisesti perusteltu työllisyyspoliittinen tai työmarkkinoita koskeva tavoite taikka jos erilainen kohtelu johtuu eläke- tai työkyvyttömyysetuuksien saamisedellytykseksi vahvistetuista ikärajoista.'*

<sup>40</sup> Finland, Judicial Procedure Code (*oikeudenkäymiskaari*) 4/1734. Available at: <http://www.finlex.fi/fi/laki/ajantasa/1734/17340004000>.

<sup>41</sup> For a discussion of the decisions 258/2017, 292/2017 and 315/2017 of the National Equality and Non-Discrimination Tribunal see: Hiltunen, R. (2018) *Country report Non-discrimination for Finland 2018*,

Sometimes journalists use situation testing as a means to describe the prevalence of discrimination. In autumn 2013, the Finnish television programme 'Eyewitness' (*Silminnäkijä*) showed how three testers (one a native Finn, one with a Somali background and one with a Russian background) were treated while applying for a job, trying to get into a restaurant and trying to rent an apartment. The results of the test showed a suspicion of discrimination in all these situations. A day after the programme was broadcast on television, the Ombudsman for Minorities asked the police to investigate whether the prohibition of discrimination in the Criminal Code had been breached. In October 2016, the Helsinki District Court sentenced the doorman who had denied entry to the testers with Somali and Russian backgrounds to pay EUR 300 in fines and EUR 1 600 in compensation to the victims of discrimination.<sup>42</sup>

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

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

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

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

'if an apparently neutral rule, criterion or practice puts a person<sup>43</sup> at a disadvantage compared with others.'

Many of the cases where the Non-Discrimination and Equality Tribunal has found indirect discrimination are indirect discrimination of people with disabilities in providing goods and services.<sup>44</sup>

#### b) Justification test for indirect discrimination

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

'unless that rule, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'<sup>45</sup>

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European network of legal experts in gender and non-discrimination, Section 12.2 Case law (p. 81)

<https://www.equalitylaw.eu/downloads/4746-finland-country-report-non-discrimination-2018-pdf-2-04-mb>.

<sup>42</sup> See YLE news on the case:

[https://yle.fi/uutiset/osasto/news/nightclub\\_bouncer\\_convicted\\_after\\_yle\\_discrimination\\_investigation/9239728](https://yle.fi/uutiset/osasto/news/nightclub_bouncer_convicted_after_yle_discrimination_investigation/9239728).

<sup>43</sup> In the unofficial translation provided by the Ministry of Justice, the English word 'person' is used when defining the concept of indirect discrimination. The original word '*jonkun*' in the text of the act in Finnish can be interpreted to include groups as well as individuals. Section 13 in Finnish: '*Syrjintä on välillistä, jos näennäisesti yhdenvertainen sääntö, peruste tai käytäntö saattaa jonkun muita epäedullisempaan asemaan henkilöön liittyvän syyn perusteella.*'

<sup>44</sup> See, e.g. the Non-Discrimination and Equality Tribunal decision 390/2018 (11.6.2018). The tribunal considered it indirect discrimination when the National Social Security Institution (KELA) refused to provide an interpreter who had previously interpreted for a person with vision and hearing impairment and was available, but lacked the required official certificate for vision impairment interpretation. The tribunal considered that the aim of maintaining high quality by requiring proof of training was a neutral, legitimate aim. As the person with vision and hearing impairment was, however, left without any interpretation services this seemingly neutral requirement was indirectly discriminatory in this case.

<sup>45</sup> The latter part of Section 13 in Finnish reads: '*paitsi jos säännöllä, perusteella tai käytännöllä on hyväksyttävä tavoite ja tavoitteen saavuttamiseksi käytetyt keinot ovat asianmukaisia ja tarpeellisia.*'



It is clearly stated in the Government proposal for the act that the interpretation of the act must follow the jurisprudence of the Court of Justice of the European Union and other international human rights bodies, including the European Court of Human Rights.<sup>46</sup>

### 2.3.1 Statistical evidence

#### a) Legal framework

In Finland, there is legislation regulating the collection of personal data. The Data Protection Act<sup>47</sup> supplements the prohibition of processing of special categories of personal data in the General Data Protection Regulation (GDPR).<sup>48</sup> The Data Protection Act does not create additional special categories of personal data. It specifies the conditions under which processing certain personal data is allowed, following the rules set in the GDPR.

In Finland, statistical evidence is permitted by national law in order to establish indirect discrimination. The procedural laws do not specifically address this issue. Normally courts are at liberty to freely regard as admissible any type of evidence, including statistics. This principle is embodied in Chapter 17, Section 2 of the Judicial Procedure Code, Paragraph 1 of which provides that

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

#### b) Practice

In Finland, statistical evidence in order to establish indirect discrimination is used in practice. Indeed, statistical evidence has been presented in the courts, deemed admissible and used *in ratio decidendi*.<sup>49</sup>

However, there have been only a few cases that have involved the use of statistical analysis, and even in these cases the analyses have been rather straightforward and simple. These cases have dealt with age discrimination.<sup>50</sup>

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

## 2.4 Harassment (Article 2(3))

#### a) Prohibition and definition of harassment

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

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<sup>46</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.68.

<sup>47</sup> Finland, Data Protection Act (*Tietosuojalaki*), 1050/2018.

<sup>48</sup> Regulation (EU) 2016/679 Of The European Parliament And Of The Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02016R0679-20160504&from=FI>.

<sup>49</sup> See e.g. Supreme Administrative Court, cases KHO 2001:38 and KHO 2006:93 and Supreme Court, KKO 2004:59.

<sup>50</sup> E.g. Supreme Administrative Court cases KHO 2001:38 and KHO 2006:93 involved simple statistical analyses of the treatment received by people of different ages.

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

'The deliberate or de facto infringement of the dignity of a person is harassment if the infringing behaviour relates to a reason referred to in Section 8(1), and as a result of the reason, a degrading or humiliating, intimidating, hostile or offensive environment towards the person is created by the behaviour.'<sup>51</sup>

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

The personal and material scope of the prohibition of harassment is explained in the Government proposal on the 2015 Non-Discrimination Act.<sup>52</sup> The proposal outlines that harassment that addresses a group of people is also prohibited, and therefore harassment does not need to be addressed to a particular individual. According to the proposal, talks, gestures, facial expressions, emails or the presenting of inappropriate material can all count as harassment.

The Government proposal also refers to the decision of the Supreme Administrative Court from 9 March 2011,<sup>53</sup> in which the question was whether broadcasting a programme (called 'Romano-TV') on national television breached the prohibition of harassment (and discrimination) in the Non-Discrimination Act. The court decided that broadcasting a TV programme is included in the concept of 'service', where discrimination is prohibited. The court also examined whether the programme violated the dignity of the Roma population in Finland. This was important as it confirmed the principle that the prohibition of harassment in providing services extends beyond individuals, to groups.

In 2018, the National Non-Discrimination and Equality Tribunal considered that hanging a swastika/Nazi flag from an apartment window-opening was harassment on grounds of religion and prohibited in the Non-Discrimination Act.<sup>54</sup> The tribunal considered that the behaviour of the defendant had infringed the human dignity of the victim, who was the chairperson of the Jewish Community of Helsinki and that the defendant's behaviour related to religion. The tribunal found that the behaviour had also created a degrading or humiliating, intimidating, hostile or offensive environment for the victim.

#### b) Scope of liability for harassment

In Finland, where harassment is perpetrated by an employee, the employer and the employee are liable. Section 14(2) of the Non-Discrimination Act especially defines it as discrimination if the employer neglects to take action after being informed of harassment of an employee.<sup>55</sup> It is not clear if a similar lack of reaction is automatically seen as discrimination if it happens in schools, for example.

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

#### a) Prohibition of instructions to discriminate

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<sup>51</sup> The term used for discrimination grounds is 'reason' in Section 14 of the Non-Discrimination Act.

<sup>52</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.78.

<sup>53</sup> Supreme Administrative Court, 09.03.2011, Reference number 588, Ref. 3870/1/09.

<sup>54</sup> The National Non-Discrimination and Equality Tribunal, 19.12.2018 decision 393/2018 [https://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/jFpTF4RIt/YVTltk\\_tapausseloste-19.12.2018-hairinta-hakaristolippu\\_L.pdf](https://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/jFpTF4RIt/YVTltk_tapausseloste-19.12.2018-hairinta-hakaristolippu_L.pdf).

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



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

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

b) Scope of liability for instructions to discriminate

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

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

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

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

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

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

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

b) Practice and case law

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

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<sup>56</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.69.

<sup>57</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.69.

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

<sup>59</sup> Finland, Non-Discrimination Act, 1325/2014, Section 15(3).

The occupational safety and health authorities have published some information on its activities against discrimination. Their 2018 report describes a case where the employer invited a job applicant to a group interview, but did not interview the applicant after finding out that they had a visual impairment.<sup>60</sup> The occupational safety and health authorities considered that the employer had neglected to look into what kind of accommodation the person would have needed to cope with the work.

The report does not say whether the views of the occupational safety and health authorities resulted in any sanctions against the employer or whether compensation was awarded to the person who was denied reasonable accommodation.

c) Definition of disability and non-discrimination protection

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

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

In Finland, failure to meet the duty of reasonable accommodation is directly defined as discrimination as part of the definition of discrimination in the Non-Discrimination Act.<sup>61</sup> Failure to meet the duty of reasonable accommodation has the same consequences as other forms of discrimination, i.e. the duty to pay financial compensation.<sup>62</sup> The Non-Discrimination and Equality Tribunal cannot order a particular accommodation to be made, but it can forbid the continuation of discrimination, i.e. denial of reasonable accommodation, and it may impose a conditional fine to enhance its prohibition or order.<sup>63</sup> The statutes concerning shifting the burden of proof also apply to situations that involve assessing reasonable accommodation duties.

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

In Finland, Section 15 of the Non-Discrimination Act sets out a duty to provide reasonable accommodation in order to provide a person with disabilities equal access to the services that authorities<sup>64</sup> provide and to receive education as well as goods and services. The obligation to make reasonable accommodation extends to authorities, those providing education and public and private providers of goods and services.

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

- the needs of the person with disabilities;
- the size, financial position and the nature and extent of activity of the actor;
- the estimated costs for reasonable accommodation measures;
- the financial support available for reasonable accommodation measures.<sup>65</sup>

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<sup>60</sup> Occupational Safety and Health Administration (2019), *Yhdenvertaisuuden ja syrjinnän kiellon valvonta työelämässä vuonna 2018*, (Monitoring equality and non-discrimination in working life in 2018), p.11. The report does not give reference details for cases presented in the report.  
[https://www.tyosuojelu.fi/documents/14660/2642702/Raportti\\_yhdenvertaisuuden\\_ja\\_syrjinnan\\_valvonta\\_2018](https://www.tyosuojelu.fi/documents/14660/2642702/Raportti_yhdenvertaisuuden_ja_syrjinnan_valvonta_2018).

<sup>61</sup> Finland, Non-Discrimination Act, 1325/2014, Section 8.

<sup>62</sup> Finland, Non-Discrimination Act, 1325/2014, Section 28.

<sup>63</sup> Finland, Non-Discrimination Act, 1325/2014, Section 20(3).

<sup>64</sup> Section 4 of the Non-Discrimination Act has definitions for the concepts used in the act. According to Section 4(1): 'In this Act, an authority means central and local government authorities, independent bodies governed by public law and parliamentary agencies, as well as authorities in the province of Åland when the latter apply State legislation. The provisions on an authority also apply to other instances discharging a public administrative function.'

<sup>65</sup> Finland, Non-Discrimination Act, 1325/2014, Section 15.

There have been several decisions by the Non-Discrimination and Equality Tribunal that have interpreted the reasonable accommodation duties in the current Non-Discrimination Act, which came into force on 1 January 2015. As the tribunal does not have authority with regard to employment, all the decisions are outside that field. In many of the decisions, the issue has involved access to goods and services when using a wheelchair. In its decisions, the tribunal has stated, for example, that in arranging a marketing or public relations event, wheelchair access to a sauna should have been arranged for the individual who requested it. Consequently, the tribunal found discrimination in the case in the form of failure to make reasonable accommodation.<sup>66</sup> On the other hand – given the particular circumstances in the street outside a currency exchange office – there was found to be no discrimination when these services were not available to a wheelchair-using customer, as it was not possible to take reasonable accommodation measures at the time.<sup>67</sup>

The Non-Discrimination and Equality Tribunal confirmed in 2015 that the duty to provide reasonable accommodation cannot be overruled by referring to the need to comply with the requirements of other legislation. The tribunal also confirmed that the duty on reasonable accommodation extends to the decision-making process of the authority in deciding, for example, on financial benefits. The case in question concerned a disabled student who was denied the use of unemployment benefit for studying.<sup>68</sup>

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

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

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

Additionally, Chapter 2 of the Non-Discrimination Act sets a general requirement for authorities, education providers and employers to promote equality on all grounds. This requirement is of a more general nature than the duty to provide reasonable accommodation for people with disabilities when they indicate that they need reasonable accommodation measures. As a response to the requirement to promote equality, many authorities provide information in many languages (in addition to official languages) or target information at specific groups, such as sexual or ethnic minorities. Even if the requirement to promote equality is intended to change the situation of groups of people in unequal situations, it is possible for the individual to use it to support her/his claim for more equal treatment even if she/he is not entitled to claim reasonable accommodation measures e.g. on grounds of her/his religion, sexual orientation or language.

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<sup>66</sup> Non-Discrimination and Equality Tribunal decision, 146/2016, 25.11.2016, <http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/RBNIT854R/YVTltk-tapausseloste-25.11.2016-esteetomyys-markkinointitempaus.pdf>.

<sup>67</sup> Non-Discrimination and Equality Tribunal decision, 47/2015, 31.03.2016 <http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/Rpkxlemev/YVTltk-tapausseloste-31.3.2016-rahamvaihtopalvelu-liikuntavammaisen.pdf>.

<sup>68</sup> Non-Discrimination and Equality Tribunal decision, 14.12.2015, 21/2015 [http://yvtltk.fi/material/attachments/ytaltk/tapausselosteet/tapausselosteet2015/GA3R XRkIL/YVTltk-tapausseloste-14\\_12\\_2015-kohtuulliset\\_mukautukset-TE\\_toimisto.pdf](http://yvtltk.fi/material/attachments/ytaltk/tapausselosteet/tapausselosteet2015/GA3R XRkIL/YVTltk-tapausseloste-14_12_2015-kohtuulliset_mukautukset-TE_toimisto.pdf).

### **3 PERSONAL AND MATERIAL SCOPE**

#### **3.1 Personal scope**

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

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

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

###### **a) Protection against discrimination**

In Finland, the personal scope of the Non-Discrimination Act (Section 8) does not cover legal persons for the purpose of protection against discrimination. As a general rule, only natural persons are protected. The Government proposal<sup>69</sup> and the Parliament's Employment and Equality Committee Opinion<sup>70</sup> both stress that in some exceptional cases, protection may extend to protecting legal persons. The Government proposal gives an example of discriminating against an association or religious community that could have a direct effect on the natural persons forming these legal persons.<sup>71</sup>

###### **b) Liability for discrimination**

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

Section 2(2) of the Non-Discrimination Act states that only legal acts that fall within the scope of private affairs and family life are exempt from the scope of applicability of the act. The Government proposal on the Non-Discrimination Act further explains that the scope of 'private affairs and family life' means interaction within family and relatives and these relationships are protected in the Constitution of Finland and in Article 8 of the European Convention on Human Rights.<sup>72</sup>

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

###### **a) Protection against discrimination**

In Finland, the Non-Discrimination Act, does not cover legal persons for the purpose of protection against discrimination. As a general rule, only natural persons are protected, therefore the protection does not extend to public sector bodies. The Government proposal<sup>73</sup> and the Parliament's Employment and Equality Committee Opinion<sup>74</sup> give examples of exceptional cases when protection may extend to legal persons. All these examples are of private sector bodies, such as associations or religious communities.

###### **b) Liability for discrimination**

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

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<sup>69</sup> Finland, Government proposal on the Non-Discrimination Act, pp.67-68.

<sup>70</sup> Finnish Parliament Employment and Equality Committee, p.4 <https://www.eduskunta.fi/pdf/TyVM+11/2014>.

<sup>71</sup> Finland, Government proposal on the Non-Discrimination Act, p.68.

<sup>72</sup> Finland, Government proposal on the Non-Discrimination Act, p.55.

<sup>73</sup> Finland, Government proposal on the Non-Discrimination Act, pp.67-68.

<sup>74</sup> Page 4, Parliament Employment and Equality Committee <https://www.eduskunta.fi/pdf/TyVM+11/2014>.

## **3.2 Material scope**

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

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

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

'conditions for access to self-employment or means of livelihood, and support for business activities;  
membership and involvement in an organisation of workers or employers or other organisations whose members carry out a particular profession, including the benefits provided by such organisations'.

The section thereby indirectly confirms that these situations are included in the material scope of the act.

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

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

In Finland, the material scope of the Non-Discrimination Act, as defined in Section 2, prohibits discrimination in the following areas: conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.

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

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

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

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

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

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

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

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

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

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

The Non-Discrimination and Equality Tribunal confirmed in 2015 that the duty on making reasonable accommodation for people with disabilities extends to the decision-making process of the authority in deciding, for example, on social security benefits.<sup>75</sup>

#### **a) Article 3(3) exception (Directive 2000/78)**

There is no direct reference in the Non-Discrimination Act to exceptions enabled in Article 3(3) of the Employment Equality Directive. As explained in section 2.2.b above and in sections 4.1 and 4.7.1 below, the only justification for differential treatment in employment must be based on genuine and determining occupational requirements (4.1), age (4.7.1) or habitual residence (2.2.b). Exceptions allowing differential treatment based on age may be relevant in regard to payments made by state schemes in relation to different retirement ages.

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

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<sup>75</sup> Non-Discrimination and Equality Tribunal decision: 14.12.2015, 21/2015  
[http://vytltk.fi/material/attachments/ytaltk/tapausselosteet/tapausselosteet2015/GA3RXXRkIL/YVtltk-tapausseloste-14\\_12\\_2015-kohtuulliset\\_mukautukset-TE\\_toimisto.pdf](http://vytltk.fi/material/attachments/ytaltk/tapausselosteet/tapausselosteet2015/GA3RXXRkIL/YVtltk-tapausseloste-14_12_2015-kohtuulliset_mukautukset-TE_toimisto.pdf).

'it has a justified purpose that is objectively and appropriately founded and derives from employment policy, labour market or vocational training or some other comparable justified objective, or when the differential treatment arises from age limits adopted in qualification for retirement or invalidity benefits within the social security system.'<sup>76</sup>

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

In Finland, the Non-Discrimination Act prohibits discrimination with regard to social advantages as formulated in the Racial Equality Directive. As the scope of the act is wide, referring to 'both public and private activities' (Section 2), the act does not make any references to or specifications about the material scope of the act. The former Non-Discrimination Act<sup>77</sup> explicitly mentioned social advantages as formulated in the Racial Equality Directive in the material scope of the act. The stated goal of the current Non-Discrimination Act was to extend the material scope of the legislation to all private and public activity.<sup>78</sup> Therefore, nothing leads to the conclusion that the act is not intended to cover this requirement in the directives.

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds for discrimination. Therefore, all grounds mentioned in the act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.<sup>79</sup>

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

In Finland, Section 2 of the Non-Discrimination Act prohibits discrimination with regard to education as formulated in the Racial Equality Directive. As the scope of the act is wide, referring to 'both public and private activities' (Section 2), the act does not make any references to or specifications about the material scope of the act. However, the act makes a distinction between those who have a legislation-based position in providing education as opposed to when education is provided as part of the provision of goods and services (such as language courses, etc.) Discrimination is prohibited in both situations but only in the former case is there a special duty to purposefully and methodically foster equality.<sup>80</sup>

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

#### a) Pupils with disabilities

In Finland, the general approach to education for pupils with disabilities does not raise problems. The educational policy has been based on the principle of community schooling since the early 1980s. According to this principle, students attend school in their own

<sup>76</sup> Finland, Non-Discrimination Act, 1325/2014, Section 12(2) of which reads in Finnish: '*Ikään tai asuinpaikkaan perustuva erilainen kohtelu on lisäksi oikeutettua, jos kohtelulla on objektiivisesti ja asianmukaisesti perusteltu työllisyyspoliittinen tai työmarkkinoita koskeva tavoite taikka jos erilainen kohtelu johtuu eläke- tai työkyvyttömyysetuuksien saamisedellytykseksi vahvistetuista ikärajoista.*'

<sup>77</sup> Finland, Non-Discrimination Act, 1325/2014, Section 2(2)(2).

<sup>78</sup> Finland, Government proposal on the Non-Discrimination Act 19/2014, p.36.

<sup>79</sup> There is no age-related justification for differential treatment in social advantages e.g. in granting invalidity benefits. The only age-related exceptions are in employment – see section 4.7.1 of this report.

<sup>80</sup> Finland, Non-Discrimination Act, 1325/2014, Section 6.



residential area and there is no segregation of pupils with disabilities.<sup>81</sup> The general principle of inclusion is accepted as a basis for educational policy, but some critics point out that too many students are transferred to special needs education classes because of the attitude of the teachers.<sup>82</sup> There is no information available on the number of children with disabilities in mainstream and segregated education but of all children aged 13-15 years, 3 % study in segregated education.<sup>83</sup>

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

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

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

The follow-up study<sup>84</sup> points to positive trends, for example in attending pre-primary education and teaching of the Romani language, and in successful cooperation between Roma homes and schools. Roma children continue to participate in pre-primary education less often than children of the majority population, but their participation rate has gone up significantly in 10 years. While an increasing share of Roma pupils are doing well in basic education, one in five of all Roma pupils continue to have significant problems in their school attendance.

Roma students' high absence rate has been identified as a factor that impedes their success at school. The absences are often caused by family reasons, such as participating in family events (funerals, celebrations) and travelling. The National Board of Education's study shows, however, that Roma children are more easily persuaded to stay at home for various reasons than children of the majority population. In interviews with Roma pupils, bullying at school also came to light to some extent as a cause of unauthorised absences.<sup>85</sup> Neither the Non-Discrimination Ombudsman nor its predecessor, the Ombudsman for Minorities, has published information on cases of discrimination at schools, although the Ombudsman for Children has published a study on the welfare of Roma children.<sup>86</sup>

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<sup>81</sup> Finnish National Board of Education [http://www.edu.fi/erityinen\\_tuki/yhteinen\\_koulu\\_kaikille](http://www.edu.fi/erityinen_tuki/yhteinen_koulu_kaikille).

<sup>82</sup> For example, Professor Timo Saloviita

[http://users.jyu.fi/~saloviit/tutkimus/inclusion.html#INKLUUSIO\\_MEILL%C4\\_JA\\_MUUALLA](http://users.jyu.fi/~saloviit/tutkimus/inclusion.html#INKLUUSIO_MEILL%C4_JA_MUUALLA).

<sup>83</sup> Statistics Finland (2018), *Statistics on student education, 2017*

[http://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/StatFin\\_\\_kou\\_\\_erop/statfin\\_erop\\_pxt\\_003.px/table/](http://pxnet2.stat.fi/PXWeb/pxweb/fi/StatFin/StatFin__kou__erop/statfin_erop_pxt_003.px/table/).

<sup>84</sup> Finnish National Board of Education (2011), *Romanioppilaiden perusopetuksen tilannekatsaus 2010–2011 ja toimenpide-ehdotukset*, Reports 2011:26

[http://www.oph.fi/download/140023\\_Romanioppilaiden\\_perusopetuksen\\_tilannekatsaus\\_2010-2011\\_ja\\_toimenpide-ehdotukset.pdf](http://www.oph.fi/download/140023_Romanioppilaiden_perusopetuksen_tilannekatsaus_2010-2011_ja_toimenpide-ehdotukset.pdf).

<sup>85</sup> Ministry of Social Affairs and Health (2014) 'Steering and monitoring of the implementation of the national policy on Roma. Working group report', Finland.

<sup>86</sup> Junkala, P. and Tawah, S. (2009), *More Similar than Different - The Welfare of Roma Children and Youth and the Realisation of their Rights in Finland*, Helsinki, Ombudsman for Children, <http://lapsiasia.fi/wp-content/uploads/2015/04/romanilasten-hyvinvointi.pdf>.



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

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

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

Failure to meet the duty of reasonable accommodation is directly defined as discrimination as part of the definition of discrimination in the Non-Discrimination Act.<sup>87</sup> This provision also applies to access and supply of goods and services. There is no reference in the Non-Discrimination Act or in the Government Proposal for the Non-Discrimination Act on adapting goods as a reasonable accommodation measure. Therefore, this reasonable accommodation measure may not be required when interpreting the Non-Discrimination Act.

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

#### **a) Distinction between goods and services available publicly or privately**

In Finland, the Non-Discrimination Act does not distinguish between goods and services that are available to the public (e.g. in shops, restaurants, banks) and those that are only available privately (e.g. limited to members of a private association). Section 2(2) of the act defines that only legal acts that fall within the scope of private affairs and family life are exempt from the scope of applicability of the act. In the Government proposal<sup>88</sup> for the act it is further defined, for example, that putting a flat up for rent is included in the sphere of prohibition of discrimination.

Even if the material scope of the Non-Discrimination Act is wide and only legal acts that fall within the scope of private affairs and family life are exempt from the scope of applicability of the act, there are some restrictions on the right to compensation because of discrimination. According to Section 23 of the Non-Discrimination Act, the person who has been discriminated against is entitled to receive compensation only from the authority, employer, education provider or supplier of goods or services who has discriminated against them. Therefore, compensation cannot be received from a manufacturer who has produced inaccessible goods, for instance.<sup>89</sup>

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<sup>87</sup> Finland, Non-Discrimination Act, 1325/2014, Section 8.

<sup>88</sup> Finland, Government proposal on the Non-Discrimination Act 19/2014, p.56.

<sup>89</sup> See section 6.5.a below on applicable sanctions in cases of discrimination.

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

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

The former Non-Discrimination Act<sup>90</sup> explicitly mentioned housing as formulated in the Racial Equality Directive in the material scope of the act. The stated goal of the current Non-Discrimination Act was to extend the material scope of the legislation to all private and public activity.<sup>91</sup> Therefore, nothing leads to the conclusion that the act is not intended to cover this requirement in the directives.

In the Government proposal for the act, it is further stated that putting a flat up for rent is included in the sphere of prohibition of discrimination.<sup>92</sup> The duty to provide reasonable accommodation in order to provide a person with disabilities with equal access to goods and services extends to public and private providers of goods and services. What is reasonable accommodation depends on, among other things, the size, financial position and the nature and extent of activity of the entity concerned.<sup>93</sup> Therefore, an individual landlord who only has one apartment to rent could be required to make smaller modifications than a company that is making a substantial profit by renting many apartments.

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

There is not yet any case law from the courts on housing in respect of the current Non-Discrimination Act. The statistics of the Non-Discrimination Ombudsman regarding housing discrimination show that 8 % of the discrimination cases reported to the Ombudsman were on housing discrimination.<sup>94</sup> There is no detailed information available on which discrimination grounds the complaints of housing discrimination were based on. In May 2017, the Ombudsman sent and published on her website a letter to apartment rental agents, in which she highlighted that the prohibition on discrimination extends to apartments and houses for rent and to apartment rental agents.<sup>95</sup> It is generally believed that most housing discrimination in the private housing sector is directed to visible minorities, such as ethnic minorities. In her letter, the Ombudsman mentions discrimination based on ethnic origin and sexual orientation. Discrimination against the Roma is often referred to in respect of public housing. There are no references to the discrimination experiences of migrants in housing.

#### a) Trends and patterns regarding housing segregation for Roma

In Finland, there are patterns of housing discrimination against the Roma. This was highlighted by a study published by the Ombudsman for Minorities in 2013 on the

<sup>90</sup> Finland, Non-Discrimination Act, 1325/2014, Section 2(2)(2).

<sup>91</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.36.

<sup>92</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.56.

<sup>93</sup> Finland, Non-Discrimination Act, 1325/2014, Section 15.

<sup>94</sup> Non-Discrimination Ombudsman (2019), *Annual Report 2018*, p.19  
<https://www.syrjinta.fi/documents/10181/10834/Yhdenvertaisuusvaltuutetun+vuosikertomus+2018/efb7f5b5-652f-4117-9b70-34458edec08f>.

<sup>95</sup> Letter published 02.05.2017 <https://www.syrjinta.fi/-/yhdenvertaisuusvaltuutetun-kirje-vuokravalituspalveluille>.

discrimination faced by the Roma.<sup>96</sup> The study showed that almost half (some 48.5 %), of the Roma respondents who have been active on the housing market, have experienced discrimination on the ground of their ethnic origin when applying for rental housing financed through state subsidies, typically rental housing belonging to the municipality or city.

A follow-up study<sup>97</sup> to the report on housing and equality of the Roma was published in 2018. This time the study did not include a survey of discrimination experiences of the Roma and therefore it is not possible to make a direct comparison with the statistics from the 2013 survey. The data used in the follow-up study included information from contacts and complaints to the Non-Discrimination Ombudsman, the Housing Finance and Development Centre of Finland and Parliamentary Ombudsman, inquiries among the Roma, and expert interviews.

According to the summary of the study:

'the equality of the Roma in housing relative to the main population has improved and the population groups are now more equal as housing applicants. However, both the main population and the Roma are facing economic problems more than before. The young Roma, in particular, are experiencing financial problems that impact on housing. There is the risk that some of the Roma may be excluded from the usual housing market.'

Although the follow-up study commissioned by the Ministry of the Environment estimates that Roma housing applicants 'are now more equal' than before, there is reason to believe that housing discrimination against the Roma continues to be widespread.<sup>98</sup>

Housing segregation does not appear to be a major problem for the Roma. Part of the reason for this may be that Finland is a large country and the Roma community is small.

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<sup>96</sup> Ombudsman for Minorities (2013) 'Being Different In Everyday Life – Survey On Roma's Experiences Of Discrimination', Helsinki, p.5, [http://www.syrjinta.fi/documents/10181/10850/54366\\_romanitutkimus\\_tiivistelma\\_eng\\_final.pdf/555a7857-41b2-48f2-848b-224c5a32f665](http://www.syrjinta.fi/documents/10181/10850/54366_romanitutkimus_tiivistelma_eng_final.pdf/555a7857-41b2-48f2-848b-224c5a32f665).

<sup>97</sup> Törmä, S. and Huotari, K. (2018) *Romanien asumisen yhdenvertaisuuden seurantaselvitys*, Ympäristöministeriön raportteja 6/2018, Helsinki. [http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/160489/YMra\\_6\\_2018.pdf](http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/160489/YMra_6_2018.pdf).

<sup>98</sup> See e.g. Non-Discrimination Ombudsman (2019), *Annual Report 2018*, p.19, where the Ombudsman states that discrimination against the Roma in housing is 'lamentably common'.

## **4 EXCEPTIONS**

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

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

There is very little case law on employment discrimination and most of it concentrates on whether the employment contract has been terminated on any basis allowed in employment legislation. Even if the claim is that the contract has been terminated on a discriminatory basis (i.e. on grounds of health) instead of because of a justified need to reduce personnel, the concept of genuine and determining occupational requirements is rarely interpreted in these cases.<sup>99</sup>

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

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

However, in the Government proposal the question is addressed in conjunction with the questions of genuine and determining occupational requirement and it includes a reference to Article 4(2) of Directive 2000/78.<sup>100</sup> The Government proposal cites the Article 4(2) definition that a difference of treatment based on a person's religion or belief will not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement. Additionally, the Government proposal states that 'setting such a requirement cannot lead to discrimination on another ground.'<sup>101</sup> There is no case law on the issue.

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

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

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

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

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

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<sup>99</sup> There does not seem to have been systematic information gathering or any analysis of employment discrimination (or genuine and determining occupational requirements) in Finland. This may be due to the fact that the Non-Discrimination Ombudsman, who produces studies and information on discrimination in areas of life other than employment, is not authorised to work with employment discrimination claims. Also the conciliation agreements between employers and trade unions representing employees in discrimination cases are usually confidential. In 2014, the Ministry of Employment and the Economy published a study entitled 'Reporting on Employment Discrimination in Finland'. <https://tem.fi/documents/1410877/2859687/Ty%C3%B6syrjinn%C3%A4n+seuranta+suomessa+18122014.pdf>. The follow-up to the recommendations made on developing the reporting of employment discrimination is not available.

<sup>100</sup> In the Government proposal the question is addressed in conjunction with the questions of genuine and determining occupational requirement and it includes a reference to Article 4(2) of Directive 2000/78.

<sup>101</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2014, p.72.

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

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

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

The issue of the overlap and interface between nationality and ethnic origin as a ground of discrimination has not been tackled expressly in the national legislation or the preparatory works. There have been a few cases where the National Non-Discrimination and Equality Tribunal has opined that discrimination on the ground of (foreign) nationality may constitute indirect ethnic discrimination since the majority of foreign nationals have an ethnic origin other than Finnish.<sup>102</sup>

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

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

a) Benefits for married employees

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

b) Benefits for employees with opposite-sex partners

In Finland, it would constitute unlawful discrimination under Section 8 of the Non-Discrimination Act if an employer provided benefits only to those employees with opposite-sex partners. This would constitute discrimination based on sexual orientation, and possibly also based on family relationships.<sup>103</sup>

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

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

The Non-Discrimination Act and the other non-discrimination laws do not specifically address the issue. Health and safety issues at work are governed by the Occupational Safety and Health Act (*työturvallisuuslaki*),<sup>104</sup> which entered into force in January 2003.

According to the Occupational Safety and Health Act, primary responsibility for protection of occupational safety and health lies with the employer, who must act in cooperation with

<sup>102</sup> See e.g. the decision of the Non-discrimination and Equality Tribunal of 28.09.2006. [http://yvtltk.fi/material/attachments/ytaltk/sltkntapausselosteet2006/Ij1hQO2MR/42294\\_SLTK-tapausseloste\\_28082006\\_L.pdf](http://yvtltk.fi/material/attachments/ytaltk/sltkntapausselosteet2006/Ij1hQO2MR/42294_SLTK-tapausseloste_28082006_L.pdf).

<sup>103</sup> In an earlier case, in which the employment contract of a lesbian editor-in-chief was terminated, the Supreme Court found that there had been direct discrimination on the basis of both sexual orientation and family relationships. The contract was terminated before the period of employment started because the company became aware that the editor-in-chief was living with another woman and had given false information on the gender and political activity of her spouse. Supreme Court decision KKO 2015:14, <http://korkeinoikeus.fi/fi/index/ennakkopaatokset/precedent/1433846010211.html>. For further information of the case in English see <http://www.equalitylaw.eu/downloads/2880-finland-supreme-court-precedent-on-employment-discrimination-84-kb>.

<sup>104</sup> Finland, Health and Safety Act (*työturvallisuuslaki*), 738/2002, Section 10. <http://www.finlex.fi/fi/laki/ajantasa/2002/20020738>.

the employees. The employer must systematically and adequately analyse and identify the hazards and risk factors caused by the work, the working premises, other aspects of the working environment and the working conditions. If, according to this assessment, the work may cause a particular risk of injury or illness, such work must be carried out only by an employee who is competent and personally suitable for it or by another employee under the direct supervision of such an employee.<sup>105</sup> This requirement is absolute (non-negotiable) in nature.

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

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

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

In Finland, the Non-Discrimination Act does not provide a general exception for direct discrimination on age but there are specific exceptions, as set out further below

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

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

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

‘the treatment has an objectively and appropriately justified employment policy purpose or a purpose concerning the labour market, or if the different treatment is attributable to the age limits adopted for qualification for retirement or invalidity benefits.’<sup>106</sup>

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

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

Again, the situation would have been clearer if the law had incorporated an explicit reference to the requirement that the means employed have to be ‘appropriate and necessary’, so that it would have been clear that it is not enough to establish that the conduct in question had a legitimate aim. As it is, the present text does not, at least on a

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<sup>105</sup> Finland, Health and Safety Act, 738/2002, Section 11.

<sup>106</sup> Finland, Non-Discrimination Act, 1325/2014, Section 12(2) reads in Finnish: *‘Ikään tai asuinpaikkaan perustuva erilainen kohtelu on lisäksi oikeutettua, jos kohtelulla on objektiivisesti ja asianmukaisesti perusteltu työllisyyspoliittinen tai työmarkkinoita koskeva tavoite taikka jos erilainen kohtelu johtuu eläke- tai työkyvyttömyysetuuksien saamisedellytykseksi vahvistetuista ikärajoista.’*

literal interpretation, allow for a full proportionality assessment. However, there is no case law that would demonstrate a disproportionate use of means.

b) Permitted differences of treatment based on age

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

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

A couple of examples arise from current legislation. There is a specific act, the Young Employees Act, which governs the employment relationships of young employees, who are defined in the act as being those who are employed and under 18 years.<sup>107</sup> The act makes specific provisions with regard to, for example, the maximum working time allowed and occupational health and security.

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

Under the Employment Contract Act<sup>108</sup> the length of a general notice period, after the passing of which an employment contract is terminated, depends on the duration of the employment relationship, and therefore often indirectly also on age (provisions concerning these matters are laid down in the Employment Contracts Act, Chapter 6, Section 3).

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

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

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

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

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

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

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<sup>107</sup> Finland, Act on Young Employees (*laki nuorista työntekijöistä*) 998/1993.

<sup>108</sup> Finland, Employment Contracts Act (*työsopimuslaki*) 55/2001, as amended by laws up to 304/2004 <http://www.finlex.fi/fi/laki/ajantasa/2001/20010055>.

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

#### **4.7.3 Minimum and maximum age requirements**

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

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

Section 8 of the Civil Servants Act stipulates that a civil servant must be at least 18 years of age.<sup>109</sup> As an exception to this main rule, a person who is at least 15 years of age and who has completed compulsory schooling, can be assigned a post as a civil servant provided that the nomination is considered appropriate in light of the carrying out of the functions of the particular position.

#### **4.7.4 Retirement**

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

In Finland, there is no state pension age at which individuals must begin to collect their state pensions. According to Section 10 of the National Pension Act a person is entitled to a state old-age pension at an age that depends on her or his year of birth.<sup>110</sup> The lowest pension age is 63 years for those who were born before 1954, gradually rising to 65 years for those who were born in 1964. The pension age for those born after 1965 has not yet been confirmed but will be set by governmental decree. Whether a person is entitled to this pension depends on the amount of other benefits (including other types of pensions) that she or he receives. In any case, individuals must apply for a pension.

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

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

In Finland, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. This age depends on a person's year of birth. The lowest pension age is 63 years for those who were born before 1954, gradually rising to 65 years for those who were born in 1964. The

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<sup>109</sup> Finland Civil Servants Act (*virkamieslaki*) 750/1994, <http://www.finlex.fi/fi/laki/ajantasa/1994/19940750>.

<sup>110</sup> Finland, National Pension Act (*kansaneläkelaki*) 568/2007, <http://www.finlex.fi/fi/laki/ajantasa/2007/20070568>.



pension age for those born after 1965 has not been confirmed yet but will be set by governmental decree.

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

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

The applicable employee pension law depends on the insured person's place of work and type of employment.<sup>111</sup> A single person can enjoy several types of pension simultaneously, including the national (i.e. state) old-age pension and an employment-related old-age pension.

#### c) State imposed mandatory retirement ages

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

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

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

#### d) Retirement ages imposed by employers

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

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

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<sup>111</sup> These laws cover both public and private sector employment and self-employment: Employees' Pensions Act (TyEL), Seamen's Pensions Act (MEL), Farmers' Pensions Act (MYEL), Self-Employed Persons' Pensions Act (YEL), State's Pension Act (VaEL), Local Government Pensions Act (KuEL) and Evangelical Lutheran Church's Pension Act (KiEL).

Many employers have adopted particular internal rules that deal with retirement ages, and that employers and employees often agree to include these rules in their employment contracts.

e) Employment rights applicable to all workers irrespective of age

The legislation against dismissal<sup>112</sup> applies to all instances of dismissal, but the termination of the employment contract due to an employee reaching 68-70 years is not regarded as 'dismissal', and therefore the law on protection against dismissal does not apply in that regard. If the employer and the employee agree on continuing the employment after the employee has reached the retirement age of 68-70 years, the ordinary provisions regarding protection against unjustified dismissal apply to the termination of such an agreement. The relevant laws do not differentiate between women and men.

f) Compliance of national law with CJEU case law

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

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

#### **4.7.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

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

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

The act does not regulate more precisely the factors on the basis of which selection of workers for redundancy can be made. However, it is clear that these factors may not be discriminatory. Under case law, it is also clear that the decision of an employer not to take seniority into account when laying off or dismissing employees cannot be successfully challenged on the grounds that the employer should have taken seniority into account.

a) Age taken into account for redundancy compensation

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

Compensation for redundancy is to be paid only in situations where the laying off or dismissal was based on grounds that breach the Employment Contracts Act, for instance, if the decision was based on discriminatory considerations or if there were genuinely no

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<sup>112</sup> Finland, Civil Servants Act, 750/1994, Chapter 7 and Employment Contract Act, Chapter 7.

grounds for redundancy. The compensation must be equivalent to the pay due for a minimum of three months or a maximum of 24 months.

Depending on the reason for terminating the employment relationship, the following factors must be taken into account in determining the amount of compensation: estimated time without employment and estimated loss of earnings, the remaining period of a fixed-term employment contract, the duration of the employment relationship, the employee's age and chances of finding employment corresponding to his or her vocation or education and training, the employer's procedure for terminating the contract, any motive for termination originating on the part of the employee, the general circumstances of the employee and the employer, and other comparable matters.<sup>113</sup>

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

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

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

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

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

Section 12(2) of the Non-Discrimination Act allows for differential treatment because of domicile.<sup>114</sup> This exception is clearly outside the scope of the directives.

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

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

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<sup>113</sup> Finland, Employment Contracts Act, 55/2001, Chapter 12, Section 2.

<sup>114</sup> Finland, Non-Discrimination Act, 1325/2014. According to Section 12(2): 'Different treatment based on age or domicile is also justified if the treatment has an objectively and appropriately justified employment policy objective or an objective concerning the labour market' [-]. The reference to domicile (habitual residence) was added to the Non-Discrimination Act in the Parliament to allow municipalities to provide jobs for those persons living in the municipality.

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

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

In Finland, positive action is permitted in respect of all grounds of discrimination (origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics) in Section 9 of the Non-Discrimination Act.

Section 9 states:

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

Furthermore, the act obliges all public authorities and those private sector organisations using public power or performing public administrative tasks, education providers and those employers who employ more than 30 employees, to take steps to foster equality. According to the Non-Discrimination Act this includes the evaluation the realisation of equality and taking necessary measures to promote the realisation of equality. It is further stipulated that these measures need to be effective, expedient and proportionate.<sup>115</sup> In this way the national legislation goes beyond the minimum requirements laid down in Article 5 of Directive 2000/43 and Article 7 of Directive 2000/78.

### **b) Quotas in employment for people with disabilities**

In Finland, national law does not provide for a quota for people with disabilities in employment.

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<sup>115</sup> Finland, Non-Discrimination Act, 1325/2014, Chapter 2 - Promotion of equality.

## 6 REMEDIES AND ENFORCEMENT

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

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

In Finland, the following procedures exist for enforcing the principle of equal treatment: judicial, administrative and alternative dispute resolution procedures, such as mediation. Their availability differs depending on the domain of life in which the breach occurred.

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

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

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

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

As regards employment, compliance by employers with anti-discrimination law is supervised by the occupational safety and health authorities. They may receive communications from employees, and carry out on-site inspections in the private sector, and if they consider that there are probable grounds to suspect that discrimination, as defined in the Criminal Code, has taken place, it must report the case to a public prosecutor. In less severe cases of discrimination, the occupational safety and health authorities can issue an improvement notice.<sup>116</sup> The improvement notices that the occupational safety and health authority issues are legally binding. Discriminatory provisions included in an employment contract may be annulled or amended by an ordinary court or by the Labour Court if the matter deals with a collective agreement.

If a discriminatory decision is made in the exercise of public powers, a victim of discrimination may make use of the rectification procedure (in other words, they can request a new decision from the same public authority) or some other ordinary channel of appeal. In such situations a person who considers that they have been wronged can also file a complaint to the Parliamentary Ombudsman or the Chancellor of Justice of the

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<sup>116</sup> Finland, Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (*Laki työsuojelun valvonnasta ja työpaikan työsuojeluyhteistoiminnasta*), 44/2006, Section 13.

Government. These entities, which have oversight of legality, do not have the power to amend the decisions of authorities on the basis of complaints, or to award damages in a legally binding way, but they may, for example, issue admonitions or order the criminal prosecution of a public official.

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

b) Barriers and other deterrents faced by litigants seeking redress

The services of the Non-Discrimination Ombudsman, the National Non-Discrimination and Equality Tribunal, the occupational safety and health authorities and the Parliamentary Ombudsman or the Chancellor of Justice are free of charge and are meant to be used even without the help of a lawyer. Claiming compensation because of discrimination must be done in district courts and involves the risk of paying the defendant's legal fees if the case is lost, which in practice deters those seeking redress from claiming compensation for discrimination. The financial risks involved have been recognised as a significant deficiency in the legal protection provided under the Finnish non-discrimination legislation.<sup>117</sup>

In employment-related issues those belonging to the trade union usually turn to the legal aid services unions provide when facing discrimination. Occupational safety and health authorities provide help for those without trade union membership. Although the health and safety authorities provide free assistance nationwide, their expertise in combating discrimination varies and minorities in particular may not have confidence in their services, which are generally known to concentrate on physical occupational safety rather than on discrimination.

c) Number of discrimination cases brought to justice

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

In 2018, the Ombudsman received a total of 924 new discrimination cases,<sup>118</sup> which was around 20 % more than previous year. The number of cases reported to the Ombudsman has risen continuously since the expansion of the mandate of the Ombudsman beyond ethnicity at the beginning of 2015.

In 2018, the most common ground for reported instances of discrimination was disability (192 cases), with the next biggest group of discrimination cases relating to discrimination based on origin (175 cases). All prohibited grounds of discrimination were covered in the complaints (language, 63 cases; age, 97 cases; nationality, 90 cases; state of health, 81 cases; religion or belief, 35 cases; sexual orientation, 10 cases; opinion or political activity or trade union activity, 36 cases; and family relationships, 17 cases).<sup>119</sup>

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

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<sup>117</sup> For example, see Non-Discrimination Ombudsman (2019), *Report Of The Non-Discrimination Ombudsman To The Parliament for 2018*, Helsinki, p.51, <https://www.syrjinta.fi/documents/14490/0/The+report+of+the+Non-Discrimination+Ombudsman+to+the+Parliament/9b16017c-b442-4805-8927-9f60f1d5c681>.

<sup>118</sup> Non-Discrimination Ombudsman (2019), *Annual Report for 2018*, Helsinki, p.14.

<sup>119</sup> Non-Discrimination Ombudsman (2019), *Annual Report for 2018*, Helsinki, p.16. Cases where there may have been multiple discrimination (e.g. on grounds of sexual orientation and family relationships) are currently registered under their primary cause of discrimination.

The occupational safety and health authorities publishes statistics on the telephone enquiries on discrimination and on cases sent to them in writing.<sup>120</sup> In 2018, the occupational safety and health authorities received approximately 500 telephone inquiries on discrimination. The statistics do not specify further information, such as the reason for the enquiry or whether the enquiry concerned a certain ground of discrimination.

In 2018, the occupational safety and health authorities in Finland received around 200 cases of discrimination in writing.<sup>121</sup> The most common ground for reported instances of discrimination was state of health (35 % of cases), followed by other personal characteristics (23 % of cases). Other reasons for reported instances of discrimination were: conviction or belief (11 % of cases), age (8 % of cases), trade union activity (8 % of cases), combination of origin, nationality and language (6 % of cases), disability (3 % of cases), family relationships (3 % of cases), political activity (1 % of cases) sexual orientation (1 % of cases) and religion (1 % of cases).

In comparing the complaints to the Non-Discrimination Ombudsman and to the occupational safety and health authorities, it is noteworthy that of the discrimination cases reported to the occupational safety and health authorities, only 29 % were based on the discrimination grounds protected by the equality directives (Directives 2000/43 and 2000/78), whereas of the discrimination cases reported to the Non-Discrimination Ombudsman 58 % were based on grounds protected by the directives.

d) Registration of discrimination cases by national courts

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

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

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

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

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

In accordance with Section 21 of the Non-Discrimination Act, an organisation with an interest in advancing equality or the Non-Discrimination Ombudsman have a right to bring a specific case before the National Non-Discrimination and Equality Tribunal if the person who considers that they have been discriminated against gives his or her consent. The Non-Discrimination Ombudsman or the organisation with an interest in advancing equality then becomes the party in the case. The Government proposal for the act does not set any specific requirements as to what an 'organisation with an interest in advancing equality'

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<sup>120</sup> Occupational Safety and Health Administration (2019) *Supervision of equality and the prohibition of discrimination in employment 2018*, Helsinki.  
[https://www.tyosuojelu.fi/documents/14660/2642702/Raportti\\_yhdenvertaisuuden\\_ja\\_syrjinnan\\_valvonta\\_2018](https://www.tyosuojelu.fi/documents/14660/2642702/Raportti_yhdenvertaisuuden_ja_syrjinnan_valvonta_2018).

<sup>121</sup> The report does not give exact numbers.

may be, but opens up the concept with examples, such as a human rights association or an association representing consumers or social partners.<sup>122</sup>

b) Engaging in support of victims of discrimination (joining existing proceedings)

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

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

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

c) Actio popularis

In Finland, national law does not allow associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

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

The exception to the above is the right of the Non-Discrimination Ombudsman to be heard as an *amicus curiae*.<sup>123</sup> A court must, in a case concerning the application of the Non-Discrimination Act, allow the Non-Discrimination Ombudsman the opportunity to be heard insofar as the matter pertains to the authority of the Ombudsman. Additionally, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges for discrimination (Chapter 11, Section 11 of the Criminal Code).

d) Class action

In Finland, national law does not allow associations, organisations and trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

Class action has been possible only in relation to disputes between consumers and entrepreneurs since October 2007, and only the Consumer Ombudsman can take the matter to court as a class action.<sup>124</sup> In theory, the Consumer Ombudsman could also initiate class action claims in discrimination cases on the provision of goods and services.

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<sup>122</sup> Finland, Government proposal on the Non-Discrimination Act 19/2014, p.87.

<sup>123</sup> Finland, Non-Discrimination Act, 1325/2014, Section 27.

<sup>124</sup> Finland, Class Action Act (*ryhmäkannelaki*), 444/2007.



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

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

The provision does not apply to criminal cases, but does apply to proceedings in applying the Non-Discrimination Act before the Non-Discrimination and Equality Tribunal, before the ordinary courts (e.g. to a claim for compensation according to Section 23 of the Non-Discrimination Act) and in relation to the occupational safety and health authorities. It does not, however, apply to proceedings brought under acts other than the Non-Discrimination Act, such as the Tort Liability Act.

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

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

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

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

The personal and material scope of the provision is wide. The law applies, first of all, not just to employers or the person who the complainant has complained about, but to any person who takes action in response to the action by the complainant.<sup>125</sup> No necessary personal connection to the (alleged) discrimination is needed. Secondly, the scope of persons protected from victimisation is wide: not only is the (alleged) victim of discrimination protected, but so too are all those who have engaged in the proceedings or who have been involved in support of the victim, including witnesses, legal counsels and representatives of NGOs who have provided advice or other assistance to the victim.

Thirdly, the range of protected actions taken in response to victimisation is wide. It covers bringing legal action to a court, ombudsman, discrimination tribunal or any other competent authority, in addition to which the filing of a complaint or a crime report, or even the contacting of a human rights organisation or a lawyer, is covered.<sup>126</sup>

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

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

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

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<sup>125</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2004, p.83.

<sup>126</sup> Finland, Government proposal on the Non-Discrimination Act, 19/2004, p.83.

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

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

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

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

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

When the Non-Discrimination and Equality Tribunal prohibited a bank from discriminating against a blind customer by denying her the entry passwords needed to use a bank account electronically, the tribunal also imposed a conditional fine of EUR 50 000 to enforce compliance with its injunction.<sup>127</sup> The formulation of the tribunal decision prohibits the bank from continuing with the discrimination not only against the applicant who brought the issue to the tribunal, but also against other (future) customers in a similar situation. Therefore, the decisions of the tribunal may have a more general impact beyond the individual's situation.

In 2018, the Non-Discrimination and Equality Tribunal considered it multiple discrimination when a credit company refused to grant credit based on the combined effect of an applicant's gender, language, age and place of residence.<sup>128</sup> The tribunal prohibited the credit company from renewing the procedure, targeted at the applicant or anyone else, and imposed a conditional fine of EUR 100 000 to enforce its prohibitive decision.

#### b) Ceiling and amount of compensation

There is no minimum or maximum amount of compensation under the Non-Discrimination Act. In Section 24(1) it is stated that the amount of compensation must be in line with the

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<sup>127</sup> Non-Discrimination and Equality Tribunal, 14.12.2015, 31/2015, published online 28.01.2016 at [http://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/tapausselosteet2015/Rnklycoyt/YVTltk-tapausseloste-14\\_12\\_2015-kohtuulliset\\_mukautukset-verkkopankkitunnukset.pdf](http://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/tapausselosteet2015/Rnklycoyt/YVTltk-tapausseloste-14_12_2015-kohtuulliset_mukautukset-verkkopankkitunnukset.pdf).

<sup>128</sup> The National Non-Discrimination and Equality Tribunal, 21.3.2018 decision 216/2018 [http://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/45LI2c6dD/YVTltk-tapausseloste-21.3.2018-luotto-moniperusteinen\\_syrjinta-S-en\\_2.pdf](http://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/45LI2c6dD/YVTltk-tapausseloste-21.3.2018-luotto-moniperusteinen_syrjinta-S-en_2.pdf).

severity of the act and that consideration will be given to the type and extent of the discrimination and its duration.

There is no data available on what kind of compensation claims have been presented in the district courts or on whether the compensation level has changed since the current Non-Discrimination Act came into force on 1 January 2015. Between 2008 and 2011, 15 cases of discrimination were decided by district courts. Courts found discrimination in 10 of the cases and awarded compensation in all of them. The compensation awarded ranged from EUR 4 000 to EUR 10 000. The average compensation awarded was EUR 5 500.<sup>129</sup>

c) Assessment of the sanctions

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

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

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

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<sup>129</sup> Aaltonen, M. Heino, P. and Villa S. (2013) *Riiteleminen on pienelle ihmiselle raskasta* (a study commissioned by the Ministry of the Interior), p.42 <http://julkaisut.valtioneuvosto.fi/handle/10024/79035>.

## **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

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

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

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

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

Equality is frequently expressed in public debates as an important value in Finnish society. Equality itself is therefore seldom questioned, but what constitutes equality seems to develop over time and is therefore an issue of debate in society. For example, in relation to sexual orientation, the public discussion has – after same-sex marriage was approved – progressed to whether the Evangelical Lutheran church should perform marriages for same-sex couples.

The Non-Discrimination Ombudsman is generally recognised as an expert authority on equality and minority issues in Finland and is therefore often invited to speak as an expert in parliamentary committees, in the media and at public events, such as seminars and training events.

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

- c) Institutional architecture

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

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

i) Status of the body

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

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

ii) Independence of the body

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

There are no indications that the ministry would try to influence the independent decision making of the Ombudsman. The Ombudsman also regularly criticises the proposals or activities of the ministries. When evaluating the independence of the Ombudsman, the daily activities of the Ombudsman seem uninfluenced and independent. The yearly negotiations and performance agreement on the goals and results of the activity can be seen to limit the body's independence, particularly as the Government has emphasised that the goals of the Government should be reflected in the performance agreements with the authorities.

e) Grounds covered by the designated body/bodies

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

The majority of the resources of the office of the Ombudsman are used to investigate and intervene in discrimination cases. The Ombudsman has emphasised that, given the number of grounds, it has not organised its work based on the grounds, but rather on areas of life. This means that cases on providing goods and services, for example, are dealt with by the same members of staff, regardless of the ground of discrimination.

The Ombudsman provides data in the annual report on the cooperation between different groups representing minority groups, such as religious minorities, sexual minorities, people with disabilities and migrant organisations.

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

- f) Competences of the designated body/bodies – and their independent exercise
  - i) Independent assistance to victims

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

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

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

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

Some assistance is available in cases relating to employment. The Ombudsman can mediate between the parties for reconciliation in employment cases, but the Ombudsman cannot request information, e.g. from the employer. As explained above, the Ombudsman cannot issue a reasoned opinion on the existence of discrimination in employment, but can give general recommendations in employment. The Ombudsman can assist the victim in the district court, but cannot take an employment case to the Non-Discrimination and Equality Tribunal for prohibition of discrimination. The occupational safety and health authorities are not considered to be bodies for the promotion of equal treatment referred in Article 13 of Directive 2000/43, but they provide assistance to persons contacting them in relation to discrimination in employment.

The assistance provided by the Ombudsman is independent and often progressive, meaning that the Ombudsman tries to find interpretations of the legislation that will provide the greatest protection for victims of discrimination. The opinions of the Ombudsman are not legally binding.

It appears that the Ombudsman can currently simultaneously assist individuals who have experienced discrimination and draw the general public's attention to problems of inequality in an effective way. The Ombudsman has less impact on issues related to employment because of the restrictions on the authority of the Ombudsman in employment.

## ii) Independent surveys and reports

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

The surveys and reports are produced in an independent manner and often try to highlight less visible problems in equality and non-discrimination. It is questionable whether the Ombudsman can fulfil the task of reporting in employment as the office lacks information on the experiences of those facing discrimination. This is due to people not turning to the Ombudsman for assistance because it lacks a mandate in employment.

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

## iii) Recommendations

In Finland, the Non-Discrimination Ombudsman does have the competence to make recommendations on discrimination issues. This competence has some limitations in cases relating to employment given that the Ombudsman does not have the authority to supervise compliance with the Non-Discrimination Act in employment. These limitations are explained below.

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

The justified statements (later recommendations) that the Ombudsman makes are independent and often represent the maximum protection available in the interpretation of the legislation. There is no apparent pressure from the Government or other political actors in formulating the views and recommendations of the Ombudsman and the Ombudsman can formulate her recommendations in an independent manner.

The starting point of the statements is usually to find a reconciliation agreement between the parties, including a public expression of apology for the discrimination and financial compensation to the victim. The view of the Ombudsman is often accepted by all parties involved and it seems that the Ombudsman can act efficiently both in response to individual acts of discrimination and in generating more general changes in attitudes towards greater equality in society.

## iv) Other competences

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

g) Legal standing of the designated body/bodies

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

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

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

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

h) Quasi-judicial competences

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

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

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

In 2018, the Ombudsman received a total of 924 new discrimination cases,<sup>130</sup> which was around 20 % more than previous year. The number of cases reported to the Ombudsman

<sup>130</sup> Non-Discrimination Ombudsman (2019), *Annual report for 2018*, p.14, available at: <https://www.syrjinta.fi/documents/10181/10834/Yhdenvertaisuusvaltuutetun+vuosikertomus+2018/efb7f5b5-652f-4117-9b70-34458edec08f>.



has risen continuously since the expansion of the mandate of the Ombudsman beyond ethnicity at the beginning of 2015.

In 2018, the most common ground for reported instances of discrimination was disability (192 cases), with the next biggest group of discrimination cases being discrimination based on origin (175 cases). All prohibited grounds of discrimination were covered in the complaints (language, 63 cases; age, 97 cases; nationality, 90 cases; state of health, 81 cases; religion or belief, 35 cases; sexual orientation, 10 cases; opinion or political activity or trade union activity, 36 cases; and family relationships, 17 cases).<sup>131</sup>

#### j) Stakeholder engagement

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

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

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

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

#### k) Roma and Travellers

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

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<sup>131</sup> Non-Discrimination Ombudsman (2019), *Annual report for 2018*, p. 16. Cases where there may have been multiple discrimination (e.g. on grounds of sexual orientation and family relationships) are currently registered under their primary cause of discrimination.

## 8 IMPLEMENTATION ISSUES

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The unit for democracy, language affairs and fundamental rights within the Ministry of Justice maintains the Equality.fi website, which provides resources for authorities, organisations and those interested in equality and non-discrimination. The website includes training material, together with information on legislation, research, ongoing campaigns and different minorities.<sup>132</sup>

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

An Advisory Board on Non-Discrimination (*yhdenvertaisuusasioiden neuvottelukunta*) was established by a Government decree<sup>133</sup> in January 2016 and was set up for a three-year period from 15 October 2016 to 14 October 2019. The advisory board is composed of the Non-Discrimination Ombudsman as the chairman and 37 other members 'representing significant expertise in combating discrimination' –their characteristics are defined in the Government decree. The Government decree does not provide any further information on the selection criteria for the members of the advisory board, but among the organisations represented on the advisory board are key ministries, social partners and NGOs representing all grounds of discrimination in the sphere of activity of the Ombudsman. The board does not have any decision-making role, but works as a communications network between the Ombudsman, civil society and authorities.

The Advisory Board for Ethnic Relations seeks to promote interaction between Finland's ethnic minorities and the authorities, NGOs, political parties and social partners, and to provide the ministries with immigrant and minority policy expertise in the interests of promoting an ethnically equal and diverse society.<sup>134</sup> There are also seven regional advisory boards for ethnic relations.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

The Advisory Board on Non-Discrimination (*yhdenvertaisuusasioiden neuvottelukunta*) has a subcommittee on employment issues. It gathers together the representatives of trade unions and employers and NGOs representing different discrimination grounds. The subcommittee has organised events, such as a fair designed promote the participation of persons with disabilities to employment.

- d) Addressing the situation of Roma and Travellers

There are a number of bodies that deal with discrimination/equality in relation to the Roma. These include, most importantly, the Advisory Board on Romani Affairs (RONK), which was established in 1956, and the Advisory Board for Ethnic Relations. The task of the Advisory Board on Romani Affairs is to enhance the equal participation of the Roma population in Finnish society, to improve their living conditions and socio-economic status, and to

<sup>132</sup> <http://yhdenvertaisuus.fi/en/frontpage>.

<sup>133</sup> Finland, Government Decree on the Advisory Board on Non-Discrimination (*Valtioneuvoston asetus yhdenvertaisuusasiain neuvottelukunnasta*), 39/2016.  
<https://www.edilex.fi/saaduskokoelma/20160039.pdf>.

<sup>134</sup> <https://oikeusministerio.fi/en/the-advisory-board-for-ethnic-relations>.

promote their culture. The Advisory Board on Romani Affairs functions in conjunction with the Ministry of Social Affairs and Health. There are also four regional advisory boards for Roma affairs that act at the regional level.

An effort to take the Roma into account has also been made in the area of dissemination of information, and some of the available materials are specifically targeted at the Roma community or at employers with a view to promoting employment opportunities for Roma.<sup>135</sup>

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

### **a) Mechanisms**

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

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

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

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<sup>135</sup> See e.g. [www.equality.fi](http://www.equality.fi) and [www.romanit.fi](http://www.romanit.fi).

## **9 COORDINATION AT NATIONAL LEVEL**

The responsibility for developing non-discrimination policies and legislation lies with the unit for democracy, language affairs and fundamental rights at the Ministry of Justice.

The Ministry of Justice prepared, together with representatives from all ministries, the National Action Plan on Fundamental and Human Rights. On 16 February 2017, the Government took a decision in principle to accept the National Action Plan on Fundamental and Human Rights for 2017–2019.

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

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

## 10 CURRENT BEST PRACTICES

- Equality planning.<sup>136</sup>

The Non-Discrimination Act of 2004 required authorities and those providing education to draw up a plan for the fostering of ethnic equality. The reform of the Non-Discrimination Act in 2015 extended this requirement to companies employing more than 30 employees. In addition, the scope of the equality plan was widened to include all discrimination grounds protected by the Non-Discrimination Act. Equality plans must evaluate the realisation of equality and must include measures that are effective, expedient and proportionate to promote equality.

Equality plans covering multiple grounds have been drafted in hundreds of municipalities, other authorities, companies and lots of other organisations, such as NGOs and student unions, even though for many bodies it is voluntary. In the plans, organisations and companies have been analysing how their services and functions meet the actual needs of various clients, what kind of reasonable accommodation is needed and how equality in the workplace can be secured.

The Non-Discrimination Ombudsman may bring a matter concerning the failure to draw up an effective equality plan to the National Non-Discrimination and Equality Tribunal, which can order the authority or education provider to fulfil the obligation within a reasonable time. No such application has been made so far. The tribunal can impose a conditional fine to enhance its order.

- The discrimination-free zone campaign is an information campaign to combat discrimination.<sup>137</sup> It enables organisations and work communities to declare their commitment to the principle of non-discrimination.

The organisation declaring itself a discrimination-free zone completes an online declaration form and receives in exchange a discrimination-free zone sign, which must be displayed somewhere on its premises for all to see. The idea of the campaign is to make the commitment to equality visible. Such a declaration is a signal to employees, jobseekers and customers that the organisation welcomes everyone irrespective of gender, age, ethnic background, religion or belief, opinion, state of health, disability or sexual orientation. Already more than 1 200 work communities and organisations around Finland have joined the campaign.

- Discrimination research and monitoring.<sup>138</sup>

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

- The Non-Discrimination Ombudsman's right to be heard as an *amicus curiae*.<sup>139</sup> According to the Non-Discrimination Act, the Non-Discrimination Ombudsman must be informed and allowed to be heard in court when a discrimination case (not concerning employment) is being decided there. Additionally, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges for discrimination (Chapter 11, Section 11 of the Criminal Code). This statute has become an important tool for making the Ombudsman aware of all

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<sup>136</sup> See <http://www.yhdenvertaisuus.fi/yhdenvertaisuussuunnittelu/>.

<sup>137</sup> See e.g. <http://yhdenvertaisuus.fi/syrjinnastavapaa.fi> or the example of a taxi company as a discrimination-free zone <http://tervetuloakvytiin.fi/>.

<sup>138</sup> See <http://yhdenvertaisuus.fi/syrjintatieto.fi>.

<sup>139</sup> Finland, Non-Discrimination Act, 1325/2014, Section 27.

case law regarding discrimination. Additionally, it allows the Ombudsman to ensure that courts are aware of recent jurisdiction and levels of compensation when deciding on discrimination cases.

## 11 SENSITIVE OR CONTROVERSIAL ISSUES

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

- The general justification of direct discrimination on grounds of ethnic origin (including situations governed by the Racial Equality Directive), education in general (on all grounds) or when using public power or performing public administrative tasks (on all grounds) does not derive from the directive and may be too widely formulated. Section 11(1) of the Non-Discrimination Act legislates for a general justification definition that applies in situations governed by the Racial Equality Directive and therefore allows direct discrimination on grounds of ethnicity:

'differential treatment is only allowed if the treatment is based on legislation, the treatment has an acceptable aim and the means used are in due proportion for achieving this aim.'<sup>140</sup>

### 11.2 Other issues of concern

- Compensation for discrimination can only be requested in a district court, where the claimant's risk of having to pay the legal costs of the defendant greatly affects the real possibilities of seeking remedies against discrimination. In its report on the Non-Discrimination Act, the Constitutional Law Committee of the Parliament proposed that the National Non-Discrimination and Equality Tribunal should be able to award compensation.<sup>141</sup> The Employment and Equality Committee of the Parliament, however, did not amend the Government proposal in this regard.
- The Non-Discrimination Ombudsman and the National Non-Discrimination and Equality Tribunal do not have a role in interpreting the Non-Discrimination Act in regard to employment. The Constitutional Law Committee of the Parliament considered this to be problematic, considering how central the area of employment is in safeguarding equal treatment.<sup>142</sup> The Constitutional Law Committee considered it important that the Employment and Equality Committee study the possibilities for safeguarding expertise and unity in this respect. The European Commission has had a dialogue with Finland on whether the legislative framework fulfils the requirements of the directives in this respect.
- Associations or organisations working for the benefit of victims do not have any major role to play in judicial or administrative processes. They do not have any general *locus standi* to take a case to court to pursue a matter in their own name, even with the consent of the complainant. Furthermore, associations cannot become third parties to such proceedings or act as an *amicus curiae*. This state of affairs arises from national legislation on rules of procedure.

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<sup>140</sup> See section 2.2 of this report for the direct discrimination justification.

<sup>141</sup> Constitutional Law Committee (2014), *Report 31/2014*, p.10  
[https://www.eduskunta.fi/FI/vaski/Lausunto/Documents/pevl\\_31+2014.pdf](https://www.eduskunta.fi/FI/vaski/Lausunto/Documents/pevl_31+2014.pdf).

<sup>142</sup> Constitutional Law Committee (2014), *Report 31/2014*, p.10.

## 12 LATEST DEVELOPMENTS IN 2018

### 12.1 Legislative amendments

There were no relevant legislative amendments in 2018.

### 12.2 Case law

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

**Date of decision:** 21 March 2018

**Name of the parties:** Not available

**Reference number:** 216/2018

**Address of the webpage:**

[http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/45LI2c6dD/YVTltk\\_tapausseloste-21.3.2018-luotto-moniperusteinen\\_syrjinta-S-en\\_2.pdf](http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/45LI2c6dD/YVTltk_tapausseloste-21.3.2018-luotto-moniperusteinen_syrjinta-S-en_2.pdf)

**Brief summary:** The Non-Discrimination and Equality Tribunal considered it discrimination when a credit company refused to grant credit based on the combined effect of the applicant's gender, language, age and place of residence.

A had applied for credit in order to pay for the building supplies he was purchasing from an online store. The credit was instantly denied based on the scoring system of the credit company, which calculated the scoring of the applicant based on the applicant's language, gender, age and place of residence, among other things. The scoring system had checked that A did not have payment defaults but no individual assessment of his payment ability (such as income or other debts) was made. The decision was made on a statistical basis. Had A been female, older, had Swedish as first language instead of Finnish or had he lived in different location, he would have been granted the credit for which he had applied.

The Non-Discrimination Act prohibits discrimination on grounds of age, language and other personal characteristics when providing goods and services. The tribunal considered the treatment of the credit applicant to be multiple, direct discrimination on grounds of gender, language, age and residence.

The tribunal prohibited the credit company from renewing the procedure, targeted at A or anyone else, and imposed a conditional fine of EUR 100 000 to enforce its prohibitive decision. The decision is final, as it was not appealed against.

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

**Date of decision:** 19 December 2018

**Name of the parties:** Not available

**Reference number:** 337/2018

**Address of the webpage:**

[https://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/kmnntSkQp/YVTltk\\_tapausseloste-19.12.2018-etninen\\_profilointi.pdf](https://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/kmnntSkQp/YVTltk_tapausseloste-19.12.2018-etninen_profilointi.pdf)

**Brief summary:** Stop and search by the police found to be ethnic profiling and direct discrimination prohibited in the Non-discrimination Act.

Two black women complained about police discrimination after they were stopped and searched by two police officers at 2 am in the centre of Helsinki. Helsinki Police Department told the tribunal that the officers were on a surveillance task targeting suspected prostitutes and performing immigration status checks. The police officers denied discriminating against the women, but admitted that their actions were in part influenced by the fact that the women were black. The police department explained that many foreign prostitutes lack the right to reside in Finland and may even be victims of human trafficking.



The National Non-Discrimination and Equality Tribunal found that Helsinki Police had practised ethnic profiling, and the tribunal considered it as direct discrimination prohibited in the Non-Discrimination Act.

The tribunal considered that the target of the police - to combat street prostitution and human trafficking - is an acceptable aim, which is needed for a justification for direct discrimination. However, the means that the police used were not in due proportion and therefore there was no justification of discrimination. In particular, the tribunal pointed out that the white man who the police saw talking to the women was not stopped by the police, even though the legislation prohibits both the purchase of sexual services and offering sexual services in a public place.

The tribunal prohibited the Helsinki Police from repeating the discriminatory stop and search practice and imposed a conditional fine of EUR 10 000 in order to enforce compliance with its injunction. The decision is not final, as it has been appealed against. The claimants (represented by a private lawyer) had also asked for a criminal prosecution against the police, but the prosecutor decided not to charge the police.

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

**Date of decision:** 19 December 2018

**Name of the parties:** Not available

**Reference number:** 393/2018

**Address of the webpage:**

<https://www.yvtltk.fi/material/attachments/ytltk/tapausselosteet/jFpTF4RIt/YVTltktauousseste-19.12.2018-hairinta-hakaristilippu.L.pdf>

**Brief summary:** The National Non-Discrimination and Equality Tribunal considered that hanging a swastika/Nazi flag from an apartment window-opening was harassment on the ground of religion and prohibited in the Non-Discrimination Act. The tribunal prohibited the tenant of the apartment who had displayed the flag from repeating the harassment. No conditional fine was ordered as the flag had already been removed at the time of the decision of the tribunal.

The Non-Discrimination Ombudsman claimed in her application to the tribunal that public display of the swastika flag infringed the human dignity of Jewish people, as the flag symbolises the persecution of Jewish people by the Nazis. The Ombudsman attached a written statement of the chairperson of the Jewish Community of Helsinki in which the chairman stated that the display of the flag in the window for several months without the intervention of the authorities had caused the Jewish community fear and concern. The Ombudsman named the chairperson as the victim in the application. This may have limited the tribunal to examining discrimination only on grounds of religion and not on grounds of race or ethnic origin.

The tribunal considered that the behaviour of the defendant had infringed the human dignity of the victim and that the defendant's behaviour related to religion. The tribunal found that the behaviour had also created a degrading or humiliating, intimidating, hostile or offensive environment for the victim. The decision has not been appealed against and it is therefore final.

## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

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

**Country:** Finland  
**Date:** 31 December 2018

<p><b>Title of the law: Non-Discrimination Act</b><sup>143</sup></p> <p>Abbreviation: NDA</p> <p>Date of adoption: 30.12.2014</p> <p>Entry into force: 1.1.2015</p> <p>Latest relevant amendment: No</p> <p>Web link: <a href="http://www.finlex.fi/fi/laki/ajantasa/2014/20141325">http://www.finlex.fi/fi/laki/ajantasa/2014/20141325</a></p> <p>Grounds protected: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics</p> <p>Civil/administrative/criminal law: Civil law</p> <p>Material scope: both public and private activities, excluding private life, family life and practice of religion</p> <p>Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate</p>
<p><b>Title of the law: Non-Discrimination Ombudsman Act</b></p> <p>Abbreviation: -</p> <p>Date of adoption: 30.12.2014</p> <p>Entry into force: 1.1.2015</p> <p>Latest relevant amendment: No</p> <p>Web link: <a href="http://www.finlex.fi/fi/laki/ajantasa/2014/20141326">http://www.finlex.fi/fi/laki/ajantasa/2014/20141326</a></p> <p>Grounds covered: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics</p> <p>Civil/administrative/criminal law: Administrative law</p> <p>Material scope: both public and private activities, excluding private life, family life and practice of religion</p> <p>Principal content: creation of a specialised body</p>
<p><b>Title of the law: The Criminal Code of Finland</b></p> <p>Abbreviation: Criminal Code</p> <p>Date of adoption: 19.12.1889</p> <p>Entry into force: 1.1.1891</p> <p>Latest relevant amendment: 511/2011, entry into force 1.6.2011</p> <p>Web link: <a href="https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001">https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001</a></p> <p>Grounds protected: race, national or ethnic origin, skin colour, language, sex, age, family ties, sexual preference, inheritance, disability or state of health, or religion, political orientation, political or industrial activity or another comparable circumstance</p> <p>Civil/administrative/criminal law: Criminal law</p> <p>Material scope: Discrimination (Chapter 11, Section 11) provision of goods and services, exercise of official authority or in the arrangement of a public amusement or meeting. Employment Discrimination (Chapter 47, Section 3) employment</p> <p>Principal content: prohibition of discrimination</p>

<sup>143</sup> The old Non-Discrimination Act (which was in force 2001-2014) was repealed by the Non-Discrimination Act from the beginning of 2015, expanding the protection to cover all grounds of discrimination.

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country:** Finland

**Date:** 31 December 2018

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	5.5.1989	10.5.1990	None	Yes	Yes
Protocol 12, ECHR	4.11.2000	17.12.2004	None	Yes	Yes
Revised European Social Charter	3.5.1996	21.6.2002	None	Ratified collective complaints protocol? Yes	Yes, to the extent the rights provided in ESC, as revised, are justiciable
International Covenant on Civil and Political Rights	11.10.1967	19.10.1975	None	Yes	Yes
Framework Convention for the Protection of National Minorities	1.2.1995	3.10.1997	None	Not applicable	Yes, to the extent the rights provided are justiciable (in practice extremely limited)
International Covenant on Economic, Social and Cultural Rights	11.10.1967	19.10.1975	None	Not applicable	Yes, to the extent the rights provided are justiciable
Convention on the Elimination of All Forms of Racial Discrimination	6.10.1966	14.7.1970	None	Yes	Yes
Convention on the Elimination	17.7.1980	4.9.1986	None	Yes	Yes

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
of Discrimination Against Women					
ILO Convention No. 111 on Discrimination	25.6.1958	23.4.1970	None	Not applicable	Yes
Convention on the Rights of the Child	26.1.1990	20.6.1991	None	Not applicable	Yes
Convention on the Rights of Persons with Disabilities	30.3.2007	10.6.2016	None	Yes	Yes

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