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# Country report

## Non-discrimination

Iceland

2019

including summary



Justice  
and Consumers

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# **Country report**

## **Non-discrimination**

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

### **Iceland**

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Reporting period 1 January 2018 – 31 December 2018

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## EXECUTIVE SUMMARY

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

The formal legal status of people with disabilities is good although, in practice, they habitually suffer discrimination concerning their rights to education, housing and participation in public life, and they form a large proportion of those living in poverty. According to the leading disability rights organisation, disability benefits are not adequate for a life of dignity, and only a quarter of people with disabilities are in work. Building and planning regulations require public buildings to be accessible. However, this is not always the case and sanctions are rare.

In 2018, foreign citizens in Iceland numbered approximately 44 000 or 12.6 % of all inhabitants, meaning that the number of immigrants had increased by 1.6 % from 2017. This percentage has never been higher. Poles are the most numerous group, representing approximately 38.8 % of foreign citizens; Lithuanians account for 5.5 %, Filipinos for 4 % and a small number of people of various nationalities compose the rest. There is no identified Roma community. Recent studies show that, despite the efforts made in the education system, the limited reading literacy in Icelandic hampers the studies of many of these children, and the low number of young people of immigrant origin graduating from high school is a serious problem. In 2017, 21.9 % of children in need of assistance from the Child Protection Services were of immigrant origin and 35 % of the women seeking assistance from the Shelter for Victims of Domestic Violence were foreigners. The fact that a disproportionate number of immigrant women seek assistance does not necessarily mean that violence against them is more common than violence towards Icelandic women; rather, this may reflect the fact that they have weaker support networks, so they are forced to seek assistance from the shelter instead of from friends or family.

Icelandic society is becoming increasingly diverse, and welfare services need to adapt to address this new reality. On average, the income of immigrants is lower than that of the general population, and only a small minority hold jobs where their education is fully utilised; the majority work in construction, tourism, cleaning and care services. Studies show that people of immigrant origin suffer the most prejudice in Iceland, and the Government's National Action Plan on Immigration 2016-2019 sets out numerous actions to combat prejudice and discrimination. There is no Roma community in Iceland.

In 2013, the Icelandic Muslim Association was finally allocated land to build a mosque by Reykjavík City Council and is now raising funds for its construction. The association first applied for a plot in 2000. This is a positive development, but indications of growing anti-Islamic sentiment are an issue of concern. In November 2013, a group of people placed pig heads and a bloodied Koran on the plot designated for the mosque. One individual was identified, but the investigation of the case concluded without prosecution. In 2018, an armed man who lit toilet paper and made derogatory comments in front of the Muslim community centre in a drunken arson attempt was prosecuted under the hate-speech provision of the General Penal Code (Act No. 19/1940). Although he was acquitted, this is still a positive development, as it is an indication and a message that such hateful behaviour is now taken more seriously as a crime by the Police and State Prosecutor than it may have been before.

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<sup>1</sup> Arnardóttir, E. and Haraldsson, R.H. (2014), *Uppruni og fjölpætt mismunun* (Origin and multiple discrimination), Ísafjörður, Fjölmenningarsetur (Multicultural Centre).

The number of registered religious organisations grew from 14 in 1991 to 47 in 2018. Of these, more than half are Christian denominations. Some 67.2 % of the nation belongs to the National Church of Iceland. Catholics constitute 3.9 % and, of the non-Christian minority faiths, Ásatrú (Norse pagan faith), Zuists, Buddhists and Muslims are the largest denominations. No recent research has been carried out on the extent of discrimination based on religion or belief, but in 2012, 27.3 % of Icelanders thought that general discrimination based on religion or belief was common, up from 23.4 % in 2009.<sup>2</sup>

Religious communities have consistently complained that the differentiated payments to registered religious organisations, on the one hand, and to the National Church of Iceland (the state church), on the other, constitute unlawful discrimination. In a case brought by Ásatrúarfélagið, the Norse pagan organisation, the court ruled that state support and protection for the National Church of Iceland, in accordance with Article 62 of the Constitution, did not constitute a violation of the freedom of religion and the principle of equality.

On a positive note, although sexual orientation was not a specially protected ground in the field of employment until 1 September 2018, Icelandic legislation setting out the rights of homosexual people is among the world's most progressive: all marriages have the same legal status, same-sex couples can adopt children and lesbians are able to take advantage of artificial insemination. In general, attitudes towards LGBTQ people are very liberal, and Gay Pride celebrations are a time of family festivities in Reykjavík. Despite these liberal attitudes, however, a small minority of people still hold traditional views.

## 2. Main legislation

Iceland is party to the European Economic Area (EEA) Agreement and is thus obliged to adopt the EU *acquis* related to the single market. Directives 2000/43/EC and 2000/78/EC were not incorporated into the EEA Agreement and were therefore not transposed into domestic law. Fortunately, after several years of postponement and deliberations, two pieces of equality legislation (the Equality Acts) entered into force on 1 September 2018. These are the Act on Equal Treatment irrespective of Race or Ethnic Origin No. 85/2018 (Racial Equality Act), which prohibits discrimination based on race and ethnic origin in all fields of life except the labour market, and the Act on Equal Treatment in the Labour Market No. 86/2018 (Labour Equality Act), which prohibits discrimination in the labour market on the grounds of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics. Provisions regarding discrimination on the grounds of age were set to enter into force on 1 July 2019, as the social partners needed more time to examine age-related provisions in collective agreements, including on retirement age, and to change these if necessary, in accordance with the new equality legislation. These two Equality Acts are based on the directives and aim to implement their provisions.

The grounds for discrimination covered in the Icelandic Constitution are sex, religion, opinion, national origin, race, colour, financial status and parentage. The list is non-exhaustive, as the provision also sets out that equality before the law and non-discrimination shall be ensured, irrespective of the aforementioned grounds but also irrespective of 'other status', which can be construed as including age,<sup>3</sup> sexual orientation and disability.

Anti-discrimination legislation, aside from that contained in the new Equality Acts, is elementary and fragmented, as only a handful of general law provisions stemming from the constitutional equality provision are in force. These commonly do not contain an

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<sup>2</sup> Gallup (2012), *Mismunur og viðhorf* (Discrimination and Attitudes), Reykjavík, Icelandic Human Rights Centre, September 2012, p. 6.

<sup>3</sup> Supreme Court of Iceland, *X v. Y*, Case No. 484/2007, 25 September 2008.



exhaustive enumeration of prohibited grounds for discrimination and are limited to particular sectors of the law. Provisions on equality and/or anti-discrimination in relation to the grounds enumerated in Directives 2000/43/EC and 2000/78/EC can be found in acts pertaining to older people and acts amending legislation to eliminate discrimination against homosexual and transgender people.

The Act on Services for People with Long-term Service Needs No. 38/2018 guarantees, *inter alia*, the right to equality, the right to receive assistance to be enabled to live and work in society and the right to general national and municipal services and access to public spaces. The law also provides for positive action measures: people with disabilities have preference over other applicants for government employment when they are equally qualified. The ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on 20 September 2016 spurred legislative amendments to bring Icelandic legislation in line with the provisions of the CRPD, which significantly improved the legal status of people with disabilities.

The European Convention on Human Rights, which has been incorporated into domestic law, stipulates that the enjoyment of the rights and freedoms set forth in it shall be secured without discrimination. The UN Convention on the Rights of the Child has also been incorporated into national law, setting out similar provisions. The General Penal Code, the Administrative Procedures Act No. 37/1993 and the acts on primary schools, media and postal and municipal services also contain provisions touching on equality and non-discrimination. In addition, the Act on the EEA Agreement prohibits discrimination based on citizenship in relation to the provisions of the agreement, and the transposition of the relevant EU directives has led to the prohibition of discrimination regarding temporary and part-time employment as compared with full-time employment. In addition, Iceland is party to all major human rights and International Labour Organization (ILO) conventions. In the field of anti-discrimination, Iceland has yet to ratify Protocol 12 to the ECHR, the Framework Convention for the Protection of National Minorities and the revised European Social Charter, including on the collective complaints procedures.

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

The definitions set out in the directives have been transposed into domestic law and are in line with the directives. Direct and indirect discrimination, harassment, victimisation and instruction to discriminate are defined and prohibited. Reasonable accommodation is stipulated but is not defined, and neither is 'disproportionate burden'. Explicit provisions prohibiting discrimination by assumption and association are lacking, as are provisions on dissemination of information and dialogue with NGOs and between social partners. Exceptions are not explicitly allowed for religious organisations, but exceptions for 'genuine' and 'determining' occupational requirements are permitted. Certain exceptions concerning age requirements and physical fitness are found in national legislation, governing those working as police officers, fire fighters and prison guards, for instance. Multiple discrimination is not explicitly prohibited in the Equality Acts, but the explanatory notes to the draft bills set out that, by charging the same body, the Centre for Equality, with implementation of the legislation on gender equality and the Equality Acts, it will be made easier to address cases of multiple discrimination. In addition, the Racial Equality Act stipulates that, within one year of its entry into force, the Minister for Social Affairs and Equality shall present a draft bill amending the legislation, expanding its scope to cover discrimination on the additional grounds enumerated in the Labour Equality Act in all spheres of life, except for the labour market in relation to the Labour Equality Act.

Before 1 September 2018, no national rules addressed multiple discrimination, and no cases dealing with such situations have been adjudicated.

### **4. Material scope**

The Labour Equality Act applies to the equal treatment of all persons in the public and private labour market, irrespective of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics, in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions and promotion; access to vocational guidance and training, advanced vocational training and retraining, including practical work experience; decisions on employment and other working conditions, including dismissals and pay; and membership of, and involvement in, an organisation of workers or employers, including the benefits provided by such organisations. It relies on the exception in Article 3.3 of Directive 2000/78.

The Racial Equality Act prohibits discrimination based on race and ethnic origin in relation to social protection, including social security and healthcare, education, access to and supply of goods and services that are available to the public and housing. Discrimination in social advantages, as formulated in the Racial Equality Directive, is not explicitly prohibited, but this may be an oversight, as the explanatory notes to the bill explain what social advantages are within the meaning of the legislation, so one may assume that the general anti-discrimination provision in Article 1, stipulating that the Act applies to discrimination on the grounds of race or ethnic origin in all spheres of life except the labour market in relation to the Labour Equality Act, applies to social advantages. The Act does not apply in the sphere of private and family life.

## **5. Enforcing the law**

The Equality Complaints Committee receives complaints from individuals, enterprises, institutions and non-governmental organisations, either in their own name or on behalf of members who consider that the Equality Acts have been violated.

Cases shall generally be submitted within six months, and the Committee may, after consulting the claimant, refer the case to the Centre for Equality for mediation. The Committee shall deliver its rulings within three months and the proceedings before it are generally in writing; however, the Committee may summon the parties or their representatives to hearings. The rulings of the Complaints Committee are binding and may be challenged in court in judicial review proceedings. The Committee may decide that the party against whom the complaint is directed shall pay the claimant the costs of bringing the complaint before it, providing that the Committee's decision is in the claimant's favour.

If a ruling of the Committee is in the claimant's favour but the respondent does not accept it and brings an action to have it annulled by the courts, the claimant's legal costs shall be paid by the Treasury. If the Equality Complaints Committee deems a complaint evidently unfounded, the Committee may order the claimant to pay the respondents' legal costs. The Complaints Committee shall publish its rulings.

Where the Centre for Equality has reason to suspect that an institution, enterprise or non-governmental organisation has violated the Equality Acts, it shall investigate whether there is reason to ask the Equality Complaints Committee to examine the matter. The relevant actor is obliged to provide the Centre for Equality with the information and materials necessary and, if they do not comply, the Centre for Equality may issue per diem fines until the materials have been provided. If the Centre for Equality considers that the information and materials in question further substantiate the suspicion that a violation of the Acts has taken place, it shall request the Equality Complaints Committee to examine the matter.

The Centre for Equality shall, at the request of the claimant, take steps to ensure that the rulings of the Complaints Committee are enforced as appropriate. When a party fails to comply with a ruling, the Centre for Equality may instruct the party concerned to take

satisfactory remedial measures or else pay per diem fines (of up to ISK 50 000 per day, or approx. EUR 365) until the instructions are complied with.

Numerous administrative procedures are also in place, with the aim of guaranteeing citizens the right of recourse vis-à-vis public authorities, including on non-discrimination. The Administrative Procedures Act No. 37/1993 guarantees the right to lodge an appeal against decisions made by administrative authorities, such as public institutions or committees. All the decisions of public bodies, or bodies vested with public authority, are subject to review by a higher authority, unless otherwise provided for by law. The decisions of independent authorities may in some cases be reviewed by ministers or by special review boards or committees. Mention should be made of the recently established Immigration and Asylum Appeals Board. Its objective includes ensuring an independent review of all the decisions of the Directorate of Immigration that were taken based on the Act on Foreign Nationals. Furthermore, complaints concerning discriminatory administrative decisions can be brought to the Parliamentary Ombudsman. Finally, the courts are competent to review any decision taken by the executive.

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

The Equality Acts set out that anyone who, deliberately or through negligence, violates the Acts shall be liable to pay moral and material damages according to the ordinary rules. The Acts provide for the shift of the burden of proof and set out that violations of the Acts, or of regulations issued thereunder, may be punishable by fines, unless heavier penalties are prescribed in other statutes. Cases involving violations of the Acts, or of regulations issued thereunder, shall be handled in accordance with the Act on Criminal Procedure. Fines shall be paid to the State Treasury.

Other discrimination could give rise to civil liability, falling under the general rules. The courts may rule that a certain act or omission should be remedied and may award the victim material damages. Moral damages can only be awarded on the basis of a specific legal provision, such as Article 16 of the Equality Acts or Article 31 of the Act on Equal Status and Equal Rights of Women and Men No. 10/2008. Injunctive relief is also available under Article 24 of the Act on Injunctions No. 31/1990.

Complaints concerning violations of the Act on Services for People with Long-term Support Needs No. 38/2018 and the Act on the Affairs of the Elderly No. 125/1999 in relation to services can be brought to the Complaints Committee on Welfare or to the Ministry of Welfare. There are no prescribed sanctions; the committee simply decides on whether the administrative decision in question is in accordance with the law and, if not, asks the institution or body to provide the service in accordance with the relevant law.

Violations of the General Penal Code provisions on hate speech and discrimination in services are subject to fines or imprisonment of up to two and a half years or six months, respectively. Violations of the prohibition of public insults against the beliefs or religion of lawfully established religious communities are subject to fines or imprisonment of up to three months. Fines are determined based on the guilty party's income, assets, financial status and commitments and other factors that may influence their ability to pay, as well as the financial gain or savings that the criminal act entailed or that had been envisaged. In Iceland, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. There are no explicit provisions setting out the right of organisations to act in support of victims in discrimination cases. Judicial interpretation is required on this issue but, in any case, the victim would have to be a member of the

association, which would have to have a 'legally protected interest', and a case could only be brought to recognise certain rights of the member or to relieve the member of certain duties.

## **6. Equality bodies**

Since 1 September 2018, the Centre for Equality (formerly the Centre for Gender Equality) has been charged with the implementation of the two Equality Acts (the Racial Equality Act and the Labour Equality Act) and the Gender Equality Act. The grounds covered are race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics. The Centre's mandate is largely in line with the Racial Equality Directive, and its tasks include:

- monitoring the application of the Acts,
- supervising educational and informative activities,
- advising government authorities, institutions, companies, non-governmental organisations and individuals on equality issues,
- making suggestions and proposals to the Prime Minister and other government authorities on measures to achieve equality,
- making proposals on affirmative action,
- increasing the level of activity on inequality issues,
- monitoring equality developments in society by gathering information and initiating research,
- working against wage discrimination and other forms of discrimination related to the labour market,
- mediating cases of dispute referred to the Centre for Equality on the basis of the Acts, and
- carrying out other tasks in line with the aims of the Acts in accordance with further decisions by the Prime Minister and Minister for Social Affairs and Equality.

The legislation does not explicitly set out that the Centre shall provide independent assistance to victims of discrimination in pursuing their complaints about discrimination, as set out in Article 13 of the Racial Equality Directive.

The new multi-ground mandate of the Centre for Equality is envisaged to support holistic measures to combat discrimination, including multiple discrimination, but stakeholders are concerned that, as the Centre has traditionally been underfunded and currently only has expertise on gender, the new discrimination grounds will not be adequately addressed. To fulfil its mandate, the Centre will have to be significantly strengthened in terms of both material resources and expertise. Another challenge is that the Centre is based in the north of Iceland, which has historically led to less than optimal visibility and offers limited physical access, as more than half the Icelandic population live in the capital, Reykjavík. To meet this challenge, the Centre's office in Reykjavík will need to be better resourced.

It is an issue of concern that the analysis in the explanatory notes to the Equality Bills deemed the additional costs to the state budget stemming from the new legislation to be insignificant, which implies that the additional resources that are necessary for the Centre to adequately take on its new tasks in relation to race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics are not readily available. It should also be noted that the Equality Complaints Committee is a quasi-judicial body.

The Parliamentary Ombudsman may deal with cases concerning equality and/or discrimination in relation to administrative procedure.

The Icelandic Human Rights Centre has assumed many of the functions of a national human rights institution (NHRI), albeit without the relevant powers, independence and financing

having been established by statute. The Multicultural Centre is charged with facilitating communication between individuals from different backgrounds and enhancing the services provided to foreign citizens residing in Iceland and to those interested in moving to Iceland. The Multicultural Centre assists those seeking information about daily life in Iceland, provides information about the administration and is of service to foreign citizens moving to or from the country.

International human rights monitoring bodies have called for the establishment of an NHRI in Iceland, and the Government has pledged to establish such a body, to monitor the implementation of the CRPD as per Article 33 and to comply with the recommendations of the international human rights monitoring bodies and calls from civil society. In July 2016, the Ministry of the Interior opened a consultation on a draft bill on the establishment of an Icelandic NHRI, but this work has since petered out.

## **7. Key issues**

There are no obvious breaches or controversial issues in Iceland relevant to the scope of the directives.

The ground-breaking legislative development is the entry into force of the new Equality Acts on 1 September 2018, largely in line with the requirements of the directives. Additional discrimination grounds are included: the ability to work and gender identity, gender expression and gender characteristics. However, explicit provisions prohibiting discrimination by assumption and association are lacking, as well as provisions on dissemination of information and dialogue with NGOs and between social partners. Another issue is that there is no explicit prohibition of discrimination in social advantages as formulated in the Racial Equality Directive. This may be an oversight, as the explanatory notes to the bill explain what social advantages are within the meaning of the legislation, so one may assume that the general anti-discrimination provision in Article 1, stipulating that the Act applies to discrimination on the grounds of race or ethnic origin in all spheres of life except the labour market in relation to the Labour Equality Act, applies to social advantages. Furthermore, the provision on the exception relating to nationality may be too broad, although this requires judicial interpretation. Finally, there is no explicit provision mandating the Centre for Equality with providing independent assistance to victims in pursuing their complaints of discrimination, as set out in Article 13 of the Racial Equality Directive. It is also worth mentioning that the legislation does not provide for an exception for employers with an ethos based on religion or belief.

The principle of equality is enshrined in Article 65 of the Icelandic Constitution, and a handful of general law provisions stemming from the constitutional equality provision are in force, but these commonly do not contain an exhaustive enumeration of prohibited grounds for discrimination and are limited to particular sectors of the law.

The Centre for Equality has been charged with promoting equality and non-discrimination on the basis of the two Equality Acts and the Gender Equality Act and will thus be able to address multiple discrimination, as will the Equality Complaints Committee.

No discrimination cases relating directly to the scope of the directives were decided in 2018.

## INTRODUCTION

### The national legal system

The Icelandic legal system is based on the civil law tradition. Principal sources of law include the Constitution of the Republic of Iceland and statutory legislation and regulations, as well as legal precedents and customary law. Iceland is party to the European Economic Area (EEA) Agreement and is thus obliged to adopt the EU *acquis* related to the single market. Directives 2000/43/EC and 2000/78/EC have not been incorporated into the EEA Agreement, but two legislative acts based on the directives entered into force on 1 September 2018: the Act on Equal Treatment irrespective of Race or Ethnic Origin No. 85/2018 (Racial Equality Act) and the Act on Equal Treatment in the Labour Market No. 86/2018 (Labour Equality Act).

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

The Icelandic judiciary consists of three levels: the Supreme Court, the Court of Appeal and eight district courts. The Court of Appeal, Landsréttur, commenced operation on 1 January 2018, its aims being, *inter alia*, to guarantee the use of first-hand evidence in appeals procedures, in line with international human rights standards and the constitutional provision on fair trial; to lighten the workload of the Supreme Court and improve its work; and to facilitate quality judgments in technically complex cases. In addition to the district courts and the Supreme Court, the Labour Court can be convened and, exceptionally, the Impeachment Court, which addresses criminal actions brought by the Parliament against sitting and former Government ministers.

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

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

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

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

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

On 11 June 2018, two acts were passed: the Act on Equal Treatment irrespective of Race or Ethnic Origin No. 85/2018 (Racial Equality Act), with the material scope of all fields of life except the labour market, and the Act on Equal Treatment in the Labour Market No. 86/2018 (Labour Equality Act), covering the grounds of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics, with the material scope of rights related to the labour market. The Acts, together known as the Equality Acts, entered into force on 1 September 2018, except for the provisions regarding discrimination on the grounds of age, which were set to enter into force on 1 July 2019, as the social partners needed more time to examine age-related provisions in collective agreements, including in relation to retirement age, and to change these if necessary, in accordance with the new equality legislation. The two acts are based on the directives and aim to implement their provisions.

Other relevant legislation containing anti-discrimination provisions in fields related to the directives are as follows:

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

- Act on the Affairs of Persons with Disabilities No. 59/1992 of 2 June 1992, entry into force 1 September 1992. Repealed on 1 October 2018 by Act No. 38/2018 (see below). Grounds covered: disability. Material scope: living conditions, employment, housing, assistance, education, etc.
- Act on Services for People with Long-term Support Needs No. 38/2018, entry into force 1 October 2018. Grounds covered: mainly disability, but also special needs in relation to gender, sexual orientation, age, race or religion.
- Act on Rights Advocates for People with Disabilities No. 88/2011 of 23 June 2011, entry into force 1 July 2011. Grounds covered: disability. Material scope: social services and rights of people with disabilities.
- Act on Municipal Social Services No. 40/1991 of 27 March 1991, entry into force 18 March 2002. Grounds covered: disability. Material scope: social services.
- Act on the Affairs of the Elderly No. 125/1999 of 31 December 1999, entry into force 11 January 2000. Grounds covered: age. Material scope: services, housing, healthcare, etc.
- Act Amending Laws relating to the Judicial Status of Homosexual Persons No. 65/2006 of 14 June 2006, entry into force 27 June 2006. Grounds covered: sexual orientation. Material scope: equality before the law in various areas.
- Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997 of 23 December 1997, entry into force 1 July 1998. Grounds covered: health, age, civil status, family size or gender. Material scope: non-discrimination in access to occupational pension schemes.
- Act on Workers' Terms of Employment and Pensions No. 55/1980 of 9 June 1980, entry into force 16 June 1980. Grounds covered: sex, nationality and length of contract. Material scope: non-discrimination in terms of employment.
- Act incorporating the Convention on the Rights of the Child into domestic law No. 19/2013 of 20 February 2013, entry into force 6 March 2013. Grounds covered: race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Material scope: limited to rights enshrined in the Convention.



## 1 GENERAL LEGAL FRAMEWORK

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

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

#### Article 65

Article 65, which is modelled on Article 26 of the International Covenant on Civil and Political Rights and Article 14 ECHR,<sup>4</sup> stipulates that: 'Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. Men and women shall have equal rights in every respect.'<sup>5</sup>

In the explanatory notes on the draft bill to amend the Constitution, it is stated that the scope of Article 65 is wider than that of Article 14 ECHR and that it shall apply to all legislation and ensure equal protection for everyone.<sup>6</sup> The Supreme Court has confirmed this, interpreting the article as a broad equality provision, guaranteeing not only formal equality but substantive equality, placing the obligation on the state to respect, protect and promote equality. An example is the Supreme Court decision of 4 February 1999,<sup>7</sup> where the court interpreted the provisions of the legislation on the affairs of persons with disabilities in light of Article 65 of the Constitution and Article 14 of the ECHR with respect to the right to education (see Article 2 Annex 1 ECHR), entailing the obligation of the state to ensure the same rights for people with disabilities as for other citizens. Thus interpreted, Article 65 enshrines not only the obligation to apply the law in the same manner in similar circumstances, but also the positive duty of the state to promote the rights of persons with disabilities.

A similar conclusion was reached in Case No. 125/2000,<sup>8</sup> where the court ruled that changes made to the Social Security Act No. 100/2007,<sup>9</sup> which adversely affected social security payments to persons with disabilities married to non-disabled people with an income, conflicted with Article 76(1) (the law shall guarantee everyone the assistance that they require in the case of sickness, disability, infirmity due to old age, unemployment or similar circumstances) and Article 65 of the Constitution.

The constitutional equality provision guarantees equality before the law and non-discrimination with regard to human rights regardless of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. The explanatory notes to the draft bill set out that the grounds enumerated in the article are not exhaustive; 'other status' is meant to encompass other grounds not listed in the provision, such as 'health or physical state',<sup>10</sup> and sexual orientation could clearly be included, although no cases regarding discrimination based on sexual orientation have been heard. Similarly, age would clearly fall under the provision, as argued by the claimant in Supreme Court Case No. 484/2007.<sup>11</sup> The explanatory note further elaborates that, although the aim of Article 65 is above all to ensure equality irrespective of the grounds enumerated and other status, it is not its aim to preclude legal conditions for rights or obligations from taking these

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<sup>4</sup> Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

<sup>5</sup> Constitution of the Republic of Iceland, Act No. 33/1944, 17 June 1944, as amended.

<sup>6</sup> Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

<sup>7</sup> Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. University of Iceland*, Case No. 177/1998, 4 February 1999.

<sup>8</sup> Supreme Court of Iceland, *Icelandic Federation of Disabled People v. Republic of Iceland*, Case No. 125/2000, 19 December 2000.

<sup>9</sup> Iceland, Social Security Act (*Lög um almannatryggingar*) No. 100/2007, 11 May 2007.

<sup>10</sup> Alpt. 1994-1995, A-deild, doc. 389, p. 2086.

<sup>11</sup> Supreme Court of Iceland, *X v. Y*, Case No. 484/2007, 25 September 2008.

grounds into account, provided that objective criteria form the basis for these conditions. Here, age limits are a relevant example.

### **Article 63**

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

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

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

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

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

The constitutional equality clauses can be enforced against private actors (as well as against the state). The primary objective of the human rights provisions of the Constitution is to set the limits of the intervention of public authorities on individual freedoms. They thus constitute rules on the activities of public authorities, setting out their obligations vis-à-vis individuals, and are consequently binding on the state. Although most cases where the constitutional provisions come into play are brought against state actors, in recent years, the Supreme Court has heard cases brought against private actors alleging the unconstitutionality of civil law provisions or claiming that these should be interpreted in light of the human rights provisions of the Constitution. Examples include cases won by individuals against insurance companies, alleging that the provisions of tort law are in breach of the equality principle enshrined in Article 65 of the Constitution.<sup>12</sup> Although jurisprudence demonstrates that constitutional provisions can come into play in civil proceedings, Icelandic courts have not ruled definitively whether and to what extent private individuals and entities are bound by constitutional provisions in their relations in the field of civil law.

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<sup>12</sup> See Supreme Court of Iceland, *Elfa Þóll Grétarsdóttir v. Vátryggingafélag Íslands*, Case No. 317/1997, 4 June 1998; and *Brynjólfur Hauksson v. Tryggingamiðstöðin hf.*, Case No. 10/2006, 15 June 2006.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation (Equality Acts) transposing the two EU anti-discrimination directives: race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics.

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

##### a) Racial or ethnic origin

Like Directive 2000/34, the Act on Equal Treatment irrespective of Race or Ethnic Origin No. 85/2018 does not contain an explicit definition of race or ethnic origin. However, the explanatory notes to the draft legislation set out that *race* refers to historically important divisions of people into races, based on physical appearance such as skin colour and/or other aspects often considered characteristic for a particular race. In this context, reference is made to Recital 6 of the directive, rejecting theories which attempt to determine the existence of separate human races and stating that the use of the term 'racial origin' in the Racial Equality Act does not imply an acceptance of such theories.

Further, the explanatory notes set out that *ethnic origin* refers to the common origin of a group of people, such as a common geographical origin, or a common history, culture or language, in line with the ruling of the European Court of Human Rights in *Timishev v. Russian Federation*, nos. 55762/00 and 55974/00, 13 December 2005 (referred to in the CJEU judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, paragraph 46).

##### b) Religion and belief

The Labour Equality Act does not contain an explicit definition of religion. In the explanatory notes to the draft bill, reference is made to the definition in Directive 2000/78, and it is stated that *religion* covers both the faith and its manifestation in line with the CJEU judgment of 14 March 2017, *Achbita*, C-157/15, paragraph 28.

Article 3.7 of the Act defines *belief* as a belief based on secular life views, certain ethical values and morality along with a defined system of ethics and epistemology. The explanatory notes further elaborate that this includes atheism and agnosticism but not political opinion or opinions on the hierarchy of different races, for instance.

##### c) Disability

Article 3.8 of the Act, which is based on the definition found in the UN Convention on the Rights of Persons with Disabilities, defines *disability* as the result of the interaction of people with impairments with various barriers and views which hinder their full and effective participation in society on an equal basis with others. The impairments must be long-term, and the barriers must be of such a nature as to result in discrimination based on physical, mental, intellectual or sensory impairments.

In addition to disability, the concept of *reduced capacity to work* is introduced and defined in the legislation. According to the explanatory notes to the draft bill, the traditional legal concept of disability is narrower than that in the EU legislation. Thus, a person can have reduced capacity to work without having a disability under Icelandic law. Article 3.9 defines *reduced capacity to work* as a permanent physical, mental or intellectual state, whether congenital or developed, which impairs the ability of the person concerned to participate in the labour market. This definition follows that given by the CJEU in *HK Danmark (Ring and Skouboe Werge)*, in that it refers to participation in professional life.

d) Age

Article 3.10 defines *age* as chronological age.

e) Sexual orientation

Article 3.11 defines *sexual orientation* as the ability of an individual to be attracted to or fall in love with another person.

f) Gender identity, gender characteristics and gender expression

The Labour Equality Act prohibits discrimination based on *gender identity*: the personal sense of one's own gender (Article 3.12); *gender characteristics*: chromosomes, gonads and the anatomical characteristics of a person (Article 3.12); and *gender expression*: the daily expression of one's gender identity (Article 3.13).

### **2.1.2 Multiple discrimination**

In Iceland, multiple discrimination is not explicitly prohibited in the law, but the explanatory notes to the draft bills set out that, by charging the same body, the Centre for Equality, with implementation of the legislation on gender equality and the Equality Acts, it will be made easier to address cases of multiple discrimination.

In addition, the Racial Equality Act sets out in Article 19 that, within one year of its entry into force, the Minister for Social Affairs and Equality shall present a draft bill amending the legislation, expanding its scope to cover discrimination on the additional grounds enumerated in the Labour Equality Act, in all spheres of life, except for the labour market in relation to the Labour Equality Act.

In Iceland, there is no case law dealing with multiple discrimination.

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

a) Discrimination by assumption

In Iceland, discrimination based on a perception or assumption of a person's characteristics is not prohibited in national law. It is not evident how the Equality Complaints Committee or the courts would address such complaints.

b) Discrimination by association

In Iceland, discrimination based on association with persons with particular characteristics is not prohibited in national law. It is not evident how the Equality Complaints Committee or the courts would address such complaints.

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

a) Prohibition and definition of direct discrimination

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

Article 3.2 of the Racial Equality Act defines *direct discrimination* as where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of race or ethnic origin.

Article 3.2 of the Labour Equality Act defines *direct discrimination* as where one person is treated less favourably than another is, has been or would be treated in a comparable

situation on one of the grounds enumerated in Article 1.1 (race, ethnic origin, religion, belief, disability, reduced capacity to work, age, sexual orientation, gender identity, gender expression and gender characteristics).

b) Justification for direct discrimination

In Iceland, no explicit legal provisions permit justification of direct discrimination, generally or in relation to the grounds enumerated in the directives, except for age – see chapter 4.7 below.

### **2.2.1 Situation testing**

a) Legal framework

In Iceland, the law is silent on situation testing. In principle, situation testing results could be admissible in the courts, but this remains to be seen.

b) Practice

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

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

a) Prohibition and definition of indirect discrimination

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

Article 3.3 of the Racial Equality Act sets out that *indirect discrimination* occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial or ethnic origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Article 3.3 of the Labour Equality Act sets out that *indirect discrimination* occurs where an apparently neutral provision, criterion or practice would put persons at a disadvantage because of any of the grounds enumerated in Article 1.1 (race, ethnic origin, religion, belief, disability, reduced capacity to work, age, sexual orientation, gender identity, gender expression and gender characteristics) compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

b) Justification test for indirect discrimination

The Equality Acts (Article 3.3 of both) stipulate that indirect discrimination can be justified if the discriminatory provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. This is in line with the directives.

#### **2.3.1 Statistical evidence**

a) Legal framework

In Iceland, there are national rules permitting data collection. Data collection is permitted subject to strict conditions set out in the Act on the Protection of Privacy and Processing of Personal Data No. 90/2018 (Data Protection Act), implementing the General Data

Protection Regulation (GDPR). The act covers all personal data, that is, information that can be traced to an individual. All processing must meet the criteria set out in Article 9 (consent of the data subject and other conditions). Article 11 sets out the additional criteria to be met for the processing of sensitive data, which is defined in Article 3.3 as data concerning racial or ethnic origin, political opinions, religion, beliefs or trade union membership, health (including physical or mental health) and healthcare services used, and data on drug prescriptions and alcohol and substance abuse. Data concerning a person's sex life or sexual orientation is considered sensitive, as is genetic and biometric data.

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

b) Practice

In Iceland, statistical evidence has never been used in practice to establish indirect discrimination.

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

a) Prohibition and definition of harassment

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

Articles 3.4 of the Racial Equality Act and Labour Equality Act define *harassment as* unwanted conduct taking place with the purpose or effect of violating the dignity of a person, especially when the conduct creates an intimidating, hostile, degrading, humiliating or offensive environment.

In Iceland, harassment explicitly constitutes a form of discrimination.

Article 7, paragraph 1 of the Racial Equality Act sets out that harassment on the grounds of race or ethnic origin constitutes discrimination within the meaning of the Act.

Article 7, paragraph 1 of the Labour Equality Act sets out that harassment on the grounds enumerated in Article 1.1 constitutes discrimination within the meaning of the Act.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, the employer is liable.

It is an established rule that an employer is liable for damage caused by any tortious acts or omissions of his or her employees in the course of their work, but no cases have been brought against employers or service providers for discriminatory acts perpetrated by their workers. Employers cannot generally be held liable for the acts of third parties and, similarly, trade unions and professional associations cannot be held liable for the actions of their members. Judicial interpretation is required in relation to the Equality Acts.

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

a) Prohibition of instructions to discriminate

In Iceland, instructions to discriminate are prohibited in national law. Instructions are not defined.

In Iceland, instructions explicitly constitute a form of discrimination.

Article 7, paragraph 1 of the Racial Equality Act sets out that instruction to discriminate against persons on the grounds of race or ethnic origin constitutes discrimination within the meaning of the Act.

Article 7, paragraph 1 of the Labour Equality Act sets out that instruction to discriminate against persons on the grounds enumerated in Article 1.1 constitutes discrimination within the meaning of the Act.

b) Scope of liability for instructions to discriminate

In Iceland, it is not fully clear whether the instructor or the discriminator would be liable, but it can be assumed that one of the two or both would be.

It is an established rule that an employer is liable for damage caused by any tortious acts or omissions of his or her employees in the course of their work, but no cases have been brought against employers or service providers for discriminatory acts perpetrated by their workers. Employers cannot generally be held liable for the acts of third parties and, similarly, trade unions and professional associations cannot be held liable for the actions of their members. Judicial interpretation is required in relation to the Equality Acts regarding the responsibility of the discriminator.

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

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

In Iceland, the duty on employers to provide reasonable accommodation for people with disabilities is included in the law. It is not defined.

Article 10 of the Labour Equality Act sets out that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability or reduced ability to work to have access to, participate in or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

There is no definition of *reasonable accommodation* or *disproportionate burden*. This could complicate the practical implementation of such measures. However, the explanatory notes to the bill refer to the recitals of the directive addressing reasonable accommodation, and examples of what reasonable accommodation could entail are listed (adaptation of physical space and equipment, working hours or tasks, or through training), as well as examples of what could constitute a disproportionate burden.

b) Practice and case law

As the Labour Equality Act only entered into force on 1 September 2018, there is no practice or case law to deduce from.

c) Definition of disability and non-discrimination protection

The definition of a disability for the purposes of claiming reasonable accommodation is not different from the one for claiming protection from non-discrimination in general.

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

In Iceland, failure to meet the duty of reasonable accommodation in employment for people with disabilities does not explicitly count as discrimination. However, anyone who, deliberately or through negligence, violates the Labour Equality Act, including Article 10 on reasonable accommodation, shall be liable to pay compensation according to the ordinary rules. Furthermore, the party in question may be sentenced to pay compensation to the party affected by the violation for non-pecuniary loss, if appropriate, in addition to compensation for pecuniary loss. The Centre for Equality may instruct the party concerned to take satisfactory remedial measures in accordance with a ruling of the Equality Complaints Committee within a reasonable time limit, which could include taking reasonable accommodation measures. If the party against whom the ruling is directed fails to comply with the instructions of the Centre for Equality, the Centre may impose per diem fines until it complies with the instructions. It is assumed that the burden of proof is shifted to the employer.

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

Under the Equality Acts, there is no explicit legal duty to provide reasonable accommodation for people with disabilities outside the area of employment.

However, the new Act on the Services of People with Long-term Service Needs No. 38/2018 (Disability Act), which repealed the Act on the Affairs of Persons with Disabilities on 1 October 2018, sets out that that people with disabilities are entitled to all general services provided by the state and local authorities. Services shall be endeavoured to be provided in accordance with the general legislation on education, the labour market, housing, health, services for the elderly and social services, but where the needs exceed the scope of general legislation, services shall be provided based on the Disability Act. The Act provides for and defines reasonable accommodation 'so that people with disabilities can enjoy, on an equal basis with others, all human rights and freedoms'. In this context, Article 8 stipulates that people with disabilities shall have access to support services that are essential for their participation in an inclusive society, on an equal footing with others, and to prevent social exclusion. These services shall be based on the following needs:

- The need for services to support independent living and social participation.
- The needs of disabled persons for training, rehabilitation, education and employment, i.e. through reasonable accommodation, so that they can work and participate actively in society on an equal basis with others.
- The needs of disabled persons for specialised counselling, social support and social interaction, including the pursuit of leisure and cultural life.
- The needs of disabled children for care and training as well as the necessary services for their families.
- The needs of disabled parents relating to the care and upbringing of their children.

The Act on Secondary Schools No. 92/2008 sets out a form of reasonable accommodation for students with disabilities. Article 34 stipulates that students with special needs shall be provided with assistance and the necessary equipment or accommodation as required. They should study alongside able-bodied students whenever possible.

Before 1 September 2018, although there was no explicit legal provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment as such, the Supreme Court interpreted the general equality provisions of the Constitution, ECHR and the Act on the Affairs of People with Disabilities to include a reasonable accommodation duty. In the field of higher education, the University of Iceland is obliged to accept students with disabilities and to make the necessary arrangements and



take the general measures necessary to accommodate them, ensuring that they can avail themselves of the same services as other students at the department of their choosing. This was established in the case of *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, where the court found that, although the needs of the claimant had been accommodated to some extent, the lack of general measures, a comprehensive plan or general guidelines on how to assist her had led to problems, and that she had been forced to personally insist on reasonable accommodation. This entailed a breach of her personal rights and the right to education, and she was awarded non-pecuniary damages.<sup>13</sup>

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

In Iceland, there is no duty to provide reasonable accommodation in respect of grounds other than disability and reduced capacity to work in the public or the private sector.

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<sup>13</sup> Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. University of Iceland*, Case No. 177/1998, 4 February 1999.

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

#### **3.1 Personal scope**

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

In Iceland, the following residence/citizenship/nationality requirements are applied for protection under the equality legislation transposing the directives.

Article 1, paragraph 1 of the Racial Equality Act sets out that the Act does not apply to difference of treatment based on nationality or statelessness. In addition, the Act is without prejudice to provisions and conditions relating to the entry of third-country nationals and stateless persons into the territory of Iceland and their residence in Iceland, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned. The legislation does not apply in the field of private and family life.

Article 1, paragraph 1 of the Labour Equality Act sets out that the Act does not apply to difference of treatment in the labour market based on nationality or statelessness. The Act is without prejudice to provisions and conditions relating to the entry of third-country nationals and stateless persons into the territory of Iceland and their residence in Iceland, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned. In addition, the Act does not apply to rights and services in public systems, such as rights stemming from the legislation on social security, on municipal social services, on unemployment benefits and on maternity/paternity and parental leave.

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

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

In Iceland, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination. The national provisions comply with the directive.

Article 6 of the Racial Equality Act sets out that individuals, enterprises, institutions and non-governmental organisations that consider themselves victims of violations of the Act may submit their case, either in their own name or on behalf of their members, to the Equality Complaints Committee.

Article 6 of the Labour Equality Act sets out that individuals, enterprises, institutions and non-governmental organisations that consider themselves victims of violations of the Act may submit their case, either in their own name or on behalf of their members, to the Equality Complaints Committee.

In this context, it should be noted that the general rule is that any individual, association or institution that bears rights or duties under national law can be party to a court case.<sup>14</sup> The general principle concerning legal standing is that, for an application to be admissible, the claimant must satisfy the requirement of having a personal, direct interest, that is, a 'legally protected interest'.

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

In Iceland, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

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<sup>14</sup> Iceland, Act on Civil Procedure (*Lög um meðferð einkamála*) No. 91/1991, 31 December 1991, Article 16(1).

National legislation does not provide explicit provisions distinguishing between natural and legal persons for the purposes of liability for discrimination. The Equality Acts simply state, in common Article 6, that *anyone* who, deliberately or through negligence, violates the Acts shall be liable to pay moral and material damages according to the ordinary rules. In this context, it should be noted that any individual, association or institution that bears rights or duties under national law can be party to a court case.<sup>15</sup>

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

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

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

Article 1 of the Racial Equality Act sets out that it applies to all spheres of life, except the labour market in relation to the Labour Equality Act.

Article 1 of the Labour Equality Act simply sets out that it applies equal treatment of all persons in the labour market, irrespective of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics.

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

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

Common Article 6 of the Equality Acts sets out that *anyone* who, deliberately or through negligence, violates the Acts shall be liable to pay moral and material damages according to the ordinary rules.

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

## **3.2 Material scope**

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

In Iceland, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work and holding statutory office, for the five grounds. There is no military in Iceland.

Article 1 of the Labour Equality Act sets out that it applies equal treatment of all persons in the labour market, irrespective of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics, in relation to:

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<sup>15</sup> Iceland, Act on Civil Procedure (*Lög um meðferð einkamála*) No. 91/1991, 31 December 1991, Article 16(1).

- a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions and promotion;
- b) access to vocational guidance and training, advanced vocational training and retraining, including practical work experience;
- c) decisions on employment and other working conditions, including dismissals and pay;
- d) membership of, and involvement in, an organisation of workers or employers, including the benefits provided for by such organisations.

It should be noted that the entry into force of the legislation in respect of age was deferred to 1 July 2019, as the social partners needed more time to examine age-related provisions in collective agreements, including on retirement age, and to change these if necessary, in accordance with the new equality legislation.

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

In Iceland, national legislation prohibits discrimination in conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, for the five grounds, in both the private and public sectors, as described in the directives.

Article 1 of the Labour Equality Act sets out that it applies equal treatment of all persons in the labour market, irrespective of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics, in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions and promotion.

It should be noted that the entry into force of the legislation in respect of age was deferred to 1 July 2019, as the social partners needed more time to examine age-related provisions in collective agreements, including on retirement age, and to change these if necessary, in accordance with the new equality legislation.

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

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

Article 1 of the Labour Equality Act sets out that it applies equal treatment of all persons in the labour market, irrespective of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics, in relation to decisions on employment and other working conditions, including dismissals and pay.

It should be noted that the entry into force of the legislation in respect of age was deferred to 1 July 2019, as the social partners needed more time to examine age-related provisions in collective agreements, including on retirement age, and to change these if necessary, in accordance with the new equality legislation.

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

In Iceland, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

Article 1 of the Labour Equality Act sets out that it applies equal treatment of all persons in the labour market, irrespective of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics, in relation to access to vocational guidance and training, advanced vocational training and retraining, including practical work experience.

It should be noted that the entry into force of the legislation in respect of age was deferred to 1 July 2019, as the social partners needed more time to examine age-related provisions in collective agreements, including on retirement age, and to change these if necessary, in accordance with the new equality legislation.

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

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

In Iceland, national legislation prohibits discrimination in membership of and involvement in workers' or employers' organisations, as formulated in the directives for all five grounds and for both private and public employment.

Article 1 of the Labour Equality Act sets out that it applies equal treatment of all persons in the labour market, irrespective of race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics, in relation to membership of and involvement in an organisation of workers or employers, including for the benefits provided by such organisations. It should be noted that the entry into force of the legislation in respect of age was deferred to 1 July 2019, as the social partners needed more time to examine age-related provisions in collective agreements, including on retirement age, and to change these if necessary, in accordance with the new equality legislation.

The Act on Trade Unions and Trade Disputes No. 80/1938,<sup>16</sup> which applies to both the private and public sectors, sets out that membership of trade unions shall be open to all workers employed in the respective area (see Article 2). In practice, trade unions accept all applicants, irrespective of nationality, origin, religion, disability or sexual orientation. Foreign nationals may stand for election and participate in union work on an equal footing with citizens. Similarly, professional associations and employers' organisations are open to all enterprises and employers operating or qualified in the respective fields.

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

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<sup>16</sup> Iceland, Act on Trade Unions and Trade Disputes (*Lög um stéttarfélag og vinnudeilur*) No. 80/1938, 11 June 1938.

In Iceland, national legislation prohibits discrimination in social security and healthcare, as formulated in the Racial Equality Directive.

Article 8 of the Racial Equality Act prohibits discrimination on grounds of race or ethnic origin in healthcare and social services. The same applies to access to the general social security system and other social security systems, including for unemployment benefits and maternity or parental leave.

It should be noted that Article 3, paragraph 3 of the Labour Equality Act stipulates that the Act does not apply to the public social security system, such as rights stemming from legislation on state and municipal social security, unemployment benefits and maternity/paternity and parental leave.

An anti-discrimination provision relating to healthcare can be found in Article 1 of the Act on the Rights of Patients No. 74/1997, which provides that any discrimination between patients on the grounds of sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status is prohibited. The commentary to the draft law states that 'other status' includes disability and age and sexual orientation, which would therefore fall under the legislation. In relation to social protection, Article 42 of the Act on Municipal Social Services No. 40/1991 sets out that the authorities shall work towards ensuring equality for persons with intellectual, psychosocial and physical disabilities, including living conditions comparable with those of other citizens. Persons with disabilities shall be ensured conditions that enable them to lead as normal a life as possible.

a) Article 3.3 exception (Directive 2000/78)

National law relies on the exception in Article 3.3 of Directive 2000/78.

Article 3, paragraph 3 of the Labour Equality Act stipulates that the Act does not apply to the public social security system, such as rights stemming from legislation on state and municipal social security, unemployment benefits, and maternity/paternity and parental leave.

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

In Iceland, national legislation does not explicitly prohibit discrimination in social advantages as formulated in the Racial Equality Directive. This may be an oversight, as the explanatory notes to the bill explain what social advantages are within the meaning of the legislation, so one may assume that the general anti-discrimination provision in Article 1 of the Racial Equality Act, stipulating that the Act applies to discrimination on the grounds of race or ethnic origin in all spheres of life except the labour market, therefore also applies to social advantages.

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

In Iceland, national legislation prohibits discrimination in education, as formulated in the Racial Equality Directive.

Article 10 of the Racial Equality Act prohibits discrimination on grounds of race or ethnic origin in all schools and other educational and child-rearing institutions. The explanatory notes to the bill set out that this includes studies, teaching, work methods and daily interaction with students. The notes also stipulate that educational materials shall not be discriminatory or offensive or demeaning towards people of a certain race or ethnic origin.

Article 24 of the Act on Compulsory Schools No. 91/2008<sup>17</sup> stipulates that, in the

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<sup>17</sup> Iceland, Act on Compulsory Schools (*Lög um grunnskóla*) No. 91/2008, 12 June 2008.

organisation of study and instruction, and in producing and selecting study materials, special effort shall be made to ensure that all pupils have equal study opportunities and a chance to select subjects and learning approaches in their own education. The objectives and practice of study and instruction shall be organised so that discrimination on the basis of origin (including race/ethnic origin), gender, sexual orientation, residence, social class, religion, health condition, disability or situation in general is prevented. Judicial interpretation is required, but it is assumed that age would fall under these provisions. There is no explicit prohibition of discrimination in the Act.

The national curricula for primary schools, secondary schools and upper secondary schools set out the framework and conditions for learning and teaching based on the principles of existing laws, regulations and international conventions. The curricula stipulate that equality is a fundamental pillar of the Icelandic education system. Equality shall be guaranteed in the substance of education on the one hand, and in the study methods and learning environment on the other. Characteristics to be taken into account include age, class, culture, origin, gender, disability, language, nationality, life views, race, religion, residence and sexual orientation.<sup>18</sup>

In relation to integration, it should be noted that the legislation governing compulsory and secondary education (Acts Nos. 91/2008 and 92/2008) contains provisions on the rights of children with a mother tongue other than Icelandic to special classes in Icelandic as a second language, as well as support to maintain knowledge of their mother tongue through elective classes, distance learning or other means. There is no segregation in the education system. Schools should also adopt special 'reception plans' for migrant children, containing information on school activities, interpreters, etc. The number of children of immigrant origin has increased steadily from 2004, in both kindergartens and compulsory education. In 2015, 2 435 kindergarten pupils had a mother tongue other than Icelandic, as did 3 543 pupils in compulsory education. Recent studies show that, despite the efforts made in the education system, the limited reading literacy in Icelandic hampers the studies of many of these children, and the low number of young people of immigrant origin graduating from high school is a serious problem.<sup>19</sup>

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

#### a) Pupils with disabilities

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

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

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<sup>18</sup> The curricula can be found in English on the website of the Icelandic Ministry of Education and Culture: [www.menntamalaraduneyti.is/utgefid-efni/namsskrar/adalnamskra-framhaldsskola/](http://www.menntamalaraduneyti.is/utgefid-efni/namsskrar/adalnamskra-framhaldsskola/).

<sup>19</sup> Multicultural Centre (2016), *Statistical Information on Foreign Citizens and Immigrants in Iceland 2016* (Tölfræðilegar upplýsingar um erlenda ríkisborgara og innflytjendur á Íslandi 2016), September 2016, p. 20.

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

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

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

Although there is no explicit legal provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment, the Supreme Court has interpreted the general equality provisions of the Constitution, the ECHR and the Act on the Affairs of People with Disabilities to include a duty to provide reasonable accommodation. In the case of *Ragna Kristín Guðmundsdóttir v. the University of Iceland*, the Supreme Court established that the University of Iceland is obliged to accept students with disabilities and to make the necessary arrangements and take the general measures necessary to accommodate them to ensure that they can avail themselves of the same services as other students, in the department of their choosing.<sup>20</sup> The court found that, although the needs of the claimant, a student with disabilities, had been accommodated to some extent, the lack of general measures, a comprehensive plan or general guidelines on how to assist her had led to problems, and that she had been forced to personally insist on reasonable accommodation. This entailed a breach of her personal rights and the right to education, and she was awarded non-pecuniary damages.

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

In Iceland, there are no specific trends or patterns (whether legal or societal) in education regarding Roma pupils, such as segregation. There is no Roma community in Iceland.

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

Article 9 of the Racial Equality Act prohibits discrimination on grounds of race or ethnic origin in access to and the supply of goods and services, including housing which is available to the public. The article excludes transactions carried out in the context of private and family life, in line with Recital 4 of Directive 2000/43.

There is no provision on goods and services in the Labour Equality Act, but Article 180 of the General Penal Code provides that denying a person service or access to any public area or place intended for public use on account of that person's nationality, colour, race,

<sup>20</sup> Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. University of Iceland*, Case No.177/1998, 4 February 1999.



religion, sexual orientation or gender identity is punishable by fines or imprisonment of up to six months. Neither age nor disability is covered under this provision or any other provision in the Act. There is no case law clarifying the application of the article.

a) Distinction between goods and services available publicly or privately

In Iceland, national law does not distinguish between goods and services that are available to the public (e.g. in shops, restaurants or banks) and those that are only available privately (e.g. those limited to members of a private association). However, Article 10 of the Racial Equality Act excludes transactions carried out in the context of private and family life, in line with Recital 4 of Directive 2000/43.

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

In Iceland, national legislation prohibits discrimination in the area of housing, as formulated in the Racial Equality Directive.

Article 9 of the Racial Equality Act prohibits discrimination on grounds of race or ethnic origin in access to and the supply of goods and services, including housing which is available to the public. The article excludes transactions carried out in the context of private and family life, in line with Recital 4 of Directive 2000/43.

There is no provision on the prohibition of discrimination as regards housing in the Labour Equality Act, but the General Penal Code stipulates in Article 180 that denying a person a service because of that person's nationality, colour, race, religion, sexual orientation or gender identity is punishable by fines or imprisonment of up to six months. This could include housing. No case law exists to clarify what constitutes a 'service'.

a) Trends and patterns regarding housing segregation for Roma

In Iceland, there are no trends or patterns of housing segregation or discrimination against the Roma.

## **4 EXCEPTIONS**

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

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

Article 11 of the Labour Equality Act provides that difference of treatment on the grounds of race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement proportionate.

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

In Iceland, national law does not provide for an exception for employers with an ethos based on religion or belief, as there are no national practices existing in this field, nor is there legislation containing provisions to this end. The Act on Registered Religious Associations No. 108/1999<sup>21</sup> does not contain provisions to this end, and neither does the Act on the Status, Governing and Functioning of the National Church of Iceland No. 78/1997.<sup>22</sup> However, although no explicit provision sets this condition, it is clear that, in order to be appointed to a leadership post, such as that of bishop, the incumbent would have to be a member of the National Church of Iceland.

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

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

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

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

In Iceland, national law includes exceptions relating to difference of treatment based on nationality. Iceland is not party to the 1954 and 1961 UN Statelessness Conventions.

Article 1, paragraph 1 of the Racial Equality Act sets out that the Act does not apply to difference of treatment based on nationality or statelessness. In addition, the Act is without prejudice to provisions and conditions relating to the entry of third-country nationals and stateless persons into the territory of Iceland and their residence in Iceland, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

Article 1, paragraph 1 of the Labour Equality Act sets out that the Act does not apply to difference of treatment in the labour market based on nationality or statelessness. The Act is without prejudice to provisions and conditions relating to the entry of third-country nationals and stateless persons into the territory of Iceland and their residence in Iceland, and to any treatment which arises from the legal status of the third-country nationals and

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<sup>21</sup> Iceland, Act on Registered Religious Associations (*Lög um skráð trúfélög og lífsskoðunarfélög*) No. 108/1999, 28 December 1999.

<sup>22</sup> Iceland, Act on the Status, Governing and Functioning of the National Church of Iceland (*Lög um stöðu, stjórn og starfshætti þjóðkirkjunnar*) No. 78/1997, 26 May 1997.

stateless persons concerned. In addition, the Act does not apply to rights and services in public systems, such as rights stemming from the Acts on social security, municipal social services, unemployment benefits and maternity/paternity and parental leave.

In Iceland, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law. However, mention should be made of Article 1 of the Act on Workers' Terms of Employment and Pensions No. 55/1980, which sets out that wages and other conditions negotiated by social partners shall be the minimum conditions for all workers, irrespective of sex, nationality and length of contract, in the relevant occupation within the area covered by the collective agreements. Contracts setting out worse working terms than those specified in the collective agreements shall be void.<sup>23</sup>

It should be noted that the European Commission expressed the view that the current rules<sup>24</sup> allowing citizens from the other Nordic countries to vote in municipal elections after a three-year residence, whilst requiring five years' residence for other EU citizens, is incompatible with the EU *acquis*.<sup>25</sup> So far, the Government has not proposed any changes to this system.

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

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

There is no clear relationship between nationality and race or ethnic origin in the context of indirect discrimination. The explanatory notes to the draft legislation do not address this issue. Race and ethnic origin are protected grounds under the new legislation; nationality is not. There is no case law on the matter.

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

a) Benefits for married employees

In Iceland, it would constitute unlawful discrimination in national law if an employer only provided benefits to employees who were married but not under the Equality Acts. In the public sector, limiting certain benefits to married employees would constitute a breach of the principle of equality enshrined in Article 11 of the Administrative Procedures Act and the Constitution. For the private sector, discriminatory granting of benefits could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried.

b) Benefits for employees with opposite-sex partners

In Iceland, it constitutes unlawful discrimination in national law if an employer provides benefits only to those employees with opposite-sex partners.

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<sup>23</sup> Iceland, Working Terms and Pension Rights Insurance Act (*Lög um starfskjör launafólks og skyldutryggingu lífeyrisréttinda*) No. 55/1980, 9 June 1980.

<sup>24</sup> Iceland, Act on General Elections for Municipal Government (*Lög um kosningar til sveitarstjórna*) No. 5/1998, 6 March 1998.

<sup>25</sup> European Commission (2011), *Screening report Iceland*, Chapter 23, 'Judiciary and fundamental rights', Brussels, 1 July 2011, available on the DG ENLARGE website: [http://ec.europa.eu/enlargement/pdf/iceland/key-documents/screening\\_report\\_23\\_is\\_internet\\_en.pdf](http://ec.europa.eu/enlargement/pdf/iceland/key-documents/screening_report_23_is_internet_en.pdf).

Article 1 of the Labour Equality Act stipulates that it covers sexual orientation as a discrimination ground in relation to decisions on employment and other working conditions, including dismissals and pay.

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

In Iceland, there are no exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive. Article 40(b) of the Act on Health and Safety at Work No. 46/1980<sup>26</sup> provides that the responsible minister may ask the Board of the Administration of Occupational Health and Safety to adopt rules on the employment of people with physical or mental disabilities for certain jobs, where their disability, disease or age may entail an increased risk of accidents or disease. To date, no regulations have been issued under this article.

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

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

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

In Iceland, national law provides for specific exceptions for direct discrimination on the ground of age. It should be noted that the entry into force of the Labour Equality Act in respect of age was deferred to 1 July 2019, as the social partners needed more time to examine age-related provisions in collective agreements, including on retirement age, and to change these if necessary, in accordance with the new equality legislation.

Article 1, paragraph 2 sets out that the Labour Equality Act does not apply to different age requirements in relation to rights under the occupational pension schemes.

Article 12 of the Labour Equality Act sets out that differences of treatment on grounds of age shall not constitute discrimination if they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy or another aim regarding the labour market, and if the means of achieving that aim are appropriate and proportionate.

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

In Iceland, national law provides for justifications for direct discrimination on the ground of age in relation to employment.

Article 12 of the Labour Equality Act sets out that differences of treatment on grounds of age shall not constitute discrimination if they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy or another aim regarding the labour market, and if the means of achieving that aim are appropriate and proportionate.

Article 1, paragraph 2 stipulates that the Act does not apply to different age requirements in relation to rights under the occupational pension schemes, in line with Directive 2000/78.

##### **b) Permitted differences of treatment based on age**

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

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<sup>26</sup> Iceland, Act on Health and Safety at Work (*Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum*) No. 46/1980, 28 May 1980.

The general age limit for entry into the labour market is 16 years. However, to sign valid employment contracts, workers must have reached the age of majority, which is 18. The Act on Health and Safety at Work No. 46/1980 stipulates that children under the age of 15 may not be employed except in exceptional circumstances, for example to participate in cultural events, sports or advertising activities.<sup>27</sup>

Domestic law contains various provisions setting out age limits in relation to specific functions and professions. Examples include Article 33 of the Act on the Rights and Duties of State Employees No. 70/1996, which stipulates that, to be appointed or hired as a state employee, a person must have reached the age of 18. Exceptions can be made for internships, cleaning jobs, couriers and certain other roles.<sup>28</sup> Employees and public servants (including healthcare professionals) are generally relieved of their duties at the end of the month when they turn 70 (Article 43).<sup>29</sup> Article 26 of the Act on Healthcare Professionals No. 34/2012 stipulates that healthcare professionals are generally not allowed to run private clinics after the age of 75, although the Directorate of Health can prolong permits on application, initially for three years and subsequently for one year at a time.

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

Article 40(b) of the Act on Health and Safety at Work No. 46/1980 provides that the Ministry of Welfare may ask the Board of the Administration of Occupational Health and Safety to adopt rules on the employment of people with physical or mental disabilities for certain jobs, where their disability, disease or age may entail an increased risk of accidents or disease. To date, the minister has not issued any regulations under this article. Some employment sectors set physical fitness requirements for workers. The applicable laws include, *inter alia*, the Act on the Crews of Fishing Vessels, Coast Guard Vessels, Leisure and other Boats No. 30/2007<sup>30</sup> and the Aviation Act No. 60/1998.<sup>31</sup> These provisions clearly come into play in relation to older workers.

Rights and services for 'older people' are generally provided for people aged 67 and older. The Act on Social Security No. 100/2007, dealing with pensions, sets the age of 67 (see Article 17) or 60 for sailors fulfilling special criteria, and the Act on the Affairs of the Elderly No. 125/1999 sets out the services to which people aged 67 and older are entitled. Act No. 113/1994 on Pensions for the Elderly sets out pensions for certain groups of retired people born in or before 1914, for those aged 70 years or above and for all persons falling under the law who have reached the age of 75.<sup>32</sup>

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<sup>27</sup> Iceland, Act on Health and Safety at Work (*Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum*) No. 46/1980, 28 May 1980, Chapter X.

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

<sup>29</sup> Iceland, Act on the Rights and Duties of State Employees (*Lög um réttindi og skyldur starfsmanna ríkisins*) No. 70/1996, 11 June 1996, Article 43.

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

<sup>31</sup> Iceland, Aviation Act (*Lög um loftferðir*) No. 60/1998, 10 June 1998.

<sup>32</sup> Iceland, Act on Pensions for the Elderly (*Lög um eftirlaun til aldraðra*) No. 113/1994, 28 June 1994, Article 2.

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

In Iceland, national law allows occupational pension schemes to fix ages for entitlement to benefits, in line with the option provided for by Article 6(2) of Directive 2000/78/EC. Everyone who is active in the labour market is obliged to be a member of an occupational pension fund between the ages of 16 and 70.<sup>33</sup> Payments must be received from the funds from the age of 70 at the latest.<sup>34</sup>

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

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

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

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

The Act on Health and Safety at Work No. 46/1980 sets out the general rule that children under the age of 15 or in compulsory education cannot be employed. Exceptions can be made for artistic, cultural or sports events and advertisements, but if the child is under 13, the Administration of Occupational Safety and Health must grant a permit before the child is engaged in work. Children aged 14 and older can participate in educational or occupational training, and they can be hired for simple jobs. Children aged 13 can be hired for simple jobs such as gardening or in-service jobs for a limited number of hours a week.

Young people between 16 and 18 can hold jobs suited to their age and maturity, as long as their health and safety is guaranteed.<sup>35</sup> To sign valid employment contracts, workers must have reached the age of majority, which is 18 in Iceland. When children and young people work, their parents or legal guardians sign the work contracts on their behalf. The Act on the Rights and Duties of State Employees No. 70/1996 contains the general rule that, for being appointed or hired as a state employee, a person must have reached the age of 18, the age of majority.<sup>36</sup> Exceptions can be made for internships, cleaning jobs, couriers and certain other roles.<sup>37</sup>

There is no fixed retirement age set out in collective agreements or in law in the private sector, but public employees shall be relieved of their duties at the end of the month when they turn 70.<sup>38</sup> They are, however, not barred from working part-time after the age of 70. No requirements relating to minimum and maximum ages are found in relation to training.

#### **4.7.4 Retirement**

- a) State pension age

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<sup>33</sup> Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds (*Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða*) No. 129/1997, 23 December 1997, Article 1, para. 3.

<sup>34</sup> Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds (*Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða*) No. 129/1997, 23 December 1997, Article 4, para. 1.

<sup>35</sup> Iceland, Act on Health, and Safety at Work (*Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum*) No. 46/1980, 28 May 1980. Chapter X addresses the work of children and young people.

<sup>36</sup> Iceland, Act on Legal Competence (*Lögræðislög*) No. 71/1997, Article 1.

<sup>37</sup> Iceland, Act on the Rights and Duties of State Employees (*Lög um réttindi og skyldur starfsmanna ríkisins*) No. 70/1996, Article 6.

<sup>38</sup> Iceland, Act on the Rights and Duties of State Employees (*Lög um réttindi og skyldur starfsmanna ríkisins*) No. 70/1996, Article 43.

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

An individual can collect a pension and still work, but the general rule is that their pension will be reduced. A person can also defer their pension rights until the age of 80.

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

#### b) Occupational pension schemes

In Iceland, there is no fixed age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements, but payments must be received from the funds from the age of 70 at the latest.<sup>39</sup>

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

There is no fixed retirement age set out in collective agreements or in law in the private sector, but public employees are to be relieved of their duties at the end of the month when they turn 70.<sup>40</sup> They are, however, not barred from working part-time after the age of 70, in which case they then collect reduced pensions. It is also permitted to defer collecting the pension up to the age of 72.

#### c) State imposed mandatory retirement ages

In Iceland, there is a state-imposed mandatory retirement age for the public sector. There is no fixed retirement age set out in collective agreements or in law in the private sector, but public employees are to be relieved of their duties at the end of the month when they turn 70.<sup>41</sup> They are, however, not barred from working part-time after the age of 70.

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

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<sup>39</sup> Iceland, Act on Mandatory Pension Insurance and the Operations of Pension Funds (*Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða*) No. 129/1997, 23 December 1997, Article 4, para. 1.

<sup>40</sup> Iceland, Act on the Rights and Duties of State Employees (*Lög um réttindi og skyldur starfsmanna ríkisins*) No. 70/1996, 11 June 1996, Article 43.

<sup>41</sup> Iceland, Act on the Rights and Duties of State Employees (*Lög um réttindi og skyldur starfsmanna ríkisins*) No. 70/1996, 11 June 1996, Article 43.

funds, the general pension age is 65. The general rule is that people can work longer, either deferring pension rights until the age of 80 or receiving reduced pensions.

d) Retirement ages imposed by employers

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

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

e) Employment rights applicable to all workers irrespective of age

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

f) Compliance of national law with CJEU case law

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

#### **4.7.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

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

However, a national collective agreement (*þjóðarsátt*) concluded in 1990 provides for longer notice periods for employees with seniority. For those who have worked continuously at a company for 10 years, the notice period is four months when the employee has reached the age of 55, five months if the employee is 60 and six months at the age of 63.

b) Age taken into account for redundancy compensation

In Iceland, national law provides compensation for redundancy, under the Act on Redundancies No. 63/2000. Such compensation is not affected by the age of the worker.

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

In Iceland, national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

Article 1, paragraph 2 of the Labour Equality Act sets out that the Act shall be without prejudice to measures laid down by law which are necessary for public security, for the



maintenance of public order, for the protection of health and for the protection of the rights and freedoms of others.

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

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

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

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

In Iceland, positive action is permitted in national law in respect of race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics.

Article 11, paragraph 2 of the Labour Equality Act sets out that temporary positive measures to promote equal treatment in the labour market, aimed at improving the situation of people in fields where they suffer because of race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics, are not contrary to the Labour Equality Act.

Article 12 of the Racial Equality Act stipulates that positive measures, as described in Article 3.5, are not in violation of the Act.

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

In Iceland, national law does not provide for quotas for people with disabilities in employment.

## **6 REMEDIES AND ENFORCEMENT**

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

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

In Iceland, the following procedures exist for enforcing the principle of equal treatment in the private and public sectors.

The Equality Complaints Committee receives complaints from individuals, enterprises, institutions and non-governmental organisations, either in their own name or on behalf of their members who consider that the Equality Acts have been violated (common Article 6). Articles 5-7 of the Act on Equal Rights and Equal Rights of Women and Men No. 10/2008 (Gender Equality Act) shall apply to the procedure, as applicable.

Cases shall be submitted to the Complaints Committee in writing within six months of the date when the alleged violation of the Acts was first known about, within six months of the time when a situation regarded as an infringement of the Acts came to an end, or within six months of the time when the person concerned became aware of the alleged violation. If reasoning is sought based on the Administrative Procedures Act, the period for submission shall be from the time that the decision was obtained. In special circumstances, the Complaints Committee may decide to examine a case even though the time limit defined above has passed, although in no case shall the period exceed one year. An application shall be considered timely if the pertaining letter is received by the Committee, or posted, before the time limit.

The Complaints Committee may, after consulting the claimant, refer the case to the Centre for Equality for mediation. The Committee shall deliver its rulings at the earliest opportunity, and no later than three months after receiving the case. The proceedings before the Complaints Committee shall, as a rule, be in writing; however, the Committee may summon the parties or their representatives to hearings. In other respects, the Committee's procedure shall be in accordance with the Administrative Procedures Act and further regulations issued by the Minister after receiving proposals from the Committee.

The Equality Complaints Committee shall ensure that a party to a case has the opportunity to express himself or herself regarding the matter at issue before the Committee delivers its ruling, providing that the Committee considers that neither the party's position nor the reasons for it are presented in the evidence. The Committee may, at the request of the opposite party, demand a party to present materials which it considers could have an influence on the resolution of the case. The Equality Complaints Committee may demand further evidence from the parties if it deems the facts inconclusive. If evidence is presented to the Equality Complaints Committee concerning wages, other terms of employment or the entitlements of individuals, the Complaints Committee shall inform the party concerned that this information has been submitted to the Committee. Such information shall be treated in confidence.

The rulings of the Complaints Committee are binding for the parties to each case. The parties may refer the Committee's rulings to the courts. At the request of a party, the Committee may deliver a ruling deferring the legal effect of its own ruling if it deems it reasonable to do so. A request to this effect shall be presented not later than 10 days after the publication of the ruling. The deferral of the legal effects of a ruling shall be subject to the condition that the party to the case will refer the matter to the courts within 30 days of the publication of the ruling deferring the legal effects and will then request that it receives swift treatment. If a request for swift treatment is rejected, then the case shall be litigated as quickly as possible after the rejection is announced, and not later than 30 days following the judge's rejection. The deferral of the legal effects of a ruling shall expire

if the matter is not referred to the courts within 30 days of the publication of the ruling deferring the legal effects, or if no action is instituted within 30 days of the rejection by a judge of the request for speedy treatment. If a case concerning a ruling by the Committee is litigated, the Committee may defer its treatment of comparable pending cases until judgment has been delivered in the case.

The Equality Complaints Committee may decide that the party against whom the complaint is directed shall pay the claimant the costs of bringing the complaint before it, providing that the Committee's conclusion is in the claimant's favour.

If a ruling of the Equality Complaints Committee is in the claimant's favour but the respondent does not accept the ruling and brings an action to have it annulled by the courts, the claimant's legal costs, both at the district court and at the Court of Appeals and Supreme Court levels, shall be paid by the Treasury.

If the Equality Complaints Committee deems a complaint evidently unfounded, the Committee may order the claimant to pay the respondents' legal costs. An attachment may be made, without a prior court judgment, to secure the payment of legal costs. The Complaints Committee shall publish its rulings. The costs of the Committee's activities shall be paid by the State Treasury.

Where the Centre for Equality has reason to suspect that an institution, enterprise or non-governmental organisation has violated the Equality Acts, it shall investigate whether there is reason to request the Equality Complaints Committee to examine the matter (see Article 4, paragraph 5 of the Gender Equality Act). The relevant institution, enterprise or non-governmental organisation shall be obliged to provide the Centre for Equality with the information and materials it considers necessary to reveal the facts of the case. If the parties concerned do not comply with this request by the Centre for Equality within a reasonable time limit, the Centre may decide that they are to pay per diem fines until the information and materials have been provided. If the Centre for Equality considers that the information and materials in question further substantiate the suspicion that a violation of the Acts has taken place, it shall request the Equality Complaints Committee to examine the matter, and consequently inform the institution, enterprise or non-governmental organisation concerned in writing of its decision to do so.

The Centre for Equality shall, at the request of the claimant, take steps to ensure that the rulings of the Complaints Committee are enforced as appropriate. When a party against whom a ruling of the Equality Complaints Committee is directed fails to comply with it, the Centre for Equality may instruct the party concerned to take satisfactory remedial measures in accordance with the ruling within a reasonable time limit. If the party against whom the ruling is directed fails to comply with the instructions of the Centre for Equality, the Centre may decide that the party must pay per diem fines (of up to ISK 50 000 per day, or approx. EUR 365) until it complies with the instructions.

The party to whom the instructions of the Centre for Equality are addressed under this provision may appeal to the minister responsible against the Centre's decision. A decision to impose per diem fines under paragraph 6 of Article 4 of the Gender Equality Act shall be cancelled if the ruling of the Equality Complaints Committee is referred to the courts. Decisions by the Centre for Equality to impose per diem fines may be enforced by attachment. The lodging of appeals with the relevant minister or the institution of proceedings before the ordinary courts shall defer enforcement action.

## Judicial procedure

Discrimination may give rise to civil liability, falling under the general rules. The courts may rule that a certain act or omission<sup>42</sup> should be remedied and may award the victim material damages. Moral damages can only be awarded on the basis of a specific legal provision, such as common Article 16 of the Equality Acts. At the district court level, proceedings are generally initiated by the claimant filing a summons and complaint with the court. The claimant pays court fees and the case is registered. The defendant is served with a summons, which must state the facts of the case and its merits and set out the claimant's demands and legal arguments. The summons, once issued, cannot be amended. The general principle is that all arguments must be introduced and submitted in the summons. Other arguments are excluded unless the new arguments are accepted by the defendant. Where the defendant appears before the court and holds a defence, his or her claims, facts and legal arguments shall be stated in a separate submission, which is to be filed with supporting evidence within a certain time limit. The case and dossier are then assigned to a judge. As a rule, the parties can continue to gather evidence during the proceedings if this is done without undue delay.

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

## Administrative procedures

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

The Act on Rights Advocates for Disabled People No. 88/2011<sup>43</sup> stipulates that an advocate of the rights of people with disabilities shall be appointed for each service region. The advocate is charged with monitoring the situation of people with disabilities in his or her area and assists individuals when needed, including in relation to personal finances, rights and services. Violations of the rights of a disabled person should be brought to the attention of the advocate, who can investigate the case in cooperation with the victim. Where needed, the advocate may ask the perpetrator to remedy the situation within a certain time limit. If the advocate's suggestions for improvements are not followed, the advocate can in some instances bring a complaint to the administrative Complaints Committee on Social Affairs and Housing or to the Ministry of Welfare. The Equality Complaints Committee

<sup>42</sup> See, e.g., Supreme Court of Iceland, *Berglind Stefánsdóttir and the Association of the Deaf v. State Broadcasting Services*, Case No. 151/1999, 6 May 1999, where the court held, with reference to the duty of the State Broadcasting Service to broadcast election debates as set out in the Broadcasting Act, and to Article 65 of the Constitution, that the State Broadcasting Service must ensure the broadcasting of such debates in sign language.

<sup>43</sup> Iceland, Act on Rights Advocates for Disabled People (*Lög um réttindagæslu fyrir fatlað fólk*) No. 88/2011, 23 June 2011.

also addresses complaints alleging violations of the Gender Equality Act. In some instances, decisions by local authorities may be referred to the relevant ministry. Lastly, the courts are competent to review any decision taken by the executive.

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

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

#### Criminal proceedings

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

#### b) Barriers and other deterrents faced by litigants seeking redress

Until 1 September 2018, the lack of anti-discrimination legislation covering the scope of Directives 2000/43/EC and 2000/78/EC could be considered the main barrier for effective anti-discrimination action. In general, the high level of lawyers' fees and the fact that the party that loses pays costs can also act as a deterrent for those wishing to bring discrimination cases before the courts. It should be noted that legal aid is means-tested and is limited to the very poor. Complaints brought to complaints committees, the Parliamentary Ombudsman and the Ombudsman for the Citizens of Reykjavík are not costly, however – these do not require the instruction of a lawyer and the process is relatively simple.

With the entry into force of the new Equality Acts, it remains to be seen how effective the Equality Complaints Committee will be in addressing the new discrimination grounds. One concern raised by stakeholders is that, given that the proceedings before the Committee are written in Icelandic, this can limit the access of non-native speakers, as being forced to pay for expensive translation or interpretation services could act as a deterrent for them in seeking to enforce their rights.

#### c) Number of discrimination cases brought to justice

There are no available statistics on the number of discrimination-related cases brought to justice in Iceland.

#### d) Registration of discrimination cases by national courts

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

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

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

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

Labour unions or umbrella organisations have standing on behalf of their members in labour disputes, and enterprises, institutions and non-governmental organisations can – either in their own name or on behalf of their members – submit a case concerning discrimination under the Equality Acts to the Equality Complaints Committee (common Article 6).

It should be noted that a similar provision can be found in the Gender Equality Act, but no relevant complaints have been lodged by NGOs or associations on behalf of victims since the Act came into force in 2008.

Article 70 of the Constitution sets out the principle that everyone shall, for the determination of his or her rights and obligations, be entitled to the resolution of an independent and impartial court of law. This right is also guaranteed through Article 6(1) of the Act on the European Convention on Human Rights No. 62/1994.<sup>44</sup> According to the Act on Civil Procedure No. 91/1991, any individual, association or institution that bears rights or duties under national law can be party to a court case.<sup>45</sup> The general principle concerning legal standing is that, for an application to be admissible, the claimant must satisfy the requirement of having personal, direct interest, that is, a 'legally protected interest' (*lögvarðir hagsmunir*). This rule is founded on Article 24(1) of the Act on Civil Procedure, which states that the competence of courts is limited to issues governed by the law, and Article 25(1), which states that courts do not resolve legal questions.

An exception to the rule on direct 'legally protected interest' is provided for in Article 25(3) of the Act on Civil Procedure No. 91/1991, which allows associations to apply to the courts for the recognition of certain rights of their members or to relieve their members of certain duties, if safeguarding the interests at stake forms part of the association's mandate.<sup>46</sup> Three conditions are thus set: that the interest at stake forms part of the association's mandate, that the case concerns the legally protected interests of the majority of the association's members, and that the case concerns the recognition of certain rights or the relief of duties. An example is provided by a landmark case brought by the Icelandic Federation of People with Disabilities against the Icelandic State for the recognition of the fact that it was unlawful and in breach of the Constitution to reduce social security payments to married people with disabilities based on their spouse's income, as it did not guarantee the minimum rights set out in Article 76 (the law guarantees everyone the assistance that they require in the case of sickness, disability, infirmity by reason of old age, unemployment or similar circumstances) and thus prevented those affected from fully enjoying their rights as set out in Article 65 (equality provision). The Supreme Court found in favour of the Federation, and the legislation on social security was amended to reflect the judgment.<sup>47</sup>

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<sup>44</sup> Iceland, Act on the European Convention on Human Rights (*Lög um mannréttindasáttmála Evrópu*) No. 62/1994, 19 May 1994.

<sup>45</sup> Iceland, Act on Civil Procedure (*Lög um meðferð einkamála*) No. 91/1991, 31 December 1991, Article 16(1).

<sup>46</sup> Iceland, Act on Civil Procedure (*Lög um meðferð einkamála*) No. 91/1991, 31 December 1991, Article 25(3).

<sup>47</sup> Supreme Court of Iceland, *Icelandic Federation of People with Disabilities v. Republic of Iceland*, Case No. 125/2000, 19 December 2000.

No explicit provisions have been adopted concerning membership, whether on permanency or regarding the number of members generally.<sup>48</sup> No rules stipulate that non-governmental organisations need to be registered, but they can be included in the Directorate of Internal Revenue Company Directory. This is, however, not a precondition for engaging in legal proceedings. Legitimate interest is not defined in legal statutes; it is for the courts to establish whether a 'legally protected interest' is at stake.<sup>49</sup>

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

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

According to the Act on Civil Procedure No. 91/1991, any individual, association or institution that bears rights or duties under national law can be party to a court case.<sup>50</sup> Associations may apply to the courts for the recognition of certain rights of their members or to relieve their members of certain duties, if safeguarding the interests at stake forms part of the association's mandate.<sup>51</sup> However, there are no explicit provisions setting out the right of organisations to act in support of victims in discrimination cases. Judicial interpretation is required on this issue but, in any case, the victim would have to be a member of the association, which would have to have a 'legally protected interest', and a case could only be brought to recognise certain rights of the member or to relieve the member of certain duties.

c) *Actio popularis*

In Iceland, national law appears to 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*).

According to common Article 6 of the Labour Equality Act, enterprises, institutions and non-governmental organisations can – either in their own name or on behalf of their members – submit a case concerning discrimination under the Equality Acts to the Equality Complaints Committee. The wording is not clear as to whether the existence of an individual victim is a prerequisite. Judicial interpretation is required, as the general principle is that, for *actio popularis* to be allowed, it must be specially provided for by law. Examples include the Act on Municipal Elections No. 5/1998,<sup>52</sup> which provides for complaints concerning elections, and the Act on the Review Committee on Environmental Issues and Resources No. 130/2011,<sup>53</sup> which provides for *actio popularis* in relation to certain administrative decisions for environmental and outdoor activity organisations with at least 30 members.

d) Class action

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<sup>48</sup> See, however, the discussion on *actio popularis* under para. (c), where certain criteria on membership and set-up apply.

<sup>49</sup> See Supreme Court of Iceland, *Icelandic Federation of People with Disabilities v. Republic of Iceland*, Case No. 125/2000, 19 December 2000; and *Atli Jónsson et al. and the Icelandic Nature Conservation Society v. Icelandic State*, Case No. 231/2002, 12 June 2002, where a nature conservation organisation was not deemed to have a 'legally protected interest' in a case concerning an administrative decision permitting a large damming project, simply by reference to their aim of nature conservation.

<sup>50</sup> Iceland, Act on Civil Procedure (*Lög um meðferð einkamála*) No. 91/1991, 31 December 1991, Article 16(1).

<sup>51</sup> Iceland, Act on Civil Procedure (*Lög um meðferð einkamála*) No. 91/1991, 31 December 1991, Article 25(3). See, e.g., Supreme Court of Iceland, *Icelandic Federation of People with Disabilities v. Republic of Iceland*, Case No. 125/2000, 19 December 2000.

<sup>52</sup> Iceland, Act on Municipal Elections (*Lög um kosningar til sveitarstjórna*) No. 5/1998, 6 March 1998.

<sup>53</sup> Iceland, Act on the Review Committee on Environmental Issues and Resources (*Lög um úrskurðarnefnd umhverfis- og auðlindamála*) No. 130/2011, 28 September 2011.



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

Amendments made to the Act on Civil Procedure in 2010 provide for a form of class action. Three or more people who have claims against a party stemming from the same incident or situation can establish an 'action association' (*málsóknarfélag*), which can bring a case on their behalf.<sup>54</sup>

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

In Iceland, national law requires a general shift of the burden of proof from the complainant to the respondent.

Article 15 of the Labour Equality Act stipulates that, where there are facts from which it may be deduced that discrimination has taken place, in violation of the Act, it is for the respondent to prove that the different treatment was not based on race or ethnic origin, religion or belief, disability, reduced capacity to work, age, sexual orientation or gender identity, gender expression or gender characteristics. The same provision is found in Article 15 of the Racial Equality Act with regard to race and ethnic origin.

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

In Iceland, there are measures of protection against victimisation. The language is quite broad, so one could imagine that the protection against victimisation extends to people other than the complainant, such as witnesses or someone who helps the victim of discrimination to bring a complaint.

Article 13 of the Racial Equality Act stipulates that it is prohibited to 'subject individuals to injustice' because of complaints or cases brought because of racial or ethnic discrimination or in seeking redress under the Act. The timeframe is such that the unjust measure must have occurred within one year of the complaint or case being brought or the redress being sought.

Article 13 of the Labour Equality Act stipulates that employers may not dismiss employees for bringing cases or complaints on the basis of the Act. Furthermore, employers shall ensure that employees are not subjected to injustice in their work on the grounds of having submitted a complaint or case or having sought redress. This shall not apply if the dismissal or injustice concerned takes place more than one year after the case, complaint or demand for redress was brought under the Act.

### **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

Common Article 16 of the Equality Acts sets out that anyone who, deliberately or through negligence, violates the Acts shall be liable to pay moral and material damages according to the ordinary rules. No explicit mention is made of injunctive relief.

Common Article 17 stipulates that violations of the Acts, or of regulations issued thereunder, may be punishable by fines, unless heavier penalties are prescribed in other statutes. Cases involving violations of the Acts, or of regulations issued thereunder, shall be handled in accordance with the Act on Criminal Procedure. Fines shall be paid to the State Treasury.

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<sup>54</sup> Iceland, Act on Civil Procedure (*Lög um meðferð einkamála*) No. 19/1991, 31 December 1991, Article 19a.

Other discrimination could give rise to civil liability, falling under the general rules. The courts may rule that a certain act or omission<sup>55</sup> should be remedied and may award the victim material damages. Moral damages can only be awarded based on a specific legal provision, such as Article 16 of the Equality Acts or Article 31 of the Act on Equal Status and Equal Rights of Women and Men No. 10/2008.

Complaints concerning violations of the Act on Services for People with Long-term Support Needs No. 38/2018 and the Act on the Affairs of the Elderly No. 125/1999 in relation to services can be brought to the Complaints Committee on Welfare or to the Ministry of Welfare. There are no prescribed sanctions; the committee simply decides on whether the administrative decision in question is in accordance with the law and, if not, asks the institution or body to provide the service in accordance with the relevant law.

Violations of the General Penal Code provisions on hate speech and discrimination in services are subject to fines or imprisonment of up to two and a half years or six months, respectively. Violations of the prohibition of public insults against the beliefs or religion of lawfully established religious communities are subject to fines or imprisonment of up to three months. Fines are determined based on the guilty party's income, assets, financial status and commitments and other factors that may influence their ability to pay, as well as the financial gain or savings that the criminal act entailed or that had been envisaged.<sup>56</sup> The Supreme Court has convicted three people of crimes under Article 233a (none under Articles 180 or 125). In the first case, the youth and the clean criminal record of the accused, the fact that the derogatory statements were made in the name of an organisation and the fact that the accused did not initiate the media interview in which the statements were made were taken into account when the punishment of a fine of ISK 100 000 (approximately EUR 820) or six days in prison was issued.<sup>57</sup> In the other two cases, the perpetrators were ordered to pay fines of ISK 100 000.

#### b) Ceiling and amount of compensation

In the Icelandic system, there is no ceiling on the maximum amount of damages that may be awarded – although rules on the amounts of damages because of disability are fixed – as the aim of damages is to compensate the victim for all material damage suffered.<sup>58</sup> The Icelandic legal system does not issue punitive damages. The ordinary rules on damages apply in cases concerning prohibited discrimination. The general principle concerning damages is that a person is liable for damages if the act concerned was illegal and the damage done was a probable consequence of the person's actions and harmed interests protected by the rules on damages. It is a further condition that subjective mitigating factors, such as youth or limited mental capacity, do not apply.

In determining damages, the judge can consider factors such as the claimant's contributory fault and failure to mitigate loss. Ordinary damages can be reduced if justified by the situation of the respondent or in other extraordinary circumstances. In such a case, the

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<sup>55</sup> See, e.g., Supreme Court of Iceland, *Berglind Stefánsdóttir and the Association of the Deaf v. State Broadcasting Services*, Case No. 151/1999, 6 May 1999, where the court held, with reference to the duty of the State Broadcasting Service to broadcast election debates as set out in the Broadcasting Act, and to Article 65 of the Constitution, that the State Broadcasting Service must ensure the broadcasting of such debates in sign language.

<sup>56</sup> Iceland, General Penal Code (*Almenn hegningarlög*), Act No. 19/1940, 12 February 1940, Articles 180, 233a and 51.

<sup>57</sup> Supreme Court of Iceland, *Prosecutor v. Hlynur Freyr Vigfússon*, Case No. 461/2001, 4 April 2002.

<sup>58</sup> See, e.g., Supreme Court of Iceland, *Ragna Kristín Guðmundsdóttir v. University of Iceland*, Case No. 177/1998, 4 February 1999, where the court ruled that the failure on the part of the University of Iceland to take adequate special measures to ensure that a student with disabilities could study there violated the legislation on the rights of persons with disabilities and Article 65 of the Constitution. The student was awarded compensation.

extent and nature of the damages, the situation of the victim, the interests of the victim, insurance and other relevant factors should be considered.<sup>59</sup>

The Act on Payment from the State Treasury of Damages to Victims of Crime No. 69/1995 stipulates that the State Treasury will pay damages incurred under the General Penal Code, with some exceptions.<sup>60</sup> The act does not apply to moral damages under Article 233a of the General Penal Code. In criminal proceedings based on Articles 233a and 180 of the General Penal Code, the court may, in theory, also handle claims for damages.

The provisions on sanctions under the Equality Act use the same wording as the equivalent provision in the Gender Equality Act.<sup>61</sup> It should be noted that most cases brought on the basis of the Gender Equality Act concern appointments, and in those cases the Supreme Court has established that, if an appointment procedure is not in accordance with the law and has been conducted in an inconsiderate manner, this may give rise to a claim for moral damages.<sup>62</sup>

#### c) Assessment of the sanctions

As the new equality legislation only entered into force on 1 September 2018, it remains to be seen whether the sanctions can be deemed effective, proportionate and dissuasive, as required by the directives.

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<sup>59</sup> Iceland, Act on Damages (*Skaðabótalög*) No. 50/1993, 19 May 1993, Article 24.

<sup>60</sup> Act on Payment from the State Treasury of Damages to Victims of Crime (*Lög um greiðslu ríkissjóðs á bótum til þolenda afbrota*) No. 69/1995, 10 March 1995, Article 1.

<sup>61</sup> 'Anyone who, deliberately or through negligence, violates the Gender Equality Act shall be liable to pay compensation according to the ordinary rules. Furthermore, the party in question may be sentenced to pay the affected party moral damages, if appropriate, in addition to material damages', Act on Equal Status and Equal Rights of Women and Men (*Lög um jafna stöðu og jafnan rétt kvenna og karla*) No. 10/2008, 6 March 2008, Article 31.

<sup>62</sup> See, e.g., Supreme Court of Iceland, judgments H1997:1544, H1999:3985 and H2000:869 and the judgment of 18 March 2004 (Case No. 275/2003).

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

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

Common Article 5 of the Equality Acts charges the Centre for Equality (formerly the Centre for Gender Equality) with implementation of the Acts, in accordance with Article 4 of the Gender Equality Act, as applicable, including paragraphs 5-11 on per diem fines.

The tasks handled by the Centre for Equality include:

- monitoring the application of the Acts,
- supervising educational and informative activities,
- advising government authorities, institutions, companies, non-governmental organisations and individuals on equality issues,
- making suggestions and proposals to the Prime Minister and other government authorities on measures to achieve equality,
- making proposals on affirmative action,
- increasing the level of activity on inequality issues,
- monitoring equality developments in society by gathering information and
- initiating research,
- working against wage discrimination and other forms of discrimination in the labour market,
- mediating cases of dispute referred to the Centre for Equality on the basis of the Acts, and
- carrying out other tasks in line with the aims of the Acts in accordance with further decisions by the Minister.

Institutions, enterprises and non-governmental organisations are obliged to provide the Centre with any information necessary for its operations. The Centre can impose per diem fines if its requests for information or recommendations or the rulings of the Equality Complaints Committee are not complied with.

If the Centre has reason to suspect that an institution, enterprise or non-governmental organisation has violated the Acts, it shall investigate whether there is reason to request the independent Equality Complaints Committee to examine the matter. See chapter 7(h) for a detailed description of the Committee, its powers and procedure.

The Parliamentary Ombudsman may deal with equality and/or discrimination in relation to administrative procedure. No human rights commission is in place.

The Icelandic Human Rights Centre, an NGO, has assumed many of the functions of a national human rights institution (NHRI), albeit without the relevant powers, independence and financing being established by statute. In July 2016, the Ministry of the Interior opened a consultation on a draft bill on the establishment of an Icelandic NHRI on its website, in the context of the then proposed Equality Acts, but this work petered out.

A special Multicultural Centre, established by the state, is charged with facilitating communications between individuals of different backgrounds and enhancing the services provided to foreign citizens residing in Iceland and to those interested in moving to Iceland. The Multicultural Centre assists those seeking information about daily life in Iceland, provides information about the administration and is of service to foreign citizens moving to or from the country.

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

The Centre for Equality has taken on additional tasks, dealing with discrimination on several new grounds: race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics. The multi-ground mandate is envisaged to support holistic measures to combat discrimination, including multiple discrimination, but stakeholders are concerned that, as the Centre has traditionally been underfunded and currently only has expertise on gender, the new discrimination grounds will not be adequately addressed. To fulfil its mandate, the Centre will have to be significantly strengthened in terms of both material resources and expertise in the new discrimination fields. Another challenge is that the Centre is based in the north of Iceland, which has historically led to less than optimal visibility and offers limited physical access, as more than half the Icelandic population live in the capital, Reykjavík. To meet this challenge, the Centre's office in Reykjavík will need to be better resourced.

It is an issue of concern that the analysis in the explanatory notes to the Equality Bills deemed the additional costs to the state budget stemming from the new legislation to be insignificant, which implies that the additional resources that are necessary for the Centre to adequately take on its new tasks in relation to race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics are not readily available.

c) Institutional architecture

In Iceland, the designated body does not form part of a body with multiple mandates.

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

i) Status of the body

The Centre for Equality is a special institution with separate legal status, but it operates under the authority of the Prime Minister. It shall be responsible for administration in the sphere covered by the Acts.<sup>63</sup> The Centre is governed by a director appointed by the Prime Minister for a five-year term, and it is accountable to her or him. The director oversees the Centre's day-to-day operations and manages and recruits staff.<sup>64</sup> The Centre is funded from the state budget. In 2018, it received IKR 120 million (approx. EUR 880 000) from the state.

ii) Independence of the body

The independence of the Centre for Equality is not explicitly stipulated in the Equality Acts. The body can be considered relatively independent in practice. However, state funding can of course always be cut if the Centre's work is considered too controversial.

e) Grounds covered by the designated body/bodies

Since 1 September 2018 the Centre for Equality has been designated to implement the Equality Acts as well as the Gender Equality Act, thus dealing with equal treatment and discrimination on the grounds of race, ethnic origin, religion, opinion, disability, reduced capacity to work, age, sexual orientation and gender identity, gender expression and gender characteristics. It currently only has expertise on gender, and it remains to be seen

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<sup>63</sup> Act on Equal Status and Equal Rights of Women and Men (*Lög um jafna stöðu og jafnan rétt kvenna og karla*) No. 10/2008, 6 March 2008, Article 3.

<sup>64</sup> Act on Equal Status and Equal Rights of Women and Men (*Lög um jafna stöðu og jafnan rétt kvenna og karla*) No. 10/2008, 6 March 2008, Article 4.

how it will deal with the new grounds and whether it will get the necessary material and human resources to tackle this role well.

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

i) Independent assistance to victims

The Centre does not have explicit competence to provide independent assistance to victims except in relation to the mediation of cases. In practice, the Centre may provide guidance to victims to help them bring cases to the Equality Complaints Committee.

ii) Independent surveys and reports

The Centre for Equality has the competence to conduct independent surveys and publish independent reports.<sup>65</sup> The Centre has effectively used this competence independently, sometimes even incorporating questions related to the five discrimination grounds, but it remains to be seen how systematically this will be done in relation to its new competences pertaining to the new discrimination grounds under its mandate.

iii) Recommendations

The Centre for Equality has competence to make recommendations to the Prime Minister and other bodies on discrimination issues and special measures.<sup>66</sup> The Centre has until now not issued formal recommendations to the Government, but it is consulted regularly on equality policy and it remains to be seen how this will be done in relation to the new discrimination grounds.

iv) Other competences

Institutions, enterprises and non-governmental organisations are obliged to provide the Centre with any information necessary for its operations.

If the Centre has reason to suspect that an institution, enterprise or non-governmental organisation has violated the Acts, it shall investigate whether there is reason to request the independent Equality Complaints Committee to examine the matter. The relevant actor is obliged to provide the Centre with the information and materials necessary to reveal the facts of the case. If the parties concerned do not comply with this request within a reasonable time limit, the Centre may decide that they must pay per diem fines until the information and materials have been provided.

Where the Centre for Equality considers that the information that has been provided further substantiates the suspicion that a violation of the Acts has taken place, it shall ask the Equality Complaints Committee to examine the matter, and it shall consequently inform the institution, enterprise or non-governmental organisation concerned in writing of its decision to do so.

The Centre for Equality shall, at the request of the claimant, take steps to ensure that the rulings of the Equality Complaints Committee are enforced as appropriate. When a party against whom a ruling of the Equality Complaints Committee is directed fails to comply with it, the Centre for Equality may

<sup>65</sup> Act on Equal Rights and Equal Status of Women and Men (*Lög um jafna stöðu og jafnan rétt kvenna og karla*) No. 10/2008, 6 March 2008, Article 4(e).

<sup>66</sup> Act on Equal Rights and Equal Status of Women and Men (*Lög um jafna stöðu og jafnan rétt kvenna og karla*) No. 10/2008, 6 March 2008, Article 4(g).

instruct the party concerned to take satisfactory remedial measures in accordance with the ruling within a reasonable time limit. If the party against whom the ruling is directed fails to comply with the instructions of the Centre for Equality, the Centre may decide that the party must pay per diem fines until it complies with the instructions.

g) Legal standing of the designated body/bodies

In Iceland, the designated body does not have explicit legal standing to:

- bring discrimination complaints to court on behalf of identified victims;
- bring discrimination complaints to court on behalf of non-identified victims;
- bring discrimination complaints to court ex officio;
- intervene in legal cases concerning discrimination as an *amicus curiae*.

h) Quasi-judicial competences

In Iceland, the Centre for Equality is not a quasi-judicial institution, as it is the Equality Complaints Committee that rules in cases of alleged discrimination (see below). The Centre for Equality does, however, have the powers to impose per diem fines if institutions, enterprises and non-governmental organisations do not comply with their obligation to provide the Centre with any information it requests in relation to suspected discrimination. The Centre has the powers to refer suspected cases of discrimination to the Equality Complaints Committee and, at the request of a claimant in a discrimination case, may take steps to ensure that the rulings of the Equality Complaints Committee are enforced as appropriate. When a party against whom a ruling of the Equality Complaints Committee is directed fails to comply with it, the Centre for Equality may instruct the party concerned to take satisfactory remedial measures in accordance with the ruling within a reasonable time limit. If the party against whom the ruling is directed fails to comply with the instructions of the Centre for Equality, the Centre may impose per diem fines until it complies with the instructions.<sup>67</sup>

Per diem fines imposed by the Centre for Equality may amount to up to ISK 50 000 (approx. EUR 365) per day. The party to whom the Centre's instructions are addressed may appeal to the Prime Minister against the Centre's decision. A decision to impose per diem fines under paragraph 6 of Article for of the Gender Equality Act shall be cancelled if the ruling of the Equality Complaints Committee is referred to the courts. Decisions by the Centre for Equality to impose per diem fines may be enforced by attachment. The lodging of appeals with the Minister or the institution of proceedings before the ordinary courts shall defer enforcement action.<sup>68</sup>

The independent Equality Complaints Committee is the quasi-judicial institution ruling in discrimination cases under the Equality Acts.<sup>69</sup> Articles 5-7 of the Act on Equal Rights and Equal Rights of Women and Men 10/2008 (Gender Equality Act) apply to the procedure, as applicable in each case.

The decisions of the Equality Complaints Committee are binding. The Equality Complaints Committee receives complaints from individuals, enterprises, institutions and non-governmental organisations, either in their own name or on behalf of their members who consider that the Equality Acts have been violated.

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<sup>67</sup> Act on Equal Rights and Equal Status of Women and Men (*Lög um jafna stöðu og jafnan rétt kvenna og karla*) No. 10/2008, 6 March 2008, Article 4.

<sup>68</sup> Act on Equal Rights and Equal Status of Women and Men (*Lög um jafna stöðu og jafnan rétt kvenna og karla*) No. 10/2008, 6 March 2008, Article 4.

<sup>69</sup> Common Article 6 of the Equality Acts.

Cases shall be submitted to the Complaints Committee in writing within six months of the date when the alleged violation of the Acts was first known about, within six months of the time when a situation regarded as an infringement of the Acts came to an end, or within six months of the time when the person concerned became aware of the alleged violation. If reasoning is sought based on the Administrative Procedures Act, the period for submission shall be from the time that the decision was obtained. In special circumstances, the Complaints Committee may decide to examine a case even though the time limit defined above has passed, although in no case shall the period exceed one year. An application shall be considered timely if the pertaining letter is received by the Committee, or posted, before the time limit.

The Complaints Committee may, after consulting the claimant, refer the case to the Centre for Equality for mediation. The Committee shall deliver its rulings at the earliest opportunity, and no later than three months after receiving the case. The proceedings before the Complaints Committee shall, as a rule, be in writing; however, the Committee may summon the parties or their representatives to hearings. In other respects, the Committee's procedures shall be in accordance with the Administrative Procedures Act and further regulations issued by the Prime Minister following proposals from the Committee.

The Equality Complaints Committee shall ensure that a party to a case has the opportunity to express himself or herself regarding the matter at issue before the Committee delivers its ruling, providing that the Committee considers that neither the party's position nor the reasons for it are presented in the evidence. The Committee may, at the request of the opposite party, demand a party to present materials which it considers could have an influence on the resolution of the case. The Equality Complaints Committee may demand further evidence from the parties if it deems the facts inconclusive. If evidence is presented to the Equality Complaints Committee concerning wages, other terms of employment or the entitlements of individuals, the Complaints Committee shall inform the party concerned that this information has been submitted to the Committee. Such information shall be treated in confidence.

The rulings of the Complaints Committee are binding for the parties to each case. The parties may refer the Committee's rulings to the courts. At the request of a party, the Committee may deliver a ruling deferring the legal effect of its own ruling if it deems it reasonable to do so. A request to this effect shall be presented not later than 10 days after the publication of the ruling. The deferral of the legal effects of a ruling shall be subject to the condition that the party to the case will refer the matter to the courts within 30 days of the publication of the ruling deferring the legal effects and will then request that it receives swift treatment. If a request for swift treatment is rejected, then the case shall be litigated as quickly as possible after the rejection is announced, and not later than 30 days following the judge's rejection. The deferral of the legal effects of a ruling shall expire if the matter is not referred to the courts within 30 days of the publication of the ruling deferring the legal effects, or if no action is instituted within 30 days of the rejection by a judge of the request for speedy treatment. If a case concerning a ruling by the Committee is litigated, the Committee may defer its treatment of comparable pending cases until judgment has been delivered in the case.

The Equality Complaints Committee may decide that the party against whom the complaint is directed shall pay the claimant the costs of bringing the complaint before it, providing that the Committee's conclusion is in the claimant's favour.

If a ruling of the Equality Complaints Committee is in the claimant's favour but the respondent does not accept the ruling and brings an action to have it annulled by the courts, the claimant's legal costs, both at the district court and at the Court of Appeals and Supreme Court levels, shall be paid by the Treasury.



If the Equality Complaints Committee deems a complaint evidently unfounded, the Committee may order the claimant to pay the respondents' legal costs. An attachment may be made, without a prior court judgment, to secure the payment of legal costs. The Complaints Committee shall publish its rulings. The costs of the Committee's activities shall be paid by the State Treasury.

The Centre for Equality may also request that the Equality Complaints Committee examine a case (see Article 4, paragraph 5 of the Gender Equality Act). Where the Centre for Equality has reason to suspect that an institution, enterprise or non-governmental organisation has violated the Equality Acts, it shall investigate whether there is reason to request the Equality Complaints Committee to examine the matter. The relevant institution, enterprise or non-governmental organisation shall be obliged to provide the Centre for Equality with the information and materials it considers necessary to reveal the facts of the case. If the parties concerned do not comply with this request by the Centre for Equality within a reasonable time limit, the Centre may decide that they are to pay per diem fines until the information and materials have been provided. If the Centre for Equality considers that the information and materials in question further substantiate the suspicion that a violation of the Acts has taken place, it shall request the Equality Complaints Committee to examine the matter, and consequently inform the institution, enterprise or non-governmental organisation concerned in writing of its decision to do so.

The Centre for Equality shall, at the request of the claimant, take steps to ensure that the rulings of the Complaints Committee are enforced as appropriate. When a party against whom a ruling of the Equality Complaints Committee is directed fails to comply with it, the Centre for Equality may instruct the party concerned to take satisfactory remedial measures in accordance with the ruling within a reasonable time limit. If the party against whom the ruling is directed fails to comply with the instructions of the Centre for Equality, the Centre may decide that the party must pay per diem fines (of up to ISK 50 000 per day, or approx. EUR 365) until it complies with the instructions.

The Committee has not as yet decided any cases regarding the new discrimination grounds.

i) Registration by the body of complaints and decisions

The Equality Complaints Committee registers discrimination decisions, and they are available to the public. There have been no decisions yet on the new discrimination grounds.

j) Stakeholder engagement

The Centre for Equality engaged with stakeholders in the field of gender as part of implementing its mandate before 1 September 2018, in accordance with the Gender Equality Act. Stakeholder engagement is not formalised in the Equality Acts, but consultation on the draft bills was carried out. It is envisaged that the Centre will engage with stakeholder organisations on the new discrimination grounds now falling under its mandate.

k) Roma and Travellers

The Centre for Equality does not address matters particularly concerning Roma and Travellers, as there are no Roma or Traveller communities in Iceland, and very few Roma or Travellers are present in the country.

## **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)

No specific action has been taken to disseminate information to the public about the new Equality Acts or legal protection against discrimination.

- 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)

The new Equality Acts do not contain provisions on encouraging dialogue with NGOs. However, in this context, reference can be made to Article 1, paragraph 3 of the Act on Services for People with Long-term Service Needs No. 38/2018, where it is set out that the authorities shall ensure that people with disabilities, including their national associations, shall influence all policies and decisions that have an impact on them. Similar provisions are not found in other acts governing the affairs of disadvantaged groups such as the elderly and foreign nationals.

- 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 new Equality Acts do not contain provisions on measures to promote dialogue between social partners.

- d) Addressing the situation of Roma and Travellers

There is no designated body or organisation appointed at the national level to address Roma issues specifically, nor are there any special legal provisions addressing their situation. It should be noted, however, that there is no identified Roma community in Iceland.

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

- a) Mechanisms

The general principles of the national system, '*lex specialis derogat legi generali*' (special rules prevail over general rules) and '*lex posteriori derogat legi priori*' (more recent rules prevail over less recent rules), ensure that contracts, collective agreements, internal rules of businesses and the rules governing independent occupations, professions, workers' associations and employers' associations do not conflict with the principle of equal treatment.

- b) Rules contrary to the principle of equality

No laws, regulations or rules in force are clearly in breach of the principle of equality with respect to the grounds enumerated in the directives.

## 9 COORDINATION AT NATIONAL LEVEL

The Equality Acts set out that the Minister for Social Affairs and Equality is responsible for coordinating issues regarding anti-discrimination in relation to the grounds covered by Acts.

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

Regular studies will also be carried out on the views of immigrants and Icelanders, and these will be used as the basis for awareness-raising, and to promote multiculturalism, combat prejudice and highlight the positive contribution of immigrants to Icelandic society. In addition, in order to improve access for immigrants to public services, public employees will receive multicultural-awareness training.<sup>70</sup> A special fund exists to support research and development projects related to immigration issues. Furthermore, it has been stated that preparations are under way for the ratification of the Framework Convention for the Protection of National Minorities.

Local authorities are placing increased emphasis on immigration issues. The Icelandic Association of Local Authorities (of which all Icelandic municipalities are members) has adopted a policy on immigration, and many municipalities have adopted individual policies based on this document.<sup>71</sup> Such policies aim to ensure that the interests of immigrants are guaranteed and that they know their rights and obligations as citizens and have easy access to municipal services. The key objectives are for immigrants to enjoy the same status as other residents and to participate fully in the community in each municipality.

Mention should also be made of the establishment of the Immigration and Asylum Appeals Board. Its objectives include the conducting of an independent review of all the decisions of the Directorate of Immigration taken on the basis of the Act on Foreign Nationals No. 96/2002.<sup>72</sup> The board started receiving cases on 1 January 2015. By end of 2018, it had published more than 700 decisions, mainly dealing with asylum and immigration decisions made by the Directorate of Immigration.

There is no national anti-discrimination plan in place, but action plans have been adopted in relation to some of the discrimination grounds.

In May 2017, a parliamentary resolution on a new Plan of Action on Disabled Persons' Affairs 2017-2021 was adopted.<sup>73</sup> The Plan stipulates that respect for diversity shall be a founding principle of Icelandic society and that disability is one facet of diversity. The human rights of people with disabilities will be strengthened, protected and guaranteed on an equal basis with others and disabled people shall be enabled to live independently, on their own terms. People with disabilities should enjoy fundamental freedoms and their human dignity, autonomy and independence must be respected. The provisions of the CRPD will be transposed into all legislation and policy so that people with disabilities, young and old, can live an independent life with dignity. Human rights and the prohibition of discrimination will be placed at the forefront so that rights and freedoms can be enjoyed,

<sup>70</sup> Icelandic Parliament, Resolution on a National Action Plan on Immigration 2016-2019 (*pingsályktun um aðgerðaáætlun í málefnum innflytjenda 2016-2019*), adopted at the 145th Session, 20 September 2016.

<sup>71</sup> Icelandic Association of Local Authorities (2009), *Stefnumótun í málefnum innflytjenda*, available at: [www.samband.is/media/stefnumotun-sambandsins/Stefnumotun\\_innflytjendur.pdf](http://www.samband.is/media/stefnumotun-sambandsins/Stefnumotun_innflytjendur.pdf).

<sup>72</sup> Iceland, Act on Foreign Nationals (*Lög um útlendinga*) No. 80/2016, 16 June 2016, Article 6.

<sup>73</sup> Icelandic Parliament, Resolution on a Plan of Action on Disabled Persons' Affairs 2017-2021 (*pingsályktun um stefnu og framkvæmdáætlun í málefnum fatlaðs fólks fyrir árin 2017-2021*), available at: [www.althingi.is/altext/146/s/1000.html](http://www.althingi.is/altext/146/s/1000.html).

and people with disabilities will receive support for this purpose. People with disabilities will be able to make use of all public measures, including in the fields of housing, education and social security, and in the labour market. The aims of the Plan are to:

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

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

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

Lastly, the adoption of the Act on the Judicial Status of Transgender Persons No. 57/2012<sup>74</sup> in 2012 was a welcome development, and in 2014 the General Penal Code was amended to include gender identity as a ground for discrimination. Article 233a of the Code stipulates that any person who, by mockery, slander, insult, threat or other means, publicly attacks a person or group of persons on the grounds of their nationality, colour, race, religion, sexual orientation or *gender identity* shall be liable to a fine or imprisonment for a term not exceeding two years. Similarly, Article 180 of the Code provides that denying a person service or access to any public area or place intended for public use because of that person's nationality, colour, race, religion, sexual orientation or *gender identity* is punishable by fines or imprisonment of up to six months.<sup>75</sup>

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<sup>74</sup> Iceland, Act on the Judicial Status of Transgender Persons (*Lög um réttarstöðu einkstaklinga með kynáttunarvanda*) No. 57/2012, 25 June 2012.

<sup>75</sup> Iceland, Act amending the General Penal Code (Act No. 19/1940, as amended) (discrimination based on gender identity and protocol to the European Convention on Human Rights on cybercrime) (*Almenn hegningarlög (kynvitund)*) No. 13/2014, 10 February 2014, available at: [www.althingi.is/altext/stjt/2014.013.html](http://www.althingi.is/altext/stjt/2014.013.html).

## **10 CURRENT BEST PRACTICES**

As the anti-discrimination legislation based on the directives only entered into force on 1 September 2018, there are no best practice examples to be listed.

## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

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

There are no obvious breaches with regard to the transposition of the directives as such, as Iceland is not legally obliged to transpose them under the EEA Agreement. However, explicit provisions prohibiting discrimination by assumption and association are lacking, as are provisions on the dissemination of information and dialogue with NGOs and between social partners. Another issue is that there is no explicit prohibition of discrimination in social advantages as formulated in the Racial Equality Directive. This may be an oversight, as the explanatory notes to the bill explain what social advantages are within the meaning of the legislation, so one may assume that the general anti-discrimination provision in Article 1, stipulating that the Act applies to discrimination on the grounds of race or ethnic origin in all spheres of life except the labour market in relation to the Labour Equality Act, applies to social advantages. Furthermore, the provision on the exception relating to nationality may be too broad, although this requires judicial interpretation. Finally, there is no explicit provision mandating the Centre for Equality with providing independent assistance to victims in pursuing their complaints of discrimination, as set out in Article 13 of the Racial Equality Directive. It is also worth mentioning that the legislation does not provide for an exception for employers with an ethos based on religion or belief.

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

As the Equality Acts only entered into force on 1 September 2018, issues of concern with regard to their implementation and practical application remain to be seen. However, the Centre for Gender Equality could clearly be strengthened through a more generous budget allocation and staffing for the necessary human resources and structures to be in place to meet increased demands stemming from the new Equality Acts. Allowing the Centre to provide legal assistance and to represent victims or organisations in court would also clearly strengthen equality protection in Iceland.

The proportion of immigrants among the population in Iceland has never been higher than in 2018, when it was 12.6 %. According to Statistics Iceland, immigrants have relatively good access to the Icelandic labour market, they are members of trade unions and have similar health and safety environments in their workplaces as Icelanders. However, they face challenges in education, are overqualified for their jobs, live as tenants in overcrowded housing and are poorer than Icelandic citizens.<sup>76</sup>

The number of children of immigrant origin has increased steadily from 2004, in both kindergartens and compulsory education. In 2016, 12.6 % (compared with 3.8 % in 1998) of kindergarten pupils had a mother tongue other than Icelandic (38.7 % Polish), as did 9.3 % (compared with 1.8 % in 1998) of pupils in compulsory education (35.4 % Polish).<sup>77</sup> Recent studies show that, despite the efforts made in the education system, the limited reading literacy in Icelandic hampers the studies of many of these children, and the low number of young people of immigrant origin graduating from high school is a serious problem. The enrolment of immigrants in upper secondary schools at the age of 16 is lower than the enrolment of local students and decreases with age. In 2017, approximately 7 out of 10 19-year-old Icelanders attended upper secondary school, but only about 2 in 10 immigrants.<sup>78</sup>

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<sup>76</sup> Statistics Iceland (2019), *Social indicators: Special issue on immigrants*, Statistical Series, 31 January 2019, p. 1.

<sup>77</sup> Statistics Iceland (2018), *Staða barna á Íslandi* (Status of Children in Iceland), Indicators, 28 May 2018.

<sup>78</sup> Statistics Iceland (2019), *Social indicators: Special issue on immigrants*, Statistical Series, 31 January 2019, p. 2.

In 2017, 21.9 % of children in need of assistance from the Child Protection Services were of immigrant origin,<sup>79</sup> and 35 % of the women seeking assistance at the Women's Shelter in Reykjavík were foreigners, of whom 54 % came from countries outside the EEA. The fact that a disproportionate number of immigrant women seek assistance does not necessarily mean that violence against them is more common than violence towards Icelandic women; rather, this may reflect the fact that they have weaker support networks, so they are forced to seek assistance from the shelter instead of from friends or family.<sup>80</sup>

In general, the Government has concluded that Icelandic society is becoming increasingly diverse and that welfare services need to adapt to address this new reality. It is also notable that, on average, the income of immigrants is lower than that of the general population, and that only a small minority hold jobs where their education is fully utilised; the majority work in construction, tourism, cleaning and care services. In 2017, of those with university degrees, two thirds worked in low-skilled jobs, including shop work and services; only 27 % did specialised or office work. Similarly, only 25 % of unemployed foreign nationals had previously held jobs in Iceland in the field they had trained for. A 2016 study revealed that those foreigners with university degrees who held jobs fitting their qualifications felt that their weak negotiating skills due to their limited Icelandic curtailed their career opportunities and access to networks and social capital. Participants in the study felt excluded in the workplace and considered that, as foreigners, they were stigmatised, which prevented them from being accepted as full participants in the workplace and led to their contribution and education not being fully valued. In addition, they felt that they constantly needed to prove themselves, as their employers distrusted them and undervalued their skills. Finally, they felt that they were obliged to be thankful for being employed, which belittled their contribution, knowledge, experience and education.<sup>81</sup>

A study carried out by the Icelandic Red Cross in 2014 revealed that, of those polled, 44 % thought that people of immigrant origin were the group that suffered most prejudice in Iceland.<sup>82</sup> Another 2014 study, carried out by the Multicultural Centre, revealed that one in five immigrants experienced negative attitudes on a regular basis because of their origin. Of those participating in the study, 77 % were of the view that they had experienced negative attitudes because of their limited knowledge of Icelandic, and 54 % thought that negative attitudes towards them were based on their origin or nationality. It is an issue of concern that 14 % had experienced negative attitudes when interacting with nursery school staff, and 19 % when interacting with primary school staff. As part of the study, public officials were also polled: 55 % of state officials participating in the study thought that immigrants were sometimes or often met with prejudice in their dealings with public bodies, and 43 % of municipal employees were of this view. On housing, 31 % of the respondents, or someone close to them, had experienced negative attitudes when trying to rent accommodation.<sup>83</sup> On a positive note, the Government's National Action Plan on Immigration 2016-2019 sets out numerous actions to combat prejudice and discrimination against immigrants.

Also in 2014, the Centre for Gender Equality conducted a study on the attitudes of heads of companies and bodies with more than 25 employees towards equality and discrimination in the Icelandic labour market and in their respective enterprises in 2013. The study revealed that 90.6 % of men thought that their workplace was very equal and that 74.7 %

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<sup>79</sup> Icelandic Child Protection Agency (2017), *Lykiltölur Barnaverndarstofu 2017* (Key Statistics of the Child Protection Agency 2017), available at: [www.bvs.is/media/almennigur/lykiltolur-bvs-2017.pdf](http://www.bvs.is/media/almennigur/lykiltolur-bvs-2017.pdf).

<sup>80</sup> Women's Shelter (2019), *Ársskýrsla Kvænnaathvarfsins 2018* (Annual Report of the Women's Shelter 2018), April 2019, pp. 4-5.

<sup>81</sup> Icelandic Sociologist Association (2016), *Íslenska þjóðfélagið*, 7th edition 2016, 1, Nos. 5-22, p. 5.

<sup>82</sup> Icelandic Red Cross (2014), *Hvar þrengir að? Könnun á hvaða hópar í samfélaginu eigi helst undir högg að sækja* (Study on the most vulnerable groups in society), Reykjavík, May 2014, p. 4.

<sup>83</sup> Arnardóttir, E. and Haraldsson, R.H. (2014), *Uppruni og fjölpætt mismunun* (Origin and multiple discrimination), Ísafjörður, Fjölmenningsarsetur (Multicultural Centre).

of women were of this view. However, when asked about discrimination in the labour market in general, 86 % thought that people were discriminated against on one of the following grounds: gender (63.8 %), national origin (55.1 %), age (44.1 %), disability (38.6 %), race (38.8 %), sexual orientation (22.4 %) and religion/belief (20.5 %).<sup>84</sup>

According to a 2014 study, half of Icelandic people with disabilities lived in poverty, and 50 % of people with disabilities did not participate in the labour market or activities outside the home during the day. Only 20 % received services from the municipalities; 78 % said they did not receive services, whilst 40 % found that they needed services. Another study, from 2010, demonstrated that 44 % of respondents experienced some social exclusion, with 26 % experiencing severe social exclusion. Of the respondents, 45 % experienced prejudice because of their disability, and 76 % experienced prejudice against people with disabilities in society in general.<sup>85</sup> A further study on children and poverty in Iceland from 2004-2016 concluded that people with disabilities were those most likely to live in poverty. Many have very low income for long periods and as a result do not own property or savings and have limited access to credit.<sup>86</sup>

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

In 2013, the Icelandic Muslim Association was finally allocated land to build a mosque by Reykjavík City Council and is now raising funds for its construction. The association first applied for a plot in 2000. This is a positive development, but indications of growing anti-Islamic sentiment are an issue of concern. In November 2013, a group of people placed pig heads and a bloodied Koran on the plot designated for the mosque. One individual was identified, but the investigation of the case concluded without prosecution. In 2018, an armed man who lit toilet paper and made derogatory comments in front of the Muslim community centre in a drunken arson attempt was prosecuted under the hate-speech provision of the General Penal Code. Although he was acquitted, this is still a positive development, as it is an indication and a message that such hateful behaviour is now taken more seriously as a crime by the Police and State Prosecutor than it may have been before.

The number of registered religious organisations grew from 14 in 1991 to 47 in 2018. Of these, more than half are Christian denominations. Some 67.2 % of the nation belongs to the National Church of Iceland. Catholics constitute 3.9 % and, of the non-Christian minority faiths, Ásatrú (Norse pagan faith), Zuists, Buddhists and Muslims are the largest denominations. Siðmennt, the ethical humanists, have been gaining ground in recent years, and just over 18 % of the population are undefined or are not members of religious organisations. No recent studies have been carried out on the extent of discrimination based on religion or belief, but in 2012, 27.3 % of Icelanders thought that general discrimination based on religion or belief was common, up from 23.4 % in 2009.

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<sup>84</sup> Einarsdóttir, M. (2014), *Jafnrétti á vinnustöðum á Íslandi* (Equality in Icelandic Workplaces), Akureyri, Centre for Gender Equality, 2014.

<sup>85</sup> *Fatlað fólk og öryrkjar sem íbúar sveitarfélaga* (People with disabilities as inhabitants of municipalities), report for the Icelandic Association of People with Disabilities, Reykjavík, University of Iceland, 2014.

<sup>86</sup> Stefánsson, K.H. (2019), *Lífskjör og fátækt barna á Íslandi 2004-2016* (Children and Poverty in Iceland 2004-2016), Reykjavík, Edda Centre of Excellence, University of Iceland, p. 2.



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

On a positive note, although sexual orientation was not a specially protected ground in the field of employment until 1 September 2018, Icelandic legislation setting out the rights of homosexual people is among the world's most progressive: all marriages have the same legal status, same-sex couples can adopt children and lesbians are able to take advantage of artificial insemination. One of the last remaining hurdles was the opposition of the National Church of Iceland (the Lutheran state church) to conducting the same religious ceremonies for heterosexual and same-sex marriages, but in 2015 the National Church Congress adopted a resolution which bars priests from refusing to conduct same-sex marriage ceremonies. In general, attitudes towards LGBTQ people are very liberal, and Gay Pride celebrations are a time of family festivities in Reykjavík. Despite these liberal attitudes, however, a small minority of people still hold traditional views.

## 12 LATEST DEVELOPMENTS IN 2018

### 12.1 Legislative amendments

The ground-breaking adoption and entry into force of the Equality Acts on 1 September 2018 is the major legislative development of 2018.

### 12.2 Case law

No significant cases concerning the prohibited grounds were decided in 2018, but mention should briefly be made of the following case brought because of alleged hate speech against Muslims.

**Name of the court:** Reykjanes District Court

**Date of decision:** 2 January 2018

**Name of the parties:** *Prosecutor v. X*

**Reference number:** S-172/2017

**Link:** [www.heradsdomstolar.is/default.aspx?pageid=347c3bb1-8926-11e5-80c6-005056bc6a40&id=871e7802-0326-4890-8313-f24213506e00](http://www.heradsdomstolar.is/default.aspx?pageid=347c3bb1-8926-11e5-80c6-005056bc6a40&id=871e7802-0326-4890-8313-f24213506e00)

**Brief summary:** X, who was armed, drunkenly lit toilet paper in front of the Muslim community centre in Reykjavík and, when arrested, made derogatory comments towards Muslims. He was charged with, *inter alia*, making threatening and demeaning public comments towards Muslims in Iceland, in violation of Article 233.a of the Penal Code – although it was not made explicit whether the charge concerned incitement to religious and/or ethnic (racial) hatred. Due to the limited evidence produced by the police and the lack of proof of criminal intent as set out in Article 233.a, he was acquitted.

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

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

**Country:** Iceland  
**Date:** 31 December 2018

<p><b>Title of the law: Act on Equal Treatment in the Labour Market No. 86/2018</b> Abbreviation: Labour Equality Act Date of adoption: 12.06.2018 Latest relevant amendment: N/A Entry into force: 01.09.2018 Web link: <a href="http://www.althingi.is/lagas/nuna/2018086.html">www.althingi.is/lagas/nuna/2018086.html</a> Grounds covered: Race, ethnic origin Civil law Material scope: Labour market Principal content: Equality legislation in line with Directive</p>
<p><b>Title of the law: Act on Equal Treatment Irrespective of Race or Ethnic Origin No. 85/2018</b> Abbreviation: Racial Equality Act Date of adoption: 12.06.2018 Latest relevant amendment: N/A Entry into force: 01.09.2018 Web link: <a href="http://www.althingi.is/lagas/nuna/2018085.html">www.althingi.is/lagas/nuna/2018085.html</a> Grounds covered: Race and ethnic origin Civil law Material scope: General, except labour market Principal content: Equality legislation in line with Directive</p>
<p><b>Title of the law: Constitution of the Republic of Iceland No. 33/1944</b> Abbreviation: The Constitution Date of adoption: 17.06.1944 Latest relevant amendment: N/A Entry into force: 17.06.1944 Web link: <a href="http://www.althingi.is/lagas/nuna/1944033.html">www.althingi.is/lagas/nuna/1944033.html</a> Grounds covered: Sex, religion, opinion, national origin, race, colour, financial status, parentage or other status Constitution Material scope: General Principal content: Equality before the law and in the enjoyment of human rights</p>
<p><b>Title of the law: Act incorporating the ECHR into domestic law No. 62/1994</b> Abbreviation: None Date of adoption: 19.05.1994 Latest relevant amendment: N/A Entry into force: 30.05.1994 Web link: <a href="http://www.althingi.is/lagas/144a/1994062.html">www.althingi.is/lagas/144a/1994062.html</a> Grounds covered: Sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status Civil law Material scope: Limited to rights enshrined in the ECHR Principal content: Prohibition of discrimination in the enjoyment of the rights set out in ECHR</p>
<p><b>Title of the law: Administrative Procedures Act No. 37/1993</b> Abbreviation: None</p>

<p>Date of adoption: 30.04.1993  Latest relevant amendment: N/A  Entry into force: 01.01.1994  Web link: <a href="http://www.althingi.is/lagas/nuna/1993037.html">www.althingi.is/lagas/nuna/1993037.html</a>  Grounds covered: Inter alia, race, colour, national origin, religion, political opinion, social status and family origins  Administrative law  Material scope: Administrative decisions  Principal content: Prohibition of discriminatory administrative decisions</p>
<p><b>Title of the law: General Penal Code No. 19/1940</b>  Abbreviation: None  Date of adoption: 12.02.1940  Latest relevant amendment: N/A  Entry into force: 12.08.1940  Web link: <a href="http://www.althingi.is/lagas/nuna/1940019.html">www.althingi.is/lagas/nuna/1940019.html</a>  Grounds covered: Nationality, colour, race, religion, sexual orientation, gender identity.  Criminal law  Material scope:  <ul style="list-style-type: none"> <li>- Harassment and hate speech</li> <li>- Services or access to any public area or place intended for public use</li> <li>- Public insults towards religious communities</li> </ul> Principal content:  <ul style="list-style-type: none"> <li>- Prohibition of harassment and hate speech</li> <li>- Criminalisation of denying a person a service or access to any public area or place intended for public use</li> <li>- Criminalisation of publicly insulting a religious community</li> </ul></p>
<p><b>Title of the law: Act on Primary Schools No. 91/2008</b>  Abbreviation: None  Date of adoption: 12.06.2008  Latest relevant amendment: N/A  Entry into force: 01.07.2008  Web link: <a href="http://www.althingi.is/lagas/nuna/2008091.html">www.althingi.is/lagas/nuna/2008091.html</a>  Grounds covered: National origin, sex, sexual orientation, residence, social class, religion, health, disability or other status  Civil law  Material scope: Primary education  Principal content: Prohibition of discrimination in education</p>
<p><b>Title of the law: Act on the Rights of Patients No. 74/1997</b>  Abbreviation: None  Date of adoption: 28.05.1997  Latest relevant amendment: N/A  Entry into force: 01.07.1997  Web link: <a href="http://www.althingi.is/lagas/nuna/1997074.html">www.althingi.is/lagas/nuna/1997074.html</a>  Grounds covered: Sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status  Civil law  Material scope: Access to healthcare  Principal content: Prohibition of discrimination in the provision of healthcare</p>
<p><b>Title of the law: Postal Service Act No. 19/2002</b>  Abbreviation: None  Date of adoption: 03.03.2002  Latest relevant amendment: N/A  Entry into force: 18.03.2002</p>

<p>Web link: <a href="http://www.althingi.is/lagas/nuna/2002019.html">www.althingi.is/lagas/nuna/2002019.html</a></p> <p>Grounds covered: Political, religious or ideological nature</p> <p>Civil law</p> <p>Material scope: Postal service</p> <p>Principal content: Prohibition of discrimination in provision of postal services</p>
<p><b>Title of the law: Act on the Media No. 38/2011</b></p> <p>Abbreviation: None</p> <p>Date of adoption: 20.04.2011</p> <p>Latest relevant amendment: N/A</p> <p>Entry into force: 21.04.2011</p> <p>Web link: <a href="http://www.althingi.is/lagas/nuna/2011038.html">www.althingi.is/lagas/nuna/2011038.html</a></p> <p>Grounds covered: Race, sex, sexual orientation, religion, nationality, opinion or cultural, economic social or other status in society</p> <p>Civil law</p> <p>Material scope: Organisation and work of the media</p> <p>Principal content: Anti-hate speech</p>
<p><b>Title of the law: Act on the Affairs of Persons with Disabilities No. 59/1992</b></p> <p>Abbreviation: None</p> <p>Date of adoption: 02.06.1992</p> <p>Latest relevant amendment: Repealed on 01.10.2018</p> <p>Entry into force: 01.09.1992</p> <p>Web link: <a href="http://www.althingi.is/lagas/nuna/1992059.html">www.althingi.is/lagas/nuna/1992059.html</a></p> <p>Grounds covered: Disability</p> <p>Civil law</p> <p>Material scope: Living conditions, employment, housing, assistance, education, etc.</p> <p>Principal content: Provision of services, assistance, etc. to people with disabilities</p>
<p><b>Title of the law: Act on Municipal Social Services No. 40/1991</b></p> <p>Abbreviation: None</p> <p>Date of adoption: 27.03.1991</p> <p>Latest relevant amendment: N/A</p> <p>Entry into force: 17.04.1991</p> <p>Web link: <a href="http://www.althingi.is/lagas/nuna/1991040.html">www.althingi.is/lagas/nuna/1991040.html</a></p> <p>Grounds covered: Disability</p> <p>Civil law</p> <p>Material scope: Social services</p> <p>Principal content: Provision and organisation of social services</p>
<p><b>Title of the law: Act on the Affairs of the Elderly No. 125/1999</b></p> <p>Abbreviation: None</p> <p>Date of adoption: 31.12.1999</p> <p>Latest relevant amendment: N/A</p> <p>Entry into force: 11.01.2000</p> <p>Web link: <a href="http://www.althingi.is/lagas/nuna/1999125.html">www.althingi.is/lagas/nuna/1999125.html</a></p> <p>Grounds covered: Age</p> <p>Civil law</p> <p>Material scope: Services, housing, healthcare, etc.</p> <p>Principal content: Provision and organisation of services, housing, etc. for older persons</p>
<p><b>Title of the law: Act Amending Laws relating to the Judicial Status of Homosexual Persons No. 65/2006</b></p> <p>Abbreviation: None</p> <p>Date of adoption: 14.06.2006</p> <p>Latest relevant amendment: N/A</p> <p>Entry into force: 27.06.2006</p>

<p>Web link: <a href="http://www.althingi.is/altext/132/s/1445.html">www.althingi.is/altext/132/s/1445.html</a></p> <p>Grounds covered: Sexual orientation</p> <p>Civil law</p> <p>Material scope: Equality before the law in various areas</p> <p>Principal content: Amending legislation to ensure equality for homosexual persons</p>
<p><b>Title of the law: Act on Mandatory Pension Insurance and the Operations of Pension Funds No. 129/1997</b></p> <p>Abbreviation: None</p> <p>Date of adoption: 23.12.1997</p> <p>Latest relevant amendment: N/A</p> <p>Entry into force: 01.07.1998</p> <p>Web link: <a href="http://www.althingi.is/lagas/nuna/1997129.html">www.althingi.is/lagas/nuna/1997129.html</a></p> <p>Grounds covered: Health, age, civil status, family size or gender</p> <p>Civil law</p> <p>Material scope: Non-discrimination in access to occupational pension schemes</p> <p>Principal content: Organisation, set-up and requirements for functioning of pension funds and mandatory pension insurance</p>
<p><b>Title of the law: Act on Workers' Terms of Employment and Pensions No. 55/1980</b></p> <p>Abbreviation: None</p> <p>Date of adoption: 09.06.1980</p> <p>Latest relevant amendment: N/A</p> <p>Entry into force: 16.06.1980</p> <p>Web link: <a href="http://www.althingi.is/lagas/nuna/1980055.html">www.althingi.is/lagas/nuna/1980055.html</a></p> <p>Grounds covered: Sex, nationality and length of contract</p> <p>Labour law</p> <p>Material scope: Non-discrimination in terms of employment</p> <p>Principal content: Minimum wages and conditions negotiated by social partners</p>
<p><b>Title of the law: Act incorporating the Convention on the Rights of the Child into domestic law No.19/2013</b></p> <p>Abbreviation: None</p> <p>Date of adoption: 20.02.2013</p> <p>Latest relevant amendment: N/A</p> <p>Entry into force: 06.03.2013</p> <p>Web link: <a href="http://www.althingi.is/altext/141/s/1045.html">www.althingi.is/altext/141/s/1045.html</a></p> <p>Grounds covered: Race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status</p> <p>Civil law</p> <p>Material scope: Limited to rights enshrined in the Convention</p> <p>Principal content: Prohibition of discrimination in the enjoyment and respect for the rights set out in the Convention</p>
<p><b>Title of the law: Act on Rights Advocates for People with Disabilities No. 88/2011</b></p> <p>Abbreviation: None.</p> <p>Date of adoption: 23.06.2011</p> <p>Latest relevant amendment: N/A</p> <p>Entry into force: 01.07.2011</p> <p>Web link: <a href="http://www.althingi.is/lagas/nuna/2011088.html">www.althingi.is/lagas/nuna/2011088.html</a></p> <p>Grounds covered: Disability</p> <p>Civil law</p> <p>Material scope: Social services and rights of people with disabilities</p> <p>Principal content: Establishment of system of rights advocates for people with disabilities</p>

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country:** Iceland

**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)	04.11.1950	29.06.1953	No	Yes	Yes, the ECHR has been incorporated into domestic law.
Protocol 12, ECHR	04.11.2000	Not ratified.	N/A	N/A	N/A
Revised European Social Charter	04.11.1998	Not ratified.	N/A	Ratified collective complaints protocol?  No	N/A
International Covenant on Civil and Political Rights	30.12.1968	22.08.1979	No	Yes	No
Framework Convention for the Protection of National Minorities	01.02.1995	Not ratified.	N/A	N/A	N/A
International Covenant on Economic, Social and Cultural Rights	30.12.1968	22.08.1979	No	No	No
Convention on the Elimination of All Forms of Racial Discrimination	14.12.1966	13.03.1967	No	Yes	No
Convention on the Elimination of	24.07.1980	18.6.1985	No	Yes	No

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Discrimination Against Women					
ILO Convention No. 111 on Discrimination	29.07.1964	29.07.1963	No	N/A	No
Convention on the Rights of the Child	26.01.1990	28.10.1992	No	N/A	Yes, the Convention has been incorporated into domestic law.
Convention on the Rights of Persons with Disabilities	30.03.2007	23.09.2016	No	No	No



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