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Non-discrimination

Norway

2022

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Justice
and Consumers

EUROPEAN COMMISSION

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

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

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

Norway

Lene Løvdal*

Reporting period 1 January 2021 – 31 December 2021

2021 Directorate-General for Justice and Consumers

* The author has gratefully built on the reports written until 2018 by the previous expert Else Leona McClimans.

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Luxembourg: Publications Office of the European Union, 2022

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PDF ISBN 978-92-76-49074-6

ISSN 2599-9176

doi:10.2838/656142

DS-BB-22-022-EN-N

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EXECUTIVE SUMMARY

1. Introduction

Norway is a relatively homogenous country with 5.42 million inhabitants.¹ There are 800 094 immigrants in Norway and 197 848 people who were born in Norway with immigrant parents. These two groups constitute approximately 18.5 % of the total population.² Of these, 376 656 people (or both their parents) are from EU or EEC countries, and 102 946 people are from other European countries. The remainder include: 334 028 people from Asia including Turkey; 140 414 from Africa; 27 983 people from Latin America; 12 608 people from the United States or Canada; and 2 595 people from Oceania.³

The Sami people are the largest indigenous group of people in Norway, and number between 50 000 and 65 000 people. Other national minorities include Jews (761 people)⁴ and Kvens/people of Finnish descent (approximately 10 000-15 000 people). No exact figures are available for the number of Roma people. There are approximately 700 people belonging to a traditional group of Roma who live mainly in the Oslo area, while estimates put the number of Travellers at around a few thousand people.⁵

About 68 % of Norwegians are members of the Norwegian Protestant church,⁶ while other religious groups of a significant size are Islamic associations, the Roman Catholic church and the Pentecostal church.⁷ Official statistics suggest that there are 169 605 Muslims, 370 997 'other' Christians (that is, Christians not belonging to the Norwegian church), 21 567 Buddhists, 11 970 Hindus and 106 072 people belonging to another belief or life-stance (i.e. non-religious convictions as fundamental as religious ones) organisations.⁸

Correct and reliable figures for the number of persons with disabilities in Norway are difficult to find. The most recent survey assumes that between 15 % and 18 % of those between 15 and 66 years of age have some kind of reduced functional, psychological or cognitive ability.⁹ The official employment statistics give a figure of about 258 000 persons with disabilities in employment, which would equate to 40.6 % of persons with disabilities of working age.¹⁰

Of a population of 5.42 million, 849 657 people are aged 67 years or older.¹¹

¹ See front page of Statistics Norway on www.ssb.no.

² See Statistics Norway at <https://www.ssb.no/befolkning/statistikker/innvbf>.

³ Statistics Norway, <https://www.ssb.no/befolkning/statistikker/innvbf>.

⁴ The only official numbers are for those who are members of Jewish congregations, as for other religions. There are no available numbers concerning Jews who are not members of such congregations.

⁵ Statistics Norway, <https://www.ssb.no/befolkning/statistikker/innvbf>, Norwegian Government (2009) *Action plan to promote equality and prevent ethnic discrimination 2009-2012*, https://www.regjeringen.no/globalassets/upload/bld/planer/2009/hpl_etnisk_diskriminering.pdf, and Norwegian Government (2009) *Action plan for improving the living conditions of Roma in Oslo* https://www.regjeringen.no/globalassets/upload/fad/vedlegg/sami/handlingsplan_2009_rom_oslo.pdf. In a white paper on national minorities, no new estimates were given. Instead, it was explicitly stated that how a person defines themselves is a private matter, but that the state should aim to ensure that nobody should be afraid of revealing such a part of their identity for fear of stigma. White paper to the Parliament (2020), Melding til Stortinget. Meld.St. 12 (2020-2021), *National Minorities in Norway. A comprehensive policy (Nasjonale Minoriteter i Norge. En helhetlig politikk.)*, p. 8.

⁶ See Statistics Norway: https://www.ssb.no/kultur-og-fritid/statistikker/kirke_kostraaar.

⁷ See Statistics Norway: <http://www.ssb.no/kultur-og-fritid/artikler-og-publikasjoner/norge-et-sekulaert-samfunn> (in Norwegian). Religious affiliation is not registered officially through national statistics, thus the numbers are based on information about membership given by each religious group themselves.

⁸ See Statistics Norway: <https://www.ssb.no/trosamf>.

⁹ Norwegian Directorate for Children, Youth and Family Affairs: [Levekårsstatus for personer med nedsatt funksjonsevne \(Bufdir.no\)](https://www.dir.no/Levekarsstatus-for-personer-med-nedsatt-funksjonsevne-(Bufdir.no)).

¹⁰ As per statistics from November 2020 at <http://www.ssb.no/arbeid-og-lonn/statistikker/akutu>.

¹¹ See annual statistics from Statistics Norway on population, at <https://www.ssb.no/statbank/table/05196/>.

Estimates concerning sexual orientation have varied, but the latest survey, from 2020, estimates that 7 % of the population are non-heterosexual, including orientation as well as attraction alone.¹²

The legal system is inspired by the Roman legal system and has three levels of courts, which handle both criminal and civil law. Statutory provisions (formal legislation through acts and their regulations) interpreted through the legal preparatory works and case law are the primary sources of law invoked in Norwegian courts of law and in respect of Norwegian administrative agencies – although international legislation, especially EU law, is increasingly being invoked in specific cases, including in discrimination cases.

As for trends regarding discrimination issues, there is an increasing level of hate speech, especially towards Muslims and other immigrants. However, there is also increased awareness in the police and courts of justice, which has led to an increase in the number of sanctions as well. Islamophobia is ever more present in the public debate. Since 2020, the Labour Party has been in charge of the Ministry of Culture and Equality, which is responsible for anti-discrimination and equality issues, and more measures have been taken. The current Minister is openly lesbian, and has for more than a decade worked proactively for LGBT rights, both within the Labour Party and as a member of Parliament.

2. Main legislation

Norway has ratified most of the major international instruments combating discrimination, with the notable exception of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The optional protocols no 11 and 14 to the European Convention on Human Rights have been ratified. The European Social Charter has been ratified, with some reservations.¹³

As of June 2014, Article 98 of the Constitution reads: 'All people are equal under the law. No human being must be subject to unfair or disproportional differential treatment'.¹⁴

The Human Rights Act¹⁵ incorporates a number of treaties on human rights into the domestic legal system on a general basis in which the conventions prevail over any other conflicting statutory provision, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was not incorporated into the Human Rights Act, but is included in the Equality and Anti-Discrimination Act (GEADA), the legal consequence being that ICERD does not prevail over other statutory provisions in the event of conflict, but has to be decided through interpretation. The UN Convention on the Rights of Persons with Disabilities (CRPD) was ratified on 3 July 2013.¹⁶ It is not incorporated into the GEADA; however, as part of the Government platform, the ruling parties, from October 2021, have promised to incorporate the CRPD into Norwegian law. The Equality and Anti-discrimination Ombud (the Ombud) is responsible for the supervision of the national implementation of this convention, as well as the ICERD and the CEDAW.

¹² See https://www.Bufdir.no/Statistikk_og_analyse/lhbtq/Hvor_mange/.

¹³ See https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/declarations?p_auth=7UxAG6Btg&coeconventions_WAR_coeconventionsportlet_en_Viqueur=false&coeconventions_WAR_coeconventionsportlet_searchBy=state&coeconventions_WAR_coeconventionsportlet_codePays=NOR&coeconventions_WAR_coeconventionsportlet_codeNature=10.

¹⁴ See <https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf>. The preparatory works to the constitutional clause: Dok 16 (2011-2012), Report on Human Rights in the Constitution from the Constitutional Committee to the Storting (Parliament), Chapter 6 see <http://www.stortinget.no/Global/pdf/Dokumentserien/2011-2012/dok16-201112.pdf>.

¹⁵ Act relating to the status of human rights in Norwegian law of 21.05.1999 No. 30 (*Menneskerettsloven*).

¹⁶ See Prop. 106 S (2011-2012) Proposition to the Stortinget (proposal for Parliamentary resolution) on Consent to ratification of the UN Convention of 13.12.2006 on the rights of Persons with Disabilities and Prop 105 L 2011-2012 on Changes to the Anti-Discrimination Ombud's Act on the supervision of implementation of the UN Convention on the Rights of Persons with Disabilities.

Over the last decade, several attempts were made to harmonise the anti-discrimination legislation,¹⁷ culminating in the creation of a single anti-discrimination act, the General Equality and Anti-Discrimination Act (GEADA), which entered into force on 1 January 2018. The Working Environment Act (WEA) covers age, political views, membership in trade unions, and part-time and temporary work, but only in employment or similar situations. There is also specialised legislation, such as housing acts, which now refer to the comprehensive Equality and Anti-Discrimination Act (GEADA) regarding discrimination issues.¹⁸

The protected grounds in the GEADA are: gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or combinations of these factors. 'Ethnicity' includes national origin, descent, skin colour and language. The act thus also covers protection against age discrimination outside working life, whereas the protection against age discrimination within working life continues to be covered by the WEA.

Sections 185 and 186 of the Penal Code (2005) contain criminal law protection against discrimination, regarding hate speech and access to goods and services respectively.

It is presumed that Norwegian anti-discrimination legislation is in line with the EU *acquis*. The Government has committed to having as high - or higher - standards in its work against discrimination as the requirements of the EU.¹⁹ However, as neither the Racial Equality Directive²⁰ nor the Employment Equality Directive²¹ are incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated. The protection of the directives has been reinforced by judgments of the Supreme Court.²²

3. Main principles and definitions

Direct and indirect discrimination, harassment, and instructions to discriminate are defined in line with the Racial Equality Directive or the Employment Equality Directive. Reasonable accommodation duties as well as protection against discrimination by association are provided for in the GEADA.²³ Perceived or assumed discrimination is covered by national discrimination legislation if the perception or assumption has resulted in less favourable treatment of the person.

Multiple discrimination is specifically included in the GEADA, and refers to any combination of the protected grounds covered by the GEADA. Protection against victimisation is found in the GEADA, and to some degree in the WEA.²⁴

¹⁷ First, on 21 June 2013 upon the enactment of the Sexual Orientation Anti-Discrimination Act (SOA), covering sexual orientation, gender identity and gender expression, the other existing acts were revised and aligned. Four almost identical acts, the Gender Equality Act (GEA), the Anti-Discrimination Act (ADA) covering ethnicity, religion and belief, the Anti-discrimination and Accessibility Act (AAA) covering disability, and the Sexual Orientation Act (SOA) were in force until 31 December 2017, when they were replaced by the General Equality and Anti-Discrimination Act (GEADA).

¹⁸ Chapter 10 of the Ship Labour Act (SLA) has, almost word for word, the same sections as Chapter 13 of the WEA (and will therefore not be mentioned in this report unless there is a difference).

¹⁹ Norwegian Government (2003) *Skjerpet vern mot diskriminering i arbeidslivet* (White paper on strengthened protection against discrimination in working life), NOU 2003:2, p. 7.

²⁰ Council Directive 2000/43/EC of 19 July 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, pp. 22-26.

²¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, pp. 16-22.

²² For example, in HR-217-219-A.

²³ Various sections specify that the duty to provide individual accommodation exists not only in the workplace or during recruitment (Section 22), but also for pupils and students (Section 21), when using municipal services such as kindergartens (Section 20), and for all pregnant pupils, students, job applicants or employees (Section 23). Protection against discrimination by association is provided in Section 6(3), for all grounds except political views and trade union membership, and age in employment.

²⁴ GEADA Section 14 and the WEA Chapter 2A.

In the GEADA and the WEA, a general exception for genuine and determining occupational requirements is accepted under the general framework for lawful discrimination. In working life, exceptions for employers with an ethos based on religion or belief are not accepted as a general rule. However, employers with an ethos based on religion or belief may require that employees follow this religion or belief, provided that this is a genuine and determining occupational requirement in line with the general exception to the act.

4. Material scope

National legislation applies in principle to all sectors of public and private employment and occupation, including contract work, self-employment, military service, and holding statutory office.

The scope of discrimination protection in the GEADA applies to all sectors, including employment, and covers each of the specific grounds covered by the directives.

The WEA only covers employment: it applies to all types of enterprises that engage employees, including in the public sector, unless otherwise explicitly specified in the Act. Since the main anti-discrimination act is the GEADA, the WEA primarily protects grounds that are not protected by the GEADA: political affiliation and membership in a trade union. Age in the employment sector is protected by the WEA, however, it is protected outside employment by the GEADA. The provisions also cover the employer's selection and treatment of self-employed and contract workers.

All aspects of employment, from the initial advertisements of posts until the termination of the work contract, are covered by existing legislation. National law does not explicitly provide for an exception for the armed forces or the police, prison or emergency services in relation to age or disability discrimination. There are no exceptions in relation to disability for health and safety.

5. Enforcing the law

Cases alleging instances of discrimination may either be brought before an ordinary court or be brought to the national mechanism set up to assess cases of discrimination: the Norwegian Anti-Discrimination Tribunal (the Equality Tribunal). The Ombud provides advice, and in 2019 and 2021 it also provided assistance in a couple of cases before the Equality Tribunal. The Ombud also monitors the human rights conventions CERD, CEDAW and CRPD and works proactively against discrimination.

More than 95 % of all cases on discrimination are dealt with by the Equality Tribunal, which is an administrative body, not a court. Since January 2018, the Equality Tribunal has had the ability to award compensation or damages for injury of a non-pecuniary character, the latter only in cases concerning employment. When the issue of damages or compensation is contested or complicated, it has to be taken to the courts. The Equality Tribunal has made use of this possibility increasingly since 2018.²⁵ Few cases are taken to the courts. The low rate of court litigation is partly due to the risks and costs involved in litigation, and the difficulties in obtaining free legal aid in discrimination cases.

As a general rule, the procedures for addressing discrimination issues are the same for employment in the private and public sectors. Sanctions under the GEADA and WEA that are enforced by the civil courts consist of liability for damages for injury of a non-pecuniary character or compensation for economic losses awarded to the claimant of discrimination. There are no upper limits for compensation and the national legal framework does not provide rules for the calculation of claims. Sanctions under criminal law consist of fines or imprisonment.

²⁵ From one case in 2018 to 10 cases in 2021; see <https://www.diskrimineringsnemnda.no/klagesaker-og-statistikk/s%C3%B8kstatistikk>.

The key procedural principle in Norwegian civil courts is the free evaluation of evidence by the courts in the course of the case as presented in court. All kinds of evidence may be used, although evidence may only be presented on facts that may be of importance for the ruling to be made. The scale and the scope of the presentation need to be proportionate in relation to the importance of the dispute. In civil cases before the courts, the procedural rules for evidence are the same in discrimination cases as in other cases.

Situation testing is not defined, as the law is silent on the issue. However, based on the principle of free evaluation of evidence by the courts, national law permits the use of situation testing in court for all discrimination grounds.

National law permits the use of statistical evidence to establish indirect discrimination, however, it is not necessary to prove whether indirect discrimination has happened or not, as the assessment that has to be made according to national legislation is whether or not an action or non-action has had a negative result for the individual or the group.

The rule of shared burden of proof applies to all grounds and forms of discrimination, including failure to provide reasonable accommodation, harassment, victimisation and instructions to discriminate.

Associations may be used as agents in administrative proceedings and can act on behalf of or in support of victims, and often do so, mainly regarding complaints to the Equality Tribunal. The requirement is that the organisation must have a 'purpose, wholly or partly, to oppose discrimination' according to the grounds as prohibited by law.²⁶ Actions by associations are discretionary.

6. Equality bodies

The Equality and Anti-Discrimination Ombud (the Equality Ombud) and the Equality and Anti-Discrimination Tribunal (the Equality Tribunal) constitute the administrative independent equality bodies. The Equality Tribunal constitutes a free, low-threshold complaint system, and is an alternative dispute mechanism addressing cases of discrimination outside the judicial system.

The organisation, structure and mandate of these bodies were changed on 1 January 2018 by the adoption of the Equality and Anti-Discrimination Ombud Act (EAOA).²⁷ The key change to the system is that from 1 January 2018, the Ombud no longer makes decisions regarding individual complaints, which are now left to the Equality Tribunal.

The Equality Tribunal cannot make statements concerning the activities of the Parliament, such as legislation. However, the Equality Tribunal may issue opinions regarding regulations and other administrative decisions. Such statements of opinions are not legally binding and may not be subject to enforcement, however it is assumed that public bodies should adhere to them.

The Ombud provides advice and guidance with regard to the legislation within its mandate. From 2018, it began to make complaints to the Equality Tribunal on its own initiative, in addition to providing guidance to individual complainants.²⁸ The Ombud also conducts independent surveys, publishes independent reports and makes recommendations on

²⁶ GEADA, Section 40 and the WEA, Section 13-10.

²⁷ Act relating to the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal, 16 June 2017, No. 50, in force as of 1 January 2018. See <https://lovdata.no/dokument/NLE/lov/2017-06-16-50> for an English version of the act.

²⁸ Equality and Anti-Discrimination Ombud (2019) *Annual report 2018*, p. 8, available (in Norwegian) at: <https://www.ldo.no/nyheter-og-fag/brosjyrer-og-publikasjoner/Arsrapporter/arsmelding-2018/> and subsequent annual reports at <https://ldo.no/ombudet-og-samfunnet/om-ombudet/arsmeldinger/>.

issues relating to discrimination. Since 2019, the Ombud has published annual reports and reported on the status of equality and anti-discrimination law.²⁹

The Equality Ombud is funded by annual grants, which are financed by the Ministry of Culture and Equality. Although the appointed Ombud is nominated by the Ministry of Culture and Equality and their staff are public officials, the independence of the Ombud is not questioned in Norway, as their mandate is clarified by law and they must not be instructed by ministers. The funds allocated through the state budget for 2021 as income for the Ombud's office were approximately NOK 49 090 000 (EUR 4 909 000),³⁰ a little higher than in 2020, when the amount allocated was NOK 48 020 000 (EUR 4 802 000).³¹

The Equality Tribunal is the only equality body that can investigate complaints. Its members are appointed by the Ministry of Culture and Equality for a term of four years, with the possibility for reappointment. The chairpersons must fulfil the requirements prescribed for judges. Everyone who handles discrimination cases, both in the secretariat preparing the cases and the members of the Tribunal deciding them, are lawyers.³² The Equality Tribunal has a secretariat, whose staff are public employees. The 2021 budget for the secretariat and Tribunal was NOK 22 240 000 (EUR 2 240 000),³³ which is a little lower than in 2020, when the budget was NOK 22 260 000 (EUR 2 226 000).³⁴

From 1 July 2021, the Tribunal added to its responsibilities the assessment of cases concerning victimisation as employees were henceforth able to notify it about censurable working conditions on a general basis and not only in cases of discrimination.³⁵ It is unclear how many cases the Tribunal received which did not concern discrimination, but the number of cases concerning victimisation doubled, to 39, from 2020 to 2021.³⁶

There are few Roma in Norway, but the Equality Ombud has repeatedly addressed some of the key issues seen in relation to Roma and Travellers.³⁷ In December 2020, the Government launched its first action plan on national minorities including Roma and Travellers.

In addition, a section of the Directorate for Children and Equality organises and funds a number of research reports as well as providing advice to the public administration on anti-discrimination issues. The latter, however, is not an independent administrative institution, but is part of the public administration. It has a key role in coordinating the various ministries' work against discrimination.

7. Key issues

The key legal issues in Norway with regard to measures to combat discrimination based on race/ ethnic origin, religion/ belief, sexual orientation, disability and age are outlined below.

In practice, it is debatable whether access to justice in discrimination cases is in line with the directives, concerning both effective remedies and a fair trial.³⁸ As described in a number of sections in this report, the Equality Tribunal's use of anti-discrimination law in

²⁹ See <https://ldo.no/ombudet-og-samfunnet/rapporter/diskrimineringsrett/>.

³⁰ Figures from the national budget of 2021 [Prop. 1 S \(2020–2021\) \(regjeringen.no\)](#), p. 101.

³¹ Figures from the national budget of 2020, [Prop. 1 S \(2019–2020\) \(regjeringen.no\)](#), p. 99.

³² See the website of the Equality Tribunal, <http://diskrimineringsnemnda.no/nb/innhold/sider/3006> and <http://diskrimineringsnemnda.no/nb/innhold/sider/1215>.

³³ Figures from the national budget of 2021 [Prop. 1 S \(2020–2021\) \(regjeringen.no\)](#), p. 101.

³⁴ Figures from the national budget of 2020, [Prop. 1 S \(2019–2020\) \(regjeringen.no\)](#), p. 99.

³⁵ See WEA, chapter 2A.

³⁶ [Søk i statistikk \(diskrimineringsnemnda.no\)](#).

³⁷ See, for example, its latest report on CERD, available at

https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NOR/INT_CERD_IFN_NOR_32892_E.pdf.

³⁸ Fundamental Rights Agency and the European Court of Justice (2016), *Handbook on European law relating to access to justice*, p. 15.

general has room for improvement.³⁹ The facts of the cases are also often assessed rather superficially, sometimes not taking all relevant facts or claims into consideration,⁴⁰ and the Tribunal has been criticised by the Ombud for not investigating cases sufficiently. The Tribunal has stated that it currently has insufficient resources compared with its workload.⁴¹

The assistance to victims of discrimination as described in Chapter 7 f) i), is not always sufficient for those who need individual accommodation or otherwise have insufficient resources to present the relevant facts in writing. While an oral hearing is possible, this is the exception in almost all types of cases. There is also a lack of effective remedies available through the Tribunal in many cases concerning, for example, housing and access to goods and services, as described in Section 6.5.

Decisions by the Equality Tribunal may be overruled only by the courts. Access to justice in discrimination cases is also difficult within the court system, for financial reasons. Taking a case to court is costly, as there is no free legal aid in discrimination cases, and there is a significant risk of having to pay the costs of the defendant (see, for example, court case LE-2018-145654-2). In addition, there are no rules or guidelines to ensure that judges or lay judges are trained in discrimination issues, and nothing, in the case of lay judges, even to ensure that they are not openly and actively racist, as described in Section 6.1.b.

There is still a lack of awareness and knowledge about the potential discriminatory effects of algorithms and how to prevent this, in both the public and private sectors. A lack of more specific rules and guidelines is evident, for example regarding insurance and the use of algorithms in the public administration.

Regarding best practices, the proactive equality efforts of the GEADA place a duty on public authorities, employers and educational institutions to make active, targeted and systematic efforts to promote equality within the different grounds, and to report on their efforts.⁴² The Equality and Anti-Discrimination Ombud monitors these efforts. From 2020, reporting on the active equality efforts is also part of the Accounting Act Section 3-3c, in addition to a duty to report on how they respect human rights, workers' rights, social conditions and the environment and to act against corruption in their daily work.

³⁹ For example, concerning its interpretation of direct versus indirect differential treatment and justifications of differential treatment, and its use of the rules concerning the burden of proof. See, for example, Equality Tribunal, case DIN-2021-23, in Chapter 12.2. It has, on at least two occasions, overlooked discrimination by association, and has never used it in practice. See also Bauge, M. and Løvdal, L. (2022) 'Access to Justice in Discrimination Cases in Norway', *Scandinavian Studies in Law*, vol. 68, pp. 373-402.

⁴⁰ See, for example, Equality Tribunal, cases DIN-2020-253 and DIN-2021-23, both described in detail in Chapter 12.2.

⁴¹ Email of 7 February 2022 from the director of the Equality Tribunal to the author.

⁴² See GEADA, Chapter 4.

INTRODUCTION

The national legal system

The Norwegian legal system is inspired by the Roman legal system and has a three-level court structure that handles both criminal and civil law. Statutory provisions (formal legislation through acts and their regulations) interpreted through the legal preparatory works and case law are the primary sources of law invoked in Norwegian courts of law and in respect of Norwegian administrative agencies – although international legislation, both EU and ECHR law, is increasingly being invoked in specific cases.

Discrimination cases may be brought before the ordinary courts. However, the key administrative procedure for discrimination cases is to bring them before the Equality and Anti-Discrimination Ombud (hereafter referred to as the Ombud) for advice⁴³ and/or the Equality and Anti-Discrimination Tribunal⁴⁴ (hereafter referred to as the Equality Tribunal or the Tribunal) for decisions regarding complaints.

Also of some relevance to anti-discrimination law is the Labour Court, which deals with disputes between trade unions and employers' organisations that include the interpretation, validity and existence of collective agreements and cases of breaches of collective agreements – to the extent that anti-discrimination provisions are included in the collective agreements.⁴⁵

List of main legislation transposing and implementing the directives

The General Equality and Anti-Discrimination Act (GEADA)⁴⁶ covers the following grounds of discrimination within all sectors: gender, ethnicity (including national origin, descent, skin colour, and language), religion or belief, sexual orientation and disability, as well as pregnancy, and leave in connection with childbirth or adoption, care responsibilities. The GEADA also covers protection against age discrimination outside working life, whereas the protection against age discrimination within working life continues to be covered by the WEA.⁴⁷

Sections 185 and 186 of the Penal Code⁴⁸ contain criminal law protection against discrimination. Section 185 concerns hateful expressions, emphasising more clearly that racist expressions with insulting effects are punishable by law. Section 186 penalises the refusal to provide goods and services as well as admission to a public performance/exhibition/gathering. These provisions in the Penal Code are applicable in relation to discrimination because of skin colour or national or ethnic origin, religion or life stance,⁴⁹ sexual orientation, gender identity and disability. Other hate crimes are covered by its Section 77(i), which lists aggravating circumstances that may lead to a stricter fine or prison sentence for any criminal offence motivated by a person's religion or life stance,

⁴³ See <http://www.ldo.no/en/>.

⁴⁴ See <http://www.diskrimineringsnemnda.no/en/innhold/side/forside>.

⁴⁵ See <http://www.arbeidsretten.no/engelsk.php>.

⁴⁶ Equality and Anti-Discrimination Act (GEADA) of 16 June 2017, No. 51, in force as of 1 January 2018. See <https://lovdata.no/dokument/NLE/lov/2017-06-16-51> for an English version of the act.

⁴⁷ In terms of specialised legislation, Chapter 10 of the Ship Labour Act (SLA) provides protection against discrimination in the employment relationship of seamen on the basis of political views, membership of a trade union, or age (Act of 21 June 2013, No. 102, relating to employment protection etc. for employees on board ships). See <https://www.sjofartsdir.no/en/legislation/laws/ship-labour-act/>. The SLA, Chapter 10, gives almost exactly the same protection against discrimination as the WEA, but adds another labour sector to such protection.

⁴⁸ See the Penal Code of 20 May 2005, No. 28, in force as of 1 October 2015, at <https://lovdata.no/dokument/NLE/lov/2005-05-20-28>.

⁴⁹ Non-religious convictions as fundamental as religious ones.

skin colour, national or ethnic origin, sexual orientation, disability or other circumstances relating to groups with a particular need for protection.⁵⁰

Protection against discrimination because of disability is found in the GEADA, although requirements to adapt the environment to meet the physical and psychological working environment of people with reduced functional ability is also found in Chapter 4 of the WEA, imposing general accommodation duties.

While the Racial Equality Directive and the Employment Equality Directive are not incorporated in the EEA agreement, it is still presumed that Norwegian anti-discrimination legislation is in line with the EU *acquis*. The Government has committed to standards in its work against discrimination that are as high as – or higher than – the requirements of the EU.⁵¹ The protection of the directives has been reinforced by the judgments of the Supreme Court.⁵²

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Norwegian Constitution has a general clause protecting against discrimination, Article 98, and a general human rights clause, Article 92.

Article 98 of the Constitution reads: 'All people are equal under the law. No human being must be subject to unfair or disproportional differential treatment.'⁵³ The provision mentions no particular grounds of discrimination, groups or characteristics.

Article 92 of the Constitution states that:

'The authorities of the State shall respect and ensure the human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway.'

A Supreme Court judgment clarified that Article 92 of the Constitution is not a clause that incorporates human rights conventions in Norwegian law, but obliges authorities to enforce human rights conventions at the level they are implemented in Norwegian law.⁵⁴

The Human Rights Act⁵⁵ incorporates a number of important treaties on human rights - including the International Convention on Elimination of All Forms of Discrimination of

⁵⁰ Offences perpetrated by exploiting or misguiding young persons, persons in a very difficult life situation, who are mentally disabled or in a dependent relationship with the offender, and offences which affected persons who are defenceless or particularly vulnerable to criminal offences are mentioned explicitly as well under Section 77(g) and (f).

⁵¹ Norwegian Government (2003), *Skjerpet vern mot diskriminering i arbeidslivet* (White paper on strengthened protection against discrimination in working life), NOU 2003:2, p. 7.

⁵² For example, in Supreme Court judgment HR-217-219-A.

⁵³ See <https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf>. The preparatory works to the constitutional clause are found in Dok 16 (2011-2012), 'Report on Human Rights in the Constitution from the Constitutional Committee to the Storting (Parliament)', Chapter 6, see <http://www.stortinget.no/Global/pdf/Dokumentserien/2011-2012/dok16-201112.pdf>.

⁵⁴ See Supreme Court, HR-2016-2554-P and HR-2016-2591-A of 20 December 2016, para 47. The latter case concerned the question whether a woman with a psychosocial disability (diagnosed paranoid schizophrenia) should be deprived of her legal capacity relating to her finances if the conditions for this were fulfilled in accordance with the Guardianship Act, Section 22. The Supreme Court found that the conditions to deprive the woman of a capacity to handle her own finances were fulfilled, even though this might be contrary to Article 12 of the CRPD. This is because of the Norwegian 'interpretative declaration' in relation to CRPD Article 12 (judgment, para. 58), and also because the CRPD is not incorporated into Norwegian law. An interesting observation is made in para. 63, in which it is stated that as long as the declaration made by Norway in relation to Article 12 is upheld by the legislature, the courts must abide by this even if it is in breach of international law.

⁵⁵ Act relating to the status of human rights in Norwegian law of 21 May 1999, No. 30 (*Menneskerettsloven*).

Women (CEDAW) - into the domestic legal system on a general basis in which the conventions prevail over any other conflicting statutory provision.⁵⁶ The International Convention on Elimination of All Forms of Racial Discrimination (ICERD) is not incorporated into the Human Rights Act, but into the Equality and Anti-Discrimination Act (GEADA), the legal consequence being that ICERD does not prevail over other statutory provisions in case of conflict, but has to be decided through interpretation. The UN CRPD (the Disability Convention) was ratified on 3 July 2013.⁵⁷ It is not incorporated into the Equality and Anti-Discrimination Act (GEADA) or any other Norwegian law, but the Labour Party and Centre Party Government, which came into power in October 2021, has promised that it will be part of its governance platform. The Equality and Anti-Discrimination Ombud is responsible for the supervision of the national implementation of the convention, similar to the national supervisory system of the ICERD and CEDAW.⁵⁸

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

The constitutional anti-discrimination provisions are directly applicable.

The constitutional equality clauses can be enforced both against state bodies and private individuals.

⁵⁶ The International Convention on Racial Discrimination is incorporated in the Anti-Discrimination Act (ADA), but the convention will in conflicting cases not automatically prevail. The failure to include the ICERD in the Human Rights Act has been repeatedly criticised by the NGOs working on anti-discrimination.

⁵⁷ See Proposition to Parliament, Prop. 106 S (2011–2012) on Consent to ratification of the UN Convention of 13 December 2006 on the Rights of Persons with Disabilities and Proposition to Parliament, Prop. 105 L (2011–2012) on Changes to the Anti-Discrimination Ombud Act on the supervision of implementation of the UN Convention on the Rights of Persons with Disabilities.

⁵⁸ Equality Ombud (2016), 'Strategy of the Ombud (2017–2022)', at <https://www.ldr.no/nyheiter-og-faq/brosjyrar-og-publikasjonar/Arsrapporter/arsmelding-2016/sammendraaq-strategi/>.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

Norwegian anti-discrimination legislation provides a basis to address the following grounds of discrimination within all sectors: gender, ethnicity (including national origin, descent, skin colour, and language), religion or belief, sexual orientation and disability under the GEADA. Pregnancy, leave in connection with childbirth or adoption, care responsibilities and age are also explicitly included as grounds of unlawful discrimination. 'Other significant characteristics of a person' is stated as one of the grounds within the aim of the GEADA, but is not specified as a protected ground in the list in Section 6 of the GEADA.

Discrimination based on age, political views, membership of a trade union, as well as part-time and temporary work is covered within working life under the WEA.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

a) Racial or ethnic origin

The scope of the term 'ethnicity' is vague, and provision is made for some exercise of discretion by the enforcing agencies in defining its reach. The GEADA, in Section 6(1), lists national origin, descent, skin colour and language as examples of what is meant by ethnicity. These are seen as objective elements of what is protected through the concept 'ethnicity', but the preparatory works also include subjective elements:⁵⁹

'It is not possible to provide a comprehensive definition of what the term ethnicity includes. (...) When we try to define the term ethnicity, relations are a key issue. For example, a person's ethnicity is often expressed through the individual's or group's experience of being different than others.'

Thus, the subjective part of the concept is quite similar to the definition of ethnicity in the CJEU's judgment in *CHEZ* (C-83/14).⁶⁰ National origin, descent, skin colour and language are not seen as individual grounds of discrimination and are only protected when there is a link to ethnicity, or the discrimination is on the grounds of ethnicity.⁶¹

The choice of 'national origin' is deliberate, as citizenship is not protected as a rule. However, foreign citizens may be protected against discrimination through 'national origin' depending on the circumstances, if it constitutes indirect discrimination on the basis of 'ethnicity' (see Section 4.4 below). Statelessness is also covered.⁶²

⁵⁹ See the preparatory works to the GEADA; Prop 81 L (2016-2017) Chapter 11.2.3.2 Ethnicity, available (in Norwegian) at <https://www.regjeringen.no/no/dokumenter/prop.-81-l-20162017/id2547420/sec12>. These also refer to the preparatory works of the now replaced ADA: Proposition to Parliament, Prop. 88 L (2012-2013) *Diskrimineringslovgivningen*.

⁶⁰ CJEU, judgment of 16 July 2015, *CHEZ*, C-83/14, paragraph 46, EU:C:2015:480.

⁶¹ Proposition to Parliament, Prop. 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering* Chapter 11.2.3.2, cfr the proposition of the first Anti-Discrimination Act regarding ethnicity etc., Ot.prp. No. 33 (2004-2005), Chapter 10.1.8.2.

⁶² See the decision of the Equality Ombud in case 09/892 of 3 May 2012. In case 28/2015 of 29 September 2015, the Equality Tribunal found that demanding a Norwegian or Swedish criminal record check from 18 years of age for a job application to a security company constituted indirect discrimination because of nationality, in breach of ADA Section 6. In reality, the demand from the security company signified that the company accepted only applicants who had been Norwegian or Swedish citizens since 18 years of age. The practice was seen as discriminatory vis-à-vis both EU citizens and third country nationals; that is, everyone who is not a Norwegian or Swedish citizen. See also the decision by the Equality Tribunal in case LDN-2006-18 on advertisements for apartments to rent 'only to Norwegian citizens', referred to in the preparatory works to the GEADA: Proposition to Parliament, Prop. 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering*, Chapter 11.2.3.3.

'Descent' may include place of birth; non-Norwegian country background; the place where one was brought up or from which one derives one's background; or any other hereditary and innate membership of a group.⁶³

Language is protected only when it is connected to ethnicity, and discrimination against persons who use sign language is prohibited through disability.⁶⁴

Race or racial origin are not mentioned explicitly in the GEADA, since the starting point for combating racism is to eliminate the idea that people can be divided into different races, in line with preamble no. 6 of the Racial Equality Directive. Discrimination based on perceptions of a person's race is regarded as discrimination based on ethnicity.

Skin colour was taken into the GEADA's list of examples of ethnicity on the basis that the law should at least mention skin colour explicitly in order to better fulfil the requirements of CERD while not using the word 'race', as suggested by the Ombud and supported by several anti-racist NGOs.⁶⁵ Skin colour is protected even if the person in question does not see themselves as belonging to a particular ethnic group, as the person treating someone differently on the basis of their skin colour, according to the preparatory works, does so on the basis of assumptions of ethnicity.⁶⁶

b) Religion and belief

The GEADA covers discrimination because of religion or belief. 'Life stance' is mentioned explicitly in addition to 'religion'. The preparatory works of the GEADA do not refer to any EU sources regarding the interpretation of the concept of religion or life stance, instead focusing on the ECHR, especially the ECtHR judgment in *Eweida and others v. UK*.⁶⁷ However, the preparatory works to the previous act specified that the wording follows the wording of the Employment Equality Directive, and that both having and not having a religion or belief is covered.⁶⁸

'Religion' is not defined in the preparatory works, although it is stated that the word 'belief' is specifically chosen to emphasise that all kinds of life-stance beliefs are covered, not only those linked to a specific line of religious thinking.⁶⁹

Political opinion is not protected as a 'belief' but is one of the grounds protected through the Working Environment Act.

⁶³ Proposition to Parliament, Prop. 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering*, Chapter 11.2.3.4.

⁶⁴ Proposition to Parliament, Prop. 88 L (2012-2013) *Diskrimineringslovgivning*, Chapter 10.4.1.2.

⁶⁵ See Proposition to Parliament, Prop. 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering*, Chapter 11.2.3.1.

⁶⁶ Proposition to Parliament, Prop. 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering*, Chapter 11.9.4.

⁶⁷ With the following quotes from paras 80-82: 'The right to freedom of thought, conscience and religion denotes views that attain a certain level of cogency, seriousness, cohesion and importance'; 'Even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a 'manifestation' of the belief. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9 § 1.' Prop. 81 L (2016-2017), Chapter 11.2.3.7 <https://www.regjeringen.no/no/dokumenter/prop.-81-l-20162017/id2547420/sec12>.

⁶⁸ See the preparatory works to the WEA; NOU 2003:2 *Skjerpet vern mot Diskriminering i arbeidslivet*, p. 36.

⁶⁹ In case LDN-2016-16, the Equality Tribunal accepted veganism as a life stance. In an Equality Tribunal case from 2018, case DIN-2018-48, the members of the Tribunal all agreed that a refusal to shake hands with women should be seen as an expression of religious views, which is protected against discrimination. The majority of the members of the Tribunal interpreted the employer's requirement of shaking hands with women as indirect differential treatment and concluded that it was necessary and proportionate. The minority of the Tribunal saw the employer's dismissal as direct differential treatment, and unjustifiable.

c) Disability

In the preparatory works to the GEADA, the Ministry for Children and Equality discussed whether the Norwegian concept of disability should be replaced. It proposed that the concept of disability as used in Norwegian, *nedsatt funksjonsevne*, (reduced functional ability) should be replaced with the Norwegian concept of *funksjonsnedsettelse* (functional reduction); this proposal was adopted.⁷⁰ The definition of disability in the GEADA in relation to professional life is understood as:

'a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.'

This is in line with the judgment of the European Court in the joined cases C-335/11 and C-337/11 *Skouboe Werge and Ring*, Paragraph 38. However, Norwegian law includes temporary illness in the concept of disability, unless it is 'a temporary and entirely insignificant condition which does not influence the functional ability to any significant degree'⁷¹ Furthermore, Norwegian law focuses on the discriminatory action in combination with the person's functional ability rather than the limitations that the condition alone creates.⁷² The preparatory works explicitly state that it is undesirable to limit the protection to a specific group.⁷³ Similarly, the focus must be on the discriminatory act, not on any diagnosis.⁷⁴ Assumed or perceived disability is also covered; see GEADA Section 6(2).

The social element of the reduced functional ability and interaction with the environment in working life is also covered by the employer's duty of accommodation towards all employees in the WEA, Section 4-6. The Norwegian definition may be more in line with a social model than the CJEU case law on the Employment Equality Directive, since no diagnosis is needed. Regarding the temporariness of an illness, Norwegian law gives a very wide protection, since even temporarily reduced ability is protected against discrimination.⁷⁵

It should, however, be noted, that Norwegian law allows employers to dismiss employees on the basis of long-term sick leave (WEA Section 15-8 (1)) after 12 months of absence. Dismissal during this 12-month period shall be seen as based on the person's illness and therefore unjustified, unless clearly proven to have another and justifiable reason (WEA Section 15-8(2)). After the 12-month period, the dismissal of a sick employee or an employee with a disability must have legitimate aim.⁷⁶ While WEA Sections 15-7 and 15-8

⁷⁰ See the legal preparatory works; Proposition to Parliament, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)* Chapter 11.2.

⁷¹ Proposition to Parliament, Prop. 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)* Chapter 11.2.4, 5th paragraph. It also states that 'To the knowledge of the Ministry [of Children and Equality], there are no decisions from any of the institutions handling complaints [regarding discrimination] where the question of durability has been a key issue.'

⁷² Proposition to Parliament, Ot.prp. No. 44 (2007-2008) *Om lov om forbud mot diskriminering på grunn av nedsatt funksjonsevne (diskriminerings- og tilgjengelighetsloven)* Chapters 9.4.6.2 and 9.4.8.

⁷³ Proposition to Parliament, Ot.prp. No. 44 (2007-2008) *Om lov om forbud mot diskriminering på grunn av nedsatt funksjonsevne (diskriminerings- og tilgjengelighetsloven)* Chapter 9.4.8.1.

⁷⁴ Ballangrud, A.J.B. and Søbstad, M. (2021), *Likestillings- og diskrimineringsloven. Lovkommentar*, Oslo, Universitetsforlaget, pp. 130-134. This means that there is no need of evidence concerning the complainant's health situation or abilities. However, a complaint concerning discrimination on the basis of allergy against electricity was dismissed on the basis of this not being a recognised diagnosis, see Equality Tribunal, case DIN-2019-302.

⁷⁵ Passing and minor reduced ability is not protected, for example influenza or minor injuries. There is otherwise no clear limit, which should be seen in relation to the general duty of accommodation towards all employees. Ballangrud, A.J.B. and Søbstad, M. (2021), *Likestillings- og diskrimineringsloven. Lovkommentar*, Oslo, Universitetsforlaget, p. 132.

⁷⁶ If the reason is capacity reduction of the enterprise or trying to make the production more effective, the consequences for the employee must not be disproportionate compared to the needs of the enterprise, and a dismissal cannot be justified if other suitable work can be found for the employee within the enterprise (WEA, Section 15-7).

specify what constitutes a legitimate aim, they do not mention proportionality or necessity, and thereby do not provide as strict requirements as those in the anti-discrimination legislation. It is therefore doubtful that these sections give sufficient protection against discrimination on the basis of disability after 12 months of absence.⁷⁷

d) Age

The definition of age does not have limits upwards or downwards. Discrimination based on age will thus encompass discrimination because of both high age and low age,⁷⁸ the meaning of which depend on the circumstances in the case at hand. For example, the Tribunal has concluded that a 34-year-old had been discriminated for being seen as 'too old' for a position in the fire brigade, while a 25-year-old was seen as being discriminated for being seen as 'too young' for a position in the offshore industry.⁷⁹

e) Sexual orientation

Sexual orientation includes both sexual orientation (attraction, emotions and sexual practices. The concept 'points to which gender appears in the law and/or sexuality is directed towards, if it is towards persons of the opposite sex/gender or towards the same sex/gender'.⁸⁰

Bisexual and heterosexual persons are also protected through the concept of 'sexual orientation'.⁸¹ The concept does not include particular sexual preferences or activities such as, for example, fetishism or sadomasochism.⁸²

The relationship between gender expression (also a protected ground in the GEADA) and assumed sexual orientation has not yet been addressed in any cases.

2.1.2 Multiple discrimination

In Norway, multiple discrimination is explicitly prohibited by law. Section 6(1) of the GEADA, after the listing of the prohibited grounds of discrimination, states that 'combinations of these factors' are prohibited. Multiple discrimination is when a person is discriminated against because of two or more discrimination grounds separately but simultaneously. Intersectional discrimination occurs when a person is discriminated against because of several discrimination grounds simultaneously because of a unique combination of several discrimination grounds, which cannot be linked to one isolated ground. It follows from the Norwegian wording that both are included. Intersectional or multiple discrimination are not explicitly included in the WEA, but are in practice included through judicial interpretation.⁸³

The courts, the Ombud and the Equality Tribunal have made decisions in a number of cases relating to intersectional/multiple grounds discrimination, mainly in relation to gender and

⁷⁷ See, for example, CJEU, judgment of 18 January 2018, *Carlos Enrique Ruiz Conejero v Ferroservicios Auxiliares SA and Ministerio Fiscal*, C-270/16, EU:C:2018:17, paragraph 57.

⁷⁸ See the preparatory works to the WEA, Norwegian Government (2003) *Skjerpet vern mot Diskriminering i arbeidslivet* NOU 2003:2, p. 16.

⁷⁹ Equality and Anti-Discrimination Tribunal, cases LDN-2011-35 and LDN-2014-31.

⁸⁰ The Norwegian language uses the same word for sex and gender: 'kjønn'.

⁸¹ See the legal preparatory works; Proposition to Parliament, Prop. 88 L (2012-2013) *Diskrimineringslovgivning*, Chapter 10.1.4.

⁸² See the legal preparatory works; Proposition to Parliament, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*, Chapter 11.9.5.

⁸³ The same is the case with the SLA.

age,⁸⁴ age and ethnicity,⁸⁵ and gender and religion (wearing the hijab).⁸⁶ There are few cases involving three or more grounds of discrimination.⁸⁷ The Equality Tribunal case LDN-2008-1 was the first case to explicitly address multiple discrimination, and remains a landmark case due to its focus on intersectionality. Two women with an Asian background tried to book a hotel room in Oslo. The women were refused a room at the hotel, as the women's home address was in the Oslo area, based on written guidelines permitting staff to refuse access to people domiciled in Oslo and its environs. When assessing the case, the Equality Tribunal found circumstances that gave grounds to believe that the hotel had attached stereotypes related to sex work to the combination of the women's gender and ethnic background, and that the hotel was unable to substantiate that there were other reasons behind the refusal.

The national court system has made decisions in only a few cases where multiple discrimination has been claimed. In a 2020 case decided by Borgarting Court of Appeal, an elderly Russian woman who had migrated to Norway some years previously through family reunification, had her social security benefit revoked together with others who had migrated on the same basis, mainly women from Asia and Eastern Europe. The court found that the revocation of the social benefit aimed at ensuring this group a reasonable level of income, was justified, proportional and necessary.⁸⁸ The combination of ethnicity and gender was mentioned as a factor in the case but received only superficial treatment by the court. The Supreme Court rejected an appeal.⁸⁹

Few cases go through administrative proceedings before being taken to court. One example of such a case concerned recruitment to the fire brigade, where a female employee received compensation for discrimination on the basis of age and gender.⁹⁰ It should be

⁸⁴ See, for example, the Equality Tribunal's decision in case LDN-2015-18 in which the Tribunal found that the claimant was discriminated against because of age, but not gender. In the Equality Tribunal's decision in case LDN-2015-34, the Tribunal found that the claimant was neither discriminated against because of age nor gender by an age limit for retirement set by the employer at 67 years, at which she had to stop working. In the Equality Tribunal's decision in case LDN-2015-20, the Tribunal found that the claimant was neither discriminated against because of age nor gender by her employer.

⁸⁵ See, for example, the Equality Tribunal's decision in case LDN-2015-35 in which the Tribunal found that the claimant was discriminated against both because of age and ethnicity as he was passed over for a position as a glass-maker. The decision does not state which ethnicity or nationality the glass-maker is, but only stated that he is of 'foreign origin', and that he was born in 1962, and thus was 52 years at the time of application.

⁸⁶ The Equality Tribunal's decisions on the hijab and gender are in cases LDN-2009-26, LDN-2010-08, LDN-2014-2, LDN-2017-2 and DIN-2018-30. The 2014 case signalled a new line of reasoning within the Tribunal, which in part ran counter to the previous legal understanding of the Ombud and the Equality Tribunal regarding direct discrimination because of religion. The Tribunal saw the prohibition of headscarves for security personnel at the airport as direct differential treatment on the basis of religion and indirect differential treatment on the basis of gender. The exception for direct discrimination was broadened regarding religion, as the Tribunal accepted in this case that the secular and value-neutral orientation of the needs of the employer should be given priority over the right of Muslim women to be able to wear their religious symbols within employment. In LDN-2017-2 the Tribunal thoroughly discussed international conventions as well as the decisions of the ECtHR. They concluded that general prohibitions of wearing religious symbols including hijab at the workplace should be considered indirect discrimination on the basis of religion, while the differential treatment of a woman on the basis of her wearing a hijab should be considered direct differential treatment. The ECJ Cases C-188/15 and C-157/15 are briefly referred to, with the conclusion that there is no contradiction between them and the decision of the Tribunal. The Equality Tribunal, in case DIN-2018-30, concerned a Muslim woman working as a steward on a passenger boat. In this case too, the prohibition of wearing of headscarf with the uniform was seen as indirect discrimination on the basis of religion alone. No ECJ cases were mentioned in the latter case. As yet, there has been no case tried before the ordinary courts on this issue.

⁸⁷ Although such cases are known to exist: Equality Tribunal, LDN-2015-31, concerned a woman who claimed to have been bypassed for a position as associate professor in physics: materials research with transmission electron microscopy (TEM). She claimed to have been bypassed because of her gender, age and ethnicity. The Equality Tribunal found that she had not been discriminated against.

⁸⁸ Borgarting court of appeal, case LB-2019-53935. See section 12.2 for a more detailed description of the case.

⁸⁹ Supreme Court, case HR-2020-2160-U.

⁹⁰ Øst-Finnmark court of first instance, judgment of 17 March 2010 in Case 09-136827TVI-OSFI. The case had already been assessed by the Equality Ombud and the Equality and Anti-Discrimination Tribunal, in case LDN-2008-8. A county that was recruiting new staff was alleged to have discriminated against a female

noted that in Norway a breach of the law does not lead to a stricter penalty if it involves more than one ground of discrimination.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Norway, discrimination based on a perception or assumption of a person's characteristics, is prohibited in the GEADA, Section 6(2). The sub-paragraph reads: 'The prohibition includes discrimination on the bases of actual, assumed, former or future factors specified in the first paragraph'. This covers gender, ethnicity (including national origin, descent, skin colour, and language), religion or life stance, sexual orientation and disability, pregnancy, leave in connection with childbirth or adoption, care responsibilities and age. Discrimination based on a perception or assumption is not explicitly included in the WEA, but is included in practice through judicial interpretation.⁹¹

There have been a number of cases concerning this type of discrimination, mainly on the basis of assumed current or future disability, most of which were dealt with by the Ombud alone before the 2018 reorganisation, when it was the body of first instance in the complaints procedure. In the case 16/628 considered by the Ombud, the complainant had better qualifications than the person who was offered the position, and the Ombud found that there was reason to believe that she was ranked lower for consideration because the employer thought she would be in need of accommodation or repeatedly be on sick leave, i.e. on the basis of assumed disability.

b) Discrimination by association

In Norway, discrimination based on association with persons with particular characteristics, is prohibited in the GEADA, Section 6(3). The sub-paragraph reads: 'The prohibition also applies if a person is discriminated against on the basis of his or her connection with another person, when such discrimination is based on factors specified in the first paragraph'. In the preparatory works to the former anti-discrimination laws, the ministry stated that the key issue is whether there is a causal relationship between the protected grounds of discrimination and the action in question.⁹² Discrimination by association is not explicitly included in the WEA, but is included in practice through judicial interpretation.⁹³

There have been few cases regarding discrimination by association,⁹⁴ but in only one case, the Equality Ombud's case No. 11/2514, has the issue really been assessed. Y wanted to sublet the apartment he rented to X, who was receiving social benefits due to an illness. The owner of the apartment refused, and Y complained to the Ombud on the basis of his association with X and his disability. The Ombud concluded that the link to X was too peripheral to be taken into account, using C-303/06 *Coleman v Attridge Law and Steve*

worker in the fire brigade because of her age and gender, in contravention of the GEA and the WEA. The case concerned a female worker aged 41, employed on a part-time basis in the fire brigade. She subsequently applied for a longer, full-time vacancy, and then a fixed-term, full-time position. A male worker aged 27 who was less qualified was employed in the position for which the woman had applied. The ads announcing the position had the following formulation: 'applicants should be between 27 and 35 years of age.' The Equality Tribunal and the court found that the woman was discriminated against on both the grounds of gender and age, and had also suffered from victimisation after her complaint. She was awarded compensation of EUR 37 500 (NOK 300 000) for economic losses as well as EUR 18 759 (NOK 150 000) for non-pecuniary damage.

⁹¹ The same is the case with the SLA.

⁹² Preparatory works to the ADA, AAA and SOA of 2014, Prop. 88 L (2012-2013) *Diskrimineringslovgivningen* (The anti-discrimination legislation) p. 85, available in Norwegian at <https://www.regjeringen.no/no/dokumenter/prop-88-l-20122013/id718741/>.

⁹³ The same is the case with the SLA.

⁹⁴ The Ombud's cases 08/1121 and 14/1013. The Equality Tribunal refused the appeal of the latter on the basis of its limited competence in LDN-2015-73.

Law as a comparator. Norwegian law has later been reviewed in line with C 83/14, *CHEZ Razpredelenie Bulgaria AD v. Komisija za zashtita ot diskriminatsia*.⁹⁵

This understanding of discrimination through association has not yet been used by the courts or by the Equality Tribunal. No discrimination by association has yet been found by the Tribunal or courts following these decisions by the ECJ, even in cases where the facts seem to indicate differential treatment by association.⁹⁶

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

a) Prohibition and definition of direct discrimination

In Norway, direct discrimination is prohibited in national law.

In WEA Section 13-1, the concepts of direct and indirect discrimination are not defined, but the concepts are discussed and defined in the preparatory works.⁹⁷

It is a matter of concern that the former very strict prohibition on direct discrimination in Norway is being widened because of the widening scope of accepted direct discrimination because of age. The prohibition against direct discrimination is specified in Section 7 on direct differential treatment, which reads:

“Direct differential treatment” means treatment of a person that is worse than the treatment that is, has been or would have been afforded to other persons in a corresponding situation, on the basis of factors specified in Section 6, first paragraph.’

In several cases from the Equality Tribunal there seems to be some confusion regarding what constitutes direct differential treatment. A good example of the lack of clarity in the interpretation of what direct discrimination is and when it may be justified is Equality Tribunal case DIN-2018-48, in which the dismissal of a Muslim man, who refused to shake hands with women on the basis of religious convictions, was seen as justified indirect discrimination by a majority of the Tribunal, and unjustified direct discrimination by the minority.⁹⁸ In case DIN-2018-39, the requirement of a good working knowledge of Norwegian was not seen as direct differential treatment, but as indirect differential treatment. In Equality Tribunal case DIN-2018-26, for example, it is unclear whether a language requirement is seen as direct or indirect differential treatment on the basis of ethnicity, while in several other cases from the Ombud and the Equality Tribunal, language requirements are seen as direct differential treatment.⁹⁹

b) Justification for direct discrimination

In Norway, as a starting point, neither the GEADA nor WEA permits justification of direct discrimination, neither generally, nor in relation to particular grounds, with the exception of age limits given in laws or regulations (GEADA, Section 9(3)) or genuine and determining occupational requirements (see Section 4.1 below), including employers with an ethos based on religion or belief (see Section 4.2 below). However, the wording of the legal texts

⁹⁵ Norwegian Government (2012) Prop. 88 L (2012-2013) *Diskrimineringslovgivningen* (The Anti-discrimination legislation) p. 85, available in Norwegian at <https://www.regjeringen.no/no/dokumenter/prop-88-l-20122013/id718741/>.

⁹⁶ See Equality Tribunal, case DIN-2018-21, and Frostating Court of Appeal, case LF-2021-35670, described in Chapter 12.2.

⁹⁷ The definitions are not specified in the WEA Chapter 13 but are discussed in its preparatory works, Proposition to Parliament, Ot. Prp. No. 49 (2004-2005) *Om lov om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven)*, Chapter 25.

⁹⁸ Due to the controversies around this case, and the legal complexities, the Equality Tribunal used the power to handle the case through a ‘strengthened Tribunal’: all three administrators and two Tribunal members, instead of only one administrator and two members.

⁹⁹ For example, Equality and Anti-Discrimination Ombud, cases 15/1208 and 14/153, and Equality Tribunal, case DIN-2018-139.

after the 2013 revision created uncertainty in relation to the extent of possible exceptions that were not an issue earlier.¹⁰⁰ This uncertainty is not addressed in the preparatory works to the GEADA.¹⁰¹

Lawful differential treatment is defined in the GEADA, Section 9:

‘Differential treatment does not breach the prohibition in Section 6 if it:

- a) has an objective purpose,
- b) is necessary to achieve the purpose, and
- c) does not have a disproportionate negative impact on the person or persons subject to the differential treatment.

In employment relationships and in connection with the selection and treatment of self-employed persons and hired workers, direct differential treatment on the basis of gender, ethnicity, religion, belief, disability, sexual orientation, gender identity or gender expression is only permitted if the characteristic in question is of decisive significance for the performance of the work or the pursuit of the occupation and the conditions in the first paragraph are met.

Age limits specified in laws or regulations, and favourable pricing based on age, do not breach the prohibition in Section 6.’

The first sub-paragraph thus provides the same justification used for direct and indirect discrimination, whereas the second sub-paragraph is specific to genuine and determining occupational requirements, and the third gives an even wider opening for age limits if they are specified in the laws or regulations.

The Equality Tribunal does not always specify which type of differential treatment it considers as constituting a complaint of concern.¹⁰² Direct differential treatment is sometimes seen as justified for reasons other than a genuine and determining occupational requirement, for example in Equality Tribunal case DIN-2018-69. In this case, the employer wanted a person who had recently finished their education on the basis they would be better able to deal with new technology. This was considered acceptable by the Tribunal.

WEA Section 15-8(2) contains an absolute prohibition against dismissal of employees on sick leave for the first 12 months after taking ill or becoming otherwise disabled. It should be noted, however, that after 12 months this section explicitly allows employers to dismiss a worker with a disability if the dismissal has a legitimate aim in accordance with WEA Section 15-7. This includes legitimate aims for the enterprise; it is, for example, sufficient that there is a reasonable need for reorganisation or downsizing.¹⁰³

¹⁰⁰ Researchers are worried that the former very clear and narrow exceptions for direct discrimination will be undermined by not having clear definitions of direct discrimination in the legal acts themselves, see Strand, Vibeke Blaker (2014), ‘Likestillingsloven 2013 og forenklingssjuss – en trussel mot individvernet?’ *Kvinnerettslig skriftserie/Studies in Women’s Law*, at <http://www.jus.uio.no/ior/forskning/omrader/kvinnerett/publikasjoner/skriftserien/dokumenter/nr-96-vibeke-blaker-strand.pdf>.

¹⁰¹ See the legal preparatory works; Proposition to Parliament, Prop. 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*. Chapter 14.9.4.

¹⁰² See, for example, case DIN-2021-76. Other variations are, for example, case DIN-2020-253, where the Tribunal goes directly to direct differential treatment without any discussion of the facts, which is a very common approach. Case DIN-2020-202 concerned a person who was dismissed due to her disability, but the Tribunal assessed only the lack of individual accommodation, not whether her losing her job constituted direct or indirect discrimination as well. While a breach of the duty to provide individual accommodation was found, the complainant was not awarded any damages or compensation.

¹⁰³ See Supreme Court, [Rt-1989-508](#), and [Rt-1989-508](#).

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

a) Prohibition and definition of indirect discrimination

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

Section 6 of the GEADA prohibits both direct and indirect discrimination. The definition is similar to that of the non-discrimination directives. Section 8 defines indirect discrimination as follows:

“Indirect differential treatment” means any apparently neutral provision, condition, practice, act or omission that results in persons being put in a worse position than others on the basis of factors specified in Section 6, first paragraph.’

Section 13-1(1) of the WEA reads:

‘Direct and indirect discrimination on the basis of political views, membership of a trade union and age is prohibited.’

Indirect discrimination is not defined in the WEA itself, although the legal preparatory works state that the definitions follow the Employment Equality Directive Article (2)(b).¹⁰⁴

b) Justification test for indirect discrimination

The justification for indirect discrimination is found in the GEADA, Section 9, first paragraph. The wording of Section 9 on lawful differential treatment as follows:

‘Differential treatment does not breach the prohibition in Section 6 if it:

- a) has an objective purpose,
- b) is necessary to achieve the purpose, and
- c) does not have a disproportionate negative impact on the person or persons subject to the differential treatment.’

Thus, differential treatment that is necessary in order to achieve a legitimate aim, and which does not involve a disproportionate intervention in relation to the person or persons so treated is not regarded as discrimination. The test used to justify indirect discrimination is derived from the *Bilka* case,¹⁰⁵ and thus is compatible with the origins of the non-discrimination directives. The legal preparatory works point directly to the understanding of the directives.

In the WEA, the test is found in Section 13-3(2):

‘Discrimination that is necessary to the achievement of a just cause, and does not involve disproportionate intervention in relation to the person or persons so treated is not in contravention of the prohibition against indirect discrimination, discrimination on the basis of age or discrimination against an employee who works part-time or on a temporary basis.’

What constitutes a legitimate aim is based on an evaluation of the justification of the aim assessed in each specific case. The action chosen must be relevant, true, necessary and proportionate in relation to the aim in order for indirect discrimination to be justified.

¹⁰⁴ See the legal preparatory works to the WEA; Proposition to Parliament, Ot.prp. No. 104 (2002-2003), Section 8.3.5.4, p. 36. See also, for example, the description of Equality Tribunal Case DIN-2018-48 in section 12.2 below.

¹⁰⁵ See CJEU, judgment of 10 January 2006, *Bilka*, C-170/84, ECLI:EU:C:1986:204.

The legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law.

The preparatory works of the GEADA state that in respect of the definitions of direct and indirect discrimination there are no changes in the way in which the law should be understood.¹⁰⁶ That means that the possibility for differential treatment in working life in particular should still be narrow and limited.¹⁰⁷

In practice, both the courts and the Tribunal often fail to assess whether alternative options exist.¹⁰⁸ Sometimes this seems to stem from a lack of investigation,¹⁰⁹ while occasionally the Tribunal seems not to take all relevant facts into consideration.¹¹⁰ In some areas, the Tribunal appears particularly reluctant to assess the respondent's justification, concluding that differential treatment is justifiable based on a limited or debatable assessment of the facts. Very often, the Tribunal refers simply to the employer's right to organise the workplace.¹¹¹ In employment, a breach was found in only 15 % of cases, compared with an average of 20 % of complaints in all sectors of society. Discrimination was found in only 12 % of the complaints concerning language requirements and in 17 % of the complaints concerning individual accommodation for persons with disabilities. Complaints and court cases concerning the compliance of decisions by the public administration with the GEADA rarely end with a conclusion of discrimination, indicating a similar reluctance to thoroughly assess the issue at hand.¹¹² This includes regulations, and, for court cases, legislation. There are several causes of this situation. First, the Tribunal's use of discrimination law has often been poor since the 2018 reorganisation. In addition, the rule on the burden of proof has been interpreted too strictly in Norwegian law, even though the wording in the GEADA is in line with the directives.¹¹³ In addition, the Tribunal's assessment of the facts tends to be superficial, especially when assessing whether a differential treatment is justified.¹¹⁴

2.3.1 Statistical evidence

a) Legal framework

In Norway, there is legislation regulating the collection of personal data. Statistical evidence is permitted by national law in order to establish indirect discrimination.

The EU General Data Protection Regulation (GDPR)¹¹⁵ was incorporated into Norwegian law in 2018, through a change in the Personal Data Act (PDA) of 14 April 2000, which includes a complete translation of the GDPR. According to Section 9 of the PDA, the collection of personal data revealing the racial ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation are prohibited. In addition to the exceptions mentioned in Section 9, the PDA also allows for the collection of such data

¹⁰⁶ See Proposition to Parliament 81 L (2016/2017) Chapter 12.9.1.

¹⁰⁷ See Proposition to Parliament; Prop. 88 L (2012-2013) p. 87.

¹⁰⁸ See, for example, Equality Tribunal, case DIN-2018-39, described in footnote 122, and Borgarting court of appeal, case LB-2019-53935.

¹⁰⁹ See, for example, Equality Tribunal, case DIN-2020-250.

¹¹⁰ In Tribunal case DIN-2020-102 the minority of the Tribunal did so, but not the majority. In Tribunal case DIN-2018-48 the alternative solution was dismissed by the majority, as described in footnote 179.

¹¹¹ Bauge, M. and Løvdal, L. (2022) 'Access to justice in discrimination cases in Norway', *Scandinavian Studies in Law*, vol. 68, pp. 373-402.

¹¹² Bauge, M. and Løvdal, L. (2022) 'Access to justice in discrimination cases in Norway', *Scandinavian Studies in Law*, vol. 68, pp. 373-402.

¹¹³ Hellum, A. and Strand, V. B. (2022) *Likestillings- og diskrimineringsrett*, Oslo, Gyldendal, Chapter 9.

¹¹⁴ Bauge, M. and Løvdal, L. (2022) 'Access to justice in discrimination cases in Norway', *Scandinavian Studies in Law*, vol. 68, pp. 373-402.

¹¹⁵ Regulation (EU) 2016/679 (General Data Protection Regulation) of 4 May 2016, OJ L 119, pp. 1-88, [EUR-Lex - 32016R0679 - EN - EUR-Lex \(europa.eu\)](#).

when necessary for promoting equality at a workplace, or as part of purely personal or familial activities.¹¹⁶

In Norway, statistical evidence may be admitted under national law in order to establish indirect discrimination, in accordance with the key principles of evidence in Norwegian courts. The key procedural principle in Norwegian civil courts is the free evaluation of evidence by the courts in the course of the case as presented in courts (see section 2.2.1 of this report and Chapter 21 of the Dispute Act (DA) for further details).¹¹⁷ Chapter 25 of the DA also allows for expert witnesses, i.e. 'an expert assessment of factual issues in the case', for whom statistical evidence is particularly relevant.

National law permits the use of statistical evidence to establish indirect discrimination, however, it is not necessary to prove whether indirect discrimination has happened or not, as the assessment that has to be made according to national legislation is whether or not an action or non-action has had a negative result for the individual or the group.¹¹⁸ The use of statistical evidence is however often a practical necessity, as the prohibition on indirect discrimination attempts to protect individuals against a systemic group identification that leads to unintended negative results for the individual or the group. In order to prove indirect discrimination at an individual level, the use of statistical data will often constitute a practical necessity in order to prove that discrimination has occurred. The law does not have a specific provision regarding statistical evidence – it is considered as all other forms of evidence.

There are no specific conditions for statistical evidence to be admissible in court.

b) Practice

In Norway, statistical evidence is used in practice in order to establish indirect discrimination, but its use is not widespread, as there are few discrimination cases brought before ordinary courts.

There is no current debate on ethical or methodology issues on statistical data as evidence in court. This is probably because there are so few court cases concerning discrimination, and in the few cases where statistical data have been used, this has not caused problems or been debated. To the author's knowledge there has not been a discussion on European strategic litigation issues in public discussion forums.

The case law as yet in this area is sparse. There are examples where statistical data was used in a Supreme Court case on age and retirement,¹¹⁹ as well as on gender and work-related pensions.¹²⁰ The significance attributed to this data by the Supreme Court in its judgment was low.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Norway, harassment is prohibited in national law, and explicitly constitutes a form of discrimination. It is defined.

In Norway, harassment explicitly constitutes a form of discrimination (WEA, Section 13-1(2), and GEADA, Chapter 2, *Prohibition against discrimination*). The two acts on anti-discrimination prohibit harassment within the grounds covered by the particular

¹¹⁶ Personal Data Act of 14 April 2000, No. 31, Section 2(2).

¹¹⁷ Official translation at <http://www.ub.uio.no/ujur/ulovdata/lov-20050617-090-eng.pdf>.

¹¹⁸ See the preparatory works to the AAA; Proposition to the *Odelsting*, No. 44 (2007-2008), p. 101.

¹¹⁹ Supreme Court, judgment of 29 June 2011, Rt-2011-964 *Gjensidige*.

¹²⁰ Supreme Court, judgment of 27 November 2003, Rt-2003-1657 *Braathens*.

act, see the WEA (Section 13-1(2)) and the GEADA (Section 13).¹²¹ The full material scope of the directives is covered in the various acts.

The general definitions are similar in the different parts of the legislation: harassment means unwanted acts, omissions or statements that seem or aim to seem offensive, frightening, hostile, degrading or humiliating. The subjective view of the person is an element in determining whether the act is seen to constitute harassment, as well as a more 'objective' standard assessing whether a reasonable person would view the action as 'seeming' offensive. The requirement that the harassment is unwanted is explicit only for sexual harassment (GEADA, Section 13(3)), but should be implied for all types of harassment with a view to the Racial Equality Directive and the Employment Equality Directive.¹²²

The prohibition against harassment covers all protected grounds. It also includes harassment on the basis of a present, past, or possible future belonging to a protected ground or assumed belonging to such for the grounds covered by the GEADA, Section 13(4). Harassment of a person on the basis of this person's relationship with a person with a disability, or other protected ground is also prohibited (GEADA, Section 13(5)). The WEA does not mention anything similar, nor do the preparatory works for the GEADA, so it is doubtful whether the protection of age in employment extends this far.

In addition, it is prohibited to be an accessory to any breach of the prohibition against harassment (GEADA, Section 16).¹²³ The acts all provide a specific duty on employers and the managements of organisations and educational institutions to, within their areas of responsibility, prevent and seek to prevent harassment occurring. The definitions are equivalent to those of the directives.

GEADA, Section 13 (6) also contains a duty for employers and the leaders of organisations and educational institutions to prevent and stop harassment.

Section 185 of the Penal Code¹²⁴ contains criminal law protection against discrimination, and concerns hateful expressions, emphasising specifically that racist expressions with insulting effects are punishable by law. The provisions in the Penal Code are applicable in relation to discrimination because of skin colour or national or ethnic origin, religion or life stance, sexual orientation, disability and gender identity and gender expression.¹²⁵

The legal preparatory works to the prohibition of harassment in the WEA emphasise that the concept of harassment must be construed in accordance with the general concept of

¹²¹ Sexual harassment is covered by the GEADA, but was not enforced by the Equality Tribunal until 1 January 2020, when the Tribunal's mandate was expanded with this specific aim in mind. See Amendment to the Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal, 21 June 2019.

¹²² A. Hellum and V. B. Strand (2022) *Equality and anti-discrimination law (Likestillings- og diskrimineringsrett)*, Oslo, Gyldendal, Chapter 8.3.4.

¹²³ Such a prohibition was previously part of the WEA but was removed; see Proposition to Parliament, Prop. 48 L (2014–2015) *Endringer i arbeidsmiljøloven og allmenngjøringsloven (arbeidstid, aldersgrenser, straff mv.)*.

¹²⁴ See Penal Code of 20 May 2005, No. 28, Section 185 (1). An unofficial translation published at the website for all legislation, lovdata.no, reads: 'A penalty of a fine or imprisonment for a term not exceeding three years shall be applied to any person who with intent or gross negligence publicly makes a discriminatory or hateful statement. «Statement» includes the use of symbols. Any person who in the presence of others, with intent or gross negligence, makes such a statement to a person affected by it, see the second paragraph, is liable to a penalty of a fine or imprisonment for a term not exceeding one year.'

¹²⁵ From 1 January 2021, gender identity and gender expression were included, and the phrasing 'homosexual orientation' was changed to 'sexual orientation'. While this now includes heterosexual persons, the aim was to use a consistent terminology in the anti-discrimination legislation which also includes bisexual persons, who were previously protected only through judicial interpretation. Proposition to Parliament, Prop. 66 L (2019–2020) *Endringer i straffeloven mv. (avvergingsplikt, utenomrettslig tvangsekteskap, diskrimineringsvern, skyting mot politiet mv.)* Chapter 8.5.3.

harassment in the WEA (third paragraph of Section 4-3).¹²⁶ This provision contains a general requirement that workers should not 'be subject to harassment or other improper conduct.' Harassment protection pursuant to Section 4-3 thus also includes harassment related to factors other than the grounds protected by discrimination rules. The provision is part of the requirements of the psychosocial work environment and is a continuation of the now obsolete Working Environment Act (1977), Section 12. Case law regarding the provision related to general harassment (previously WEA Section 12 and current WEA Section 4-3) is thus of relevance for the understanding of the concept of discriminatory harassment.¹²⁷ Harassment according to the GEADA need occur only once if the action is sufficiently grave. It is furthermore not necessary that an imbalance exists between the victim and the perpetrator: harassment may also occur between colleagues at the same level.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Norway, the employer or the employee is liable. This includes both damages for non-pecuniary losses and compensation for economic losses.¹²⁸ As a main rule, the person performing the harassment is liable. However, there are two exceptions: 1) when the person harassing is acting on behalf of the employer¹²⁹ and 2) due diligence of the employer. Whether the liability is shared or only belongs to either the employer or the employee, depends on which rules of liability are applicable, especially regarding the degree of liability. The general rule on liability in discrimination cases is that in 'employment relationships and in connection with an employer's selection and treatment of self-employed persons and hired workers, employer's liability exists irrespective of whether the employer can be blamed' (GEADA, Section 38(2)). In order to determine whether the employer is liable, a key issue is whether the employee was in a position of management of human resources or otherwise had the authority to instruct the person in question.

Until 2019, the judicial interpretation of the preparatory works was that there was strict liability for employers in cases where the employer or someone acting on behalf of the employer had harassed, which is the same rule as for other types of discrimination.¹³⁰ However, the following sentence was added to the GEADA Section 38(2) in 2019 (and came into effect from 1 January 2020):

'In cases concerning harassment and sexual harassment, and in sectors of society other than those specified in the first sentence, liability shall exist if the person responsible can be blamed.'

It is uncertain what degree of liability the employer now has when they themselves or their representatives harass someone.¹³¹

¹²⁶ See Proposition to Parliament, Prop 88 L (2012-2013) *Diskrimineringslovgivning*, p. 162, which refers to the previous preparatory works, in particular Proposition to Parliament, Ot.prp No. 35 (2004-2005) *Om lov om endringer i likestillingsloven mv*, p. 38 on gender equality and Proposition to Parliament, Ot.prp No. 104 (2002-2003) *Om lov om endringer i lov 4. februar 1977 nr. 4 om arbeidervern og arbeidsmiljø mv. (likebehandling i arbeidslivet) m.m.* pp. 34-35) on the WEA.

¹²⁷ See the preparatory works' special notes to the actual provision (Section 13-1) in the Proposition to Parliament, Ot.prp. No. 49 (2004-2005) *Om lov om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven)*.

¹²⁸ Proposition to Parliament, Prop. 88 L (2012-2013) *Diskrimineringslovgivning*, Chapter 14.1.4.

¹²⁹ It should be noted that this was changed as of 1 January 2020, see GEADA Section 38(2), second sentence.

¹³⁰ Proposition to Parliament, Prop. 81 L (2016-2017) Chapter 28.5.2.4.

¹³¹ In the preparatory works to the recent changes in the GEADA giving the Equality Tribunal the authority to make decisions in cases concerning sexual harassment, it is stated that strict liability cannot follow from judicial interpretation, even when the employer performs the harassment. Prop. 63 L (2018-2019) p. 16. However, according to the main preparatory works to the GEADA, there is strict liability for the employer if someone acting on behalf of the employer has performed the harassment. Proposition to Parliament, Prop. 81 L (2016-2017) Chapter 28.5.8.4.

There is, however, a duty of due diligence on the employer¹³² regarding harassment that is performed by other persons at the workplace, which is twofold (GEADA, Section 13 (6)): 1) a duty to prevent harassment in general, and 2) a duty to prevent the continuation of harassment when made aware of the existence of such.¹³³ The liability for the employer thus does not include harassment between colleagues if no blame is attached to the employer.¹³⁴ While there are many cases regarding this issue from the Tribunal, the employer's duty to prevent harassment is from 1 January 2020 exempted from the mandate of the Tribunal in relation to Section 38(1)(a) of the GEADA on awarding compensation or redress for breaches of this duty. It remains to be seen how this change in the GEADA will be interpreted by the Tribunal.

Outside the scope of Section 38 of the GEADA, the liability follows the rules of the Act relating to compensation in certain circumstances:¹³⁵ gross negligence or fault in order to claim damages for injury of a non-pecuniary character, and negligence or more for compensation for economic losses. For the act of being an accessory to harassment or any other type of discrimination to be proved, there has to be negative consequences for the victim and fault on the side of the person who is an accessory to the discrimination.¹³⁶

On this basis, service providers cannot be held directly liable for actions of third parties such as tenants, clients or customers, as long as the service provider has not been directly involved in the incident or instruction, or otherwise been aware of the situation and had the opportunity to act (with reference to the above-mentioned duty to prevent the continuation of harassment).¹³⁷

Trade unions or other general trade/professional associations can be held liable for actions of their members only if the member operates in the name of the union or if key members of the union have been responsible for the instruction

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Norway, instructions to discriminate are explicitly prohibited in national law. Instructions are defined. The definitions are equivalent to those of the directive.

Instructions relating to discrimination or harassment are prohibited (see Section 15 of the GEADA and Section 13-1(2) of the WEA). It is also prohibited to instruct anyone to carry out an act of reprisal. It is furthermore prohibited to be an accessory to instructions to discriminate, that is to assist or support instructions to discriminate. The full material scope of the directives is covered in the various acts.

To consider an action to be an instruction, a relationship of subordination, obedience or dependency must exist between the instructor and the person receiving it.¹³⁸ In a

¹³² The employer's responsibilities to prevent harassment includes persons who are in relation to them similar to employees, such as persons temporarily hired directly or through an agency for performing tasks for the employer. Proposition to Parliament, Prop. 81 L (2016-2017) Chapter 28.5.8.

¹³³ Proposition to Parliament, Prop 63 L (2018-2019) p. 16.

¹³⁴ Proposition to Parliament, Ot.prp. No. 35 (2004-2005), p. 50 and Proposition to Parliament, Prop. 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*, p. 337.

¹³⁵ Act relating to compensation in certain circumstances (*Skadeserstatningsloven*) of 13 June 1969 No. 26.

¹³⁶ Proposition to Parliament, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*, Chapter 21.8.

¹³⁷ In Supreme Court case HR-2020-2476-A, a female industrial technician was awarded damages for injury of a non-pecuniary character of NOK 35 000 (approximately EUR 3 500) after sexual harassment from the two customers. The employer had not appealed the verdict of the court of appeal finding them liable for not stopping the harassment after being made aware of it (Hålogaland court of appeal, case LH2019-135298).

¹³⁸ See the preparatory works to the previous WEA; Proposition to the Parliament, No. 104 (2002-2003) *Om lov om endringer i lov 4. februar 1977 nr. 4 om arbeidervern og arbeidsmiljø mv. (likebehandling i arbeidslivet) m.m.*, Chapter 8.3.5.6.

workplace, it will therefore be a case of instruction if a manager asks a subordinate to discriminate against another employee at the same level as the subordinate. However, if an employee asks another employee to discriminate, this demand will normally not be considered as an instruction in the legal sense, however inappropriate. The instructions must contain a specific order that one or more persons shall be discriminated against. For example, if a manager asks a middle manager to ensure that the unionised employees are assigned to the unpopular shifts this would constitute an illegal instruction. Another example is where a manager at a club instructs gatekeepers that persons with disabilities, wheelchair users or people with a particular skin colour should not be allowed in.

In 2018, the Tribunal had the opportunity to assess a case of instruction to discriminate in a contractual relationship, which it erroneously rejected on the basis of the complainants having no legal standing. The owner of a restaurant required the bidding contractors for hiring a restaurant to employ Scandinavian personnel only, which the contractors saw as an unreasonable and discriminatory requirement. As the bidding contractors were of Scandinavian background, the case was dismissed on the basis of them having no legal standing.¹³⁹

In Norway, instructions do explicitly constitute a form of discrimination.

b) Scope of liability for instructions to discriminate

In Norway, the instructor or the discriminator is liable. Sometimes both are liable, depending on the degree to which they are to blame according to the GEADA or general tort law.

Legal persons/employers are liable for the actions and omissions of their employees according to the specific sanctions imposed in each of the acts as well as by general tort law, with some exceptions for harassment outside their control, as described in Section 2.3.b.

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 persons with disabilities in the area of employment

In Norway, the duty on employers to provide reasonable accommodation is included in the law and is defined.¹⁴⁰

The duty to provide reasonable accommodation for persons with disabilities in employment relationships is specified in Section 22 of the GEADA, while Section 21 does the same for pupils and students in general. It refers to a right of 'individual accommodation', to distinguish it from universal design, and does not mention the word 'reasonable'. The recruitment process is included in the right to individual accommodation.¹⁴¹

The text of Section 22(1) reads:

'Workers and job applicants with disabilities have a right to suitable individual accommodation of the recruitment process, their workplaces and work tasks to ensure that they can obtain or retain a job, have access to training and other skills

¹³⁹ Equality Tribunal, case DIN-2018-21.

¹⁴⁰ Proposition to Parliament, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*, Chapter 23.

¹⁴¹ This was already stated through case law, see Equality Tribunal, case LDN-2015-48, in which a woman with hearing difficulties was not called for a second interview. The employer had not discussed her need for individual accommodation, which was seen as a breach of the duty of individual accommodation. See also Equality Tribunal, cases LDN-2014-56 and LDN-2014-69.

development, and perform and have the opportunity to advance in their work in the same way as other people.’

Any breach of the obligation to ensure individual accommodation is to be regarded as discrimination. GEADA, Section 37, which transposes the Employment Equality Directive Article 10, applies in cases concerning individual accommodation as well as universal design. It should be noted, however, that this rule has been interpreted somewhat erroneously since it was first implemented, demanding more from the complainant to transfer the burden of proof to the respondent. See Chapter 6.3 for more on this issue.

‘Suitable accommodation’: before assessing whether the accommodation constitutes a disproportionate burden for the employer, the law requires an assessment of whether the accommodation is ‘suitable’ accommodation. The specific accommodation measures must be assessed in relation to the individual person with the disability. The wording is intended to show that the assessment of the required accommodation measures needs to be assessed specifically against the situation, the need for the accommodation and the benefit for those who have needs to be accommodated.¹⁴²

‘Undue/disproportionate burden’: The GEADA, Sections 20 to 23, does not define the term ‘reasonable’, and the wording is ‘suitable individual accommodation’. The reasonability of the accommodation is assessed through the application of GEADA, Section 9 on justified differential treatment, together with the assessment of the suitability of the accommodation.

In assessing whether the arrangement involves an undue burden, factors to be assessed include what effect the dismantling of disabling barriers will have, the costs of the actual accommodation and the resources of the enterprise. The cost is a fundamental factor in determining whether the measure should be considered as an undue burden or not. The extent to which public support is available is another factor. The requirements – and expectations – for accommodation imposed on a large and resourceful enterprise are stricter than the requirements imposed on a smaller firm. The same applies in relation to municipalities of different sizes and different economic situations.

What may be regarded as a disproportionate/undue burden must be seen in the context of what an individual accommodation entails. The cost should be viewed not in isolation from the resources of the enterprise, but also in relation to the individual beneficiaries of such accommodation arrangements. Another factor to be taken into consideration is whether others can benefit from the measure. A measure that only marginally improves the situation for one person is more easily perceived as an undue burden if that measure cannot be used for others.

Individual accommodation in both the GEADA and the WEA is framed as an obligation only where the accommodation will not entail a ‘disproportionate burden’. When considering whether the accommodation leads to a disproportionate burden, particular importance is to be attached to the effect of the accommodation on the dismantling of disabling barriers, the necessary costs of the accommodation and the resources involved.¹⁴³ Beyond the assessment of those elements, there is no one test of what constitutes a ‘disproportionate burden’.

It should also be noted that Section 4-6 of the WEA contains provisions on individual accommodation for workers who due to ‘accident, sickness, fatigue or the like’ need such

¹⁴² See Ot.prp. No. 88 L (2012-2013) *Diskrimineringslovgivning*, p. 182, which refers to the previous preparatory works, in particular Ot.prp. No. 44 (2007-2008) *Om lov om forbud mot diskriminering på grunn av nedsatt funksjonsevne (diskriminerings- og tilgjengelighetsloven)*, Chapter 10.6.4 on p. 180 ff, and Chapter 18 p. 263.

¹⁴³ See the preparatory works to the AAA, Proposition to the *Odelsting* No. 44 (2007-2008) pp. 263-265 and to the GEADA, Chapter 23, available at <https://www.regjeringen.no/no/dokumenter/prop.-81-l-20162017/id2547420/sec24>.

accommodation. This section lays out procedural rules for the dialogue between employer and employee, including for mapping out opportunities for reasonable accommodation. In practice, the WEA provisions are used more often than the GEADA in cases that concern individual accommodation, often in conjunction with Section 22 of the GEADA.¹⁴⁴

The right is individual in the GEADA as well as the WEA, so the duty to provide individual accommodation must be considered in relation to each person with a disability. In this assessment, relevant factors are the planned duration of the relationship between the responsible party and the individual person with a disability, as well as the kind of/degree of disability and the timeframe of the accommodation. Other factors that may be used in the legal assessment are to what extent the arena for adaptation is an essential part of that person's life, as well as the benefit for the person with disabilities.¹⁴⁵ There is no explicit rule regarding whether financial assistance from the state should be considered in assessing whether there is a disproportionate burden. However, there is a duty on the employer to investigate what support is available from the welfare authorities, as stated in a 2010 case from the Equality Ombud.¹⁴⁶

b) Case law

Since the reorganisation in 2018, the Tribunal has assessed 21 cases concerning individual accommodation for persons with disabilities in employment. Of these cases, a breach was found in six cases, in most of which the facts were very clear. For example, in case DIN-2021-364, a blind music teacher was not called in for an interview, and the employer had thoroughly explained in writing how this was linked to his disability. In cases DIN-2018-34 and DIN-2018-5, minimum efforts had not been made by the employer, either by not providing a piece of furniture, or by not making a plan for accommodation together with the employee as required by the WEA Section 4-6.

Case DIN-2019-203 concerned a 67-year-old doctor who was partially dismissed because of her age and disability in combination. Since she was old enough to retire, the employer also stopped providing accommodation in the form of working from home for part of the time. The Tribunal found that a presumption of discrimination had been established both regarding age discrimination in respect of the partial dismissal, and regarding the lack of individual accommodation. The employer had not proven that there were sufficiently good reasons why she could not work from home for part of the time. In conclusion, the Tribunal found discrimination on both issues and awarded NOK 60 000 (EUR 6 000) in damages for non-pecuniary losses.

Since 2018, the Tribunal has taken its precedent from case DIN-2018-144, which stated that the Tribunal has limited authority to overrule an employer's decisions. The Tribunal thus rarely provides any assessment of the reasoning behind the lack of accommodation, as, for example, in Equality Tribunal case DIN-2018-206: The position was found to be too difficult for the complainant, since the complainant was unable to perform key tasks for the position, after thorough assessments and a lot of dialogue meetings between employer and employee. Other positions had been tried, so the Tribunal found that adequate efforts had been made. The Tribunal concluded that after such thorough procedures, it could not overrule the conclusions of the employer to dismiss her, even though the accommodation that she asked for had previously been granted.

¹⁴⁴ The Ship Labour Act (SLA) does not provide the same general duty to provide individual accommodation, which constitutes the main difference between the SLA and the WEA regarding discrimination. Ship Labour Act, 21 June 2013, English version available at <https://www.sdir.no/en/shipping/legislation/laws/ship-labour-act/>.

¹⁴⁵ See the preparatory works to the AAA, Proposition to the *Odelsting* No. 44 (2007-2008) pp. 263-265 and to the GEADA, Chapter 23 <https://www.regjeringen.no/no/dokumenter/prop.-81-l-20162017/id2547420/sec24>.

¹⁴⁶ [Equality and Anti-Discrimination Ombud, case 10/175: Manglende tilrettelegging i arbeidslivet for person med nedsatt funksjonsevne.](#)

'In Equality Tribunal case DIN-2018-14, the accommodation was mainly to work less. The lack of accommodation was not seen as discrimination due to its consequences for colleagues and those receiving care.¹⁴⁷

c) Definition of disability and non-discrimination protection

Under Norwegian law, the definition of disability for the purposes of claiming individual accommodation is the same as the one for claiming protection from non-discrimination in general, as a breach of the duty to provide individual accommodation is defined as discrimination.¹⁴⁸

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

In Norway, failure to meet the duty of individual accommodation in employment for persons with disabilities is recognised as a form of discrimination according to the GEADA. Neither the GEADA nor case law specifies what kind of discrimination a failure to meet the duty of individual accommodation should be classified as.

The burden of proof is the same as for any other question of discrimination. The justification defence is related only to the standard of 'reasonable' as described above. The potential sanction in relation to individual accommodation is within working life economic compensation and compensation for non-monetary damage to the person discriminated against. The burden of proof is shifted to the employer/person responsible upon showing that there are reasons to believe that discrimination has occurred, as per Section 37 the GEADA on the burden of proof, which reads:

'Discrimination shall be assumed to have occurred if: circumstances apply that provide grounds for believing that discrimination has occurred, and the person responsible fails to substantiate that discrimination did not in fact occur. This shall apply in the case of alleged breaches of...c) the rules on individual accommodation in Sections 20 to 23.'

The Equality Tribunal may, in simple cases, award compensation for economic losses, damages for injury of a non-pecuniary character in employment situations, or both, after a breach of this duty (Section 38 of the GEADA and EAOA Section 12). The Tribunal may also order the employer to provide individual accommodation and impose fines if they employer does not comply within a set time limit (EAOA Section 11(2)).

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

In Norway, there is a legal duty to provide individual accommodation for persons with disabilities outside the area of employment, but only in selected areas. Section 21 of the GEADA provides the right of individual accommodation in schools and educational institutions, including higher education. This right is given to 'pupils and students with disabilities who attend a school or educational institution' and states that they will 'have a

¹⁴⁷ Available at: <http://diskrimineringsnemnda.no/media/2180/sak-144-2018-anonymisert-uttalelse.pdf>.

¹⁴⁸ As per the legal preparatory works; Proposition to Parliament, Prop. 88 L (2012-2013) *Diskrimineringslovgivningen*, p. 62. In practice, the right to individual accommodation which follows from the education legislation is more important as its complaints procedures is more efficient. See the preparatory works to the GEADA, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*, Chapter 23.2.2. However, while WEA Section 4-6 appears to be in accordance with the definition of disability in the GEADA, the rules on burden of proof in Chapter 13 on discrimination in the WEA do not apply directly to other chapters in the WEA. This is a good reason why it might be useful for lawyers to use the GEADA in addition to WEA Sections 4-3 and 4-6 more often, instead of focusing only on the WEA.

right to suitable individual accommodation of the place of learning, teaching, teaching aids and examinations to ensure equal training and education opportunities'.¹⁴⁹

Similarly, the municipalities provide individual accommodation for children at kindergartens to ensure that children with disabilities obtain equal opportunities for development and activity.

Section 20 of the GEADA provides the right to individual accommodation of municipal services, including kindergartens, healthcare and other care services of lasting character for the individual.

These duties are imposed if they do not cause a 'disproportionate burden'. The definition of 'disproportionate burden' in this context, as contained in legislation and developed in case law does not differ from the definition used with regard to employment. It is rare that the Tribunal finds that there has been a breach of this duty.¹⁵⁰

Outside the areas mentioned above, there are no other duties to provide reasonable accommodation at an individual level, but there is a general duty regarding universal design of websites and physical locations open to the general public according to GEADA, Section 17.¹⁵¹ This includes both the public and private sectors.

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

In Norway, there is a legal duty to provide reasonable accommodation in respect of other grounds in the public and the private sector, but only for pregnant jobseekers, workers, pupils and students (GEADA, Section 23). While the wording of the Section is the same as for persons with disabilities, the preparatory works state that what is seen as an unreasonable burden should be interpreted in a very narrow fashion, in line with case law regarding pregnant workers, pupils and students. For example, there are no openings for employers to claim an unreasonable burden during hiring or firing processes.¹⁵²

There is also a general rule in WEA Section 4-2 (2) b), which states that 'the work shall be organised and arranged with regard for the individual employee's capacity for work, proficiency, age and other conditions'. WEA Section 4-6 imposes duties on employers to accommodate any employee with 'reduced capacity for work as a result of an accident, sickness, fatigue or the like.' This means that reduced ability to work due to age in practice is covered, albeit without the divided burden of proof applicable to WEA Chapter 13 and the GEADA.

There is no duty to provide reasonable accommodation regarding religion or life stance, ethnicity or sexual orientation except what follows from the general rules regarding direct and indirect discrimination. However, a person who is a member of a religious group other than the Church of Norway may have two days off for religious reasons every year, according to the Act relating to religious communities (ARC) Section 18.¹⁵³ According to WEA Section 10-10 (5) it is also possible for an employee to make a written agreement with their employer on having a different working week for religious reasons, i.e. to work

¹⁴⁹ A duty for educational institutions to provide individual accommodation is also found in the Kindergarten Act (*barnehageloven*) Section 19a; the Education Act (*opplæringsloven*) Sections 1-3 and 5-1; and the University Act (*universitets- og høyskoleloven*) Section 4-3(5).

¹⁵⁰ Bauge, M. and Løvdal, L. (2022) 'Access to justice in discrimination cases in Norway' in *Scandinavian Studies in Law*, vol. 68, pp. 373-402, Chapter 4.5.

¹⁵¹ GEADA, Section 17(2), lists a number of issues which should be taken into consideration when assessing whether this duty is disproportionately burdensome, and in practice this duty mainly concerns new buildings.

¹⁵² See the preparatory works to the GEADA, Prop. 81 L (2016–2017), Law on equality and prohibition against discrimination, Chapter 23.9.3.

¹⁵³ Act relating to religious communities of 24 April 2020, no. 31, available in Norwegian at: <https://lovdata.no/lov/2020-04-24-31/§18>.

on Sundays and/or Saturdays in exchange for having other days of the week off based on a religious calendar.

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 Norway, no residence or citizenship/nationality requirements are applied for protection under the relevant national laws transposing the directives. Citizenship/nationality requirements are not a ground for protection, but nationality will often be assessed as ethnicity, if negative value is placed on non-Norwegian citizenship. Those with an irregular status are protected against discrimination in the same way as other immigrants.

This has been specifically raised as an issue in relation to the grounds of protection of the Equality and Anti-Discrimination Act (GEADA): citizenship is not explicitly mentioned as a basis for discrimination under the GEADA and therefore requiring Norwegian citizenship does not fall within the prohibition of direct discrimination in Section 7 of the GEADA. Discrimination based on citizenship is however discussed in the act's preparatory works, which state that discrimination based on citizenship may be subject to the prohibition against indirect discrimination based on ethnicity.¹⁵⁴ It is left to the enforcement agencies to determine the point at which discriminatory treatment based on citizenship comes under the prohibition of indirect discrimination based on ethnicity etc. The Equality Tribunal or the courts must assess each case on its own merits. A case involving the requirement of Norwegian citizenship was assessed by the Equality Tribunal in cases DIN-2019-16 and DIN-2019-43.¹⁵⁵

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

a) Protection against discrimination

In Norway, the personal scope of anti-discrimination law covers natural persons, but not legal persons, for the purpose of protection against discrimination. The prohibition against discrimination (GEADA, Section 6) in Norway is directed towards natural persons only, as 'treatment of a person' is specified in Sections 7 and 8 of the GEADA.

The Tribunal has accepted complaints from legal entities in which it has been clear that the reason for possible discrimination is the discrimination ground relating to the members of the entities – as, for example, in case DIN-2021-554, in which a hotel refused a booking from an organisation for persons with disabilities. It was still the persons who were protected against discrimination, not the organisation. Other complaints from legal entities have been rejected, for example from municipal councils for persons with disabilities,¹⁵⁶ even though the same reasoning might be applied.

b) Liability for discrimination

In Norway, the personal scope of anti-discrimination law covers (certain) natural and/or legal persons for the purpose of liability for discrimination. Legal persons are liable for discrimination under the GEADA (Section 6) and WEA (Section 13-2).

¹⁵⁴ See the preparatory works to the GEADA, Prop. 81 L (2016-2017) Chapter 11.2.3.

¹⁵⁵ The Tribunal found that two Polish citizens had been discriminated against on the basis of national origin under the ground of ethnicity when they were paid significantly less than Norwegian citizens working for the same ship owner. Both cases concerned the same ship owner/employer.

¹⁵⁶ For example, case DIN-2018-411.

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

a) Protection against discrimination

In Norway, the personal scope of anti-discrimination law covers private and public sectors, including public bodies, for the purpose of protection against discrimination (see Section 13-2 of the WEA and Section 2 of the GEADA on factual scope and WEA Section 13-1 and GEADA Section 6 on the prohibition against discrimination).

b) Liability for discrimination

In Norway, the personal scope of anti-discrimination law covers private and public sectors, including public bodies, for the purpose of liability for discrimination (see Section 13-2 of the WEA, and Section 2 of the GEADA on factual scope and WEA Section 13-1 and GEADA Section 6 on the prohibition against discrimination).

3.2 Material scope

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

The scope of discrimination in employment under both acts (WEA Section 13-2 and GEADA Section 29) covers all aspects of employment from the initial advertisement of posts until the termination of the work contract, such as pay and working conditions, training and other forms of skill development, appointment, relocation and promotion.¹⁵⁷

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

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

National law on discrimination covers working conditions including pay and dismissals (see WEA Section 13-2(1) and GEADA Section 29).

A 2020 Court of Appeal case¹⁵⁸ on age limits for doctors working for the Norwegian Search and Rescue Service was the first case to discuss whether the prohibition of age discrimination in the GEADA is applicable in employment cases not covered by the WEA. The WEA does not apply to the Air Force, according to its Section 1-2(2). The Municipal Court had concluded that the service was part of the Air Force, and that the only possible protection against discrimination that might apply was the GEADA, which only covers age outside employment. Since the service is, in practice, not military, the Court of Appeal found that the complainant's employment was within the scope of the WEA Chapter 13

¹⁵⁷ The SLA is more indirect, stating that the rules set out in Chapter 10 of the SLA 'shall apply correspondingly to the company's selection and treatment of persons working on board' (Section 10-2(2)), which in practice also covers self-employed persons working on board ship.

¹⁵⁸ Court of Appeal, case LB-2019-190061. The complainant, A, had to stop working as a doctor for the Norwegian Search and Rescue Service, which is organised under the Norwegian Ministry for Defence, due to the age limit of 60 years. This age limit was set forth in the cooperation agreement between the Rescue Service and the regional health administration in question.

regarding age discrimination, referring to Directive 2000/78. The Court further reasoned that the WEA is constructed differently from the GEADA and that its prohibition against discrimination should be interpreted with a view to other parts of it. On this basis, the Court concluded that types of employment not covered by the WEA regarding age discrimination were not covered by the GEADA either – in this case, positions in the Air Force. This decision highlights some gaps and inconsistencies in the current position.

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

Given the full factual scope of the GEADA (Section 2) as described above, the act covers all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience.¹⁵⁹ The GEADA Section 29 and the WEA Section 13-2(1)(b) regarding age in employment, specifically cover training and other forms of skill development.

3.2.4 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 Norway, national legislation prohibits discrimination in relation to 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 (see GEADA, Sections 2 and 6).

Access to 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, cannot be refused based on ethnicity or disability or the other grounds, since the GEADA covers all sectors of society.

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

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

The GEADA covers 'all sectors of society' according to its Section 2(1), including social protection, implicitly including social security, social housing and healthcare. This means that disability, religion or belief and sexual orientation are also covered, in addition to race/ethnicity, in all these areas. Protection against age discrimination outside employment is covered by the GEADA (Section 6), with the specific exception in Section 2(2), stating that the GEADA 'shall not apply to discrimination on the basis of age and circumstances regulated by Chapter 13 of the Working Environment Act'. In addition, Section 9(3) of the GEADA states that age limits specified in laws or regulations, and favourable pricing based on age, do not breach the prohibition in Section 6.

Most legislation, including that on social security, is neutral in terms of the existing grounds for discrimination. This is a challenge in contexts where, for example, men and women's choices in reality are different because of stereotypical gender roles in society, or where

¹⁵⁹ For practical and historical reasons, Section 29 of the GEADA contains the same list as Section 13-2(1) of the WEA concerning the various aspects of employment covered. This does not, however, limit the general scope of the GEADA in any way.

choices made by the minority population of specific ethnic or religious groups makes it difficult for the individuals of this group to access the protection afforded to the majority population. Thus, in the absence of any proactive measures, the result of these kinds of neutral systems might lead to differences in results because of individual choices. A system of neutral legislation leaves little room for compensating results of stereotypical individual choices based on gender, ethnicity, religion, disability etc. A challenge in terms of addressing discrimination in social security thus becomes an issue of defining what is meant by 'discrimination' and 'equality' in the interaction between anti-discrimination legislation and social security.¹⁶⁰

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

The WEA – age in employment – does not extend to social security, and as such is in line with the exception in Directive 2000/78, Article 3(3). As the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated. It should, however, be noted that discrimination on the basis of age is covered by the GEADA in all sectors other than employment, but with the exception that age limits in laws or regulations shall not be considered to be in breach of the prohibition against discrimination (GEADA, Section 9(3)).

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

In Norway, national legislation prohibits discrimination in social advantages as formulated in the Racial Equality Directive.

Section 2 of the GEADA covers all sectors of society, thus also all forms of social advantages, meaning benefits that may be provided by either public or private actors to people because of their employment or residence status. Discrimination in this area will be unlawful. The WEA covers only the employment relationship (see Section 13-2(3)), and social benefits will therefore for the most part be protected by the GEADA.

Section 6(3) of the GEADA also states that '[a]ge limits specified in laws or regulations, and favourable pricing based on age, do not breach the prohibition in section 6'. This means that age limits, especially those that already exist, do not have to be evaluated with regard to the legitimate aim, necessity and proportionality (GEADA Section 9(1)).

There are a number of benefits in Norway that are needs-based under the social security scheme, for example funeral support, family allowances etc. To the author's knowledge there is little indication that any of these are either discriminatory or have a discriminatory effect.

¹⁶⁰ A decision by Borgarting Court of Appeal in case LB-2019-53935 shows how these issues are not always considered by the Government when it makes changes in the legislation, especially for persons with an immigrant background. The case concerned a type of social benefit for immigrants who are unable to obtain pension rights through work due to age, or refugees with a disability preventing them from working, called '*suppleringsstønad*' - supplementary financial support. The benefit is supposed to ensure an income at the same level as the lowest amount of pension from the state. From 2016, people who had migrated to Norway with the condition of receiving financial support from a relative living in Norway had their right to this benefit revoked, even if they had previously received it. The complainant, A, was born in Russia in 1934, and moved to Norway through family reunification with her daughter in 2008. She obtained the permanent residence permit in 2012, and received supplementary financial support from the same year until January 2016, due to a change in the legislation. This left her dependent on the minimum social security benefit, which is supposed to be a temporary solution only. The Court recognised that this change in the legislation mainly had consequences for women from low-income countries and found the logic behind it questionable. However, since the persons concerned would still receive the minimum social security benefit, the Court still saw the change in legislation as having a legitimate aim, and was necessary and proportionate compared to the negative consequences for those concerned. This decision is an example of how the courts tend to avoid applying discrimination law if they can find an easier path, according to Bauge, M. and Løvdal, L. (2022) 'Access to justice in discrimination cases in Norway', *Scandinavian Studies in Law*, vol. 68, pp. 373-402.

Prohibition of discrimination because of age is limited to discrimination in working life, and does not cover social advantages. Discrimination in relation to social advantages outside working life will thus not be unlawful on the ground of age.

In Norway, the lack of definition of social advantages does not raise problems, given that the protection against discrimination covers any discrimination that may arise.

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

In Norway, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.¹⁶¹

The anti-discrimination legislation on ethnicity, religion or belief, disability and sexual orientation (GEADA, Sections 2 and 6), also covers all aspects of education including all types of schools, both public and private, given the full factual scope of the act as described above. Age is partly covered, as age limits following from laws or regulations are explicitly seen as permissible differential treatment in Section 9(3) of the GEADA.

In Norway, the general approach to education for pupils with disabilities does not give rise to problems.

The general approach to education for children with disabilities in Norway attempts to handle the needs of children with disabilities within the mainstream public education system, but also has a network of segregated 'special' education for those children unable to benefit from a more 'mainstream' approach. The downside to this solution is twofold: first, there is a lack of universal design in most schools,¹⁶² and secondly, there is a lack of knowledge at the level of individual schools.

All children have a right to free education in Norway, as stated in the Education Act.¹⁶³ Children have the right to go to school in the community where they live (Section 8-1). An exception is made for deaf students with sign language as their first language, as they are given the right to special instruction and education, under Section 2-6. The access to education for this group of children suffered during the COVID-19 lockdowns.¹⁶⁴

The school has a general duty to adapt all education and instruction for each student, depending on the individual's abilities and aptitudes. If this special adaptation is not enough and does not give each individual pupil sufficient educational training, the pupil will be entitled to special education (Section 5-1).

The challenge in Norway is practical aspects related to giving children with disabilities an equal education. Despite well-developed legislation in the field of education, the practical implementation is not always optimal for children with disabilities. This is partly because well-intended administrative decisions are not always complied with, and partly because

¹⁶¹ Migrant minors with residency rights in Norway have a right to enrol in the Norwegian educational system. Adult migrants with a residence permit, who do not have basic primary education, are entitled to enrol in the Norwegian primary school system free of charge and receive a monthly allowance/ subsidy from the welfare system during primary education.

¹⁶² The anti-discrimination and equality unit of the Directorate for Children, Youth and Family Affairs commissioned a socioeconomic analysis of universal design of primary and secondary schools, which was published in 2018: Bufdir and Oslo Economics (2018) *Samfunnsøkonomisk analyse av universelt utformet grunnskole*, available in Norwegian at https://www.bufdir.no/globalassets/global/Samfunnsokonomisk_analyse_av_universelt_utformet_grunnskole_i_2030.pdf.

¹⁶³ Act on primary and secondary education of 17 July 1998 No. 61, see <http://www.ub.uio.no/ujur/ulovdata/lov-19980717-061-eng.pdf>.

¹⁶⁴ According to their parents. See Caspersen, J. (2021) *Håndtering og konsekvenser av koronapandemien i grunnskolen* (The response to and consequences of the COVID-19 pandemic in primary education), Oslo, the Directorate for Education (Udir). Available at: [Håndtering og konsekvenser av koronapandemien i grunnskolen \(udir.no\)](https://www.udir.no/handtering-og-konsekvenser-av-koronapandemien-i-grunnskolen).

of a lack of necessary resources and qualified personnel.¹⁶⁵ The actual practice in schools allowing full or part segregation of children with disabilities from the other students is being noted as an area of concern in the shadow report of civil society/persons with disabilities organisations to the UNCRPD committee.¹⁶⁶

a) Trends and patterns regarding Roma pupils

In Norway, there are no specific patterns existing in education regarding Roma pupils, such as segregation. There is no segregated schooling for Roma children, as they are registered in the school district to go to school where their registered address is. There is however a scheme enabling web-based education (long-distance learning) for Roma students to enable them to study while travelling with their families during the school year.

There are fewer than 1 000 Norwegian Roma, most of whom live in Oslo. The authorities have worked proactively in this field for more than a decade.¹⁶⁷ The municipal action plan to improve the situation of the Roma in Oslo includes elements related to schooling, both specific education in Norwegian as well as mother-language training according to Section 2-8 of the Education Act and Section 3-5 of the Private Education Act. A key feature is the hiring and funding of Roma persons to act as coordinators between families, schools and other municipal services. These measures are funded by the Ministry of Local Government and Regional Development, and have been expanded twice, in 2016 and 2019, through, for example, the hiring of more guides.¹⁶⁸ These guides engage in close cooperation with one of the two main Roma NGOs, Romano Kher. The focus has been on the education of children, not adults.¹⁶⁹

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

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

The anti-discrimination legislation on ethnicity, religion or belief, disability and sexual orientation also covers access to and supply of goods and services, given the full factual scope of these acts as described above (see GEADA, Sections 2 and 6). Age outside employment is also covered by the general prohibition in the GEADA, with the specific exception in Section 9(3) that age limits specified in laws or regulations, and favourable pricing based on age, are not discriminatory.

The first court case in which a provider of goods and services was penalised in accordance with the Penal Code, Section 186 on discriminatory services because of religion, was

¹⁶⁵ See Wendelborg, C. og Tøssebro, J. (2010), 'Marginalisation processes in inclusive education in Norway – a longitudinal study of classroom participation', *Disability and Society*, 25 (6), 701-714. See also a number of reports in Norwegian: Norwegian Federation of Organisations of Disabled People (FFO) (2008), 'Rett til spesialundervisning i praksis? En rapport om spesialundervisning i grunnskolen og videregående skole', at http://ffo.no/globalassets/rapporter/rapport_spesialundervisning.pdf.

¹⁶⁶ See Civil Society Coalition Norway (2019) *Alternative Report to the Committee for the Rights of Persons with Disabilities*, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fNOR%2f33866&Lang=en.

¹⁶⁷ See (in Norwegian) <https://www.regjeringen.no/no/dokumenter/Handlingsplan-for-a-bedre-levekarene-for-rom-i-Oslo/id594315/>. An evaluation of the action plan was carried out in 2014; see Tyldum, G. and Horgen Friberg J. (2014), 'Et skritt på veien', Fafo-rapport no. 50:2014, at <http://www.fafo.no/index.php/nb/zoo-publikasjoner/fafo-rapporter/item/et-skritt-pa-veien>. A new action plan had not yet been drafted as of March 2021.

¹⁶⁸ White paper to the Parliament (2020), Melding til Stortinget. Meld.St. 12 (2020-2021), 'National Minorities in Norway. A comprehensive policy' (*Nasjonale Minoriteter i Norge. En helhetlig politikk.*), Chapter 4.3.1.3.

¹⁶⁹ White paper to the Parliament (2020), Melding til Stortinget. Meld.St. 12 (2020-2021), 'National Minorities in Norway. A comprehensive policy', (*Nasjonale Minoriteter i Norge. En helhetlig politikk.*), Chapter 4.3.1.3.

assessed by the courts in 2016-2017, in which the service provider was issued a small fine for a case involving religious clothing (hijab).¹⁷⁰

a) Distinction between goods and services available publicly or privately

In Norway, national law distinguishes between goods and services available to the public (e.g. in shops, restaurants and banks) and those only available privately (e.g. those restricted to members of a private association), but, since 2018, only with regard to the mandate of the Equality Tribunal.

The Act on the Equality and Anti-Discrimination Ombud and the Equality Tribunal (EAOA) states that the Equality Tribunal 'shall not enforce the prohibition against discrimination in family life and other purely personal circumstances pursuant to the Equality and Anti-Discrimination Act' (Section 7(2)).

Of a total of 2 479 inquiries to the Ombud in 2021, 266 (11 %) were related to goods and services. Of a total of 410 cases assessed by the Equality Tribunal in 2021, 73 concerned goods and services.¹⁷¹

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

In Norway, national legislation prohibits discrimination in housing as formulated in the Racial Equality Directive.

In Norway, Section 3(1)h of Directive 2000/43 has been implemented by including specific provisions in four different acts on housing referring to the GEADA: the Tenancy Act (*husleieloven*) Section 1-8, the Housing Cooperative Act (*burettslagslova*) Section 1-5, the Property Ownership Act (*eierseksjonsloven*) Section 3a and the Act relating to housing cooperatives (*bustadbyggjelagslova*) Section 1-4. Through these acts, discrimination based on age, gender, ethnicity, religion or belief, sexual orientation or disability is prohibited. Those provisions emphasise the point that the GEADA prohibits against discrimination in all these parts of the housing sector.

The prohibition against discrimination according to the housing acts does not include selling a dwelling, that is, the relationship between the vendor and the buyer. The selling of dwellings is covered by the GEADA directly.

No cases regarding housing discrimination have yet been taken to court, but the Equality Tribunal has made decisions in 36 complaints concerning housing since 2018. A breach of the GEADA was found in eight of these cases, and a partial breach in two of them.¹⁷² A total of 19 of these cases concerned disability and five concerned ethnicity, with the remainder involving a variety of grounds.

¹⁷⁰ Jæren district court, *Public prosecutor v. A*, case TJARE-2016-96260, judgment of 9 September 2016. In this case, a hairdresser had refused a hijab-dressed woman her services. What was said in the situation is disputed, but the parties agree that two hijab-clad young women came to the hairdresser's salon. As they entered the hair salon, they asked the price of a hair colouring. The hairdresser said either: 'I do not take on people like you, go to another hairdresser' or 'Get out, I do not want to touch someone like you'. The women then walked away and reported the incident to the police, who fined the hairdresser NOK 8 000 (EUR 963). As the hairdresser refused to pay the fine, the case was taken to court by the public prosecutor. The hairdresser was sentenced to pay a fine of NOK 10 000 (approx. EUR 1 250) and NOK 5 000 (EUR 500) in legal costs to the state for refusing a hijab-clad woman access to her store, as this was found to constitute discrimination on the ground of religion. The case was appealed to the Gulating court of appeal, which, in judgment LG-2016-164427 sentenced the hairdresser to a fine of NOK 7 000 (EUR 900). An appeal to the Supreme Court was rejected, see case HR-2017-534-U.

¹⁷¹ According to an email of 21 February 2022 to the author from the Equality Ombud, and the website of the Equality Tribunal: <http://www.diskrimineringsnemnda.no/klagesaker-og-statistikk/søkstatistikk>

¹⁷² Cases which were dismissed for procedural reasons, or in which no decision was made due to, for example, no follow-up from the complainant, are not included.

In cases concerning housing, the Tribunal may only issue orders/injunctions or award compensation for economic losses. This means that in some cases, where there are no economic losses, and there is no order to give, there are no effective remedies even in cases of discrimination. There is also a lack of follow-up of cases to ensure that decisions are complied with.¹⁷³ Since there is no free legal aid for cases of discrimination, and as a rule not in cases concerning housing, access to justice is difficult to achieve. This would, for example, be the case if a person was refused a rental contract on the basis of a protected ground and could not prove any direct economic loss.

Regulations have been approved under the Act on Planning and Building¹⁷⁴ regarding housing accessible to persons with disabilities and elderly people.

a) Trends and patterns regarding housing segregation for Roma

In Norway, there are no known patterns of housing segregation and discrimination against the Norwegian Roma. In her 2018 report to the ICERD committee, the Ombud states: 'There is insufficient documentation about the population's attitudes to the other four national minorities in Norway other than Jews: the Roma, Romani people, Kvens, and Forest Finns.'¹⁷⁵ In a 2015 study on discrimination against various national minorities and immigrants in Norway, 'Roma continue to report discrimination, including in connection with housing.'¹⁷⁶ In a white paper on national minorities from 2020, the Government commits to investigating discrimination issues for Roma concerning housing.¹⁷⁷

In an Equality Tribunal case, a housing cooperative refused to consent to an apartment in the cooperative being rented to A, a person of Roma background.¹⁷⁸ The person who wanted to let the apartment had said that they had wanted him as tenant, but that they could not after receiving a text message from the head of the board of the cooperative, which stated that the board would not consent to 'gypsies' as tenants. The board was made aware of the prohibition against discrimination by the Roma NGO, Romtiltaket, and apologised for their message. The apartment was then let to A's sister. The Equality Tribunal consider this constituted discrimination on the basis of ethnicity.

¹⁷³ Winterstø, C. (2022) 'Det norske lavterskeltilbudet i diskrimineringsaker - En kritisk rettsdogmatisk og rettssosiologisk analyse i kjølvannet av 2017- reformen', in *Kvinnerettslig* skriftserie no. 110.

¹⁷⁴ Act relating to planning and the processing of building application of 27 June 2008 No. 71, at (translation date as of January 2010) <https://www.regjeringen.no/en/dokumenter/planning-building-act/id570450/>.

¹⁷⁵ Norwegian Equality and Anti-discrimination Ombud (2018) *ICERD 2018: the Ombud's Report to the UN Committee on the Elimination of Racial Discrimination – a supplement to Norway's 23rd/24th Periodic Report*, Chapter 2.1.4. Available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NOR/INT_CERD_IFN_NOR_32892_E.pdf.

¹⁷⁶ Midtbøen, A. and Lidén, H. (2015) *Diskriminering av samer, nasjonale minoriteter og innvandrere i Norge. En kunnskapsgjennomgang* (Discrimination against the Sámi, national minorities and immigrants in Norway: A knowledge review) Norwegian Institute for Social Research, Report 2015:01.

¹⁷⁷ Norwegian Government (2021), *Melding til Stortinget. Meld.St. 12 (2020-2021) Nasjonale Minoriteter i Norge. En helhetlig politikk.* (White paper to the Parliament, Meld.St. 12, National Minorities in Norway. A comprehensive policy) Chapter 4.1.4.

¹⁷⁸ Equality Tribunal, case LDN-2014-94.

4 EXCEPTIONS

As the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated in national law as such.

4.1 Genuine and determining occupational requirements (Article 4)

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

There is a general exception in Section 9(2) of the GEADA for genuine and determining occupational requirements for all protected grounds, including disability, which is in line with Section 4(1) of Directive 2000/78. Age discrimination within the employment sector is prohibited through the WEA, which does not contain the same reference to genuine and determining occupational requirements.

While the GEADA Section 9(2) states explicitly that direct differential treatment is allowed only in respect of genuine and determining occupational requirements, the Tribunal does not always differentiate between direct and indirect differential treatment before it assesses whether the differential treatment is justified or is inconsistent with what it sees as direct differential treatment, as described in Section 2.2.a). This has an impact on what is seen as genuine and determining occupational requirements in practice, for example in an Equality Tribunal case regarding the refusal to shake hands with women on the basis of religious convictions.¹⁷⁹

In general, the Tribunal tends to defer to the employer's judgement on whether specific levels of knowledge of Norwegian are genuine and determining occupational requirements in any given situation. For example, in case DIN-2019-32, a nurse who had lived in Norway since 2001 and had received her education here was required to pass a test of her Norwegian skills when applying for a position. This was direct differential treatment since the only basis for this requirement was her ethnicity. The Tribunal found that the requirement to pass the test was both legitimate and proportionate, on the basis that the employer is the one who should determine the language level that is required for any given position. The Equality and Anti-Discrimination Ombud later criticised the Tribunal for not looking into why there had been no individual assessment in this situation, and why no reason had been given as to why no such assessment had been done.¹⁸⁰

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

In Norway, national law provides for an exception for employers with an ethos based on religion or belief, which is not specific in the revised current legal text, but follows from the legal preparatory works.¹⁸¹

¹⁷⁹ Equality Tribunal, DIN-2018-48. A was temporarily employed as an assistant at a school. From the beginning he had made it clear that he did not shake hands with women on the basis of his religious convictions. His contract was not renewed due to this refusal. A majority of the members of the Tribunal interpreted the school's actions as indirect differential treatment and concluded that it was necessary to demand that he shook hands with women. A minority of the Tribunal saw the school's dismissal as direct differential treatment, and unjustifiable. None of the Tribunal saw the possibility of not shaking hands with anyone as a solution.

¹⁸⁰ See the Ombud's report on developments in discrimination law in 2020: *Likestillings- og diskrimineringsombudet (2021) Diskrimineringsretten 2020. Rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis*, p. 32. Available in Norwegian at [Diskrimineringsretten 2020 : rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis \(ldo.no\)](https://www.likel.no/rettsutvikling-pa-likestillings-og-diskrimineringsfeltet-med-gjennomgang-av-relevante-lovendringer-forvaltnings-og-rettspraksis).

¹⁸¹ See the legal preparatory works; Proposition to Parliament, Prop 79 (2008-2009) Ot.prp. nr. 79 (2008-2009) *Om lov om endringer i arbeidsmiljøloven, likestillingsloven, diskrimineringsombudsloven og diskriminerings- og tilgjengelighetsloven (Homofile og kvinner i trossamfunn m.m.)*, Chapter 6.1.3.3.

Religious organisations have the right to set their own teachings, religious rituals, religious education and choice of religious leaders and this would still be accepted as a part of lawful differential treatment, see Section 9 of the GEADA.^{182 183}

In working life, as a rule, exceptions for employers with an ethos based on religion or belief are not accepted. However, employers with an ethos based on religion or belief may require that employees follow this religion or belief, provided that this is a genuine and determining occupational requirement in line with the general exception to the act. This would be the case for religious/confessional positions, under Section 30(2) of the GEADA.

The scope of this exception is specified in relation to the advertisements of such positions, as it is stated that employers may ask information regarding the applicant's stance on religious or cultural issues if the nature of the position so requires, or if it is part of the purpose of the enterprise concerned to promote specific religious or cultural views and the stance of the employee will be significant for the accomplishment of the said purpose (GEADA, Section 30(2)). It follows from the Church Act that, as an employer, the Church of Norway has the right to require that its employees are members of the church for confessional/ religious positions (see Section 29 of the Church Act).¹⁸⁴

A comprehensive white paper¹⁸⁵ was published in September 2016 regarding the consequences of a conscience-based refusal by employees to carry out tasks in their work that are contrary to their beliefs, and the question of reservations on the basis of religious convictions at the workplace was also addressed in the preparatory works to the Act on religious communities, which entered into force on 1 January 2021.¹⁸⁶ The rule is that if you accept a position, you accept that you will perform all the tasks required in this position. Another rule is that a refusal to accept a job for religious reasons means forfeiting the right to social benefits due to unemployment. However, some convictions are so deep that it would be unreasonable not to make exceptions. No general rule has been recommended regarding the right to reservation on the basis of deeply felt religious or non-religious convictions, although the paper recognised the need for legislation in particular areas. For example, under the current Abortion Act, Section 14 states that when organising the hospital service 'weight shall be given to health personnel who want to be exempt from these services for conscientious rights'. A similar statement of principle is made in the Act on ritual circumcision of boys (Section 4). The preparatory works to the new Act on religious communities refer to the GEADA as the relevant legislation to guide the solution in individual cases,¹⁸⁷ and that three issues should receive particular attention in determining such cases: 1) the depth of the conviction; 2) whether a reservation can be

¹⁸² See the legal preparatory works; Proposition to Parliament, Prop. 88 L (2012-2013) *Diskrimineringslovgivning*, Chapter 12.4.2.2, p. 88 and Proposition to Parliament, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)* Chapter 14.2.5, pp. 120-121.

¹⁸³ It should be noted that on 1 January 2021, a new Act relating to religious communities of 24 April 2020 no. 31 entered into force, which provided for the withdrawal of financial support from the Norwegian state to religious communities if they do not comply with the anti-discrimination legislation and the rights of children etc. The religious communities also have to report on differential treatment on the basis of all grounds, including sexual orientation and gender, in order to receive funding. Emphasis is put on dialogue and training, and funding will not be automatically removed if reporting etc. is lacking.

¹⁸⁴ Church Act of 7 June 1996, No. 31.

¹⁸⁵ Norwegian Government (2016) *Samvittighetsfrihet i arbeidslivet* (Freedom of conscience in working life - white paper), NOU 2016:13, available (in Norwegian) at <https://www.regjeringen.no/no/aktuelt/samvittighetsutvalget-overleverte-utredning-om-samvittighetsfrihet-i-arbeidslivet/id2510546/>.

¹⁸⁶ Proposition to Parliament, Prop 130 L (2018-2019) *Lov om tros- og livssynssamfunn (trossamfunnsloven)*, Chapter 9.3, available in Norwegian at [Prop. 130 L \(2018-2019\) \(regjeringen.no\)](https://www.regjeringen.no/no/prop130L20182019/lov-om-tros-og-livssynssamfunn/id2510546/).

¹⁸⁷ Proposition to Parliament, Prop 130 L (2018-2019) *Lov om tros- og livssynssamfunn (trossamfunnsloven)*, Chapter 9.3.4.

made without any consequences for third parties,¹⁸⁸ and 3) whether it can be made without unreasonable consequences for colleagues and the employer.¹⁸⁹

As the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated in national law as such.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Norway, there is a specific provision relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination in Section 30(3) of the GEADA in the context of employment. The first paragraph in Section 30 prohibits employers from asking about religion or life stance, or sexual orientation, gender identity or gender expression. According to Section 30(3),

‘the collection of information on an applicant’s living arrangements, religion or beliefs is permitted if the purpose of the undertaking is to promote particular beliefs or religious views and the worker’s position will be important for the achievement of the purpose. If such information will be requested, this must be stated in the announcement of the position.’

To some degree, differential treatment on the basis of same-sex marriage or cohabitation, as well as religion or life stance, is allowed. The distinction between sexual orientation and same-sex living arrangements relates to the protection against discrimination on the basis of sexual orientation in religious organisations: no differential treatment is allowed on the basis of sexual orientation alone, but is permitted to some degree when it comes to actually living with another person of the same sex; see GEADA, Section 30(3).

For general employment in positions in religious organisations that have no bearing on the organisation itself, it is not allowed either to ask or emphasise religious affiliation, gender or sexual orientation. This is the case for positions such as caretakers or cleaners in churches/religious organisations. This approach has been confirmed in several cases brought before the Equality Ombud¹⁹⁰ and the Equality Tribunal, but the issue has not been brought before Norwegian courts.

There is case law from the Equality Ombud, some of which provided the basis for its handbook on religion at work, which devotes several pages to religious groups and to what extent they are allowed to differentiate on the basis of gender and sexual orientation.¹⁹¹

In Equality Tribunal case LDN-2013-29, a municipal church council was found to have breached the prohibition against harassment on the basis of sexual orientation. They had recently hired a woman who was married to another woman for a post in which she was responsible for faith education in the parish. This created a lot of debate in the parish, and during their annual meeting, where any member could attend, her choice of living arrangements was under formal debate. This was not a general discussion of sexual

¹⁸⁸ This includes discrimination issues concerning other grounds, for example gender and sexual orientation, as well as the dignity of the person concerned. See Norwegian Government (2016) *Samvittighetsfrihet i arbeidslivet* (Freedom of conscience in working life - white paper), NOU 2016:13, chapter 9.4.1. Available (in Norwegian) at <https://www.regjeringen.no/no/aktuelt/samvittighetsutvalget-overleverte-utredning-om-samvittighetsfrihet-i-arbeidslivet/id2510546/>.

¹⁸⁹ Proposition to Parliament, Prop 130 L (2018-2019) *Lov om tros- og livssynssamfunn (trossamfunnsloven)*, Chapter 9.3.4.

¹⁹⁰ See Equality and Anti-Discrimination Ombud, case 08/1023 on a cleaner in an evangelical Lutheran church (not accepted), case 10/779 on a gymnastics teacher in a religious (Christian/ Lutheran) boarding school (accepted), and case 10/761 on teachers of Spanish/maths/computer science in a private Christian (Lutheran) high school (accepted).

¹⁹¹ See Equality Ombud (2016) *Religion and Beliefs in the Workplace*, chapter 12, available at <http://www.ido.no/nyheter-og-faq/brosjyrer-og-publikasjoner/brosjyrer/Religion-og-arbeid/>.

orientation, but was a discussion of her particular life choices and sexual orientation. She had been told before the meeting that her living arrangements, and thereby also her sexual orientation would be discussed during the meeting to which her response had been that it was unacceptable to discuss such things in this type of meeting. The church council was partly responsible for her as an employer and the participants at the meetings were people who she would have to meet when performing the work of the council, so it had a duty to actively prevent such demeaning treatment of one of its employees.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19 Directive 2000/78)

In Norway, national legislation provides for an exception for the armed forces in relation to age discrimination (Section 3(4), Directive 2000/78). Norwegian nationality is also required.¹⁹²

National law provides an exception for the armed forces in relation to age discrimination as the Armed Forces Act, Section 44(2) states that 'Military personnel are exempt from the prohibition on age discrimination according to WEA, Section 13-1.'¹⁹³ In the legal preparatory works to the WEA, it was stated that:

'The directive gives an opportunity for national legislation to provide for an exception for the armed forces in relation to age or disability discrimination. This gives an opportunity to, but not a duty to except the armed forces. The context of directive 3 no 3 and 4 is not explicitly included in the legislative proposal. The reason for this is that these provisions contain rules that are not a natural part of the provisions of the WEA.'¹⁹⁴

In Norway, the scope of the exception is limited to safeguarding the combat effectiveness of the armed forces. According to the Armed Forces Act, Section 44(2), military employees are exempt from the prohibition against discrimination on the basis of age in WEA Section 13-1. According to the preparatory works, this only means officers in the armed forces.¹⁹⁵

In Norway, the scope of the exception does not extend to other non-combat staff, such as civilians employed in administrative positions in the army. Court of Appeal case LB-2019-190061¹⁹⁶ concerned a doctor working for the Norwegian Search and Rescue Service (organised as squadron 330 of the armed forces), and whether the age limit of 60 years for such doctors was valid. His employment was not seen as part of the exemption for the armed forces by the Court of Appeal, contrary to the decision by the municipal court,¹⁹⁷ since this is a general emergency search and rescue service even though it is organised under the armed forces. The court also stated that when differential treatment on the basis of age in employment is not prohibited by the WEA, it is also not covered by the prohibition against age discrimination in the GEADA. The WEA Section 1-2 (2) states that military aviation, which is within the scope of the Aviation Act,¹⁹⁸ is exempted from the scope of the WEA altogether. The fact that employment discrimination on most grounds is regulated by the GEADA, while the other parts of the WEA may be applicable, was not

¹⁹² Armed Forces Act of 12 August 2016, No. 7, Section 44(3). The Ministry of Defence may, according to Section 44(7), make regulations providing exceptions to this rule. This has not been done as of May 2021.

¹⁹³ Armed Forces Act, 12 August 2016, Section 44(2).

¹⁹⁴ See the preparatory works to the previous WEA on equality in employment, Proposition to the Parliament, Ot.prp. no. 104 (2002-2003) *Om lov om endringer i lov 4. februar 1977 nr. 4 om arbeidervern og arbeidsmiljø mv. (likebehandling i arbeidslivet) m.m.*, Section 8.1.2.

¹⁹⁵ Proposition to Parliament, Prop. 102 L (2015-2016) *Lov om verneplikt og tjeneste i Forsvaret m.m. (forsvarsloven)*, Chapter 10.1.1.

¹⁹⁶ See section 12.2 below for more information about the case.

¹⁹⁷ Oslo Municipal Court, case TOSLO-2019-69527.

¹⁹⁸ The Act relating to aviation of 11 June 1993, No. 101, available in Norwegian at [Lov om luftfart \(luftfartsloven\) - Lovdata](#), and in English at [Act no. 0101 of 11 June 1993 relating to Aviation \(Aviation Act\) - regjeringen.no](#).

taken into consideration. The consequence of this ruling appears to be that there is a gap in the anti-discrimination legislation, where employment in military aviation is not covered by any of the acts prohibiting discrimination on the basis of age. This is only the case for personnel who perform military duties, and not, for example, doctors or administrative personnel.

The GEADA does not contain a specific exception for the armed forces regarding any grounds of discrimination, nor is this addressed in the legal preparatory works.

The question of disability discrimination in the armed forces has never been tried before the courts, although an attempt to do so was made by an association for people with ADHD.¹⁹⁹ This was not successful, as current recruits with ADHD are not given an individual assessment for being able to enter military service,²⁰⁰ but are categorised as being unfit for war-time service by virtue of their diagnosis. The Equality and Anti-Discrimination Ombud took this issue to the Equality Tribunal in 2019, but no decision was made since the armed forces ceded the point that the rejection of persons diagnosed with ADHD without any individual assessment was discriminatory. There is still an ongoing process, which the Ombud is monitoring.²⁰¹ The Ministry of Defence has given the armed forces a deadline on 15 February 2022 to make suggestions for how they can undertake individual assessments for persons with ADHD.²⁰²

As the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated in national law as such.

4.4 Nationality discrimination (Article 3(2))

As the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated as such in relation to the directives.

a) Discrimination on the ground of nationality

In Norway, national law does not include exceptions relating to difference of treatment based on nationality.

In Norway, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

Nationality, in the sense of citizenship, is not included in the definitions of discrimination grounds of the GEADA.²⁰³

¹⁹⁹ The association ADHD Norway initiated a case against the state/the Equality Tribunal before the Oslo City court, claiming that the Tribunal's decision in case LDN-2011-25 on the assessment of the introduction course for military recruits in the armed forces was invalid. As the introduction scheme was marginally changed after the decision of the Tribunal, the appellate court in Case LB-2013-142603 rejected the case, as it found that the decision of the Tribunal was not a live controversy. The dispute was by verdict rejected from court assessment based on a lack of a genuine need to have the case determined, as per the RDA Section 1-3. This verdict was appealed to the Supreme Court, which, in case Rt. 2014-480, found that the Tribunal did not have a mandate to make a decision in the case, and that the Tribunal – erroneously – had made a binding decision where it should have issued an opinion. It is not possible to refer an opinion to the courts, only decisions.

²⁰⁰ This applies only to military personnel, not civilians working for the armed forces.

²⁰¹ Letter of 16 February 2022 from the Equality and Anti-Discrimination Ombud to the author.

²⁰² Equality Tribunal, DIN-2019-13, Letter of 10 December 2021 from the Ministry of Defence to the armed forces, ref. no. 2019/577-51/FD V 4/ART.

²⁰³ See the legal preparatory works; Proposition to Parliament, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*, Chapter 11.2.3.3 p. 82.

As explained above on the definition of ethnicity, the legal preparatory works make it clear that 'national origin', as grounds for discrimination, is closely associated with the term ethnicity, and as such, nationality as a ground is protected under ethnicity. Statelessness is also covered.²⁰⁴

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

National law, under Section 6 of the GEADA protects 'national origin' as one of the interpretations of the concept 'ethnicity'. Nationality – other than Norwegian – is in reality thus a protected ground through judicial interpretation, within the context of 'ethnicity' as the protected ground. See, for example, Equality Tribunal cases DIN-2019-16 and DIN-2019-43.²⁰⁵

Similarly, people who lack a nationality – the stateless – can also have their case heard. The Equality Ombud assessed the question of indirect discrimination against a stateless employee on the basis of ethnicity.²⁰⁶ As the employee was not entitled to a Norwegian personal id-number, he was refused a permanent access card for working in a business leasing employees to other employers, thus he was fired. The employer (the leasing company) claimed that the dismissal/ rejection was based on the fact that the employee as an asylum-seeker did not have a personal id-number, and thus could not be registered in the internal tax and salary systems of the firm. The Ombud considered that the requirement to have a personal id-number/ social security number was an apparently neutral rule. Nevertheless, the lack of a personal id-number led to the person being put in a worse position than others. There was a clear connection between his lack of personal identity number and his national origin. The company later changed its practice so that people who lack a personal id-number/ social security number, but hold a DUF number (a registration number issued by the immigration board) and work permit can take up employment in the company.

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

In Norway, there are no specific exceptions in relation to disability and health and safety (Section 7(2), Directive 2000/78), other than the general justifications in relation to direct and indirect discrimination as described above (Sections 2.2.b and 2.3.b).

As the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated as such.

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

4.6.1 Direct discrimination

In Norway, national law provides for justifications for direct discrimination on the ground of age, under Section 13-3(1) of the WEA and Section 9(3) of the GEADA.

²⁰⁴ See the Equality Ombud's decision in case 09/892 of 3 May 2012. In its decision in case LDN-2015-28/, the Equality Tribunal found that demanding a Norwegian or Swedish criminal record check from 18 years of age for a job application to a security company constituted indirect discrimination because of nationality in breach of Section 6 of the ADA. In reality, the demand from the security company signified that the company accepted only applicants who had been Norwegian or Swedish citizens since the age of 18. The practice was seen as discriminatory vis-à-vis both EU citizens and third country nationals; that is, everyone who is not a Norwegian or Swedish citizen.

²⁰⁵ The Tribunal found that two Polish citizens had been discriminated against on the basis of national origin under the ground of ethnicity when they were paid significantly less than Norwegian citizens working on for the same ship owner. Both cases concerned the same ship owner/employer.

²⁰⁶ Equality Ombud, case 09/892.

a) Exceptions to the prohibition of direct discrimination on grounds of age

In Norway, national law provides for specific exceptions for direct discrimination on the ground of age.

According to the GEADA Section 9(3), age limits specified in laws or regulations, and favourable pricing based on age, do not breach the prohibition against differential treatment based on age outside employment in Section 6. This concerns age limits outside employment. However, there are several age limits within employment as well, which will be described below (see section c).

b) Justification of direct discrimination on the ground of age

In Norway, national law provides for specific exceptions for direct discrimination on the ground of age.

The general exception in the WEA states that discrimination that has a just cause, does not involve disproportionate intervention in relation to the person or persons so treated and that is necessary for the performance of work or profession, will not be regarded as discrimination, as provided by Section 13-3(1) of the WEA. In addition, the WEA states in Section 13-3(3) that the Government may 'by regulation issue further provisions concerning the extent of the exception from the prohibition against age discrimination'.

Outside employment, Section 9 of the GEADA allows some differential treatment on the basis of age when it a) has an objective purpose, b) is necessary to achieve the purpose, and c) does not have a disproportionate negative impact on the person or persons subject to the differential treatment. The law does not list potential legitimate aims. In addition, the GEADA, Section 9(3), states that age limits specified in laws or regulations, and favourable pricing based on age, do not breach the prohibition against discrimination.

The test is in principle compliant with the test used by the Court of Justice in the *Mangold* case,²⁰⁷ as the Norwegian Supreme Court referred explicitly to the *Mangold* test in its first judgment on age discrimination.²⁰⁸

In a more recent Court of Appeal case, LB-2019-190061,²⁰⁹ the complainant, A, had to stop working as a doctor for the Norwegian Search and Rescue Service (organised as squadron 330 under the Norwegian Ministry for Defence), due to the age limit of 60 years. This age limit was set forth in the cooperation agreement between squadron 330, the Norwegian Air Ambulance and the regional health administration in question. The Court of Appeal found that his employment was within the scope of the WEA Chapter 13 on discrimination, even though it was technically within the armed forces, referring to Directive 2000/78/EF²¹⁰ and emphasising that the scope of WEA Section 13-3 must not be interpreted more narrowly than the directive.²¹¹

The Court went on to consider whether the age limit had a legitimate aim and was necessary to achieve that aim. The aim of the age limit is to ensure the health and safety of the patients. The doctors working on helicopter ambulances often have to work under physically and mentally challenging conditions, sometimes of long duration. Although the doctors are part of a team, there is only one doctor per team, and they will have to, for example, be able to climb up and down mountainsides and give immediate medical aid under difficult conditions.

²⁰⁷ CJEU, judgment of 22 November 2005, *Mangold v Helm*, C-144/04, EU:C:2005:709.

²⁰⁸ See Supreme Court judgment of 18 February 2010, Rt-2010-202 (*Nye Kystlink*).

²⁰⁹ Borgarting Court of Appeal, case LB-2019-190061.

²¹⁰ As interpreted in Supreme Court judgment Rt-2012-219, section 46.

²¹¹ It should be noted that this directive is not directly binding on the Norwegian Government through the EEA agreement.

The court referred to C-229/08 (*Wolf*) on not using routine situations as the bar, but situations that are particularly challenging and that are bound to occur from time to time, and which the Norwegian Search and Rescue Service are the only ones able to perform. The age limit for military personnel is 60 years, and since the search and rescue service is organised under the Norwegian army, it was deemed logical to set the same age limit for medical doctors on the teams. The court saw individual testing as insufficient to achieve the goal alone, due to the increased risk of sudden health issues that comes with age. The fact that two private companies providing the same service do not have such an age limit was seen as irrelevant on the basis of their contracts being a temporary solution due to limited capacity in squadron 330, and the age limit being otherwise consistently upheld over time and in all regional health units.

The court further distinguished the case from C-447/09 (*Prigge*) on the basis that in *Prigge*, the age limit of 60 years in question differed from national and international age limits, which were of 65 years. The court thereby concluded that the age limit was justified and necessary. Since A could continue working in other positions as a doctor, the age limit was not seen as disproportionate either, even though there are no extra pension rights because of the age limit. The final conclusion was thus that the age limit was not in breach of the WEA Chapter 13 on discrimination.

c) Permitted differences of treatment based on age

In Norway, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78, as provided by Section 13-3 of the WEA. In practice, the most contested section has been Section 15-13a of the WEA, which allows for the possibility of terminating employment on account of age (see section 4.7.4.d below).

The WEA Section 1-2 exempts civil servants from its scope regarding retirement age and a number of other rules, covered instead by the Civil Servants Act. The Age Limits for Civil Servants Act²¹² sets forth several age limits for civil servants, with a maximum age limit of 70,²¹³ and several lower limits for positions that are particularly demanding mentally or physically or require particular mental or physical capabilities.²¹⁴

There have been a number of court cases regarding the legality of age limits, including the Supreme Court judgment of 14 February 2012, Rt-2012-219, the 'helicopter' judgment. The question was whether the employer could require, based on a collective agreement, that its helicopter pilots retire at age 60. The court found that following the *Prigge* judgment, safety or health reasons cannot justify the 60-year age limit for helicopter pilots. The Supreme Court also stated that the other considerations, such as a dignified retirement, the rapid career advancement of younger pilots and protecting a good pension scheme were not sufficiently weighty to require that pilots stopped working at the age of 60. This is in contrast to a previous Supreme Court judgment of 5 May 2011 Rt-2011-609, HR-2011-910-A (*SAS-pilotene*) described below in section 4.7.5.a.

Protection against age-discrimination is provided in Norway within working life, in line with Directive 2000/78, in WEA Chapter 13. Protection against age-discrimination outside working life is included in Section 6 of the GEADA.²¹⁵ This protection has extensive exceptions, as age limits specified in law or regulations on age do not breach the prohibition in Section 6, according to Section 9(3) of the GEADA and Section 13-3(3) of the WEA.

²¹² Act on Age Limits for Civil Servants and others of 21 December 1956 no. 1,.

²¹³ If the person is still qualified for the position, the main rule is that they may remain in this position for first two, then one more year at a time, up to a total of 5 years (Act on Age Limits for Civil Servants and others of 21 December 1956 no. 1 Section 3. The authority to make such a decision belongs to the employer.

²¹⁴ There are other age limits as well, such as for nurses and officers in the armed forces, as described earlier.

²¹⁵ See the legal preparatory works; Proposition to Parliament, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)*, Chapter 15.

'Favourable pricing based on age' is also allowed according to the GEADA Section 9(3), and covers cheaper tickets for students and senior citizens.

d) Fixing of ages for to occupational pension schemes

In Norway, national law allows occupational pension schemes to fix ages for admission to the scheme, taking up the possibility provided for by the GEADA, Section 9(3).²¹⁶

The law allows for the use of age criteria in actuarial calculations, see for example the Insurance Agreement Act Section 10-2(e) and Section 13-8. There are no restrictions in this act regarding to what extent age can be considered a factor, which means that the rules of the GEADA apply without any specifications.

4.6.2 Special conditions for younger and older workers

In Norway, there are no special conditions set by law for older or younger workers in order to promote their vocational integration.

4.6.3 Minimum and maximum age requirements

In Norway, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training.

The maximum age requirement in the public sector is 70 years, in Section 2 of the Act on age limits for public officials of 21 December 1956, no. 1. Lower limits, at the ages of 65, 63 or 60, may be set for positions that are particularly demanding, mentally or physically. This may be done by the Parliament, if the rule affects a large number of persons, or, more commonly, by the Government through regulations.²¹⁷

In private sector employment there is no maximum age requirement by law, but the protection against 'just cause' in dismissals is lifted at the age of 72 years, under Section 15-13a of the WEA. Lower age limits may be set if required for health and safety reasons. An age limit of 70 may be set without any justifications, on the condition that it is made known to the employees, its application is consistent and employees have an adequate pension scheme. It is also required that the employer discusses such an age limit with trade union representatives.

There is a prohibition against child labour in Section 11-1(1) of the WEA, which prohibits from working children under 15 years old or who have a duty to go to school,²¹⁸ with a few exceptions.²¹⁹ In general, for adults (above 18), there are no minimum age limits in Norway regarding access to employment, however a number of positions or access to training positions require that the employee be a major (i.e. above 18 years) in order to handle money. There is no minimum age of entry into public sector employment, as employment in this sector is governed to a large degree by qualification requirements. There are some select positions in public employment with minimum age requirements: Supreme Court judges must be at least 30 years old, judges of the appellate courts must be at least 25 and assistant/deputy judges at least 21 years, under the Act on Courts of 13 August 1915 No 5, Section 54. There is an age minimum of 20 years to work as a lawyer, as per Section 218b of the Act on Courts.

²¹⁶ See Act on Compulsory Occupational Pension Schemes (*Lov om obligatorisk tjenestepensjon*) of 21 December 2005, No. 124.

²¹⁷ For example, FOR-2000-01-05-4 on age limits for nurses.

²¹⁸ Compulsory primary education usually finishes in June of the year in which the child turns 16.

²¹⁹ Such exceptions relate to cultural work or similar, easy work after turning 13, work as part of education or vocational training approved by the educational authorities and if the child is 14 or older.

4.6.4 Retirement

a) State pension age

In Norway, there is a state pension age, at which individuals must begin to collect their state pensions.²²⁰ If an individual wishes to work beyond the state pension age, the pension can be deferred. Also, an individual can collect part of a pension and still work.

In theory, if pensioners have a full right to pension, they can start to collect state pensions when they are between 62 and 75 years.²²¹ The general state pension age is set at 67 years. In order to start collecting a pension earlier than the age of 67, the pensioner must have sufficiently high pension credits.²²²

For Government employees, if an individual wishes to work longer, the state pension can also be deferred, but only until the employee reaches 70 years of age. A pensioner can choose to work part-time and get a part-time pension.²²³

There is no relevant case law linked to state pension age and the accrual of pensions.

b) Occupational pension schemes

In Norway, there is a standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. However, there are several exceptions, and the system is now more flexible than it used to be.

The 'normal' pension age is 67 years, based on the previous regulations in the Act on National Social Insurance, in which this was the age when the state pensions were available. Amendments to national insurance have made it possible to start an advance pension at 62 years, and to defer payment until 75 years. If an individual wishes to work longer, payments from the occupational pension schemes can be deferred. People can collect a part-time pension and still work partly or fully.

c) State-imposed mandatory retirement ages

In Norway, there is a state-imposed mandatory retirement age of 70 years for state workers according to the Act on age limits for public officials.²²⁴ This is generally applicable, but there are also exceptions, such as for the armed forces and other sectors with a lower mandatory retirement age.²²⁵

These lower mandatory retirement ages are in the process of being evaluated, as the ages differ. Furthermore, the justification for the lower mandatory retirement ages are neither similar, nor always clear. The legitimacy of these lower mandatory retirement ages have not been scrutinised against the justification required by Directive 2000/78 Article 6(1), but this will – hopefully – be carried out in the current evaluation.

Two key judgments were given in 2015 concerning state-imposed mandatory retirement ages, both of which related to health workers in the public sector.²²⁶ In both cases, the

²²⁰ Act relating to National Insurance of 28 February 1997, No. 19, Section 19-4.

²²¹ Act relating to National Insurance of 28 February 1997, No. 19, Sections 20-2.

²²² Act relating to National Insurance of 28 February 1997, No. 19, Section 20-15.

²²³ Act on age limits for public officials of 21 December 1956, No. 1, Section 2.

²²⁴ Act on age limits for public officials of 21 December 1956, No. 1, Section 2.

²²⁵ Most age limits for state employees were approved by the Parliament in 1995, see St.prp No. 38 (1994-1995 *Om aldersgrenser for offentlige tjenestemenn m.fl.*, and Innst. S nr 77 (1995-1996).

²²⁶ See Court of Appeal cases LB-2014-29065 and LG-2014-189475. Case LB-2014-29065 addressed whether or not the termination of employment as a result of a lower mandatory retirement age, set at 65 years for subordinate nurses in the Nurses Pension Act, Section 6, was in violation of the prohibition against age

appellate court found the lower mandatory retirement ages acceptable, relying heavily on the criteria set out in Directive 2000/78 Article 4(1) and the cases by the ECJ.

For employees who are not public officials, there is no state-imposed mandatory retirement age (see below for more information).

d) Retirement ages imposed by employers

In Norway, national law permits employers to set a retirement age of 70 or older by contract and/or collective bargaining and/or unilaterally through limits set by the firm itself, if the age limit is made known to the employees, it is consequently upheld, the employee has the right to satisfactory pension, and the age limit has been discussed with the elected representatives of the trade unions (WEA, Section 13-15a(3)). Lower age limits are allowed if it is necessary by reason of health or safety (WEA, Section 13-15a(2)). In both cases, lower age limits on the basis of law, contract or collective bargaining may be accepted if the aim is objectively justified and not disproportionate (WEA, Section 13-3(2)).

Section 15-13a(1) of the WEA allows the employer to terminate an employment contract when the employee turns 72 years old.²²⁷ Dismissal before the age of 72 because of having reached the right to a pension according to the National Insurance Act cannot be objectively justified. It is thus implicitly accepted by Section 15-13a of the WEA that a person may be dismissed because of age when they reach 72 years.²²⁸ In reality this means that it is acceptable to dismiss a person on the ground of age alone from 72 years and onwards. This is applicable only for employees in the private sector, as public officials have a retirement age of 70 years.²²⁹

An age limit of 67 years decided by a firm, practised consistently and laid down in the internal regulations, was accepted by the Supreme Court in its judgment Rt-2011-964 (*Gjensidige*). The opposite was found in a judgment of 5 March 2014 of the Borgarting appellate court (case LB-2013-144423), where a similar, mandatory retirement age imposed by the employer at 67 years was found invalid. The latter case concerned the validity of the employer's termination of the employee's employment at age 67 in accordance with the age limit established unilaterally in the firm stating a retirement age at 67 years. The appellate court found that the age limit of 67 years was not widely known among the employees. One of the conditions that jurisprudence has lined up to accept a

discrimination in the WEA Section 13-1, cf. Sections 13-3 and 15-13a and Directive 2000/78/EC, Articles 4 and 6. The age limit for supervisors or nurses in administrative positions is 70 years according to the act. The appellate court took as a starting point that the requirements of the WEA are the same as those of the directive. Although the aim of the act is not specified either in the act itself or in the preparatory works to the act, the court said that seen in context, the central purpose of the specific age limit is related to the physical and psychological strain of the job that the regular physical contact with patients and clients entails. The age limit also has an aspect related to the safety of patients, as the nurses need to keep abreast of professional developments and maintain sharp vigilance in each case. The latter aspect is not seen as being a legitimate aim in accordance with the directive, Article 6(1) but in line with Article 4(1). Also the strain of the profession is seen to fall under Article 4(1), as the possession of certain physical and mental capabilities, capabilities that deteriorate with age, is a regular professional requirement for subordinate nurses who have extensive contact with patients and clients. LG-2014-189475 addressed the termination of employment as a result of a lower mandatory retirement age, extended pursuant to a collective agreement until 67 years if the employee is not entitled to a full pension. The appellate court explicitly referred to the decision of February 2015 as cited above and pointed out that this age limit was established by law contrary to the case in February 2015 where the age limit was established by collective agreement. It is thus up to the legislature to change the law. The appeal to Supreme Court was not accepted, see HR-2015-2505-U of 15 December 2015.

²²⁷ This age limit was extended as per 1 July 2015 from 70 to 72 years. Preparatory works to the change is Prop. 48L (2014-2015) *Endringer i arbeidsmiljøloven og allmenngjøringsloven (arbeidstid, aldersgrenser, skatt, mv)*.

²²⁸ A tripartite commission set up to assess the age limit of 72 years in the WEA handed in its report to the Government on 1 December 2016. The commission did not agree upon whether or not to expand or abolish the age limit of 72 years, see (in Norwegian) https://www.regjeringen.no/contentassets/44d25e06d416405e823ce79ef83e8238/a-0042_b_seniorer_og_arbeidslivet_uu.pdf.

²²⁹ According to the Act on age limits for public officials of 21 December 1956, No. 1, Section 2.

lower mandatory retirement age limit than 70 years, was thus not met. The employer's termination of the employment contract was thus invalid, and the employee was awarded compensation for economic losses sustained, under WEA Section 15-13a.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights do not apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age, as described above. Legislation on protection against unjustified dismissal applies to workers under 72 years, see WEA, Section 15-13a(1).

f) Compliance of national law with CJEU case law

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

That national legislation is generally in line with the CJEU case law is demonstrated by the Supreme Court judgment of 14 February 2012 *Bjørn Nybø and others v. CHC Helicopter Service AS*, Rt-2012-219, which fully built on the CJEU judgment in case C-447/09 *Prigge*. However, the claimants did not receive pecuniary compensation for this discrimination, which is not in compliance with the CJEU case law, nor with the principle of effective damages for injury of a non-pecuniary character, as per the Supreme Court judgment of 30 January 2017 in case number HR-2017-219-A.

The lower mandatory retirement ages for certain professions, as well as the acceptance of the right of employers to mandate and unilaterally impose retirement ages for company employees may not always be in line with the justification required by Directive 2000/78/EC and the practice of the CJEU, which is a possible cause for concern.

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

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

National law does not explicitly permit age or seniority to be taken into account when selecting workers for redundancy, as this must be assessed in each case against the limitations set by Directive 2000/78 and the WEA, Sections 13-1 and 13-3(3); the latter opens up the possibility for differential treatment on the basis of age if it is done in laws or regulations, i.e. age of retirement in redundancy cases.

In practice, an important element to be included in the employer's assessment of whom to make redundant is the social consequences of a possible redundancy. The right of an employee to receive a full pension may be used as an argument for selection for redundancy, thus a number of employees have found themselves redundant at an early age, for example 62 years, which is when it is possible to ask for agreement-based retirement packages.

A Supreme Court judgment from 2011 accepted that 10 airline pilots were lawfully dismissed when they reached 60 years, as part of a selection process for redundancy. The Supreme Court concluded that the selection of the dismissed pilots was based on considerations that were justifiable under Section 15-7 of the WEA, that is, an economic need for dismissals and the use of specified criteria – here – that the pilots were eligible for pension. The Supreme Court found that if, in a particular situation, an employer chooses to base the selection process for redundancies on criteria other than tenure, this cannot in

itself lead to the decision being ill founded. In this specific setting, age was seen as a justifiable consideration, and thus, the pilots were not subject to age-based discrimination when chosen for redundancy.²³⁰ This judgment is probably not in accordance with Directive 2000/78. In similar cases in Sweden and Denmark concerning the same airline, the conclusion was the opposite: that the pilots were subject to discrimination, and entitled to compensation.²³¹ The current situation is not entirely clear, since the wording of most trade union agreements appears to have changed.

b) Age taken into account for redundancy compensation

In Norway, national law does not provide for compensation for redundancy. However, some compensation for seniority is given that is only indirectly affected by age: national legislation concerning the paid periods of notice according to the law provides for longer periods of notice based on seniority, thus there is an element of compensation for age (see WEA, Section 15-3).

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

National law includes no exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. However, it is important to keep in mind that as the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement, the specific exceptions allowed under the directives have not been clearly articulated as such.

4.8 Any other exceptions

In Norway, there are no other exceptions to the prohibition of discrimination (on any ground covered by this report) provided in national law.

²³⁰ Supreme Court, Rt-2010-609 of 5 May 2011.

²³¹ Swedish Labour Court, Judgment [AD-2011-37](#), and Østre Landsrett court of second instance in Denmark, Judgment B-1271-11.

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

a) Scope for positive action measures

In Norway, positive action in respect of racial or ethnic origin, religion or belief, disability, age, or sexual orientation is permitted in national law.

Positive differential treatment is permitted both in Section 11 of the GEADA and Section 13-6 of the WEA on preferential treatment, which means that positive action is permitted for all discrimination grounds. In the WEA, the term used is 'preferential/ special treatment', but the content is intended to be the same.

Positive differential treatment is allowed if a) it promotes the purpose of the GEADA or WEA (i.e. has a legitimate, anti-discriminatory aim and is appropriate to achieve this aim), b) the negative impact is proportionate in view of the intended result, and c) the differential treatment will cease when its purpose has been achieved. The extent to which one may use positive differential treatment is still contested.²³²

The title of Section 11 of the GEADA is 'Permitted positive differential treatment', but apart from enlarging the scope of positive action to include all new discrimination grounds, including positive action for men, the scope for positive action measures remains the same as under the previous legislation.²³³

The legislative scope for positive action in Norway has been interpreted as very narrow, based on the ECJ court rulings on gender as well as the EFTA court case against Norway (E-1/02). It may be questioned whether Article 5 of the Racial Equality Directive is fulfilled as the directive itself does not suggest the narrow scope that the EFTA court has interpreted in relation to gender.

From January 2020, the public administration may give priority to applicants with an immigration background from outside the EU/EEA according to the Civil Servants Act, which gives persons with an immigrant background rights to positive action in employment. When recruiting to positions in the civil service, the employer must take into account the special rules in the Civil Servants Act in addition to the provisions of the Working Environment Act.²³⁴ If there are qualified applicants who inform the employer about their immigrant background, at least one of the applicants with an immigrant background must always be called for interview. However, in contrast to persons with disabilities (see below), there is no exception regarding their qualifications, allowing for moderate positive differential treatment only.

b) Quotas in employment for persons with disabilities

In Norway, national law does not provide for a quota for the employment of persons with disabilities.

However, the state may give priority to applicants with disabilities according to the Civil Servants Act, which gives persons with disabilities rights to positive action in employment. When recruiting to positions in the civil service, the employer must take into account the special rules in the Civil Servants Act in addition to the provisions of the Working Environment Act.²³⁵ If there are qualified applicants with disabilities²³⁶ for a position, at

²³² Ballangrud, A.J.B. and Søbstad, M. (2021), *Likestillings- og diskrimineringsloven. Lovkommentar*, Oslo, Universitetsforlaget, Chapter 11.2.5.

²³³ See the legal preparatory works; Proposition to Parliament, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)* Chapter 17.

²³⁴ See regulations to the Civil Servants Act (*statsansatteloven*), FOR-1983-11-11-1608, Section 9.

²³⁵ See regulations to the Civil Servants Act (*statsansatteloven*), FOR-1983-11-11-1608, Section 9.

²³⁶ A person registered as a person with a disability by the National Labour and Welfare Authorities (Nav), a person who has completed a vocational rehabilitation programme organised by Nav, or who holds a partial

least one of the applicants with a disability must always be called for an interview. A specific provision in Section 4a expands this right to people who have been without employment while not being in training or studying, due to drug addiction, imprisonment or illness, and people who have been actively seeking employment during the period of unemployment. The applicants must themselves assess their disability and an applicant seeking to rely on the right to be called for an interview must disclose their disability in the application. The employer may also choose to hire an applicant with disabilities, if they are almost as qualified as the best qualified applicant. This is often called 'radical positive action', and increases the likelihood of persons with disabilities being hired. In January 2017, a trainee programme was introduced for persons with disabilities applying for positions in the civil service, in which it is possible to apply for trainee positions lasting up to one and a half years in order to get relevant work experience.²³⁷

or full-time pension due to inability to work (the regulations to the Act on public officials Section 9, cfr. the Act on public officials, Section 5(1)).

²³⁷ See the website for the trainee programme at <https://arbeidsgiver.difi.no/strategisk-hr-og-ledelse/inkluderingsdugnaden/traineeprogrammet-i-staten>.

6 REMEDIES AND ENFORCEMENT

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

In Norway, as a general rule, the procedures for addressing discrimination issues are the same for employment in both the private and public sectors.

a) Available procedures for enforcing the principle of equal treatment

In Norway, there are no special procedures for enforcing the principle of equal treatment if the case is taken to the courts, as this follows general legal principles.

The procedures for enforcing the principle of equal treatment in Norway are listed below.

For matters within the scope of the WEA, the law itself has a special procedure to be followed in the ordinary court system (WEA, Chapter 17), which gives some clear timelines. Most individual conflicts regarding labour issues, for example regarding hiring or dismissals, go through these procedures.

For the enforcement of the GEADA within the ordinary civil courts, discrimination cases follow the 'normal' procedural rules for civil cases as set out in the Dispute Act.²³⁸

There are no specific procedural rules when forwarding a case to the administrative dispute mechanism, the Equality Tribunal, other than those laid out in the Act on the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal (EAOA), described below in chapter 7. This is part of its role as a low-threshold and low-cost conflict resolution institution. There are no fees, and the procedures are based on the idea that individuals with no knowledge of the law should be able to complain directly to the Tribunal with no legal aid.

As for criminal procedure, the GEADA and the Penal Code contain a few sections concerning discrimination. Such cases qualify for criminal procedure before the courts. Section 39 of the GEADA states as follows:

'A penalty of a fine or imprisonment for a term not exceeding three years shall be applied to any person who jointly with at least two other persons commits an aggravated breach of the prohibition against

- a) discrimination on the basis of ethnicity, religion or belief in Section 6,
- b) harassment on the basis of ethnicity, religion or belief in Section 13,
- c) retaliation on the basis of ethnicity, religion or belief in Section 14, or
- d) instructing a person to discriminate on the basis of ethnicity, religion or belief in Section 15.

Any person who has previously been penalized for breach of this provision may be penalized even if the breach is not aggravated.

When assessing whether a breach is aggravated, particular weight shall be given to the degree of culpability, whether the breach was racially motivated, whether it constitutes harassment, whether it involved physical assault or serious violation of another person's mental integrity, whether it is likely to cause fear and whether it was committed against a person under the age of 18.

²³⁸ See Act of 17 June 2005, No. 90, relating to mediation and procedure in civil disputes (the Dispute Act), available in English at <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-20050617-090-eng.pdf>.

Before an indictment is issued in respect of a matter specified in the first paragraph, consideration shall be given to whether a civil penalty would be sufficient.

The provisions on the burden of proof in Section 37, first paragraph, do not apply in connection with enforcement of this provision.'

Sections 185 and 186 of the Penal Code concern hateful expressions and refusal to provide goods and services. These are applicable in relation to discrimination because of skin colour or national or ethnic origin, religion or life stance, sexual orientation and disability, but are not applicable to claims in respect of age or gender.²³⁹

b) Barriers and other deterrents faced by litigants seeking redress

The low rate of court litigation in Norway is due to the risks and costs involved in litigation, and the difficulties in obtaining free legal aid in discrimination cases, among other factors.

It is not a procedural requirement to be represented by a lawyer or legal practitioner in court, as it is given as a right – but not a duty – to use counsel. The key costs of the judicial proceedings in civil cases are, however, the fees linked to legal counsel – that is, the fee of the lawyer. Where a claimant/victim is not represented by legal counsel, the judge has an extended or specific duty to advise the complainant/victim of procedural matters that might be of relevance to the case. The court also has a duty to assist the complainant/victim in setting up a proper writ summons to start the case, and to assist in making an appeal, as long as the complainant/victim appears in court and asks for assistance.

There is furthermore a large economic risk linked to costs of proceedings. The general rules on costs of proceedings in discrimination cases before the ordinary courts are found in Chapter 20 of the Dispute Act, and are also applicable in discrimination cases. The general rule is that the successful party is entitled to full compensation for their legal costs from the opposite party (Section 20-2(1) of the Dispute Act). The court can exempt the opposite party from liability for legal costs in whole or in part if the court finds that 'weighty grounds' justify exemptions (see Section 20-2(3)).

According to the Dispute Act, Article 20-2(3), the court can exempt the opposing party from liability for legal costs in whole or in part if the court finds compelling grounds to justify exemption. The court may consider whether the case is important to the welfare of the party and whether the relative strength of the parties justifies an exception from such liability. According to Supreme Court judgment Rt-2012-209, paragraphs 17 and 18, this is not enough by itself: in order for someone to be exempted from paying the cost if they lose a case, the decision must concern matters of principle or other significant reasons for having the case tried before the courts. In LE-2018-145654-2, the Court of Appeal did not see the issue as a matter of principle, even though it concerned the extent of the right of persons with cognitive disabilities to decide where they want to live.²⁴⁰ Each person thus had to pay around EUR 15 000 for the procedures before the courts.

There is also the possibility, in exceptional cases, that the cost of litigation can be shared between the parties, even if the main case is lost. This has happened in only a very few discrimination cases: in a case from March 2012, the Supreme Court found that the losing party did not have to pay due to the uneven level between the parties, irregularities in

²³⁹ Gender expression was included from 1 January 2021. At the same time, 'sexual orientation' was protected instead of only 'homosexual orientation'.

²⁴⁰ The first judgment from the Court of Appeal on this matter was repealed by the Supreme Court, in case HR-2019-1637-U, partly for not assessing the human rights and discrimination issues. The Supreme Court decided that the other party, Vågå Municipality, had to pay all the costs for the complainants. Still, the Court of Appeal, when reassessing the matter in favour of the municipality, decided that the complainants should pay the costs for the municipality for the proceedings in first and second instance, i.e., not before the Supreme Court.

during the hiring process and the importance of the case for the claimant.²⁴¹ In another case in the appellate court regarding discrimination on the basis of disability (blindness), which the claimant lost the case but the employer had to pay the costs for the case before the court of first instance, since the Court of Appeal considered that the employer was partly to blame for the events that led to the dispute.²⁴²

Another barrier was highlighted in the civil society' latest shadow report to the CERD committee.²⁴³

'In a judgment issued in 2015 (LB-2015-158669-2), Borgarting Court of Appeal assessed the competence of a lay judge with documented, strong prejudices against immigrants in general and Muslims in particular. [...] Although her [often publicly expressed] views clearly contravene some of the most fundamental human rights of immigrants in general and Muslims in particular, this person has been a lay judge for a number of years. [...] Since the lay judge had not been convicted of making such unlawful statements, the court found that she could not be excluded from the pool [of lay judges].

The Court of Appeal stated that her negative attitudes to immigrants could provide grounds for removing her from individual cases where immigrants/Muslims are involved. This transfers the responsibility for proving the lay judge's bias to the lawyer in each case, something that will produce a variable result. This also requires each lawyer to be aware of her bias, and this will very likely not be the case. Thus, as far as we know, she has continued to act as a lay judge, including in cases involving immigrants.'

The rules regarding the qualifications of judges and lay judges are vague in both civil and criminal cases. Section 55 of the Courts of Justice Act states that judges should fulfil high standards both personally and professionally and must perform their duties impartially and in a fashion that promotes common trust and respect. Section 70 of the Courts of Justice Act is particularly problematic, as it stipulates only that a lay judge must be 'personally suitable'. If this is not the case, the person may not be elected or must be excluded from the pool of lay judges.²⁴⁴ This creates doubts about the impartiality of the courts in both civil and criminal cases.

c) Number of discrimination cases brought to justice

In Norway, there are neither official statistics on the number of cases related to discrimination brought to justice (that is, to a court), nor to the author's knowledge are statistics on court cases kept by other bodies.

All Supreme Court cases, most court of appeal cases and select cases from the courts of first instance are published electronically on the website www.lovdata.no, and accessible through a subscription. The Supreme Court cases are posted on the publicly accessible part of the website (not requiring subscription) for 30 days after judgment. The published cases are tagged – among other things – based on the legislative act. It is thus possible to find and register discrimination cases that have been assessed by the appellate court and the Supreme Court. As www.lovdata.no only publishes selected cases from the court of first instance, Lovdata does not give a full accurate picture of the total of discrimination cases. The selection of judgments published from the courts of first instance is carried out partly

²⁴¹ Supreme Court, judgment of 5 March 2012, HR-2012-580-A.

²⁴² Borgarting court of appeal/court of second instance, judgment of 27 January 2003 (case LB-2002-44) (*Sporveissaken*).

²⁴³ Norwegian NGOs (2018) *NGO alternative report to CERD 2018*, paragraphs 308-311, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fNOR%2f32995&Lang=en.

²⁴⁴ Act relating to the Courts of Justice (Courts of Justice Act) of 13 August 1915 No. 5, <https://lovdata.no/dokument/NL/lov/1915-08-13-5>.

by the court itself, which forwards the judgments to Lovdata, and in part by staff at Lovdata.

The total number of court cases on discrimination remains sparse, especially compared with the volume of cases brought before the Equality Ombud. The Equality Tribunal holds detailed annual statistics on its work, and it receives more than 95 % of all cases on discrimination. For example, the Equality Ombud provided advice in 1 966 cases in 2020, and in 2 479 cases in 2021.²⁴⁵ The Equality Tribunal made decisions in 313 cases in 2020, and in 429 cases in 2021.²⁴⁶ In 2020, the Supreme Court assessed one case concerning sexual harassment, while the courts of second instance assessed six cases concerning various grounds of discrimination. In 2021, the Supreme Court assessed no cases which concerned discrimination issues,²⁴⁷ while three cases were assessed by the courts of second instance.²⁴⁸

Cases on hate speech are treated as criminal cases outside the scope of the non-discrimination directives and are therefore not part of this list.

The small percentage of cases before the courts has consequences in relation to an assessment of compliance with EU law in terms of sanctions in particular, since the Tribunal has limited authority (see section 6.5 below).

d) Registration of national court decisions on discrimination cases

In Norway, court decisions on discrimination are not registered as such by national courts, but may be found on the subscription-service www.lovdata.no categorised among other things according to the act invoked in the judgment. The judgments are available to the general public on www.lovdata.no for free the first month after publication, but after this period are only available by subscription.

Court cases are all published in Norwegian. There is no systematic translation of cases in Lovdata, although some cases – almost all of them from the Supreme Court – are translated into English. This translation is, in most cases, arranged by the lawyers for either the defence or the victim and is paid for by the Court administration.

Discrimination cases brought before the Equality Tribunal are anonymised and published for public perusal for free on their webpages (as described in section 7.g below).

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

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

In Norway, non-governmental organisations, that is associations/organisations/trade unions, are entitled to act on behalf of victims of discrimination.

NGOs are, through their legal counsel, entitled to act on behalf of victims of discrimination with a specific power of attorney from the person or company or organisation in court (Dispute Act (DA), Section 3-3(4) allows for a person with relevant qualifications to act on

²⁴⁵ Email of 21 February 2022 from the Equality Ombud, and Equality Ombud (2018) *Annual Report for 2020* (in Norwegian) at [LDO - Årsmelding 2020](https://www.lovdata.no/ldo-arsmelding-2020). Since 2017, the number of cases before the Equality Ombud has been close to 2 000 each year.

²⁴⁶ See [Søk i statistikk \(diskrimineringsnemnda.no\)](https://www.lovdata.no/sok-i-statistikk-diskrimineringsnemnda.no).

²⁴⁷ The Supreme Court did, however, assess one case concerning indigenous peoples' rights in relation to the Convention on Civil and Political Rights: Supreme Court, case HR-2021-1975-S, concerning pastoral rights for Sami people versus the building of wind turbines.

²⁴⁸ See cases LF-2021-35670, concerning genuine and determining occupational requirements and disability; LA-2021-58180 concerning individual accommodation; and LG-2018-14681 concerning parental leave for men.

behalf of the victim). However, the actual victim (the party to the case) must be present in court to give testimony during the main hearing, as provided by Section 9-15 of the DA.

In discrimination cases, the right of associations to be used as agents in administrative proceedings and act on behalf of victims is expressly stated. The requirement is that the organisation must have a “purpose, wholly or partly, to oppose discrimination” according to the grounds as prohibited by law’ (see the GEADA, Section 40 and the WEA, Section 13-10). This rule supplements the rules concerning the individual rights of associations to act on their own (see section 6.2.c below on *actio popularis*) and the right of organisations to act on behalf of their members under the DA, Section 1-4. The Dispute Act governs the rights of bodies to stand on behalf of and in support of parties in courts. A legal representative must, at the same time as providing an authorisation as stated in Section 3-4 of the Dispute Act, submit written information from the organisation regarding the legal representative’s qualifications (see Section 40(4) of the GEADA).

There are no special rules on the shifting burden of proof where associations are engaged in proceedings – the rules are the same no matter who the claimant is.

Action by NGOs is discretionary. There are no rules establishing that associations have a legal duty to act under specific circumstances, unless they themselves have taken on a particular assignment on behalf of a specific victim or victims to act on their behalf.

In general, persons of legal age (18 years) have procedural capacity and can act on their own in court (see the DA, Section 2-2). Physical persons and legal entities, including the state, municipal and county authorities have the capacity to sue and be sued (DA, Section 2-1(1)). Organisations that are not legal entities in the form of a foundation etc. have the capacity to sue and be sued to the extent justified by an overall assessment where the court considers issues such as whether the organisation has a permanent organisational structure, whether there are formalised membership arrangements, the purpose of the organisation and the subject matter of the action (see DA, Section 2-1(2)).

There are few specialised NGOs working in the field of non-discrimination that are competent to engage in litigation issues.²⁴⁹ It is not uncommon for NGOs to submit complaints to the Tribunal, but few have the resources to do it often. OMOD, for example, an NGO working against discrimination in the public sector on the basis of ethnicity and religion, has made several complaints, including DIN-2018-48 described in Chapter 2.2. Stopp Diskrimineringen, an NGO working against discrimination on the basis of disabilities, was the first to make complaints about the universal design of web pages, and targeted all the major political parties in a number of successful complaints.²⁵⁰ After the 2018 reorganisation of the equality bodies, however, the rules concerning legal standing have become stricter, as has the interpretation of them, which has resulted in the dismissal of a number of complaints that would previously have been assessed in full.²⁵¹

Where entities act on behalf of or in support of victims, they need a written specific power of attorney to authenticate them and authorise them in relation to the court/the Equality Tribunal. There are no specific requirements regarding the form or content of this power of attorney.

As a rule, associations have no legal standing within criminal law, although they have a limited right to raise a private criminal case against someone. This is seldom used in practice, and the author has never heard of a discrimination case in which this right has been exercised.

²⁴⁹ See <http://www.noas.no/en/>.

²⁵⁰ Cases DIN-2018-13, DIN-2018-14, DIN-2018-15, DIN-2018-16, DIN-2018-17 and DIN-2018-18.

²⁵¹ For example, DIN-2018-411, in which a municipal council for persons with disabilities complained concerning universal design of a bridge.

It should be noted that NGOs play a key role in access to justice for victims of discrimination in Norway. They often provide free legal information and advice, in addition to occasionally providing free legal aid in specific cases. In addition, they often work politically to make other legislation and regulations in line with the GEADA.

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

In Norway, associations, organisations and trade unions, as well as foundations and public bodies charged with promoting specific interests in cases that fall within the purpose and normal scope of the organisation according to Section 1-4 of the Dispute Act, are entitled to act in support of victims of discrimination in the form of co-counsel/ third party intervention, as provided by Section 15-7 of the Dispute Act.

Although there are no impediments to NGO engagement in support of victims of discrimination or in strategic litigation, Anti-discrimination NGOs often provide assistance, and sometimes legal aid, in cases before the Tribunal.

There are special provisions on victim consent in cases where obtaining formal authorisation is problematic, such as by minors (i.e. persons under 18 years) and persons under guardianship. The Guardianship Act²⁵² provides the possibility to legally incapacitate a person, but never to a greater extent than absolutely necessary and always tailored to the person's circumstances. In a 2018 Supreme Court decision, it was ruled that NGOs do not have legal standing in cases concerning legal guardianship, on the basis that NGOs are not listed as persons or institutions that may ask for someone to be put under guardianship in the Guardianship Act (Section 56).²⁵³

- c) *Actio popularis*

In Norway, national law allows NGOs in the form of associations/organisations/trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

NGOs have a right of action in their own name in relation to matters that fall within their purpose and normal scope, on the condition that they have a 'genuine need' to have the claim determined, see Section 1-4(1) of the Dispute Act. NGOs have an action right both in their own name as well as being entitled to act on behalf or in support of victims. As described above, the right of the organisation to bring a case to court does not depend on the organisation being registered or not, but on an overall assessment as to whether or not the organisation has a 'genuine need' to have the claim determined, in which the court assesses issues such as whether the organisation has a permanent organisational structure, whether there are formalised membership arrangements, the purpose of the organisation and the subject matter of the action (Dispute Act, Section 2-1(2)).

There is thus no need to have a specific victim to support or represent, although it is necessary to prove some kind of membership. The fact that a formalised membership structure exists will more easily demonstrate and classify the organisation as one with legal capacity to sue and be sued according to the law. Ad-hoc organisations, that is organisations established in order to forward a particular case of litigation, or other organisations that may be termed 'mayfly organisations' will not in themselves have the legal capacity to sue and be sued. Case law has widely accepted associations and cooperatives acting under a common name.²⁵⁴

²⁵² Act relating to guardianship of 26 March 2010, No. 9, available in Norwegian at [Lov om vergemål \(vergemålsloven\) - Lovdata](#).

²⁵³ Supreme Court, case HR-2018-1786-U.

²⁵⁴ See the preparatory works to the Dispute Act, Norwegian Official Report NOU 2001:32 *Rett på sak* Section 2.2.2.1.

The Equality Tribunal has accepted complaints from organisations alone concerning universal design of web pages,²⁵⁵ but has refused complaints from municipal councils for persons with disabilities, even though they have a legitimate interest in having matters of universal design in particular assessed by the Tribunal, on the basis that they are part of the municipality and therefore cannot make complaints against the municipality. While it is not uncommon for parts of the public administration to have the authority to take cases in which they have legitimate interest in having assessed by the courts or relevant administrative complaints procedures, this follows explicitly from the act of Parliament defining their authority.

The organisations that have a right of action in their own name may use all proceedings under the Dispute Act. The rules on the shifting burden of proof under the anti-discrimination legislation are also applicable to organisations and associations. However, since only individuals are protected against discrimination, not legal persons, organisations can only claim injunctive relief and the finding of discrimination on their own behalf.

d) Class action

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

National law allows associations to act in the interest of more than one individual victim. Since 2008, with the implementation of the Dispute Act, there is an option to collectively take cases to court, in class actions, with specific procedural rules according to Chapter 35 of the Dispute Act.

A class action may be brought by any person who fulfils the conditions for class membership or by an organisation, association or public body charged with promoting a specific interest. In the preparatory works to the Dispute Act, discrimination cases are given as an example of the kind of cases where class action might be suitable.²⁵⁶ A class action may be brought by an organisation or an association or a public body charged with promoting specific interests, provided that the action falls within its purpose and normal scope pursuant to the Dispute Act, Sections 1-4 as provided by Section 35-3(1)b. Official documents and legal preparatory works have assumed that the Ombud is also able to bring a class action suit concerning discrimination to courts, however she has so far not made use of that ability.²⁵⁷

As a general rule, in both general civil and criminal cases, victims must be identified. This is similar for class actions, where a specific victim of discrimination must be identified in most instances. The exception may be in the kind of class action where not all members of the class are required to be made known by name (see Sections 35-2 and 35-3).

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

In Norway, national law permits a partial shift of the burden of proof from the complainant to the respondent.

The rule of shared burden of proof applies for all grounds and forms of discrimination, including failure to provide reasonable accommodation,²⁵⁸ harassment, victimisation and

²⁵⁵ For example, Equality Tribunal, cases DIN-2018-13, DIN-2018-14, DIN-2018-15, DIN-2018-16, DIN-2018-17 and DIN-2018-18, which were all part of strategic litigation by the NGO Stopp diskrimineringen concerning universal design of the webpages of all major political parties.

²⁵⁶ See Ot.prp No. 51 (2004-2005) s 322.

²⁵⁷ Norwegian Government (2008) *Kjønn og lønn* (Gender and Pay – white paper), NOU 2008:6, p. 114.

²⁵⁸ As described in chapter 2-6, the WEA, Section 4-6 contains rules for accommodation which are used more often in practice than the GEADA, Section 22. The shared burden of proof does not apply to this part of the WEA.

instructions to discriminate, under Section 37 of the GEADA and Section 13-8 of the WEA. It does not apply to the employers and heads of educational and other institutions to prevent harassment; see GEADA, Sections 13(6) and 37(2)a).

The Norwegian legal text as found in Section 37(1) of the GEADA state that:

‘Discrimination shall be assumed to have occurred if circumstances apply that provide grounds for believing that discrimination has occurred, and the person responsible fails to substantiate that discrimination did not in fact occur.’

What is meant by ‘reason to believe’ for the burden of proof to be reversed is interpreted by the Equality Tribunal to mean that the allegation must be ‘supported by the chain of events and the external circumstances of the case which necessitates an assessment of the specifics of the case’.²⁵⁹

Recent research has shown that the rule regarding the burden of proof has not been interpreted entirely in line with EU law since it was transposed into Norwegian law, even though the wording in the Equality and Anti-Discrimination Act Section 37 is in line with the directives.

In cases concerning dismissals according to labour law procedural rules, it is a general principle that the employer must substantiate that the dismissal is based upon the correct facts. Other than this, in civil cases – as a general rule – the burden of proof is on the claimant. This means that the most probable facts after an overall assessment should be the ones taken as a starting point for the legal assessment. This is why the shifting burden of proof as implemented in the discrimination legislation is so important. In all discrimination cases, if there are circumstances that give ‘reason to believe’ that there has been direct or indirect differential treatment in contravention of the said legislation, such differential treatment will be assumed to have taken place unless the person responsible proves on a balance of probabilities that such differential treatment nonetheless did not take place.

The relationship between the general rule concerning burden of proof in civil cases and the burden of proof as set forth in Directive 97/80/EC and subsequent directives was never thoroughly assessed by the Government when writing the preparatory works for anti-discrimination legislation,²⁶⁰ since 1995.²⁶¹ An assumption that it requires more to establish a presumption of discrimination than is set forth in EU law has thus prevailed among all legal practitioners in the field, including the equality bodies and the courts. For example, in Supreme Court case HR-2020-2476-A,²⁶² the Court stated:

‘the rule regarding the burden of proof (...) does not constitute any exception from the general rule regarding the required level of proof in civil law cases. The required proof is, here as elsewhere, that the most probable facts – after an overall assessment of the evidence presented (...) – shall provide the basis for the court’s further assessment of the case. Common rules concerning the assessment of the evidence, such as evidence that came into being at a time close to the events in question, apply in the same manner as in other civil cases. Another matter is that the rule [regarding the shared burden of proof] creates a duty for both parties to present all the evidence available to them.

²⁵⁹ See the Equality Tribunal’s decision in case LDN-2006-26, in which the said quote was used by the dissenting member of the Tribunal. Although the rest of the Tribunal did not agree with the dissenting member in this particular case, the quote was later referred to by the Ombud and the Equality Tribunal in a number of subsequent cases.

²⁶⁰ For example, Proposition to Parliament, Ot.prp no. 77 (2000-2001) *Om lov om endringer i likestillingsloven mv.*

²⁶¹ Hellum, A. and Strand, V.B. (2022) *Likestillings- og diskrimineringsrett* (Equality and Anti-Discrimination Law), Oslo, Gyldendal, p. 375-376.

²⁶² [002-NO-GE-2021-Supreme Court judgment on sexual harassment \(equalitylaw.eu\).](#)

If, after an overall assessment of all evidence, there remains a definite doubt regarding which facts are more likely, i.e. that one set of facts is as likely as the other, the rule sets forth that this doubt should lead to a conclusion to the disfavour of the "responsible party"(...). In practice such situations regarding the proof are rare, however.²⁶³

The interpretations have thus been too strict regarding the establishment of a presumption of discrimination.²⁶⁴

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

In Norway, there are legal measures of protection against victimisation.

Protection against retaliation/acts of reprisal/victimisation is implemented through Section 14 of the GEADA. The shift of the burden of proof also applies to situations of reprisals and victimisation. It is not permitted to retaliate against any person who has submitted a complaint regarding a breach of provisions of the discrimination legislation, or who has stated that a complaint may be submitted. There is a limitation to this right, and that is in instances where the complainant has acted with gross negligence. The protection against victimisation applies correspondingly to witnesses or someone who helps the victim of discrimination to bring a complaint, for example a workers' representative.

Since 2018, the Equality Tribunal has made decisions in a total of 73 cases where victimisation was one of the issues raised;²⁶⁵ there were eight victimisation cases in 2018, 7 in 2019, 18 in 2020 and 40 in 2021.²⁶⁶ The Equality Tribunal has, since 2018, found only one breach of the prohibition against victimisation in relation to discrimination.²⁶⁷

In a 2010 court case on discrimination because of age and gender, the female complainant was found to have been subject to victimisation and discrimination on the basis of age and gender.²⁶⁸

Age in employment is not covered by the GEADA, and thereby not by its prohibition against victimisation.

It is unclear to what extent victimisation in cases concerning discrimination is prohibited in the WEA. While WEA Section 13-8 on burden of proof refers explicitly to victimisation, there is no explicit prohibition of victimisation in WEA Chapter 13 on discrimination. There is a general prohibition against retaliation in WEA Section 2A-4, after, for example, notifying the employer, a supervisory authority or other public authority about an unsatisfactory working environment, abuse of authority or a breach of data security (WEA

²⁶³ HR-2020-2476-A, Section 75.

²⁶⁴ Hellum and Strand refer mainly to the report by Farkas, L. and O'Farrell, O. (2014), *Reversing the burden of proof. Practical dilemmas at the European and national level*, European Network of Legal Experts in the Non-Discrimination Field, available at <https://www.equalitylaw.eu/downloads/1076-burden-of-proof-en>.

²⁶⁵ Sometimes different aspects of one complaint are separated into different decisions/case numbers.

²⁶⁶ See Equality Tribunal, cases LND-2008-27/ (gender), LDN-2009-30/ (disability and ethnicity), LDN-2010-43 (ethnicity), LDN-2011-20/ (ethnicity), LDN-2011-48/ (disability), LDN-201-29 (disability) and LDN-2012-50 (disability), LDN-2013-21 (gender) LDN-2014-34 (gender).

²⁶⁷ Equality Tribunal, case DIN-2020-227. While the employer was not found to have discriminated the complainant, they were found to have victimised her after her making a complaint by stopping a hiring procedure for another position within the enterprise.

²⁶⁸ Øst-Finnmark district court, judgment of 17 March 2010, case TOSFI-2009-136827. The case had already been assessed by the Equality Ombud and the Equality and Anti-Discrimination Tribunal, in its case LDN-2008-8. The case concerned a female worker aged 41, employed on a part-time basis in the fire brigade. She subsequently applied for a longer, full-time vacancy, and then a fixed-term, full-time position. A male worker aged 27 who was less qualified was employed in the position. The ads announcing the position had the following formulation: 'applicants should be between 27 and 35 years of age.' The Equality Tribunal and the court found that the woman was discriminated against both on the grounds of gender and age and had also suffered from victimisation after her complaint. She was awarded compensation of EUR 37 500 (NOK 300 000) for economic losses as well as EUR 18 759 (NOK 150 000) for non-pecuniary damages. There have been no court cases since then where someone was found guilty of victimisation in cases concerning discrimination.

Section 2A-1(2)). Judicial interpretation is required whether this includes individual complaints concerning discrimination, and the wording does not appear to include all possible cases of discrimination and victimisation in the workplace. WEA Chapter 2A on notification constitutes, however, the only protection against victimisation in the WEA.

From 1 January 2020, the mandate of the Equality Tribunal was expanded to include chapter 2A of the WEA, i.e. beyond anti-discrimination issues. No decisions were made concerning victimisation in 2020, and in 2021 the only case which concerned victimisation in relation to gender, age and life stance was dismissed due to lack of follow-up from the complainant.

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

Sanctions according to the GEADA as well as the WEA that are enforced by the civil courts consist of liability for damages for injury of a non-pecuniary character or compensation for economic losses awarded to the claimant of discrimination. Sanctions according to criminal law consist of fines or imprisonment. In general, sanctions are equally applicable in private and public employment. Sanctions cover all discrimination grounds in all fields. The regulations on sanctions are found in Section 38 of the GEADA and Section 13-9 of the WEA. It should be noted, however, that the EAOA significantly limits the sanctions that may be awarded by the Tribunal, as will be described in more detail below.²⁶⁹

There are a number of general rules on compensation in Norwegian legislation that are applicable in discrimination cases. Compensation in Norwegian law is awarded either for fault-based liability (*culpa*) or for liability without fault. These ordinary rules are the rules on compensation set mainly by the Compensation Act,²⁷⁰ as well as by the non-statutory customary rules on compensatory damages. These also include a number of general rules to limit liability.

Section 38 of the GEADA regulates compensation and damages. In employment relationships and in connection with an employer's selection and treatment of self-employed people and hired workers, the employer's liability exists irrespective of whether the employer can be blamed, with the exception of harassment (for more on this, see section 2.4.b).

Regarding damages for injury of a non-pecuniary character, the GEADA contains the general rule that compensation will be set at an amount that is reasonable in view of the scope and nature of the harm, the relationship between the parties and other circumstances (see Section 38(3) of the GEADA and Section 13-9 of the WEA).

A practical form of 'sanction' often claimed before the courts by victims of discrimination in employment is preliminary injunction on the right to remain in the position until the case has been finally decided in court. This has been granted on one occasion in relation to age discrimination in the context of interlocutory judgments,²⁷¹ but refused by the Supreme Court,²⁷² and by the appellate court in later cases.²⁷³ The EAOA does not give the Tribunal

²⁶⁹ See the legal preparatory works; Proposition to Parliament, Prop 80 L (2016-2017) *Lov om likestillings- og diskrimineringsombudet og Diskrimineringsnemnda (diskrimineringsombudsloven)*, page 106. Available at <https://www.regjeringen.no/contentassets/14dd1daa159348c88de5dbe043feb0a4/horingsnotat.pdf>.

²⁷⁰ Compensation Act of 13 June 1969, No. 26.

²⁷¹ For example, Oslo municipal court, verdict of 19 November 2009 in case 09-143503TVI-OTIR/02.

²⁷² In its decision Rt 2011-974/ HR-2011-1294-A of 29 June 2011, the Supreme Court did not give the claimant the right to continue her position when addressing the possible discriminatory aspects of a retirement age of 67 set unilaterally by the company. The Supreme Court stated that allowing the claimant the preliminary right to remain in position in these kinds of litigation would reduce the content of these age limits.

²⁷³ Borgarting court of appeal, verdict of 18 June 2014 in case LB-2014-56188 (*Mediaas-saken*).

the authority to give such preliminary injunctions; instead it has an emergency procedure for making quick decisions when necessary; see EAOA, Section 11(3).

Section 39 of the GEADA provides penalties in the form of fines or imprisonment for up to three years for the perpetrators of a gross discrimination that has been committed jointly by several persons.²⁷⁴ This is in relation to discrimination on the following grounds: ethnicity, religion or belief.²⁷⁵ Any person who wilfully and jointly with at least two other persons commits a serious contravention or is an accessory to a serious contravention of parts of the GEADA is liable to fines or imprisonment for a term not exceeding three years. Furthermore, there is a specific clause on repeated behaviour, such that any person who has previously been sentenced to a penalty for contravention of the current provision may be liable to a penalty even if the contravention is not serious. When assessing whether a contravention is serious, particular importance is attached to the degree of manifest fault, whether the contravention was racially motivated, whether it is in the nature of harassment, whether it constitutes an offence against the person or serious violation of a person's mental integrity, whether it is liable to create fear and whether it was committed against a person under the age of 18. Before instituting a prosecution for such offences, an assessment must be made of whether it will be sufficient to impose an administrative sanction in the form of an order or fine. In the GEADA, the limit for imprisonment is three years. To the author's knowledge, this sanction has not yet been used. Given that Section 39 of the GEADA has never been used, this might be an indication that it does not comply with the criteria set by the ECJ of being a sufficiently dissuasive sanction.

The crime statistics do not tag information regarding whether 'hate motivation' is an aggravating circumstance, and therefore there is no way of knowing the usage, or extent of the usage, of this provision in the Norwegian courts. However, there have been several cases brought before the courts in recent years based on Sections 185²⁷⁶ and 186²⁷⁷ of the Penal Code, which at least shows that hate crime is being taken seriously. Case LB-2019-190061 was the first where a person was convicted for hate speech against a group, the Sami people, in line with recent judgments from the European Court of Human Rights.²⁷⁸

According to Section 12 of the EAOA, the Equality Tribunal has the power to make an administrative decision including damages for economic losses as well as damages for injury of a non-pecuniary character, but only in simple cases. In cases that do not concern employment, compensation for economic losses only may be awarded.²⁷⁹ Damages for injury of a non-pecuniary character is usually below EUR 8 000 (NOK 80 000).

²⁷⁴ In an assessment of the penal protection against discrimination on behalf of the Ministry of Children and Equality, Professor Kjetil Mujezinovic Larsen assessed Section 26 of the former ADA and suggested that it be continued in the upcoming legislation, and that it should be extended to cover all grounds in a holistic new law. He furthermore proposed that gender, gender identity and gender expressions should be included in the penal protection; see: Larsen, K.M. (2016) *Utredning om det strafferettslige diskrimineringsvernet* <https://www.regjeringen.no/no/dokumenter/utredning-om-det-strafferettslige-diskrimineringsvernet/id2520561/> (In Norwegian only). Since then, the penal code has been revised with a view to hate crime and hate speech to include gender identity, and 'sexual orientation' instead of 'homosexual orientation'. Discrimination committed jointly by several persons as prohibited by the GEADA, Section 39, is still (May 2022) only prohibited regarding ethnicity and/or religion.

²⁷⁵ See the legal preparatory works; Proposition to Parliament, Prop 81 L (2016-2017) *Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)* Chapter 28.6.

²⁷⁶ There were 10 cases in 2021, almost all from courts of first instance, for example TALTA-2020-111453.

²⁷⁷ The last published case (March 20121) was case TJARE-2016-96260 (refusal of a hairdresser's services to a woman wearing a hijab) and subsequent appeals: LG-2016-164427 and HR-2017-534-U.

²⁷⁸ For example *Lilliendahl v. Iceland*, no. 29297/18, 12 May 2020.

²⁷⁹ There were some confusion just after the reorganisation of the equality bodies in 2018 as to whether there was an upper limit to the damages the Equality Tribunal could award. The Equality Tribunal's interpretation of this as an absolute limit was corrected in a white paper, Ministry for Culture (2020) *On changes in the GEADA and WEA*, published 2 July 2020, Chapter 7.4. Available in Norwegian at <https://www.regjeringen.no/contentassets/9a57245aabaf407d9b893ae303a2e727/endringer-i-diskrimineringsombudsloven-og-arbeidsmiljolooven.pdf>. So far (2018-2021) damages of over NOK 100 000 (EUR 10 000) have been awarded in several cases, all concerning gender, for example Equality Tribunal, cases DIN-2020-207 and DIN-2020-171.

Taking a case to court is costly, as there is no free legal aid in discrimination cases, and with a significant risk of having to pay the costs of the defendant.²⁸⁰ This makes access to effective remedies in discrimination cases a concern.

The Equality Tribunal has a limited competence to make an administrative order - that is to order an act to be stopped or remedied or other measures that are necessary to ensure that discrimination, harassment, instructions or reprisals cease and to prevent their repetition (see Section 11 of the EAOA). Breaches of the duty of accommodation (individual accommodation/universal design) are regarded as discrimination and can be ordered to be stopped or remedied. The Equality Tribunal may set a time limit for compliance with the order. The Tribunal will state the grounds for an administrative decision at the time the decision is made. Furthermore, the Equality Tribunal may make an administrative decision to impose a coercive fine to ensure the implementation of orders if the time limit for complying with the order is exceeded (EAOA, Section 13). The coercive fine begins to run if a new time limit for complying with the order is exceeded and will normally run until the order has been complied with. The Tribunal may reduce or waive a fine that has been imposed when special reasons warrant doing so. The coercive fine accrues to the state. An administrative decision to impose a coercive fine constitutes grounds for enforcement. The Equality Tribunal must state the grounds for an administrative decision to impose a coercive fine at the time the decision is made.

The clearer legal basis through the GEADA seems to have led to a more effective system at least to some degree and functions as a strong motivation to comply when the Equality Tribunal gives a binding decision that requires action, as in case DIN-2018-32. Since the revision of the anti-discrimination legislation and reorganisation of the equality bodies in 2018, the Equality Tribunal has made use of administrative orders in 11 cases, all except one concerning disability or universal design. According to recent research, it is an issue of concern that the Tribunal does not follow up cases where no orders have been made.²⁸¹ However, in the 11 cases from 2018 to 2021 in which orders were made, with the threat of a fine in the event of non-compliance, a fine was issued only twice.

b) Compensation – maximum and average amounts

There are no upper limits for compensation for economic losses, and the national legal framework does not provide rules for calculation. While damages of rather small amounts are awarded for non-pecuniary losses, any compensation must, as a rule, compensate for actual loss caused directly by the discrimination.

There are very few Supreme Court cases concerning discrimination law, and even fewer in which damages or compensation have been awarded.

In its judgment of 28 March 2014, the Eidsivating appellate court awarded in case number LE-2013-113570 *Gate Gourmet 2* compensation amounting to real economic loss because of discrimination due to membership of a trade union. The Supreme Court had in its case Rt-2011-1755 *Gate Gourmet*, found that these employees had been discriminated against in violation of the general rule in the WEA Section 13-1 first paragraph because jobseekers who were members of another union got preferential hiring. The 50 complainants were awarded NOK 5 000 (EUR 625 at the time) in damages for non-pecuniary losses for the discrimination incurred. In subsequent cases for the Øvre Romerike district court (12-073184TVI-OVRO of 23 April 2013) and the Eidsivating appellate court, the claimants were awarded compensation for incurred loss. The compensation to all claimants totalled more than NOK 8 million (approximately EUR 1 million).

²⁸⁰ See, for example, in court case LE-2018-145654-2, described in Section 6.1.b).

²⁸¹ Winterstø, C. (2022) 'Det norske lavterskeltilbudet i diskrimineringsaker - En kritisk rettsdogmatisk og rettssosiologisk analyse i kjølvannet av 2017- reformen', in *Kvinnevertslig* skriftserie no. 110.

Compensation was also awarded in Supreme Court case Rt 2001-248, *Olderdalen*. NOK 100 000, (EUR 12 000) was awarded to each of the claimants as economic loss because of discrimination due to political affiliation. The WEA of the time did not contain a clause specifically on liability for economic loss, thus the comparable sanctions used for gender discrimination were referred to.

In the other cases before the Supreme Court, compensation or damages either have not been claimed, or the case was lost, and compensation thus not awarded. In one case, HR-2018-1189-A, which concerned pregnancy, the final result was the awarding of compensation for economic losses, but of an unknown amount. The Supreme Court concluded that the Court of Appeal decision that the employer had not discriminated the complainant was incorrect, and the parties decided to negotiate the amount outside the courts. Supreme Court case HR-2018-1958-A concerned a doctor working for a municipality who refused to insert intrauterine contraceptive devices for religious reasons. Her contract with the municipality was terminated on this basis, as this was part of her duties. The termination was found to be unjustified by the Supreme Court, which referred the case back to the Court of Appeal regarding the amount of compensation. Since there was no judgment from the Court of Appeal on this matter, it is likely that the parties came to an agreement outside the courts in this case too.

Another noteworthy example concerns the lack of compensation awarded in Supreme Court judgment HR-2017-219-A. This case was a direct follow-up to the Supreme Court case Rt 2012-219, in which the Supreme Court found that the pilots had been discriminated against. The same court subsequently found that the discrimination did not merit compensation, based on the reasoning that the unclear legal situation did not attribute sufficient blame to the employer as required by compensation law.

Since 2018, the Equality Tribunal has had powers to award damages for injury of a non-pecuniary character for non-economic losses in cases concerning a breach of the prohibition against discrimination in employment relationships, under Section 12 of the EAOA. This power has been used several times since. According to the preparatory works to the GEADA, such damages for injury of a non-pecuniary character should usually be between NOK 20 000 and NOK 80 000 (approximately EUR 2 000 to EUR 8 000).²⁸² In all cases from 2018 to 2021, the damages for non-pecuniary losses were less than NOK 80 000 (EUR 8 000); compensation for economic loss has usually been within the same range, due to some confusion concerning the Tribunal's authority. Recently this confusion has been remedied,²⁸³ and the Tribunal has awarded higher amounts of compensation, but only in cases concerning gender.²⁸⁴ It should be noted that the power of the Equality Tribunal to award compensation is limited to cases where 'the only submissions made by the respondent relate to inability to pay or other manifestly untenable objections', and its decisions have to be unanimous (EAOA, Section 12(2)).

There is no statistical information available concerning the average amount of compensation available to victims, but the amounts in each case are published on the website of the Equality Tribunal.²⁸⁵

²⁸² Prop.80 L (2016-2017) p. 94. The Tribunal's interpretation of this as an absolute limit was corrected in a white paper, Ministry for Culture (2020) *On changes in the GEADA and WEA*, published 2 July 2020, Chapter 7.4. Available in Norwegian at <https://www.regjeringen.no/contentassets/9a57245aabaf407d9b893ae303a2e727/endringer-i-diskrimineringsombudsloven-og-arbeidsmiljolooven.pdf>. It should also be noted that the Tribunal's power to award compensation and damages for injury of a non-pecuniary character is limited to cases where the calculation of such is not very complicated (EAOA, Section 12(2)).

²⁸³ This was remedied in Tribunal case DIN-2021-544.

²⁸⁴ NOK 265 000 (EUR 26 500) in case DIN-2020-207 and NOK 109 732 (EUR 11 000) in case DIN-2020-171.

²⁸⁵ See [Søk i klagesaker \(diskrimineringsnemnda.no\)](https://www.sok-i-klagesaker.no).

c) Assessment of the sanctions

The sanctions as formulated in the legislation and adopted in Norway are only partially satisfactory in relation to EU directives per se to address problems of discrimination. An effective remedy is in reality almost impossible to achieve in some cases, for a number of reasons.

Statistics on discrimination cases in Norway show that although the courts do handle discrimination cases, and although the number of cases assessed by courts is increasing, by far the overwhelming number of discrimination cases in Norway are channelled through the administrative bodies: the Equality Ombud and the Equality Tribunal.

Until recently, there were few consequences for breaches of the anti-discrimination legislation. The changes in the EAOA as of 1 January 2018 giving the Equality Tribunal the power to award damages for non-pecuniary losses in cases concerning employment might partly overcome this barrier,²⁸⁶ but a lot of cases will continue to lack efficient remedies; for example, cases involving various types of harassment outside employment relationships, or housing. In such cases, the Equality Tribunal can award only compensation for economic losses, not damages for injury of a non-pecuniary character (EAOA, Section 12). Damages of a non-pecuniary character were awarded on 19 occasions in 2019-2021, and in four of these cases, compensation was awarded as well. In two cases, regarding disability, only compensation for economic losses was awarded, as this was outside employment.²⁸⁷

As for remedies regarding the public sector outside of employment relationships, the Equality Tribunal has the power to evaluate the decisions of other parts of the public administration, even if it cannot overrule them (see EAOA, Section 14(2)). For the most part, the Equality Tribunal appears to have been reluctant to use this opportunity, as for example in case DIN-2020-175, described in Chapter 12.2. In one decision, however, it concluded that regulations were not in line with the GEADA.²⁸⁸

In theory, it is possible to obtain damages, compensation, injunctions or annulment of decisions made by the public administration by taking a case to the courts. However, since there is no free legal aid, and there is a significant risk of losing and having to pay large sums to the other party, this option is often too burdensome in comparison with what may be achieved to be viable in practice.

²⁸⁶ See the legal preparatory works; Proposition to Parliament, Prop 80 L (2016-2017) *Lov om likestillings- og diskrimineringsombudet og Diskrimineringsnemnda (diskrimineringsombudsloven)*, building upon the paper sent for public hearing in 2016

<https://www.regjeringen.no/contentassets/14dd1daa159348c88de5dbe043feb0a4/horingsnotat.pdf>. This proposal builds on an assessment of the structure and mandate of the equality bodies finalised in March 2016, see: <https://www.regjeringen.no/contentassets/04bd6c545ae74c4ebea246f44dcf4942/utredning-av-handhevings--og-virkemiddelapparatet-pa-likestillings--og-diskrimineringsfeltet.pdf>.

²⁸⁷ Equality Tribunal, cases DIN-2020-325 and DIN-2021-197.

²⁸⁸ Equality Tribunal, case DIN-2019-218 concerning compensation for loss of income for fishermen when on parental leave.

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

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

The Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal (Equality Tribunal) are the specialised bodies for the promotion of equal treatment irrespective of racial or ethnic origin according to Article 13 of the Racial Equality Directive.

The Equality Tribunal is an administrative body providing a free and simplified procedure for most discrimination complaints (EAOA Section 1 and Chapter 3), while the Ombud provides information and advice to individuals; monitors compulsory equality efforts²⁸⁹ as well as the implementation of CEDAW, the CERD and the CRPD; and works proactively on many levels to promote equality (EAOA Section 1 and Chapter 2).

- b) Political, economic and social context of the designated bodies

There is evidence of recent positive political support for the designated bodies and of recent political hostility to the designated bodies. In 2021, the Government changed to a coalition of the Labour Party and Centre Party. The responsible minister for the anti-discrimination field is from the Labour Party and has for many years been an openly lesbian member of Parliament who is familiar with and supportive of anti-discrimination and equality efforts.

There is evidence of popular debate that is supportive of equality and diversity and of the designated bodies. Popular debate is, in principle, positive and supportive of equality and diversity. A report commissioned by the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) found that while there has been a slight increase of negative comments on the Facebook pages of the editorial media in Norway, the main increase is in neutral comments, concluding that '[s]ome increased frustration and use of negative tone has been found, but what is more prominent is how the seriousness of the situation has given us more balanced, nuanced and factual comments'.²⁹⁰

While there has been an increase in hate speech over several years, there has also been an increased level of response from the Government²⁹¹ and the judiciary.²⁹²

- c) Institutional architecture

In Norway, the designated bodies do not form part of a body with multiple mandates, as equality and non-discrimination are the complete and only mandate of both the Ombud and the Equality Tribunal. As such, their only focus is on equality and non-discrimination. The Ombud's work has high public visibility, whereas the work of the Equality Tribunal has less visibility in the public domain, although its visibility is increasing through media attention concerning its decisions.

²⁸⁹ See GEADA, Chapter 4.

²⁹⁰ Retriever (2021) *Tone og hatefulle ytringer in norske kommentarfelt. En analyse av fem norske mediers kommentarfelt på Facebook, før og under koronapandemien.* (Tone of speech and hate speech on the Facebook pages of the editorial media in Norway, before and during the COVID-19 pandemic.)

²⁹¹ See, for example, the Government strategy against hate speech https://www.regjeringen.no/contentassets/72293ca5195642249029bf6905ff08be/hatefulleytringer_uu.pdf and the following report: Lenz, C., Lid, S., Lorentzen, G., Nilsen, AB., Nustad, P. and Risea, E. (2018), *Tiltak mot hatefulle ytringer: kunnskaps- og tiltaksoversikt* (Report on existing knowledge and policies against hate speech). An action plan against racism and discrimination on the basis of ethnicity or religion was published in December 2019: https://www.regjeringen.no/contentassets/589aa9f4e14540b5a5a6144aaea7b518/handlingsplan-mot-rasisme_uu_des-2019.pdf; An action plan against discrimination and hate against Muslims was published in September 2020: [Handlingsplan mot diskriminering av og hat mot muslimer 2020-2023 - regjeringen.no](https://www.regjeringen.no/contentassets/589aa9f4e14540b5a5a6144aaea7b518/handlingsplan-mot-diskriminering-av-og-hat-mot-muslimer-2020-2023-regjeringen.no).

²⁹² From 2018 until 2021, 64 court cases concerning hate speech have been published at www.lovdato.no.

The primary responsibilities of the Ombud are now:

- a. to provide advice and information in individual cases as well as at a general level;
- b. to monitor the implementation of the UN conventions CEDAW, CERD and CRPD;
- c. to be a driving force regarding anti-discrimination and equality issues, and
- d. to monitor the duty on employers and the public administration to make proactive efforts towards equality.²⁹³

The Ombud also runs courses and presentations on discrimination issues and participates in campaigns with both civil sector and public agencies.

The Anti-Discrimination and Equality Tribunal (the Equality Tribunal) is an administrative body with limited powers to make decisions in discrimination cases. The Tribunal may award damages only for injury of a non-pecuniary character or compensation for economic losses in connection with employment and can only make decisions about compensation for concrete financial losses in simple cases.²⁹⁴ Damages for injury of a non-pecuniary character or compensation for economic losses claims must otherwise be filed before the ordinary courts. When the Tribunal handles matters concerning regulations or administrative decisions made by a public administrative body, it can only issue a 'statement' on contravention of the GEADA, rather than a 'decision' (EAOA, Section 14).

Bringing complaints to the Equality Tribunal is not mandatory before going to ordinary courts. However, very few discrimination cases are brought before the courts. Legal aid is not granted in discrimination cases.

The Directorate for Children, Youth and Family Affairs also has a department responsible for obtaining and spreading knowledge both within the public sector and to the general public, through reports, advice and so on, about most of the protected grounds of discrimination, including: gender, sexual orientation, gender identity, persons with disabilities, ethnicity and life stance.²⁹⁵ They are, however, not independent, and also serve as an advisory body for the ministries as well as implementing Government policies.

d) Status of the designated bodies – general independence

i) Status of the bodies

The legal status of both the Ombud and the Equality Tribunal are found in the EAOA. They are independent public administrative agencies, administratively subordinate to the King and the ministry, although neither the King nor the ministry may issue instructions to the Ombud or the Equality Tribunal regarding their professional activities.

The Ombud is appointed by the King in Council for a fixed term of six years, in a full-time position. The members of the Equality Tribunal are appointed by the King in Council for four years. They are all lawyers, and the leaders of the four chambers must have the same qualifications as judges or have experience as such, unless other qualifications make such experience unnecessary (EAOA, Section 6(3)).

The Ombud has the powers to recruit and manage its staff. The members of the Tribunal have other full-time positions and are supported in their work by a secretariat who are employed full-time, under the lead of a director of the secretariat who manages the staff.

²⁹³ See EAOA Section 5 and the Equality Ombud (2016) *Strategy 2017-2022*, available at <http://www.ldo.no/link/e7b12b5b0de341599adfc954c64bb562.aspx?id=12271>.

²⁹⁴ 'Simple cases' entails cases when the complainant is not asserting anything but the inability to pay or other obviously unsustainable objections.

²⁹⁵ See the website of the Directorate for Children, Youth and Family Affairs at <https://www.Bufdir.no/Inkludering/>.

The Ministry of Culture and Equality recruits the director, who then recruits and manages the secretariat staff (EAOA Section 6(6)).

Both the Equality and Anti-Discrimination Ombud and the Equality Tribunal receive their funds in an annual letter of budget allocation from the Ministry of Culture and Equality, and they report on the use of these funds in their annual reports to the Ministry, which are also published on their websites. The funds allocated through the state budget for 2021 as income for the Ombud's office were NOK 49 090 000 (EUR 4 909 000),²⁹⁶ a little higher than in 2020, when it was NOK 48 020 000 (EUR 4 802 000).²⁹⁷ The 2021 budget for the Equality Tribunal was NOK 22 240 000 (EUR 2 240 000),²⁹⁸ which is a little lower than in 2020, when the budget was NOK 22 260 000 (EUR 2 226 000).²⁹⁹

ii) Independence of the bodies

In Norway, the independence of the bodies is stipulated in law. Section 4(2) of the Act on the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal (EAOA) states that the Ombud is independent and not subject to instructions regarding the Ombud's professional activities. A similar provision in respect of the Equality Tribunal is found in Section 6(1). This independence exists in practice.

e) Grounds covered by the designated bodies

The grounds covered by the mandate of the equality bodies are gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age, political views, membership of a trade union, or combinations of these.

Neither the Ombud nor the Equality Tribunal have compartmentalised their work according to the different grounds. The Ombud administration is divided into the following sections: the Ombud's staff, advice, monitoring and admin/HR.³⁰⁰ Staff are hired according to their specific expertise according to each discrimination ground, but the principal idea is that all staff within the Ombud's office should have knowledge about all grounds, particularly in order to uncover multiple discrimination.

Gender and disability are the areas in which there are most individual complaints, however the focus on shadow reports to the UN committees and the monitoring role of the Ombud in relation to the CERD, CEDAW and CRPD means that attention is also given to ethnicity and religion. In 2020, the Ombud paid particular attention to discrimination on the basis of ethnicity.³⁰¹ There is also a working group on LGBTI issues. The discrimination ground with the least number of individual complaints is sexual orientation.³⁰² Discrimination because of sexual orientation has been targeted through campaigns against hate crime and harassment, in particular in relation to schools and public life, participation in various reference groups, and participation in Pride or other public events. From an external perspective it does not appear that any discrimination ground is receiving less attention than the others.

²⁹⁶ Figures from the national budget of 2021 [Prop. 1 S \(2020–2021\) \(regjeringen.no\)](#) p. 101.

²⁹⁷ Figures from the national budget of 2020, [Prop. 1 S \(2019–2020\) \(regjeringen.no\)](#) p. 99.

²⁹⁸ Figures from the national budget of 2021 [Prop. 1 S \(2020–2021\) \(regjeringen.no\)](#) p. 101.

²⁹⁹ Figures from the national budget of 2020, [Prop. 1 S \(2019–2020\) \(regjeringen.no\)](#) p. 99.

³⁰⁰ See the Ombud's website: www.ldo.no/nyheter-og-fag/om-ombudet/ansatte/.

³⁰¹ Equality and Anti-Discrimination Ombud (2021), *Annual report 2020*, (*Årsmelding*) available at [LDO - Årsmelding 2020](#).

³⁰² There is no indication that this is due to fewer cases being reported on this ground; on the contrary, for several years, the LGBTIQ organisations have been doing a lot of work to discover and provide legal aid in discrimination cases.

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

The Ombud provides independent assistance to victims by providing information and advice to anybody who contacts the Ombud (EAOA, Section 5(2)). The Equality Tribunal's assessment of individual cases of possible breaches of the law is exercised in an independent manner. However, there are concerns regarding independent assistance to victims of discrimination from both the Ombud and the Tribunal, especially regarding persons with a need for accommodation.³⁰³

The victim submits a written complaint to the Equality Tribunal, and the procedure is, with some exceptions, in written form (EAOA, Section 9). For persons who write well in Norwegian and are able to understand what is required in terms of proof, advice from the Ombud and the Tribunal complaints procedure usually provides sufficient assistance to enable them to obtain an assessment of the relevant facts. However, NGOs and others report that the complaints procedure is still too difficult and burdensome for many. For example, the form for making a complaint on the web pages of the Tribunal is in Norwegian only. The Tribunal states on its website that it does not give advice to complainants, and there is no information about possible accommodations, whether because of a disability, lack of writing or language skills or other barriers to providing the relevant information.³⁰⁴

The Tribunal is supposed to use a simplified administrative procedure for which complainants do not require legal aid. While the Ombud may provide advice, the complainant has to write their complaint themselves. In 2018, the Ombud started to assist victims in a few select cases before the Equality Tribunal. Since then, it has initiated, and represented the victim in, up to two cases per year. In its strategy, the Ombud states that it will give priority to cases that will have an effect on many people, which may prove a problem for small groups such as LGBT groups and minorities within minorities.³⁰⁵ There is no mention of providing legal representation for persons who are unable to have their case assessed without such assistance. The Ombud has not yet used its power to support victims in taking claims to court.

The Ombud provided advice in 2 479 cases in 2021, an increase of 26 % compared with 2020. It is not known how many of the complainants to the Tribunal have received advice from the Ombud, but the Ombud is better known than the Tribunal among the general population, and the Tribunal refers people to the Ombud for advice on its own website. Together with the fact that the Ombud provided advice in cases totalling six times the number of complaints to the Tribunal, it should be safe to assume that most complainants have received advice from the Ombud before making a complaint.

Even so, more than a third of the complaints are dismissed early in the process,³⁰⁶ most often on the basis that there is no differential treatment or no causal link to a protected ground.

³⁰³ Winterstø, C. (2022) 'Det norske lavterskeltilbudet i diskrimineringsaker - En kritisk rettsdogmatisk og retts sosiologisk analyse i kjølvannet av 2017- reformen', in: *Kvinnerettslig* skriftserie no. 110.

³⁰⁴ See the tribunal's webpage at: <https://www.diskrimineringsnemnda.no/fo>.

³⁰⁵ Equality and Anti-Discrimination Ombud (2016) *Strategy for 2017-2022*, paragraph 3, <http://www.ldo.no/nyheiter-og-fag/brosjyrar-og-publikasjonar/Arsrapporter/arsmelding-2016/sammendrag-strategi/>. There is, however, a working group at the Ombud's office targeting LGBTQI issues.

³⁰⁶ Of 297 complaints concerning discrimination, which were assessed by the Tribunal in 2021, 121 were dismissed, usually for being 'clearly not in breach' of the GEADA, and 59 were rejected for procedural reasons. In addition, 132 were filed without assessment due to the complainant not answering further questions from the Tribunal, or withdrawing their complaint. See [Søk i statistikk \(diskrimineringsnemnda.no\)](https://www.diskrimineringsnemnda.no).

The Tribunal has been criticised by the Ombud for not investigating sufficiently before dismissing cases.³⁰⁷ There is not a clear line between assistance and investigation. For the Tribunal to be the low-threshold alternative to the courts that it is supposed to be, the tasks of obtaining and presenting information relevant to the case otherwise assigned to the legal representative must be provided by either the Ombud or the Tribunal. It is evident that there is room for improvement regarding independent assistance to victims, especially, but not necessarily limited to, those requiring some form of accommodation.

When dismissing cases, the Tribunal informs the complainant that a decision of dismissal cannot be appealed.³⁰⁸ However, according to EAOA Section 20, all its decisions may be reassessed upon request by one of the parties if there is new information that indicates that the decision most likely would have been different. The EAOA Section 20 does not differentiate between dismissals and other decisions. This rule, and the Tribunal's interpretation of it, makes it even more important that the victims of discrimination receive adequate assistance early in the process.

In 2020, the Ombud assessed the Tribunal's decisions in cases concerning ethnicity, and found that a common feature for all cases in which a breach of the GEADA was found was that the parties had agreed that differential treatment had taken place; the question was whether it was justified.³⁰⁹ This tendency to find a breach mainly in cases in which the differential treatment is uncontested or well documented is not limited to cases concerning ethnicity.³¹⁰

NGOs working against discrimination play a key role in providing independent assistance to victims. They are often the first to identify a case since most of them provide some degree of legal advice for specific groups. Occasionally they also provide legal representation in cases before the Tribunal, but few have the resources to provide assistance beyond legal advice.

Both the Ombud and the Equality Tribunal have resources available to them, although the Tribunal's move to Bergen as of 1 January 2018 led to a depletion in the number of skilled staff in the secretariat, as almost none of the previous staff moved. Since then, the Tribunal has been enlarged from three to four chambers from 1 January 2020 and has had its responsibilities increased threefold since 2018.³¹¹ The number of complaints increased by almost 70 % from 2020 to 2021, and the Tribunal now reports a lack of sufficient resources to handle the workload.³¹²

ii) Independent surveys and reports

In Norway, the Ombud does have the competence to conduct independent surveys and publish independent reports (EAOA, Sections 4(2) and 5). The Tribunal does not produce reports.

³⁰⁷ Equality and Anti-Discrimination Ombud (2021), *Diskrimineringsretten 2020 – Rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis* (Discrimination Law 2020. Legal developments in equality and anti-discrimination law, including changes in the legislation, judgments and administrative decisions), available in Norwegian at: [Diskrimineringsretten 2020 : rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis \(ldo.no\)](https://ldo.no/rettsutvikling-pa-likestillings-og-diskrimineringsfeltet-med-gjennomgang-av-relevante-lovendringer-forvaltnings-og-rettspraksis).

³⁰⁸ See, for example, Equality Tribunal, case DIN-2021-25.

³⁰⁹ Equality and Anti-Discrimination Ombud (2021), *Diskrimineringsretten 2020 – Rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis* (Discrimination Law 2020. Legal developments in equality and anti-discrimination law, including changes in the legislation, judgments and administrative decisions), p. 42.

³¹⁰ See, for example, Equality Tribunal, case DIN-2020-250.

³¹¹ First, sexual harassment was included in the Tribunal's mandate from 1 January 2020. From 1 July 2021, the Tribunal should assess cases concerning victimisation in cases concerning notification of any type at a workplace, not only discrimination. From 1 January 2022, the Tribunal's authority to assess cases concerning universal design of information and communication technology was expanded to encompass a proactive duty on enterprises regarding this issue.

³¹² Email to the author from the Equality and Anti-Discrimination Tribunal, 7 February 2021.

The reports of the Ombud, in particular as part of her mandate to follow up on Norwegian obligations under the CERD, CEDAW and CRPD, show that this responsibility is effectively exercised in an independent manner. The Ombud also publishes reports on various legal matters, for example on age discrimination and reasonable accommodation.³¹³

In 2019, the Ombud began to publish annual reports on legal developments in the field of equality and anti-discrimination law. This includes monitoring the decisions of the Equality Tribunal.

The majority of good-quality reports and broad, independent surveys concerning discrimination are initiated and funded by an agency without independent status: the Department for Equality and Universal Design within the Directorate for Children, Youth and Family Affairs (Bufdir). This agency focuses on the collection and dissemination of knowledge, both within the public sector and for anyone who requests it. Although the commission of certain reports may in itself be politicised by the sitting Government, the reports themselves are independent.³¹⁴ Among other things, the agency coordinates and monitors the implementation of Government action plans.

iii) Recommendations

For several reasons, the effectiveness of the Equality Tribunal still has room for improvement. First, more than a third of all the decisions from 2018 to 2021 were rejected or dismissed,³¹⁵ many with the justification of being 'clearly not in breach' of Section 1 of the GEADA. These decisions often do not contain sufficient information to assess the quality of the decision. This has been criticised by the Ombud, which also stated that it made it more difficult for it to provide guidance to victims of discrimination.³¹⁶ More informative dismissals are therefore recommended, along with adequate funding for the Tribunal to have sufficient time to do this. As described earlier in this chapter, there is also significant room for improvement regarding assistance to victims, even if it is unclear whether this is the responsibility of the Ombud or the Tribunal, or both.

There is significant room for improvement regarding the assessments of the facts at various stages in the process.³¹⁷ This may be done on several levels.

As few members of the Tribunal seem to have experience in the anti-discrimination field,³¹⁸ there is an increased risk of overlooking widespread stereotypes using this justification.³¹⁹

³¹³ Equality and Anti-Discrimination Ombud (2014) 'Individual Accommodation for Employees and Jobseekers with Disability', <http://www.ldo.no/link/2d95e9dddad24563af903938afaeab95.aspx?id=1266> and Ombud (2015) 'Age Discrimination in Working Life', <http://www.ldo.no/link/6d30dab282ee4e5cbefceb5076beecb1.aspx?id=1132>.

³¹⁴ See, for example, Bufdir (2021) *Likestillingskonsekvenser av covid-19 og tiltakene mot pandemien. Isolasjon, helse- og omsorgstjenester, skole, utdanning, arbeid, økonomi, informasjon og deltakelse. Funksjonsnedsettelse (Consequences of Covid-19 and the measures against the pandemic regarding equality. Isolation, health and care services, school, education, work, economics, information and participation.)*.

³¹⁵ Not including those that were filed without any decision due to lack of follow-up information from the complainant.

³¹⁶ Equality and Anti-Discrimination Ombud (2021), *Diskrimineringsretten 2020 – Rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis (Discrimination Law 2020. Legal developments in equality and anti-discrimination law, including changes in the legislation, judgments and administrative decisions)*, pp. 23-24.

³¹⁷ See other parts of this chapter, and Bauge, M. and Løvdal, L. (2022) 'Access to justice in discrimination cases in Norway', *Scandinavian Studies in Law*, vol. 68 pp. 373-402.

³¹⁸ <https://diskrimineringsnemnda.no/nemndas-medlemmer->

³¹⁹ See, for example, the Equality Tribunal's decision in DIN-2018-239, which is, at best, too brief to justify the dismissal. The Ombud also mentions these issues in its reports on recent legal developments in anti-discrimination law: Likestillings- og diskrimineringsombudet (2020) *Diskrimineringsretten 2019 - En gjennomgang av året som har gått*, available at https://www.ldo.no/globalassets/ldo_2019/03_ombudet-og-samfunnet/rapporter/diskrimineringsrett/diskrimineringsretten-2019.pdf; and Equality and Anti-Discrimination Ombud (2021), *Diskrimineringsretten 2020 – Rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis*

Employing persons with various backgrounds, especially those with relevant identities and lived experience, was an integral part of the assessment of cases at the Equality Ombud when it was the first instance body for the complaints procedure. The members of the Tribunal were previously recruited on the basis of recommendations from anti-discrimination NGOs. Recruiting persons with a wider range of backgrounds might improve the Tribunal's assessments of the facts.

The Tribunal has a cooperation agreement with the Norwegian Digitalisation Agency, which is responsible for monitoring the Web Accessibility Directive regarding assessments of the facts in cases concerning information and communication technology and universal design. This cooperation is an example of good practice which has led to some excellent decisions.³²⁰ Similar cooperation, as well as the use of expert witnesses or similar in some cases, is recommended in order to provide a real alternative to the courts.

In its report on developments in 2020, the Ombud raised several concerns. First, the number of rejections or dismissals of cases in which the reasoning is so briefly described that it is often impossible to understand why a case was dismissed. Secondly, according to the way in which the Ombud interprets the law, a case that has been dismissed or rejected may not be reopened.³²¹ The Ombud therefore recommends that the Government clarifies the EAOA so that dismissed or rejected cases may be reopened, and recommends that the Tribunal explain its dismissals and rejections more thoroughly.

Many of the cases brought before the Equality Tribunal concern discrimination by various parts of the public administration. The Equality Tribunal found a breach of the anti-discrimination legislation in only 2 % of the cases against the public administration, while it found a breach in 13 % of the sum total of cases in this period. Overall, 77 % of the cases against the public administration were dismissed or rejected, compared to 40 % of the cases in total. A few of the rejections are due to the Equality Tribunal's limited mandate, as it cannot assess whether legislation is in line with the GEADA. However, the lack of investigation into complaints against the public administration is a cause for concern, for example regarding care and housing issues for persons with disabilities. In its report on legal developments in 2020 mentioned above, the Ombud also recommends that the duty of the Tribunal to investigate each case is clarified.

It is also a cause for concern that the Tribunal rarely chooses to provide 'opinions' in such cases, when it has the mandate to do so. The Equality Tribunal does not have the power to evaluate the actions of the Parliament or courts and their administrative branches (EAOA, Section 1(3)). This also means that it cannot evaluate laws or judgments. However, regulations made by the ministries fall under its powers to provide non-binding opinions (EAOA Section 14).

A general concern is that the quality of the Tribunal's assessments regarding the application and interpretation of the GEADA and WEA is variable. The directives are rarely used, and CEDAW and the CERD and CRPD even less often. While this was to be expected

(Discrimination Law 2020. Legal developments in equality and anti-discrimination law, including changes in the legislation, judgments and administrative decisions), available in Norwegian at: [Diskrimineringsretten 2020 : rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis \(ldo.no\)](https://www.ldb.no/globalassets/ldb_2019/03_ombudet-og-samfunnet/rapporter/diskrimineringsrett/diskrimineringsretten-2019.pdf).

³²⁰ Equality Tribunal, cases DIN-2018-32 and DIN-2020-120.

³²¹ Equality and Anti-Discrimination Ombud (2020), *Diskrimineringsretten 2019 – En gjennomgang av året sin har gått* (Discrimination Law 2019. An overview of last year's legal developments), pp. 31-59. The report is available in Norwegian at https://www.ldb.no/globalassets/ldb_2019/03_ombudet-og-samfunnet/rapporter/diskrimineringsrett/diskrimineringsretten-2019.pdf. The Equality and Anti-Discrimination Ombud (2021), *Diskrimineringsretten 2020 – Rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis* (Discrimination Law 2020. Legal developments in equality and anti-discrimination law, including changes in the legislation, judgments and administrative decisions), available in Norwegian at: [Diskrimineringsretten 2020 : rettsutvikling på likestillings- og diskrimineringsfeltet, med gjennomgang av relevante lovendringer, forvaltnings- og rettspraksis \(ldo.no\)](https://www.ldb.no/globalassets/ldb_2021/03_ombudet-og-samfunnet/rapporter/diskrimineringsrett/diskrimineringsretten-2020.pdf).

to at least some degree after the reorganisation and relocation in 2018, the quality is still questionable in many decisions, especially when it comes to justifiable differential treatment. The CRPD is not used at all when interpreting what is justified in respect of differential treatment, and the assessment of the facts is usually very superficial.³²²

iv) Other competences

The Equality Tribunal only assesses individual cases of discrimination, including the active equality efforts stipulated in the law in relation to whether or not public authorities, employers and employees fulfil their duties to promote equality within their fields.

According to the EAOA, the mandate of the Equality and Anti-Discrimination Ombud is to promote real equality and work against discrimination on the basis of gender, pregnancy, ethnicity, religion, disability, sexual orientation, gender identity, gender expression and age. As of December 2021, no new regulations for its work have been issued. The Ombud's strategy from 2017 to 2022 gives priority to:

1. strengthening its monitoring role regarding the UN Conventions CEDAW, CERD and CRPD;
2. prevention instead of reaction;
3. issues that concern many people;
4. cooperation with NGOs;
5. writing reports and using them in the public debate.³²³

The Ombud provides a number of courses on various discrimination issues and participates in campaigns together with NGOs and other parts of the public administration.³²⁴ The Ombud herself also participates in the public debate. From 1 January 2020, the Ombud is also responsible for monitoring the proactive duties of employers and the public administration reintroduced into the GEADA from the same date (see EAOA Section 5(4) and GEADA Sections 24, 25, 26 and 26a).

g) Legal standing of the designated bodies

In Norway, the Ombud in theory has legal standing to:

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

In practice, the Ombud has intervened in only one court case (several years ago), and as such has not made use of that part of the mandate. Since 2019, the Ombud has brought up to two complaints to the Equality Tribunal per year.³²⁵ Occasionally legal experts from the Ombud act as *amicus curiae* if requested to do so by one of the lawyers.

The basis for how the Ombud selects cases is found in the Ombud strategy, and the most relevant criterion is no. 3, 'issues that concern many people'. The selection process is complex, as the Ombud has many different tools to promote an issue, but is reasonably transparent.

³²² Bauge, M. and Løvdal, L. (2022) 'Access to justice in discrimination cases in Norway', *Scandinavian Studies in Law*, vol. 68 pp. 373-402.

³²³ Equality Ombud (2016) *Strategy for 2017 – 2022*.

³²⁴ Email to the author from the Ombud, 5 April 2019.

³²⁵ Equality Tribunal, Cases DIN-2019-3, DIN-2019-114.

In Norway, the Equality Tribunal does not have legal standing to carry out any of the legal actions listed above.³²⁶

h) Quasi-judicial competences

In Norway, the Equality Tribunal is a quasi-judicial institution (EAOA Sections 1 and 7).

The Equality Tribunal is a permanent body that has been entrusted by law to exercise its functions and its composition is defined by law (see EAOA, Section 6). It must apply the law and is an independent body, as its members are external appointees, selected on personal merit. The Tribunal is divided into four chambers, each with a head of chambers, who may make decisions regarding dismissals and rejections for procedural reasons alone. Most other decisions are made by a chamber constituted of the head of chamber and two Tribunal members. In cases concerning sexual harassment and/or damages for injury of a non-pecuniary character, the parties have a right to an oral hearing. Otherwise, an oral hearing may be held if it is deemed necessary for the sake of obtaining sufficient information about the facts of the case (EAOA, Section 9).

A decision of the Equality Tribunal is a legally binding administrative decision if the case is against a private party, as provided by the EAOA in Section 11. The same applies for the public sector when it acts as an employer. The Tribunal may not make an administrative decision establishing that an administrative decision of another public administrative agency breaches provisions in the anti-discrimination acts but may issue a statement as to how the Tribunal evaluates the case seen in relation to the discrimination legislation (EAOA, Section 14). In accordance with a previous landmark case from the Parliamentary Ombudsman, a party to a case should either fulfil the decisions of the Equality Tribunal or forward the case to the ordinary courts.³²⁷

The Equality Tribunal has the right according to the law to award damages for injury of a non-pecuniary character and compensation for economic losses. Section 12 of the EAOA provides that the Tribunal may make an administrative decision concerning damages for injury of a non-pecuniary character in the context of an employment relationship under the GEADA (Section 38, second paragraph, first sentence) and the WEA (Section 13-9). This includes the treatment of self-employed people and hired workers. This means that in cases regarding, for example, harassment outside of employment, the only thing that a victim can obtain from the Tribunal decision is a statement that they have been discriminated against.

However, the Equality Tribunal may order the cessation, correction and other necessary actions in order to ensure that the discrimination, harassment, instruction or victimisation ceases, or to prevent repetition (EAOA, Section 11). This does not include administrative decisions (EAOA, Section 14) or issues within the jurisdiction of the Labour Court (EAOA, Section 15). The Tribunal monitors those cases where it has issued an order, for example in respect of several cases regarding universal design of the websites of the main political parties.³²⁸ The decisions of the Equality Tribunal are generally well respected.

The Equality Tribunal can unanimously award compensation for economic losses in all types of cases within its jurisdiction, but only when the compensation issue is fairly simple.³²⁹ The Tribunal has used this opportunity to award damages or compensation increasingly since 2018; in 2021, damages for non-pecuniary losses were awarded seven times alone,

³²⁶ EAOA Chapter 3.

³²⁷ The Ombud stated in a landmark decision of 1993 that public authorities that do not wish to comply with the statements of the Ombud have a duty to appeal the case to the Tribunal for a final decision. A non-appeal to the Tribunal by public authorities is seen as an implicit acceptance of the Ombud's conclusions.

³²⁸ According to an email of 12 April 2019 from the Equality Tribunal to the author. Equality Tribunal, cases 13/2018, 14/2018, 15/2018, 16/2018, 17/2018 and 18/2018. There were no cases in 2019 in which the Tribunal issued any orders.

³²⁹ EAOA, 2018, Sections 12 and 2.

and on two occasions together with compensation for economic losses.³³⁰ In addition, compensation for economic losses alone was awarded in two cases. The fact that the Tribunal cannot award damages for injury of a non-pecuniary character in cases concerning issues outside employment relationships means that there are no effective sanctions against, for example, harassment outside employment. For discrimination concerning other areas such as housing and goods and services, there will often not be any effective remedies available through the Tribunal.

There is no way of appealing a decision of the Equality Tribunal other than bringing it to the ordinary courts. An oral hearing in court may give a different result, as the court will hear the case again in full, and will not use the findings of the Equality Tribunal alone.³³¹

i) Registration by the bodies of complaints and decisions

In Norway, the Ombud registers the number of inquiries received, complaints of discrimination made and decisions by ground and field, but publishes them only in their annual reports.³³² In 2021, the Ombud provided advice in a total of 2 479 cases (compared with 1 966 in 2020). Of those cases, 525 concerned disability; 306 ethnicity (including language, where there were 35 cases); 122 age; 52 religion; 20 sexual orientation; 545 concerned other grounds (such as membership in trade union, political views or grounds not covered); and 240 concerned several grounds (the number of cases that actually concerned multiple discrimination is unknown).³³³ Of the fields covered, 1 318 cases concerned employment, 266 concerned goods and services, 242 concerned public administration, 160 related to education, 108 related to housing, 53 concerned the police and the judiciary, and 329 cases concerned other parts of society.³³⁴

The Equality Tribunal publishes its decisions in an online database and systematically registers some other statistical data.³³⁵ Decisions were made in 430 cases in 2021.³³⁶ Of those cases, 95 concerned ethnicity, 124 disability, 46 age, 89 gender or pregnancy, 21 parental leave or care responsibilities, 44 religion or life stance, 25 gender identity or gender expression, five sexual orientation, four membership in a trade union and 39 other or non-protected grounds.

³³⁰ See: <https://www.diskrimineringsnemnda.no/klagesaker-og-statistikk>.

³³¹ The judgment of Hålogaland court of appeal in case LH-2014-27941 of 27 June 2014 underscores this point. A man (A) claimed to have been subject to discrimination because of disability when he was not offered a position as a handling agent in the Norwegian National Collection Agency, and claimed compensation according to the (previous) AAA, Section 17. His complaint had previously been assessed both by the Ombud and by the Equality Tribunal, which both found that there was reason to believe that the employer had placed weight on his disability to his disadvantage when he was not considered for the position he had applied for (see Equality Tribunal, LDN-2012-8). The court found that he had not been discriminated against because of his disability. The court found, based on the witnesses and other evidence provided in court, that A's personal abilities were decisive when he was not hired for the job. The court found that there was no evidence in the case that his disability was decisive. The court points in this context especially to two conditions. First, that it was not necessary to make adaptations to the work situation, as both an elevating table and chair are standard at all workstations. Secondly, that the collection agency at the time of the appointment also offered two people positions who were, at the time of the application, on sick leave. Furthermore, the employer had a relatively high number of employees with disabilities, some of whom had considerably greater disabilities than A.

³³² See <https://www.ldo.no/en/nyheter-og-fag/brosjyrar-og-publikasjoner/Arsrapporter/>.

³³³ Email from the Equality Ombud, 23 March 2020. In 2018, 378 cases concerned disability; 243 ethnicity (including language, where there were 37 cases); 86 age; 62 religion; 18 sexual orientation; 332 concerned other grounds (such as membership in trade union, political views or grounds not covered); and 152 concerned several grounds (the number of cases that actually concerned multiple discrimination is unknown). Also, 339 cases concerned pregnancy and/or parental leave, 380 cases sex and/or gender, 21 care responsibilities, and 24 cases gender identity.

³³⁴ Email from the Equality Ombud 23.03.2020. In 2018, 1 101 cases concerned employment, 266 concerned goods and services, 217 concerned public administration, 148 related to education, 85 related to housing, 26 concerned the police and the judiciary, and 192 cases concerned other parts of society.

³³⁵ <https://diskrimineringsnemnda.no/klagesaker-og-statistikk/s%C3%B8k%20i%20klagesaker>.

³³⁶ Decisions were made in 313 cases in 2020, 296 cases in 2019, 157 cases in 2018 and 58 cases in 2017. See: [Søk i statistikk \(diskrimineringsnemnda.no\)](https://www.diskrimineringsnemnda.no).

It should be noted that the quality of the data from the Tribunal is not very good, as it does not operate with mutually exclusive categories. This means that many cases are counted several times, depending on the search term or category in question. It is also often unclear what is included in a category, or how cases are counted. Any numbers from the Tribunal included in this report have been corrected and verified by the author as far as possible without creating separate statistics, but errors are bound to occur.

k) Roma and Travellers

Neither the Ombud nor the Equality Tribunal currently treat Roma and Travellers as a priority issue.

8 IMPLEMENTATION ISSUES

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

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

The Ombud had a specific duty to disseminate information about legal protection against discrimination,³³⁷ but this is no longer specified anywhere. The current mandate of the Ombud is to:

- promote equality and prevent discrimination on the basis of sex and gender, pregnancy and, parental leave, care work, ethnicity, religion, life stance, disability, sexual orientation, gender identity, gender expression and age, in all areas of society;
- provide advice about discrimination law;
- monitor the implementation of the UN conventions CEDAW, CERD and CRPD; and
- monitor the duty for employers³³⁸ and the public sector to make active equality efforts and report on them.³³⁹

Additionally, public authorities have a general proactive duty according to chapter 4 of the GEADA, to make active, targeted and systematic efforts to promote non-discrimination policies and measures regarding ethnicity, sexual orientation and disability in all sectors of society. This includes dissemination of information. The Department for Equality and Universal Design in the Directorate for Children, Youth and Family Affairs (Bufdir), plays a major role in fulfilling this duty. According to its website, it works to prevent discrimination and contribute to equality on all the grounds protected by the GEADA. More specifically, it develops statistics and indicators, monitors and coordinates action plans, organises funding programmes, creates information material and cooperates both nationally and internationally. It aims to provide information to the general public concerning discrimination and the various protected grounds of 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)

Although there are no formal rules in the anti-discrimination legislation on dissemination of information, social dialogue or dialogue with NGOs by the authorities, there is a broad tradition in Norway to regularly undertake public consultations with NGOs and social partners. NGOs and social partners are in general invited to participate in referee groups when new legal proposals are being drafted, and are also recipients of white papers and law proposals for consultative purposes before legislation is enacted. The various action plans (see chapter 9 below) are usually drafted and implemented in collaboration with NGOs and social partners, to a varying degree.

The Equality and Anti-Discrimination Ombud cooperates with NGOs systematically.³⁴⁰ There is no available information on how the Department for Equality and Universal Design within the Directorate for Children, Youth and Family Affairs (Bufdir) interacts with NGOs except through funding projects. While recommendations from NGOs used to play an important part in the recruitment of members of the Equality Tribunal, this is no longer the case.

³³⁷ The previous Regulations on the organisation and activities of the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal of 16 December 2005 no. 1524, Section 1.

³³⁸ Active equality efforts are required from the public sector, or for enterprises with more than 50 employees, and if a trade union or employer demands it for enterprises with 20-50 employees.

³³⁹ EAOA, Section 5.

³⁴⁰ See [Bufdir | Barne-, ungdoms- og familiedirektoratet](#), including its last annual report, Bufdir (2020) *Årsrapport* (Annual report), available at [arsrapport 2020 Bufdir.pdf](#).

- 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).

There are a number of initiatives in relation to promoting dialogue between social partners to give effect to the principle of equal treatment through workplace practices, codes of practice and workforce monitoring. After the duty on employers to work proactively against discrimination and to report on their efforts was strengthened from 2020,³⁴¹ the Directorate for Children, Youth and Family Affairs (Bufdir) and the Equality Ombud have cooperated with trade unions, employers' organisations and others to develop standards and guidelines for this work.³⁴²

From 2020, the duty on public administration bodies to work proactively against discrimination based on all grounds was also strengthened significantly (GEADA, Section 24). The duties on the public administration are to

'issue a statement on what they are doing to integrate considerations relating to gender and non-discrimination into their work. Public authorities shall describe what they are doing to convert equality and non-discrimination principles, procedures and standards into action. Public authorities shall provide an assessment as to what has been achieved as a result of these efforts, and outline expectations with regards to future efforts in this area. The statement shall be provided in the annual report, another report issued annually or another document available to the general public.' (GEADA, Section 24)

The duties on employers are, according to GEADA Section 26(2), to a) investigate whether there is a risk of discrimination or other barriers to equality, including by reviewing pay conditions by reference to gender and the use of involuntary part-time work every two years, b) analyse the causes of identified risks, c) implement measures suited to counteract discrimination and promote greater equality and diversity in the undertaking, and d) evaluate the results of efforts made pursuant to a) to c). Furthermore, these efforts must be documented in the annual report. They must also be made on an ongoing basis and in cooperation with employee representatives. The board of directors of limited liability companies and public limited liability companies 'shall ensure that the duty to engage actively in equality work and the duty to issue statements in this regard are met' (GEADA, Section 26c). The reporting on active equality efforts is part of the annual report to the Norwegian Tax Administration and must also be made accessible to anyone who wishes to see it.³⁴³ If any compulsory part of the annual report is lacking, the Norwegian Tax Administration may issue a fine.³⁴⁴

- d) Addressing the situation of Roma and Travellers

Although there are very few Roma and Travellers in Norway, the Equality Ombud has repeatedly addressed some of the key issues seen in relation to Roma and Travellers. In her 2010 report to the UN CERD committee, the Equality Ombud addressed the areas of critical concern: that the Roma's access to basic rights is denied unless they discontinue their traditional way of life. In relation to schooling, the Ombud is concerned that the Travellers are being made responsible for the consequences of the failure to adjust Norwegian school policy to the traditional manner of travelling. The Roma people are furthermore systematically denied access to campsites and restaurants on the grounds that they belong to a national minority. In her 2018 report to the UN CERD committee, the Ombud reiterated her previous concerns related to schooling and housing, negative

³⁴¹ GEADA, Section 24.

³⁴² Bufdir (2020) *Årsrapport (Annual report)*, p. 104, available at [arsrapport_2020_Bufdir.pdf](#).

³⁴³ Act relating to Annual Accounts (Lov om årsregnskap) of 17 July 1998 no. 56 Section 8-2.

³⁴⁴ Act relating to Annual Accounts (Lov om årsregnskap) of 17 July 1998 no. 56 Section 8-3.

attitudes and harassment, focusing on the lack of knowledge about these groups.³⁴⁵ At a policy level, the Ombud has thus been a public voice speaking out against the discrimination of the Roma in Norwegian society.

The Government presented a white paper on national minorities to the Parliament in December 2020, which describes the situation of national minorities, as well as on-going and planned activities. This includes Roma who speak Romanes;³⁴⁶ and Romani people or Travellers, who have lived in Norway at least since the 16th century and speak Romani. The numbers are uncertain, as each person may determine whether they belong to one of these minorities regardless of whether they speak the language or not. However, they are small groups, somewhere between 200 and 2 000 people. The Norwegian Government takes the Council of Europe Framework Convention for the Protection of National Minorities as a starting point, focusing on three main goals: 1) the active participation of national minorities in society and their ability to use and develop their languages and culture; 2) the participation of national minorities in the decisions of the public administration; 3) national minorities shall receive public services of the same quality as other citizens.

To achieve the first goal, the Norwegian Government funds museums for each national minority, as well as several measures focused on the use and further development of their respective languages. For example, the Norwegian State Council for language (Språkrådet) has been given responsibility for strengthening and making more visible the languages Romani and Romanes in cooperation with the users of said languages. This includes the development of standards for written language. The national broadcasting corporation, NRK, has a responsibility to provide programmes in these languages.

To achieve the second goal, the Government focuses on funding CSOs representing the minorities, and creating forums for dialogue between these organisations and the public administration.

Regarding the third aim, that national minorities shall receive public services of the same quality as other citizens, the relevant public administration body is most often the municipality. The Government is aware that the relationship between the public administration and these groups is complicated, both due to historical discrimination and lack of knowledge about these groups among public servants. There is a 'bridge building' service for Oslo and surrounding municipalities for the Roma/Travelers, which employs people from this group together with other people, but national minorities elsewhere do not have such a service.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

Norway has taken the necessary measures to ensure that laws, regulations and administrative provisions are not contrary to the principle of equal treatment, even if there is still a need for interpretation and other measures. Before implementing international legislation in Norway, the national legislation was reviewed to ensure compliance.

A challenge is posed in relation to the 'normal' principles of interpretation in law, where the traditional principles of interpretation are used, such as *lex specialis* etc. This was demonstrated in the Supreme Court judgment of 18 February 2010, where the Seaman's

³⁴⁵ Norwegian Equality and Anti-discrimination Ombud (2018) *ICERD 2018: the Ombud's Report to the UN Committee on the Elimination of Racial Discrimination – a supplement to Norway's 23rd/24th Periodic Report*, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NOR/INT_CERD_IFN_NOR_32892_E.pdf.

³⁴⁶ This group is descended mostly from five families who have lived in Norway from some time before World War II, and are mostly based around Oslo, but travel widely.

Act was referred to as *lex specialis* in relation to non-discrimination clauses, and a 62-year retirement age for seamen was thus accepted.³⁴⁷

Of note is a Supreme Court Judgment from 2019 regarding the principle of equal treatment in public administration in general, not just discrimination law³⁴⁸). The case concerned tax law, with a focus on the principle of equal treatment and when it applies in the public administration's decision-making. The tax authorities had interpreted the law in a way that the claimant saw as unjustified differential treatment. Before this judgment the common interpretation was that this principle was only applicable in situations where the public administration is allowed so-called free discretion. The public administration's 'free discretion' is seen as opposed to pure interpretation of a law, and concerns legal standards in narrow fields, often closely linked to the facts and science in a particular field, which the public administration has very good knowledge of and which the courts should be very reticent about overruling. This limited application of the principle of equal treatment was corrected by the Supreme Court, which concluded that the principle of equal treatment was applicable also to the interpretation of the law itself. The court could therefore address the question at hand, which concerned the public administration's discretion when interpreting the law (which is not considered part of its free discretion) and whether its interpretation of the law itself was in breach of the principle of equal treatment. However, when the public administration has interpreted the law correctly, extraordinary circumstances are required in order to overrule the decision on the basis of a breach of the principle of equal treatment.

This judgment has created some debate among lawyers, both regarding the extent to which the interpretation of the law may be subject to being overruled on the basis of this principle, and the need for such an extension of the use of this principle. Those not in favour of the extension argue, for example, that the courts have full authority to overrule the interpretation of the law by the public administration, and that the aim of the courts' adjudication is to ensure that the law has been interpreted correctly, not to ensure equal treatment. Those in support of the extension argue, among other things, that the public administration also uses its discretion when the law is interpreted, so there is no real reason for treating the different areas of discretion differently. If the question concerns any of the protected grounds of discrimination, the GEADA applies in any case, but the case also clarifies the scope of use of the GEADA.

There are no known laws or regulations or rules that are contrary to the principle of equality still in force, as in theory all legislative areas are assessed before the implementation of new directives and acts. However, while the Ombud works actively to comment on proposed new legislation, this is not the situation in practice. In part, some issues are overlooked when new legislation is made. In addition, old legislation and regulations have not always been updated with a view to the GEADA. The Equality Tribunal assessed one such case in 2021, which concerned COVID-19 regulations regarding quarantine for persons from abroad compared with persons arriving from areas with a high level of contagion within Norway.³⁴⁹ It assessed three such cases in 2020: case DIN-2020-188 concerned temporary restrictions on immigration due to COVID-19 in both legislation and regulations, which were claimed to constitute discrimination on the basis of ethnicity. The case was dismissed on the basis that the claimant did not have a personal interest in having the question determined by the Tribunal. Case DIN-2019-161 concerned the Immigration Regulations³⁵⁰ and whether the fact that a temporary pension for persons unable to work does not fulfil the requirement of future income when this is required for family immigration is discriminatory. The Tribunal assessed the regulation but concluded that it did not

³⁴⁷ Supreme Court, Judgment Rt 2010 s 202, (HR-2010-00303-A) (*Kystlink*).

³⁴⁸ Supreme Court, case HR-2019-273-A. Available at: <https://lovdata.no/pro/#document/HRsiv/avgjorelse/hr-2019-273-a> (login required).

³⁴⁹ Equality Tribunal, DIN-2021-161.

³⁵⁰ Regulations relating to foreigners' access to the nation and their residence here (*Forskrift om utlendingers adgang til riket og deres opphold her*) of 15 October 2009, no 1286.

constitute discrimination on the basis of disability, mainly since the situation is temporary. In DIN-2019-274 the Equality Tribunal assessed whether a person with multiple chemical sensitivity was discriminated against when she was refused a parking permit on the basis of her diagnosis. The Regulations relating to parking permits for persons with reduced mobility³⁵¹ only allow persons with diagnoses of a reduced physical mobility to have such permits. The Tribunal found that since an individual assessment had been made, this was sufficient to be in accordance with the GEADA, and 'they could not evaluate the result of the assessment'.³⁵² The latter conclusion is debatable with a view to EAOA Section 14 on the Tribunal's authority concerning decisions made by the public administration. Since the published decision does not include any details concerning the assessment, its compliance with the CRPD or the GEADA remains unclear.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

Norway has not taken the necessary measures to ensure compliance with Article 14(b) and Article 16(b) of Directive 2000/43 in order to ensure that contracts, collective agreements, internal rules of businesses and the rules governing independent occupations, professions, workers' associations or employers' associations that are contrary to the principle of equal treatment are or may be, declared null and void or are amended.

The WEA Section 13-9(2) contains a specific clause that provisions laid down in collective agreements, regulations, bylaws etc. will be declared null and void if they are in breach of the WEA Chapter 13 on discrimination. However, this provision only refers to Chapter 13 of the WEA. There is no such provision regarding the majority of the grounds of discrimination that are covered by the GEADA. The only grounds protected by the wording of this provision today are age in employment and membership of a trade union.

For collective agreements, if a provision is found to be against the law, it will be declared null and void by the Labour Court and any compensation that is paid will date back to the moment the invalid provision was put in force.³⁵³

Contracts and internal rules of businesses may be reviewed by the Equality Tribunal through the complaints procedure.³⁵⁴ However, in a case concerning the clauses of a proposed contract, the Equality Tribunal stated that it was a prejudicial question that had to be reviewed by the court as part of the contractual dispute and dismissed the case.³⁵⁵

³⁵¹ Regulations relating to parking permits for persons with reduced mobility of 18 March 2016 no. 264.

³⁵² Equality Tribunal, DIN-2019-274, p. 5, available in Norwegian at [19-274-anonymisert-uttalelse.pdf](https://www.likelighetstribunal.no/19-274-anonymisert-uttalelse.pdf) ([diskrimineringsnemnda.no](https://www.likelighetstribunal.no/diskrimineringsnemnda.no)).

³⁵³ See, for instance, Labour Court Judgment ARD-1990-148 – Bio Engineers.

³⁵⁴ The preparatory works, Proposition to Parliament, Prop. 88 L (2012-2013) Chapter 4.7.4 state that 'the Tribunal cannot determine make decisions where a collective agreement is valid, how it should be interpreted, or regarding its existence. However, the Tribunal can give a justified opinion on whether a collective agreement or part of the collective agreement is in breach of one of the prohibitions against discrimination.'

³⁵⁵ Equality Tribunal, DIN-2018-21.

9 COORDINATION AT NATIONAL LEVEL

The Ministry of Culture and Equality is responsible for dealing with anti-discrimination in relation to the grounds covered by the GEADA. The Ministry of Labour and Social Inclusion is responsible for dealing with the anti-discrimination provisions of the WEA, which relate to age and membership in trade unions. Additionally, the Ministry of Labour and Social Inclusion is responsible for welfare policy and the work on an inclusive working life; the latter is targeted at employees who are temporarily or permanently disabled and measures to promote their return to paid employment. The Ministry of Local Government and Regional Development is responsible for Samis and national minorities, as well as policies regarding information and communication technologies. The Ministry of Justice and Public Security is responsible for immigration and the integration of immigrants.³⁵⁶

Coordination of equality and anti-discrimination efforts were lacking for a very long time, which led to the creation of the Department for Equality and Universal Design in the Directorate for Children, Youth and Family Affairs (Bufdir). The department lists the following aims:

- to provide a good knowledge basis and promote equality in all areas of society;
- to have a holistic perspective and initiate work for equality on all grounds of discrimination;
- to have a targeted and established corporation with selected sectors;
- to coordinate efforts and implement Government policies across all sectors; and
- to contribute to equivalent services from the public sector.³⁵⁷

Among other things, this department plays a major role in developing and implementing Government action plans. Action plans are the main tool for coordinating the Government's efforts against discrimination.

The Government plan of action against discrimination because of sexual orientation, gender identity and gender expression covers the period from 2021 to 2024.³⁵⁸ The title of the action plan is: 'Safety, diversity and openness: the Government plan of action against discrimination because of sexual orientation, gender identity and gender expressions'. The title aptly describes the key focus of the action plan, which is to ensure safe neighbourhoods and public spaces, equal public services and livelihoods for particularly vulnerable groups. The plan shall, in addition to combating discrimination, help to ensure the rights of lesbian, gay, bisexual, transgender and intersex persons.³⁵⁹ Things remain challenging for many, especially for transgender and bisexual persons.³⁶⁰ There is an increased focus on intersectionality compared with the previous action plan, and on hate speech and conversion therapy.

In a decision of December 2016, universal access of ICT was made a condition within education by 1 January 2021.³⁶¹ There are still a lot of challenges regarding this area, along with teaching materials for pupils who are blind or have other visual disabilities, that the

³⁵⁶ See [Ministries - regjeringen.no](https://www.regjeringen.no).

³⁵⁷ Email to the author from Bufdir, 12 April 2019, translated by the author.

³⁵⁸ Available in Norwegian at:

<https://www.regjeringen.no/contentassets/023227879f06471793113a7f116e71b9/210624-handlingsplan-lhbtig-.pdf>.

³⁵⁹ Norwegian Government (2021) *Trygghet, diversitet, åpenhet. Regjeringens handlingsplan mot diskriminering på grunn av seksuell orientering, kjønnsidentitet og kjønnsuttrykk 2021-2024* at <https://www.regjeringen.no/contentassets/023227879f06471793113a7f116e71b9/210624-handlingsplan-lhbtig-.pdf>.

³⁶⁰ See Anderssen, N., Eggebø, H., Stubberud, E. and Holmelid, Ø. (2021) *Seksuell orientering, kjønns mangfold og levekår. Resultater fra spørreundersøkelsen 2020*. Bergen, Bergen University and flash report of 30 August 2021, available at: <https://www.equalitylaw.eu/downloads/5494-norway-research-report-on-living-conditions-for-lgbt-persons-in-norway-101-kb>.

³⁶¹ See (in Norwegian) <https://www.regjeringen.no/no/aktuelt/innforer-krav-om-universell-utforming-av-ikt-i-utdanningen/id2521801/>.

Ombud is working proactively to improve.³⁶² A new holistic Government plan of action for improving the quality of life of persons with disabilities was published in 2019, called 'A society for all – the Government's strategy for equality for persons with disabilities 2020-2030'.³⁶³ This strategy focuses on:

- developing both universal and specialised solutions;
- promoting self-determination, participation and inclusion;
- improved coordination in all areas; and
- four targeted areas of society: education, employment, health and care, and culture and leisure.

This action plan was not well received by the civil society organisations, which criticised it for not addressing a number of issues raised by the CRPD committee, and for otherwise lacking both funding and ambition.³⁶⁴ There is also an action plan for universal design.³⁶⁵

The Action plan against racism and discrimination based on ethnicity and religion 2020-2023³⁶⁶ includes research, a cross-ministry coordination group at the political level, a decision to try anonymous applications in public administration in ordinary hiring procedures, so that at least the first bar of stereotyping is removed. Other measures include information campaigns, for example on how to make complaints regarding discrimination on the basis of ethnicity and religion. A number of measures aim to improve equal public services, including education. Roma are mentioned as a group at risk regarding ethnic discrimination, but no measures target them specifically at a national level. The new action plan regarding discrimination against Muslims was one of the promised general measures.³⁶⁷ See section 8.1.d above on coordination concerning Roma and Travellers.

The Action plan against discrimination of and hate against Muslims was published in September 2020.³⁶⁸ The action plan contains a variety of measures, for example a new funding programme for measures against racism, discrimination and hate speech to promote initiatives locally, regionally and nationally; improving the dialogue between Muslim communities and the police.

The Government strategy against hate speech 2016-2020³⁶⁹ has not yet been replaced. However, a status report on its progress was published in May 2020.³⁷⁰ At that point,

³⁶² See, for example, the Ministry of Education and Research, letter to the Equality and Anti-Discrimination Ombud, 21. January 2022, available here: https://ftbb.no/pdf/2022_01_28_KD_LDO_BlindeOgSvaksynteElever.pdf.

³⁶³ Norwegian Government (2019) *Et samfunn for alle – Likestilling, demokrati og menneskerettigheter* Regjeringens handlingsplan for likestilling av personer med funksjonsnedsettelse 2020–2025, p. 25, at <https://www.regjeringen.no/contentassets/4538c7392f3d417a8d7cc48965a603c9/et-samfunn-for-alle---regjeringens-handlingsplan-for-likestilling-av-personer-med-funksjonsnedsettelse-des-2019.pdf>.

³⁶⁴ <https://velferd.no/velferd/2019/knusende-kritikk-av-handlingsplan-for-funksjonshemmede>.

³⁶⁵ Norwegian Government (2021), *Regjeringens handlingsplan for universell utforming: Bærekraft og like muligheter – et universelt utformet Norge (2021–2025)* (Government action plan for universal design: Sustainability and equality of opportunities – a universally designed Norway (2021-2025)).

³⁶⁶ Norwegian Government (2019) *Regjeringens handlingsplan mot rasisme og diskriminering på grunn av etnisitet og religion 2020–2023* (Government action plan against racism and discrimination on the basis of ethnicity and religion 2020-2023) at <https://www.regjeringen.no/contentassets/589aa9f4e14540b5a5a6144aaea7b518/handlingsplan-mot-rasisme-uu-des-2019.pdf>.

³⁶⁷ Norwegian Government (2019) *Regjeringens handlingsplan mot rasisme og diskriminering på grunn av etnisitet og religion 2020–2023* (Government action plan against racism and discrimination on the basis of ethnicity and religion), p. 17.

³⁶⁸ Norwegian Government (2019), *Handlingsplan mot diskriminering av og hat mot muslimer 2020-2023* (Government action plan against discrimination and hate against Muslims 2020-2023), available at [Handlingsplan mot diskriminering av og hat mot muslimer 2020-2023 - regjeringen.no](https://www.regjeringen.no/contentassets/4538c7392f3d417a8d7cc48965a603c9/handlingsplan-mot-diskriminering-av-og-hat-mot-muslimer-2020-2023-regjeringen.no).

³⁶⁹ Norwegian Government (2016), *Regjeringens strategi mot hatefulle ytringer 2016 – 2020* (Government strategy against hate speech 2016-2020). Available at [Regjeringens strategi mot hatefulle ytringer 2016 - 2020 - regjeringen.no](https://www.regjeringen.no/contentassets/4538c7392f3d417a8d7cc48965a603c9/regjeringens-strategi-mot-hatefulle-ytringer-2016-2020-regjeringen.no).

³⁷⁰ Norwegian Government (2020) *Regjeringens strategi mot hatefulle ytringer 2016 – 2020. Statusrapport mai 2020* (Government action plan against hate speech 2016-2020. Status report May 2020). Available at: [Regjeringens strategi mot hatefulle ytringer 2016-2020. Statusrapport mai 2020. - regjeringen.no](https://www.regjeringen.no/contentassets/4538c7392f3d417a8d7cc48965a603c9/regjeringens-strategi-mot-hatefulle-ytringer-2016-2020-statusrapport-mai-2020-regjeringen.no).

13 additional measures had been included in the Government's efforts, including a strengthening of the duty for employers to work proactively against discrimination.

10 CURRENT BEST PRACTICES

The active equality efforts of the GEADA give a duty for public authorities, employers and educational institutions to make active, targeted and systematic efforts to promote equality within the different grounds.³⁷¹ The Equality and Anti-Discrimination Ombud monitors these efforts. From 2020, reporting on the active equality efforts are also part of the Accounting Act Section 3-3c, in addition to a duty to report on how they respect human rights, workers' rights, social conditions, the environment and act against corruption in their daily work.

Of particular interest is also the Department for Equality and Universal Design in the Directorate for Children, Youth and Family Affairs (Bufdir), which works actively and systematically to gather knowledge and promote equality, especially within the ministries and other parts of the public sector.

There are rules on employers' disclosure duty regarding pay, to try to minimise pay gaps because of ethnicity, disability or sexual orientation.

Jobseekers who consider that they might have been discriminated against in appointment processes have a right to request that the employer disclose written information about the education, experience and other clearly measurable qualifications of the appointed candidate.

There are no best practices to report in relation to the use of artificial intelligence (AI) to improve the effective implementation of the national legislation transposing the directives. However, the current close cooperation between the Norwegian Digitalisation Agency and the Equality Tribunal, in which the Agency assesses the facts in cases concerning universal design of information and communication technologies, may have the potential of becoming one.

³⁷¹ See GEADA, Chapter 4.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

It is presumed that Norwegian anti-discrimination legislation is in line with the EU *acquis*, although the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement. However, the Government has committed to having as high – or higher – standards in its work against discrimination as the requirements of the EU. This protection has been underlined by Supreme Court judgments. The legal consequence of the anti-discrimination directives not being incorporated into the EEA agreement is that the directives will not prevail in conflict, as the gender directives do. A practical consequence of this situation is that the practitioners use the directives and recent case law only to a very limited degree. The Ombud has published an annual report on legal developments since 2019, which includes cases from the European Court of Justice (ECJ). The Tribunal, however, still uses EU law very rarely.

In practice, it is debatable whether access to justice in discrimination cases is in line with the directives concerning both effective remedies and a fair trial.³⁷² As described in a number of sections in this report, the Tribunal's use of anti-discrimination law in general has room for improvement.³⁷³ The facts of the cases are also often assessed rather superficially, sometimes not taking all relevant facts or claims into consideration,³⁷⁴ and the Tribunal has been criticised by the Ombud for not investigating cases sufficiently. The Tribunal has stated that it currently has insufficient resources compared with its workload.³⁷⁵

The assistance to victims of discrimination as described in Chapter 7 f) i), is not always sufficient for those who need individual accommodation or otherwise have insufficient resources to present the relevant facts in writing. While it is possible to have an oral hearing, this is the exception in almost all types of case.

There is also a lack of effective remedies available through the Tribunal in many cases concerning, for example, housing and access to goods and services. The Tribunal can award only compensation for economic losses in such cases, not damages for non-pecuniary losses, and other sanctions such as administrative orders are usually unavailable, as described in Section 6.5.

Decisions by the Tribunal may be overruled only by the courts. Unless the case concerns employment and a trade union decides to take on the procedural costs, taking a case to court is costly, as there is no free legal aid in discrimination cases. There is also a significant risk of having to pay the costs of the defendant (see, for example, court case LE-2018-145654-2). In addition, there are no rules or guidelines to ensure that the judges or lay judges are trained in discrimination issues or, in the case of lay judges, nothing even to ensure that they are not openly and actively racist, as described in Section 6.1.b.

Recent research has shown that the rule regarding the burden of proof has not been interpreted entirely in line with EU law since it was transposed into Norwegian law, even though the wording in the Equality and Anti-Discrimination Act Section 37 is in line with the directives.

³⁷² Fundamental Rights Agency and the European Court of Justice (2016) *Handbook on European law relating to access to justice*, p. 15.

³⁷³ For example, concerning its interpretation of direct vs indirect differential treatment and justifications of differential treatment, and its use of the rules concerning the burden of proof. See, for example, Equality Tribunal, case DIN-2021-23 in chapter 12.2. It has on at least two occasions overlooked discrimination by association, while never using the concept in practice. See also Bauge, M. and Løvdaal, L. (2022) 'Access to Justice in Discrimination Cases in Norway', *Scandinavian Studies in Law*, vol. 68 pp. 373-402.

³⁷⁴ See, for example, Equality Tribunal, cases no. DIN-2020-253 and DIN-2021-23, both described in detail in Chapter 12.2.

³⁷⁵ Email from the director of the Equality Tribunal to the author, 7 February 2022.

In cases concerning dismissals according to labour law procedural rules, it is a general principle that the employer must substantiate that the dismissal is based upon the correct facts. Other than this, in civil cases – as a general rule – the burden of proof is on the claimant. This means that the most probable facts after an overall assessment should be the ones taken as a starting point for the legal assessment. This is why the shifting burden of proof as implemented in the discrimination legislation is so important. In all discrimination cases, if there are circumstances that give 'reason to believe' that there has been direct or indirect differential treatment in contravention of the said legislation, such differential treatment will be assumed to have taken place unless the person responsible proves on a balance of probabilities that such differential treatment nonetheless did not take place.

The relationship between the general rule concerning burden of proof in civil cases and the burden of proof as set forth in Directive 97/80/EC and subsequent directives was never thoroughly assessed by the Government when writing the preparatory works for anti-discrimination legislation,³⁷⁶ since 1995.³⁷⁷ An assumption that it requires more to establish a presumption of discrimination than is set forth in EU law has thus prevailed among all legal practitioners in the field, including in the equality bodies and the courts.

If, after an overall assessment of all evidence, there remains a definite doubt regarding which facts are more likely, i.e. that one set of facts is as likely as the other, the rule sets forth that this doubt should lead to a conclusion to the disfavour of the 'responsible party(...)'. In practice, however, such situations regarding the proof are rare.³⁷⁸

Interpretation has thus been too strict regarding the establishment of a presumption of discrimination and subsequent assessment of discrimination cases.³⁷⁹ This is of particular concern in combination with the Tribunal's authority to dismiss cases that are 'clearly not in breach' of the GEADA; see the EAOA. Section 10(3).

11.2 Other issues of concern

The WEA Section 13-9(2) contains a specific clause that provisions laid down in collective agreements, regulations, bylaws etc. will be declared null and void if they are in breach of the WEA Chapter 13 on discrimination. However, this provision only refers to Chapter 13 of the WEA. There is no such provision regarding the majority of the grounds of discrimination, which are covered by the GEADA, which contains no such provision. The only grounds currently protected by the wording of the WEA provision are age in employment and membership of a trade union. However, the Equality Tribunal has the mandate to provide opinions on whether collective agreements are in breach of the GEADA or WEA.³⁸⁰

Another issue of concern is the system for legal guardianship for persons with cognitive disabilities. In 2018, VG, a nationwide Norwegian newspaper, revealed that a Norwegian municipality had had two brothers taken under legal guardianship without their knowledge or consent, probably because this would increase the amount of money transferred from the state to the municipality. This highlighted major flaws in the system for legal guardianship. The system has also been criticised by the Auditor General of Norway, who

³⁷⁶ For example, see Proposition to Parliament, Prop. 77 (2000-2001), *Om lov om endringer i likestillingsloven mv.*

³⁷⁷ Hellum, A. and Strand, V.B. (2022), *Likestillings- og diskrimineringsrett (Equality and Anti-Discrimination Law)*, Oslo, Gyldendal, pp. 375-376.

³⁷⁸ HR-2020-2476-A Section 75.

³⁷⁹ Hellum and Strand refer mainly to the report by Farkas, L. and O'Farrell, O. (2014), 'Reversing the burden of proof. Practical dilemmas at the European and national level', European Network of Legal Experts in the Non-Discrimination Field, available at: <https://www.equalitylaw.eu/downloads/1076-burden-of-proof-en>.

³⁸⁰ Proposition to Parliament, Prop. 88 L (2012-2013) Chapter 4.7.4 state that 'the tribunal cannot determine make decisions where a collective agreement is valid, how it should be interpreted, or regarding its existence. However, the tribunal can give a justified opinion on whether a collective agreement or part of the collective agreement is in breach of one of the prohibitions against discrimination.'

found that: in two out of three audited cases, the guardianship was general and not adapted to the individual in accordance with the law; and in only half of the cases had the guardianship authorities spoken to the person under guardianship. The auditor also found a lack of planned training for the guardians themselves.³⁸¹ Some months later, the Supreme Court took the stance that the Norwegian organisation for people with mental disabilities (NFU) did not have legal standing in a case concerning legal guardianship. The reasoning was that NGOs are not listed as persons or institutions that may ask for someone to be put under guardianship in the Guardianship Act, Section 56.³⁸² As a general rule, NGOs do have legal standing in cases concerning their field of work (see Section 5.2 of this report).

There is still a lack of awareness and knowledge about the potential discriminatory effects of algorithms and how to prevent this, both in the public and private sector. A lack of more specific rules and guidelines is evident, for example regarding insurance and the use of algorithms in the public administration.

³⁸¹ See: <https://www.riksrevisjonen.no/globalassets/rapporter/no-2017-2018/vergemaal.pdf>.

³⁸² Supreme Court, case HR-2018-1786-U.

12 LATEST DEVELOPMENTS IN 2021

12.1 Legislative amendments

With effect from 1 January 2022, the GEADA, Section 18 on universal design of information and communication technology (ICT) has been revised in order to strengthen the general duty in line with the Web Accessibility Directive. Previously, the Tribunal could assess complaints concerning universal design of ICT only through the general duty regarding universal design of spaces open for the general public set forth in Section 17. The EAOA Section 7, regarding the authority of the Tribunal, was changed accordingly.

In addition, a new section 19a was added to the GEADA, setting forth a duty on public and private enterprises to work proactively for universal design of ICT and to report on their efforts. The Tribunal was also awarded the authority to assess individual complaints regarding this duty (EAOA, Section 7). It should be noted that most general duties on the public administration, trade unions and employers' organisations, and employers' duties to work proactively against discrimination, are still exempted from the Tribunal's authority (GEADA, Sections 24 to 26b). The Tribunal only has the authority to assess the duty of employers, leaders of organisations and educational institutions to prevent harassment and sexual harassment (GEADA, Section 13(6)).

The Norwegian Digitalisation Agency has the authority to monitor the implementation of the Web Accessibility Directive, while the Equality Tribunal assesses individual complaints regarding universal design of ICT in close cooperation with the Agency, with the Agency assessing the facts of the case.

12.2 Case law

AGE

Relevant discrimination ground: Age

Name of the court: Equality Tribunal

Date of decision: 26 February 2021

Name of the parties: *A v. the Norwegian Labour Inspection Authority*

Reference number: DIN-2020-253

Address of the webpage: [20-253-offentlig-versjon-av-vedtak.pdf \(diskrimineringsnemnda.no\)](https://www.diskrimineringsnemnda.no/20-253-offentlig-versjon-av-vedtak.pdf)

Brief summary: The complainant, A, had applied for a position at the Norwegian Labour Inspection Authority. She was very well qualified, and 55 years old at the time. However, she was ranked third among the candidates, and a 30-year-old man who was less qualified compared with what the employer had asked for was offered the position. The Tribunal found that the difference in qualifications and age was sufficient to transfer the burden of proof to the employer. However, they did not offer any reasonable justification for the differential treatment. The complainant was awarded damages for losses of a non-pecuniary character of NOK 45 000 (EUR 4 500). She asked for compensation for economic losses as well, due to the higher salary for the position that she was not offered, but this issue was not mentioned in the Tribunal's assessment of the case.

ETHNICITY

Relevant discrimination ground: Ethnicity

Name of the court: Equality Tribunal

Date of decision: 13 April 2021

Name of the parties: *A v. Trøndelag police district*

Reference number: DIN-2020-175

Address of the webpage: [Offentlig versjon av vedtak og uttalelse \(diskrimineringsnemnda.no\)](https://www.diskrimineringsnemnda.no/offentlig-versjon-av-vedtak-og-uttalelse)

Brief summary: The case concerned ethnic profiling by the police. The complainant, A, was of immigrant background. From 2015 to July 2020, he was stopped by the police 10 times when driving. The police never charged him with anything, and he was the only one with a visible immigrant background in his group of friends, who witnessed this differential treatment. The controls were not just verbal: he had been locked in a police car, had his car door torn up without consent, and had testing equipment inserted into his mouth under duress. The controls usually took place before witnesses, adding to the humiliation.

He reported these incidents to the unit assessing possible illegal behaviour by police officers, but it concluded that no crime had been committed by the police. This decision was appealed to the Higher Prosecuting Authorities, which also dismissed the case, but remarked that the complaint concerned structural issues regarding how the police perform their duties and sent it back to the relevant police district for administrative follow-up. The situation did not improve, however, and A made a complaint to the Equality Tribunal.

The police district admitted to having stopped him more often than others on the basis of his ethnic background. The Tribunal thus found that this constituted direct discrimination. They also found that the lack of registration of the controls constituted disproportionate indirect differential treatment, i.e., indirect discrimination.

While the police district agreed that many of the police officers had refused to identify themselves, and that they had stopped him too often based on his ethnicity alone, the Tribunal concluded that this behaviour did not constitute harassment on the basis that there was no indication of a causal link between the lack of identification and the ethnicity of the complainant. It further concluded that, even if one police officer had not behaved correctly on several occasions, this would not be sufficient to reach a conclusion of harassment.

The Tribunal further concluded that the police district had fulfilled its duty to try to prevent discrimination, on the basis that it had taken several measures including active recruitment of police officers from ethnic minorities, dialogue and meetings with minority groups and training from experts from other police districts.

DISABILITY

Relevant discrimination ground: Disability

Name of the court: Frostating Court of Appeal

Date of decision: 23 December 2021

Name of the parties: *A v. B regional healthcare administration*

Reference number: LF-2021-35670

Address of the webpage: <https://lovdata.no/avgjorelse/lf-2021-35670>.

Brief summary: A female student applied for a temporary job in the mental health care department of a hospital, where she might be required to restrain patients. During the interview, she was offered the opportunity to undertake three shifts, during which the employer would assess her ability to perform the duties of the position in question. After the interview, the employer received information that she had previously made formal complaints concerning restraints while she was a patient in the same department of that hospital. The employer maintained that her not mentioning this during the interview created doubts about her abilities to perform the tasks required for the position and withdrew the offer. The complainant claimed that a binding agreement about her taking the position had been breached due to her previous diagnosis, and demanded compensation for economic losses.

The court majority of four judges held that since her mental illness had been temporary and was in the past, she was no longer protected by the GEADA. Discrimination based on assumed disability was not discussed. They further held that the causal link between her

previous diagnosis and the offer of employment being withdrawn was too tenuous and distant, and that her not informing the employer about this part of her past was a breach of trust which justified the withdrawal of the offer. The minority of one judge held that the employer's dismissal was in breach of the WEA rules of termination of employment contracts, and that there was a causal link to the protected ground of disability. The differential treatment was unjustified, and the minority concluded that there had been a breach of the GEADA, Section 6.

Relevant discrimination ground: Disability

Name of the court: Frostating Court of Appeal

Date of decision: 26 August 2021

Name of the parties: *A v. the Ministry for Justice*

Reference number: LF-2021-105560

Address of the webpage: <https://lovdata.no/avgjorelse/lf-2021-105560>.

Brief summary: A lawyer with dyslexia claimed that, as he needed more time to work with his cases due to his disability, the fees that a court had assigned to him for his work on a particular case was discriminatory. The court found that the number of hours that a lawyer will require to prepare a case will always vary and that the rules concerning the calculation of fees for lawyers do not include taking reduced ability into consideration, and that such extra costs must be covered through other channels.

Relevant discrimination ground: Disability

Name of the court: Equality Tribunal

Date of decision: 4 February 2021

Name of the parties: *A v. Coop Nord AS*

Reference number: DIN-2020-202

Address of the webpage: [20-202-offentlig-versjon-av-vedatk.pdf \(diskrimineringsnemnda.no\)](https://20-202-offentlig-versjon-av-vedatk.pdf(diskrimineringsnemnda.no))

Brief summary: A had just started working as a temporary assistant at a grocery store. During the interview she had informed the employer about her reduced functional ability. After a short time, the employer gave her notice that she could no longer work there due to her reduced functional ability, arguing that it was having a stronger impact on her work performance than they had understood during the interview. She had worked as a shop assistant in several other places previously, with some accommodation, and it had not posed a problem. The grocery store was found to have breached their duty to provide reasonable accommodation by not even assessing available possibilities for accommodation, thereby discriminating against her.

Relevant discrimination ground: Disability

Name of the court: Equality Tribunal

Date of decision: 3 March 2021

Name of the parties: *A v. Bærum municipality*

Reference number: DIN-2020-323

Address of the webpage: [Offentlig versjon av uttalelse \(diskrimineringsnemnda.no\)](https://Offentlig%20versjon%20av%20uttalelse%20(diskrimineringsnemnda.no))

Brief summary: A was a care worker for persons with disabilities in Bærum municipality from 2009 onwards, and from 2017 she was employed in a 32.63 % position. This meant that in addition to her regular weekend shifts, she worked three shifts per month. She had a chronic illness which reduced her ability to work during the early hours of the day in particular, and in 2017 she asked for accommodation in the form of working in the evenings only, and of not working with four of the care recipients, whose needs had proven too difficult for her to meet due to her health situation. For the four persons with whom she usually worked, she requested only working late shifts as accommodation. The employer had not conceded to this request, saying that they needed more information than her doctor already had provided about her reduced abilities. The employer then sent a letter directly to her doctor requesting detailed information about her health, which he refused to provide on the basis that it was far beyond what employers have the right to know. A complained to the Tribunal on the basis of lack of individual accommodation and of

harassment, as she saw the employer's invasive and overbearing communication as well as the refusal to provide a very small-scale accommodation as hostile and humiliating.

The Tribunal found that the actions of the employer did not constitute harassment, and that while their demand for information about her health had been too invasive, the employee should have provided some further information about her abilities and what kind of accommodation she needed. The Tribunal thus concluded that there was no breach of the GEADA, Section 22, on the basis that she had not provided sufficient information about her need for accommodation.

Relevant discrimination ground: Disability

Name of the court: Equality Tribunal

Date of decision: 22 September 2021

Name of the parties: *A, represented by JURK (Legal Advice for Women) and B, represented by barrister E.E. Johnson*

Reference number: DIN-2021-23

Address of the webpage: [offentlig-versjon-nemndas-vedtak-130255.pdf \(diskrimineringsnemnda.no\)](https://offentlig-versjon-nemndas-vedtak-130255.pdf(diskrimineringsnemnda.no))

Brief summary: The complainant, A, who has a cochlear implant due to reduced hearing, applied for a position as a janitor. During the first interview, where the previous head of administration and the previous janitor were present, questions were asked about her need for accommodation. After two interviews she was offered the position, but after four days the offer was revoked, and she was called in for a third interview where the HR officer, a new head of the administration and the property manager were present. Her hearing was the main topic during this interview. A was then informed that she was not offered the position, and two months later a call for applications for the same position was made by the employer, with the same requirements. The employer held that the reason for this was that the hiring process had not followed the correct procedures.

The Tribunal found that there was reason to believe that her hearing had been a major reason behind her not being offered the position again, and that the employer had not provided evidence to the contrary. The Tribunal further found that her being able to speak on the phone was not a genuine and determining occupational requirement and concluded that she had been discriminated on the basis of her functional abilities. She was awarded NOK 40 000 (approximately EUR 4 000) in redress for losses of a non-pecuniary character. Although she had claimed compensation for economic losses as well, this matter was not addressed by the Tribunal.

Relevant discrimination ground: Sexual orientation

Name of the court: Equality Tribunal

Date of decision: 10 November 2020

Name of the parties: *A v. B Child Welfare Services*

Reference number: DIN-2020-344 and DIN-2012-430

Address of the webpage: [Offentlig versjon av avvisningsvedtak \(diskrimineringsnemnda.no\)](https://offentlig-versjon-av-avvisningsvedtak(diskrimineringsnemnda.no)) and [offentlig-versjon-av-henleggelsesbeslutning.pdf \(diskrimineringsnemnda.no\)](https://offentlig-versjon-av-henleggelsesbeslutning.pdf(diskrimineringsnemnda.no))

Brief summary: The cases concerned a same-sex couple and the children they had had through surrogacy. A case worker from Child Welfare Services had commented to their young child on several occasions that everyone has a mother and a father. The Tribunal considered the statement 'not untrue', i.e. taking the biological approach to parentage without any discussion of social parentage. On this basis, it concluded that the comments were clearly not in breach of the GEADA, Section 13, on harassment based on sexual orientation. The parents then complained to the Tribunal for dismissing the case and asked for it to be reopened and assessed by the entire chamber of the Tribunal, instead of only the head of chamber.

The Tribunal stated that dismissals cannot be appealed (EAOA, Section 20). There was no new information available, which would be a requirement for reassessing the case. It also stated that the rules of the Public Administration Act regarding reassessment of decisions do not apply to the Equality Tribunal (EAOA, Sections 2, 20 and 21).

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: Norway
Date: 1 January 2022

Title of the Law: Act relating to equality and a prohibition against discrimination (Equality and Anti-Discrimination Act)

Abbreviation: GEADA

Date of adoption: 16. June 2017 No. 51

Entry into force: 1 January 2018

Latest amendments: LOV-2019-06-21-57 from 1 January 2020 and LOV-2021-06-11-77, in force from 1 January 2022.

Web link: [Act relating to equality and a prohibition against discrimination \(Equality and Anti-Discrimination Act\) - Lovdata](#)

Grounds protected: Gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or combinations of these factors

Civil law

Material scope: covers all areas

Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate within select grounds

Title of the Law: The Working Environment Act (WEA) on Working environment, working hours and employment protection, etc. (Arbeidsmiljøloven), Chapter 13

Abbreviation: WEA

Date of adoption: 17 June 2005

Entry into force: 1 January 2006

Latest amendments: LOV-2018-06-22-45, in force from 1 January 2019 for Chapter 13.

Web link: <https://lovdata.no/dokument/NLE/lov/2005-06-17-62>

(English version of 1 February 2021)

Grounds protected: Age in employment (covers also part-time/ temporary work, political affiliation and membership in trade unions)

Civil law

Material scope: Public and private employment

Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate within select grounds

Title of the Law: Act relating to the equality and anti-discrimination Ombud and the anti-discrimination Tribunal (Equality and Anti-Discrimination Ombud Act)

Abbreviation: EAOA

Date of adoption: 16. June 2017 No. 50

Entry into force: 1 January 2018

Latest amendments: [LOV-2021-06-11-77](#) in force from 1 January 2022, and [LOV-2021-06-18-93](#) in force from 1 January 2021

Grounds protected: -

Civil/administrative law

Material scope: Rules on the organisation and activities of the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal

Principal content: Creation of a specialised body

Title of the law: Act relating to the strengthening of the status of human rights in Norwegian law (The Human Rights Act)

Abbreviation: HRA

Date of adoption: 21 May 1999 No. 30

Entry into force: 21 May 1999

Latest amendments: 9 May 2014 No. 9, in force from 1 January 2022.

Web link: <http://www.ub.uio.no/ujur/ulovdata/lov-19990521-030-eng.pdf>

Grounds covered: -

Civil law

Material scope: Incorporates select human rights instrument into Norwegian law

Principal content: Strengthening the status of human rights

ANNEX 2: INTERNATIONAL INSTRUMENTS

Country: Norway
Date: 1 January 2022

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	04.11.1950	15.01.1952	No	Yes	Yes, through Human Rights Act
Protocol 12, ECHR	Not signed	Not ratified	N/A	N/A	N/A
Revised European Social Charter	Yes	07.05.2001	Has accepted 80 of the revised charter's 98 paragraphs	Collective complaints protocol ratified 20.03.1997	No
International Covenant on Civil and Political Rights	20.03.1968	13.09.1972	No	Yes	Yes, through Human Rights Act
Framework Convention for the Protection of National Minorities	Yes	17.09.1999	No	N/A	No
International Covenant on Economic, Social and Cultural Rights	20.03.1968	13.09.1972	No	No	Yes, through Human Rights Act
Convention on the Elimination of All Forms of Racial Discrimination	21.11.1969	06.08.1970	No	No	Yes, through the Anti-Discrimination Act
ILO Convention No. 111 on Discrimination	Yes	24.09.1959	No	N/a	No

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	26.01.1990	08.01.1991	No	Yes	Yes, through Human Rights Act
Convention on the Rights of Persons with Disabilities	30.03.2007	01.07.2013	No ³⁸³	No	No

³⁸³ No derogation or reservation is made, but 'interpretative declarations' to Sections 12 and 14 on fully supported decision-making arrangements and compulsory treatment are made by the Norwegian government (similar to those of Australia) which are especially relevant to people with psycho-social disabilities.

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