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Non-discrimination

Finland

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Country report

Non-discrimination

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

Finland

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Reporting period 1 January 2024 – 1 January 2025

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EXECUTIVE SUMMARY

1. Introduction

Until the end of the 1980s, Finland was one of the most culturally homogeneous countries in Europe. The number of immigrants was minimal. There was a major shift from emigration to immigration in the 1990s, with the number of foreign citizens growing from 26 300 in 1990 to 168 000 in 2010 and 370 000 in 2023. Currently some 10.5 % of the total population of 5.6 million were born outside Finland.¹

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

Religious diversity in Finland has increased during the past 25 years, as the size of Muslim communities has grown from 30 000 to 120 000 people, due to the arrival of immigrants from Muslim countries. At present, 64 % of the population belongs to the Evangelical Lutheran Church. Around 34 % of the population do not belong to any religious faith.²

There has been a considerable change in attitudes towards sexual orientation: homosexuality was decriminalised in 1971; discrimination on the basis of sexual orientation in employment, administration and when providing goods and service was prohibited by criminal law in 1995; and in 2001, the Registered Partnerships Act guaranteed registered same-sex couples a status almost equal to marriage, but without the ability to take a joint family name and to adopt together. Same-sex couples were finally allowed to marry and adopt together in 2017. The Lutheran Church has also accepted ministers who are gay or transgender. Some Lutheran clergy have also conducted same-sex marriages.

The proportion of the population aged 65 and older in Finland is the fourth highest (23.4 %) in the EU.³ It is generally accepted that age discrimination exists in Finland. In one survey, 18 % of respondents reported having been discriminated against in recruitment because of their age and 12 % reported having been discriminated against while in employment because of their age.⁴ However, there have been only a few court cases dealing with age discrimination.

For persons with disabilities, the legal and political focus has remained on the specific services that persons with disabilities need, i.e. concentrating on the traditional social policy approach, but not so much on equal treatment. However, the focus is gradually shifting towards a more equal-rights-based approach, which has been strengthened by adoption of a new Non-Discrimination Act in 2015 and the ratification of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol in 2016. The National Non-Discrimination and Equality Tribunal has interpreted⁵ these instruments as requiring that the organisers of all public events, providers of goods and services, and public authorities take accessibility into consideration when planning their activities.

¹ Population Statistics, 31 December 2023 (stat.fi).

https://pxdata.stat.fi/PxWeb/pxweb/fi/StatFin/StatFin_vaerak/statfin_vaerak_pxt_11ru.px/.

² Population Statistics 31 December 2023 (stat.fi).

https://pxdata.stat.fi/PxWeb/pxweb/fi/StatFin/StatFin_vaerak/statfin_vaerak_pxt_11rx.px/.

³ Eurostat (2024), 'The share of elderly people continues to increase', available at:

https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Population_structure_and_ageing#The_share_of_elderly_people_continues_to_increase.

⁴ Taloustutkimus (2018) 'Ikäsyryjintä työelämässä' ('Age discrimination in employment'), available at:

<https://docplayer.fi/104753668-Tutkimusraportti-ikasyryjinta-tyoelamassa.html>.

⁵ See e.g. National Non-Discrimination and Equality Tribunal decisions 678/2019 and 669/2019, available at:

https://www.yvtltk.fi/fi/index/materiaalit/tapausselosteet_3/tapausselosteet2020.html.

2. Main legislation

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

Section 6 of the Constitution provides for equality and prohibits discrimination.⁶ The main thrust of this constitutional guarantee of non-discrimination is to ensure formal equality, i.e. the principle that people in similar circumstances are to be treated similarly, but it also aims to reach full, substantive equality in practice.

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

The Non-Discrimination Act,⁷ which entered into force on 1 January 2015, is the main instrument transposing the EU directives on equal treatment (the Racial Equality Directive and the Employment Equality Directive) into national law. The current Non-Discrimination Act repealed the previous Non-Discrimination Act, which was in force from 2004 to 2014.

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

The Criminal Code⁸ has two provisions on discrimination where discrimination is prohibited on grounds of race, national or ethnic origin, colour, language, sex, age, family relationships,⁹ sexual orientation, state of health, religion, political orientation, political or industrial activity or another comparable circumstance. The first provision covers discrimination, inter alia, in the provision of services and in the discharge of public duties, while the second provision covers discrimination in the field of employment. There is a considerable amount of case law under the first provision, mainly regarding discrimination on the ground of ethnic origin. Punishment for discrimination laid down by law is in the form of fines or imprisonment for up to six months. In practice, the sentences for discrimination have been fines.

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

The Åland Islands, an autonomous Swedish-speaking province of Finland with about 30 000 inhabitants and legislative powers in certain areas, such as employment, education and social welfare, has its own non-discrimination law in these areas.¹⁰

⁶ Constitution (*Perustuslaki*), 731/1999. <https://www.finlex.fi/fi/laki/ajantasa/1999/19990731>.

⁷ Non-Discrimination Act (*Yhdenvertaisuuslaki*), 1325/2014.

<https://www.finlex.fi/fi/laki/ajantasa/2014/20141325>.

⁸ Criminal Code (*Rikoslaki*), 39/1889. <https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001>.

⁹ Family relationships refer to people having a family, being unmarried, married, in a registered partnership, cohabiting, in a relationship, divorced or widowed, regardless of whether the individuals are of the same or opposite sex.

¹⁰ Provincial Act on the Implementation of the Non-Discrimination Act (*Landskapslag (2022:43) om tillämpning av diskrimineringslagen*), <https://www.regeringen.ax/alandsk-lagstiftning/alex/202243>.

3. Main principles and definitions

The Non-Discrimination Act is applicable to all public and private activities, excluding private life, family life and the practice of religion. The protection against discrimination is equal regardless of whether the discrimination is based on origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.¹¹ The act explicitly bans discrimination that is based on association or assumption.

Proportionate differential treatment that aims to advance genuine equality or to prevent or reduce the effects of discrimination is not discrimination according to the Non-Discrimination Act.

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

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

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

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

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

Public authorities, employers, education and early childhood education providers must, where necessary, make reasonable accommodations to ensure that persons with disabilities have equal access to services, work or education and training. Persons with disabilities must also have equal access to goods and services. Disability must be taken into account in the provision of services, for example, by modifying the service to be accessible for all or arranging alternative ways of providing the service for those who need it, whenever possible. In employment, the employer is liable for reasonable accommodation in order to provide persons with disabilities equal access to employment and to enable them to carry out their work-related tasks and advance in their career.

Failure to meet the duty of reasonable accommodation is directly defined as discrimination in the Non-Discrimination Act. There is no duty to provide reasonable accommodation in respect of grounds other than disability in the public or the private sector.

¹¹ 'Other personal characteristics' may include, for instance, social status, unemployment, homelessness, wealth, place of residence, appearance, or participation in the activities of associations.

Harassment is prohibited in the Non-Discrimination Act, where it explicitly constitutes a form of discrimination. In a landmark case, the National Non-Discrimination and Equality Tribunal considered that hanging a swastika/Nazi flag from the window of an apartment was harassment on the ground of religion and thus prohibited in the Non-Discrimination Act.¹²

Multiple or intersectional discrimination is not explicitly prohibited in the Non-Discrimination Act, but the Government proposal for the Act explains¹³ that both multiple and intersectional discrimination are included in the concept of discrimination when applying the Act. There are cases when discrimination has been prohibited on more than one discrimination ground. In a landmark case, the National Non-Discrimination and Equality Tribunal considered it multiple discrimination¹⁴ when a credit company refused to grant credit based on the combined effect of an applicant's gender, language, age and place of residence.

4. Material scope

The Non-Discrimination Act expands the material scope of protection against discrimination. The act applies to all public and private activities, excluding private life, family life and the practice of religion.¹⁵ This means that all activity by public authorities (both governmental and municipal), education, providing goods and services and employment are included in the scope of the act.

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

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

An example of the wide applicability of the Non-Discrimination Act, is a landmark finding by the National Non-Discrimination and Equality Tribunal that the Helsinki Police had practised ethnic profiling while performing immigration status checks. The tribunal considered it as direct discrimination prohibited in the Non-Discrimination Act. In 2022, after an appeal by the Police, the Supreme Administrative Court¹⁶ confirmed the findings of the Tribunal in the final ruling of the case.

The material scope of the act does not differ depending on the protected grounds for discrimination. Discrimination is prohibited on the five grounds protected in the directives: ethnic origin,¹⁷ age, disability, religion or belief and sexual orientation, as well as on other grounds included in the Finnish Non-Discrimination Act – nationality, language, opinion,

¹² National Non-Discrimination and Equality Tribunal, xx.xx.2018, decision 3xx/2018, https://www.yvtltk.fi/material/collections/20230609105551/Hs0NDSz3b/Tapausseloste_YVTltk_3xx_2018_hakaristolippu.pdf.

¹³ Government proposal on the Non-Discrimination Act, 19/2popu014, p. 57.

¹⁴ National Non-Discrimination and Equality Tribunal, 21 March 2018, decision 216/2018, https://www.yvtltk.fi/material/attachments/ytltk/tiedotteet/zBoCz0PN9/YVTltk-tapausseloste-21.3.2018-luotto-moniperusteinen_syrjinta-S.pdf.

¹⁵ The material scope of the Non-Discrimination Act is further explained in Section 3.2 of this report.

¹⁶ Supreme Administrative Court, 8 September 2022, ECLI:FI:KHO:2022:106, <https://www.kho.fi/fi/index/paatokset/vuosikirjapaatokset/1662440009521.html>.

¹⁷ The Non-Discrimination Act uses the term 'origin', which is defined in the Government proposal as including ethnic origin, national origin, social origin, race and skin colour.

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

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

5. Enforcing the law

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

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

As regards employment, compliance by employers with anti-discrimination law is also supervised by the occupational health and safety authorities.¹⁸ They may receive communications from employees and carry out on-site inspections in the private sector and, if they consider that there are probable grounds to suspect that discrimination, as defined in the Criminal Code, has taken place, they must report the case to a public prosecutor. In less severe cases of discrimination, the occupational health and safety authorities can issue an improvement notice. If the improvement notice is not followed, the occupational health and safety authorities can make a legally binding decision and set a conditional fine if the decision is not followed.

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

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

If a discriminatory decision is made in the exercise of public powers, the victim of discrimination may make use of the rectification procedure (in other words requesting a new decision from the same public authority) or some other ordinary channel of appeal.

¹⁸ The occupational health and safety authorities consist of five regional Divisions for Occupational Safety and Health (the official translation of the Finnish health and safety bodies) in the regional state administrative agencies. The occupational health and safety authorities are under the control of the Department for Work and Gender Equality of the Ministry of Social Affairs and Health and come together to form the Occupational Safety and Health Administration, which publishes an annual report.

They may also turn to the Parliamentary Ombudsman or the Chancellor of Justice in order to file a complaint. These bodies may not amend or annul a particular decision, but may bring legal action against an official and/or issue their opinions on the correct interpretation of the law.

Only the victims of discrimination and not, for example, NGOs supporting the victims of discrimination can initiate and have legal standing in discrimination cases in courts. However, an organisation with an interest in advancing equality and the Non-Discrimination Ombudsman have a right to bring a specific case before the National Non-Discrimination and Equality Tribunal. This is possible without a specific victim as *actio popularis* or if the person who considers that they have been discriminated against gives their consent to this.

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

Discrimination is an offence punishable under the Criminal Code,¹⁹ most importantly in the provision of goods and services and employment. A person found guilty of discrimination may be convicted and sentenced to pay a fine or to imprisonment for up to six months.

6. Equality bodies

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

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

In individual cases the Ombudsman can also give a justified statement on the prevention, continuation or repetition of discrimination.

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

7. Key issues

- The concept of direct discrimination used in the Non-Discrimination Act in areas outside employment includes justification for direct discrimination. This may not fulfil the criteria of the Racial Equality Directive. The Non-Discrimination Act generally justifies differential treatment, such as on the basis of ethnic origin, if the treatment is based on legislation, has an acceptable aim and the means used are in due proportion to achieving the aim.

¹⁹ Criminal Code (39/1889), Chapter 11, Section 11 and Chapter 47, Section 3.

- In analysing whether the available sanctions are effective, proportionate and dissuasive as required by the directives, it can be said that, on the one hand, victims can obtain redress in the form of compensation, initiate criminal law proceedings and obtain an order of cessation from the Non-Discrimination and Equality Tribunal, while on the other hand, some particularly robust remedies, such as reinstatement, are not available. Furthermore, as compensation for discrimination can only be requested in the district courts, the risk of having to pay the defendant's legal costs greatly affects the real possibilities of seeking remedies against discrimination.
- The Non-Discrimination Act requires public authorities, providers of education and those employers with more than 30 employees to purposefully and methodically foster equality and draw up a plan for the fostering of equality (an equality plan). The equality plans must evaluate the realisation of equality and are supposed to cover all protected grounds of discrimination in the Non-Discrimination Act (origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics). These measures form the most significant source of positive action in Finnish society. Equality plans covering multiple grounds have been written in hundreds of municipalities, other public authorities, companies and lots of other organisations, such as NGOs and student unions. The occupational health and safety authorities and the Non-Discrimination Ombudsman monitor whether employers have plans. The Non-Discrimination Ombudsman also monitors public authorities and providers of education in meeting the obligation.
- Discrimination relating to the use of artificial intelligence has been recognised for many years. In 2018 the National Equality and Non-Discrimination Tribunal²⁰ already prohibited a credit institution from applying discriminatory use of AI when deciding on credit applications.

²⁰ National Non-Discrimination and Equality Tribunal, xx.xx.2018, decision 3xx/2018, A credit application was denied based on the scoring system of the credit institution which calculated the applicant's score based on their language, gender, age and place of residence, among other things, although no individual assessment of payment ability (such as income or other debts) was made. The Tribunal considered the treatment of the credit applicant to be multiple, direct discrimination on grounds of gender, language, age and residence https://www.yvtltk.fi/material/collections/20230609105321/Hs0M3JT8I/Tapausseloste_YVTltk_3xx_2018_et_ninen_profilointi.pdf.

INTRODUCTION

The national legal system

The main provisions pertaining to discrimination have been laid down in the Constitution, the Non-Discrimination Act and the Criminal Code. A prohibition on discrimination is also included in many statutory acts as a general clause. Section 6 of the Constitution provides for equality and prohibits discrimination.²¹ The main thrust of this constitutional guarantee of non-discrimination is to ensure formal equality, i.e. the principle that people in similar circumstances are to be treated similarly, but it also aims to reach full, substantive equality in practice. The constitutional prohibition of discrimination may be directly invoked in courts and regular laws are to be interpreted in accordance with it.

The Non-Discrimination Act is the main instrument transposing the EU directives on equal treatment (the Racial Equality Directive and the Employment Equality Directive) into national law. The scope of the Non-Discrimination Act is wide, covering both public and private activities, but excluding private life, family life and the practice of religion. Protection is provided on the grounds of origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics.

In the Finnish legislative system, Government proposals (relevant preparatory works or *travaux préparatoires*) are an important source of information for interpreting legislation. The Government proposal for a particular legislative act is not legally binding but is frequently used by courts and academics in explaining and interpreting the concepts and purpose of a particular piece of legislation. As the text of non-discrimination legislation is also concise and often does not include definitions, the definitions mentioned in the relevant Government proposals are frequently referred to in this report.²²

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

Gender equality is addressed in the Constitution and in the Criminal Code, and in a separate law of general application, the Act on Equality between Women and Men. This act is explicitly also applied to gender identity and gender expression.

The Åland Islands, which form an autonomous province of Finland, have exclusive legislative competence over certain material areas covered by the two directives as concerns the territory of the province. The division of legislative competence between the Åland Islands and the Finnish State is as follows: the Åland Islands have competence over matters relating to civil servants employed by the Province of Åland or one of the municipalities in the Åland Islands, healthcare, social welfare, education, self-employment, promotion of employment, and some aspects of the provision of services (e.g. transport services); the Finnish State has competence over matters such as private employment including those employed by the public authorities of the Åland Islands or one of the

²¹ Constitution, Section 6 '(1): Everyone is equal before the law. (2): No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person'. According to the preparatory works of the Constitution 'other reason that concerns his or her person' includes reasons such as social status, wealth, participation in NGOs, family relationships, pregnancy, sexual orientation and place of residence. The Parliament's Constitutional Law Committee, whose task is to analyse the constitutionality of legislative proposals, has repeatedly referred to these other reasons as protected grounds against discrimination.

²² See e.g. Section 2.1, Definition of the grounds of unlawful discrimination within the directives.

municipalities as employees (i.e. not civil servants), some parts of the provision of services, such as banking, and criminal and procedural law, including rules on the burden of proof.

Starting from 1 January 2023, the Finnish Non-Discrimination Act is applicable in Åland in all fields of life. The Act of Åland on the Implementation of the Non-Discrimination Act²³ states that the mainland Non-Discrimination Act approved in the Finnish Parliament is also applicable in Åland in fields of life where the Åland Islands have autonomy. The only difference is that the requirement of domicile (legal place of residence) in Åland or the requirement to use the Swedish language cannot be considered as discrimination in issues which fall under the autonomy of the Åland Islands. Before 2023, a separate Act of Åland on Prevention of Discrimination in the Province of Åland was applicable in fields of life where the Åland Islands have autonomy.

List of main legislation transposing and implementing the directives

Official title of the law: Non-Discrimination Act²⁴

Name used in this report: N/A

Abbreviation: N/A

Date of adoption: 30 December 2014

Entry into force: 1 January 2015

Latest relevant amendment: Act Amending the Non-Discrimination Act (907/2024), entry into force 1 January 2025

Web link: <http://www.finlex.fi/fi/laki/ajantasa/2014/20141325>

Grounds protected: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics

Civil/administrative/criminal law: civil law

Material scope: both public and private activities, excluding private life, family life and practice of religion

Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate

Official title of the law: Non-Discrimination Ombudsman Act²⁵

Name used in this report: N/A

Abbreviation: N/A

Date of adoption: 30 December 2014

Entry into force: 1 January 2015

Latest relevant amendment: Act Amending Section 1 of the Non-Discrimination Ombudsman Act (26/2024), entry into force 1 January 2025

Web link: <http://www.finlex.fi/fi/laki/ajantasa/2014/20141326>

Grounds covered: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics

Civil/administrative/criminal law: administrative law

Material scope: both public and private activities, excluding private life, family life and practice of religion

Principal content: creation of a specialised body

²³ Provincial Act on the Implementation of the Non-Discrimination Act (2022:43) (*Landskapslag (2022:43) om tillämpning av diskrimineringslagen*), adopted 16 March 2022. Available at: <https://www.regeringen.ax/alandsk-lagstiftning/alex/202243>.

²⁴ Non-Discrimination Act (*Yhdenvertaisuuslaki*) 1325/2014. Available at: <http://www.finlex.fi/fi/laki/ajantasa/2014/20141325>.

²⁵ Act on the Non-Discrimination Ombudsman (*Laki yhdenvertaisuusvaltuutetusta*), 1326/2014. Available at: <http://www.finlex.fi/fi/laki/ajantasa/2014/20141326>.

Official title of the law: Act on the Non-Discrimination and Equality Tribunal²⁶

Name used in this report: N/A

Abbreviation: N/A

Date of adoption: 30 December 2014

Entry into force: 1 January 2015

Latest relevant amendment: Act Amending the Act on the Non-Discrimination and Equality Tribunal (907/2024), entry into force 1 January 2025

Web link: <https://finlex.fi/fi/laki/ajantasa/2014/20141327>

Grounds protected: gender, gender identity, origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics

Civil/administrative/criminal law: civil law

Material scope: both public and private activities, excluding private life, family life and the practice of religion.

Principal content: creation and governance of a tribunal authorised to make binding decisions on the application of the Non-Discrimination Act.

Official title of the law: Act of Åland on the Implementation of the Non-Discrimination Act²⁷

Name used in this report: N/A

Abbreviation: N/A

Date of adoption: 8 June 2022

Entry into force: 1 January 2023

Latest relevant amendment: -

Web link: <https://www.regeringen.ax/alandsk-lagstiftning/alex/202243>

Grounds protected: origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics

Civil/administrative/criminal law: civil law

Material scope: applicable in the Åland Islands; civil servants employed by the ÅI or by one of the ÅI's municipalities, schools, social care and healthcare, some aspects of the provision of goods and services.

Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate

²⁶ Act on the Non-Discrimination and Equality Tribunal (*Laki yhdenvertaisuus- ja tasa-arvolautakunnasta*) 1327/2014. Available at: <http://www.finlex.fi/fi/laki/ajantasa/2014/20141327>.

²⁷ Provincial Act on the Implementation of the Non-Discrimination Act (2022:43) (*Landskapslag (2022:43) om tillämpning av diskrimineringslagen*). Available at: <https://www.regeringen.ax/alandsk-lagstiftning/alex/202243>.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

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

- Section 6(1) of the Constitution²⁸ is a general clause: 'Everyone is equal before the law'.
- Section 6(2) defines the prohibition of discrimination and the protected grounds: 'No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns their person'.²⁹
- Section 6(3): is a children's rights article: 'Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to them to a degree corresponding to their level of development.'

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives. The constitutional anti-discrimination provisions are directly applicable. Section 6 has been invoked in courts.³⁰

These provisions can be enforced against private individuals (as well as against the state). Although the primary thrust of Section 6 is to ensure equal treatment in the use of public powers, Section 6 may in some situations have a bearing on relationships between private parties as well. Mostly this effect takes place through statutory law which implements the constitutional principle of equal treatment, although in some situations Section 6 may be directly applicable, e.g. as a ground for claiming damages or as a ground for determining that a specific clause of an agreement is to be considered 'unjust'.³¹

²⁸ Constitution (*Perustuslaki*) 731/1999 Available at: <http://www.finlex.fi/fi/laki/ajantasa/1999/19990731>.

²⁹ Government proposal on the Constitution 309/1993 (*Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta*), pp. 42, explains that 'other reason that concerns his or her person' includes position in society, wealth, participation in NGOs, family relationships, pregnancy, sexual orientation and domicile.

³⁰ See e.g. Hallberg, P. (1999) in Hallberg et al, *Perusoikeudet* (Fundamental rights), WSOY, pp. 704, 717, 719; Kortteinen, J., Makkonen, T. (2000), *Oikeutta rasismien ja syrjinnän uhreille – Etnisen syrjinnän vastainen käsikirja* (Justice to the victims of racism and discrimination – a manual against ethnic discrimination), Ihmisoikeusliitto.

³¹ Scheinin, M. (1999) 'Yhdenvertaisuus ja syrjinnän kieltö' (Equality and the prohibition of discrimination), in Hallberg et al, *Perusoikeudet* (Fundamental rights), WSOY, p. 260; Makkonen, T. (2003) *Syrjinnän vastainen käsikirja* (Manual against discrimination), IOM Helsinki, p. 101.

2 THE DEFINITION OF DISCRIMINATION

2.1 Definition of the grounds of unlawful discrimination within the directives

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

Secondly, the Government proposal³² (pertinent preparatory works or *travaux préparatoires*) for the Non-Discrimination Act defines the grounds for discrimination referring to the case law of the Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECtHR).³³

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

a) Racial or ethnic origin

The term for ethnic origin in the repealed Non-Discrimination Act was 'ethnic or national origin'. This term was replaced in the current Non-Discrimination Act by the word 'origin'. It is defined in the Government proposal as including ethnic origin, national origin, social origin,³⁴ race and skin colour.³⁵ There is no doubt that the concepts of race and ethnic origin are to be interpreted as being included in the concept of origin as used in the Non-Discrimination Act.

b) Religion or belief

On the definition of religion or belief, the Government proposal explains only that the difference between these two is not always easy to distinguish, although belief is connected more to conviction than to religion. It is further defined that the belief protected in the Non-Discrimination Act is required to be permanent to a certain extent.³⁶ Other terms included in the list of prohibited discrimination grounds in the act, such as 'opinion' and 'political activity', complement the protection against discrimination on the basis of an individual's views and values.

c) Disability

On disability, the Government proposal briefly explains that there is no unambiguous definition in Finnish legislation. The Government proposal then refers to the UN Convention

³² Government proposal on the Non-Discrimination Act 19/2014 (*Hallituksen esitys yhdenvertaisuuslaiksi 19/2014 vp*), pp. 66-68, <http://www.finlex.fi/fi/esitykset/he/2014/20140019>.

³³ The Government proposal refers to the CJEU decision of HK Danmark (C-335/11 and C-337/11, 11 April 2013) when explaining the relationship between state of health and disability, and to the ECtHR decision in Hode and Abdi (6 December 2012) when explaining the concept of 'other personal characteristics'.

³⁴ The term 'social origin' (*yhteiskunnallinen alkuperä*) is also used in the Government proposition for the Constitution (HE309/1993). The proposition for the Constitution uses the term with reference to the International Covenant on Civil and Political Rights, which uses 'social origin' in Article 2.

³⁵ Government proposal on the Non-Discrimination Act, 19/2014, p. 66.

³⁶ Government proposal on the Non-Discrimination Act, 19/2014, p. 66.

on the Rights of Persons with Disabilities, by stating that, according to Article 1 of that convention, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Additionally, the Government proposal mentions that disability can be congenital or it can be caused by an accident.³⁷

The Government proposal explains that the definition of health in the Non-Discrimination Act refers to both physical and mental health. The Government proposal refers to the Court of Justice of the European Union decision *HK Danmark* (C-335/11 and C-337/11)³⁸ and explains that an illness combined with long-lasting effects preventing participation in employment can also be considered a disability.³⁹

d) Age

The Government proposal explains that the prohibition of discrimination on the ground of age would protect all ages, young as well as old.⁴⁰

e) Sexual orientation

The Finnish term for sexual orientation in the repealed Non-Discrimination Act and in the Finnish translation of Directive 2000/78 was '*sukupuolinen suuntautuminen*', which can also be translated as 'gender orientation'. In the current Non-Discrimination Act, the term for sexual orientation has been changed to '*seksuaalinen suuntautuminen*', which is commonly used in general discussion and preferred by LGBTIQ organisations and communities. The Government proposal does not define sexual orientation in the section where some of the other grounds of discrimination are defined. However, in the section where the Government proposal analyses the situation of trans and intersex people in society, the Government proposal briefly mentions that the term sexual orientation includes homosexual, heterosexual or bisexual orientation, although these terms themselves are not further defined.⁴¹

2.2 Multiple and intersectional discrimination

In Finland, multiple discrimination and intersectional discrimination are not explicitly prohibited by law. The requirement for specific prohibition of multiple discrimination and clarifying who should supervise this prohibition was one of the disagreements in preparing the 2015 overall renewal of the Non-Discrimination Act.⁴² Neither the Government proposal nor the Employment and Equality Committee report give reasons why multiple discrimination was not explicitly addressed in the Non-Discrimination Act. The Government proposal explains,⁴³ however, that both multiple and intersectional discrimination are included in the concept of discrimination when applying the Non-Discrimination Act.

In Finland, the following case law deals with multiple discrimination and intersectional discrimination: the Rovaniemi Appeal Court confirmed the decision of the Oulu District Court when it awarded compensation separately on the basis of gender discrimination (applying the compensation statutes of the Act on Equality between Women and Men) and

³⁷ Government proposal on the Non-Discrimination Act, 19/2014, p. 67.

³⁸ CJEU, C-335/11 and C-337/11, *HK Danmark*, 11 April 2013, ECLI:EU:C:2013:222.

³⁹ Government proposal on the Non-Discrimination Act, 19/2014, p. 67. This interpretation has been applied also in court practice, see e.g. ECLI:FI:VHO:2022:425

⁴⁰ Government proposal on the Non-Discrimination Act, 19/2014, p. 66.

⁴¹ Government proposal on the Non-Discrimination Act, 19/2014, p. 34.

⁴² See Ministry of Justice (2013) *Yhdenvertaisuuslainsäädännön uudistamista koskeva hallituksen esitys, Lausuntotiivistelmä* (Review of comments on the Government proposal on the renewal of the Non-Discrimination Act), Helsinki, https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76496/omml_46_2013_lausuntotiiv_18_s.pdf?sequence=1.

⁴³ Government proposal on the Non-Discrimination Act, 19/2014, p. 57, .

on the basis of disability discrimination (applying the compensation statutes of the Non-Discrimination Act). The defendant, who lost the case in the district court, stated in the appeal court that compensation cannot be awarded based on both acts, as there was only one discriminatory act, which occurred when the visually impaired claimant was not reinstated to her previous position after returning from maternity leave.⁴⁴ This case shows that multiple discrimination has been taken into account by courts when deciding on sanctions. There is no case law on intersectional discrimination.

In a landmark decision, the Non-Discrimination and Equality Tribunal considered it multiple discrimination⁴⁵ when a credit company refused to grant credit based on the combined effect of an applicant's gender, language, age and place of residence. The decision is final as it was not appealed against. A credit application was denied on the basis of the credit company's scoring system, which calculated the scoring of the applicant based on his language, gender, age and place of residence, among other things, but without making an individual assessment of the applicant's payment ability (such as income or other debts). The decision was made on a statistical basis. Had the credit applicant been female, older, had Swedish as their first language instead of Finnish, or lived in a different location, he would have been granted the credit for which he had applied. The tribunal considered the treatment of the applicant to be multiple, direct discrimination on grounds of gender, language, age and residence. The Tribunal cannot award compensation, so it is not possible to analyse whether multiple discrimination would have affected sanctions in this case.

2.3 Assumed and associated discrimination

a) Discrimination by assumption

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

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

b) Discrimination by association

In Finland, discrimination based on association with persons with particular characteristics is prohibited in Section 8 of the Non-Discrimination Act as it states that discrimination is prohibited, regardless of whether it is based on a fact or assumption concerning the person him/herself or *another*.

It is clearly stated in the Government proposal for the act that explicit prohibition of discrimination by association in the Non-Discrimination Act is to be interpreted in line with the *Coleman* case (C-303/06).⁴⁶

2.4 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

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

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

⁴⁴ Rovaniemi Appeal Court, 23 October 2014, 483/23.10.2014, S13/536.

⁴⁵ National Non-Discrimination and Equality Tribunal, 21 March 2018 decision 216/2018, https://yvltk.fi/material/collections/20220929103022/HmnVFeDYI/Tapausseloste_YVTltk_2xx_2017_luottokelpoisuuden_arviointimenettely.pdf.

⁴⁶ CJEU, C-303/06, *Coleman*, judgment of 17 July 2008, EU:C:2008:415 and Government proposal on the Non-Discrimination Act 19/2014, p. 68.

'If a person⁴⁷ ... is treated less favourably than another person was treated, is treated or would be treated in a comparable situation.'

b) Justification for direct discrimination

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

- i. In discrimination on grounds of ethnic origin, in education in general, when using public powers or performing public administrative tasks, the following applies: differential treatment is allowed only if the treatment is based on legislation, the treatment has an acceptable aim and the means used are in due proportion to achieving the aim.⁴⁸

An example of using different elements of justification for direct discrimination is found in a landmark decision⁴⁹ of the Supreme Administrative Court on ethnic profiling, which the court found to be direct discrimination prohibited by the Non-Discrimination Act. The Supreme Administrative Court stated that the treatment by the police of two black women had been affected by the colour of their skin and their ethnic origin. The court then examined whether the action of the police was justified by the preconditions set for direct discrimination justification in the Non-Discrimination Act. The court first acknowledged that the actions of the police were based on legislation – which is required for justification – as it is the task of the police to supervise the prohibition of street prostitution and to perform immigration status checks. The Supreme Administrative Court considered, however, that the actions of the police did not fulfil the proportionality requirement in the justification of direct discrimination. The means police used were not in due proportion to the aim of combatting street prostitution and human trafficking and therefore there was no justification of discrimination.

This general justification of direct discrimination in situations governed by the Racial Equality Directive does not derive from the Directive and may be too widely formulated. However, there is no case law indicating a violation of the directive. The Government proposal for the Non-Discrimination Act lists safeguards that would prevent the possibility of legislating or applying discriminatory acts or other legislation.⁵⁰ These include the Parliament Constitutional Law Committee's task to analyse the constitutionality of legislative proposals and their relationship to international human rights treaties⁵¹ and the courts' responsibility not to apply acts in conflict with the Constitution.⁵²

- ii. In other situations, except in the area of employment, it is not required that differential treatment be based on legislation, but in this case the aim needs to be acceptable from the perspective of fundamental rights and human rights and the

⁴⁷ In the unofficial translation provided by the Ministry of Justice, the English word 'person' is used when defining the concept of direct discrimination. The original word 'jotakuta' in the text of the act in Finnish can be interpreted to include groups as well as individuals.

⁴⁸ Non-Discrimination Act, 1325/2014, Section 11(1). In Finnish: 'Erlainen kohtelu ei ole syrjintää, jos kohtelu perustuu lakiin ja sillä muutoin on hyväksyttävä tavoite ja keinot tavoitteen saavuttamiseksi ovat oikeasuhtaisia.'

⁴⁹ Supreme Administrative Court, 8 September 2022, ECLI:FI:KHO:2022:106, <https://www.kho.fi/fi/index/paatokset/vuosikirjapaatokset/1662440009521.html>.

⁵⁰ Government proposal on the Non-Discrimination Act, 19/2014, p. 71.

⁵¹ Constitution, Section 74.

⁵² Constitution, Section 106.

means used must be in due proportion to achieving the aim.⁵³ These situations are not governed by the Racial Equality Directive and the justification of direct discrimination therefore does not have to follow the requirements of the directive.

- iii. In employment, differential treatment is allowed based on genuine and determining occupational requirements, age and habitual residence (in other words: where you live in Finland). Occupational requirements are explained below in Section 4.1 and differential treatment based on age in Section 4.6.1 of this report.

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

'it has a justified purpose that is objectively and appropriately founded and derives from employment policy, labour market or vocational training or some other comparable justified objective, or when the differential treatment arises from age limits adopted in qualification for retirement or disability benefits within the social security system.'⁵⁴

2.5 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

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

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

'If an apparently neutral rule, criterion or practice puts a person⁵⁵ at a disadvantage compared with others.'

Many of the cases where the Non-Discrimination and Equality Tribunal has found indirect discrimination involve indirect discrimination against persons with disabilities in the provision of goods and services.⁵⁶

b) Justification test for indirect discrimination

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

⁵³ Non-Discrimination Act, 1325/2014, Section 11(2). In Finnish: 'Erilainen kohtelu on kuitenkin oikeutettua siinäkin tapauksessa, että kohtelun oikeuttamisperusteista ei ole säädetty, jos kohtelulla on perus- ja ihmisoikeuksien kannalta hyväksyttävä tavoite ja keinot tavoitteen saavuttamiseksi ovat oikeasuhtaisia'.

⁵⁴ This rather exceptional detail – differential treatment because of habitual residence – in the otherwise quite exception-free Non-Discrimination Act originates from a statement by the Deputy Chancellor of Justice who criticised a municipality in Finland for providing summer jobs only to those young people who live in the municipality, without a legal basis for this action. Non-Discrimination Act, 1325/2014, Section 12(2). In Finnish: 'Ikään tai asuinpaikkaan perustuva erilainen kohtelu on lisäksi oikeutettua, jos kohtelulla on objektiivisesti ja asianmukaisesti perusteltu työllisyyspoliittinen tai työmarkkinoita koskeva tavoite taikka jos erilainen kohtelu johtuu eläke- tai työkyvyttömyysetuuksien saamisedellytykseksi vahvistetuista ikärajoista.'

⁵⁵ In the unofficial translation provided by the Ministry of Justice, the English word 'person' is used when defining the concept of indirect discrimination. The original word 'jonkun' in the text of the act in Finnish can be interpreted to include groups as well as individuals. Section 13 in Finnish: 'Syrjintä on välillistä, jos näennäisesti yhdenvertainen sääntö, peruste tai käytäntö saattaa jonkun muita epäedullisempaan asemaan henkilöön liittyvän synn perusteella.'

⁵⁶ See. e.g. Non-Discrimination and Equality Tribunal decision 390/2018 (11 June 2018). The Tribunal considered it indirect discrimination when the National Social Security Institution (KELA) refused to provide an interpreter who had previously interpreted for a person with vision and hearing impairments and was available, but lacked the required official certificate for vision impairment interpreting. The Tribunal considered that the aim of maintaining high quality by requiring proof of training was a neutral, legitimate aim. As the person with vision and hearing impairment was, however, left without any interpreting services, this seemingly neutral requirement was indirectly discriminatory in this case.

‘Unless that rule, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.’⁵⁷

It is clearly stated in the Government proposal for the act that the interpretation of the act must follow the jurisprudence of the Court of Justice of the European Union and other international human rights bodies, including the European Court of Human Rights.⁵⁸

2.5.1 Statistical evidence

a) Legal framework

In Finland, there is legislation regulating the collection of personal data. The Data Protection Act⁵⁹ supplements the prohibition of processing of special categories of personal data in the General Data Protection Regulation (GDPR).⁶⁰ The Data Protection Act does not create additional special categories of personal data. It specifies the conditions under which processing certain personal data is allowed, following the rules set in the GDPR.⁶¹

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

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

b) Practice

In Finland, statistical evidence is used in practice in order to establish indirect and other forms of discrimination. Indeed, statistical evidence has been presented in the courts, deemed admissible and used *in ratio decidendi*.⁶²

However, there have been only a few cases that have involved the use of statistical analysis, and even in these cases the analyses have been fairly straightforward and simple. These cases dealt with age discrimination.⁶³

The use of statistical evidence may be more widespread in the area of gender discrimination, although no data are available for the purposes of making comparisons. It does not appear to be the case that there would be any reluctance about using statistical evidence in courts; if data are available, they will likely be deemed admissible as evidence.

⁵⁷ The latter part of Section 13 in Finnish reads: ‘paitsi jos säännöllä, perusteella tai käytännöllä on hyväksyttävä tavoite ja tavoitteen saavuttamiseksi käytetyt keinot ovat asianmukaisia ja tarpeellisia’.

⁵⁸ Government proposal on the Non-Discrimination Act, 19/2014, p. 68.

⁵⁹ Data Protection Act (*Tietosuojalaki*), 1050/2018.

⁶⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02016R0679-20160504&from=FI>.

⁶¹ According to Section 6 of the Data Protection Act, Article 9(1) of the General Data Protection Regulation does not apply in the processing of data on a person’s health by an insurance institution, healthcare service provider or social welfare service provider. Article 9(1) also does not apply to the processing of data concerning health and of genetic data in sports in the context of anti-doping measures or in sports for persons with disabilities, to the processing of data for scientific or historical research purposes or for statistical purposes or to the processing of research and cultural heritage materials for archiving purposes in the public interest, with the exception of genetic data.

⁶² See e.g. Supreme Administrative Court, cases KHO 2001:38 and KHO 2006:93 and Supreme Court, KKO 2004:59.

⁶³ E.g. Supreme Administrative Court cases KHO 2001:38 and KHO 2006:93 involved simple statistical analyses of the treatment received by people of different ages.

2.6 Harassment (Article 2(3))

a) Prohibition and definition of harassment

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

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

'The deliberate or de facto infringement of the dignity of a person or a group of people is harassment if the infringing behaviour relates to a reason referred to in Section 8(1), and as a result of the reason, a degrading or humiliating, intimidating, hostile or offensive environment towards the person or group of people is created by the behaviour.'⁶⁴

In Finland, harassment explicitly constitutes discrimination under the Non-Discrimination Act (Section 8(2)). Therefore, the burden of proof provisions defined in Section 28 of the act also apply to harassment.

The material scope of the prohibition of harassment was explained in the Government proposal on the 2015 Non-Discrimination Act.⁶⁵ According to the proposal, talks, gestures, facial expressions, emails or displaying inappropriate material can all count as harassment. In a landmark decision, the National Non-Discrimination and Equality Tribunal considered that hanging a swastika/Nazi flag from an apartment window was harassment on grounds of religion and origin and therefore prohibited in the Non-Discrimination Act.⁶⁶ The Tribunal considered that the behaviour of the defendant had infringed the human dignity of the victim, who was the chairperson of the Jewish Community of Helsinki, and that the defendant's behaviour was related to religion. The Tribunal found that the behaviour had also created a degrading or humiliating, intimidating, hostile or offensive environment for the victim.

The personal scope of the prohibition of harassment was widened by amending the Non-Discrimination Act in 2022 to cover harassment also when it is directed at a group of people.⁶⁷ The National Non-Discrimination and Equality Tribunal had previously interpreted the Non-Discrimination Act from 2015 which only prohibits harassment directed at individuals.

b) Scope of liability for harassment

In Finland, where harassment is perpetrated by an employee, the employer and the employee are liable but only the employer can be ordered to pay compensation to the victim of harassment. Section 14(2) of the Non-Discrimination Act specifically defines it as discrimination if the employer neglects to take action after being informed of harassment by an employee.⁶⁸ Similar responsibility in responding to any harassment in schools and daycare centres was added in 2022 to providers of education and early childhood education.⁶⁹

⁶⁴ The term used for discrimination grounds is 'reason' in Section 14 of the Non-Discrimination Act.

⁶⁵ Government proposal on the Non-Discrimination Act, 19/2014, p. 78.

⁶⁶ National Non-Discrimination and Equality Tribunal, xx.xx.2018 decision 3xx/2018, https://www.yvtltk.fi/material/collections/20230609105551/Hs0NDSz3b/Tapausseloste_YVTltk_3xx_2018_hakaristilippu.pdf.

⁶⁷ Act Amending the Non-Discrimination Act (1192/2022), Section 14. The changes came into force 1 June 2023. <https://finlex.fi/fi/laki/alkup/2022/20221192>.

⁶⁸ Section 14(2) reads in Finnish: *Työnantajan menettelyä on pidettävä syrjintänä, jos työnantaja saatuaan tiedon siitä, että työntekijä on joutunut työssään 1 momentissa tarkoitetun häirinnän kohteeksi, laiminlyö ryhtyä käytettävissään oleviin toimiin häirinnän poistamiseksi.*

⁶⁹ Act Amending the Non-Discrimination Act (1192/2022), Section 14 (3).

2.7 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Finland, instructions to discriminate are prohibited in Section 8 of the Non-Discrimination Act, where instructions or orders to discriminate are defined as discrimination. Instructions are not defined in the act itself, but the Government proposal opens up the definition, stating that instructions, guidelines or orders that relate to or create discrimination are discrimination if the person giving instructions, guidelines or orders has the power to impose them.⁷⁰

In Finland, instructions explicitly constitute a form of discrimination even if the instructions have not been followed.⁷¹

b) Scope of liability for instructions to discriminate

In Finland, both the instructor and the discriminator are liable. When considering the consequences of discrimination (i.e. the obligation to pay compensation to the victim), the general principles of law applicable in the Finnish legal system determine responsibility. As a general rule, an employer is liable for the action or lack of action by an employee.⁷²

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

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

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

The wording of the Section 15(2) was slightly changed in 2022.⁷³ The needs for reasonable accommodation of the person with disabilities were given priority in the assessment. The Government proposal⁷⁴ refers to the interpretation of the CRPD by stating that it is first necessary to identify accommodation measures that meet the needs of the person with disabilities and only then assess their reasonableness. The Government proposal also states that it is not necessary for a person with disabilities to explicitly require specific accommodation measures if the duty bearer for reasonable accommodation should have understood the need of their own accord and proposed some accommodation if the need

⁷⁰ Government proposal on the Non-Discrimination Act, 19/2014, p. 69.

⁷¹ Government proposal on the Non-Discrimination Act, 19/2014, p. 69.

⁷² Tort Liability Act, 412/1974, Chapter 3 — Vicarious liability of employers and public corporations, Section 1(1) states: 'An employer shall be vicariously liable in damages for injury or damage caused by an employee through an error or negligence at work', <http://www.finlex.fi/fi/laki/ajantasa/1974/19740412>.

⁷³ Act Amending the Non-Discrimination Act (1192/2022), Section 15(2). The changes came into force on 1 June 2023.

⁷⁴ Government proposal on Changing the Non-Discrimination Act, 148/2022, p. 69.

is obvious. The duty bearer is also referred to as having a duty to communicate with the person with disabilities about their needs.

The employer also has a special duty to give a written explanation to a person with disabilities who considers that they have been discriminated against in a recruitment situation or during employment.⁷⁵

b) Case law

Although the duty to provide reasonable accommodation for persons with disabilities has been in place since 2004, the practical implementation of this duty in employment is not well documented and the case law on breaches of the duty is scarce.

Some case law does exist. In a landmark decision, the Vaasa Court of Appeal⁷⁶ considered it direct discrimination on the ground of disability when a detective superintendent was moved to a lower ranked position in the police organisation during organisational changes. The court considered that the reason for this was his disability and his use of a wheelchair. The court also found denial of reasonable accommodation measures when the detective superintendent was not allowed to receive compensation for the use of his own car to participate in supervisors' meetings. In addition, the fact that he was physically unable to visit two of the police stations under his command, as there were no accessible toilets or wheelchair ramps, was considered to go against the duty of reasonable accommodation measures for the employer.

In 2024 the Supreme Court considered it discrimination⁷⁷ when an employer terminated the working contract of a person with a hearing impairment during the six-month probationary period of their contract. The Supreme Court considered that the employer had failed to meet the duty of reasonable accommodation, as the employer had not explored any possible solutions before terminating the contract when it noticed that the employee was unable to hear sufficiently well when meeting clients. The Supreme Court stated that even though the employee had not requested any reasonable accommodation measures, the employer should have investigated potential measures when it became aware of the employee's hearing problem affecting their work.⁷⁸

c) Definition of disability and non-discrimination protection

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

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

In Finland, failure to meet the duty of reasonable accommodation in employment for persons with disabilities is recognised as a form of discrimination under the Non-Discrimination Act.⁷⁹ Failure to meet the duty of reasonable accommodation has the same consequences as other forms of discrimination, i.e. the duty to pay financial compensation.⁸⁰ The statutes concerning shifting the burden of proof also apply to situations that involve assessing reasonable accommodation duties.

⁷⁵ Non-Discrimination Act, 1325/2014, Section 15(3).

⁷⁶ Vaasa Court of Appeal decision 21 November 2022, ECLI:FI:VHO:2022:425, <https://www.edilex.fi/uutiset/80162> (requires password).

⁷⁷ Supreme Court decision (S2023/63, 22 October 2024), <https://korkeinoikeus.fi/fi/index/ajankohtaista/tiedotteet/2024/rmdnhdnuu.html>

⁷⁸ The Supreme Court interpreted legislation in force at the time of the events (in 2019) where it was not explicitly expressed in legislation that the employer has a duty to consider the need for reasonable accommodation measures, even without any request from the person needing them. In this context the Supreme Court referred to General comment No. 6 of the UN Committee on the Rights of Persons with Disabilities.

⁷⁹ Non-Discrimination Act, 1325/2014, Section 8.

⁸⁰ Non-Discrimination Act, 1325/2014, Section 28.

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

In Finland, Section 15 of the Non-Discrimination Act sets out a duty to provide reasonable accommodation in order to give persons with disabilities equal access to the services that public authorities⁸¹ provide and to receive education as well as goods and services. The obligation to make reasonable accommodations extends to public authorities, those providing education, and public and private providers of goods and services.

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

- the needs of the person with disabilities;
- the size and financial position and the nature and extent of activity of the actor;
- the estimated costs for reasonable accommodation measures;
- the financial support available for reasonable accommodation measures.⁸²

There have been several decisions by the Non-Discrimination and Equality Tribunal that have interpreted the reasonable accommodation duties in the Non-Discrimination Act. The Non-Discrimination and Equality Tribunal cannot order a particular accommodation to be made, but it can forbid the continuation of discrimination, i.e. denial of reasonable accommodation, and it may impose a conditional fine to enhance its prohibition or order.⁸³

As the Tribunal does not have authority with regard to employment, all the decisions are outside that field. In many of the decisions, the issue has involved access to goods and services when using a wheelchair. In its decisions, the Tribunal has stated, for example, that in arranging a marketing or public relations event, wheelchair access to a sauna should have been arranged for the individual who requested it. Consequently, the Tribunal found discrimination in this case, in the form of failure to make reasonable accommodations.⁸⁴

The wide interpretation of reasonable accommodation duties by the Equality and Non-Discrimination Tribunal has been confirmed by the Supreme Administrative Court. In a landmark decision, the Supreme Administrative Court stated that the duty of reasonable accommodation in the Non-Discrimination Act is to be interpreted consistently with the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and the interpretation of the Convention by the UN Committee on the Rights of Persons with Disabilities. The Supreme Administrative Court decided that an airline's duty to provide reasonable accommodation for a person with a disability can extend to offering several seats at a reduced price where the person needs two adjacent seats in order to sit comfortably and rejected the argument of the airline that the freedom to conduct business and pricing freedom would prevent the use of financial discounts as part of reasonable accommodation measures.⁸⁵

⁸¹ Section 4 of the Non-Discrimination Act has definitions for the concepts used in the act. According to Section 4(1): 'In this Act, an authority means central and local government authorities, independent bodies governed by public law and parliamentary agencies, as well as authorities in the province of Åland when the latter apply State legislation. The provisions on an authority also apply to other instances discharging a public administrative function.'

⁸² Non-Discrimination Act, 1325/2014, Section 15.

⁸³ Non-Discrimination Act, 1325/2014, Section 20(3).

⁸⁴ Non-Discrimination and Equality Tribunal decision, 1xx/2016, xx.xx.2016, https://www.yvtltk.fi/material/collections/20230608093021/HsytI6Z89/Tapausseloste_YVTltk_1xx_2016_Ma_inostapahtuman_esteettomyys.pdf.

⁸⁵ Supreme Administrative Court decision ECLI:FI:KHO:2021:189, 22 December 2021, <https://www.kho.fi/fi/index/paatokset/vuosikirjapaatokset/1640067772579.html>. For an analysis of this decision in English, see European Network of legal experts in gender equality and non-discrimination (2022) *Flash report. Finland*, available at: <https://www.equalitylaw.eu/downloads/5583-finland-supreme-administrative-court-precedent-on-reasonable-accommodation-in-providing-flight-services-98-kb>

The interpretation of reasonable accommodation by the Non-Discrimination and Equality Tribunal has changed in recent years. The Tribunal has in several cases⁸⁶ considered that situations where a person using a wheelchair cannot access private or public services or access public events should be first examined as indirect discrimination on the ground of disability and only secondarily as denial of reasonable accommodation. This is significant as it requires such bodies to take measures to guarantee accessibility when planning their activities (that is, beforehand) and not only after the person needing them has requested such accessibility (as a form of reasonable accommodation).

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

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

However, the obligation established in the Constitution on public authorities to 'guarantee the observance of basic rights and liberties' has been interpreted by the Non-discrimination Ombudsman, the Parliamentary Ombudsman and the National Non-Discrimination and Equality Tribunal⁸⁷ as requiring public authorities to modify their procedures in order to ensure equal access, taking into account protected characteristics.

In addition, Chapter 2 of the Non-Discrimination Act sets out a general requirement for public authorities, education providers and employers to promote equality on all grounds.⁸⁸ This requirement is of a more general nature than the duty to provide reasonable accommodation for persons with disabilities when they indicate that they need such measures.

As a response to the requirement to promote equality, many public authorities provide information in many languages (in addition to official languages) or target information at specific groups, such as sexual or ethnic minorities. Even though the requirement to promote equality is intended to change the situation of groups of people in unequal situations, it has been used by individuals to support their claim for equal treatment, e.g. in the National Non-Discrimination and Equality Tribunal, even if they are not entitled to claim reasonable accommodation measures on grounds such as their religion, sexual orientation or language.

Although there is no obligation for reasonable accommodation measures on grounds other than disability, asking for similar measures on another ground must not lead to discrimination. The Helsinki District Court considered it to be discrimination as prohibited by the Criminal Code when a Muslim man's working contract was terminated before it had started after the man asked for unpaid time off from work in order to attend Friday prayers.⁸⁹

⁸⁶ See e.g. National Non-Discrimination and Equality Tribunal, decisions 678/2019 and 669/2019, https://www.yvtltk.fi/fi/index/materiaalit/tapausselosteet_3/tapausselosteet2020.html.

⁸⁷ See e.g. National Non-Discrimination and Equality Tribunal decision 8xx/2015, xx.xx.2016, https://www.yvtltk.fi/material/collections/20230608092645/Hsyk4S4nX/Tapausseloste_YVTltk_8xx_2015_Hedelmoityshoitoon_paaseminen.pdf.

⁸⁸ Chapter 2, Section 6 of the Non-Discrimination Act requires providers of education to 'evaluate the realisation of equality in their activities and take necessary measures to promote the realisation of equality. These measures shall be effective, expedient and proportionate, taking into account the educational institution's operating environment, resources and other circumstances.' There are similarly worded requirements for public authorities in Section 5, and for employers in Section 7.

⁸⁹ Helsinki District Court decision, 19 September 2019, reference number R 18/7100.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

There is no case law on the use of AI/automated systems in relation to the personal scope of the legislation against discrimination.

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

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

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

a) Protection against discrimination

In Finland, the personal scope of the Non-Discrimination Act (Section 8) does not cover legal persons for the purpose of protection against discrimination. As a general rule, only natural persons are protected. The Government proposal⁹⁰ and the Parliament's Employment and Equality Committee opinion⁹¹ both stress that, in some exceptional cases, protection may extend to protecting legal persons. The Government proposal gives an example of discriminating against an association or religious community where this could have a direct effect on the natural persons forming these legal persons.⁹²

In 2024 many newspapers reported on the case where a caterer's premises hire reservation was cancelled when the owner of the premises found out that the caterer was living with another man. The caterer had to cancel the catering for a memorial service at the last minute on the day of the event. In the media, a representative of the Non-Discrimination Ombudsman explained that the Non-Discrimination Act also protects small business entrepreneurs when there is a close link between the business and the person running it. In addition, the police started to investigate the case as discrimination is considered a crime liable to public prosecution in the Criminal Code.

b) Liability for discrimination

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

Section 2(2) of the Non-Discrimination Act states that only legal acts that fall within the scope of private affairs and family life are exempt from the scope of applicability of the Act. The Government proposal on the Non-Discrimination Act further explains that the scope of 'private affairs and family life' means interaction within the family and with relatives, and these relationships are protected in the Constitution of Finland and in Article 8 of the European Convention on Human Rights.⁹³

⁹⁰ Government proposal on the Non-Discrimination Act, pp. 67-68.

⁹¹ Finnish Parliament Employment and Equality Committee, p. 4, <https://www.eduskunta.fi/pdf/TyVM+11/2014>.

⁹² Government proposal on the Non-Discrimination Act, p. 68.

⁹³ Government proposal on the Non-Discrimination Act, p. 55.

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

a) Protection against discrimination

In Finland, the personal scope of the Non-Discrimination Act (Section 8) covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.

b) Liability for discrimination

In Finland, the personal scope of the Non-Discrimination Act (Section 2) covers the private and public sectors, including public bodies, for the purpose of liability for discrimination. The Non-Discrimination Act is applicable to all public and private activities, excluding private life, family life and the practice of religion.

3.2 Material scope

There is no case law on the use of AI/automated systems in relation to the material scope of the legislation except in the area of access to goods and services in Section 3.2.8.

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 Finland, the material scope of the Non-Discrimination Act, as defined in Section 2, 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 and in both private and public sectors, as described in the directives.

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

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

This section thereby indirectly confirms that these situations are included in the material scope of the Act. There is no case law in which the applicability of the Non-Discrimination Act has been questioned.

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds of discrimination. Therefore, all grounds mentioned in the Act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the scope of the Non-Discrimination Act.⁹⁴

⁹⁴ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in Section 7 in the Act on Equality between Women and Men (609/1986). See English translation of the Act: https://finlex.fi/fi/laki/kaannokset/1986/en19860609_20160915.pdf.

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

In Finland, the Non-Discrimination Act, as defined in Section 2, prohibits discrimination in working conditions including pay and dismissals, for all five grounds and for both private and public employment. In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected characteristics. In addition to the five grounds mentioned in the directives (origin, age, disability, religion or belief, sexual orientation), nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics are also included in the material scope of the Non-Discrimination Act.⁹⁵

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

In Finland, the Non-Discrimination Act⁹⁶, as defined in Section 2, applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, and adult lifelong learning courses.

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

The Non-Discrimination Act clearly applies to both employment and education and makes no distinction between protected grounds when applied to employment and education. In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds of discrimination. In addition to the five grounds mentioned in the directives (origin, age, disability, religion or belief, and sexual orientation), nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics are also included in the material scope of the Non-Discrimination Act.⁹⁷

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 Finland, the Non-Discrimination Act, as defined in Section 2, 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.

As the scope of the Act is wide, covering 'both public and private activities' (but excluding private life, family life and the practice of religion), it is clear that membership of and involvement in workers' or employers' organisations is included within the sphere of applicability of the Act.

⁹⁵ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in Section 7 of the Act on Equality between Women and Men (609/1986).

⁹⁶ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in Section 7 of the Act on Equality between Women and Men (609/1986).

⁹⁷ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in Section 7 of the Act on Equality between Women and Men (609/1986).

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds for discrimination. In addition to the five grounds mentioned in the directives (origin, age, disability, religion, belief, sexual orientation), nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics are also included in the material scope of the Non-Discrimination Act.⁹⁸

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

In Finland, the Non-Discrimination Act, as defined in Section 2, includes social protection, including social security, healthcare and access to social housing as formulated in the Racial Equality Directive. In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds of discrimination. Therefore, all grounds mentioned in the act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.⁹⁹

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

There is no direct reference in the Non-Discrimination Act to the exceptions enabled by Article 3(3) of the Employment Equality Directive. As explained in Section 2.2.b above and in Sections 4.1 and 4.6.1 below, the only justification for differential treatment in employment must be based on genuine and determining occupational requirements (4.1), age (4.6.1) or habitual residence (2.2.b). Exceptions allowing differential treatment based on age may be relevant in regard to payments made by state schemes in relation to different retirement ages.

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

‘It has a justified purpose that is objectively and appropriately founded and derives from employment policy, labour market or vocational training or some other comparable justified objective, or when the differential treatment arises from age limits adopted in qualification for retirement or disability benefits within the social security system.’¹⁰⁰

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

In Finland, the Non-Discrimination Act prohibits discrimination with regard to social advantages as formulated in the Racial Equality Directive. As the scope of the Act is wide, referring to ‘both public and private activities’ (Section 2), it does not make any references to or specifications about the material scope of the Act. The former Non-Discrimination Act¹⁰¹ explicitly mentioned social advantages as formulated in the Racial Equality Directive in the material scope of the Act. The stated goal of the current Non-Discrimination Act was to extend the material scope of the legislation to all private and public activity.¹⁰²

⁹⁸ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in Section 7 of the Act on Equality between Women and Men (609/1986).

⁹⁹ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in Section 7 of the Act on Equality between Women and Men (609/1986).

¹⁰⁰ Non-Discrimination Act, 1325/2014, Section 12(2) of which reads in Finnish: *‘Ikään tai asuinpaikkaan perustuva erilainen kohtelu on lisäksi oikeutettua, jos kohtelulla on objektiivisesti ja asianmukaisesti perusteltu työllisyyspoliittinen tai työmarkkinoita koskeva tavoite taikka jos erilainen kohtelu johtuu eläke- tai työkyvyttömyysetuuksien saamisedellytykseksi vahvistetuista ikärajoista.’*

¹⁰¹ Non-Discrimination Act, 1325/2014, Section 2(2)(2).

¹⁰² Government proposal on the Non-Discrimination Act 19/2014, p. 36.

Therefore, nothing leads to the conclusion that the Act is not intended to cover this requirement in the directives.

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds of discrimination. Therefore, all grounds mentioned in the Act – origin, age¹⁰³, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.¹⁰⁴

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

In Finland, Section 2 of the Non-Discrimination Act prohibits discrimination with regard to education as formulated in the Racial Equality Directive. As the scope of the Act is wide, referring to 'both public and private activities' (Section 2), it does not make any references to or specifications about the material scope of the Act. However, it does make a distinction between those who have a legislation-based position in providing education as opposed to when education is provided as part of the provision of goods and services (such as language courses, etc.) Discrimination is prohibited in both situations but only in the former case is there a special duty to purposefully and methodically foster equality.¹⁰⁵

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds of discrimination. Therefore, all grounds mentioned in the Act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.¹⁰⁶

Educational policy in Finland has been based on the principle of community schooling since the early 1980s. According to this principle, students attend school in their own residential area and there is no segregation of pupils with disabilities.¹⁰⁷ The general principle of inclusion is accepted as a basis for educational policy, but some critics have pointed out that too many students are transferred to special needs education classes because of the attitudes of teachers.¹⁰⁸

a) Trends and patterns regarding Roma pupils

In Finland, there are specific patterns of discrimination in education regarding Roma pupils, such as a high drop-out rate. The situation regarding the basic education¹⁰⁹ of Roma pupils was studied for the first time by the National Board of Education in 2000–2001. In 2010–2011, the National Board of Education conducted a follow-up study by interviewing a total of 240 Roma children and young people in the age group for receiving basic education, as well as their guardians. Responses to an online questionnaire were received from 1 341 school principals.¹¹⁰

The first study on the basic education of Roma pupils conducted by the National Board of Education in 2000–2001 indicated that the problems related to school attendance faced by Roma children were associated with having to repeat years and with frequent absences. A

¹⁰³ There is no age-related justification for differential treatment in social advantages e.g. in granting disability benefits. The only age-related exceptions are in employment – see Section 4.6.1 of this report.

¹⁰⁴ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in the Act on Equality between Women and Men (609/1986).

¹⁰⁵ Non-Discrimination Act, 1325/2014, Section 6.

¹⁰⁶ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in Section 7 of the Act on Equality between Women and Men (609/1986).

¹⁰⁷ Finnish National Agency for Education, <https://www.oph.fi/en>.

¹⁰⁸ For example, Professor Timo Saloviita, 'Inklusio meillä ja muualla' (Inclusion in Finland and elsewhere) http://users.jyu.fi/~saloviit/tutkimus/inclusion.html#INKLUUSIO_MEILL%C4_JA_MUUALLA.

¹⁰⁹ Basic education refers to primary and lower secondary education given to young people aged 7–16. Compulsory education runs to age 18.

¹¹⁰ There is no information available on whether the study will be repeated and updated.

significant number of Roma children received special needs teaching and they participated in pre-primary education less often than children belonging to the majority population. Dropping out of school was also more common than in the majority population. The study also found that Roma children did well in arts and crafts, that they were sociable and that they had good manners.

The follow-up study¹¹¹ in 2011 pointed to positive trends, for example in attending pre-primary education and teaching of the Romani language, and in successful cooperation between Roma homes and schools. Roma children continued to participate in pre-primary education less often than children of the majority population, but their participation rate had gone up significantly in 10 years. While an increasing share of Roma pupils were doing well in basic education, one in five of all Roma pupils continued to have significant problems with their school attendance.

Roma students' high absence rates have been identified as a factor that impedes their success at school. The absences are often due to family reasons, such as participating in family events (funerals, celebrations) and travelling. The National Board of Education's study showed, however, that Roma children were more easily persuaded to stay at home for various reasons than children from the majority population. In interviews with Roma pupils, bullying at school also came to light to some extent as a cause of unauthorised absences.¹¹²

The wellbeing of minority children has been a special interest of the Ombudsman for Children, who has published two studies on the welfare of Roma children, the first one in 2009¹¹³ and the second one in 2023.¹¹⁴ In the latter study Roma children talk about their experiences of being bullied and harassed and the lack of intervention from teachers in response to it.

One of the key objectives of the National Roma Policy¹¹⁵ (for 2023–2030) is to improve the education and training level of Roma people. The Policy includes eight action proposals related to education. These include reviewing the sections on the Roma in educational materials and developing them, developing guidance counselling for Roma pupils and developing a national operating model to support Roma education paths to higher education.

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

¹¹¹ Finnish National Agency for Education (2011), *Romanioppilaiden perusopetuksen tilannekatsaus 2010–2011 ja toimenpide-ehdotukset*, Reports 2011:26, https://www.oph.fi/sites/default/files/documents/140023_romanioppilaiden_perusopetuksen_tilannekatsaus_2010-2011_ja_toimenpide-ehdotukset.pdf.

¹¹² Ministry of Social Affairs and Health (2014) 'Steering and monitoring of the implementation of the national policy on Roma. Working group report', Finland. https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/70279/URN_ISBN_978-952-00-3487-0.pdf?sequence=1&isAllowed=y

¹¹³ Junkala, P. and Tawah, S. (2009), *More similar than different*, Helsinki, Ombudsman for Children, <https://lapsiasia.fi/documents/25250457/37284233/roma-children.pdf/b608c743-6cf7-3a38-b478-dfba432a07f3/roma-children.pdf?t=1428490981000>.

¹¹⁴ Weckström, E., Kekkonen, K. and Kekkonen, O. (2023) 'Tulee fiilis, et nää oikeesti hyväksyy mikä mä oon'. *Romanilasten hyvinvointi ja oikeuksien toteutuminen* ('I get the feeling that these people really accept who I am': The wellbeing of Roma children and the realisation of their rights), Ombudsman for Children (2023:3) <https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/164574/Raportti%20romanilapset.pdf?sequence=1&isAllowed=y>

¹¹⁵ Ministry of Social Affairs and Health (2023) *Finland's National Roma Policy 2023–2030*. https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/164779/STM_2023_15_J.pdf?sequence=1&isAllowed=y.

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds of discrimination. Therefore, all grounds mentioned in the Act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.¹¹⁶

Failure to meet the duty of reasonable accommodation is directly defined as discrimination as part of the definition of discrimination in the Non-Discrimination Act.¹¹⁷ This provision also applies to the access and supply of goods and services. There is no reference in the Non-Discrimination Act or in the Government Proposal for the Non-Discrimination Act on adapting goods as a reasonable accommodation measure. Therefore, this reasonable accommodation measure may not be required when interpreting the Non-Discrimination Act.

The only case where the use of artificial intelligence has been found to be discriminatory in Finland was in the supply of goods and services. A credit institution used algorithms to decide whether to grant credit to a buyer at an online store. Credit was instantly denied to the applicant, based on the scoring system of the credit institution which calculated the applicant's score based among other things on their language, gender, age and place of residence. The scoring system had checked that the applicant did not have payment defaults but no individual assessment of the payment ability (such as income or other debts) was made. The National Non-Discrimination and Equality Tribunal considered¹¹⁸ the treatment of the credit applicant to be multiple, direct discrimination on grounds of gender, language, age and residence.

In recent years, direct discrimination against the Roma has been combated increasingly effectively.¹¹⁹ This is for two reasons. First, the Criminal Code provisions against discrimination have been increasingly followed by the police, prosecutors and the courts in cases where the victims have been Roma. For example, the Non-Discrimination Ombudsman has trained the prosecutors (who also guide the police in their investigations) on bringing charges of discrimination as prohibited in the Criminal Code to courts. Moreover, although the burden of proof does not shift from the complainant to the respondent in criminal cases, the courts are less likely to accept the respondent's explanations for differential treatment, such as confusion with another person who has previously misbehaved while using the services of the respondent. Secondly, the courts have increasingly applied the Non-Discrimination Act in criminal cases brought in front of them and consequently have awarded financial compensation to victims of discrimination in addition to imposing fines on the perpetrators.

a) Distinction between goods and services available publicly or privately

In Finland, the Non-Discrimination Act does not distinguish between goods and services that are available to the public (e.g. in shops, restaurants and banks) and those that are only available privately (e.g. those restricted to members of a private association). Section 2(2) of the Act defines that only legal acts that fall within the sphere of private affairs and family life are exempt from the scope of applicability. In the Government proposal¹²⁰ for the Act it is further defined, for example, that putting a flat up for rent is included in the scope of prohibition of discrimination.

¹¹⁶ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in Section 7 of the Act on Equality between Women and Men (609/1986).

¹¹⁷ Non-Discrimination Act, 1325/2014, Section 8.

¹¹⁸ National Non-Discrimination and Equality Tribunal decision 216/2017, 21 March 2018, <https://www.equalitylaw.eu/downloads/4658-finland-multiple-discrimination-in-assessing-creditworthiness-pdf-120-kb>.

¹¹⁹ Courts have ordered fines and compensation in cases of discrimination against Roma which happened at a petrol station, a car rental shop, a bar and when renting an apartment.

¹²⁰ Government proposal on the Non-Discrimination Act 19/2014, p. 56.

Even if the material scope of the Non-Discrimination Act is wide and only legal acts that fall within the sphere of private affairs and family life are exempt from the scope of applicability of the Act, there are some restrictions on the right to compensation because of discrimination. According to Section 23 of the Non-Discrimination Act, a person who has been discriminated against is entitled to receive compensation only from the public authority, employer, education provider or supplier of goods or services who has discriminated against them. Therefore, compensation cannot be received from a manufacturer who has produced inaccessible goods, for instance.¹²¹

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

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

The former Non-Discrimination Act¹²² explicitly mentioned housing as formulated in the Racial Equality Directive in the material scope of the Act. The stated goal of the current Non-Discrimination Act was to extend the material scope of the legislation to all private and public activity.¹²³ Therefore, there is nothing to lead to the conclusion that the Act is not intended to cover this requirement in the directives.

In the Government proposal for the Act, it is further stated that putting a flat up for rent is included in the scope of prohibition of discrimination.¹²⁴ The duty to provide reasonable accommodation in order to give a person with disabilities equal access to goods and services extends to public and private providers of goods and services. What is reasonable accommodation depends, among other things, on the size and financial position and the nature and extent of activity of the entity concerned.¹²⁵ Therefore, an individual landlord who only has one apartment to rent could be required to make less substantial modifications than a company that is making a substantial profit by renting out many apartments.

In Finland, the material scope of the Non-Discrimination Act does not differ depending on the protected grounds of discrimination. Therefore, all grounds mentioned in the Act – origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health and other personal characteristics – are within the material scope of the Non-Discrimination Act.¹²⁶

The statistics from the Non-Discrimination Ombudsman regarding housing discrimination show that 7 % of the discrimination cases reported to the Ombudsman related to housing.¹²⁷ Cases concern challenges in obtaining housing both in the public housing market and in the private market, experiences of discrimination during residing, especially in homes provided by housing companies, and termination of tenancy relationships. In her annual report the Non-Discrimination Ombudsman states that issues raised with the Ombudsman related to origin, nationality and language are clearly highlighted as grounds for discrimination in housing. In addition, the Ombudsman explains that a significant number of cases concern shortcomings in accessibility when it comes to housing for persons with disabilities.¹²⁸

¹²¹ See Section 6.5.a below on applicable sanctions in cases of discrimination.

¹²² Non-Discrimination Act, 1325/2014, Section 2(2)(2).

¹²³ Government proposal on the Non-Discrimination Act, 19/2014, p. 36.

¹²⁴ Government proposal on the Non-Discrimination Act, 19/2014, p. 56.

¹²⁵ Non-Discrimination Act, 1325/2014, Section 15.

¹²⁶ Discrimination based on gender, gender identity, gender expression or sex characteristics is prohibited in Section 7 of the Act on Equality between Women and Men (609/1986).

¹²⁷ Non-Discrimination Ombudsman (2024), *Annual report for 2023*, p. 31.

¹²⁸ Non-Discrimination Ombudsman (2024), *Annual report for 2023*, p. 32.

In 2019, knowledge of non-discrimination legislation (the Non-Discrimination Act and discrimination provisions in the Criminal Code) was added to the requirements to pass the test required by law to operate an estate agency.¹²⁹ In 2021, the Finnish Real Estate Federation informed¹³⁰ its members of the duty of reasonable accommodation for persons with disabilities in housing co-operatives. The Finnish Real Estate Federation represents property owners and landlords providing housing for 36 % of the population of Finland.

a) Trends and patterns regarding housing segregation for Roma

In Finland, there are patterns of housing discrimination against the Roma. This was highlighted by a study published by the Ombudsman for Minorities in 2013 on the discrimination faced by Roma people.¹³¹ The study showed that almost half (some 48.5 %), of Roma respondents who had had interactions with the housing market had experienced discrimination on the ground of their ethnic origin when applying for rented housing financed through state subsidies, typically rented housing belonging to the municipality or city.

A follow-up study¹³² to the report on Roma experiences of housing and equality was published in 2018. This time the study did not include a survey of discrimination experienced by Roma people and therefore it is not possible to make a direct comparison with the statistics from the 2013 survey. The data used in the follow-up study included information from contacts and complaints to the Non-Discrimination Ombudsman, the Housing Finance and Development Centre of Finland (ARA), the Parliamentary Ombudsman, surveys among the Roma, and expert interviews.

According to the summary of the study:

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

Although the follow-up study commissioned by the Ministry of the Environment estimated that Roma housing applicants were 'now more equal' than before, there was still reason to believe that housing discrimination against the Roma continued to be widespread.¹³³ Housing segregation does not appear to be a major problem for the Roma. Part of the reason for this may be that Finland is a large country and the Roma community is small. Furthermore, there is less housing segregation in Finland in general than in many other countries.¹³⁴

¹²⁹ Central Federation of Finnish Real Estate Agencies (2019) News, 6 June 2019, <https://kvkl.fi/yhdenvertaisuuslain-saadanto-valitystoiminnassa/>.

¹³⁰ Finnish Real Estate Federation (2021), 'News', 15 December 2021, <https://www.kiinteistoliitto.fi/uutiset/nayta/?id=11716>.

¹³¹ Ombudsman for Minorities (2013), *Erilaisena Arjessa – Selvitys romanien syrjäntäkokemuksista* (Being different in everyday Life – Survey on Roma experiences of discrimination), Helsinki, p. 5, <https://syrjinta.fi/documents/25249352/34271292/Erilaisena+arjessa+Selvitys+romanien+syrjinta%C3%A4kokemuksista.pdf/584516fc-d3a7-4f88-8ecc-c8b2271ebf41/Erilaisena+arjessa+Selvitys+romanien+syrjinta%C3%A4kokemuksista.pdf?version=1.1&t=1600444638764>.

¹³² Törmä, S. and Huotari, K. (2018) *Romanien asumisen yhdenvertaisuuden seurantaselvitys, Ympäristöministeriön raportteja 6/2018* (A follow-up study on the report on Roma experiences of housing and equality), Helsinki, http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/160489/YMr_6_2018.pdf.

¹³³ See e.g. Non-Discrimination Ombudsman (2019), *Annual Report 2018*, p. 19, where the Ombudsman states that discrimination against the Roma in housing is 'lamentably common'.

¹³⁴ See e.g. Hirvonen, J. (2019) 'Asumisen etninen eriytyminen Helsingissä ja muualla' (Housing segregation in Helsinki), <https://kaupunkitieto.hel.fi/fi/asumisen-etninen-eriytyminen-helsingissa-ja-muualla>.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)

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

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

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

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

However, in the Government proposal the question is addressed in conjunction with the questions of genuine and determining occupational requirement and it includes a reference to Article 4(2) of Directive 2000/78.¹³⁵ The Government proposal cites the Article 4(2) definition that a difference in treatment based on a person's religion or belief will not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement. In addition, the Government proposal states that 'setting such a requirement cannot lead to discrimination on another ground.'¹³⁶ There is no case law on the issue.

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

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

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

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

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

Discrimination on the ground of nationality has been prohibited in the case law of both the National Non-Discrimination and Equality Tribunal and the district courts.

¹³⁵ In the Government proposal the question is addressed in conjunction with the issue of genuine and determining occupational requirements and it includes a reference to Article 4(2) of Directive 2000/78.

¹³⁶ Government proposal on the Non-Discrimination Act, 19/2014, p. 72.

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

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

The issue of the overlap and interface between nationality and ethnic origin as a ground of discrimination has not been tackled expressly in the national legislation or the preparatory works. There have been a few cases where the National Non-Discrimination and Equality Tribunal has opined that discrimination on the ground of (foreign) nationality may constitute indirect ethnic discrimination, since the majority of foreign nationals have an ethnic origin other than Finnish.¹³⁷

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

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

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

The Non-Discrimination Act and the other non-discrimination laws do not specifically address the issue. Health and safety issues at work are governed by the Occupational Health and Safety Act (*Työturvallisuuslaki*),¹³⁸ which entered into force in January 2003.

According to the Occupational Health and Safety Act, primary responsibility for occupational health and safety lies with the employer, who must act in cooperation with the employees. The employer must systematically and adequately analyse and identify the hazards and risk factors caused by the work, the working premises, other aspects of the working environment and the working conditions. If, according to this assessment, the work may cause a particular risk of injury or illness, such work must be carried out only by an employee who is competent and personally suitable for it or by another employee under the direct supervision of such an employee.¹³⁹ This requirement is absolute (non-negotiable).

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

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

4.6.1 Direct discrimination

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

In Finland, national law does not provide for specific exceptions for direct discrimination on the ground of age.

¹³⁷ See e.g. the decision of the Non-Discrimination and Equality Tribunal of 28 August 2006, https://www.yvtltk.fi/material/sites/ytaltk/sltk-tapausselosteet/2p6mfxvo1/Tapausseloste_SLTK_1920_66_2005_Sairauskuluvaluutus.pdf.

¹³⁸ Health and Safety Act (*Työturvallisuuslaki*), 738/2002, Section 10, <http://www.finlex.fi/fi/laki/ajantasa/2002/20020738>.

¹³⁹ Health and Safety Act, 738/2002, Section 11.

b) Justification of direct discrimination on the ground of age

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

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

‘The treatment has an objectively and appropriately justified employment policy purpose or a purpose concerning the labour market, or if the different treatment is attributable to the age limits adopted for qualification for retirement or disability benefits.’¹⁴⁰

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

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

Again, the situation would have been clearer if the law had incorporated an explicit reference to the requirement that the means employed have to be ‘appropriate and necessary’, so that it would have been clear that it is not enough to establish that the conduct in question had a legitimate aim. As it is, the present text does not, at least on a literal interpretation, allow for a full proportionality assessment. However, there is no case law that would demonstrate a disproportionate use of means.

c) Permitted differences of treatment based on age

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

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

A couple of examples arise from current legislation. There is a specific act, the Young Employees Act, which governs the employment relationships of young employees, who are defined in the Act as being those who are employed and aged under 18 years.¹⁴¹ The Act makes specific provisions with regard to, for example, the maximum working time allowed and occupational health and security.

According to the Young Employees Act, young people from the age of 15 may conclude and terminate an employment contract (Section 3 of the Act), while the employment contract of anyone younger than 15 may be concluded or terminated by their legal guardian.

¹⁴⁰ Non-Discrimination Act, 1325/2014, Section 12(2) reads in Finnish: ‘*Ikään tai asuinpaikkaan perustuva erilainen kohtelu on lisäksi oikeutettua, jos kohtelulla on objektiivisesti ja asianmukaisesti perusteltu työllisyyspoliittinen tai työmarkkinoita koskeva tavoite taikka jos erilainen kohtelu johtuu eläke- tai työkyvyttömyysetuuksien saamisedellytykseksi vahvistetuista ikärajoista.*’.

¹⁴¹ Young Employees Act (*Laki nuorista työntekijöistä*) 998/1993.

Under the Employment Contract Act¹⁴² the length of a general notice period, after the passing of which an employment contract is terminated, depends on the duration of the employment relationship, and therefore often indirectly also on age (provisions concerning these matters are laid down in the Employment Contracts Act, Chapter 6, Section 3).

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

d) Fixing of ages for admission to occupational pension schemes

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

4.6.2 Special conditions for younger or older workers

In Finland, there are special conditions set by law for older and younger workers in order to promote their vocational integration.

The Cooperation within Undertakings Act¹⁴³ requires (Section 9) companies employing more than 20 employees to prepare a personnel and training plan annually, in order to maintain and improve the occupational skills of its employees. Among other obligations, the companies are required in the plan to establish principles aiming to maintain the working ability of employees who are older or at risk of disability.

4.6.3 Minimum and maximum age requirements

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

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

Section 8 of the Civil Servants Act stipulates that a civil servant must be at least 18 years of age.¹⁴⁴ As an exception to this main rule, a person who is at least 15 years of age and who has completed compulsory schooling can be assigned a post as a civil servant, provided that the nomination is considered appropriate in light of the functions to be carried out in that particular position.

¹⁴² Employment Contracts Act (*Työsopimuslaki*) 55/2001, as amended by laws up to 304/2004, <http://www.finlex.fi/fi/laki/ajantasa/2001/20010055>.

¹⁴³ Cooperation within Undertakings Act (*Laki yhteistoiminnasta yrityksissä*) 1333/2021, <https://www.finlex.fi/fi/laki/ajantasa/2021/20211333#L2P6>.

¹⁴⁴ Civil Servants Act (*Virkamieslaki*) 750/1994, <http://www.finlex.fi/fi/laki/ajantasa/1994/19940750>.

4.6.4 Retirement

a) State pension age

In Finland, there is no state pension age at which individuals must begin to collect their state pensions. According to Section 10 of the National Pension Act a person is entitled to a state old-age pension at an age that depends on their year of birth.¹⁴⁵ The lowest pension age is 63 years for those who were born before 1954, gradually rising to 65 years for those who were born in 1964. The pension age for those born after 1965 has not yet been confirmed but will be set by governmental decree. Whether a person is entitled to this pension depends on the amount of other benefits (including other types of pensions) that they receive. In any case, individuals must apply for a pension.

If an individual wishes to work beyond the state pension age, the pension can be deferred. In this case the person is entitled to an increase in the amount of the pension.

An individual can collect a pension and still work. The fact that a person receives an old-age pension does not preclude them from working and a person can receive a pension and work at the same time.

b) Occupational pension schemes

In Finland, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. This pension age depends on a person's year of birth. The lowest pension age is 63 years for those who were born before 1954, gradually rising to 65 years for those who were born in 1964. The pension age for those born after 1965 has not been confirmed yet but will be set by governmental decree.

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

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

The applicable employee pension law depends on the insured person's place of work and type of employment.¹⁴⁶ A single person can enjoy several types of pension simultaneously, including the national (i.e. state) old-age pension and an employment-related old-age pension.

c) State imposed mandatory retirement ages

In Finland, there are state-imposed mandatory retirement ages, with discretion to extend working. The rules regarding retirement age and pension have been amended in the past 15 years in an attempt to attract employees to remain in the labour market for longer.

¹⁴⁵ National Pension Act (*Kansaneläkelaki*) 568/2007, <http://www.finlex.fi/fi/laki/ajantasa/2007/20070568>.

¹⁴⁶ These laws cover both public and private sector employment and self-employment: Employees' Pensions Act (TyEL), Seamen's Pensions Act (MEL), Farmers' Pensions Act (MYEL), Self-Employed Persons' Pensions Act (YEL), State Pension Act (VaEL), Local Government Pensions Act (KuEL) and Evangelical Lutheran Church Pension Act (KiEL).

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

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

d) Retirement ages imposed by employers

In Finland, national law permits employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and collective bargaining. This needs to be justified by a purpose that is objectively and appropriately justified in terms of employment policy or the labour market.

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

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

e) Employment rights applicable to all workers irrespective of age

The legislation against dismissal¹⁴⁷ applies to all instances of dismissal, but the termination of the employment contract due to an employee reaching 68-70 years is not regarded as 'dismissal' and therefore the law on protection against dismissal does not apply in that instance. If the employer and the employee agree on continuing the employment after the employee has reached the retirement age of 68-70 years, the ordinary provisions regarding protection against unjustified dismissal apply to the termination of such an agreement. The relevant laws do not differentiate between women and men.

f) Compliance of national law with CJEU case law

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

In a landmark case, the Supreme Administrative Court decided that a Decree on Police Administration, which set a lower obligatory retirement age for those police officers who belong to the management of the Central Bureau of Investigation, was discriminatory and against Directive 2000/78. In the academic comments on this decision there has been no reference to other decrees or acts that would set a lower obligatory retirement age without an objectively and reasonably justified aim, by appropriate and necessary means. This does not, of course, mean that such cases could not arise. Furthermore, after *Hörnfeldt* (C-

¹⁴⁷ Civil Servants Act, 750/1994, Chapter 7 and Employment Contract Act, Chapter 7.

1141/11), it is not clear whether the aims that led to the setting of the general retirement age of 68-70 years in Finland would be seen as justified and required by the directive.

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

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

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

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

b) Age taken into account for redundancy compensation

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

Compensation for redundancy is to be paid only in situations where the laying off or dismissal was based on grounds that breach the Employment Contracts Act, for instance, if the decision was based on discriminatory considerations or if there were genuinely no grounds for redundancy. The compensation must be equivalent to the pay due for a minimum of three months or a maximum of 24 months.

Depending on the reason for terminating the employment relationship, the following factors must be taken into account in determining the amount of compensation: estimated time without employment and estimated loss of earnings, the remaining period of a fixed-term employment contract, the duration of the employment relationship, the employee's age and chances of finding employment corresponding to their vocation or education and training, the employer's procedure for terminating the contract, any motive for termination originating on the part of the employee, the general circumstances of the employee and the employer, and other comparable matters.¹⁴⁸

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

4.7 Further exceptions necessary in a democratic society: Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Finland, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive (public security, public order, criminal offences, protection of health, and protection of the rights and freedoms of others).

4.8 Any other exceptions

In Finland, there are no other exceptions to the prohibition of discrimination.

¹⁴⁸ Employment Contracts Act, 55/2001, Chapter 12, Section 2.

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

a) Scope for positive action measures

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

The requirements set out in law for positive action measures are proportionality and the aims of promoting de facto equality or preventing or removing disadvantages attributable to discrimination.

Section 9 states:

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

Furthermore, the Act obliges all public authorities and any private sector organisations exercising public power or performing public administrative tasks, education providers and employers with more than 30 employees to take steps to foster equality. According to the Non-Discrimination Act this includes assessing the realisation of equality and taking necessary measures to promote its realisation. It is further stipulated that these measures need to be effective, expedient and proportionate.¹⁴⁹ In this way the national legislation goes beyond the minimum requirements laid down in Article 13 of Directive 2000/78.

b) Quotas in employment for persons with disabilities

In Finland, national law does not provide for quotas for the employment of persons with disabilities.

¹⁴⁹ Non-Discrimination Act, 1325/2014, Chapter 2 – Promotion of equality.

6 REMEDIES AND ENFORCEMENT

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

a) Available procedures for enforcing the principle of equal treatment

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

As regards, *inter alia*, employment, education, the provision of goods and services, the exercise of public powers and the arranging of public meetings, a victim of discrimination may bring criminal charges. Discrimination is considered a crime liable to public prosecution in the Criminal Code. This means that the police may investigate them and the prosecutor may prosecute, even if the complainant does not demand punishment for them.

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

With regard to areas covered by the Non-Discrimination Act, a victim of discrimination may turn to the Non-Discrimination Ombudsman for advice and assistance in having the discrimination examined. People who consider that they have been discriminated against may also ask the Ombudsman to lead conciliation proceedings. The Ombudsman may issue statements on any discrimination case submitted. The statements of the Ombudsman are not legally binding. The annual statistics and work of the Non-Discrimination Ombudsman are further explained in Chapter 7 (Body for the promotion of equal treatment) of this report.

In addition to the Non-Discrimination Ombudsman, compliance by employers with anti-discrimination law is also supervised by the occupational health and safety authorities. They may receive communications from employees, and carry out on-site inspections in the private sector, and if they consider that there are probable grounds to suspect that discrimination, as defined in the Criminal Code, has taken place, they must report the case to a public prosecutor. In less severe cases of discrimination, the occupational health and safety authorities can issue an improvement notice.¹⁵⁰ If the improvement notice is not followed, the occupational health and safety authorities can make a legally binding decision,¹⁵¹ which is subject to appeal at the Administrative Court. The author of this report is not aware that a binding decision has ever been made when applying the Non-Discrimination Act, which raises questions about the implementation of the legislation. The occupational health and safety authorities can also report discrimination which breaches the prohibition of discrimination in the Criminal Code to a public prosecutor. Discriminatory provisions included in an employment contract may be annulled or amended by an ordinary court or by the Labour Court if the matter deals with a collective agreement.

The Occupational Safety and Health Administration publishes¹⁵² information a) on the inquiries it has received on discrimination issues, b) enforcement requests related to discrimination and c) inspections related to discrimination carried out on the basis of

¹⁵⁰ Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health in the Workplace Act (*Laki työsuojelun valvonnasta ja työpaikan työsuojeluyhteistoiminnasta*), 44/2006, Section 13.

¹⁵¹ Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health in the Workplace Act (*Laki työsuojelun valvonnasta ja työpaikan työsuojeluyhteistoiminnasta*), 44/2006, Section 15.

¹⁵² According to Section 25 of the Non-Discrimination Act, a court may amend or ignore contractual terms that are contrary to the prohibition of discrimination or victimisation.

enforcement requests and d) obligations imposed due to violation of the prohibition of discrimination. According to the latest available data, in 2023, the occupational health and safety authorities received approximately 520 inquiries relating to discrimination by phone, email or letter. The statistics do not specify further information, such as the reason for the inquiry or whether the inquiry concerned a certain ground of discrimination.

In 2023, the occupational health and safety authorities in Finland received 'around' 175 enforcement requests related to discrimination. Most of these enforcement requests related to grounds outside the scope of the Employment Equality Directive, as 40 % of the cases related to state of health and 30 % related to 'other personal characteristics'. The occupational health and safety authorities combine requests relating to origin, nationality and language. These were present in 26 % of the requests. One case can be reported to relate to several grounds of discrimination.

In 101 cases the authorities started investigating the issue, usually by sending an inquiry to the employee. In cases where the occupational health and safety authorities started an investigation, 55 % related to discrimination in relation to termination of a work contract, 39 % concerned discrimination during a work contract and 8 % concerned discrimination in recruitment. In about one in four of the investigated cases the health and safety authorities considered that the prohibition of discrimination had been breached and issued a (non-binding) statement on the issue. There is no information indicating that any legally binding decisions were made in 2023.

The numbers of enforcement requests to and inspections by the occupational health and safety authorities was around 20 % less in 2023 than in 2022. This may be because the Non-Discrimination Ombudsman was given powers to investigate employment discrimination starting from 1 June 2023. Some of the requests that would have been made to the occupational health and safety authorities were subsequently directed to the Ombudsman.

The National Non-Discrimination and Equality Tribunal may confirm a settlement between the parties or prohibit the continuation of a conduct that is contrary to the prohibition of discrimination or victimisation. The jurisdiction of the tribunal depends on the legislation it is applying. According to the Non-Discrimination Act, the Tribunal does not have jurisdiction in employment, but it does have jurisdiction in employment in relation to the Act on Equality Between Women and Men. The decisions of the Tribunal are binding, but can be appealed against in an administrative court. The Tribunal may also order a party to fulfil its obligations by imposing a conditional fine. If the prohibition order is not followed, an order for the payment of the conditional fine can be made in separate proceedings, on the request of the applicant. The Tribunal can also make a recommendation on the amount of compensation in cases where it finds discrimination.

In 2024 the Tribunal decided on 159 applications, out of which 44 decisions were made by the chairperson. One third of the cases were from the private sector and two thirds from the public sector. In 45 of the cases the Tribunal found discrimination and decided to prohibit discrimination. In eight of the cases the Tribunal imposed a conditional fine to enhance the prohibition and in 40 cases the Tribunal gave a recommendation on the amount of compensation which should be paid to the victim of discrimination. Over half (85) of the cases were related to disability, the next most common grounds were personal characteristics and cases with multiple grounds, both 17 cases.¹⁵³

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

¹⁵³ See: <https://www.yvtltk.fi/fi/index/vuosikertomukset/jakatsaukset/tilastot/tilastot2024.html>

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

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

b) Barriers and other deterrents faced by litigants seeking redress

The services of the Non-Discrimination Ombudsman, the National Non-Discrimination and Equality Tribunal, the occupational health and safety authorities and the Parliamentary Ombudsman or the Chancellor of Justice are free of charge and are meant to be used even without the help of a lawyer.

Claiming compensation because of discrimination must be done in district courts and involves the risk of paying the defendant's legal fees if the case is lost, which in practice deters those seeking redress from claiming compensation for discrimination. The financial risks involved have been recognised as a significant deficiency in the legal protection provided under Finnish non-discrimination legislation.¹⁵⁴

In addition, the time limits in legislation for claiming compensation are relatively short, as compensation must be claimed within two years of the discriminatory actions or, in recruitment, within a year of the date when the applicant who was discriminated against received notice of the selection decision.

A study commissioned and published by the Prime Minister's Office in 2020 showed that, between 2015 and 2019, compensation was requested in district courts on the basis of the Non-Discrimination Act in seven cases and awarded only three times.¹⁵⁵ No information is available on the grounds of discrimination and fields for which the compensation was requested and awarded. The study listed several reasons for the low number of compensation claims in district courts, including the aforementioned risk of having to pay the defendant's legal fees if the case is lost and the relatively short time limits for claiming compensation.

c) Number of discrimination cases brought to justice

In Finland, statistics on the number of court cases related to discrimination brought to justice are not available.

d) Registration of national court decisions on discrimination cases

In Finland, court decisions on discrimination are not registered as such by national courts.

¹⁵⁴ For example, see Non-Discrimination Ombudsman (2022), *Yhdenvertaisuusvaltuutetun kertomus eduskunnalle 2022* (Report of the Non-Discrimination Ombudsman to the Parliament for 2022), Helsinki, p. 15, available at: https://www.eduskunta.fi/FI/vaski/Kertomus/Documents/K_7+2022.pdf.

¹⁵⁵ Nieminen, K., Jauhola, L., Lepola, O., Rantala, K., Karinen, R., Luukkonen, T. (2020) *Aidosti yhdenvertaiset, Yhdenvertaisuuslain arviointi* (Study commissioned by the Prime Minister's Office on the implementation of the Non-Discrimination Act), p.62, available at: <http://urn.fi/URN:ISBN:978-952-287-959-2>.

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 Finland, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination in the courts. A lawyer employed or paid by any organisation can represent the victim in court.¹⁵⁶ In these cases the organisations themselves do not become party to the court proceedings and the court case is always in the name of the victim.

However, in accordance with Section 21 of the Non-Discrimination Act, an organisation with an interest in advancing equality or the Non-Discrimination Ombudsman have a right to bring a specific case before the National Non-Discrimination and Equality Tribunal if the person who considers that they have been discriminated against gives their consent. The Non-Discrimination Ombudsman or the organisation with an interest in advancing equality then becomes the party in the case. The Government proposal for the act does not set any specific requirements as to what an 'organisation with an interest in advancing equality' may be, but opens up the concept with examples, such as a human rights association or an association representing consumers or social partners.¹⁵⁷

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

In Finland, associations, organisations and trade unions are not entitled to act in support of victims of discrimination in courts by joining existing proceedings.

However, the Non-Discrimination Act (Section 27) requires that a court must, in cases concerning the application of the act, allow the Non-Discrimination Ombudsman the opportunity to be heard insofar as the matter pertains to the authority of the Ombudsman.¹⁵⁸ Additionally, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges for discrimination (Chapter 11, Section 11 of the Criminal Code). In practice, the courts send a notice to the Office of the Non-Discrimination Ombudsman and inform them of the opportunity to be heard in court in relation to the case or to send a written opinion on the case.

c) *Actio popularis*

In Finland, national law does not allow associations, organisations and trade unions to act in court in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). As a general rule in the Finnish legal system, both natural and legal persons, such as registered associations (NGOs, trade unions), have legal status and therefore can have rights and obligations. However, only those whose rights or obligations are directly at stake can have legal standing in court in a particular case.

However, an organisation with an interest in advancing equality and the Non-Discrimination Ombudsman have a right to bring a specific case before the National Non-Discrimination and Equality Tribunal without a specific victim as *actio popularis*.¹⁵⁹

d) Class action

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

¹⁵⁶ Code of Judicial Procedure, 4/1734, Chapter 15, Section 1.

¹⁵⁷ Government proposal on the Non-Discrimination Act 19/2014, p. 87.

¹⁵⁸ Non-Discrimination Act, 1325/2014, Section 27.

¹⁵⁹ Act Amending the Non-Discrimination Act, 1192/2022, Section 21, entry into force 1 June 2023.

Class action has been possible only in relation to disputes between consumers and entrepreneurs since October 2007, and only the Consumer Ombudsman can take the matter to court as a class action.¹⁶⁰ In theory, the Consumer Ombudsman could also initiate class action claims in discrimination cases on the provision of goods and services.

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

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

As discrimination is defined in Section 8(2) to include direct and indirect discrimination, harassment, denial of reasonable accommodation and instructions or orders to discriminate, the shift of the burden of proof is applicable in cases relating to all these forms of discrimination.

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

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

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

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

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

The personal and material scope of the provision is wide. The law applies, first of all, not just to employers or the person who the complainant has complained about, but to any person who takes action in response to the action by the complainant.¹⁶¹ No personal connection to the (alleged) discrimination is needed. Secondly, the scope of persons protected from victimisation is wide: not only is the (alleged) victim of discrimination protected, but so too are all those who have engaged in the proceedings or who have been involved in support of the victim, including witnesses, legal counsels and representatives of NGOs who have provided advice or other assistance to the victim.

Thirdly, the range of protected actions taken in response to victimisation is wide. It covers bringing legal action to a court, ombudsman, discrimination tribunal or any other competent authority, in addition to which the filing of a complaint or a crime report, or even the contacting of a human rights organisation or a lawyer, is covered.¹⁶²

¹⁶⁰ Class Action Act (*Ryhmäkannelaki*), 444/2007.

¹⁶¹ Government proposal on the Non-Discrimination Act, 19/2004, p. 83.

¹⁶² Government proposal on the Non-Discrimination Act, 19/2004, p. 83.

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

Case law on the application of the ban on victimisation is scarce, especially within the scope of the two EU directives on equal treatment. In a case on disability discrimination in the provision of goods and services, the National Non-Discrimination and Equality Tribunal considered it victimisation when a person was not accepted as a client because he had acted as his spouse's assistant in a case concerning alleged discrimination. The Tribunal prohibited the healthcare company from continuing or renewing the discrimination against the applicant.¹⁶³

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

Section 23 of the Non-Discrimination Act provides the victim of discrimination or the person who has been the target of victimisation with a right to compensation from the authority, employer or provider of education, training, goods or services who has engaged in discrimination or targeted victimisation. The compensation can be awarded in cases of discrimination based on any of the 14 grounds of discrimination in the Non-Discrimination Act. This compensation for discrimination can be claimed in a district court, either in a separate civil law process or when discrimination is examined in a criminal proceeding.¹⁶⁴

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

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

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

The National Non-Discrimination and Equality Tribunal may issue an order for injunctive relief, that is, to prohibit the continuation or repetition of discrimination in its sphere of authority i.e. outside employment. The Tribunal may also order a party to fulfil its obligations by imposing a conditional fine. These two sanctions are applicable when there is no individual victim i.e. in cases of mass discrimination or *actio popularis*. The decisions of the Tribunal show that a conditional fine tends to be used in situations where the discrimination is still ongoing or may be expected to be repeated. The typical conditional

¹⁶³ National Non-Discrimination and Equality Tribunal decision, 8xx/2020, xx.xx.2021 (the Tribunal currently anonymises the decision details, see: https://www.yvtltk.fi/material/collections/20220826105413/HlxoH9RxD/Tapausselostte_YVTltk_8xx_2020_terveyspalvelu_asiakkuus_vastatoimet2.pdf).

¹⁶⁴ In Finland, there are no separate civil courts and criminal courts. District courts apply both civil law and criminal law in their sessions. Therefore it is possible to claim and get compensation according to the Non-Discrimination Act also in criminal cases when the prosecutor has raised charges on discrimination prohibited in the Criminal Code.

fine imposed by the Tribunal has been EUR 5 000 but, depending on the financial situation of the defendant, it has sometimes been higher, as the following examples show.

When the Non-Discrimination and Equality Tribunal prohibited a bank from discriminating against a blind customer by denying her the entry passwords needed to use a bank account electronically, the Tribunal also imposed a conditional fine of EUR 50 000 to enforce compliance with its injunction.¹⁶⁵ The wording of the Tribunal decision prohibits the bank from continuing with the discrimination not only against the applicant who brought the issue to the Tribunal, but also against other (future) customers in a similar situation. Therefore, these decisions of the Tribunal have a preventive effect which goes beyond the individual's situation.

The Non-Discrimination and Equality Tribunal considered it multiple discrimination when a credit company refused to grant credit based on the combined effect of an applicant's gender, language, age and place of residence.¹⁶⁶ The Tribunal prohibited the credit company from repeating the procedure, targeted at the applicant or anyone else, and imposed a conditional fine of EUR 100 000 to enforce its prohibitive decision.

To sum up:

- i. National legislation provides for preventive and socio-preventive sanctions, in particular injunctions or structural injunctions. The National Non-Discrimination and Equality Tribunal may prohibit the continuation or repetition of discrimination in its sphere of authority i.e. outside employment.
 - ii. There are no injunctions specific for cases of collective redress (*actio popularis* or class actions). The injunctive order can be given both for cases of collective redress and for individual redress.
 - iii. There are sanctions in place to deal with cases of mass discrimination, particularly as a result of the use of AI or automated systems. An injunctive order can and has been given in cases relating to the use of automated granting of credit, as explained above.
- b) Pecuniary sanctions – maximum and average amounts

There is no minimum or maximum amount of pecuniary sanctions under the Non-Discrimination Act. According to Section 23 of the Non-Discrimination Act, a victim of discrimination has a right to compensation from the authority, employer or provider of education, training, goods or services who has engaged in discrimination. In Section 24(1) it is stated that the amount of compensation must be in line with the severity of the act and that consideration will be given to the type and extent of the discrimination and its duration. The right to receive compensation is not connected to any fiscal damage and the victim may additionally obtain damages under the Tort Liability Act.

Compensation that has been awarded in recent years usually ranges from EUR 500 to EUR 10 000. The compensation level has been significantly lower in cases where the discrimination has occurred in the provision of services, such as in restaurants, and has generally been higher in cases relating to employment. In 2022 the Vaasa Court of Appeal decided to award compensation of EUR 20 000 to a senior police officer who had been discriminated against on the ground of his disability.

¹⁶⁵ Non-Discrimination and Equality Tribunal, xx.xx.2015, 3xx/2015, published online 28 January 2016 at: https://www.yvtltk.fi/material/collections/20230608094751/HsymSAf11/Tapausseloste_YVTltk_3xx_2015_V_erkkopankkitunnusten_myontaminen_nakovammaiselle.pdf.

¹⁶⁶ National Non-Discrimination and Equality Tribunal, 21 March 2018 decision 216/2018, https://www.yvtltk.fi/material/attachments/ytltk/tiedotteet/zBoCz0PN9/YVTltk-tapausseloste-21.3.2018-luotto-moniperusteinen_syrjinta-S.pdf.

A study commissioned by the Prime Minister's Office showed that compensation was awarded between 2015 and 2019 only a couple of times. The compensation was awarded three times (EUR 5 500, EUR 8 000 and EUR 10 000)¹⁶⁷ when the request for compensation was made in a district court on the basis of the Non-Discrimination Act and five times¹⁶⁸ when the request for compensation was made on the basis of the Criminal Code. In the latter cases, the compensation awarded ranged from EUR 1 000 to EUR 8 000, with the average compensation being EUR 4 300. The reason why compensation was claimed and awarded more often when the cases came to court on the basis of the Criminal Code may be that in such cases the victim does not risk having to pay the defendant's legal fees if the defendant is acquitted.

c) Assessment of the sanctions

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

The range of remedies and sanctions is limited but may possibly be considered sufficient. On the one hand, victims can obtain redress in the form of compensation, initiate criminal law proceedings and obtain an order of cessation from the National Non-Discrimination and Equality Tribunal. The National Non-Discrimination and Equality Tribunal cannot order a particular accommodation to be made, but it can forbid the continuation of discrimination (i.e. denial of reasonable accommodation) and may impose a conditional fine to enhance its prohibition or order. The Tribunal can also make a recommendation on the amount of compensation in cases where it finds discrimination.¹⁶⁹

When the Tribunal prohibits the continuation of discrimination the decision applies not only to the individual who has taken the case to the Tribunal, but also to other persons in similar situations in the future. In this way the decisions can also combat structural or systemic discrimination.¹⁷⁰ On the other hand, some particularly robust remedies, such as reinstatement, are not available. In addition, an important limitation is that the Tribunal does not have jurisdiction in employment.

As compensation for discrimination can only be requested in a district court, the risk of having to pay the legal costs of the defendant greatly affects the real possibilities of seeking remedies against discrimination. This is proven by a study published in 2020, according to which, compensation for violating the prohibition in the Non-Discrimination Act was awarded by courts only three times between 2015 and 2019.¹⁷¹ It is quite clear that the main sanction against discrimination established in the Non-Discrimination Act – financial compensation – does not function as planned. Instead, victims of discrimination claim compensation when a case is taken to court on the basis of the Criminal Code by the prosecutor. Alternatively, many victims turn to the Non-Discrimination Ombudsman for mediation on the discrimination and any compensation, in a process led by the Non-Discrimination Ombudsman.

¹⁶⁷ Nieminen, K., Jauhola, L., Lepola, O., Rantala, K., Karinen, R., Luukkonen, T. (2020) *Aidosti yhdenvertaiset, Yhdenvertaisuuslain arviointi* (Study commissioned by the Prime Minister's Office on the implementation of the Non-Discrimination Act), p. 62, available at: <http://urn.fi/URN:ISBN:978-952-287-959-2>.

¹⁶⁸ Nieminen, K., Jauhola, L., Lepola, O., Rantala, K., Karinen, R., Luukkonen, T. (2020) *Aidosti yhdenvertaiset, Yhdenvertaisuuslain arviointi*, (Study commissioned by the Prime Minister's Office on the implementation of the Non-Discrimination Act), p. 70.

¹⁶⁹ The National Non-Discrimination and Equality Tribunal was given the power to make a recommendation on the amount of compensation in 2022. The changes came into force from 1 June 2023.

¹⁷⁰ This approach has been confirmed also by the Supreme Administrative Court which confirmed the decision of the tribunal to prohibit the Police to use ethnic profiling and upheld the conditional fine to enhance the prohibition. Supreme Administrative Court, 8 September 2022 ECLI:FI:KHO:2022:106.

¹⁷¹ Nieminen, K., Jauhola, L., Lepola, O., Rantala, K., Karinen, R., Luukkonen, T. (2020) *Aidosti yhdenvertaiset, Yhdenvertaisuuslain arviointi*, (Study commissioned by the Prime Minister's Office on the implementation of the Non-Discrimination Act), p. 62.

d) Enforcement and monitoring of the implementation of sanctions

i. Court and adjudicating bodies' mechanisms to monitor or enforce their decisions

The enforcement of sanctions depends on which authority has decided on the sanctions. Generally, it is for the victim of discrimination to pursue the enforcement of sanctions. Only sentences (fines or prison sentences) decided by the courts on the basis of the Criminal Code are enforced by the state.

If a person is awarded compensation by the court, the victim may either come to an agreement on the payment arrangements or let the state enforcement officer recover the compensation. If the National Non-Discrimination and Equality Tribunal has confirmed reconciliation between the parties in matters concerning discrimination or victimisation, the reconciliation confirmed by the Tribunal shall be enforced in the same way as a legally valid compensation judgment by the court.

ii. Possibility for courts and other adjudicating bodies to retain jurisdiction after sanctions have been imposed

If the discrimination continues after the National Non-discrimination and Equality Tribunal has decided it is a case of prohibited discrimination and set a conditional fine, the victim may request for the payment of the conditional fine from the Tribunal. The victim can also turn to the Non-Discrimination Ombudsman for help, since the Ombudsman can also bring the matter to be handled by the Tribunal.

iii. Further steps/measures courts or adjudicating bodies can take in case of non-compliance with the sanction

If the Tribunal has decided there has been an instance of prohibited discrimination without setting a conditional fine, and the discrimination continues, the Ombudsman or the victim can bring the matter to the Tribunal and ask for a conditional fine to be imposed.

iv. The burden of enforcing sanctions

It is the responsibility of the victim of discrimination to pursue the enforcement of sanctions. Only sentences (fines or prison sentences) decided by the courts on the basis of the Criminal Code are enforced by the state. If the sanctions are the final decision of a court, the victim can ask the National Enforcement Authority to collect the applicable monetary sum. In practice, the Non-Discrimination Ombudsman provides assistance in enforcing sanctions.

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

7.1 National equality body

a) General 'architecture' of equality bodies

The Non-Discrimination Ombudsman supervises compliance with the Non-Discrimination Act with regard to all grounds of discrimination mentioned in the Act (origin, age, disability, religion, belief, sexual orientation, nationality, language, opinion, political activity, trade union activity, family relationships, state of health or other personal characteristics). The Ombudsman for Equality supervises compliance with the Act on Equality between Women and Men with regard to gender, gender identity and gender expression discrimination.¹⁷²

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

b) Designated body for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The Non-Discrimination Ombudsman provides assistance at no charge to victims of discrimination in accordance with Article 13 of the Racial Equality Directive. Contact can be made with the office of the Ombudsman by post, email, phone, computer-chat or by arranging a meeting in the office in the capital, which is accessible to users with disabilities. The Ombudsman provides information in many languages including sign language. When recruiting personnel, the Ombudsman publicises the fact that it is an accessible workplace and is prepared to take reasonable accommodation measures. The Ombudsman is well known throughout the country for her work on the rights of vulnerable minorities.

7.2 Political, economic and social context of the designated body

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

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

7.3 Institutional architecture

In Finland, the designated body does not form part of a body with multiple mandates, but the Non-Discrimination Ombudsman does have tasks that are not directly connected to its position as the equality body, as required by the Racial Equality Directive. These tasks are to act as the National Rapporteur on Human Trafficking (as recommended in Directive 2011/36/EU) and as the body for Monitoring Removal from the Country (as

¹⁷² Sex characteristics are also included as a prohibited ground of discrimination. According to Section 3(7) of the Act on Equality between Women and Men: 'This Act's provisions on discrimination based on gender identity or gender expression apply correspondingly to discrimination based on the fact that an individual's physical gender-defining characteristics are not unambiguously female or male.'

required by Directive 2008/115/EC). The main task of the Non-Discrimination Ombudsman is to supervise compliance with the Non-Discrimination Act and to carry out other tasks given to equality bodies in the Racial Equality Directive.

7.4 Status of the designated body – general independence and resources

a) Status of the body

- Separate or other legal status or personality

The Non-Discrimination Ombudsman is an independent authority. It is part of the Agency for Special Authorities in Judicial Administration. The head of the office, the Ombudsman, is nominated by the Council of State on the proposal of the Ministry of Justice.

- Selection of governing body

There is no separate governing body for the Non-Discrimination Ombudsman and the Ombudsman makes independent decisions on its actions and use of resources.

- Sources of funding

The Ministry of Justice decides on the Ombudsman's budget, based on the funds allocated in the state budget for similar (small) authorities. As part of this process, the Ministry of Justice and the Non-Discrimination Ombudsman agree yearly on the goals and resources of the Ombudsman.

- Powers to recruit and manage staff

The Ombudsman recruits and manages its own staff.

- Accountability

The Ombudsman presents its annual report to the Ministry of Justice and every four years to the Parliament. The annual report to the ministry usually describes the actions taken by the Ombudsman in the past year and is directed towards the general public (media, NGOs and public authorities). There is no approval mechanism by the ministry for the reports, indicating the independence of the Ombudsman. The report to the Parliament usually includes the Ombudsman's recommendations for the Parliament to require legislative action from the Government.

b) Independence of the body

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

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

c) Resources

- Annual budget of the body

The total budget of the Ombudsman in 2024 was EUR 2.7 million.

- Share of the annual budget dedicated to the equality body mandate

Around EUR 1.5 million was dedicated for equality and non-discrimination activities in 2024.

- Total number of staff of the body

Annually, around 33 people work in the Office of the Non-Discrimination Ombudsman, of whom around five are employed on temporary work contracts (trainees, project workers and temporary research personnel). In addition to tasks related to non-discrimination, the Ombudsman also acts as the National Rapporteur on Human Trafficking (as recommended in Directive 2011/36/EU), the National Rapporteur on Violence Against Women (as recommended in the Istanbul Convention – Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence) and as the body for Monitoring Removal from the Country (as required by Directive 2008/115/EC).

- Number of staff dedicated to the equality body mandate

Around 15 people out of a total staff of 33 work on equality and activities related to non-discrimination.

7.5 Grounds and fields covered by the designated body

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

The majority of the resources of the office of the Ombudsman are used to investigate and intervene in discrimination cases on all grounds. The Ombudsman has emphasised that, given the number of grounds, it has not organised its work based on the grounds, but rather on areas of life. This means that cases on providing goods and services, for example, are dealt with by the same members of staff, regardless of the ground of discrimination. As the scope of the Non-Discrimination Act is wide, covering 'both public and private activities' (but excluding private life, family life and the practice of religion) the activities of the Non-Discrimination Ombudsman cover all fields of life.

The Ombudsman provides data in the annual report on cooperation with civil society and NGOs representing minority groups, such as religious minorities, LGBTIQ organisations, persons with disabilities and migrant organisations.

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

7.6 Competences of the designated body – and their independent exercise

a) Independent assistance to victims

In Finland, the Non-Discrimination Ombudsman does have the competence (according to Section 19(1) of the Non-Discrimination Act) to provide independent assistance to victims.

The Ombudsman can (according to Section 19(2) of the Non-Discrimination Act) issue 'a reasoned opinion to prevent actions contrary to this Act, or to prevent continuation or repetition thereof'.¹⁷³

The Ombudsman usually starts by contacting the opposite side – the person or body that it is claimed has discriminated against the victim – for information or their view on what has happened. Based on this information, together with the information from the victim, the Ombudsman can advise the victim on their rights where discrimination has happened.

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

The independent assistance of the Ombudsman comprises a wide range of supporting actions: the Ombudsman can mediate between the parties for reconciliation, make a public or private statement on the discrimination in the case, take the case to the National Non-Discrimination and Equality Tribunal¹⁷⁴ for prohibition of the discrimination on behalf of the victim or assist the victim in the district court, for example, in claiming compensation.

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

It appears that the Ombudsman can currently simultaneously assist individuals who have experienced discrimination and draw the attention of the general public to problems of inequality in an effective way.

b) Independent surveys and reports

In Finland, the Non-Discrimination Ombudsman does have the competence to conduct independent surveys and publish independent reports (according to Section 3(1) of the Act on the Non-Discrimination Ombudsman). The Ombudsman usually produces a report yearly or every two years. These usually include survey data and recommendations for improving the rights of vulnerable groups in society and combating the discrimination they face. In 2022, the Non-Discrimination Ombudsman published a handbook on promoting employment of persons with disabilities¹⁷⁵ and, in 2023, a brochure on the responsibilities of schools to combat harassment.¹⁷⁶ The Ombudsman did not publish any reports in 2024 in relation to its remit as an equality body.

The surveys and reports are produced in an independent manner and often try to highlight less visible problems in the sphere of equality and non-discrimination. The resources

¹⁷³ Prior to amendments to the Non-Discrimination Act in 2023, the Non-Discrimination Ombudsman did not have the right to investigate or issue a reasoned opinion on employment discrimination.

¹⁷⁴ The Ombudsman cannot take an employment case to the Non-Discrimination and Equality Tribunal for prohibition of discrimination as the Tribunal does not have jurisdiction in employment.

¹⁷⁵ Non-Discrimination Ombudsman (2022), *Suuntana vammaisten henkilöiden yhdenvertainen osallisuus työelämässä* (Towards equal participation in employment for persons with disabilities), [https://syriinta.fi/documents/25249352/34268331/Suuntana+vammaisten+henkil%C3%B6iden+yhdenvertainen+osallisuus+ty%C3%B6el%C3%A4m%C3%A4ss%C3%A4+\(pdf\).pdf/17b21bb8-30a3-c039-a30d-4e240d349a3a/Suuntana+vammaisten+henkil%C3%B6iden+yhdenvertainen+osallisuus+ty%C3%B6el%C3%A4m%C3%A4ss%C3%A4+\(pdf\).pdf?version=1.2&t=1666849430246](https://syriinta.fi/documents/25249352/34268331/Suuntana+vammaisten+henkil%C3%B6iden+yhdenvertainen+osallisuus+ty%C3%B6el%C3%A4m%C3%A4ss%C3%A4+(pdf).pdf/17b21bb8-30a3-c039-a30d-4e240d349a3a/Suuntana+vammaisten+henkil%C3%B6iden+yhdenvertainen+osallisuus+ty%C3%B6el%C3%A4m%C3%A4ss%C3%A4+(pdf).pdf?version=1.2&t=1666849430246).

¹⁷⁶ Non-Discrimination Ombudsman (2023), *Turvallinen koulu on vapaa häirinnästä* (Safer school is free from discrimination), <https://yhdenvertaisuusvaltuutettu.fi/documents/25249352/34268331/Turvallinen+koulu+on+vapaa+h%C3%A4irinn%C3%A4st%C3%A4.pdf/0a7d549b-8567-971a-da1d-bd7dcdc8fed1/Turvallinen+koulu+on+vapaa+h%C3%A4irinn%C3%A4st%C3%A4.pdf?version=1.0&t=1678868483542>.

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

The Non-Discrimination Ombudsman sets priorities for its activities by adopting a multi-annual strategy and yearly work plans.

c) Recommendations

In addition to issuing reasoned opinions in individual cases of discrimination, the Non-Discrimination Ombudsman actively publishes her views as more general policy recommendations. These include theme papers published as blogs or more formal recommendations on a particular topic e.g. on the rights of persons with disabilities in housing or the possibility of using burkini as swimwear in public swimming pools.¹⁷⁷ These general recommendations are usually followed.

The Ombudsman is also regularly consulted by the ministries when preparing legislation and is often heard before Parliamentary committees. The Ombudsman gives written and oral recommendations in hearings, especially on how legislation should be formulated to guarantee equality.

d) Prevention, promotion and awareness-raising

According to Section 19 of the Non-Discrimination Act, it is the task of the Non-Discrimination Ombudsman to give general recommendations to prevent discrimination and to promote equality. The Ombudsman regularly raises the importance of equal treatment in her public appearances and through the media.

The Non-Discrimination Ombudsman also provides supervision to ensure that public authorities, education providers and employers fulfil their legal duties to promote equality and to have a plan for necessary measures for the promotion of equality. This supervision is done e.g. by collecting plans for the promotion of equality from a certain geographical area or from certain providers of education (such as universities). The equality promotion plans are always requested when a claim of discrimination is received concerning an organisation responsible for having such a plan.

Cooperation, such as in the form of joint meetings and projects, between the equality body and civil society organisations is a long-standing tradition in the work of the Ombudsman. However, it appears that most resources are dedicated to the provision of independent assistance to victims. The Ombudsman has continuously raised the need to increase its resources accordingly as the number of complaints has risen year on year.

e) Other competences

The Ombudsman participates in European and international cooperation, promotes information exchange, education and training and monitors the implementation of international treaties and human rights obligations in the field of equal treatment and non-discrimination. The Ombudsman is often invited to give lectures and presentations on her work and on advancing equality.

¹⁷⁷ See e.g. the recommendation on using a burkini as a swimsuit:
<https://syrjinta.fi/documents/25249352/0/Yhdenvertaisuusvaltuutetun+suositus+uimahalleille+burkinien+k%C3%A4yt%C3%B6n+sallimisesta.pdf/365cfbb3-50f0-74c0-5fd0-e3206bce6af4/Yhdenvertaisuusvaltuutetun+suositus+uimahalleille+burkinien+k%C3%A4yt%C3%B6n+sallimisesta.pdf?t=1612267035275>.

7.7 Legal standing of the designated body

In Finland, the Non-Discrimination Ombudsman has legal standing to bring discrimination complaints on behalf of identified victims to court. A lawyer employed or paid by the Non-Discrimination Ombudsman can represent the victim in court. In these cases the Non-Discrimination Ombudsman itself does not become party to the court proceedings and the court case is always in the name of the victim.

Taking a case to the court is rare and has happened only a couple of times during the 20 years of the Ombudsman's existence. There are two reasons for this: firstly, the resources of the Ombudsman are limited and secondly, the victims often get legal aid from government-provided free legal aid bureaus or trade union lawyers in cases related to employment. In 2023 the Ombudsman represented two Roma women in an employment termination discrimination case as the prosecutor decided just two weeks before the statutory limitation deadline not to press criminal charges against the employer. As the Roma women were left without any protection against discrimination, the Non-Discrimination Ombudsman decided to take the case to the district court as discrimination prohibited in the Non-Discrimination Act.¹⁷⁸ In 2024 the Non-Discrimination Ombudsman represented the women in the court of appeal as the defendant appealed against the decision of the district court.¹⁷⁹

The Non-Discrimination Ombudsman does not have legal standing to bring complaints on behalf of non-identified victims to court, but the Non-Discrimination Ombudsman can bring a complaint on behalf of non-identified victims to the National Non-Discrimination and Equality Tribunal which is not a court. The Ombudsman has mostly used this right to *actio popularis* for combatting discrimination in access to goods and services experienced by persons with disabilities. The Tribunal does not have jurisdiction in employment-related issues when applying the Non-Discrimination Act. Therefore the Non-Discrimination Ombudsman cannot bring employment-related cases to the Tribunal. This apparently affects the level of protection against discrimination in different fields of life.

The Ombudsman cannot bring complaints ex officio to court, but the Non-Discrimination Act (Section 27) requires that a court must, in cases concerning the application of the Act, allow the Non-Discrimination Ombudsman the opportunity to be heard insofar as the matter pertains to the authority of the Ombudsman.¹⁸⁰ In addition, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges of discrimination (Chapter 11, Section 11 of the Criminal Code). In practice, the courts send a notice to the Office of the Non-Discrimination Ombudsman and inform the body of the opportunity to be heard in court in relation to the case or to send a written opinion on the case.

7.8 Dispute resolution

a) Quasi-judicial functions

In Finland, the Non-Discrimination Ombudsman is not a quasi-judicial institution. The Non-Discrimination Ombudsman cannot issue binding enforceable decisions but it can issue non-binding opinions on the interpretation of the Non-Discrimination Act in an individual case.

In Finland, the National Non-discrimination and Equality Tribunal is a separate quasi-judicial body competent to decide on discrimination cases. The Tribunal is not an equality body. In addition, the occupational health and safety authorities can make legally binding

¹⁷⁸ Pirkanmaa District Court, 29 March 2023, Decisions L 758/2022/458 and L 758/2022/455.

¹⁷⁹ No decision was made in this case during 2024.

¹⁸⁰ Non-Discrimination Act, 1325/2014, Section 27.

decisions, which are subject to appeal before the Administrative Court. These authorities are not equality bodies.

i) Power to impose sanctions

The National Non-Discrimination and Equality Tribunal may prohibit the continuation of conduct that is contrary to the prohibition of discrimination or victimisation or confirm a settlement between the parties. The Tribunal does not have jurisdiction in employment. The decisions of the National Non-discrimination and Equality Tribunal are binding. The Tribunal may also order a party to fulfil its obligations by imposing a conditional fine.

ii) Nature and level of sanctions that can be imposed

The binding decision with a conditional fine is the most powerful sanction for enforcing the principle of non-discrimination that the designated bodies have. No restorative measures, such as the reinstatement of employment, are available in Finnish legislation. Furthermore, the main consequence of discrimination – right to compensation for the victim – cannot be decided by the Non-Discrimination and Equality Tribunal and the victim must claim compensation in court, with the risk of having to pay the defendant's legal fees if the case is lost.

iii) Possibility to appeal (to the body itself or to courts)

The decisions of the National Non-discrimination and Equality Tribunal can be appealed against before the administrative courts.

iv) Enforcement of binding decisions

An order for the payment of the conditional fine may be made in separate proceedings on the request of the applicant where the prohibition order of the National Non-discrimination and Equality Tribunal has not been followed. The Tribunal does not itself monitor the enforcement of its decisions.

v) Implementation of non-binding opinions

According to Section 19(2) of the Non-Discrimination Act, in individual cases the Ombudsman can give a justified statement on the prevention of the continuation or repetition of discrimination.

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

The starting point of the statements is usually to find a reconciliation agreement between the parties, including a public expression of apology for the discrimination and financial compensation to the victim. The opinions that the Ombudsman makes are public and they are usually published in order to prevent discrimination in similar situations in the future.

The view of the Ombudsman is often accepted by all parties involved and it seems that the Ombudsman is able to act efficiently both in response to individual acts of discrimination and in generating more general changes in attitudes towards greater equality in society. The Ombudsman sometimes receives criticism, for example from right-wing parliamentarians who see her public statements as based too much on the rights of people who belong to different minority groups.

b) Amicable settlements

According to Section 19(1)(4) of the Non-Discrimination Act, it is the task of the Non-Discrimination Ombudsman to take action to 'reconcile a matter pertaining to compliance with this Act'. As a rule, the Ombudsman tries to find amicable solutions in the discrimination cases brought to its attention. The Ombudsman usually suggests a solution which includes recognition of discrimination in the case, an apology and financial compensation. The amicable settlements reached with the assistance of the Ombudsman are usually made public and are important in preventing discrimination in similar cases in the future.

7.9 Procedural safeguards

There are no specific rules that regulate the way in which the different powers (e.g. investigation, amicable settlement, issuing a reasoned opinion or litigating by taking the case to the Non-Discrimination and Equality Tribunal or district court) are used in the work of the Non-Discrimination Ombudsman. The main reason for this is that the Ombudsman's role is to represent the interests of non-discrimination in using any of its powers. Therefore the Ombudsman does not primarily act as a representative of an individual claiming discrimination, even when litigating in an individual case, but acts to guarantee the principle of non-discrimination and effective remedies against discrimination.¹⁸¹ In addition, the human resources of the Ombudsman (around 15 people working on non-discrimination issues) would not be sufficient to handle the current workload (around 1 500 cases of discrimination per year) if the different powers had to be executed separately.

7.10 Data collection by the designated body

a) Registration of complaints and decisions

In Finland, the Non-Discrimination Ombudsman does register the total number of inquiries and complaints of discrimination it receives each year. These data are available to the public through the annual reports of the Ombudsman, which are published on the Ombudsman's website. However, the Ombudsman does not distinguish between inquiries and complaints of discrimination in the data it publishes. All questions, inquiries and reports of discrimination are reported as 'cases' or 'complaints' by the Ombudsman and the annual report where the information is published does not distinguish between written and verbal complaints. The Ombudsman offers the following means of contact: contact form, email, letter, telephone and sign language video. No detailed information is given on the number of decisions or other outcomes. The available data include information on the number of complaints each year, what ground of discrimination the complaints were based on and in what field the suspected discrimination took place.

In 2023, the Ombudsman received a total of 1 730 new discrimination cases.¹⁸² According to the Annual Report, the most common ground for reported instances of discrimination was disability (349 cases) followed by discrimination cases relating to nationality (232 cases). All prohibited grounds of discrimination were covered in the complaints, with cases on: age (196); other personal characteristics (196); state of health (172); origin (170);

¹⁸¹ This principle was already established in legislation when the Racial Equality Directive (2000/43) was originally implemented. Section 4 of the Act on the Minority Ombudsman (660/2001) states that the predecessor of the current Non-Discrimination Ombudsman, the Minority Ombudsman, can acquire legal help for the victim of discrimination if the Ombudsman considers the issue has principal importance in combatting discrimination.

¹⁸² Latest available data (checked 22 March 2025). Non-Discrimination Ombudsman (2024), *Yhdenvertaisuusvaltuutetun vuosikertomus 2023* (Annual Report for 2023), Helsinki, p. 31, [https://yhdenvertaisuusvaltuutettu.fi/documents/25249352/157476116/Yhdenvertaisuusvaltuutetun+vuosikertomus+2022+\(pdf\).pdf/bd9295aa-e49b-9977-fe85-c909c52a8d70/Yhdenvertaisuusvaltuutetun+vuosikertomus+2022+\(pdf\).pdf?version=1.1&t=1681975578017](https://yhdenvertaisuusvaltuutettu.fi/documents/25249352/157476116/Yhdenvertaisuusvaltuutetun+vuosikertomus+2022+(pdf).pdf/bd9295aa-e49b-9977-fe85-c909c52a8d70/Yhdenvertaisuusvaltuutetun+vuosikertomus+2022+(pdf).pdf?version=1.1&t=1681975578017).

no ground specified (160);¹⁸³ language (98); religion or belief (95); opinion or political activity or trade union activity (38); sexual orientation (27); family relationships (26); and sex/gender (15).

The most common fields of life where discrimination was reported to the Non-Discrimination Ombudsman were: employment (372 cases); no field specified (251); other private services (241); other public services (241); education (231); health and social care (224); housing (128); leisure activities (95); and private/family life (19).¹⁸⁴

In 2023, the Non-Discrimination Ombudsman received 372 contacts related to employment discrimination. This was an increase of 43 % compared to the previous year. The obvious reason for this is the extension of the mandate to officially also cover employment discrimination from the middle of the year (1 June 2023).

More than a third of the complaints of employment discrimination received by the Ombudsman concerned recruitment. This is exceptional as, traditionally, cases of discrimination related to termination of employment have been prominent in the courts. In terms of quantity, the difference between complaints related to recruitment received by the Ombudsman and those related to termination of employment was fourfold.

The most common grounds for discrimination in recruitment-related complaints were age, language, nationality, other personal characteristics and disability. 'Other personal characteristics' is a very diverse and fragmented category, including, for example, issues related to a person's place of residence or the professional group they represent, or even the criminal record of a job seeker's spouse.

The National Non-Discrimination and Equality Tribunal does not have responsibility for the tasks specified in Article 13 of the Racial Equality Directive and should therefore not be considered as a 'body for the promotion of equal treatment' in accordance with the said provision. The Tribunal is an independent and impartial judicial body, the decisions of which are binding and can be appealed against. The Tribunal decided in 2024 on 159 applications, out of which 44 decisions were made by the chairperson. One third of the cases came from the private sector and two thirds from the public sector. In 45 of the cases the Tribunal found instances of prohibited discrimination. In eight of the cases the Tribunal imposed a conditional fine to enhance the prohibition and in 40 of the cases the Tribunal gave a recommendation on the amount of compensation which should be paid to the victim of discrimination. Over half (85) of the cases were related to disability, the next most common grounds were personal characteristics and cases with multiple grounds, both 17 cases.¹⁸⁵

b) Equality data collection

In Finland, the Non-Discrimination Ombudsman does not collect general equality data. As of 2015, this has been the responsibility of the Ministry of Justice. The purpose of the monitoring system is: to produce up-to-date information on discrimination in Finnish society; to compile research data and statistics produced by others; to promote cooperation between people and organisations working with discrimination research; and to suggest policy measures on promotion of non-discrimination.¹⁸⁶

The Non-Discrimination Ombudsman is guaranteed a broad right of access to information and this right is enshrined in legislation. Among other things, it can obtain detailed, confidential information from the courts in relation to discrimination cases.

¹⁸³ The Annual Report does not state what kind of cases are reported under 'no ground specified'.

¹⁸⁴ There is no (published) cross reference data which would indicate discrimination by ground and field of life.

¹⁸⁵ See: <https://www.vytltk.fi/fi/index/vuosikertomukset/jakatsaukset/tilastot/tilastot2024.html>.

¹⁸⁶ See: <https://yhdenvertaisuus.fi/en/dataondiscrimination.fi>.

7.11 Roma and Travellers

The Non-Discrimination Ombudsman stated in her 2022 report to the Finnish Parliament that the discrimination faced by Roma is a serious human rights issue in Finland.¹⁸⁷ In the report, the Ombudsman highlights three issues relating to Roma people: ethnic profiling by the police and security personnel¹⁸⁸; discrimination in employment especially for Roma young people in accessing trainee positions¹⁸⁹; and discrimination against Roma in housing.¹⁹⁰

¹⁸⁷ Non-Discrimination Ombudsman, *The report of the Non-Discrimination Ombudsman to the Parliament 2022*, p. 54, [https://syrjinta.fi/documents/25249352/42720545/The+report+of+the+Non-Discrimination+Ombudsman+to+the+Parliament+2022+\(pdf\).pdf/30137cda-da7a-cce5-990f-73ef1464c7cd/The+report+of+the+Non-Discrimination+Ombudsman+to+the+Parliament+2022+\(pdf\).pdf?version=1.1&t=1667220262453](https://syrjinta.fi/documents/25249352/42720545/The+report+of+the+Non-Discrimination+Ombudsman+to+the+Parliament+2022+(pdf).pdf/30137cda-da7a-cce5-990f-73ef1464c7cd/The+report+of+the+Non-Discrimination+Ombudsman+to+the+Parliament+2022+(pdf).pdf?version=1.1&t=1667220262453).

¹⁸⁸ Non-Discrimination Ombudsman, *The report of the Non-Discrimination Ombudsman to the Parliament 2022*, (Yhdenvertaisuusvaltuutetun kertomus eduskunnalle 2022), pp. 26-27.

¹⁸⁹ Non-Discrimination Ombudsman, *The report of the Non-Discrimination Ombudsman to the Parliament 2022*, (Yhdenvertaisuusvaltuutetun kertomus eduskunnalle 2022), p. 64.

¹⁹⁰ Non-Discrimination Ombudsman, *The report of the Non-Discrimination Ombudsman to the Parliament 2022*, (Yhdenvertaisuusvaltuutetun kertomus eduskunnalle 2022), p.54.

8 IMPLEMENTATION ISSUES

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

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

The unit for democracy, language affairs and fundamental rights within the Ministry of Justice maintains the Equality.fi website, which provides resources for public authorities, organisations and those interested in equality and non-discrimination. The website includes training materials, together with information on legislation, research, ongoing campaigns and different minorities.¹⁹¹

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

An Advisory Board on Non-Discrimination (*Yhdenvertaisuusasioiden neuvottelukunta*) was established by a Government decree¹⁹² in January 2016. The advisory board is composed of the Non-Discrimination Ombudsman as the chair and a maximum of 40 other members 'representing significant expertise in combating discrimination' – their characteristics are defined in the Government decree. The Government decree does not provide any further information on the selection criteria for the members of the advisory board, but among the organisations represented on the advisory board are key ministries, social partners and NGOs representing all grounds of discrimination in the Ombudsman's sphere of activity. The board does not have any decision-making role, but works as a communications network between the Ombudsman, civil society and public authorities. The current Advisory Board on Non-Discrimination was established by Government for the period November 2023 to November 2026.

The Advisory Board for Ethnic Relations seeks to promote interaction between Finland's ethnic minorities and the public authorities, NGOs, political parties and social partners, and to provide the ministries with immigrant and minority policy expertise in the interests of promoting an ethnically equal and diverse society.¹⁹³ There are also seven regional advisory boards for ethnic relations.

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

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

- d) Addressing the situation of Roma and Travellers

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

¹⁹¹ See: <http://yhdenvertaisuus.fi/en/frontpage>.

¹⁹² Government Decree on the Advisory Board on Non-Discrimination (*Valtioneuvoston asetus yhdenvertaisuusasiain neuvottelukunnasta*), 39/2016, available at: <https://www.edilex.fi/saaduskokoelma/20160039.pdf>.

¹⁹³ See: <https://oikeusministerio.fi/en/the-advisory-board-for-ethnic-relations>.

Finnish society, to improve their living conditions and socio-economic status, and to promote their culture. The Advisory Board on Romani Affairs functions in conjunction with the Ministry of Social Affairs and Health. There are also four regional advisory boards for Roma affairs that act at the regional level.

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))

It appears that Finland has taken the necessary measures to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished. When implementing Directive 2000/43 and Directive 2000/78 into Finnish legislation by enacting the former Non-Discrimination Act (21/2004) the Parliament simultaneously enacted changes to many laws to guarantee their compliance with the directives. For instance, a reference to discrimination was added to the Employment Contracts Act (55/2001), stating: 'Provisions on equality and on the prohibition of discrimination are laid down in the Non-Discrimination Act'.

When enacting the current Non-Discrimination Act (1325/2014) the Government proposal (HE 19/2014) included a statute that would have made the Non-Discrimination Act secondary to more specific legislation or legislation enacted after the Non-Discrimination Act. After criticism from NGOs and academics the Constitutional Committee of the Parliament suggested that the secondary statute be withdrawn from the final version of the Act. The Parliament decided accordingly and therefore the Non-Discrimination Act remains the primary legislation in interpreting the concept of discrimination.

Regarding the compliance of lower-level statutes with the Non-Discrimination Act, Section 107 (Subordination of lower-level statutes) of the Finnish Constitution states that if a provision in a decree or another statute of a lower level than an act is in conflict with the Constitution or another act, it will not be applied by a court of law or by any other public authority. Therefore, decrees or other statutes of a lower level that would be in conflict with the Non-Discrimination Act would not be applied by any public authority.

In addition, Section 106 (Primacy of the Constitution) of the Finnish Constitution states that if, in a matter being tried by a court of law, the application of an act would be in evident conflict with the Constitution, the court of law must give primacy to the provision in the Constitution.

In a landmark decision, the Helsinki Court of Appeal found¹⁹⁴ that preferential treatment accorded to Jehovah's Witnesses in legislation is unconstitutional, since other conscientious objectors are placed in a disadvantageous position without an objective justification. Although the legislation giving exemption to Jehovah's Witnesses from compulsory military service had been enacted (in 1987) as a limited derogation of the Constitution, the Helsinki Court of Appeal considered that it is now in breach of the current equality clauses and their interpretation in the Constitution. The individual (who did not specify any religion or belief) who appealed to the Helsinki Court of Appeal was assisted by the Non-Discrimination Ombudsman which claimed in the application that current legislation on conscription was against both the Constitution and the Non-Discrimination Act.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

Section 25 of the Non-Discrimination Act provides that any discriminatory contractual terms and statutes of a company, association or trust are void. A court may, in a case that is being processed by it, change or ignore contractual terms that are contrary to the

¹⁹⁴ Helsinki Court of Appeal 23 February 2018, (R 16/738), <https://www.finlex.fi/fi/oikeus/ho/2018/helho2018108226>.

prohibition of discrimination if it would be unreasonable to apply the contract otherwise unchanged.

9 COORDINATION AT NATIONAL LEVEL

9.1 Coordination at the governmental level

The responsibility for developing non-discrimination policies and legislation lies with the Department for Democracy and Public Law at the Ministry of Justice.

9.2 National Strategies and action plans

The previous Government adopted Finland's third National Roma Policy (for 2023–2030)¹⁹⁵ in 2023. The key objective of the policy is to support Roma inclusion, participation and equality and to end discrimination by tackling antigypsyism. The policy programme includes four sectoral sets of objectives related to education, employment, housing and health. The special priority areas of the policy programme are the rights and participation of children and young people, equal operating conditions for older people and particularly vulnerable people, diversity and non-discrimination in employment, and the maintenance of Roma language and culture. The policy programme stresses the importance of an intersectional approach. The measures proposed in the policy programme were selected together with various stakeholders, including representatives of Roma organisations.

The current Government, which came into power in April 2023, announced in its programme that it will prepare the fourth National Action Plan on Fundamental and Human Rights. In the first public hearing on the preparations in November 2024, a first draft of the content of the Plan¹⁹⁶ was presented. According to the draft, the Action Plan will focus on 'concrete measures to strengthen the implementation and monitoring of fundamental and human rights that are essential for the rule of law in different areas of society and administrative sectors'. The topics chosen for the Action Plan were, according to the draft: 1. Strengthening the independence of the judiciary; 2. Access to justice and access to rights; 3. Equal implementation of rights; 4. Increasing knowledge about human rights and the rule of law; 5. Monitoring the implementation of rights; and 6. Democracy, good governance and freedom of expression. It was announced that the Action Plan would be published during spring 2025.

In 2024 there was no separate national strategy or national plan on Antisemitism or on the rights of LGBTIQ persons or any announcements to introduce such plans. Furthermore, these topics were not addressed in the preliminary draft of the National Action Plan on Fundamental and Human Rights. In 2024 the National Human Rights Centre, together with the Ministry of Justice, did publish a report on 'Experiences of and views on Antisemitism in Finland – a report on discrimination and hate crimes against Jews'.¹⁹⁷ People interviewed for the report said that Antisemitism has increased in Finland in the last five years. According to their responses, they consider Antisemitism on the internet and social media to be the main problem in Finland, followed by Antisemitism in the media and in political life. Based on the results of the survey and focus group interviews, recommendations were made to combat Antisemitism, to promote the safety of the Jewish minority and to protect Jewish culture, including from the perspective of multiple minorities. The recommendations cover the topics of education, prevention of violence, discrimination and hate crimes against Jews, the protection of Jewish life and culture, and research related to Judaism.

¹⁹⁵ Ministry of Social Affairs and Health (2023) *Finland's National Roma Policy 2023–2030*, https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/164779/STM_2023_15_J.pdf?sequence=1&isAllowed=y.

¹⁹⁶ Ministry of Justice (2024), 'Fourth National Action Plan on Fundamental and Human Rights – Background note for the hearing on 7 November 2024', https://api.hankeikkuna.fi/asiakirjat/72a0b70b-337b-4898-9a58-b0e051c072ac/c6ec3427-7442-4f98-b98e-e88129d98687/MUISTIO_20241114111800.PDF

¹⁹⁷ Human Rights Centre (2024), *Experiences of and Views on Antisemitism in Finland – a Report on Discrimination and Hate Crimes against Jews*, Human Rights Centre publications 3/2024.

In August 2024 the Government published its Action Plan to Combat Racism and Promote Equality.¹⁹⁸ It is based on the equality statement submitted by the Government to Parliament on 31 August 2023.¹⁹⁹ According to the Action Plan, the purpose is to implement the policies outlined in the equality statement. The four objectives set in the equality statement also form the basis for this Action Plan: 1. Dismantling social structures in the labour market and elsewhere in society that lead to inequality, 2. Fostering good relations between population groups, 3. Promoting access to the labour market, and 4. Building up the knowledge base on racism. According to the Action Plan, the measures contained in it are based on an assessment of the work carried out during the previous Government, as well as recommendations from bodies monitoring Finland's compliance with human rights treaties, existing research data and information gained through strategic foresight. The Action Plan does not use the word 'intersectional', but recognises that discrimination can be cross-cutting and some groups, such as persons with a foreign heritage can also be vulnerable to discrimination on grounds of gender, age and 'functional ability'.

The Action Plan received a lot of attention in the media, as the Government seemed divided in its support for the Plan. The intention of the Government was to gather different kinds of organisations to support the Action Plan and commit themselves to combatting racism. A representative of the True Finns (political party), one of the parties in the Government, has criticised the Action Plan as trying to solve a racism problem that does not exist.²⁰⁰ Some trade unions have withdrawn from the campaign, criticising the Government for its plans to reduce the legislative requirements for equality planning.²⁰¹

In December 2024 the Government published its National Action Plan on the UN Convention on the Rights of Persons with Disabilities. The Action Plan identifies the measures that will be taken to promote the implementation of the Convention in different administrative branches during the third Action Plan period 2023–2027. Work on the Action Plan was coordinated and adapted by VANE (the Advisory Board for the Rights of Persons with Disabilities), the members of which include representatives of disability organisations and the ministries and stakeholders with a key role regarding the rights of persons with disabilities. The Action Plan consists of 13 content areas and 75 measures. The implementation of the measures will be monitored during the Action Plan period and evaluated at the end of this period. The Action Plan emphasises the inclusion and equality of persons with disabilities. In the programme, particular emphasis has been placed on the rights of women and children with disabilities and the intersectional perspective.

¹⁹⁸ Council of State (2024), *A New Boost for Equality in Finland : Government action plan to combat racism and promote equality* https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/165803/VN_2024_40.pdf?sequence=1&isAllowed=y

¹⁹⁹ Government statement to Parliament on measures to promote equality, gender equality and non-discrimination in Finnish society, 2023. See: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/165110/VN_tiedonanto_31082023.pdf?sequence=4&isAllowed=y.

²⁰⁰ YLE News 6 August 2024, 'PS's Jani Mäkelä on the anti-racism campaign: "We are trying to solve a problem whose existence has quite varying views"', <https://yle.fi/a/74-20103436>

²⁰¹ 'The Finnish Government's anti-racism campaign is a disgraceful cover-up attempt – Trade Union JHL cancels its participation', <https://www.jhl.fi/en/news/the-finnish-governments-anti-racism-campaign-is-a-disgraceful-cover-up-attempt-trade-union-jhl-cancels-its-participation/>

10 CURRENT BEST PRACTICES

- Equality planning.²⁰²

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

Aside from the obligation on employers, the Non-Discrimination Ombudsman may bring a matter concerning the failure to draw up an effective equality plan to the National Non-Discrimination and Equality Tribunal, which can order the public authority or education provider to fulfil the obligation within a reasonable time. The Tribunal can impose a conditional fine to enhance its order.

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

The impact of equality plans varies depending on how deeply the plans relate to the strategy and activities of the organisation. Some of the plans (for example, in sports organisations) have managed to push equality firmly up the agenda of the organisation, while other equality plans have just remained on the level of quoting the ban on discrimination in legislation. The greatest impact of the requirement for equality planning has been that it has offered a structure for analysing how the needs of different minorities are met in the organisation and what can be done to improve the situation in this respect.

- Discrimination research and monitoring.²⁰³

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

- The Non-Discrimination Ombudsman's right to be heard as an *amicus curiae*.²⁰⁴

According to the Non-Discrimination Act, the Non-Discrimination Ombudsman must be informed and allowed to be heard in court when a discrimination case is being decided there. In addition, the prosecutor must allow the Non-Discrimination Ombudsman the opportunity to be heard prior to bringing charges for discrimination (Chapter 11, Section 11 of the Criminal Code). This statute has become an important tool for making the Ombudsman aware of all case law regarding discrimination. Furthermore, it allows the Ombudsman to ensure that the courts are aware of recent jurisdiction and levels of compensation when deciding on discrimination cases.

²⁰² See: <http://www.yhdenvertaisuus.fi/yhdenvertaisuussuunnittelu/>.

²⁰³ See: <http://yhdenvertaisuus.fi/syrjintatieto.fi>.

²⁰⁴ Non-Discrimination Act, 1325/2014, Section 27.

- The use of artificial intelligence (AI) has been recognised as a potential source of discrimination. As early as 2015, the Non-Discrimination Ombudsman started an investigation into the discriminatory effects of artificial intelligence (in assessing the creditworthiness of loan applicants). In 2017 the National Equality and Non-Discrimination Tribunal (based on an application from the Ombudsman) considered it discrimination to assess credit ratings solely on the basis of statistical data on gender, age, language and place of residence.²⁰⁵ Currently, the discriminatory impacts of AI are analysed in the work of the Non-Discrimination Ombudsman²⁰⁶ and in research commissioned by the Finnish Government: 'Avoiding AI biases: A Finnish assessment framework for non-discriminatory AI systems'.²⁰⁷

²⁰⁵ See: European Network of legal experts in gender equality and non-discrimination (2018), 'Multiple discrimination in assessing creditworthiness', *News report. Finland*, <https://www.equalitylaw.eu/downloads/4658-finland-multiple-discrimination-in-assessing-creditworthiness-pdf-120-kb>.

²⁰⁶ See: Non-Discrimination Ombudsman, 'Artificial intelligence and equality', <https://syrjinta.fi/en/artificial-intelligence-and-equality>.

²⁰⁷ See: Demos Helsinki, 'Avoiding AI biases', <https://demoshelsinki.fi/referenssit/avoiding-ai-biases/>.

11 SENSITIVE OR CONTROVERSIAL ISSUES²⁰⁸

11.1 Potential breaches of the directives at the national level

- The general justification of direct discrimination on grounds of ethnic origin (in situations governed by the Racial Equality Directive) does not derive from the Directive and may be too widely formulated. The relevant provision in this regard is Section 11(1) of the Non-Discrimination Act, which provides a general justification definition that applies in situations governed by the Racial Equality Directive and therefore allows direct discrimination on grounds of ethnicity:

'Differential treatment is only allowed if the treatment is based on legislation, the treatment has an acceptable aim and the means used are in due proportion for achieving this aim.'²⁰⁹

11.2 Other issues of concern

The sanctions for discrimination are not effective, proportionate and dissuasive. Compensation for discrimination can only be requested in a district court, where the claimant's risk of having to pay the legal costs of the defendant greatly affects the real possibilities of seeking remedies against discrimination. In its report on the Non-Discrimination Act, the Constitutional Law Committee of the Parliament proposed that the National Non-Discrimination and Equality Tribunal should be able to award compensation.²¹⁰ However, the Employment and Equality Committee of the Parliament did not amend the Government proposal in this regard. A study commissioned by the Government confirmed that victims of discrimination rarely use the Non-Discrimination Act to claim and receive discrimination compensation in court.²¹¹ Furthermore, discrimination in employment cannot be addressed by the National Non-Discrimination and Equality Tribunal. The Tribunal has played a significant role in providing access to justice in cases relating access to goods and services for persons with disabilities. As this mechanism is not available in employment discrimination, discrimination e.g. on grounds of ethnicity and origin in employment, can only be compensated through the district courts.

- Associations or organisations working for the benefit of victims do not have any major role to play in judicial or administrative processes. They do not have any general *locus standi* to take a case to court to pursue a matter in their own name, even with the consent of the complainant. Furthermore, associations cannot become third parties to such proceedings or act as an *amicus curiae*. This state of affairs arises from national legislation on rules of procedure.
- No apparent issues of concern can be identified regarding the use of artificial intelligence in relation to the implementation of the national legislation transposing the EU directives on equal treatment (the Racial Equality Directive and the Employment Equality Directive). The regulation of artificial intelligence has been a concern of the Non-Discrimination Ombudsman who published observations on the effects of artificial intelligence in relation to equality in 2021.²¹² In particular, the

²⁰⁸ The assessments and views expressed in both Sections 11.1 and 11.2 reflect the author's opinion.

²⁰⁹ See Section 2.2 of this report for the direct discrimination justification.

²¹⁰ Constitutional Law Committee (2014), *Lausunto 31/2014 vp* (Report 31/2014), p. 10, https://www.eduskunta.fi/FI/vaski/Lausunto/Documents/pevl_31+2014.pdf.

²¹¹ Compensation was awarded between 2015 and 2019 only three times when the request for compensation was made by the victim in a district court on the basis of the Non-Discrimination Act. See: Nieminen, K., Jauhola, L., Lepola, O., Rantala, K., Karinen, R., Luukkonen, T. (2020) *Aidosti yhdenvertaiset, Yhdenvertaisuuslain arviointi* (Study commissioned by the Prime Minister's Office on the implementation of the Non-Discrimination Act), p. 62. Available at: <http://urn.fi/URN:ISBN:978-952-287-959-2>.

²¹² Non-Discrimination Ombudsman (2021) 'The Non-Discrimination Ombudsman's observations on artificial intelligence's effects on equality', 9 February 2021, available in English: <https://syrjinta.fi/en/-/the-non-discrimination-ombudsman-s-observations-on-artificial-intelligence-s-effects-on-equality>.

Ombudsman has recommended efficient evaluation of the impacts on equality in the design and procurement stages of an AI system and during its use.

12 LATEST DEVELOPMENTS IN 2024

12.1 Legislative amendments

- At the end of 2024 the requirement for providers of early childhood education to draft an equality plan was removed from the Non-Discrimination Act. This change in legislation will come into force on 1 January 2025.
- The motivation for the change came from the current Government Programme, according to which the municipalities will be strengthened by removing regulation from the current scope of municipal responsibilities. Municipalities arrange most of early childhood education.
- Act Amending the Non-Discrimination Act (907/2024), changes in Section 6a
- Web link: <http://www.finlex.fi/fi/laki/ajantasa/2014/20141325>

12.2 Case law

Relevant discrimination ground(s): Disability

Name of the court: Supreme Court

Date of decision: 22 October 2024

Name of the parties: N/A

Reference number: Decision S2023/63

ECLI reference: N/A

Link: <https://korkeinoikeus.fi/fi/index/ajankohtaista/tiedotteet/2024/rmdnhdnuu.html>

Brief summary: The Supreme Court of Finland considered it discrimination when an employer terminated the working contract of a person with a hearing impairment during the six-month probationary period of their contract. The Supreme Court considered that the employer had failed to meet the duty of reasonable accommodation, as the employer had not explored any possible solutions before terminating the contract when it noticed that the employee was unable to hear sufficiently well when meeting clients. The Supreme Court stated that even though the employee had not requested any reasonable accommodation measures, the employer should have investigated potential measures when it became aware of the employee's hearing problem affecting their work.

The Supreme Court interpreted legislation in force at the time of the events (in 2019) where it was not explicitly expressed in legislation that the employer has a duty to consider the need for reasonable accommodation measures, even without any request from the person needing them. In this context the Supreme Court referred to General comment No. 6 of the UN Committee on the Rights of Persons with Disabilities.

ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS**Country: Finland****Date: 1 January 2025**

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)	5 May 1989	10 May 1990	None	Yes	Yes
Protocol 12, ECHR	4 November 2000	17 December 2004	None	Yes	Yes
Revised European Social Charter	3 May 1996	21 June 2002	None	Ratified collective complaints protocol? Yes	Yes, to the extent the rights provided in ESC, as revised, are justiciable
International Covenant on Civil and Political Rights	11 October 1967	19 October 1975	None	Yes	Yes
Framework Convention for the Protection of National Minorities	1 February 1995	3 October 1997	None	Not applicable	Yes, to the extent the rights provided are justiciable (in practice extremely limited)
International Covenant on Economic, Social and Cultural Rights	11 October 1967	19 October 1975	None	Not applicable	Yes, to the extent the rights provided are justiciable
Convention on the Elimination of All Forms of Racial Discrimination	6 October 1966	14 July 1970	None	Yes	Yes

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?
ILO Convention No. 111 on Discrimination	25 June 1958	23 April 1970	None	Not applicable	Yes
Convention on the Rights of the Child	26 January 1990	20 June 1991	None	Not applicable	Yes
Convention on the Rights of Persons with Disabilities	30 March 2007	10 June 2016	None	Yes	Yes

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