

NB: Unofficial translation
© Ministry of Labour, Finland
April 2006

Non-Discrimination Act (21/2004)
(as amended by Act No 50/2006)

Section 1
Purpose of the Act

The purpose of this Act is to foster and safeguard equality and enhance the protection provided by law to those who have been discriminated against in cases of discrimination that fall under the scope of this Act.

Section 2
Scope of application

This Act applies to both public and private activities in the following contexts:

- 1) conditions for access to self-employment or means of livelihood, and support for business activities;
- 2) recruitment conditions, employment and working conditions, personnel training and promotion;
- 3) access to training, including advanced training and retraining, and vocational guidance; and
- 4) membership and involvement in an organization of workers or employers or other organizations whose members carry out a particular profession, including the benefits provided by such organizations.

The Act also applies to discrimination based on ethnic origin concerning:

- 1) social welfare and health care services;
- 2) social security benefits or other forms of support, rebate or advantage granted on social grounds;
- 3) the performance of military service, women's voluntary military service or non-military service; or
- 4) the supply of or access to housing and movable and immovable property and services on offer or available to the general public other than in respect of relationships between private individuals.

Section 3
Limits on scope of application

This Act does not apply to:

- 1) the aims or content of education or the education system; or
- 2) application of provisions governing entry into and residence in the country by foreigners, or the placing of foreigners in a different position for a reason deriving from their legal status under the law.

Section 4 *Authorities' duty to foster equality*

In all they do, the authorities shall seek purposefully and methodically to foster equality and consolidate administrative and operational practices that will ensure the fostering of equality in preparatory work and decision-making. In particular, the authorities shall alter any circumstances that prevent the realization of equality.

Each authority shall draw up a plan for the fostering of ethnic equality (*equality plan*), which must be as extensive as required by the nature of the work of the authority. The Ministry of Labour shall issue general recommendations for the content of plans referred to in this subsection.

In this section, the expression *authorities* refers to central or local government authorities, independent bodies governed by public law and authorities in the province of Åland when the latter are discharging the functions of national authorities in the province. 'Authorities' also refers to societies governed by public law and individual actors when these are discharging public administrative functions, and to non-incorporated state enterprises. The duty to draw up the plan referred to in subsection 2 above does not, however, apply to the Evangelical Lutheran Church or the Orthodox Church, or to individual actors comparable to an authority when discharging public administrative functions.

Section 5 *Improving the access to employment and training of persons with disabilities*

In order to foster equality in the contexts referred to in section 2(1), a person commissioning work or arranging training shall where necessary take any reasonable steps to help a person with disabilities to gain access to work or training, to cope at work and to advance in their career. In assessing what constitutes reasonable, particular attention shall be devoted to the costs of the steps, the financial position of the person commissioning work or arranging training, and the possibility of support from public funds or elsewhere towards the costs involved.

Section 6 *Prohibition of discrimination*

Nobody may be discriminated against on the basis of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. The prohibition of discrimination based on gender is covered by the provisions of the Act on Equality between Women and Men (609/1986).

Discrimination means:

- 1) the treatment of a person less favourably than the way another person is treated, has been treated or would be treated in a comparable situation (*direct discrimination*);
- 2) that an apparently neutral provision, criterion or practice puts a person at a particular disadvantage compared with other persons, unless said provision, criterion or practice has an acceptable aim and the means used are appropriate and necessary for achieving this aim (*indirect discrimination*);

- 3) the deliberate or de facto infringement of the dignity and integrity of a person or group of people by the creation of a intimidating, hostile, degrading, humiliating or offensive environment (*harassment*); and
- 4) an instruction or order to discriminate.

Section 7

Conduct not classified as discrimination

The following conduct is not considered discrimination under this Act:

- 1) a procedure based on an equality plan, and intended to implement the intention of this Act in practice; and
- 2) different treatment in relation to a basis of discrimination referred to in section 6(1) that is founded on a genuine and determining requirement relating to a specific type of occupational activity and the performance of said activity;
- 3) different treatment based on age when 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 different treatment arises from age limits adopted in qualification for retirement or invalidity benefits within the social security system.

This Act does not prevent specific measures aimed at the achievement of genuine equality in order to prevent or reduce the disadvantages caused by the types of discrimination referred to in section 6(1) (*positive discrimination*). Positive discrimination must be appropriate to its objective.

Section 8

Prohibition of victimization

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.

Section 9

Compensation

A supplier of work, movable or immovable property, or services, education or benefits as referred to in section 2 who has infringed the provisions of section 6 or section 8 on the basis of age, ethnic or national origin, nationality, religion, belief, opinion, state of health, disability or sexual orientation shall pay the injured party compensation for the suffering caused by such discrimination or victimization. Compensation shall not exceed 15,000 euros, depending on the severity of the infringement.

In determining the level of compensation, due consideration shall be given to the type and extent of the discrimination and its duration, the attitude to his/her actions on the part of the person who has infringed section 6 or section 8, any reconciliation reached between the parties, the restoration of a legal position of equality, the financial position of the offender and other circumstances, plus the financial compensation imposed or ordered to be paid under other legislation for the same act of infringement against the person. Imposition of compensation is not mandatory if not imposing it would be a reasonable decision in the circumstances. Where special cause exists, the maximum level of

compensation may be exceeded if this is justified by the duration and severity of the discrimination and other circumstances of the case.

Payment of compensation does not preclude an injured party claiming damages under the Tort Liability Act (412/1974) or other legislation.

Section 10

Changing discriminatory contractual terms

In cases being processed by them, courts may change or ignore contractual terms that are contrary to the prohibition provided in section 6 or section 8. Contractual terms are considered to include commitments relating to the size of a remuneration.

If a term referred to in subsection 1 is such that it would be unreasonable to continue the contract otherwise unaffected after changing or ignoring the offending term, other parts of the contract may also be changed, or the contract as a whole may be declared void.

Section 11

Supervision

Compliance with the terms of this Act in employment relationships and service relationships governed by public law, and in traineeships and other comparable activities at the workplace, shall be supervised by the occupational safety and health authorities in accordance with the provisions of the Act on Occupational Safety and Health Enforcement and Cooperation on Safety and Health at Workplaces (44/2006).

The prohibition on discrimination based on ethnic origin other than in employment relationships and service relationships governed by public law shall be supervised by the Ombudsman for Minorities and the Discrimination Board, as provided for in the Act on the Ombudsman for Minorities and the Discrimination Board (660/2001).

Section 12

Guidance, advice, recommendations and conciliation

A person who considers himself to have been the victim of discrimination based on ethnic origin may seek guidance, advice, recommendations and conciliation from the Ombudsman for Minorities in respect of the matters referred to in sections 2(1)(1, 3, 4) and 2(2).

Section 13

Role of the Discrimination Board

In matters relating to ethnic discrimination, insofar as they do not touch on an employment relationship or a service relationship governed by public law, or in traineeships and other comparable activities at the workplace, the Discrimination Board is empowered to:

- 1) confirm a conciliation settlement between the parties; or
- 2) prohibit the continuation or repeat of conduct contrary to the terms of section 6 or section 8.

A conciliation settlement confirmed by the Discrimination Board and involving an agreed sum in compensation may be enforced in the same way as a legally valid judgement.

When the Discrimination Board issues a prohibitive decision, it shall where necessary incorporate into the decision a reasonable period of time within which the decision must be complied with. The Board may also impose a conditional fine and order payment as provided in the Act on Conditional Imposition of a Fine (1113/1990).

If a case referred to in subsection 1 has been or is to be taken up by another authority, the Discrimination Board may not investigate it.

Section 14

Requesting a statement

The courts, the Ombudsman for Minorities, other authorities and associations may request a statement from the Discrimination Board on the application of this Act in cases of ethnic discrimination.

Section 15

Bringing a case before the Discrimination Board

A person who is the subject of conduct prohibited under section 6 or section 8, or the Ombudsman for Minorities may bring a case concerning ethnic discrimination as referred to in section 2(1)(1, 3, 4) and section 2(2) before the Discrimination Board for purposes of the procedure provided for in section 13(1)(2).

The parties to a conciliation settlement together or the Ombudsman for Minorities with the consent of the parties, may bring a case such as that referred to in subsection 1 before the Discrimination Board for purposes of the procedure provided for in section 13(1)(1).

The handling of cases by the Discrimination Board is provided for in the Act on the Ombudsman for Minorities and the Discrimination Board.

Section 16

Period for instituting proceedings

Actions pertaining to matters referred to in sections 9 and 10 above must be instituted at a court of law at the plaintiff's domicile, within two years of the infringement of section 6 or section 8, if the infringement has been continuous, within two years of its cessation. In cases relating to employee recruitment, however, action must be instituted within one year of the date on which the jobseeker discriminated against receives notification of the recruitment decision.

Section 17

Burden of proof

During the hearing of a case as referred to in this Act, when a person who considers himself to have been a victim of discrimination as referred to in section 6 establishes before a court of law or other competent authority information from which it may be presumed that the prohibition of discrimination has been infringed, the defendant must

demonstrate that the prohibition has not been infringed. This provision does not apply to criminal cases.

Section 18

Appeal

Decisions of the Discrimination Board under section 13(1)(2) may be appealed to an Administrative Court. The competent Administrative Court is the one in the judicial district of which the person allegedly discriminated against resides. Appeals are otherwise covered by the terms of the Administrative Judicial Procedure Act (586/1996).

Decisions of the Discrimination Board under section 13(1)(2) may be enforced irrespective of any appeal unless the Administrative Court rules otherwise.

Section 19

Prohibition on appeal

Decisions of the Discrimination Board under section 13(1)(1) or section 13(4) are not subject to appeal.

Section 20

Penal provisions

The penalty for discrimination is provided for in chapter 11, section 9 of the Penal Code (39/1889), and for discrimination in employment in chapter 47, section 3 of the Penal Code.

Section 21

Adjustment of compensation sum

The maximum euro-denominated sum in compensation as provided in section 9 above shall be adjusted by Ministry of Labour decree once every three years, in line with changes in monetary value.

Section 22

Entry into force

This Act enters into force on February 1, 2004.

Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.