



**REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC**

COUNTRY REPORT 2013

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

The Icelandic legal system is based on the civil law tradition. Principal sources of law include the Constitution of the Republic of Iceland, statutory legislation and regulations as well as legal precedents and customary law. Iceland is party to the EEA-Agreement and thus obliged to adopt the EU *aquis* related to the single market. Directives 2000/43/EC and 2000/78/EC have not been incorporated into the EEA-Agreement and have thus not been transposed into domestic law. In 2005 a Committee established under the auspices of the Ministry for Social Affairs recommended transposition through the adoption of comprehensive anti-discrimination legislation covering both Directives. It was envisaged that a proposal to this end would be presented in the Icelandic Parliament in the fall of 2012 but this was not the case, due in part to criticism from stakeholders of the draft proposal, during informal consultations. Work on an improved bill was undertaken in 2013 but no proposal was presented formally.

The legal system is structured into legal fields (criminal law, civil law, administrative law etc.) with many fields governed by specific procedural codes. Primary legislation consists of the Constitution and enacted Acts, which take precedence over other sources of law such as regulations issued by Ministers, rules, notices and other legislative decrees published in the Government Gazette. The aforementioned, on the other hand, take precedence over common law, case law, analogy, collective agreements, legal principles and the tradition of culture.

The Icelandic judiciary consists of two levels: the Supreme Court and eight District Courts. In addition, the Labour Court can be convened and, exceptionally, the Impeachment Court which addresses criminal actions brought by the Parliament against sitting and former government ministers. The judiciary is competent to review administrative decisions and the constitutionality of legislation. It is established custom that Icelandic courts are competent to review the constitutionality of all laws. District courts and the Supreme Court may decide that legislation that they find incompatible with the Constitution, e.g. its equality provisions, cannot be applied. The Supreme Court and the district courts are also competent to review decisions taken by the executive, albeit only on procedure.

The Parliamentary Ombudsman monitors the administrative functions of public and local authorities and safeguards the rights of the citizens vis-à-vis administrative authorities. The Ombudsman shall ensure that the principle of equality is observed and that administration is conducted in conformity with the law and good



administrative practice. The Ombudsman investigates administrative cases based on complaints or on his or her own initiative. The Ombudsman may also examine whether laws are in conflict with the Constitution, e.g. the equality provision, or are flawed in other respects.

Iceland is a dualist country. International treaties do not automatically become domestic law when ratified; until incorporated into national law they are simply binding under international law. Consequently, international law that has not been incorporated into Icelandic law cannot be directly applied by the courts. It is, however, a principle of the Icelandic legal system that domestic law shall be interpreted in accordance with international obligations but in cases of divergence, domestic law generally takes precedence. In recent years, the Supreme Court of Iceland has sought to interpret Icelandic law, as far as possible, in conformity with Iceland's international obligations. The Court has made several references to international obligations undertaken by Iceland, and it has interpreted both the Constitution and other laws in light of such obligations.

The European Convention on Human Rights and Fundamental Freedoms (ECHR) has been incorporated into domestic law and Iceland is party to all major human rights and International Labour Organization (ILO) conventions. In the field of discrimination, Iceland has yet to ratify Protocol 12 to the ECHR, the Convention on the Rights of Persons with Disabilities (CRPD) and the Framework Convention for the Protection of National Minorities.

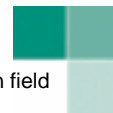
0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives or whether there are gaps in the transposition/implementation process, including issues where uncertainty remains and/or judicial interpretation is required. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

This could also be used to give an overview of the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.



Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

- Directives 2000/43/EC and 2000/78/EC remain to be transposed into domestic law although work to this end is under way. It was envisaged that a draft law on anti-discrimination would be presented in Parliament in the fall of 2012, but this was not the case.
- The principle of equality is enshrined in Article 65 of the Icelandic Constitution but comprehensive anti-discrimination legislation, ensuring protection against discrimination on grounds of race or ethnic origin, religion or belief, age, disability or sexual orientation, is lacking. A handful of general law provisions stemming from the constitutional equality provision are in force but these commonly do not contain an exhaustive enumeration of prohibited discrimination grounds and are limited to a particular law sector.
- Limited provisions on equality/anti-discrimination in relation to the grounds enumerated in the Directives can be found in a handful of legal acts. These include acts on the affairs of the elderly and persons with disabilities and acts amending legislation to eliminate discrimination against homosexual and transgender persons. The European Convention on Human Rights, which has been transposed into domestic law, stipulates that the enjoyment of the rights and freedoms set forth in it shall be secured without discrimination and the General Penal Code, the Act on Administrative Procedure and the acts on primary schools and postal and municipal services also contain equality provisions. Finally, the Act on the EEA Agreement prohibits discrimination based on citizenship in relation to the provisions of the Agreement and the transposition of the relevant EU Directives has led to the prohibition of discrimination because of temporary and part-time employment.
- No equality body has been established to promote equality and non-discrimination on the grounds of race or ethnic origin, religion or belief, age, disability or sexual orientation. The Centre for Gender Equality deals with gender discrimination only.

0.3 Case-law

*Provide a list of any important case-law in 2012 within the national legal system relating to the application and interpretation of the Directives. (The **older case-law mentioned in the previous report should be moved to Annex 3**). Please ensure a follow-up of previous cases if these are going to higher courts. This should take the following format:*

Brief summary of the key points of law and of the actual facts (no more than several sentences).

→ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law falling under both anti-discrimination Directives (Please note that you may include case-law going



beyond discrimination in the employment field for grounds other than racial and ethnic origin)

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

Currently, 8% of those living in Iceland are of immigrant origin. The Ministry for Welfare has established that following the economic crisis, more immigrants are unemployed and long term unemployment among them is more common than for Icelanders. There are indications that the number of immigrants seeking assistance from charities is growing; among other things because they are not adequately informed about the public welfare services. Also more children of immigrant origin are in need of assistance from the Child Protection Services. The Ministry has concluded that Icelandic society is increasingly diverse and that the welfare services need to adapt to address this new reality.¹

According to the preliminary results of an unpublished study conducted by the Multicultural Centre on origin and discrimination, one in five immigrants in Iceland experiences negative attitudes because of his or her origin on a regular basis. Of those participating in the study, 77% were of the view that they experienced negative attitudes because of their limited knowledge of Icelandic and 54% thought negative attitudes towards them were based on their origin or nationality. It is an issue of concern that 14% had experienced negative attitudes when interacting with staff of nursery schools and 19% when interacting with primary school staff. As part of the study, public officials were also polled; 55% of state officials participating in the study thought that immigrants are sometimes or often met with prejudice in their dealings with public bodies and 43% of municipal employees were of this view. It is also notable that the study demonstrates that on average income of immigrants is lower than that of the general population and only a small minority holds jobs where their education is fully utilised.²

Similarly, the Centre for Gender Equality conducted a study on the attitudes of heads in private organisations towards equality and discrimination in the Icelandic labour market and in their respective enterprises in 2013. The study revealed that 90.6% of men thought that their workplace was very equal and 74.7% of women were of this view. However, when asked about discrimination in the labour market in general 86% thought that people were discriminated against on one of the following grounds; gender (63.8%), national origin (55.1%), age (44.1%), disability (38.6%), race (38.8%), sexual orientation (22.4%), religion/belief (20.5%).³

¹ Ministry for Welfare: *Aðgerðir til að vinna gegn fátækt; tillögur byggðar á skýrslunni Farsæld Baráttan gegn fátækt á Íslandi*, March 2013.

² Rúnar Helgi Haraldsson, *Uppruni og margþætt mismunur*, unpublished presentation, the Multicultural Centre, 2013.

³ Marta Einarsdóttir, „Ekki benda á mig...“; Niðurstöður rannsóknar Jafnréttisstofu um jafnrétti og mismunur á vinnumarkaði, unpublished presentation, University of Akureyri Research Centre, 2013.

A comprehensive study from 2009 revealed similar trends, 56.9% of Icelanders thought discrimination and/or harassment based on race or ethnic origin was common, 41.3% discrimination based on sexual orientation, 35.9% discrimination based on disability, 25.4% age discrimination (older than 60), 25.3% gender discrimination and 23.4% discrimination based on religion or belief.⁴ A Eurobarometer study, published in 2011, further demonstrates that Icelanders have witnessed or experienced more discrimination because of older age than the EU average in the workplace, in relation to access to education and training and in their leisure time.⁵

The reality described above is not reflected in the current legislation and cases concerning discrimination based on race, religion or belief, age and sexual orientation are rare. No cases have been adjudicated by the courts concerning discrimination based on sexual orientation nor have any cases been brought alleging discrimination against Roma people and Travellers. It should be noted that no Roma or Travellers have settled in Iceland.

No important cases relating to the scope of the Directives have been concluded in 2013. As very limited case law exists regarding equality provisions in Icelandic law and the grounds listed in the Directives, a case adjudicated concerning the right to a disability pension and residence requirements is summarised below although it is not directly related to the application and interpretation of the Directives.

Name of the court Supreme Court of Iceland

Date of decision 13 June 2013

Name of the parties Sara Rafaelsdóttir vs The Directorate of Social Security and the Icelandic State

Reference number 61/2013

Address of the webpage <http://haestirettur.is/domar?nr=8922>

Brief summary: S moved to Iceland in 1998 when she was 38 year old. She was granted Icelandic citizenship in 2003. Following serious illness in 2000 she was diagnosed as having 75% disability and thus it was established that she was entitled to a disability pension until the age of 67 from the year 2007. On the basis of Article 18 paragraph 4, *cf.* Article 17 paragraph 1 of the Act on Social Security No 100/2007 her pension was reduced to 71.45% of a full pension based on her time of residence in Iceland. S argued that this reduction constituted unlawful discrimination in breach of the Constitution and the ECHR. S argued firstly that as an Icelandic citizen, bearing the same duties as other Icelandic citizens, she should have the same rights to benefits. Secondly, she argued that the reduction in benefits on the basis of time of

⁴ *Könnun um viðhorf til mismununar*, Capacent Gallup, félags- og tryggingamálaráðuneytið og Mannréttindaskrifstofa Íslands, 2009, p. 6, available at: www.humanrights.is/media/frettir//Konnun_um_vidhorf_til_mismununar_Gallup_Capacent_PROGRES_S_4018978_mismunun_050509_2.pdf.

⁵ *Virkni aldraðra*, Eurobarometer study carried out in 2011, accessible on the website of the Ministry of Interior: www.velferdarraduneyti.is/media/frettatengt2012/Eurobarometer-active-ageing-2012.pdf, p.2.

residence constituted indirect discrimination towards Icelandic citizens of foreign origin, as those previously having another citizenship would be more affected than those born with Icelandic nationality. This indirect discrimination could not be considered reasonably justified in the light of the rights in question, i.e. the right to social assistance and security and an adequate standard of living. S argued that the reduction in benefits constituted discrimination on the basis of origin and membership of a national minority, cf. Article 14 ECHR, as those of immigrant origin would be more severely affected than other nationals; in particular those coming from countries outside Europe, as national and EU legislation equates residence in Europe with that of residing in Iceland in some cases. The Court ruled in favour of the State finding that the provisions basing social security entitlements on the time of residence were clear and that there was no discrimination in contravention of Article 65 of the Constitution as the conditions concerning residence were general and applied irrespective of citizenship, sex, national origin or other status. The Court also dismissed claims that the reduction of the disability pension violated the right to social assistance protected in Article 76 of the Constitution. Claims that the plaintiff's and the plaintiff's daughter's rights to property under Article 72 of the Constitution had been violated were also dismissed.



1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

In 1995 the Constitution was amended to include a general equality provision. Until then, equality had been one of the uncodified principles of the Icelandic legal structure.⁶ Article 65, which is modelled on Article 26 ICCPR and Article 14 ECHR,⁷ stipulates that: ‘Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. Men and women shall have equal rights in every respect.’⁸

In the explanatory notes on the draft bill to amend the Constitution, it is stated that the scope of Article 65 shall be wider than that of Article 14 ECHR and that it shall apply to all legislation and ensure equal protection for everyone.⁹ The Supreme Court has confirmed this, interpreting the article as a broad equality provision guaranteeing not only formal equality but also substantive equality, placing the obligation on the State to respect, protect and promote equality. An example is the Supreme Court Decision of 19 December 2000, where the Court interpreted the provisions of the legislation on the affairs of persons with disabilities in the light of Article 65 and Article 14 ECHR with respect to the right to education, *cf.* Article 2 Annex 1 ECHR, to entail the obligation of the state to ensure the same rights for persons with disabilities as for other citizens. Thus interpreted, Article 65 enshrines not only the obligation to apply the law in the same manner in similar circumstances but also the positive duty of the state to promote the rights of persons with disabilities. A similar conclusion is reached in case No. 125/2000, where the Court ruled that changes made to the Social Security Act No. 117/1993, adversely affecting social security payments to persons with disabilities married to able-bodied persons with income, conflicted with Article 76(1) (the law shall guarantee for everyone the necessary assistance in case of sickness, invalidity, infirmity by reason of old age, unemployment and similar circumstances) and Article 65 of the Constitution.

The constitutional equality provision guarantees equality before the law and non-discrimination with respect to human rights regardless of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. The explanatory notes to the draft bill set out that the grounds enumerated in the article are not exhaustive; ‘other status’ is meant to encompass other grounds not listed in the provision, such as,

⁶ Thorarensen, B., *Stjórnskipunarréttur; Mannréttindi*, Bókaútgáfan CODEX, Reykjavík, 2008, p. 563.

⁷ Alþt. 1994-1995, A-deild, doc. 389, p. 2086.

⁸ The Constitution of the Republic of Iceland, Act No. 33/1944, as amended.

⁹ Alþt. 1994-1995, A-deild, doc. 389, p. 2086.



for example, 'health or physical state'¹⁰ and sexual orientation could clearly fall thereunder, although no cases regarding discrimination based on sexual orientation have been adjudicated. Similarly, age would clearly fall under the provision, as argued by the plaintiff in Supreme Court Case No. 484/2007.¹¹ The explanatory note further elaborates that, although the aim of Article 65 is above all to ensure equality irrespective of the grounds enumerated and other status, it is not its aim to preclude that legal conditions for rights or obligations can take these grounds into account, provided that objective criteria form the basis for these conditions. Here, age-limits are a relevant example.

Article 63 of the Constitution protects the right to form religious associations and to practice religion in conformity with individual convictions. This right can be limited for the protection of morals or public order. Religious freedom is protected in Article 64(1) which states that 'no one may lose any civil or national rights on account of his or her religion, nor may anyone refuse to perform any generally applicable civil duty on religious grounds.' The right to remain outside religious associations is also protected as well as the right to be exempt from paying dues to any religious association of which a person is not a member.

b) Are constitutional anti-discrimination provisions directly applicable?

The commentary to the draft bill introducing the constitutional anti-discrimination provision explains that the aim is on the one hand to set out equality as an important policy objective and general constitutional principle and on the other hand to lay down a directly applicable legal provision upon which an individual can base rights in a particular case. Jurisprudence has confirmed this interpretation.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

The primary objective of the human rights provisions of the Constitution is to set the limits of the intervention of public authorities on individual freedoms. They thus constitute rules on the activities of public authorities, setting out their obligations *vis-à-vis* individuals, and are consequently binding on the State. Although most cases where the constitutional provisions come into play are brought against State actors, in recent years, the Supreme Court has adjudicated cases brought against private actors alleging unconstitutionality of civil law provisions or claiming that these should be interpreted in light of the human rights provisions of the Constitution. Examples include cases won by individuals against insurance companies alleging that provisions of tort law are in breach of the equality principle enshrined in Article 65 of

¹⁰ Ibid.

¹¹ X vs. Y, Case No. 484/2007, Supreme Court Judgement of 25 September 2008.



the Constitution.¹² Although jurisprudence demonstrates that Constitutional provisions can come into play in civil proceedings, Icelandic courts have not ruled definitively whether and to what extent private individuals and entities are bound by constitutional provisions in their relations in the field of civil law.¹³

¹² See the Elfa Þöll Grétarsdóttir vs. Vátryggingafélag Íslands, Case No. 317/1997, Supreme Court Judgment of 4 June 1998 and Brynjólfur Hauksson vs. Tryggingamiðstöðin hf. Case No. 10/2006, Supreme Court Judgment of 15 June 2006.

¹³ Thorarensen, B., *Stjórnskipunarréttur; Mannréttindi*, Bókaútgáfan CODEX, Reykjavík, 2008, p. 48.



2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

The grounds covered in the Icelandic Constitution are sex, religion, opinion/belief, national origin, race, colour, financial status and parentage. The list is non-exhaustive as the provision also sets out that equality before the law and non-discrimination shall be ensured irrespective of the aforementioned grounds but also irrespective of 'other status', which can be construed as to include ethnic origin, age, disability and sexual orientation.

The only comprehensive anti-discrimination legislation in force is in the field of gender equality, the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 (Gender Equality Act), which is "largely in line with the European Union aquis".¹⁴ Anti-discrimination in other fields is elementary and fragmented as only a handful of general law provisions stemming from the constitutional equality provision are in force. These commonly do not contain an exhaustive enumeration of prohibited discrimination grounds and are limited to a particular law sector. The European Commission does not consider Icelandic legislation in line with Directives 2000/43/EC and 2000/78/EC as 'no detailed protection against discrimination is provided in the labour market nor is there any comprehensive legislation in force prohibiting discrimination on grounds of racial or ethnic origin outside the labour market'.¹⁵ The Council of Europe Commissioner for Human Rights has also urged Iceland to adopt comprehensive equal treatment legislation and set up an effective and independent national equality body to promote its implementation. The Commissioner is of the opinion that the current non-discrimination provisions in Icelandic law do not protect all vulnerable groups of people to the same extent. In his report, following a fact-finding mission in 2012, he concludes that people with disabilities, older persons, members of ethnic and religious minorities and

¹⁴ Commission Staff Working Document; Analytical Report accompanying the Communication from the Commission to the European Parliament and the Council: Commission Opinion on Iceland's Application for Membership of the European Union COM(2010)62, p. 53. It should be noted that the EFTA Surveillance Authority issued a reasoned opinion in June 2012 where it opined, inter alia, that the implementing rules in Iceland do not reflect correctly the wording of the definitions of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, in particular of the terms direct discrimination and sexual harassment. PR(12)33, www.eftasurv.int/press-publications/press-releases/internal-market/nr/1692. To rectify this problem, an amendment to the provision containing the definition of direct gender discrimination was presented in Parliament in November 2013 but it has yet to be adopted.

¹⁵ European Commission: DG Enlargement Screening report Iceland; Chapter 19 – Social policy and employment of 17 October 2011.

transgender persons would benefit from stronger guarantees against discrimination, stressing that “equal treatment legislation should cover all the relevant grounds of discrimination in all walks of life.”¹⁶ Similarly, the United Nations Human Rights Council and the Committee monitoring the implementation of the European Social Charter have concluded that legislation prohibiting discrimination in employment on grounds other than sex is inadequate.¹⁷

The main equality provisions, in addition to the constitutional provision, are the following:

Article 14 of the act incorporating the ECHR into domestic law, No. 62/1994, contains a general prohibition of discrimination based on sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This prohibition is limited to rights enshrined in the ECHR. Iceland has signed but not ratified Protocol 12 to the ECHR which contains a general prohibition of discrimination.

Article 11 of the Act on Administrative Procedure No. 37/1993 stipulates that administrative authorities shall ensure legal harmony and equality in decisions, and that discrimination between individual parties based on views relating to, inter alia, race, colour, national origin, religion, political opinion, social status or family origin is prohibited.

Article 233a of the General Penal Code No. 19/1940 prohibits ‘hate speech’, providing that any person who, by mockery, slander, insult, threat or other means, publicly attacks a person or group of persons on the grounds of their nationality, colour, race, religion or sexual orientation shall be liable to a fine or imprisonment for a term not exceeding two years. **Article 180 of the General Penal Code** provides that denying a person service, or access to any public area or place intended for general public use, on account of that person’s nationality, colour, race, religion or sexual orientation is punishable by fines or imprisonment for up to six months. Finally, **Article 125 of the General Penal Code** stipulates that public insults against the beliefs or religion of lawfully established religious communities shall be subject to fines or imprisonment of up to 3 months. The articles listed above are provisions that, inter alia, govern the relations between private individuals in relation to nationality, colour, race, religion or sexual orientation. It should be noted that age and disability are not listed and the protection afforded by the provisions is limited compared to that of Directives 2000/43/EC and 2000/78/EC. As the articles form part of criminal law, strict rules apply in relation to burden of proof, reasonable doubt, intent, etc.,

¹⁶ Council of Europe: Press release by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Iceland (7-9 January 2012). Available at: <http://www.coe.int/web/commissioner/country-report/iceland>.

¹⁷ See e.g. Council of Europe, Department of the European Social Charter and the European Code of Social Security, Directorate General of Human rights and the Rule of Law: *Fact Sheet Iceland*, April 2013.



rendering them largely ineffective, as demonstrated by the fact that no cases have been adjudicated on the basis of Articles 180 and 125. The Supreme Court has decided only one case where Article 233 a. comes into play.

Article 24 of the Act on Primary Schools No. 91/2008 provides that in issuing a general curriculum and organizing studies and tuition, and in preparing and selecting study material, care shall be taken that all students receive as much as possible equal opportunities for study. The objectives of study, tuition and practices in primary schools shall be such as to prevent any discrimination based on national origin, sex, sexual orientation, residence, social class, religion, health, disability or other status. It should be noted that the provision does not set out a clear prohibition of discrimination; it simply sets out the objective to prevent discrimination.

Article 1 of the Act on the Rights of Patients No. 74/1997 provides that any discrimination between patients on grounds of sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status is prohibited. The commentary to the draft law states that 'other status' includes disability and age.

Article 6 of the Postal Service Act No. 19/2002 provides that mail service shall be provided without discrimination of any kind, in particular of a political, religious or ideological nature. 'Any kind' can here be construed to encompass all the discrimination grounds enumerated in Directives 2000/43/EC and 2000/78/EC.

Article 27 of the Act on the Media No. 38/2011 prohibits incitement of criminal behaviour and incitement of hatred in the media on the basis of race, sex, sexual orientation, religion, nationality, opinion or cultural, economic social or other status in society. 'Other status' would include disability and age, in accordance with the interpretation of Article 65 of the Constitution.

Article 2 of the Act on Mandatory Pension Insurance and on the Activities of Pension Funds No. 129/1997 stipulates that it is prohibited to deny a person membership to an occupational pension fund on the grounds of health, age, civil status, family size or gender. Neither disability nor sexual orientation is enumerated but disability could in some instances fall under 'health'.

Article 1 of the Act on Workers' Terms of Employment and Pension No. 55/1980 sets out that wages and other conditions negotiated by social partners shall be the minimum conditions for all workers, irrespective of sex, nationality and length of contract, in the relevant occupation within the area covered by the collective agreements. Contracts setting out poorer working terms than those specified in the collective agreements shall be void. Here no mention is made of race or ethnic origin, disability, religion or opinion, age or disability.

Article 1 of the Act on the Affairs of Persons with Disabilities No. 59/1992 states that the objective of the Act is to guarantee equality for people with disabilities and living conditions comparable with those of other citizens, and to provide them with

conditions that enable them to lead a normal life. Similarly, **Article 42 of the Act on Municipal Social Services No. 40/1991** sets out that the authorities shall work towards ensuring equality for persons with intellectual, psycho-social and physical disabilities living conditions comparable with those of other citizens. Persons with disabilities shall be ensured conditions that enable them to lead as normal a life as possible.

Article 1 of the Act on the Affairs of the Elderly No. 125/1999 stipulates that in the implementation of the law, the equal rights of elderly persons shall be guaranteed and their right to self-agency respected.

The **Act Amending Laws relating to the Judicial Status of Homosexual Persons No. 65/2006** amended several laws to eliminate existing discrimination.

The **Act on the Judicial Status of Transgender Persons No. 57/2012** which aims to guarantee the same legal status for transgender people as for other citizens, respecting human rights and human dignity.

The Constitution does not prohibit differentiation based on nationality in relation to rights to enter and stay in Iceland; Article 66(2) simply stipulates that the rights of non-nationals to enter and reside in Iceland, and the reasons for which they may be expelled, shall be laid down by law. The **Treaty on the European Economic Area (EEA)** was incorporated into Icelandic law by means of Act No. 2/1993. Article 4 of the Agreement sets out that within the scope of application of the Agreement, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality is prohibited (between EEA-citizens). Special agreements also provide for preferential treatment for citizens of the Nordic States e. g. with regard to the right to vote in municipal elections.

Finally, the transposition of the EU aquis in the field of labour law has entailed detailed provisions in the field of gender equality but also the prohibition of discrimination because of temporary and part-time employment cf. the Act on Temporary Employment No. 139/2003 and the Act on Part-time Workers No. 10/2004.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

- a) *How does national law on discrimination define the following terms: (the expert can provide first a general explanation under a) and then has to provide an answer for each ground)*

No comprehensive anti-discrimination legislation is in force but definitions in special laws governing the affairs of the groups protected in the Directives shed light on the meaning of the terms age, disability and religion in Icelandic law. No explicit definitions of sexual orientation, race or ethnic origin may be found in national law.

i) *racial or ethnic origin,*

No comprehensive definition is found in national law of race or ethnic origin. The terms race, national origin, colour and nationality are generally used without further definition. No reference is made to ethnic origin or ethnicity, although these terms may be interpreted by the legislator to fall under the term 'national origin' in Icelandic. As the Supreme Court has only decided one case where race comes into play, it is not clear how the terms race, national origin and colour should be interpreted.

ii) *religion or belief,*

The Evangelical Lutheran Church (National Church of Iceland) is the state church in Iceland and is, as such, supported and protected by the State. The Constitution establishes the right to form religious associations and to practice religion and that one may not forfeit any civil or national rights on account of religion, nor may anyone refuse to perform any generally applicable civil duty on religious grounds. The right to remain outside religious associations and the right not to pay personal dues to religious associations is also protected. Persons who are not members of religious associations shall pay their 'parish fees' directly to the State. Registered religious organizations receive State funding on the basis of size but the National Church of Iceland receives a larger share because of its obligation to provide services to non-members (e.g. burials, marriages). The State levies a church tax from all citizens, from which this funding is paid.

There is no clear definition of belief or religion in the context of anti-discrimination legislation or the general legislation as such, but Article 3 of the Act on Registered Religious Associations No. 108/1999 provides some guidance. See b) below.

iii) *disability. Is there a definition of disability at the national level and how does it compare with the concept adopted by the Court of Justice of the European Union in Joined Cases C-335/11 and C-337/11 Skouboe Werge and Ring, Paragraph 38, according to which the concept of 'disability' must be understood as: "a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers" (based on Article 1 UN Convention on the Rights of Persons with Disabilities)?*

There is no specific anti-discrimination legislation in force and no clear definition of disability has been codified. Article 2 of the Act on the Affairs of Persons with Disabilities No. 59/1992 sets out that an individual is entitled to services and support under the Act if he or she has a mental or physical disability which calls for special services or assistance; including intellectual disability, psycho-social disability, reduced mobility, sight and hearing impairment. Disability may also be the result of prolonged illness and accidents. In addition, the Article 1 of the Act on the Affairs of

Persons with Disabilities No. 59/1992 stipulates that in the implementation of the Act reference shall be made to the United Nations Convention on the Rights of Persons with Disabilities. This would include the definition in Article 1 of the Convention. Work is currently underway to ratify the United Nations Convention on the Rights of Persons with Disabilities; this entails bringing Icelandic legislation in line with the provisions of the Convention.

iv) *age,*

According to Article 2(1) of the Act on the Affairs of the Elderly No. 125/1999, an older person is one who has reached 67 years of age. Article 1 stipulates that in the implementation of the law, the equal rights of elderly persons *vis-à-vis* other citizens shall be guaranteed and that their right to self-agency shall be respected. There is no other explicit definition of age (under 67) to be found in national law in the context of equality and non-discrimination

v) *sexual orientation?*

Sexual orientation is not defined in national law.

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

There is no general law on discrimination in force. Recital 17 of Directive 2000/78/EC is not reflected in the national legislation.

i) *racial or ethnic origin*

No comprehensive definition is found in national law of race or ethnic origin. Iceland is party to the ICERD which contains a definition of racial discrimination. The term has not been interpreted and as Iceland is a dualist country. International treaties do not automatically become domestic law when ratified; until incorporated into national law they are simply binding under international law. Consequently, international law that has not been incorporated into Icelandic law cannot be directly applied by the courts. It is, however, a principle of the Icelandic legal system that domestic law shall be interpreted in accordance with international obligations but in cases of divergence, domestic law generally takes precedence.

ii) *religion or belief (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)?*

There is no clear definition of belief or religion in the context of anti-discrimination legislation or the general legislation as such, but Article 3 of the Act on Registered



Religious Associations No. 108/1999 provides some guidance. The Act sets the general conditions for registration of religious associations which 'practice a religion or belief that can be associated with the religions of humanity that have historical or cultural roots'. Furthermore, to be registered the association must be well established and active and its members must practice their religion in line with the association's ethos and be legally obliged to pay their parish fees in Iceland. The Icelandic Ethical Humanist Society has repeatedly applied for registration under the Act on Registered Religious Associations No. 108/1999 in order, *inter alia*, to be able to receive a part of its members' parish fees but has been rejected as it is not considered a 'religious association' within the meaning of the law. The Society claims that this constitutes unlawful discrimination based on religion or belief as only registered organizations receive support from the State. Currently, a draft bill, amending the Act on Registered Religious Associations to include non-confessional and philosophical associations, is being discussed in the Parliament. The draft bill permits the registration of non-confessional associations founded on non-religious ethics and beliefs with ties to known philosophical and ethical ideologies. To be registered the association must have human development and ethics at its core and have established historical or cultural roots and it must address ethics and epistemology in a clearly defined manner. Equivalent terms have not been used or interpreted in other national legal acts.

iii) *Disability*

Although no clear definition of disability has been codified, Article 2 of the Act on the Affairs of Persons with Disabilities No. 59/1992 sets out that an individual is entitled to services and support under the Act if he or she has a mental or physical disability which calls for special services or assistance; including intellectual disability, psychosocial disability, reduced mobility, sight and hearing impairment. Disability may also be the result of prolonged illness and accidents. In addition, the Article 1 of the Act on the Affairs of Persons with Disabilities No. 59/1992 stipulates that in the implementation of the Act reference shall be made to the United Nations Convention on the Rights of Persons with Disabilities. This would include the definition in Article 1 of the Convention. Work is currently underway to ratify the United Nations Convention on the Rights of Persons with Disabilities; this entails bringing Icelandic legislation in line with the provisions of the Convention.

According to the Social Security Act No. 100/2007, entitlement to an invalidity pension from the social security pension insurance scheme is based on length of residence in Iceland, the age of the applicant, and medical disability. Not everyone falling under the Social Security Act will fall under the Act on the Affairs of Persons with Disabilities. The definition of disability in this context, i.e. for entitlement to an invalidity pension, is simply a medical assessment cf. Article 18, which states that disability must be at least 75% long-term due to the consequences of medically recognised diseases or invalidity.

iv) *Age*

According to Article 2(1) of the Act on the Affairs of the Elderly No. 125/1999, an older person is one who has reached 67 years of age. There is no other explicit definition of age (under 67) to be found in national law in the context of equality and non-discrimination.

v) *sexual orientation*

Sexual orientation is not defined or interpreted in national law.

c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

There is no special legislation in force setting out age as a protected ground (apart from the Act on the Affairs of the Elderly No. 125/1999 to a limited extent); consequently, there are no restrictions in force related to the scope of 'age' as a protected ground.

2.1.2 Multiple discrimination

a) *Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*

Would, in your view, national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

There is currently no legislation in force that explicitly addresses multiple discrimination and no cases have been adjudicated dealing with such situations. National legislation would be imperative to facilitate the adjudication of multiple discrimination cases.

b) *How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

No multiple discrimination cases have been adjudicated dealing with gender in conjunction with one of the Art.19 TFEU grounds.

2.1.3 Assumed and associated discrimination

a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is*

discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).

National law does not explicitly prohibit discrimination based on perception or assumption of what a person is.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

National law does not explicitly prohibit discrimination based on association with persons with particular characteristics.

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

- a) *How is direct discrimination defined in national law? Please indicate whether the definition complies with those given in the directives.*

The only definition of direct discrimination is found in Article 2(1) of the Gender Equality Act: 'Direct gender discrimination is defined as treatment where an individual receives less favourable treatment than another of the opposite sex in a comparable situation.' It should be noted that this definition may place an undue burden on the complainant to demonstrate comparability to the actual situation of someone else, contrary to developments in EU legislation. To clarify this point, Directives 2002/73/EC and 2006/54/EC allow for 'theoretical comparison' setting out that direct discrimination occurs when one person is treated less favourably on grounds of sex than another person 'is, has been or would be' treated in a comparable situation. An amendment to the Gender Equality Act, which rectifies this was presented in Parliament in November 2013 but has yet to be adopted.

- b) *Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn).*

Depending on their nature, discriminatory statements may constitute a criminal offence under Article 233a of the General Penal Code which states that any person who, by mockery, slander, insult, threat or other means, publicly attacks a person or group of persons on the grounds of their nationality, colour, race, religion or sexual orientation shall be liable to a fine or imprisonment for a term not exceeding two years. It should be noted that disability and age are not protected grounds here. Furthermore, no legal provisions explicitly set out that discriminatory job vacancy

announcements may constitute direct discrimination.¹⁸ However, in the public sector, discriminatory job adverts would contravene the principle of equality contained in the Act on Administrative Procedure. In the private sector, discriminatory vacancy announcements could possibly fall under Article 180 of the General Penal Code, but this may be farfetched. No cases concerning discriminatory vacancy advertisements on the grounds enumerated in the Directives have been addressed by the Courts.

- c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

No explicit provisions permitting justification of direct discrimination generally or in relation to particular grounds enumerated in the Directives are found in national legislation. The constitutional equality provision guarantees equality before the law and non-discrimination with respect to human rights regardless of sex, religion, opinion, national origin, race, colour, financial status, parentage or other status. The explanatory notes to the draft bill elaborate that, although the aim of Article 65 is above all to ensure equality irrespective of the grounds enumerated and other status, it is not its aim to preclude that legal conditions for rights or obligations can take these grounds into account, provided that objective criteria form the basis for these conditions.¹⁹ Here age-limits are a relevant example; see e.g. Supreme Court Case No. 484/2007 summarized in Annex 3. Furthermore, the Act on the Affairs of Persons with Disabilities provides for positive measures to promote the employment participation of persons with disabilities, *inter alia*, in Article 32 which stipulates that people with disabilities shall have priority for jobs with the State and municipalities when they are equally or more qualified than other applicants. No similar provisions are in place in relation to age, religion or belief, race or sexual orientation.

- d) *In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?*

National law does not contain provisions specific to age discrimination; thus there is no definition based on 'less favourable' treatment in relation to age discrimination.

2.2.1 Situation Testing

- a) *Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.*

¹⁸ No legal provisions are in force in relation to the grounds listed in the Directives. There are, however, provisions to this end in the Gender Equality Act.

¹⁹ *Ibid.*



National law does not clearly permit or prohibit the use of situation testing; it is silent on the matter.

- b) *Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc.).*

Situation testing has as of yet not been used in practice. The Icelandic Human Rights Centre has carried out one testing in relation to race/ethnic origin but the results were not used in litigation. To date, situation testing has not been the subject to debate in the country.

- c) *Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

Situation testing results have not been used as evidence in Court. Evolution in other European countries and strategic litigation has not markedly influenced Icelandic law in this respect.

- d) *Outline important case law within the national legal system on this issue.*

As of yet no cases related to this issue have been adjudicated.

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

- a) *How is indirect discrimination defined in national law on discrimination? Please indicate whether the definition complies with those given in the directives.*

The sole definition of indirect discrimination in national law is found in Article 2(2) of the Gender Equality Act: 'Indirect discrimination is when an impartial requirement, standard of reference or measure disadvantages one sex more than the other, unless this is appropriate, necessary or justifiable in terms of impartial considerations independent of gender.' There is no legislation banning indirect discrimination based on the grounds listed in the Directives.

- b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

No cases concerning indirect discrimination have been adjudicated in Iceland and the explanatory notes to the Gender Equality Act are silent on what test must be satisfied to justify indirect discrimination. Similarly, no case law exists where appropriate and

necessary measures, pursuing a legitimate aim, were deemed to justify indirect discrimination based on age, disability, religion or belief, sexual orientation or age.

c) *Is this compatible with the Directives?*

There is no definition of indirect discrimination in national legislation related to the grounds protected by the Directives; consequently, there is no jurisprudence on this issue.

d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

There is no definition of age discrimination in national legislation nor is there specification on how comparison is to be made.

e) *Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?*

Claims concerning differences in treatment based on language have not been adjudicated.

2.3.1 Statistical Evidence

a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?*

National law does not explicitly permit or prohibit the use of statistical evidence to establish indirect discrimination.

b) *Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

Statistical evidence has not been used in any discrimination cases concerning the grounds enumerated in the Directives.

c) *Please illustrate the most important case law in this area.*

There is no important case law in this area.

d) *Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*



Data collection is permitted, subject to strict conditions set out in the Act on the Protection of Privacy as regards the Processing of Personal Data No. 77/2000 (Data Protection Act). The Act covers all personal data, that is, information that can be traced to an individual. Processing is defined as any operation or set of operations performed on personal data. All processing must meet the criteria set out in Article 8 (consent of the data subject and other conditions). Article 9 sets out the additional criteria to be met for the processing of sensitive data which is defined as all data concerning, *inter alia*, race or ethnic origin, political opinions, religious or philosophical belief, trade union membership, health or sexual life. Article 4 of the Act on the Affairs of Persons with Disabilities sets out that the use of personal data, handled in connection with the implementation of the Act, shall be in accordance with the Data Protection Act, and that it shall be ensured that access to the data is restricted and secure.

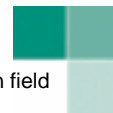
In principle, statistical data collection for the purposes of litigation and positive action is allowed, subject to the conditions set out in the Data Protection Act. As of yet, statistical data has not been formally used to design positive action measures to promote equality and combat discrimination on the grounds enumerated in the Directives.

2.4 Harassment (Article 2(3))

- a) *How is harassment defined in national law? Does this definition comply with those of the directives? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

The only definition of harassment in relation to anti-discrimination is found in Article 2(3) of the Gender Equality Act which sets out that 'gender-based harassment is any unwanted unreasonable and/or insulting behaviour, related to the gender of the person, which has the effect of violating the dignity of the person, and is continued despite clear expression that it is unwanted. The harassment can be physical, verbal or symbolic. One incident can constitute harassment, if sufficiently serious.' The Act also prohibits sexual harassment.

No national legislation is in force prohibiting harassment on the grounds listed in the Directives but mention should be made of Article 233a of the General Penal Code No. 19/1940 which stipulates that any person who, by mockery, slander, insult, threat or other means, publicly attacks a person or group of persons on the grounds of their nationality, colour, race, religion or sexual orientation shall be liable to a fine or imprisonment for a term not exceeding two years. The Supreme Court has decided one case concerning a violation of Article 233a, where it upheld the conviction of the accused for publicly assaulting an anonymous group of persons by derision,



vilification and denigration on the basis of their nationality, colour and race in a newspaper interview.²⁰

b) Is harassment prohibited as a form of discrimination?

The Gender Equality Act prohibits gender-based harassment but there are no other provisions prohibiting harassment as a form of discrimination.

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

There are no additional sources to be found concerning the concept of harassment as discrimination on the basis of the grounds covered by Directives 2000/43/EC and 2000/78/EC.

d) What is the scope of liability for discrimination)? Specifically, can employers or service providers (in the case of racial or ethnic origin, but please also look at the other grounds of discrimination) e.g. landlords, schools, hospitals, be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

There is no general anti-discrimination legislation in force banning in particular harassment or instruction to discriminate. It is an established rule that an employer is liable for damage caused by tortious acts or omissions of his or her employees in the course of their work but no cases have been brought against employers or service providers for discriminatory acts of their workers. Employers cannot generally be held liable for the acts of third parties and, similarly, trade unions and professional associations cannot be held liable for the actions of their members.

2.5 Instructions to discriminate (Article 2(4))

a) Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

National law does not contain explicit provisions prohibiting instructions to discriminate in relation to the protected grounds.

b) Does national law go beyond the Directives' requirement? (e.g. including incitement)

²⁰ The Prosecutor vs. Hlynur Freyr Vigfússon, Case No. 461/2001, Judgment of 24 April 2002.



National law does not go beyond the requirements set out in the Directives.

- c) *What is the scope of liability for discrimination? Specifically, can employers or service providers (in the case of racial or ethnic origin)(e.g. landlords, schools, hospitals) be held liable for the actions of employees giving instruction to discriminate? Can the individual who discriminated because s/he received such an instruction be held liable?*

There is no general anti-discrimination legislation in force banning in particular harassment or instruction to discriminate. It is an established rule that an employer is liable for damage caused by tortious acts or omissions of his or her employees in the course of their work but no cases have been brought against employers or service providers for discriminatory acts of their workers. Employers cannot generally be held liable for the acts of third parties and, similarly, trade unions and professional associations cannot be held liable for the actions of their members.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

- a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers? Is the availability of financial assistance from the State to be taken into account in assessing whether there is a disproportionate burden?*

National law does not explicitly set out the duty of employers to take reasonable measures to accommodate persons with disabilities. There is no definition of 'reasonable' or 'disproportionate burden' to be found in national legislation. Article 29 of the Act on the Affairs of Persons with Disabilities simply states that persons with disabilities shall be given assistance in holding jobs on the labour market when necessary. This shall be done through special personal support at the workplace, as well as through information and instruction for other workers. People with disabilities shall have access to vocational training in private enterprises and institutions, where possible. In that event, a special agreement shall be concluded setting out, inter alia, the period of training and costs. The costs incurred because of special assistance at the workplace shall be paid by the State Treasury.

- b) *Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

National law does not explicitly set out the duty of employers to take reasonable measures to accommodate persons with disabilities. There is no special definition of disability in relation to reasonable accommodation or protection from non-discrimination in general.

- c) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of “disproportionate burden” in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

Article 7 of Act No. 59/1992 on the Affairs of Persons with Disabilities states that people with disabilities are entitled to all general services provided by the State and the municipalities. It shall be endeavoured to provide services in accordance with the general legislation on education, health and social services but where the needs exceed the scope of general legislation, services shall be provided on the basis of the AAPD. Although there is no explicit legal provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment as such, the Supreme Court has interpreted the general equality provisions of the Constitution, the ECHR and the AAPD to include a reasonable accommodation duty. In the field of higher education, the University of Iceland is obliged to accept students with disabilities and to make the necessary arrangements and to take general measures necessary to accommodate them and to ensure they can avail themselves of the same services as other students, at the department of their choosing.²¹ This was established in the case of Ragna Kristín Guðmundsdóttir vs. the University of Iceland, where the Court found that although the needs of R had been accommodated to some extent, the lack of general measures, a comprehensive plan or general guidelines on how to assist R had led to problems and that she had been forced to personally insist on reasonable accommodation. This entailed a breach of her personal rights and the right to education and R was awarded non-pecuniary compensation.

Another example, relating to the right to vote, is the ruling of the Supreme Court that the National Broadcasting Company (RÚV) had a duty to translate political candidates' speeches simultaneously into sign language on the night before elections. It was obliged to ensure equality when carrying out its legally prescribed role in relation to elections, *cf.* Article 15 of the Broadcasting Act No. 68/1985, not only in respect of candidates and political parties but also in respect of their viewers. Therefore, RÚV should arrange the broadcast of candidates' speeches in a manner accessible to deaf people *cf.* also the AAPD. In this case, the Court ruled that RÚV had not sufficiently justified the discrimination entailed in its decision not to translate

²¹ Supreme Court Judgement of 4 February 1999, Ragna Kristín Guðmundsdóttir vs. the University of Iceland, No.177/1998.

the candidates' speeches as it was clear that this was technically feasible and the broadcast was to take place the day before elections.²²

- d) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination? What is the potential sanction? (i.e.: fine)*

Although national legislation does not contain an explicit provision setting out the duty to provide reasonable accommodation for people with disabilities in areas outside employment, the Supreme Court has interpreted the provisions of the legislation on the affairs of persons with disabilities in the light of Article 65 and Article 14 ECHR with respect to the right to education, *cf.* Article 2 Annex 1 ECHR, to entail a positive duty of the state to promote the rights of people with disabilities.²³ Also, in the case of the National Federation of People with Disabilities against the State Broadcasting Agency, the court referred to the decision not to translate political candidates' important speeches into sign language when technically possible as discriminatory.²⁴

Article 42 of the Act on Municipal Social Services No. 40/1991 sets out a positive duty of the authorities to work towards ensuring equality for people with intellectual, psycho-social and physical disabilities and living conditions comparable with those of other citizens. Persons with disabilities shall be ensured conditions that enable them to lead as normal a life as possible. There is no definition of direct or indirect discrimination enacted in relation to the protected grounds. No specific sanction for the failure to meet the duty to provide reasonable accommodation is set out in national law.

- e) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)*
- i) *race or ethnic origin*

National law (including case law) has not implemented the duty to provide reasonable accommodation in respect of race or ethnic origin.

- ii) *religion or belief*

National law (including case law) has not implemented the duty to provide reasonable accommodation in respect of religion or belief.

²² Supreme Court Judgement of 6 May 1999, Berglind Stefánsdóttir and Félag heyrnalausra vs. the State Broadcasting Service.

²³ Ibid.

²⁴ Ibid.



iii) age

National law (including case law) has not implemented the duty to provide reasonable accommodation in respect of age.

iv) sexual orientation

National law (including case law) has not implemented the duty to provide reasonable accommodation in respect of sexual orientation.

f) Please specify whether this is within the employment field or in areas outside employment

i) race or ethnic origin

National law (including case law) has not implemented the duty to provide reasonable accommodation in respect of race or ethnic origin, neither within the employment field nor in areas outside employment.

ii) religion or belief

National law (including case law) has not implemented the duty to provide reasonable accommodation in respect of religion or belief, neither within the employment field nor in areas outside employment.

iii) Age

National law (including case law) has not implemented the duty to provide reasonable accommodation in respect of age, neither within the employment field nor in areas outside employment.

iv) sexual orientation

National law (including case law) has not implemented the duty to provide reasonable accommodation in respect of sexual orientation, neither within the employment field nor in areas outside employment.

g) Is it common practice to provide for reasonable accommodation for other grounds than disability in the public or private sector?

It is not common practice to provide reasonable accommodation for grounds other than disability in the public and private sector.

h) Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?



National law does not clearly provide for the shift of the burden of proof in this context.

- i) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?*

Article 34 of the Act on the Affairs of Persons with Disabilities states that municipalities shall address accessibility issues of people with disabilities in an organized manner, including through the adoption of plans on improving accessibility in public buildings and service institutions, in accordance with planning and building laws and secondary legislation based thereon.

The Planning Act No.123/2010, and secondary legislation, the Planning Regulation No. 90/2013 and the Building Regulation No. 112/2012, set out numerous requirements in relation to building and urban planning to ensure accessibility for people with disabilities and universal design. Article 19(e) of the Planning Act stipulates that the aim of the law is, *inter alia*, to ensure the professional preparation of buildings and infrastructure regarding e.g. structure and universal access and Article 2 contains definitions of universal design and access.

As Directive 2000/78/EC has not been incorporated into the EEA Agreement or transposed into domestic law, a discrimination case based on legislation transposing the Directive cannot be brought.

- j) *Does national law contain a general duty to provide accessibility by anticipation for people with disabilities? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?*

National law does not set out a general duty to provide accessibility for people with disabilities by anticipation.

- k) *Does national law require public services to also translate some or all of their documents in Braille? (i.e. Tax declarations, general information) Is translation in sign languages provided in some of the public services where needed? What is the practice?*

The Act on the status of the Icelandic language and Icelandic sign language No. 61/2011 stipulates that Icelandic Braille is the first written language of those who have to rely on it for expression and communication.²⁵ People using Braille are entitled to

²⁵ Act on the status of the Icelandic language and Icelandic sign language No. 61/2011.

all public information in Braille and have the right to ask the National Institute for the Blind, Visually Impaired and Deafblind – a public body governed by the Ministry of Welfare – to convert text to Braille, free of charge, when needed. However, as all public documents and information are available in digital form, the use of refreshable braille display or braille terminals to access information is more common.

The Act on the status of the Icelandic language and Icelandic sign language stipulates that the Icelandic sign language is the first language of those who have to rely on it for expression and communication, and of their children. Central and local authorities are obliged to ensure that all those who need Icelandic sign language services have access to them. The Communication Centre for The Deaf and Hard of Hearing – public body under the auspices of the Ministry of Education – provides sign language interpreting services for deaf people. Interpreting services relating to all public services are provided where needed free of charge. For the private sphere, e.g. in relation to employment issues, participation in courses and housing society meetings, fees for interpreting services can be covered by a special state fund. It should be noted that in 2013 the fund was exhausted in September, so not all applications for interpretation could be covered. It should be noted that as the legislation is not very clear, in practice private actors providing ‘public services’, such as homes for the elderly, private universities, alcohol and drug rehabilitation centres do not always consider their institutions obliged to cover the cost of interpretation, thus forcing users to bring complaints to the authorities resulting in delays and administrative hassle.

- l) *Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?*

The Constitution confers the same rights on people with disabilities as other citizens and provides for equality and non-discrimination. The Act on the Affairs of People with Disabilities No. 59/1992 governs the affairs of people with disabilities and sets out special rights for them. The objective is to guarantee equality for persons with disabilities and living conditions comparable with those of other citizens, and to ensure conditions that enable people with disabilities to lead a normal life. In the implementation of the Act, the provisions of the United Nations Convention on the Rights of Persons with Disabilities shall be taken into account and the associations of people with disabilities guaranteed influence when policies are being developed and in relation to other decisions touching upon the affairs of persons with disabilities.²⁶

The Act stipulates that people with disabilities shall be entitled to all general services provided by the State and the municipalities. Services shall, as a general rule, be provided on the basis of general legislation in the field of education, health and social

²⁶ These provisions are a step towards the ratification of the Convention, for which preparations are underway.



services. If the needs of a person with disabilities cannot be met through the provision of general services, he or she shall receive services in accordance with the Act. Support services and institutions shall be available to assist persons with disabilities to work and live normally in society with others; these shall relate to assistance in the home, psychological and social support, rehabilitation and habilitation and the needs of children with disabilities and their families.

In relation to employment, the Act states that persons with disabilities shall be given assistance in holding jobs on the labour market when necessary. This shall be done through special personal support at the workplace, as well as through information and instruction for other workers. People with disabilities shall have access to vocational training in private enterprises and institutions, where this can be arranged. In that event, a special agreement shall be concluded setting out, *inter alia*, the period of training and costs. The costs incurred because of special assistance at the workplace shall be paid by the State Treasury. The Act stipulates that each region shall provide sheltered work in the general labour market for people with disabilities. Sheltered work may entail work that is organized to take disability into account. Sheltered workplaces for people with disabilities may also be operated. Sheltered workplaces shall on the one hand provide remunerated training for people with disabilities to enable them to participate in the general labour market. On the other, they shall provide fixed, remunerated employment for people with disabilities. The costs incurred shall be paid by the State Treasury. Finally, people with disabilities shall be given priority regarding work for the State and municipalities when their qualifications for the post are greater or equal to those of other applicants. It should be noted that amendments to the Act in 2010 abolished the monitoring role of the Regional Board in this respect, with the explanatory notes referring to the imminent transposition of Directive 2000/78/EC, which would entail relevant provisions on remedies and enforcement in this respect.²⁷ The employment measures for people with disabilities are described in further detail in Regulation No. 376/1996; employment in the general labour market shall have precedence over the other measures set out which include vocational guidance, search for employment and employment service, assistance, habilitation and sheltered workplaces.²⁸

The Act contains provisions providing for social services that shall be available to enable people with disabilities to live in their own homes and to other housing options, in accordance with their needs and wishes, as possible. It contains a special chapter setting out measures to support children with disabilities and their families and another on social habilitation and rehabilitation.

²⁷ Bill to amend Act No. 59/1992, on the Affairs of Persons with Disabilities, as amended available at the website of Althingi: www.althingi.is/altext/139/s/0298.html. As of yet the Directive has not been transposed.

²⁸ Regulation on the employment of persons with disabilities No. 376/1996, adopted on 6 June 1996, available on the website of the Ministry of Interior: www.reglugerd.is/interpro/dkm/WebGuard.nsf/key2/376-1996.



The Act contains a special chapter on accessibility and transport setting out that municipalities shall address accessibility issue in an organized manner, that is, through the adoption of action plans to improve the accessibility of public buildings and services in accordance with provisions in planning and building legislation. Municipalities are obliged to provide transport services to persons with disabilities. The aim is to enable those who cannot avail themselves of public transport because of disability to work and enjoy leisure time. Transport services shall also be provided to service institutions, etc.

In addition, a number of other laws set out rights for people with disabilities. These include e.g. the Act on Municipal Services No. 40/1991, the Act on Rights of Patients No. 74/1997, The Pre-schools Act No. 90/2008, the Primary School Act No. 91/2008, the Secondary School Act No. 92/2008 and the Act on Labour Market Measures No. 55/2006.

2.7 Sheltered or semi-sheltered accommodation/employment

- a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?*

Article 30 of the Act on the Affairs of Persons with Disabilities stipulates that each region shall provide sheltered work in the general labour market for people with disabilities. Article 6 of Regulation No. 376/1996 elaborates on the work of people with disabilities in the general labour market. Workers with disabilities in the private sector shall be provided with special assistance at the workplace, supervision, training in accordance with a special agreement and a sheltered workspace, if needed. An employment contract shall be drafted on working hours, pay and terms. The worker shall be provided with special training, in particular at the outset. Special supervision shall be provided, publicly funded. Temporary vocational training contracts may be concluded where part of the worker's salary goes towards training to enable him or her to work in the general labour market. Finally, sheltered workspaces may be established in private businesses to provide employment for people with disabilities. The cost incurred through may be covered by the State. Finally, other employees, working with people with disabilities, shall be provided with guidance and training as needed.

Sheltered work may entail work that is organized to take disability into account. Sheltered workplaces for people with disabilities may also be operated. These shall on the one hand provide remunerated training for people with disabilities to enable them to participate in the general labour market. On the other, they shall provide fixed, remunerated employment for people with disabilities. The costs incurred shall be paid by the State Treasury.

Regulation No. 376/1996 on the employment of people with disabilities sets out that sheltered workplaces may be established to meet the need of people with disabilities for training for fixed or temporary employment. These may be service institutions for



people with disabilities, and may be run by municipalities, NGOs etc. carrying out production and/or services. The role of sheltered workplaces is to:

- A. provide opportunities for employment calling for significant amount of remunerated work;
- B. provide employment for those who cannot fulfil requirements of productivity set out in A;
- C. provide rehabilitating and habilitating training.

The employer and employee shall conclude an agreement setting out the rights and duties of the employee. Individuals working in sheltered workplaces, and their tasks, shall be assessed regularly to evaluate whether the workers are able to take on new responsibilities or other work, e.g. in the general labour market. The Act on Labour Market Measures No. 55/2006 also contains provisions related to sheltered workplaces.

In recent years, community care and independent community living has replaced institutional care and now services in private apartments are commonplace. For those in need of substantial support, group homes are being phased out in favour of clusters of apartments, often in mixed apartment blocks. The provisions on sheltered accommodation are found in Chapter VI of the Act on the Affairs of Persons with Disabilities, which sets out that social services shall be available to people with disabilities to enable them to live in their own homes or use other housing options, in accordance with their needs and wishes, as possible. Municipalities shall ensure that housing fit for persons with disabilities is available and that the necessary services are provided. Special housing may be run by NGOs and other private actors in residential areas and close to general public services, if possible. The Regulation on services for persons with disabilities in their homes No.1054/2010 sets out in more detail the requirements and system governing housing for people with disabilities.²⁹

- b) *Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?*

Those working in sheltered workplaces receive wages in accordance with agreements with the trade unions. They pay the standard social security contributions and to pension funds so it may be assumed that their work constitutes employment under national law.

²⁹ Regulation on home-service for people with disabilities No. 1054/2010, adopted on 29 December 2010, available on the website of the Ministry of Interior:
www.reglugerd.is/interpro/dkm/WebGuard.nsf/key2/1054-2010.



3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

There is no legislation in force transposing the Directives. However, general equality and non-discrimination provisions would apply to non-EEA citizens in relation to the grounds enumerated, e.g. disability, sexual orientation, race, etc.

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

a) *Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?*

National legislation does not provide special protection for legal persons where they suffer discrimination on grounds of the racial or ethnic origin of their members, nor explicit provisions distinguishing between natural and legal persons for purposes of protection against discrimination or liability for discrimination. In this context it should be noted that any individual, association or institution, which bears rights or duties under national law, can be party to a court case.³⁰ The general principle concerning legal standing is that in order for an application to be admissible, the plaintiff must satisfy the requirement of having personal, direct interest, that is, a 'legally protected interest'.

b) *Is national law applicable to both private and public sector including public bodies?*

The Directives have not been transposed into national law; no comprehensive anti-discrimination law applies to all sectors of public and private employment and occupation. However, some discriminatory acts in relation to the aforementioned fields could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried. For the public sector, Article 11 of the Administrative Procedures Act No. 37/1993 stipulates that administrative authorities shall ensure legal harmony and equality in decisions, and that discrimination between individual parties based on views relating to, inter alia, race, colour, national origin, religion, political opinion, social status or family origins is prohibited.

³⁰ Act on Civil Procedure No. 91/1991, Article 16(1).



3.1.3 Scope of liability

Are there any liability provisions other than those mentioned under harassment and instruction to discriminate? (e.g. employers, landlords, tenants, clients, customers, trade unions)

There is no general anti-discrimination legislation in force banning in particular harassment or instruction to discriminate. It is an established rule that an employer is liable for damages caused by tortious acts or omissions of his or her employees in the course of their work but no cases have been brought against employers or service providers for discriminatory acts of their workers. Employers cannot generally be held liable for the acts of third parties and, similarly, trade unions and professional associations cannot be held liable for the actions of their members.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national anti-discrimination legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office? In case national anti-discrimination law does not do so, is discrimination in employment, self-employment and occupation dealt with in any other legislation?

The Directives have not been transposed into national law; no comprehensive anti-discrimination law applies to all sectors of public and private employment and occupation in relation to the protected grounds. Discrimination in employment, self-employment and occupation is not dealt with in other legislation.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

3.2.2 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))

Does national law on discrimination include access to employment, self-employment or occupation as described in the Directives? In case national anti-discrimination law does not do so, is discrimination regarding access to employment, self-employment and occupation dealt with in any other legislation?

Is the public sector dealt with differently to the private sector?

Directives 2000/78/EC and 2000/43/EC have not been transposed. There is no legislation in force applying to the private sector prohibiting discrimination in relation



to the grounds enumerated in the Directives regarding conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion. However, some discriminatory acts in relation to the aforementioned fields could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried. For the public sector, Article 11 of the Administrative Procedures Act No. 37/1993 stipulates that administrative authorities shall ensure legal harmony and equality in decisions, and that discrimination between individual parties based on views relating to, inter alia, race, colour, national origin, religion, political opinion, social status or family origins is prohibited.

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

Does national law on discrimination include working conditions including pay and dismissals? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

In respect of occupational pensions, how does national law on discrimination ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC. In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

Directives 2000/78/EC and 2000/43/EC have not been transposed. There is no legislation in force ensuring the prohibition of discrimination on the grounds covered by the Directives in respect of working conditions including pay and dismissals.

However, working conditions are dealt with in the Act on Workers' Terms of Employment and Pension No. 55/1980 which stipulates that wages, and other working terms agreed between the social partners shall be considered minimum terms, independent of sex, nationality or term of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement. Contracts made between individual wage earners and employers on poorer working terms than those specified in the general collective agreement shall be void. This is a general rule which would apply in relation to the discrimination grounds covered by the Directives. In addition, it should be noted that Article 2 of the Act on Mandatory Pension Insurance and on the Activities of Pension Funds No. 129/1997 stipulates that it is prohibited to deny a person membership to an occupational pension fund on the grounds of health, age, civil status, family size or gender. Neither disability nor sexual orientation is enumerated but disability could in some instances fall under 'health'.



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

Does national law on discrimination include access to guidance and training as defined and formulated in the directives? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does national law on discrimination apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses? If not does any other legislation do so?

Directives 2000/78/EC and 2000/43/EC have not been transposed. There is no comprehensive anti-discrimination law in force prohibiting discrimination with regard to access to guidance and training as defined and formulated in the Directives. Access to vocational training based on the employment relationship would be governed by collective agreement and thus the Act on Workers’ Terms of Employment and Pension No. 55/1980 which stipulates that wages, and other working terms agreed between the social partners shall be considered minimum terms, independent of sex, nationality or term of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement. Contracts made between individual wage earners and employers on poorer working terms than those specified in the general collective agreement shall be void. This is a general rule which would apply in relation to the discrimination grounds covered by the Directives.

3.2.5 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))

Does national law on discrimination include membership of, and involvement in workers or employers’ organisations as defined and formulated in the directives? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

Directives 2000/78/EC and 2000/43/EC have not been transposed. The Act on Trade Unions and Trade Disputes No. 80/1938, which applies to both the private and the public sector, sets out that membership to trade unions shall be open to all workers employed in the respective area *cf.* Article 2. In practice, trade unions accept all applicants, irrespective of nationality, origin, religion or sexual orientation. Foreign members may stand for elections and participate in union work on equal footing with national members. Similarly, professional associations and employers' organizations are open to all enterprises/employers operating or qualified in the respective fields. There is, however, no comprehensive anti-discrimination law in force in this sector and no prohibition of discrimination with regard to membership of, and involvement in, workers' or employers' organizations, or other professional organizations, and related benefits, has been enacted.

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

Does national law on discrimination cover social protection, including social security and healthcare? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

Directives 2000/78/EC and 2000/43/EC have not been transposed. No comprehensive legislation on discrimination has been adopted but an anti-discrimination provision can be found relating to healthcare in Article 1 of the Act on the Rights of Patients No. 74/1997 which provides that any discrimination between patients on grounds of sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status is prohibited. The commentary to the draft law states that 'other status' includes disability and age.

National law does not set out exceptions for social security and health care based on religion or belief, age, disability or sexual orientation.

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

Does national law on discrimination cover social advantages? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.



National law does not contain explicit provisions prohibiting discrimination based on race or ethnic origin in relation to 'social advantages'. In the public sector, discrimination of this sort is likely to constitute a breach of the equality principle codified in Article 11 of the Act on Administrative Procedure. In the private sector, a case could possibly be brought under Article 26(b) of the Tort Damages Act No. 50/1993. The Article stipulates that compensation may be awarded for personal injury from unlawful wrongdoing which breaches the freedom, peace, honour or person of the victim.

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

Does national law on discrimination cover education? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

Article 24 of the Act on Primary Schools No. 91/2008 stipulates that in the organisation of study and instruction and in producing and selecting study material, special effort shall be made to ensure that all pupils have equal study opportunities and a chance to select subjects and learning approaches in their own education. The objectives and practice of study and instruction shall aim at preventing discrimination on the basis of origin, gender, sexual orientation, residence, social class, religion, health condition, disability or situation in general.

The general approach to education for children with disabilities is that they shall attend the mainstream schools. Article 7 of the Act on the Affairs of Persons with Disabilities No. 59/1992 stipulates that people with disabilities shall be entitled to all general services provided by central and local government. Attempts shall be made at all times to provide them with services according to general statutes in the field of education and the health services and social services. If the needs of a person with disabilities prove to be too great to be met within the framework of the general services, the person shall receive services under the Act on the Affairs of Persons with Disabilities.

Children are entitled to nursery school attendance and primary schooling in the municipality in which they have legal residence. Article 19 of the Act on the Affairs of Persons with Disabilities stipulates that children with disabilities are entitled to schooling in general nursery schools and that they shall be provided with the necessary support to make this possible. Article 17 of the Act on Primary Schools

No. 91/2008 stipulates that students with special needs are entitled to services in inclusive general schools, without distinction based on physical or mental ability. Students with disabilities shall receive support, if needed.

Secondary school students with special needs shall have access to specialist assistance and study alongside other students, as possible, *cf.* Article 34 of the Act on Secondary Schools No. 92/2008. Many secondary schools have special departments, vocational study programmes, and other courses specifically designed for students with disabilities. Children with hearing impairments have a right to classes in the Icelandic sign language.

No identified Roma have settled in Iceland so they are not formally acknowledged as an ethnic minority. Thus, no patterns of segregation and discrimination in schools notably affect them. In relation to integration, it should be noted that the legislation governing primary and secondary education (aforementioned Acts No. 91/2008 and 92/2008) contain provisions on the rights of children with a foreign mother tongue to special classes in Icelandic as a second language as well as support to maintain knowledge of their mother tongue through elective classes, distance learning or other means. Schools shall also adopt special 'reception plans' for immigrant children, containing information on school activities, interpreters etc.

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

Does national law on discrimination cover access to and supply of goods and services? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

- a) *Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.*

Article 180 of the General Penal Code provides that denying a person service, or access to any public area or place intended for general public use, on account of that person's nationality, colour, race, religion or sexual orientation is punishable by fines or imprisonment for up to six months. National law does not distinguish between goods and services available to the public and those available to members of private associations.

- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*



National law does not explicitly allow for differences in treatment on the grounds of age and disability in the provision of financial services. Similarly, the Act on Insurance Activity No. 56/2010 does not contain any provisions on age or disability. In practice, however, assessment of risk may take age or disability into account but no explicit legislative provisions are to be found to this end. Furthermore, life insurance premiums may take the age of the insured into account, although this is not explicitly set out in the law.

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

Does national law on discrimination cover housing? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

Directive 2000/43/EC has not been transposed into national law. No explicit provisions have been adopted to ensure non-discrimination in relation to access to housing irrespective of race or ethnic origin.

Chapter VI of the Act on the Affairs of Persons with Disabilities stipulates that social services shall be available to enable people with disabilities to live in their own homes and those using other housing options, in accordance with their needs and wishes, as possible. Municipalities shall ensure that suitable housing is available and that the necessary services are provided. Special housing may be run by NGOs and other private actors in residential areas and close to general public services, if possible. The Regulation on home-services for persons with disabilities No. 1054/2010 sets out in more detail the requirements and system governing housing.³¹

The Act on Affairs of the Elderly No. 125/1999 aims to guarantee that older people can enjoy a normal home life as for long as possible but that the necessary institutional services are available when necessary. These include geriatric homes, residences and flats designed to meet the needs of the elderly, *cf.* Article 14 of the Act on Affairs of the Elderly.

It should be noted that the General Penal Code No 19/1940 stipulates in Article 180 that denying a person service on account of that person's nationality, colour, race, religion or sexual orientation is punishable by fines or imprisonment for up to six

³¹ Regulation on home-services for people with disabilities No. 1054/2010, adopted on 29 December 2010, available on the website of the Ministry of Interior:
www.reglugerd.is/interpro/dkm/WebGuard.nsf/key2/1054-2010.



months. This could include housing. No case law exists to clarify what constitutes 'service'.



4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

National law does not set out an exception for genuine and determining occupational requirements in relation to the grounds listed in the Directives.

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

a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

The Act on Registered Religious Associations No. 108/1999 does not contain provisions to this end. Neither does the Act on the Status and Functioning of the National Church of Iceland No. 31/1997. However, although no explicit provision sets this condition, it is clear that in order to be chosen for senior posts, such as to become bishops, incumbents would have to be members of the National Church of Iceland.

b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).*

There are no specific provisions in national law and no case law relating to conflict between the rights of organizations with an ethos based on religion or belief as employers and other rights to non-discrimination.

c) *Are religious institutions permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both? Is there any case law on this?*

Religious institutions are not charged with any task regarding the appointment of people to posts in other state institutions. The Icelandic State does not operate religious schools. Thus, there is no case law dealing with this issue.



4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

- a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

Iceland has no military.

- b) *Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

Certain exceptions in relation to age requirements and physical form are found in national legislation governing those working as police officers, fire fighters and prison guards. Those planning to enrol in the Police Academy must be aged between 20-40 years. To become a police officer one must, *inter alia*, be an Icelandic citizen and healthy, pass a fitness test and an Icelandic language proficiency exam.³² The general pension age in Iceland is 67, but the Act on the Police No. 90/1996 stipulates that police officers shall be discharged when they reach the age of 65, or earlier, as decided by the Minister of Interior.³³

Applicants for official training as prison guards must be aged between 20-45 years. They must be in good physical shape and have good knowledge of Icelandic. Age and education criteria may be waived in special circumstances.³⁴

Those hired as fire fighters must, *inter alia*, be in good shape, physically and mentally and have good sight and hearing and not be colour blind.³⁵ Before 2001, applicants had to be 20-28 years old, but this age requirement has now been abolished.

4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

- a) *How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?*

³² Act on the Police No. 90/1996, Article 38.

³³ Act on the Police No. 90/1996, Article 29.

³⁴ Regulation No. 347/2007 on the education of prison guards, Article 3.

³⁵ Regulation No. 792/2001 on the fire fighters school and the rights and duties of fire-fighters, Article 8.



Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?)

Several provisions in Icelandic law permit different treatment based on nationality; these are, however, generally not framed in the context of an exception to the rule of equality. No provisions address discrimination based on statelessness.

There is no clear relationship between nationality and race or ethnic origin in the context of indirect discrimination, as indirect discrimination on these grounds has not been defined, or explicitly prohibited, in national law. Only one case has been decided by the Supreme Court where these grounds come into play. In this case the Supreme Court upheld the conviction of a member of a racist organization for publicly assaulting an anonymous group of persons by derision, vilification and denigration on the basis of their nationality, colour and race in a newspaper interview. In the interview, the accused expressed his opinions on the superiority of the white race and enumerated various negative qualities he thought characterized Africans. The Court ruled that his comments were clearly punishable under Article 233a of the General Penal Code but did not elaborate on the interplay between nationality and ethnicity.³⁶

It should be noted that the European Commission has expressed its view that the current rules³⁷ allowing citizens from the other Nordic countries to vote in municipal elections after a three year residence, whilst requiring five year residence for other EU citizens, is incompatible with the EU *aquis*.³⁸

In relation to employment and nationality discrimination, mention should also be made of Article 1 of the Act on Workers' Terms of Employment and Pensions No. 55/1980 which sets out that wages and other conditions negotiated by social partners shall be the minimum conditions for all workers, irrespective of sex, nationality and length of contract, in the relevant occupation within the area covered by the collective agreements. Contracts setting out poorer working terms than those specified in the collective agreements shall be void.³⁹

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

As the Directives have not been transposed, there are no exceptions in national law relying on Article 3(2).

³⁶ Prosecutor vs. Hlynur Freyr Vigfússon, Case No. 461/2001, Supreme Court Judgment of 24 April 2002.

³⁷ Act on General Elections for Municipal Government No. 5/1998.

³⁸ Screening report Iceland, Chapter 23 – Judiciary and fundamental rights, 1 July 2011, available on the website of DG ENLARGE: http://ec.europa.eu/enlargement/pdf/iceland/key-documents/screening_report_23_is_internet_en.pdf.

³⁹ Working Terms and Pension Rights Insurance Act No. 55/1980.



4.5 Work-related family benefits (Recital 22 Directive 2000/78)

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

- a) *Would it constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married?*

National law does not contain provisions explicitly prohibiting discrimination based on civil status or sexual orientation in relation to work-related family benefits. In the public sector, limiting certain benefits to married employees would constitute a breach of the principle of equality enshrined in Article 11 of the Act on Administrative Procedure and the Constitution. For the private sector, discriminatory granting of benefits could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried.

- b) *Would it constitute unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners?*

The civil status of homosexual – and heterosexual partnerships is the same under national law. In the public sector, limiting certain benefits to heterosexual partners would constitute a breach of the principle of equality enshrined in Article 11 of the Act on Administrative Procedure and the Constitution. In the private sector, discriminatory granting of benefits could fall under the scope of Article 26 of the Tort Damages Act No. 50/1993, but no cases of this sort have been tried.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

- a) *Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?*

No, there are no exceptions in relation to disability and health and safety.

- b) *Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.)?*

There are no exceptions in national law concerning health and safety in relation to other grounds, for example, disability, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.).



4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

4.7.1 Direct discrimination

Please, indicate whether national law provides an exception for age? (Does the law allow for direct discrimination on the ground of age?)

Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the Court of Justice of the European Union in the Case C-144/04, Mangold and Case C-555/07 Kucukdeveci?

- a) *Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

The general age limit for entry into the labour market is 16 years. However, to sign valid employment contracts, workers must have reached the age of majority which is 18. The Act on Health and Safety at Work No. 46/1980 stipulates that children under the age of 15 may not be employed, except in exceptional circumstances, e.g. to participate in cultural events, sports or advertising activities.

Domestic law contains various provisions setting out age limits in relation to specific functions and professions. These are, however, generally justified maximum and minimum age limits with reference to the occupation in question, unlike the situation dealt with by the European Court of Justice in Case C-144/04, Mangold. Examples include Article 33 of the Act on the Rights and Duties of State Employees which stipulates that for appointment or hiring as a state employee, a person must have reached the age of 18. Exceptions can be made, in particular for internships, cleaning jobs, couriers and the like.⁴⁰ Employees and public servants are to be relieved of their duties at the end of the month after they turn 70, *cf.* Article 43.⁴¹ Similarly, Article 26 of the Act on Healthcare Professionals No. 34/2012 stipulates that healthcare professionals are generally not allowed to run clinics after the age of 70. However, the Directorate of Health can prolong permits on application for up to two years at a time, but no more than three times. As set out above, the Act on the Police No. 90/1996 sets age limits for entry into the Police Academy, 20-40 years, but exceptions can be made, and that police officers shall be relieved from their duties when they reach the age of 65. The Aviation Act No. 60/1998 sets the general age limit for professional pilots and air traffic controllers at 60, with a possible extension to 65. Similar provisions may be found in other laws governing the rights and duties of specific professions.

⁴⁰ Act on the Rights and Duties of State Employees No. 70/1996, Article 6. See also the Act on Health and Safety at Work No. 46/1980, which contains special provisions on the work of youngsters.

⁴¹ Act on the Rights and Duties of State Employees No. 70/1996, Article 44.

Article 40(b) of the Act on Health and Safety at Work No. 46/1980 provides that the Ministry of Welfare may ask the Board of the Administration of Occupational Health and Safety to adopt rules on the employment of persons with physical or mental disabilities for certain jobs, where their disability, disease or age may entail an increased risk of accidents or disease. The Minister has, as of yet, not issued any regulations under this article. Some employment sectors set health conditions for workers. These include, *inter alia*, the Act on the Crews of Fishing Vessels, Coast Guard Vessels, Leisure and other Boats No. 30/2007 and the Aviation Act No. 60/1998. These provisions clearly come into play when workers age.

Rights and services for 'older people' are generally provided for people 67 years of age and older. The Act on Social Security No. 100/2007, dealing with pensions, sets the age of 67, *cf.* Article 17 (60 for seamen fulfilling special criteria) and the Act on the Affairs of the Elderly No. 125/1999 sets out the services which people 67 and older are entitled to. Act No. 113/1994 on Pensions for the Elderly sets out pensions for certain groups of retired people born in or before 1914, 70 years or older and for all persons falling under the law who have reached the age of 75.⁴²

b) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2)?*

Directive 2000/78/EC has not been transposed, thus national legislation does not explicitly permit different treatment based on age for activities within its material scope.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

No special conditions have been codified in national law to promote the vocational integration of older and younger workers, or to ensure the protection of persons with caring responsibilities.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

⁴² Act on Pensions for the Elderly No. 113/1994, Article 2.

The Act on the Rights and Duties of State Employees contains the general rule that for appointment or hiring as a state employee a person must have reached the age of 18; the legal age of majority in Iceland.⁴³ Exceptions can be made, in particular for internships, cleaning jobs, couriers and the like.⁴⁴ There is no fixed retirement age set out in collective agreements or law in the private sector but public employees are to be relieved of their duties at the end of the month when they turn 70.⁴⁵ They are, however, not barred from working part-time after the age of 70. No requirements relating to minimum and maximum age are found in relation to training and the grounds listed in the Directives.

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

- a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

The Icelandic pension system is based on three pillars. Firstly, a tax-financed national old-age pension (social security benefits), secondly, mandatory occupational pension funds, and thirdly, voluntary individual pension savings with tax incentives.

The national old-age pension scheme is regulated by the Act on Social Security No. 100/2007. The legal retirement age is 67. The scheme covers all residents with flat-rate but income-tested benefits depending on duration of residence. A person must have been resident in Iceland for at least three years between the ages of 16-66 to be entitled to receive national old-age pension. The general rule is that persons can work longer, until 70, and collect reduced pensions. It is also possible to defer collecting the pension up to the age of 72.

- b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be*

⁴³ Act on Legal Competence No. 71/1997, Article 1.

⁴⁴ Act on the Rights and Duties of State Employees No. 70/1996, Article 6.

⁴⁵ Act on the Rights and Duties of State Employees No. 70/1996, Article 44.



deferred if an individual wishes to work longer, or can an individual collect a pension and still work?

The Act on Mandatory Pension Insurance and on the Activities of Pension Funds No. 129/1997 stipulates that all employees, self-employed persons and employers are obliged to ensure their pension rights through membership in an occupational pension fund from the age of 16 to 70. Contributions towards pension benefits shall be determined in special legislation, in collective agreements, in employment contracts, or by other comparable means. The general rule is that members begin to receive old-age pensions at the age of 67 but it is possible to start collecting a reduced pension as early as 60, or as late as 70, with additional benefits, depending on the funds. For state employee occupational pension funds, the general pension age is 65. The general rule is that people can work longer, either deferring pension rights until 70 or receiving reduced pensions.

- c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

The general retirement age is 67 in both the public and private sector but people can work longer. There is no mandatory retirement age in the private sector. In the public sector the mandatory retirement age is 70. No changes to the system have been announced.

- d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

The general retirement age is 67 in both the public and private sector but people can work longer. In the public sector the mandatory retirement age is 70. No specific legal provisions govern the retirement age in the private sector which can thus be negotiated by the employer and employee. However, the Act on Mandatory Pension Insurance and on the Activities of Pension Funds No. 129/1997 stipulates that the payment of pensions shall commence at the age of 65-70. The common retirement age is 67 but the pension funds can generally delay or expedite payment by five years at the request of the member.

- e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?*

General protection against dismissals and other laws protecting workers' rights apply irrespective of age.

- f) *Is your national legislation in line with the CJEU case law on age (in particular Cases C-229/08 Wolf, C-499/08 Andersen, C-144/04 Mangold and C-555/07 Kücüdevici C-87/06 Pascual García [2006], and cases C-411/05 Palacios de la Villa [2007], C-488/05 The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform [2009], C-45/09, Rosenblatt [2010], C-250/09 Georgiev, C-159/10 Fuchs, C-447/09, Prigge [2011] regarding compulsory retirement.*

National law appears to be in line with CJEU case law on age but judicial interpretation is required.

4.7.5 Redundancy

- a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

National law does not explicitly permit age or seniority to be taken into account in selecting workers for redundancy. In fact, a national collective agreement concluded in 1990 (Icelandic: *þjóðarsátt*) provides for longer notices for employees with seniority. For those who have worked continuously for 10 years at the company the notice is four months when the employee has reached the age of 55, five months if the employee is 60 and six months for 63 year olds.

- b) *If national law provides compensation for redundancy, is this affected by the age of the worker?*

Legislation on redundancies does not explicitly set out exceptions in relation to age.

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

Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

National law does not allow for exceptions that rely on Article 2(5) of Directive 2000/78.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

There are no other exceptions to the prohibition of discrimination set out in national law in relation to the protected grounds.

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

- a) *What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.*

National law does not contain any provisions on positive action in respect of racial or ethnic origin, religion or belief, age or sexual orientation and it is unclear what scope it provides for such action as no cases have been adjudicated nor has any legal/political discussion taken place on this topic. The only positive measures in place, relating to the scope of Directives 2000/43/EC and 2000/78/EC, aim to strengthen the position of persons with disabilities in the labour market.

- b) *Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.*

The only positive measures in place, relating to the scope of Directives 2000/43/EC and 2000/78/EC, aim to strengthen the position of persons with disabilities in the labour market. The Act on the Affairs of Persons with Disabilities No. 59/1992 aims to ensure equality for people with disabilities and living conditions comparable with those of other citizens, and to provide conditions that enable them to lead a normal life. The Act does not set quotas but establishes that persons with disabilities shall be given assistance in holding jobs on the labour market when necessary. This shall be done through special personal support at the workplace, as well as through information and instruction for other workers. Persons with disabilities shall also have access to vocational training in private enterprises and institutions, where this can be arranged. Each region shall provide sheltered work in the general labour market for people with disabilities and operate sheltered workplaces. Sheltered workplaces provide remunerated training to enable people with disabilities to participate in the general labour market and they also shall provide fixed, remunerated employment for people with disabilities.

Finally, people with disabilities shall be given priority regarding work for the State and municipalities when their qualifications for the post are greater or equal to those of other applicants.

No positive action measures have been taken in respect of racial or ethnic origin, religion or belief, age or sexual orientation and no cases adjudicated. It is thus not clear whether such measures would be held compatible with the equality principle. No specific positive measures have been put in place for the benefit of Roma or other



minorities. National minorities, as defined by the Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, are not present in Iceland.

It should be noted that the Gender Equality Act sets out positive measures in relation to gender and that in 2010 gender quotas were adopted for public company boards. Larger private companies were obliged to ensure at least 40% representation of women on their boards by 1 September 2014.⁴⁶

⁴⁶ Act No. 13/2010 amending the Act on Limited Liability Companies No. 2&1995 and the Act on Private Limited Companies No. 138&1994.



6 REMEDIES AND ENFORCEMENT

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

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.

- a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*

No specific procedures have been established to deal with discrimination on the grounds enumerated in the Directives. The sole discrimination complaints body, the Gender Equality Complaints Committee, deals with gender discrimination only.

Numerous administrative procedures are in place with the aim of guaranteeing citizens' rights of recourse *vis-à-vis* public authorities. The Act on Administrative Procedure No. 37/1993 guarantees the right to lodge an appeal against decisions of administrative authorities, such as public institutions or committees. All decisions by public bodies, or bodies vested with public authority, are subject to review from a higher authority, unless otherwise provided for by law. The decisions of independent authorities may in some cases be reviewed by Ministers or special review boards/committees. One example is the Gender Equality Complaints Committee, a specialized committee under the Ministry for Welfare, which addresses complaints alleging violations of the Gender Equality Act. Another is the Committee on Social Services, which addresses, *inter alia*, complaints concerning services for persons with disabilities falling under the Act on Municipal Social Services. In some instances, decisions by local authorities may be referred to the relevant Ministry. Finally, the courts are competent to review any decision taken by the executive.

The Parliamentary Ombudsman may receive complaints concerning discriminatory administrative decisions. The Ombudsman monitors the administrative functions of public and local authorities and safeguards the rights of the citizens *vis-à-vis* administrative authorities. The Ombudsman shall ensure that the principle of equality is observed and that administration is conducted in conformity with the law and good administrative practice. The Ombudsman investigates administrative cases based on complaints or on his or her own initiative. He or she may also examine whether laws are in conflict with the Constitution, e.g. the equality provision, or are flawed in other respects.

Breaches of Articles 180 and 233a of the General Penal Code are subject to official indictment. Criminal proceedings commence with an investigation by the police either on its own initiative or pursuant to a complaint. If the investigation reveals that a crime may have been committed, the matter is referred to a prosecutor. If the prosecutor considers that there is a *prima facie* case against the accused, an indictment charge will be brought by the prosecutor before a general court.



No statistics have been gathered on the number of discrimination cases that have been brought before the courts.

b) Are these binding or non-binding?

Judgments of the civil courts are binding and enforceable. The decisions of the Parliamentary Ombudsman are not legally binding on the authorities and do not automatically invalidate the disputed decision. The Ombudsman may recommend that an authority that has not observed the principle of equality and acted contrary to the law and good administrative practice make amends. Decisions of administrative committees are non-binding (except for the Gender Equality Complaints Committee, which issues binding decisions).

c) What is the time limit within which a procedure must be initiated?

The time limits for bringing complaints to review committees vary, e.g. from two weeks to three months from the date of the disputed decision, and some have no time limits. Complaints must be brought to the Parliamentary Ombudsman within one year from the date of the disputed decision or event. The time limit for bringing a complaint to the Gender Equality Complaints Committee is six months, but the Committee can make exceptions and deal with complaints brought up to one year after the alleged breach occurred.

d) Can a person bring a case after the employment relationship has ended?

In principle, the complaints can be brought to all the aforementioned bodies after an employment relationship has ended.

e) In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).

The lack of anti-discrimination provisions covering the scope of Directives 2000/43/EC and 2000/78/EC can be considered the main barrier for effective anti-discrimination action. In general, the high fees of lawyers and the fact that the party that loses pays can act as a deterrent for those wishing to bring discrimination cases before the courts. It should be noted, that legal aid is means-tested and limited to the very poor. Complaints brought to complaints committees or the Parliamentary Ombudsman are not costly, these do not call for the instruction of a lawyer and are rather simple. It should be noted, that the Ombudsman and the complaint committees generally deal with complaints concerning decisions of public bodies/authorities. However, one exception is the Gender Equality Complaints Committee, which also deals with discrimination by private actors.

- f) *Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.*

No statistics are available on the number of cases related to discrimination that have been brought to justice.

- g) *Are discrimination cases registered as such by national courts? (by ground? Field?) Are these data available to the public?*

Discrimination cases are not registered as such by national courts and no statistics are available.

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

Please list the ways in which associations may engage in judicial or other procedures

- a) *Are associations entitled to act on behalf of victims of discrimination? (to represent a person, company, organisation in court)*

Associations may apply to the courts for the recognition of certain rights of its members or to relieve their members of certain duties, if safeguarding the interests at stake forms part of the association's mandate.⁴⁷ However, organisations do not generally have individual standing (on behalf of victims). Exceptions include labour unions or umbrella organisations that have standing on behalf of their members in labour disputes and enterprises, institutions and non-governmental organizations, who can, either in their own name or on behalf of their members who consider they are victims of gender discrimination, submit a case to the Gender Equality Complaints Committee.⁴⁸

- b) *Are associations entitled to act in support of victims of discrimination? (to join already existing proceedings)*

No provisions exist on the entitlement of associations to join already existing proceedings in discrimination cases.

- c) *What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association, organisation, trade union, etc.).*

According to the Act on Civil Procedure No. 91/1991 any individual, association or institution, which bears rights or duties under national law, can be party to a court

⁴⁷ Act on Civil Procedure, Article 25(3). See e.g. the Icelandic Federation of the Handicapped vs. the Republic of Iceland, Case No. 125/2000, Supreme Court Judgment of 19 December 2000.

⁴⁸ Gender Equality Act No. 10/2008, Article 6.

case.⁴⁹ Associations may apply to the courts for the recognition of certain rights of its members or to relieve its members of certain duties, if safeguarding the interests at stake forms part of the association's mandate.⁵⁰ However, organisations do not generally have individual standing (on behalf of victims). Exceptions include labour unions or umbrella organisations that have standing on behalf of their members in labour disputes and enterprises, institutions and non-governmental organizations, who can, either in their own name or on behalf of their members who consider they are victims of gender discrimination, submit a case to the Gender Equality Complaints Committee.⁵¹ In general, individuals bring cases to the Committee; it is rare that cases are brought by institutions or NGOs. No such complaints have been addressed by the Committee since the current legislation entered into force in 2008.

- d) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?*

Article 70 of the Constitution sets out the principle that everyone shall, for the determination of his/her rights and obligations, be entitled to the resolution of an independent and impartial court of law. This right is also guaranteed through Article 6(1) of the Act on the European Convention on Human Rights No. 62/1994. According to the Act on Civil Procedure No. 91/1991 any individual, association or institution, which bears rights or duties under national law, can be party to a court case.⁵² The general principle concerning legal standing is that in order for an application to be admissible, the plaintiff must satisfy the requirement of having personal, direct interest, that is, a 'legally protected interest' (is. *lögvarðir hagsmunir*). This rule is founded on Article 24(1) of the Act on Civil Procedure which sets out that the competence of Courts is limited to issues governed by the law. This rule bars the Courts from addressing complaints where there is no real legitimate interest.

No other explicit provisions have been adopted concerning membership, e.g. on permanency or number of members generally.⁵³ No rules stipulate that non-

⁴⁹ Act on Civil Procedure No. 91/1991, Article 16(1).

⁵⁰ Act on Civil Procedure, Article 25(3). See e.g. the Icelandic Federation of the Handicapped vs. the Republic of Iceland, Case No. 125/2000, Supreme Court Judgment of 19 December 2000.

⁵¹ Gender Equality Act No. 10/2008, Article 6.

⁵² Act on Civil Procedure No. 91/1991, Article 16(1).

⁵³ See, however, the discussion on *actio popularis* under i), where certain criteria on membership and set up apply.

governmental organizations shall register, but they can be included in the Company Register. This is, however, not a precondition for engaging in legal proceedings. Legitimate interest is not defined in legal statutes; it is for the Courts to establish whether 'legally protected interest' is at stake.⁵⁴

- e) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

There are no special provisions in national law on victim consent in cases brought on behalf of, or in support of, victims of discrimination in general, nor are there any specific provisions on victim consent where obtaining formal authorization is problematic. In such cases, consent would be sought from the legal guardian of the victim in question. Article 25 paragraph 3 of the Act on Civil Procedure No. 91/1991 simply stipulates that entities can bring cases in their own name for the recognition of the rights of their members or to relieve their members of a particular duty, when safeguarding the interests at stake forms part of the association's mandate. The Icelandic Federation of Persons with Disabilities is the sole rights-based NGO which has made use of this provision.⁵⁵ In practice, associations tend to bring cases jointly with their members, as demonstrated by the Supreme Court case brought by Berglind Stefánsdóttir and the Association of the Deaf against the State Broadcasting Services,⁵⁶ or they provide financial support for litigation by individual members. Neither the Act on Criminal Procedure nor the Act on Civil Procedure contains explicit provisions on victim consent and jurisprudence sheds limited light on procedure as only a handful of discrimination cases concerning issues falling under the scope of the Directives have been adjudicated.

- f) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

Action by associations is discretionary and rare. Nevertheless, two important discrimination cases have been decided by the Supreme Court where associations played an important role. In the first, brought by the Icelandic Federation of Disabled People, the Court ruled that changes made to the Social Security Act No. 117/1993, adversely affecting social security payments to persons with disabilities married to

⁵⁴ See the Icelandic Federation of Disabled People against the Republic of Iceland, Case No. 125/2000, Supreme Court Judgement of 19 December 2000 and Atli Jónsson *et al* and the Icelandic Nature Conservation Society vs the Icelandic State, Case No. 231/2002), Supreme Court Judgment of 12 June 2002 where a nature conservation organisation was not deemed to have a 'legally protected interest' in a case concerning an administrative decision permitting a large damming project, simply with reference to their aim of nature conservation.

⁵⁵ The Icelandic Federation of Disabled People against the Republic of Iceland, Case No. 125/2000, Supreme Court Judgement of 19 December 2000. Summarized in Annex 3.

⁵⁶ Berglind Stefánsdóttir and the Association of the Deaf vs. the State Broadcasting Services, Case No. 151/1999, Supreme Court Judgment of 6 May 1999. Summarized in Annex 3.

able-bodied persons with income, conflicted with Article 76(1) (the law shall guarantee for everyone the necessary assistance in case of sickness, invalidity, infirmity by reason of old age, unemployment and similar circumstances) and Article 65 of the Constitution.⁵⁷ In the second case, brought by the Association of Deaf People and an individual, the Court ruled that the decision of the National Broadcasting Service (RÚV) not to provide simultaneous interpretation into sign language of speeches by political candidates to be broadcast on the night before elections constituted discrimination.⁵⁸

- g) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.*

Associations may engage in civil and administrative proceedings.

- h) *What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.*

There are no explicit provisions setting out remedies for discrimination based on the grounds listed in the Directives and thus no differences in terms of remedies with respect to associations and victims.

- i) *Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?*

There are no special rules on the shift of the burden of proof where associations are engaged in proceedings.

- j) *Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

National law does not provide for actio popularis in discrimination cases. For actio popularis to be allowed it has to be specially provided for by law. Examples include the Act on Municipal Elections No. 5/1998 which provides for complaints concerning elections, and the Act on the Review Committee on Environmental Issues and Resources No. 130/2011 which provides for actio popularis in relation to certain

⁵⁷ The Icelandic Federation of Disabled People against the Republic of Iceland, Case No. 125/2000, Supreme Court Judgment of 19 December 2000. Summarized in Annex 3

⁵⁸ Berglind Stefánsdóttir and the Association of the Deaf vs. the State Broadcasting Services, Case No. 151/1999, Supreme Court Judgment of 6 May 1999. Summarized in Annex 3.

administrative decisions for environmental and outdoor activity organizations having at least 30 members.

- k) *Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Amendments made to the Act on Civil Procedure in 2010 provide for a form of class action. Three or more people who have claims against a party stemming from the same incident or situation etc. can establish an 'action association' (Icelandic: *málsóknarfélag*) which can bring the case on the plaintiffs' behalf.⁵⁹

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

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

No provisions setting out the shift of the burden of proof in discrimination cases concerning the grounds enumerated in the Directives are found in national law. The Gender Equality Act provides for the shift of the burden of proof in gender discrimination cases.

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

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).

The only provision concerning discrimination cases and victimisation is found in Article 27 of the Gender Equality Act. Employers may not dismiss employees for demanding redress on the basis of the Act. Furthermore, employers shall ensure that employees are not subjected to injustice in their work, e.g. as regards job security, terms of employment or performance assessment, on the grounds of having submitted a complaint or provided information regarding gender-based or sexual harassment or sexual discrimination. If there is reason to believe that this provision has been violated, the employer shall demonstrate that the dismissal, or alleged injustice, is not based on the employee's demand for redress, complaint or provision of information regarding gender-based or sexual harassment or sexual

⁵⁹ Act on Civil Procedure No. 19/1991, Article 19a.

discrimination. This shall not apply if the dismissal takes place more than one year after the employee made his/her demand for redress. As of yet, this provision has not been applied.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

- a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

Directives 2000/43/EC and 2000/78/EC have not been transposed. However, discrimination could give rise to civil liability, falling under the general rules. The Courts may rule that a certain act or omission⁶⁰ should be remedied and award the victim material damages. Moral damages can only be awarded on the basis of a specific legal provision, e.g. Article 31 of Gender Equality Act.

Violations of the General Penal Code provisions on hate speech and discrimination in services are subject to fines or imprisonment of up to two years and six months. Violations of prohibition of public insults against the beliefs or religion of lawfully established religious communities are subject to fines or imprisonment of up to three months. Fines are determined based on the income, assets, financial status and commitments and other factors that may influence the ability of the guilty party to pay as well as the financial gain or savings that the criminal act entailed or that had been envisaged.⁶¹ The Supreme Court has only decided one case concerning Article 233a (none on Articles 180 and 125). There the young age and clean criminal record of the accused, the fact that the derogatory statements were made in the name of an organisation and that he did not initiate the media interview were taken into account when the punishment of a fine of ISK 100,000 (approximately 590 euros) or six days in prison was awarded.⁶²

Violations of the Gender Equality Act, or of related regulations, are punishable by fines unless heavier penalties are prescribed in other statutes.⁶³ Furthermore, the Centre for Gender Equality may request information from any actor deemed necessary for its supervision of the Gender Equality Act and has the power to impose *per diem* fines if requests for information are not complied with. The Gender Equality Complaints Committee does not decide sanctions or fines; it simply rules on whether

⁶⁰ See, e.g. Berglind Stefánsdóttir and the Association of the Deaf vs. the State Broadcasting Services, Case No. 151/1999, Supreme Court Judgement of 6 May 1999), where the Court held, *inter alia*, with reference to the duty of the State Broadcasting Service to broadcast election debates set out in the Broadcasting Act, and Article 65 of the Constitution, that the State Broadcasting Service was to ensure broadcasting of such debates in sign language. Summarized in Annex 3.

⁶¹ General Penal Code No. 19/1940, Articles 180, 233a and 51.

⁶² The Prosecutor vs. Hlynur Freyr Vigfússon, Case No. 461/2001, Supreme Court Judgment of 4 April 2002.

⁶³ Gender Equality Act No. 10/2008, Article 32.



the Gender Equality Act has been infringed and if so recommends that the respondent remedy the situation.

b) *Is there any ceiling on the maximum amount of compensation that can be awarded?*

Directives 2000/43/EC and 2000/78/EC have not been transposed and no explicit provisions set out compensation for discrimination. In the Icelandic system there is no ceiling on the maximum amounts of damages awarded - although rules on amounts of damages because of disability are fixed - as the aim of damages is to compensate the victim for all material damage suffered.⁶⁴ The Icelandic legal system does not award punitive damages. The ordinary rules on damages would apply in cases concerning prohibited discrimination. The general principle concerning damages is that a person is liable for damages if the following conditions apply: the act is illegal, and the damage done is a probable consequence of his or her actions and harms interests protected by rules on damages. Furthermore, it is also a condition that subjective mitigating factors, such as youth or limited mental capacity, do not apply.

In determining damages the judge can take into account factors such as the claimant's contributory fault, failure to mitigate loss, etc. Ordinary damages can be reduced if justified by the situation of the respondent or in other extraordinary circumstances. In such a case, the extent and nature of the damages, the situation of the victim, the interests of the victim, insurance and other relevant factors should be taken into account.⁶⁵

The Act on Payment from the State Treasury of Damages to Victims of Crime stipulates that the State Treasury will pay damages incurred under the General Penal Code, with some exceptions.⁶⁶ The Act does not apply to moral damages under Article 233a of the General Penal Code. In criminal proceedings based on Articles 233a and 180 of the General Penal Code, in theory, the court may also handle claims for damages.

Anyone who, deliberately or through negligence, violates the Gender Equality Act shall be liable to pay compensation according to the ordinary rules. Furthermore, the party in question may be sentenced to pay the party affected compensation for non-pecuniary loss, if appropriate, in addition to compensation for financial loss.⁶⁷ The

⁶⁴ See e.g. Ragna Kristín Guðmundsdóttir vs. the University of Iceland, Case No. 177/1998, Supreme Court Judgment of 4 February 1999, where the Court ruled that the failure on the part of the University of Iceland to take adequate special measures to ensure that a student with disabilities could study there violated the legislation on the rights of persons with disabilities and Article 65 of the Constitution. The student was awarded compensation.

⁶⁵ Act on Damages No. 50/1993, Article 24.

⁶⁶ Act on Payment from the State Treasury of Damages to Victims of Crime No. 69/1995, Article 1.

⁶⁷ Gender Equality Act No. 10/2008, Article 31.



majority of cases brought on the basis of the Gender Equality Act concern appointments. The Supreme Court has established that if an appointment procedure is not in accordance with the law and is conducted in an inconsiderate manner, this may give rise to a claim for moral damages.⁶⁸

c) *Is there any information available concerning:*

i) *the average amount of compensation awarded to victims?*

No.

ii) *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?*

No.

⁶⁸ See e.g. Supreme Court Judgments H1997:1544, H1999:3985, H2000:869 and Judgment of 18 March 2004 (Case No. 275/2003).

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly).

For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

- a) *Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).*

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin. The Parliamentary Ombudsman may deal with equality/discrimination in relation to administrative procedure. No human rights commission is in place.

The Icelandic Human Rights Centre has assumed many of the functions of a National Human Rights Institution (NHRI), albeit without its powers, independence and financing being established by statute. A special Multicultural Centre is charged with facilitating communications between individuals of different backgrounds, and to enhance the services provided to foreign citizens residing in Iceland and to those interested in moving to Iceland. The Multicultural Centre offers assistance to those seeking information about daily life in Iceland, provides information about the administration and is of service to foreign citizens moving to or from the country.

It should be noted that European Commission against Racism and Intolerance has strongly recommended that Iceland establish a specialised body to combat racism and discrimination on grounds of “race”, colour, language, religion, nationality or national or ethnic origin which could form part of a body with wider objectives in the field of human rights generally.⁶⁹ The Council of Europe Commissioner for Human Rights has also urged Iceland to adopt comprehensive equal treatment legislation and set up an effective and independent national equality body to promote its implementation.⁷⁰ Similarly, the United Nations Committee on the Elimination of Racial Discrimination has urged Iceland to formally establish a NHRI to inter alia combat racism as well as a complaints mechanism.⁷¹

⁶⁹ Council of Europe, European Commission against Racism and Intolerance (ECRI): *Report on Iceland*, CRI(2012)1.

⁷⁰ Council of Europe: Press release by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Iceland (7-9 January 2012). Available at: <http://www.coe.int/web/commissioner/country-report/iceland>.

⁷¹ United Nations, Committee on the Elimination of Racial Discrimination, *Concluding Observations; Iceland*, CERD/C/ISL/CO/19-20, 2010.



- b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.*

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

- c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

- d) *Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

- e) *Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).*

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

- f) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.

- g) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts? Are the decisions well respected? (Please illustrate with examples/decisions).*

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin. The sole specialised body charged with



promoting equal treatment in Iceland is the Centre for Gender Equality. The Centre only deals with issues related to gender.

h) Does the body register the number of complaints and decisions? (by ground, field, type of discrimination, etc.?) Are these data available to the public?

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin, thus no complaints or decisions are registered.

i) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.

No specialised body has been established for the promotion of equal treatment irrespective of racial or ethnic origin.



8 IMPLEMENTATION ISSUES

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

Describe *briefly* the action taken by the Member State

- a) *to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

As the Directives have not been transposed, no specific action has been taken in line with the Directives to disseminate information about legal protection against discrimination to the general public.

- b) *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) and*

As the Directives have not been transposed, no specific action has been taken in line with the Directives to encourage dialogue with NGOs.

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

As the Directives have not been transposed, no specific action has been taken in line with the Directives to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice and workforce monitoring. However, in this context reference can be made to Article 1(2) of the Act on the Affairs of Persons with Disabilities, where it is set out that the authorities shall ensure that the national associations of persons with disabilities shall influence all policies and decisions that have an impact on them. Similar provisions are not found in other acts governing the affairs of disadvantaged groups such as the elderly and foreigners.

- d) *to specifically address the situation of Roma and Travellers. Is there any specific body or organ appointed on the national level to address Roma issues?*

No measures have been taken to specifically address the situation of Roma and Travellers.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

- a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict*

with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).

As the Directives have not been transposed, no particular measures have been taken in accordance with Article 14 Directive 2000/43/EC and Article 16 Directive 2000/78/EC.

b) *Are any laws, regulations or rules that are contrary to the principle of equality still in force?*

Although Icelandic anti-discrimination legislation is fragmented and incomplete, no rules are in force that are clearly in breach of the principle of equality in relation to the grounds enumerated in the Directive.



9 CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

The Ministries of Welfare and Interior are responsible for co-ordinating issues regarding anti-discrimination in relation to the grounds covered by Directives 2000/43/EC and 2000/78/EC. There is currently no anti-discrimination action plan in place but work on a human rights strategy for Iceland is underway at the Ministry of Interior. More importantly, it is envisaged that a proposal for a comprehensive anti-discrimination law will be presented in the Parliament in 2014.

Although the Directives have not been transposed into national law, Iceland has adopted various measures aimed to improve the status of the disadvantaged groups listed in the Directives. An action plan on the issues of immigrants was adopted through a Parliamentary Resolution in 2008. The plan describes more than 90 actions that aim to promote the integration of immigrants and their full participation in the Icelandic society. Four actions in particular aim to combat prejudice and discrimination: a campaign against prejudice; education and awareness-raising against prejudice; civics instruction (information package) for immigrants; and educational and awareness-raising material on gender equality issues for immigrants.⁷² In addition, a special fund is operated to support research and development projects related to immigration issues. It should also be noted that a draft bill establishing, inter alia, a complaints committee to review the decisions of the Directorate of Immigration taken on the basis of the Act on Foreigners No. 96/2002 was presented in the Parliament in December 2013. The objective is, *inter alia*, to ensure independent review of all decisions of the Directorate of Immigration.⁷³ In addition, according to the Ministry of Welfare, preparations are under way for the ratification of the Framework Convention for the Protection of National Minorities. Local authorities are also placing increased emphasis on immigration issues. The Icelandic Association of Local Authorities (all Icelandic municipalities are members) has adopted a special policy on immigration and many municipalities have adopted individual policies based on this document. Such policies aim to ensure that the interests of immigrants are guaranteed and that they know their rights and obligations as citizens and have easy access to municipal services. The key objective is that

⁷² Parliamentary resolution on an action plan on the affairs of immigrants of 29 May 2008. Available on the website of the Icelandic Parliament: www.althingi.is/altext/135/s/1226.html.

⁷³ Article 1, Draft bill amending the Act on Foreigners No. 96/2002, Doc. 457, presented at the 143th Session of Althing, 2013–2014. Available on the website of Parliament: <http://www.althingi.is/altext/143/s/0457.html>.



immigrants enjoy the same status as other residents and that they can fully participate in the community in each municipality.

The Act on the Affairs of Persons with Disabilities No. 59/1992 was amended in 2011 to, *inter alia*, transfer the responsibility for the affairs of persons with disabilities from the State to local authorities on 1 January 2012. The Minister of Welfare is responsible for policy making in cooperation with the Icelandic Association of Local Authorities. The national interest associations of people with disabilities shall be consulted with regard to all decisions and policies that concern persons with disabilities. In conjunction with the amendments to the Act on the Affairs of Persons with Disabilities, the Act on Safeguarding the Interests of Persons with Disabilities No. 88/2011 was adopted. The law provides measures to safeguard the rights of persons with disabilities and preparations are underway for a system of personal assistance to be established by the end of 2014 and for the ratification of the UN Convention on the Rights of Persons with Disabilities. Furthermore, a comprehensive Plan of Action on Disabled Persons' Affairs until 2014 is in place. The Plan of Action takes account of the UN Convention on the Rights of Persons with Disabilities and other international human rights obligations of the Icelandic State. Emphasis is placed on human rights and the prohibition of discrimination on the basis of disability; 'disability' is a concept undergoing evolution and change and it should be recognized that disability arises in the interaction between people with reduced function, their environment and attitudes which prevent full and active participation in society on an equal basis with others. The Plan of Action also takes recent developments in services for people with disabilities into account, focusing on the individual, variety and the autonomy of persons with disabilities.

Preparations are underway to transfer the responsibility for the affairs of elderly people from the State to the local authorities in the near future.

Finally, the adoption of the Act on the Judicial Status of Transgender Persons No. 57/2012 in 2012 was a welcome development. The Act aims to guarantee the same legal status for transgender people as for other citizens. The Act clarifies the legal status of transgender people, procedure for recognition of new gender, name change, family law, etc.



ANNEX

- 1. Table of key national anti-discrimination legislation**
- 2. Table of international instruments**
- 3. Previous case-law**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and Anti-discrimination legislation** at both Federal and federated/provincial level

Name of Country: Iceland

Date 31 December 2013

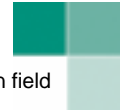
Title of Legislation (including amending legislation)	Date of adoption dd/m/y	Date of entry in force from dd/m/y	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
Title of the Law: Constitution of the Republic of Iceland No. 33/1944 Web-page: http://www.althingi.is/lagas/139b/1944033.html	17.6.1944	17.6.1944	Sex, religion, opinion, national origin, race, colour, financial status, parentage or other status	Constitution	General.	Equality before the law and in the enjoyment of human rights.
Title of the Law: Act incorporating the ECHR into domestic law No. 62/1994 Web-page: http://www.althingi.is/lagas/nuna/1994062.html%20	19.5.1994	30.5.1994	Sex, race, colour, language, religion, political or other opinion, national or social origin, association	Civil	Limited to rights enshrined in the ECHR.	Prohibition discrimination in the enjoyment of the rights set out in ECHR.



			with a national minority, property, birth or other status.			
Title of the Law: Act on Administrative Procedures No. 37/1993 Web-page: http://www.althingi.is/lagas/nuna/1993037.html	30.4.1993	1.1.1994	Inter alia, race, colour, national origin, religion, political opinion, social status and family origins.	Admin.	Administrative decisions.	Prohibition discriminatory administrative decisions.
Title of the Law: General Penal Code No. 19/1940 Web-page: http://www.althingi.is/lagas/137/1940019.html	12.2.1940	12.8.1940	Nationality, colour, race, religion, sexual orientation.	Penal	Harassment and hate speech. Service or access to any public area or place intended for general public use. Public insults towards religious communities	Prohibition of harassment and hate speech. Criminalization of denying a person service or access to any public area or place intended for general public use. Criminalization of publicly insulting a religious



						community.
Title of the Law: Act on Primary Schools No. 91/2008 Web-page: http://www.althingi.is/alt/ext/stjt/2008.091.html	12.6.2008	1.7.2008	National origin, sex, sexual orientation, residence, social class, religion, health, disability or other status.	Civil	Primary education	Prohibition of discrimination in education
Title of the Law: Act on the Rights of Patients No. 74/1997 Web-page: http://www.althingi.is/lagas/140b/1997074.html	28.5.1997	1.7.1997	Sex, religion, opinion, ethnic origin, race, colour, property, family origins or other status.	Civil	Access to health care.	Prohibition of discrimination in the provision of health care.
Title of the Law: Postal Service Act No. 19/2002 Web-page: http://www.althingi.is/lagas/140b/2002019.html	18.3.2002	3.3.2002	Political, religious or ideological nature.	Civil	Postal service.	Prohibition of discrimination in provision of postal services.



Title of the Law: Act on the Media No. 38/2011 Web-page: http://www.althingi.is/altex/t/stjt/2011.038.html	20.4.2011	21.4.2011	Race, sex, sexual orientation, religion, nationality, opinion or cultural, economic social or other status in society	Civil	Anti-hate speech.	Organisation and work of the media.
Title of the Law: Act on the Affairs of Persons with Disabilities No. 59/1992 Web-page: http://www.althingi.is/lagas/140a/1992059.html	2.6.1992	1.9.1992	Disability.	Civil	Living conditions, employment, housing, assistance, education, etc.	Provision of services, assistance, etc. to people with disabilities
Title of the Law: Act on Municipal Social Services No. 40/1991 Web-page: http://www.althingi.is/lagas/137/1991040.html	27.3.1991	17.4.1991	Disability.	Civil	Social services	Provision and organisation of social services.
Title of the Law: Act on the Affairs of the Elderly No. 125/1999 Web-page: http://www.althingi.is/lagas/140a/1999125.html	31.12.1999	11.1.2000	Age.	Civil	Services, housing, health care, etc.	Provision and organisation of services, housing, etc. for older persons.



Title of the Law: Act Amending Laws relating to the Judicial Status of Homosexual Persons No. 65/2006 Web-page: http://www.althingi.is/altext/stjt/2006.065.html	14.6.2006	27.6.2006	Sexual orientation.	Civil	Equality before the law in various areas.	Amending legislation to ensure equality for homosexual persons.
Title of the Law: Act on Mandatory Pension Insurance and on the Activities of Pension Funds No. 129/1997 Web-page: http://www.althingi.is/lagas/nuna/1997129.html	23.12.1997	1.7.1998	Health, age, civil status, family size or gender.	Civil	Non-discrimination in access to occupational pension schemes.	Organisation, set-up, ad requirements for functioning of pension funds and mandatory pension insurance.
Title of the Law: Act on Workers' Terms of Employment and Pension No. 55/1980 Web-page: http://www.althingi.is/lagas/140b/1980055.html	9.6.1980	16.6.1980	Sex, nationality and length of contract.	Labour	Non-discrimination in terms of employment,	Minimum wages and conditions negotiated by social partners.



ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Iceland

Date: 31 December 2013

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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)	4.11.1950	29.06.1953	No	Yes	Yes, the ECHR has been incorporated into domestic law.
Protocol 12, ECHR	4.11.2000	Not ratified.	N/A	N/A	N/A
Revised European Social Charter	4.11.1998	Not ratified.	N/A	Ratified collective complaints protocol? No	N/A
International Covenant on Civil and Political Rights	30.12.1968	22.08.1979	No	Yes	No

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
Framework Convention for the Protection of National Minorities	1.02.1995	Not ratified.	N/A	N/A	N/A
International Convention on Economic, Social and Cultural Rights	30.12.1968	22.08.1979	No	No	No
Convention on the Elimination of All Forms of Racial Discrimination	14.12.1966	13.03.1967	No	Yes	No
Convention on the Elimination of Discrimination Against Women	24.07.1980	18.6.1985	No	Yes	No
ILO Convention No. 111 on Discrimination	29.07.1964	29.07.1963	No	N/A	No



Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	26.01.1990	28.10.1992	No	N/A	No.
Convention on the Rights of Persons with Disabilities	30.03.2007	Not ratified.	N/A	N/A	N/A

ANNEX 3: PREVIOUS CASE-LAW

The majority of discrimination cases brought to the courts concern alleged gender discrimination, in breach of the Constitution and the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 (Gender Equality Act) but these fall outside the scope of this report. Article 65 has, however, also been applied in a handful of judgments rendered, resolving whether unlawful discrimination had occurred in relation to the grounds covered by Directives 2000/43/EC and 2000/78/EC. Four major cases concerning disability have been decided by the Supreme Court. One case alleging discrimination based on religion or belief has been decided, one concerning racial discrimination and one which touched upon age. No cases regarding discrimination against Roma and Travellers have been adjudicated.

Name of the court: Supreme Court of Iceland

Date of decision: 25 September 2008

Name of the parties: X vs. Y

Reference number: 484/2007

Address of the webpage: www.haestirettur.is/domar?nr=5356

Brief summary: The plaintiff, X, demanded that a decision denying her in vitro fertilization treatment be annulled. X argued the age-limits (in general 42 years) for women undergoing fertilization treatment set out in Regulation No. 568/1997 had no statutory basis and that the limits were in breach of the equality principle set out in Article 65 of the Constitution. The Supreme Court upheld the District Court's findings that it had been the intention of the legislature to set age-limits, not to restrict the freedom of the doctors, but to provide guidance when deciding whether to attempt treatment. The wording 'in general' in the provision was not interpreted to set out the unconditional right to treatment, to permit exceptions nor to limit the doctor's options. Assessment of whether treatment should be carried out was in the hands of the doctor who should also look to other factors, such as general health and state of the patient, where biological factors weigh heavily. X had health complications and was 44 when she requested treatment. The Court found that the age-limit was in accordance with Act No. 55/1996 on In vitro Fertilization and, moreover, it was the explicit aim of the legislature to order things in this manner. Furthermore, the Court ruled that the provisions of the regulation stipulating that a woman may not be older than 45 when an embryo is implanted, and her husband or partner no older than 50, did not constitute a violation of the principle of gender equality as stated in Article 65 of the Constitution, since general, objective and reasonable considerations lay behind the provision. X's claim was denied.

Name of the court: Supreme Court of Iceland

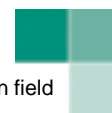
Date of decision: 25 October 2007

Name of the parties: Ásatrúarfélagið vs. The Icelandic State

Reference number: 109/2007

Address of the webpage: www.haestirettur.is/domar?nr=4775&leit=t

Brief summary: The plaintiff, *Ásatrúarfélagið*, A, a registered religious association (a Norse pagan religious association) claimed that the differentiated payments to



registered religious organizations, on the one hand, and to the National Church of Iceland (state church), on the other, constituted unlawful discrimination. A argued that Articles 62 and 65 of the Constitution should be interpreted together to mean that under the constitutional equality provision it was unlawful to discriminate between religious organizations in legislation regarding financial support to them. In its decision, the Supreme Court referred to the legally-prescribed role of National Church of Iceland under Act No. 78/1997 on the Status, Control and Working Procedures of the National Church of Iceland and the fact that the employees of the National Church were civil servants, and as such had rights and obligations towards the public. The Court ruled that as the functions of A and its duties towards the community, *cf.* the Act on Registered Religious Associations No. 108/1999, were not comparable to those of the legally-prescribed functions and obligations of the National Church of Iceland, funding from the State Treasury to the National Church to an extent over and above that received by other religious communities did not constitute a violation of the rule of equality set forth in Article 65 of the Constitution. In short, the Court ruled that state support and protection of the National Church of Iceland, according to Article 62 of the Constitution, does not constitute a violation of the freedom of religion and the principle of equality.

Name of the court: Supreme Court of Iceland

Date of decision: 29 March 2007

Name of the parties: Hallgrímur Þór Gunnþórsson vs. The Icelandic State

Reference number: 516/2006

Address of the webpage: www.haestirettur.is/domar?nr=4465&leit=t

Brief summary: The plaintiff, H, claiming damages and compensation, argued that Article 32 of Act No. 59/1992 on the Affairs of Persons with Disabilities had been violated when he was not hired for a job advertised at the District Court of Reykjavik. The Court found the employer's assessment that the person hired was more qualified than H reasonable and that the conditions set out in the job advertisement did not preclude the employer from hiring an applicant with more education than set out in the advertisement. H argued that the incorrect assumption that his disability entailed reduced mobility was decisive in him not being hired. The Court found that one would have to assume that H would have been asked to provide a medical certificate of his disability had his application been taken into consideration. In his application H included a certificate which stated he was unable to work and that his disability was 75%. Therefore, the employer's assumption that H was not able to work was not considered incorrect. H also based his claim on the Gender Equality Act but his statements were deemed unsubstantiated as no information was provided on the number of workers or the gender ratio of the employees working at the courts. The State was acquitted.

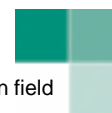
Name of the court: Supreme Court of Iceland

Date of decision: 4 February 1999

Name of the parties: Ragna Kristín Guðmundsdóttir vs. the University of Iceland

Reference number: 177/1998

Address of the webpage: www.haestirettur.is/domar?nr=69&leit=t



Brief summary: R enrolled in the University of Iceland in 1990 but gave up her studies in 1994. She argued that she had not received the assistance and facilities called for by her disability; she is blind. With reference to Acts No. 41/1983 and No. 59/1992 on persons with disabilities, the ECHR and Article 65 of the Constitution, the Court ruled that the University had an obligation to accept R as a student and to take general measures necessary to accommodate her to ensure that she could avail herself of the same services as other students, at the department of her choosing. The Court found that although the needs of R had been accommodated to some extent, the lack of general measures, a comprehensive plan or general guidelines on how to assist R had led to problems and that she had been forced to personally insist on normal accommodation. This entailed a breach of her personal rights and the right to education and R was awarded non-pecuniary compensation of ISK 600,000 (approximately 3700 euros), a reasonable amount by Icelandic standards at the time. R's claims for compensation for pecuniary loss were deemed unsubstantiated and thus rejected.

Date of decision: 24 April 2002

Name of the parties: The Prosecutor vs. Hlynur Freyr Vigfússon

Reference number: 461/2001

Address of the webpage: www.haestirettur.is/domar?nr=2157&leit=t

Brief summary: H was prosecuted for a violation of Article 233(a) of the General Penal Code by publicly assaulting an anonymous group of persons by derision, vilification and denigration on the basis of their nationality, colour and race in a newspaper interview. In the interview H expressed his opinions on the superiority of the white race and enumerated various negative qualities he thought characterize Africans. The Supreme Court weighed the conflicting interests of the defendant's freedom of expression and the prevention of racial discrimination and hatred. The Court held that the comments of H were clearly punishable under Article 233(a). It deemed the purpose of the provision, to prevent racial discrimination and racial hatred, lawful and found that its limitations on the freedom of expression were necessary and in conformity with democratic traditions. The conviction of H was upheld. H was ordered to pay a fine of ISK 100,000 (approximately 650 euros).

Name of the court: Supreme Court of Iceland

Date of decision: 19 December 2000

Name of the parties: Icelandic Federation of Persons with Disabilities vs. the Republic of Iceland

Reference number: 125/2000

Address of the webpage: <http://www.haestirettur.is/domar?nr=1104&leit=t>

Brief summary: The Court ruled, *inter alia*, that changes made to the Social Security Act No. 117/1993, adversely affecting social security payments to persons with disabilities married to able-bodied persons with income, conflicted with Article 76(1) (the law shall guarantee for everyone the necessary assistance in case of sickness, invalidity, infirmity by reason of old age, unemployment and similar circumstances) and Article 65 of the Constitution. The Court stated that Article 76 should be interpreted in line with international obligations set out in instruments Iceland is party

to, to entail an obligation to legally guarantee the right of everyone to at least some minimal support in accordance with a system organized in an objective manner. Such a system would have to be in accordance with Article 65 of the Constitution, that is, everyone should enjoy special rights equally, as well as general human rights. The social security legislation set out general rights for persons with disabilities which should be enjoyed on an equal footing with those in a similar situation. Although the legislator had some flexibility in defining the minimum rights contained in Article 76(1) the Court could not shy away from assessing whether such decisions were in accordance with constitutional provisions. The Court ruled that the system of reducing social security payments on the basis of spouse income had not been lawful and that it was in breach of the Constitution as it did not guarantee the minimum rights set out in Article 76 and thus prevented those affected from fully enjoying their rights as set out in Article 65. As a result of this judgment the Social Security Act No. 117/1993 was amended to provide for full payments to those who had received reduced benefits for 1997 and 1998 but also to provide the legal basis for a (smaller) reduction in payments for married persons with disabilities for the years 1999 and 2000. The Court found that claims for earlier periods 1994-1996 were statute barred. This judgment led to another case being brought before the Supreme Court, see below.

Name of the court: Supreme Court of Iceland

Date of decision: 16 October 2003

Name of the parties: Ingibjörg Stefánsdóttir vs. The Administration on Social Security

Reference number: 549/2002

Address of the webpage: www.haestirettur.is/domar?nr=2491

Brief summary: The plaintiff argued that she was entitled to full benefits for the period 1994-1996 and 1999-2000 on the basis of the judgment of 19 December 2000 (see above). The Court ruled that the claims regarding 1994-1999 were statute barred but that disability benefits recipients should have the right to full benefits on the basis of the judgment for the period 1999-2000 as the provisions in the amended Act on Social Security, setting out the reduction, could not be applied retroactively as the benefits claim constituted protected property *cf.* Article 72 of the Constitution. The Court ruled that the plaintiff should receive full benefits for the period 1999-2000.

Name of the court: Supreme Court of Iceland

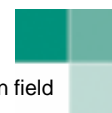
Date of decision: 6 May 1999

Name of the parties: Berglind Stefánsdóttir and Félag heyrnalausra vs. the State Broadcasting Service

Reference number: 151/1999

Address of the webpage: www.haestirettur.is/domar?nr=283&leit=t

Brief summary: The plaintiffs, the Association of the Deaf and B, demanded that the National Broadcasting Service (RÚV) be required to provide simultaneous interpretation into sign language of speeches by political candidates to be broadcast by RÚV on the night before elections. The Supreme Court found that the possibility to learn about the issues to be voted on was an integral part of the right to vote



protected in Chapter 3 of the Constitution and Article 3 of Annex I ECHR. RÚV should ensure equality when carrying out its legally prescribed role in relation to elections, cf. Article 15 of the Broadcasting Act No. 68/1985, not only in respect of candidates and political parties but also in respect of their viewers. Therefore, RÚV should arrange the broadcast of candidates' speeches in a manner accessible to deaf people cf. also Article 7 of Act No. 59/1992 on the Affairs of Persons with Disabilities. The Court found that although RÚV had considerable flexibility in its work, decisions contrary to the rights and obligations set out in Article 15 of the Broadcasting Act and Article 7 of Act on the Affairs of Persons with Disabilities must have valid and reasonable justification. In this case, the Court ruled that RÚV had not sufficiently justified the discrimination entailed in its decision not to translate the candidates' speeches as it was clear that this was technically feasible and the broadcast was to take place the day before elections. The Court ruled in favour of the plaintiffs, finding that RÚV had a duty to translate the candidates' speeches simultaneously into sign language. As a result of this judgment it is now common practice by RUV to simultaneously translate important political debates broadcast live into sign language.

Name of the court: Reykjanes District Court

Date of decision: 19 May 2003

Name of the parties: Dofri Örn Guðlaugsson vs the Municipality of Kópavogur

Reference number: E-4172/2002

Address of the webpage: N/A

Brief summary: The plaintiff, who is gay, applied for the position of supervisor at a municipal home for boys. He was shortlisted for the position but following an interview, where his sexual orientation was discussed at length, a less qualified applicant was hired. The Court ruled that the equality provision set out in Article 11 of the Act on Administrative Procedure No. 37/1993 had been breached and awarded the applicant compensation on the basis of a general provision on libel, Article 26 of the Tort Act No 50/1993, cf. Article 13 of Act No. 37/1993, 300.000 ISK (approximately 2000 euros). The decision was not appealed.