## RE : Study on article 5 of the Convention on Rights of Persons with Disabilities

Office of the United Nations High Commissioner

for Human Rights IOK/16/2016 27/06/2016
United Nations Office at Geneva

CH 1211 Geneva 10

BY EMAIL to registry@ohchr.org

**Diary number**

**Date**

**Contribution from the Finnish NHRI/Human Rights Centre**

The Human Rights Centre (HRC) would like to thank the Office of the High Commissioner for Human Rights for the possibility to provide information for the OHCHR’s study on article 5 of the Convention on Rights of Persons with Disabilities.

The Human Rights Centre, its Delegation and the Office of the Parliamentary Ombudsman together form Finland’s National Human Rights Institution. The institution was accredited with the highest A-status by the International Coordinating Committee of National Human Rights Institutions in December 2014. According to legislation, one of the tasks of the HRC is to participate in European and international cooperation related to the promotion and protection of fundamental and human rights. The HRC generally represents the Finnish NHRI in international NHRI cooperation. The Office of the Parliamentary Ombudsman was consulted when preparing this response.

We hope that you will find our response useful for your purposes.

On behalf of the Finnish NHRI/Human Rights Centre,

Sirpa Rautio

Director

Hanna Rönty

Associate Expert

1. Has your country adopted legislation establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.

According to the **Constitution of Finland**[[1]](#footnote-1) (731/1999), everyone is equal before the law and 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 **Non-Discrimination Act**[[2]](#footnote-2)(1325/2014, entered into force on 1 January 2015), protection against discrimination is equal regardless of whether the discrimination is based on ethnic origin, age, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. The Act is applied to all public and private activities, excluding private life, family life and practice of religion. In addition to direct and indirect discrimination, harassment, and an instruction or order to discriminate, **the denial of reasonable accommodations also constitutes discrimination**. However, unequal treatment is still allowed in certain situations, for example if it has acceptable grounds and an objective based on fundamental and human rights and if the means to achieve the objective are proportionate.

Compliance with the provisions of the Non-Discrimination Act is supervised by the Non-Discrimination Ombudsman, the National Non-Discrimination and Equality Tribunal, and the occupational safety and health authorities.

**The Criminal Code**[[3]](#footnote-3) (39/1889) criminalises discrimination and work discrimination based on disability. The maximum sentence for both crimes is six months of imprisonment.

2. Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements.

The assessment of the extent of required accommodations is based on the **Non-Discrimination Act.** According to **Section 15** of the Act, “(1) An authority, education provider, employer or provider of goods and services has to make **due and appropriate adjustments** necessary in each situation for a person with disabilities to be able, equally with others, to deal with the authorities and gain access to education, work and generally available goods and services, as well as to manage their work tasks and to advance their career. (2) In assessing the reasonableness of the adjustments, attention shall also be devoted, in addition to the needs of the person with disabilities, to the size, financial position, nature and extent of the operations of an actor [--] as well as the estimated costs of the adjustments and the support available for the adjustments. (3) On request, the employer shall promptly provide a written report on the grounds of its procedures to a person with disabilities, who considers that they have been discriminated against as a result of the denial of reasonable adjustments in applying for employment or public service employment or in an employment relationship or in an employment relationship under public law.”

According to the **Government Bill on the Non-Discrimination Act** (HE 19/2014), the assessment of the extent of accommodations needed is made by the authority, education provider, employer or provider of goods and services who is responsible for the accommodation. The Government Bill contains further elaboration on what should be taken into account when assessing the appropriateness of reasonable accommodations. The Government Bill emphasises that on the one hand, accommodations must not cause disproportionate economic or other burden to the actor but on the other hand, accommodations must realise equal opportunities for persons with disabilities in a fair manner.

In case there is disagreement between the parties on the extent of reasonable accommodations, the matter can be brought to the Non-Discrimination Ombudsman or the National Non-Discrimination and Equality Tribunal. Ultimately, the assessment of the appropriateness of reasonable accommodations is made by courts.

3. Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures being applied and enforced.

**The Non-Discrimination Act** allows for positive differential treatment. According to the Act, proportionate different treatment that aims to promote de facto equality, or to prevent or remove the disadvantages attributable to discrimination, does not constitute discrimination.

The aim of **Finland’s Disability Policy Programme VAMPO 2010–2015**[[4]](#footnote-4) was to safeguard a just position in the society for persons with disability and to draw up the development paths with which to reach for sustainable and responsible disability policy. According to the final report on VAMPO’s implementation (2016), most of the 122 measures introduced in the programme had been realised in line with the programme by the end of 2015. The report concluded that a clear positive development had taken place, for example in the areas of culture and sports services, education and international cooperation in the field of disability. In the field of non-discrimination, the Ministry of the Interior developed, for example, guidance for non-discrimination planning, including a general guidebook as well as targeted guidebooks for civil society organisations and education establishments. In addition, a guide on non-discrimination impact assessment in the legislative process was published in 2014.

Finland’s ratification of the **UN Convention on the Rights of Persons with Disabilities** entered into force on 10 June 2016. The responsibility for drafting a national action plan on the implementation of the convention is likely to be given to the successor of the current National Council on Disability, which will function as the national coordination mechanism according to article 33(1) of the Convention. The new Council is expected to be appointed in September 2016.

**Disability services** can also be seen as measure to tackle the structures that prevent persons with disabilities from participating equally in the society. Disability services are laid down in the Social Welfare Act (1301/2014) Services and Assistance for the Disabled Act (380/1987), the Act on Special Care for Persons with Intellectual Disabilities (519/1977) and the Act on Interpretation Services for Persons with Disabilities (133/2010).

4. Does your country have laws, policies and strategies for combating discrimination against women and children with disabilities? Please, describe how these policies are reflected in legislation and policy frameworks.

The National Action Plan for Gender Equality for 2016–2019 does not address the situation of women with disabilities.

**Finland’s Disability Policy Programme VAMPO 2010–2015** recognised that women and girls with disabilities are among groups that are at risk of facing discrimination on more than one ground. The policy especially recognised that women and girls with disabilities face a greater risk to become victims of violence. However, VAMPO did not include any specific actions to tackle the specific situation of women and girls with disabilities.

In 2010, the Government prepared the **Action Plan to Reduce Violence against Women**[[5]](#footnote-5) for 2010–2015. The Action Plan paid attention to violence faced by disabled women and included measures which specifically addressed violence against disabled women.

5. Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?

Although no such systematic, continuous and comprehensive national collection of disaggregated data currently exists, both authorities and disabled people’s organisations regularly conduct studies and surveys on discrimination against persons with disabilities.

The Ministry of Justice coordinates **the national monitoring system for discrimination.** The monitoring system compiles and publishes information and research on discrimination on the website [www.equality.fi](http://www.equality.fi) (in Finnish: [www.yhdenvertaisuus.fi](http://www.yhdenvertaisuus.fi)), drafts an annual discrimination study, and publishes a report on discrimination in Finland every four years. The most recent discrimination in Finland report was published in 2014. The most recent annual discrimination study, a survey on hate speech and harassment and their influence on different minority groups, was published in March 2016. The topic of the next annual discrimination study will be justice and security.

The implementation of the national monitoring system is the responsibility of **the Discrimination Monitoring Group**, which consists of representatives of various ministries, research institutes, labour market parties, NGOs, equality bodies and boards. The National Council on Disability and the Finnish Disability Forum, an umbrella organisation for DPOs, are represented in the Monitoring Group.

**The complaints received by the Non-Discrimination Ombudsman** offer an important source of data on discrimination faced by disabled persons. In 2015, out of 496 complaints received by the Non-Discrimination Ombudsman, 90 cases dealt with discrimination on the basis of disability, the second largest amount after cases concerning discrimination based on origin. The Office of the Non-Discrimination Ombudsman is currently preparing a study on discrimination faced by persons with disabilities.[[6]](#footnote-6)

**The National Institute for Health and Welfare** does research and gathers statics on disability, based on which it is possible to examine discrimination faced by persons with disabilities.[[7]](#footnote-7)

In addition, **Regional State Administrative Agencies** monitor discrimination in working life on all discrimination grounds, including disability.

1. Unofficial English translation: <https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf> [↑](#footnote-ref-1)
2. Unofficial English translation: <https://www.finlex.fi/fi/laki/kaannokset/2014/en20141325.pdf> [↑](#footnote-ref-2)
3. Unofficial English translation: <http://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf> [↑](#footnote-ref-3)
4. <http://www.vane.to/images/stories/vampo2012/vampo2012_english.pdf> [↑](#footnote-ref-4)
5. Action Plan to Reduce Violence against Women. Ministry of Social Affairs and Health 2010. <http://www.julkari.fi/bitstream/handle/10024/112432/JUL1015_Violence_verkko_Final.pdf?sequence=1> [↑](#footnote-ref-5)
6. Publications of the Non-Discrimination Ombudsman in English can be found in <http://www.syrjinta.fi/web/en/publications>. The annual report for 2015 is not yet available in English. [↑](#footnote-ref-6)
7. Information in English can be found in <https://www.thl.fi/en/web/thlfi-en/statistics/statistics-by-topic/disability> [↑](#footnote-ref-7)