**Questionnaire on the rights of persons with disabilities; Access to justice**

**Replies of the Government of Finland**

**10 May 2017**

**1. Does your country have laws, policies or guidelines on access to justice, at any level of government, which ensure persons with disabilities, particularly women and children with disabilities:**

1. **to participate in judicial and administrative proceedings on an equal basis with others in their role as witness, juror, complainant, defendant or other, including through the provision of procedural and age-appropriate accommodations (please identify and share the text of those provisions);**
2. **to have individual legal standing in all administrative and judicial procedures, including the right to be heard as part of their right to fair trial;**
3. **to have access to effective remedies that are appropriately proportional to the right(s) infringed and tailored to their specific situation; and**
4. **to have effective access to justice in the context of disasters, migration and asylum-seeking, conflict and post-conflict situations and transitional justice, and formal or informal systems of customary, indigenous and community justice, among others.**

**According to Section 6 of the Constitution of Finland** (731/1999) [[1]](#footnote-1), 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. In addition, the Constitution states that children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.

Section 21 of the Constitution (Protection under the law) states that everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

**The new Non-Discrimination Act (1325/2014)[[2]](#footnote-2)** entered into force on 1 January 2015. The act prohibits discrimination based on ethnic origin, age, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. According to the Act, direct and indirect discrimination, harassment, denial of reasonable accommodation as well as an instruction or order to discriminate constitute discrimination. The Act applies to all public and private activities, excluding private life, family life and religious worship. The reform of the non-discrimination legislation strengthened the legal protection of victims of discrimination, enlarged the scope of prohibitions of discrimination and expanded the obligations to promote equality. The Act also obligates authorities, employers and providers of education and training to promote equality. Authorities, providers of education and training and large employers must have prepared equality plans under the Act by 2017. Equality planning is supervised by the Non-Discrimination Ombudsman and occupational safety and health authorities.

According to Section 15 of the Non-Discrimination Act, an authority, education provider, employer or provider of goods and services has to make due and appropriate **reasonable accommodations** 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.

**According to the Legal Aid Act (257/2002)[[3]](#footnote-3)**, everyone, regardless of disability or functional capacity, can receive public legal aid based on economic grounds. Legal aid is provided at the expense of the state to persons who need expert assistance in a legal matter and who are unable to meet the costs of proceedings as a result of their economic situation. Legal aid is provided on application, for free or against a deductible, on the basis of the economic situation of the applicant.

**In criminal proceedings**, the defendant is under certain circumstances provided with a public defender at the expense of the state, regardless of his or her financial status. The victim of serious violent crime or sexual crime may be provided with a trial counsel at the expense of the state, regardless of his or her financial status. In addition, a public defender can be appointed to the suspect upon request if he or she is suspected of or charged with an offence punishable by no less than imprisonment for four months or an attempt of or participation in such an offence; or he or she is under arrest or remanded for trial. A public defender is to be appointed for a suspect *ex officio*, when:

1. the suspect is incapable of defending himself or herself;
2. the suspect has no public defender and is under 18 years of age, unless it is apparent that he or she has no need of a public defender;
3. the public defender retained by the suspect does not meet the qualifications required of a public defender or is incapable of defending the suspect in an appropriate manner; or
4. there is another special reason for this.

**Guardianship services** are intended for persons who cannot themselves take care of their financial or other affairs. The objective of guardianship services is to look after the rights and interests of persons who cannot themselves take care of their financial affairs owing to incompetency, illness, absence or another reason. Such persons may obtain support from a guardian, who takes care of their affairs and looks after their interests either together with them or on their behalf including their affairs in judicial and administrative proceedings. Appointing a guardian may be necessary when one’s mental capacity has been reduced e.g. by serious illness or advanced age, with the result that one cannot look after one’s own interests or take care of one’s affairs. However, a guardian is appointed only if one's affairs cannot properly be managed in any other way.[[4]](#footnote-4)

**Chapter 12 of the Code of Judicial Procedure (4/1734)[[5]](#footnote-5)** includes provisions concerning the appearance of persons without full legal capacity in civil cases as follows:

* When a person without full legal capacity is a party in a civil case or as an injured party in a criminal case, his or her right to be heard shall be exercised by his or her guardian or other legal representative. However, in a case concerning the person of a minor, his or her right to be heard shall be exercised the person responsible for his or her care and custody or his or her other legal representative. A person without full legal capacity shall personally exercise his or her right to be heard if he or she is competent to administer the object of the dispute or of the offence, or if the dispute concerns a transaction into which he or she is competent to enter. In a case concerning his or her person, a person without full legal capacity shall personally exercise his or her right to be heard if he or she has reached the age of eighteen years and is able to understand the significance of the matter. A minor who has reached the age of fifteen years has an independent right to be heard in a matter concerning his or her person, parallel to that of the person responsible for his or her care and custody or his or her other legal representative.
* A person without full legal capacity shall personally exercise his or her right to be heard as a defendant in a criminal case if he or she is responsible under criminal law. However, in addition to a minor defendant, his or her guardian, the person responsible for his or her care and custody, or other legal representative shall have an independent right, parallel to that of the defendant, to be heard. If a person without full legal capacity who has reached the age of eighteen years is not responsible under criminal law, his or her guardian or other legal representative shall exercise his or her right to be heard.
* The court may hear the guardian of a person without full legal capacity, the person responsible for his or her care and custody, or his or her other legal representative, even if the person without full legal capacity has the sole right to be heard in the matter, if this is regarded as necessary in view of his or her best interests.
* If a party is incapable of looking after his or her interests in court proceedings owing to illness, mental impairment, ill health or another comparable reason or if the guardian of the party is prevented from exercising his or her right to be heard in the case due to disqualification or another reason, the court where the case is pending may on its own motion appoint a guardian for that party for purposes of the proceedings.

**Chapter 17 of the Code of Judicial Procedure** contains provisions on Evidence. Section 27 in chapter 17 regulates on hearing of a party as follows:

* (1) A party who has not reached the age of 15 years or who is mentally impaired may be heard in evidence if the court deems this appropriate and if:
  + (1) hearing him or her in person is of essential significance in the clarification of the case; and
  + (2) the hearing would probably not cause the party such suffering or other inconvenience that could harm him or her or his or her development.
* (2) The court shall as necessary appoint a support person for the person to be heard. The provisions in Chapter 2 of the Criminal Proceedings Act on a support person appointed for an injured person apply to the support person.

The **Constitution of Finland** regulates on the *Right to one's language and culture* (section 17). The rights of disabled persons needing interpretation are guaranteed in the third paragraph of section 17:

* The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.

Provisions on **the right to use sign language and on interpretation for persons with a sensory or speech defect** in judicial and administrative proceedings are laid down, for example, in the Administrative Procedure Act (434/2003), Administrative Judicial Procedure Act (586/1996), Criminal Investigation Act (805/2011) and Criminal Procedure Act (689/1997). Provisions of the Act on Interpretation Services for Persons with Disabilities (133/2010) apply to arrangement of interpretation services for persons with disabilities if they are not provided with sufficient and appropriate interpretation serviceunder another act.

According to Chapter 4, Section 12 of the Criminal Investigation Act (805/2011) [[6]](#footnote-6), the criminal investigation authority shall arrange for interpretation or obtain an interpreter at State expense when the authority is not required to speak the language of the person with whom it is in contact. Persons using sign language have the right in the criminal investigation to use sign language. The criminal investigation authority shall ascertain whether or not the party needs interpretation. The criminal authority shall ensure that the party receives the interpretation that he or she needs. Interpretation shall be arranged also when this is necessary due to a sensory or speaking impediment of the person to be heard.

According to Chapter 6 a, Section 2 of the Criminal Procedure Act (689/1997)[[7]](#footnote-7), the court shall arrange for interpretation also when a party uses sign language or when interpretation is necessary due to a sensory or speaking impediment of a party.

The Administrative Procedure Act states that *s*ervice and the consideration of matters by an authority should be arranged so that the customer of the administration receives appropriate service and that the authority can perform its tasks productively. According to Section 26 of the Administrative Procedure Act (434/2003)[[8]](#footnote-8), the authority shall arrange for interpretation and translation in a matter that can become pending on the initiative of the authority, if a party using the Romani language, sign language or another language does not know the language (Finnish or Swedish) used in the authority or if a person who owing to a handicap or illness cannot be understood. The matter may be interpreted or translated into a language that the party can be deemed to know adequately in view of the nature of the matter.

According to Section 77 of the Administrative Judicial Procedure Act (586/1996)[[9]](#footnote-9), the authority shall see to interpretation and translation if the person cannot make himself understood for reason of a sensory or speech defect and in a previous phase of the procedure the competent authority was to see to interpretation and translation by virtue of section 26(1) of the Administrative Procedure Act or another provision, or the present authority is the first instance in a matter that has been initiated by a public authority, or the person is heard in person. For a special reason the authority may see to interpretation and translation also in other cases.

Also the Finnish Aliens Act and the Act on the Reception of Persons applying for International Protection contain similar provisions as above guaranteeing interpretation or translation on account, for example, of disability and consideration given to the special needs that arise from one’s vulnerable position.

***Accessibility of police facilities and website***

The Finnish Police has put together a Concept Paper on Police Facilities, in order to unify the planning of police facilities and enhancing usage of the best practices in all projects concerning police facilities. The Concept Paper guides planning of new facilities and renovation and development of old facilities within the police administration. New police facilities and large renovations are planned so that people with physical disabilities can access the main entrance via slope, customer service points are sized for wheel chairs and the lobby will have accessible toilet facilities. All floors of the building have accessible toilet facilities for staff members, too.

The website of the Finnish Police receives 10 million visits per year. Special attention has been paid to the accessibility of this site. It has information in simple language as well as contents and videos in sign language, some of them subtitled. In complaint matters special needs are also acknowledged, for instance, by providing a complaint form with larger lettering.

***Guidelines of the Finnish Immigration Service***

As far as the asylum process is concerned, persons with disabilities can be regarded as a group in a particularly vulnerable situation, as applicants with special needs. Chapter 2.3. of the Finnish Immigration Service’s guidelines on asylum deals with the procedural guarantees for those with special needs, giving examples of the kind of support available in the asylum procedure. The asylum interview is in individual cases tailored taking into account the disability of the applicant.

Persons with disabilities are taken into consideration in the guidelines concerning the requirement for sufficient financial resources, the processing of child-related matters and the oral hearings. For instance the guidelines on oral hearings state that in case the oral hearing of an applicant or a sponsor is not possible due to disability, it will be looked into whether his/her legal representative/guardian/interpreter etc. is able to assist in understanding his/her responses.

**2. Do you have examples from your country on**:

1. **how procedural and age-appropriate accommodations are provided and applied, including protocols or other guidelines;**
2. **training programmes on the right of access to justice for persons with disabilities for judges, lawyers, prosecutors, police, social workers, language and sign language interpreters, legal aid centres, other judicial and administrative bodies intervening in judicial or quasi-judicial instances;**
3. **education programmes on the right of access to justice for persons with disabilities for law students as well as in schools of social work, sign language interpretation, forensic science, psychiatry and psychology, among other relevant faculties; and**
4. **legal aid programmes, public and/or private, which include the right of access to justice for persons with disabilities in their practices, including the availability of support and liaison services for courts or other judicial or quasi-judicial instances.**

One of the aims of the Programme of Prime Minister Sipilä's Government is to improve the **status of victims**.

The Victims’ Rights Directive of the European Union (2012/29/EU) establishes minimum standards on the rights, support and protection of victims of crime and ensures that persons who have fallen victim of crime are recognised, treated with respect and receive proper protection, support and access to justice. The Directive emphasises, inter alia, the rights of child victims and the child’s best interest. In addition, the Directive states that Member States have to ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings. The Ministry of Justice has been responsible for the transposition of the directive in Finland. A Government Bill on amendments to relevant legislation (HE 66/2015 vp) was submitted to the Parliament in 2015 and the amendments entered into force in 2016.

In 2016, the Ministry of Justice published the recommendations of a working group appointed to examine the promotion of crime victims' right to receive information. The recommendations of the working group included publishing new brochures and forms on victims’ rights, improving access to information in electronic format, making referral of victims to support services more efficient, paying more attention to victims' needs in the summonses and arrangements of the courts, making victim-sensitive communication an integral part of authorities' training and quality projects as well as making the flow of information between the authorities more efficient by means of information systems.

In March 2017, the Ministry of Justice appointed a working group to promote good practices that take into consideration the needs of the victim in criminal proceedings. The working group will, for example, pay attention to how victims are interacted with and how they receive information about their rights and possibilities to receive support and protection.

The Ministry of Justice has published multiple brochures and guidebooks for victims of crime, witnesses and persons needing legal aid, including a brochure on the rights of victims of crime published in March 2017.[[10]](#footnote-10) In 2013, the Ministry of Justice, the Ministry of the Interior and the Ministry of Social Affairs and Health published a guidebook for parents of child victims.[[11]](#footnote-11)

The Ministry of Justice and the Ministry of Social Affairs and Health are the main sponsors of Victim Support Finland (Rikosuhripäivystys, RIKU). RIKU’s aim is to improve the position of victims of crime, their loved ones and witnesses in criminal cases e.g. by producing low threshold support and guidance services. RIKU has an information package on its website on children as victims of crime.[[12]](#footnote-12) RIKU’s youth website (<http://nuoret.riku.fi/>) is aimed at young victims of crime. RIKU has also published guides for victims in plain language.

A child’s right to be heard is currently being assessed by a working group appointed by the Ministry of Justice which is preparing a reform of legislation concerning child custody and right of access (the right of a child to maintain contact and meet with the parent with whom he or she does not reside).

***Police training programmes***

The Police Act states that the police must perform their duties in respect of fundamental and human rights and, among other things, following the principle of proportionality and promoting equal treatment. In Finland graduation courses as well as continuing education of the police candidates include training on how to encounter disabled persons and those with special needs. Special needs groups are also noted in the police's ethical principles and education concerning the principles. The Police of Finland strives to operate so that all its customers are treated equally and as individuals.

The Police University College updates the curricula of police education yearly. One of the main themes of the current updating process is to ensure that the police as a whole have got necessary knowledge on fundamental and human rights.

**3. Does your country have laws, policies and strategies to ensure the participation of persons with disabilities on an equal basis with others in the judiciary or other judicial or quasi-judicial instances, including in their role as judges, witnesses, jurors, lawyers or any other active party to judicial or quasi-judicial procedures?**

See answer to question 1.

**4. Does your country monitor and collect disaggregated data with respect to access to judicial or quasi-judicial procedures concerning:**

1. **the participation of persons with disabilities in judicial or quasi-judicial procedures, including the number of complaints submitted, nature of complaints and outcomes;**
2. **persons with disabilities obtaining remedies and the nature of those remedies, whether they are adequate, effective, prompt and appropriate, responding to their specific situation;**
3. **persons with disabilities being convicted, the nature of their sentence, and whether they benefitted from safeguards of the right to fair trial on an equal basis with others; and**
4. **the opening and conduct of impartial and independent investigations of human rights violations of persons with disabilities, particularly those relating to the right to life, liberty and security of the person, freedom from violence, abuse and exploitation, and freedom from torture or cruel, inhuman or degrading treatment or punishment.**

Comprehensive disaggregated data on the participation of persons with disabilities in judicial and quasi-judicial procedures is currently not available.

Pursuant to **the Personal Data Act** (523/1999), the processing of sensitive data is prohibited. Personal data are deemed to be sensitive if they relate to or are intended to relate, inter alia, information on the state of health, disability and medical care or treatment given to a person. However, this prohibition does not prevent processing of data for purposes of historical, scientific or statistical research.

However, some statistics on the complaints made by persons with disabilities to independent human rights and equality bodies are available.

Information on the complaints examined by the **Parliamentary Ombudsman** can be found in the Ombudsman’s annual report. In 2015, 219 out of a total of 4 867 decisions made by the Parliamentary Ombudsman dealt with the rights of disabled persons.[[13]](#footnote-13)

The **Non-Discrimination Ombudsman**, who supervises compliance with the Non-Discrimination Act, received 496 reports concerning discrimination during 2015. 90 cases concerned suspected discrimination based on disability.[[14]](#footnote-14)

In 2016, the Non-Discrimination Ombudsman published a study on the discrimination encountered by persons with disabilities in everyday life (<https://www.syrjinta.fi/documents/10181/40035/Vammaisselvitys_uusin/2506b079-2a76-4aff-ae1d-5e9728f38657>).

The **Non-Discrimination and Equality Tribunal**, which started its operation in January 2015, is an autonomous and independent legal protection body appointed by the Government to provide legal remedies to anyone who has experienced discrimination or related prohibited victimisation. In 2015, the Tribunal gave three decisions in cases concerning discrimination based on disability, and in two of the cases the Tribunal concluded that discrimination had occurred. In 2016, the Tribunal dealt with nine cases concerning suspected discrimination based on disability. Discrimination was found in three cases and six cases were dismissed (two of these cases were considered beyond the mandate of the Tribunal).[[15]](#footnote-15)

The **occupational safety and health authorities**, operating under the Regional State Administrative Agencies, supervise non-discrimination in working life. For example, the Regional State Administrative Agency for Southern Finland conducted 92 inspections concerning discrimination cases in 2016. Seven of these cases concerned suspected discrimination based on disability. Discrimination based on disability was found in four cases.

Since 2008, **the national discrimination monitoring system** has collected information to study the manifestation of discrimination experienced by different population groups in different sectors of life. [[16]](#footnote-16) The three-tier system consists of (1) collecting up-to-date discrimination information and research and publishing it at a specific website, (2) an annual discrimination study, and (3) a report on discrimination in Finland published once every electoral term (4 years). In 2013, the monitoring system published a report on access to justice for of victims of discrimination. The report included statistical data on access to justice in discrimination cases as well as interviews with victims of discrimination.[[17]](#footnote-17) The most recent comprehensive Discrimination in Finland report was published in 2014. The report includes a chapter on the availability of legal remedies but it does not contain comprehensive statistics on persons with disabilities.

The Police University College publishes **systematic monitoring data on hate crime**. According to the 2015 survey, a total of 1,250 alleged cases of hate crime were reported to the police. 65 cases (5,2 %) concerned disabled persons (29 cases out of 822 in 2014).

1. Unofficial English translation of the Constitution of Finland: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf> [↑](#footnote-ref-1)
2. Unofficial English translation of the Non-Discrimination Act: <http://www.finlex.fi/fi/laki/kaannokset/2014/en20141325.pdf> [↑](#footnote-ref-2)
3. Unofficial English translation of the Legal Aid Act: <http://www.finlex.fi/fi/laki/kaannokset/2002/en20020257.pdf> [↑](#footnote-ref-3)
4. Guardianship Services Act (442/1999), unofficial English translation: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990442.pdf> [↑](#footnote-ref-4)
5. Unofficial English translation of the Code of Judicial Procedure: <http://www.finlex.fi/fi/laki/kaannokset/1734/en17340004.pdf> [↑](#footnote-ref-5)
6. Unofficial English translation of the Criminal Investigation Act: <http://www.finlex.fi/fi/laki/kaannokset/2011/en20110805.pdf> [↑](#footnote-ref-6)
7. Unofficial English translation of the Criminal Procedure Act: <http://www.finlex.fi/fi/laki/kaannokset/1997/en19970689.pdf> [↑](#footnote-ref-7)
8. Unofficial English translation of the Administrative Procedure Act: <http://www.finlex.fi/fi/laki/kaannokset/2003/en20030434.pdf> [↑](#footnote-ref-8)
9. Unofficial English translation of the Administrative Judicial Procedure Act: <http://www.finlex.fi/fi/laki/kaannokset/1996/en19960586.pdf> [↑](#footnote-ref-9)
10. Brochure on the rights of victims of crime available in Finnish at <https://oikeus.fi/material/attachments/oikeus/tietoarikoksenuhrinoikeuksista2017/Q0agDrQq7/Tietoa_rikoksen_uhrin_oikeuksista.pdf> [↑](#footnote-ref-10)
11. Guidebook for parents of child victims available in Finnish at <https://oikeus.fi/fi/index/esitteet/lapsirikoksenuhrina.html> [↑](#footnote-ref-11)
12. Information package on children as victims of crime available also in English at <http://www.riku.fi/en/children+as+victims+of+crime/> [↑](#footnote-ref-12)
13. Annual reports of the Parliamentary Ombudsman are available in English at <http://www.oikeusasiamies.fi/Resource.phx/eoa/english/publications/annual.htx> [↑](#footnote-ref-13)
14. The Non-Discrimination Ombudsman’s Annual Report 2015is available in English at <https://www.syrjinta.fi/documents/14490/0/Englanti_YHDENV_VUOSIKERTOMUS_2016.pdf/153ed14a-b602-457a-aa12-a07e9d372e01> [↑](#footnote-ref-14)
15. Information on the Non-Discrimination and Equality Tribunal can be found in <http://yvtltk.fi/en/index.html> [↑](#footnote-ref-15)
16. Information on the discrimination monitoring system can be found in <http://www.equality.fi/> [↑](#footnote-ref-16)
17. Milla Aaltonen, Päivi Heino ja Susan Villa (2013). "Riiteleminen on pienelle ihmiselle raskasta", Selvitys syrjinnän uhrien oikeusturvakeinojen saavutettavuudesta ja vaikuttavuudesta. Ministry of the Interior publication 13/2013. The report, which includes an English summary, is available in Finnish at <http://yhdenvertaisuus-fi-bin.directo.fi/@Bin/6f9141026bed612ebb0090156f858e54/1493197478/application/pdf/277136/Riiteleminen%20on%20pienelle%20ihmiselle%20raskasta.pdf> [↑](#footnote-ref-17)