



Executive Summary

Finland country report on measures to combat discrimination

by Timo Makkonen

1. Introduction

Finland, although culturally still rather homogeneous, has in the past twenty years experienced major demographic, cultural, attitudinal and political changes.

Rapid and relatively significant cultural diversification is exemplified by the fact that the number of immigrants grew fourfold during 1990–2002. At the end of 2006, the number of foreign citizens residing in Finland was approximately 122,000. Most of them were of Russian, Estonian, Swedish, Somali or (ex-)Yugoslavian nationality. Finland is home to a number of national minorities, such as the Roma, Jewish, Tatar and Russian minorities, as well as the indigenous Sámi people. The Sámi and the national minorities number around 50,000 altogether, which means that the total number of people belonging to immigrant groups, ethnic minorities or to the Sámi indigenous people is around 164,000 representing circa 3 % of the total population of 5.2 million.

Religious diversity is on the increase as well, although the position and membership base of the Lutheran Church remains strong. Here, the change is especially a matter of principle. Historically, up to the end of the 19th century, every Finn had to belong to either the Lutheran or the Orthodox Church, and full freedom of religion was guaranteed only in 1923. Currently 83% of the population belongs to the Evangelical Lutheran Church. Other religious groups are considerably smaller, the next largest communities being the Russian Orthodox Church (1%) and the Pentecostal movement (1%). Catholics, Adventists, Methodists, Baptists and members of the Salvation Army comprise 1% of the population. During the past ten years or so the arrival of immigrants from Muslim countries has increased the size of Islamic communities in Finland, and Muslims currently number around 15,000 (0.3%). The number of Jews is around 1,350. In addition to those already mentioned, there are about 30 other registered religious communities. Some 15% of the population do not belong to any religious community.

A considerable change in attitudes has taken place with respect to matters relating to sexual orientation. Traditionally, homosexuality was considered a sin by the religious authorities, a disease by the medical authorities and a crime by the law. Homosexual behaviour was decriminalised in 1971 and discrimination on the basis of sexual orientation was prohibited in 1995. 2001 saw the adoption of the Act on Registered Partnerships, guaranteeing registered same-sex couples a position that in many ways approximates that of married couples.

Awareness with respect to the existence of age discrimination is quite high in Finland. In one survey, every third respondent was of the view that discrimination on the basis of age takes place “frequently” or “every now and then” in his/her workplace. However, there have been only a few court cases dealing with age discrimination.

As regards the situation of people with disabilities, the legal and political focus has remained on the specific services that people with disabilities need, i.e. on the traditional social law approach, and not so much on equal treatment. Consequently, there is not much information available as regards the extent and nature of disability discrimination, and the

number of court cases dealing with disability discrimination has remained low. The focus is, however, gradually shifting towards a more equal rights-based approach.

2. Main legislation

The main provisions pertaining to discrimination have been laid down in the Constitution, the Non-Discrimination Act and the Penal Code. In addition to these, there are more than a dozen individual statutory acts which deal with particular areas of life such as the labour market, and which prohibit discrimination in their respective spheres of application. Finland has ratified the main international agreements relevant for fighting discrimination such as: European Convention on Human Rights (including Protocol No. 12), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child. These conventions are part and parcel of the national legal system; they can be directly applied in courts and must be taken into account in the interpretation of regular laws.

All the main domestic anti-discrimination provisions prohibit, either explicitly or implicitly, discrimination on the basis of a wide variety of grounds, including age, ethnic and racial origin, religion, belief, sexual orientation and disability. Finnish legislation does not explicitly address multiple discrimination, nor has this issue been addressed in case law. Plans are however underway to review and amend the Finnish anti-discrimination law from the point of view of being better able to tackle multiple discrimination. International human rights conventions to which Finland is a party are part and parcel of the national legal system and may be invoked and applied directly in courts. This adds further protection from discrimination. International human rights provisions are to be taken into account when interpreting the domestic law.

Section 6 of the Constitution provides for equality and prohibits discrimination. The main thrust of this constitutional guarantee of non-discrimination is to ensure formal equality, i.e. the principle that people are to be treated similarly in similar circumstances, but it also aims at enhancing the achievement of full, substantive equality in practice. The constitutional prohibition of discrimination may be directly invoked in courts and regular laws are to be interpreted in accordance with it. So far the constitutional anti-discrimination provision has been applied mainly in situations involving the use of public power, but it may in some instances have a bearing on relationships between private parties as well.

The Non-Discrimination Act is the main instrument adopted in order to transpose into national law the EU directives on equal treatment. The Non-Discrimination Act prohibits discrimination in a number of key areas of life, including employment and education. Finland was somewhat late in transposing the two directives, as the Non-Discrimination Act entered into force in February 2004, while for instance the Racial Equality Directive should have been transposed into national law already by July 2003. Substantially, the Non-discrimination Act follows quite closely the provisions of the two EU directives, although in some respects it goes beyond the minimum requirements set forth in them. The courts and the Discrimination Tribunal have applied the Act in several important cases, and it is likely that its significance will further increase in the future.

The Penal Code has two provisions on discrimination. The first covers discrimination, *inter alia*, in the provision of services and in the discharge of public duties, while the second covers discrimination in the field of employment. There is a considerable amount of case law

under the first provision, mainly as regards ethnic discrimination. Punishment for discrimination laid down by law is in the form of fines or imprisonment for up to six months. In practice the sentence for discrimination has been fines.

The Ministry of Justice of Finland has set up, in January 2007, a working group to review and, if necessary, to make a proposal for the amendment of the Finnish anti-discrimination law. The working group is to conclude its work in January 2009.

The Åland Islands, which is an autonomous Swedish-speaking province of Finland with some 26 200 inhabitants, and which has legislative powers in certain particular subject areas such as employment, education and social welfare, has adopted its own set of non-discrimination laws. These laws prohibit discrimination on the grounds of ethnic origin, religion and belief, disability, age and sexual orientation.

3. Main principles and definitions

The principle of equal treatment is strongly embedded in the domestic law, and has been so for quite some time. However, the approach of the more recent legislation, in particular the Non-Discrimination Act, is different from that of the older parts of the legislation, and in this respect Finnish anti-discrimination law is characterised by certain dualism. The traditional approach of Finnish anti-discrimination legislation has been to opt for rather general formulations of equality and non-discrimination and to provide protection for a wide variety of grounds on an equal basis. Discrimination has traditionally been defined mainly as “putting a person in a different position without an acceptable reason”. As this formulation is rather vague, it has been up to the courts and legal scholars to determine in practice what counts as a “different position” or “an acceptable reason”.

The approach of the more recent legislation, the Non-Discrimination Act in particular, is more detailed and specific in nature, with precise definitions of discrimination, scope of application and legitimate exceptions. In this way, the new legislation complements the older. The Non-Discrimination Act prohibits discrimination in all of its forms, including direct and indirect discrimination, harassment and instruction or order to discriminate. The Non-Discrimination Act also prohibits victimisation, which refers to adverse treatment or adverse consequences that are directed against a victim of discrimination because he or she has filed a complaint or taken other such action. As an exception which is to be construed narrowly, differential treatment may be legitimate in working life provided that it is based on a genuine and determining occupational requirement. Differential treatment on the basis of age is not to be considered discrimination if such treatment has an objective and appropriate aim that is related to important societal goals, such as reduction of unemployment.

Finnish anti-discrimination law, both old and new, allows but does not require the taking of positive action. Positive action refers to specific measures that aim to alleviate or prevent disadvantages linked to discrimination. The Non-Discrimination Act, however, obliges the authorities to promote the realisation of equal treatment actively and in a principled manner. This is to be achieved in particular by means of removing obstacles that are in the way of the realisation of equality. This is one of the situations where the Finnish anti-discrimination law goes beyond the minimum requirements set forth in the two EU directives.

In order to promote equal treatment of people with disabilities, the Non-Discrimination Act requires employers and education providers to take reasonable steps to help disabled people to gain access to work or training, to cope at work and to advance in their careers.

The Non-Discrimination Act, or its preparatory works, do not define “ethnicity”, “ethnic origin”, “religion”, “disability”, “age” or “sexual orientation” for the purposes of anti-discrimination law. According to general rules of interpretation, these notions are thus to be interpreted in accordance with international human rights law and the rulings of the European Court of Justice.

The laws adopted by the Åland Islands follow the more recent domestic laws, and explicitly prohibit direct and indirect discrimination, harassment, instructions to discriminate and victimization.

4. Material scope

The Finnish anti-discrimination law covers a wide area. The primary thrust of the Constitutional prohibition of discrimination is to ensure equal treatment in the exercise of public powers. The Constitution nevertheless has a bearing on legal relationships between private parties as well and may for instance provide grounds for amending or nullifying discriminatory provisions of a contract.

The material scope of the Non-Discrimination Act follows quite closely those of the two EU directives, but goes beyond them by extending its protection in the field of education/training to all grounds of discrimination. Accordingly, the Non-Discrimination Act prohibits discrimination on the basis of, inter alia, religion, belief, age, sexual orientation, disability and ethnic origin in the following fields (a broad typology): (i) access to self-employment and occupation; (ii) conditions for access to employment, employment and working conditions, vocational guidance; (iii) access to education, all types of vocational training and retraining; and (iv) membership of and involvement in an organisation of workers or employers. Furthermore, discrimination on the basis of ethnic origin is also prohibited in the following fields: (v) social and health services; (vi) social benefits and advantages; (vii) military or civilian service, including voluntary military service for women; and (viii) housing and other supply of services and goods available to the public. The field of education is not completely covered, as the Act is not applicable to the content or goals of education or to the educational system itself.

The Penal Code is applicable to instances of discrimination that have taken place in the fields of, inter alia, employment, provision of services and the discharge of duties in a public office.

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

5. Enforcing the law

There are several ways in which a victim of discrimination may have recourse to the law, depending on the ground of discrimination and the domain of life in which discrimination has taken place.

If a discriminatory decision is made in the exercise of public powers, the victim of discrimination may make use of the rectification procedure or some other ordinary channel of appeal. He or she may also turn to the Parliamentary Ombudsman or the Chancellor of

Justice in order to file a complaint. Victims of ethnic discrimination may in some cases also turn to the Ombudsman for Minorities or the national Discrimination Tribunal. A victim of ethnic discrimination may, under the Non-Discrimination Act, choose to claim compensation in a regular court. Compensation may be awarded for up to 15,000 € and even more in exceptionally serious cases.

If discrimination takes place in the field of work or education/training, the victim may take his/her case to a regular court and either claim compensation as described above and/or bring criminal charges. A victim of ethnic discrimination may also file a complaint to the Discrimination Tribunal or turn to the Ombudsman for Minorities, who may take the matter further. In matters relating to employment, the Occupational Health and Safety Authority supervises compliance with anti-discrimination law. The authority may carry out on-site inspections and, upon encountering discrimination, it must report the case to a public prosecutor.

If discrimination takes place in the provision of services, the victim may bring criminal charges, or in the case of discrimination on the basis of ethnic origin, claim compensation under the Non-Discrimination Act or file a complaint to the Discrimination Tribunal.

Previously, i.e. before the Non-Discrimination Act came into force, the most often used means of judicial recourse was to bring criminal charges. Most of these cases dealt with denial of access, on the grounds of ethnic origin, to restaurants or other places open to the public. The entering into force of the Non-Discrimination has changed the situation somewhat, as the Act eases the burden of proof in all but criminal proceedings, and entitles victims of discrimination to claim compensation, both matters that are important from the point of view of victims. This has increased recourse to civil proceedings.

Human rights NGOs and other organisations are not allowed to engage in legal proceedings on behalf or in support of the victim, although it is of course possible for a lawyer working for such an organisation to represent a victim in accordance with the ordinary rules of representation. This rarely happens in practice though, but it must be noted that there are organisations that provide expert advice to the victims, e.g. in how to bring legal action.

Discrimination cases are every now and then brought to the attention of the public, in particular by the main daily newspapers.

6. Equality bodies

The office of the Ombudsman for Minorities was established in 2001 in order to promote the realisation of equal treatment irrespective of ethnic origin. The Ombudsman functions mainly as an expert body, providing advice and instructions to victims of ethnic discrimination. The Ombudsman may also provide legal aid in exceptionally significant cases. Most of the cases of ethnic discrimination in which the Ombudsman's office has been contacted have dealt with recruitment, social security or education. Upon encountering discriminatory practices the Ombudsman shall, by way of advice and instructions, aim to eliminate them. The Ombudsman must also issue recommendations and come up with initiatives aimed to improve ethnic relations and the status of ethnic minorities. A victim of discrimination may request the Ombudsman to conduct conciliation proceedings.

The Ombudsman or the victim of discrimination may also take the case to the Discrimination Tribunal, which has a mandate to deal with complaints relating to ethnic discrimination. The Tribunal may confirm a settlement between the parties and prohibit the continuation or

renewal of a discriminatory practice. It may also order a party to fulfil its obligations under penalty of a fine. It may issue statements regarding the correct interpretation of anti-discrimination law upon the request of one or both of the parties, the Ombudsman for Minorities, a court of law, a public authority or an NGO.

A victim of discrimination, irrespective of the ground of discrimination, may also file a complaint to the Parliamentary Ombudsman or the Chancellor of Justice if discrimination has taken place in the exercise of public powers. These bodies may not amend or annul a particular decision but may bring legal action against an official and/or issue their opinions of the correct interpretation of the law.

The Åland Islands has also set up an office of Discrimination Ombudsman. The Ombudsman is an independent entity with the task to promote and secure equal treatment on the grounds of ethnic origin, religion and belief, disability, age and sexual orientation. The Ombudsman has been entrusted with overseeing the implementation and observance of the new anti-discrimination legislation adopted in Åland.