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

COUNTRY REPORT 2011

NORWAY

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State of affairs up to 15 March 2012

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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.

Norway is a relatively homogenous country with approximately 5 million inhabitants. In terms of people in Norway with minority backgrounds, there are approximately 381,000 immigrants in Norway and 79,000 people born in Norway with immigrant parents. These two groups constitute approx 9.7% of the total population. The Sami people is the largest indigenous group of people in Norway, and constitute between 50,000 and 65,000 people. Other national minorities include Jews (approx 1,100 people), Kvens/ people with Finnish descent (approx 10,000-15,000 people). Approximately 700 persons belong to the traditional group of Roma people. No exact figure is available for *Romani* (travellers) in Norway, but estimates put the number at around a few thousand people.[1] About 82% Norwegians are members of the protestant state church, the other religions groups of a certain size belong to Islam, the Roman Catholic church or the Pentecostal church.[2] Correct and reliable figures for the number of disabled people in Norway are difficult to find. Figures from the national Health Survey of 1985 estimates that 479,000 people between 16 and 67 years were disabled. Additionally there are 41,000 disabled people under 16 years, and 292 000 people over 67 years. The estimate corresponds to a percentage of disabled at 18.8 per cent of the population and working age (16-66 years).[3] It is assumed that current figures are similar. There are 768,014 persons who are 65 years or older, out of a population of 4,985,870.[4]

The legal system is inspired by the roman legal system, and has a three-level court system which handles both criminal and civil law. Statutory provisions (formal legislation through Acts and their regulations) interpreted through the legal preparatory works and case law are the primary sources of law invoked in Norwegian courts of law and in respect of Norwegian administrative agencies, although international legislation, especially European law, is increasingly being invoked in concrete cases.

Discrimination cases may be brought before the ordinary courts. The key administrative procedure to handle discrimination cases is the Equality and Anti-Discrimination Ombudsman (the Equality Ombud) with its complaint body the

[1] Statistics from Statistics Norway and the governmental Action plan to promote equality and prevent ethnic discrimination 2009-2012.
[2] See www.ssb.no/samfunnspeilet/utg/200903/03/index.html. Religious affiliation is not registered officially through national statistics, thus the numbers are based on information about membership given by each religious group themselves.
[3] See Norwegian Official Report NOU 1998:18 Det er bruk for alle (*All are useful*) chapter 9.6.5.
[4] See annual statistics by 01.01.2012 from Statistics Norway on population, at http://www.ssb.no/folkemengde/arkiv/tab-2012-02-23-01.html.

Equality and Anti-Discrimination Tribunal (hereinafter referred to as the Equality Tribunal).[5] Of some relevance to anti-discrimination law is also the Labour Court, which deals with disputes between trade unions that include the interpretation, validity and existence of collective agreements and cases of breach of collective agreements – to the extent anti-discrimination provisions are included in the collective agreements.[6]

Although no constitutional provision exist on non-discrimination, the legislative framework for anti-discrimination legislation is well developed, however difficult to access as its legislative base is derived from four general main different legislative acts as well as found in specialized legislation. The key pieces of anti-discrimination legislation consist of the Gender Equality Act (GEA), the Anti-Discrimination Act (ADA), the Anti-discrimination and Accessibility Act (AAA) and the Working Environment Act (WEA), as well as specialized legislation (the seamen's act and housing acts).

The Gender Equality Act (GEA): The Gender Equality Act prohibits discrimination based on gender in all areas of society, except for internal matters in religious communities.[7] Direct or indirect differential treatment (discrimination) of women and men is not permitted, in line with the EU *acquis*. The Act came into force in 1979, and has been amended several times, most recently in 2010.

The Anti-discrimination Act (ADA): The purpose of the ADA is to promote equality, ensure equal opportunities and rights and prevent discrimination based on ethnicity, national origin, descent, skin colour, language, religion or belief.[8] The Act applies in all areas of society including employment, goods and services with the clear exception for family life and personal relationships. The Act has a specific exception for "actions and activities carried out under the auspices of religious and belief communities and enterprises with a religious or belief-related purpose, if the actions or activities are significant for the accomplishment of the community's or the enterprise's religious or belief-related purpose". It is specified that the exception related to ethos organisations shall not apply in working life, see ADA article 3(1).

The Anti-discrimination and Accessibility Act (AAA): The AAA entered into force 1. January 2009.[9] Its purpose is to promote equality, and ensure equal opportunities for

[5] As per the Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal of 10. June 2005 No 40 (*Diskrimineringsombudsloven*).
[6] See http://www.arbeidsretten.no/index.php?&module=Pagesetter&func=viewpub&tid=4&pid=18&topic=1&tpl=forside&newlang=eng
[7] The Gender Equality Act (GEA) of 9. June 1978 No 45 (*Likestilling*) official translation at http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-relating-to-Gender-Equality-the-.html?id=454568.
[8] The Anti-Discrimination Act of 3. June 2005 No 33 on Prohibition of discrimination based on ethnicity, religion etc (*Diskrimineringsloven*) unofficial translation at http://www.regjeringen.no/en/doc/Laws/Acts/the-act-on-prohibition-of-discrimination.html?id=449184.
[9] Act of 20 June 2008 No 42 relating to a prohibition against discrimination on the basis of disability (the Anti-Discrimination and Accessibility Act - AAA).

and rights to social participation for all persons regardless of disabilities, and to prevent discrimination on the basis of disability. The Act shall help to dismantle disabling barriers created by society and to prevent new ones from being created. The AAA applies to all areas of society with the exception of family life and other relationships of a personal nature, see ADA section 2. The prohibition against discrimination relates to discrimination on the grounds of a present disability, assumed disability, past disability, possible future disability as well as discrimination of a person due to their relationship with a person with a disability, see AAA section 4(5).[10] The AAA covers in addition to the "normal" anti-discriminatory regulations also specific clauses on obligation to ensure general accessibility/accommodation (universal design)[11] in sections 9-11 and individual accessibility/ accommodation in section 12. Any breach of these obligations is regarded as discrimination.

The Working Environment Act (WEA): WEA chapter 13 covers discrimination in working life, and prohibits unlawful discrimination based on political views, membership of a trade union, sexual orientation and age The WEA applies correspondingly in the case of discrimination of an employee who works part-time or on a temporary basis. These grounds for discrimination are only protected as far as the coverage of the WEA, i.e., working life. All employment aspects are covered by WEA chapter 13, such as recruitment, career development and promotion, working conditions, termination etc. The WEA applies to undertakings that engage employees, unless otherwise explicitly provided by the Act, see WEA section 1-2(1) and section 13-2 second paragraph.

The Anti-discrimination Ombud Act (AOT): Cases alleging instances of discrimination can either be brought before an ordinary court, the Labour Court or be brought to the national machinery set up to assess cases of discrimination; Likestillings- og diskrimineringsombudet (The Gender Equality and Anti-Discrimination Ombudsman, hereinafter "the Equality Ombud") and Likestillings- og diskrimineringsnemnda (the Gender Equality and Anti-Discrimination Tribunal, hereinafter "the Equality Tribunal"). The appointment, method of organisation and authority of these bodies are regulated in the Anti-Discrimination Ombud Act - AOT.[12]

In terms of specialised legislation, the Seamen's Act of 30. May 1975 no 18 chapter II a provides protection against discrimination in the employment relationship of seamen on the basis of political views, membership of a trade union, sexual orientation, disability or age. Specialized legislation also includes prohibiting discrimination on the grounds of ethnicity, sexual orientation or disability in four different Acts regarding housing legislation (see below point 3.2.10).

[10] The latter legislative requirement in line with the EC Judgment C-303/06 Coleman.
[11] In the Norwegian translation to the act, the terminology "general accommodation" or universal design is used to describe the duty to plan and construct the main solution regarding the physical conditions so that the main solution can be used by as many people as possible.
[12] The AOT - Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal of 10. June 2005 No 40 (Diskrimineringsombudsloven).

Section 135a and section 349a of the General Civil Penal Code[13] contains criminal-law protection against discrimination. Section 135a concerns hateful expressions emphasising more clearly that racist expressions with insulting effects are punished by law. Section 349a penalizes the refusal of providing goods and services as well as admission to public performance/ exhibition/gathering. The provisions in the penal code are only applicable in relation to discrimination because of skin colour or national or ethnic origin, religion or life stance or homosexuality, lifestyle or orientation.

A proposal for a comprehensive anti-discriminatory legal framework that is: one legal instrument - was presented on 1. July 2009, by a Commission set up by government.[14] The Commission considered the following issues: [15]

- A holistic compiled Act against discrimination, including the question of whether new groups should be protected by the anti-discrimination legislation.
- The abolition of the special exemptions of religious communities from the prohibition against discrimination on the basis of gender or same-sex partnerships stipulated in the Gender Equality Act and Working Environment Act.
- The ratification and implementation of The European Convention on Human Rights' Protocol no. 12 on discrimination.
- Anti-discrimination provisions in the Constitution.

In a decision of September 2011, the current government through its Minister of Children, Equality and Social Inclusion decided to abolish the key element of the proposal, that of preparing one comprehensive anti-discrimination Act, and is now preparing a specific proposal for a new Act to cover sexual orientation and transgender which will, similarly to the ADA and AAA cover all areas, including goods and services, health and social benefits etc.[16] Currently, the grounds of age and sexual orientation under the WEA are protected only in employment.

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives. 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.

[13] See Penal Act of 22. May 1902 No 10.
[14] Government White Paper on Comprehensive protection against discrimination, NOU 2009:14 Et helhetlig diskrimineringsvern, presented on 1. July 2009.
[15] See a presentation of the Committee (in English) at http://www.regjeringen.no/nb/dep/bld/ryddemappe/temainnhold/comprehensive-protection-against-discrim.html?id=579248.
[16] See (in Norwegian) http://www.regjeringen.no/nb/dep/bld/aktuelt/nyheter/2011/arbeidet-med-ny-diskrimineringslovgivnin.html?id=653933.

It is presumed that Norwegian anti-discrimination legislation is in line with the EU *acquis,* although the non-discrimination directives (2000/78 and 2000/43) are not incorporated in the EEA agreement. However, the government has committed to having as high - or higher - standards in its work against discrimination as the requirements of the EU.[17] This protection has been reinforced by the Supreme Court in recent judgments.[18] Directive 2000/78 is thus implemented through the Working Environment Act (WEA)[19] chapter 13 on political views, membership of a trade union, sexual orientation and age,[20] and in the Anti-discrimination and Accessibility Act (AAA) in force as of 1.1.2009 covering disability.[21] Directive 2000/43 is implemented by the Act on prohibition of discrimination based on ethnicity, religion, etc. (the Anti-Discrimination Act - ADA) covering ethnicity, national origin, descent, skin colour, language, religion or belief, in force as of 1.1.2006.[22] The latter Acts were all assessed against the directives 2000/78 and 2000/43 before enactment.

Notably, there are currently no constitutional provisions on protection against discrimination and the promotion of equality.

There is a questionmark regarding the Norwegian implementation in relation to the requirements of directive 2000/43 regarding legal aid to victims of discrimination because of racial or ethnic origin, see point 7 e) below.

0.3 Case-law

Provide a list of any <u>important</u> case law within the national legal system relating to the application and interpretation of the Directives.

Name of the court
Date of decision
Name of the parties
Reference number (or place where the case is reported).
Address of the webpage (if the decision is available electronically)
Brief summary of the key points of <u>law</u> 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 concerning the

[17] Government White Paper on Strengthened protection against discrimination in working life, NOU 2003:2 *Skjerpet vern mot diskriminering i arbeidslivet,* page 7.
[18] See HR-2012-580-A premise 30, HR-2012-325A premise 46, Rt-2011-964 premise 39-44, Rt-2011-609 premise 68-72, Rt-2010-202 premise 46 and 55-56.
[19] Act relating to working environment, working hours and employment protection, etc. (Working Environment Act) (WEA) of 17. June 2005 no 62, see http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156.
[20] The discrimination clauses in force as of 2004 in the previous WEA.
[21] Act of 20 June 2008 No 42 on prohibition against discrimination on the basis of disability (the Anti-Discrimination and Accessibility Act - AAA).
[22] Act on prohibition of discrimination based on ethnicity, religion etc (the Anti-Discrimination Act) of 3. June 2005 no 33.

equality grounds of the two Directives (also beyond employment on the grounds of Directive 2000/78/EC), even if it does not relate to the legislation transposing them - e.g. if it concerns previous legislation unrelated to the transposition of the Directives

Name of the court: Supreme Court
Date of decision: 15. March 2012
Name of the parties: A vs the State/ Ministry of Labour
Reference number: HR-2012-580-A
Brief summary: A 61 year old male social worker claimed to be subject to discrimination because of age, as he was not selected to participate in a interview for a position at the local Welfare office on a small island called Smøla. He was well known by the employers. The case was brought before the Equality Ombud, who agreed that he had been subject to discrimination, as did the court of first instance. Both the court of appeal and the Supreme Court found that he had not been selected for interview because the employer sought to recruit someone with a different professional profile than social work. Thus, age was not the reason for the non-selection of him to participate in an interview.

Name of the court: Supreme Court
Date of decision: 14. February 2012
Name of the parties: Bjørn Nybø and others vs CHC Helikopter Service AS
Reference number: Rt-2012-219/ HR-2012-325A
Brief summary: Could the employer based on collective agreement require that its helicopter pilots retire at age 60? Ten helicopter pilots sued the employer claiming to continue their employment relationship after age 60 - even though an obligation to retire at age 60 followed from the interpretation of their collective agreement. The Supreme Court referred to its earlier case law in which it is stated that the national Working Environment Act shall be interpreted so as to be compatible with directive 2000/78/EU on equal treatment in employment, even though this directive is not a part of the EEA agreement. The Court found that following the *Prigge* judgment, safety or health reasons cannot justify the 60-year age limit for helicopter pilots. The Supreme Court did not assess whether the other purposes of the age limit that were highlighted - the interests of a dignified retirement, the rapid career advancement of younger pilots and protecting a good pension scheme - were justifiable in this context, as these other purposes were not sufficiently weighty to require that pilots stopped working at the age of 60.

Name of the court: Supreme Court
Date of decision: 22. November 2011
Name of the parties: Gate Gourmet Norway AS vs Nguyen Thi Ha and others
Reference number: Rt-2011-1755, HR-2011-2393-A
Brief summary: Was it possible to ask job applicants about their membership in trade unions within the contexts of a transfer of ownership in an undertaking? The Supreme Court found this to be a breach of WEA § 13-4 against obtaining information about applicants. The applicants were awarded a compensation of NOK

5000,- (approx € 650,-) as decided by the Court of Appeal in its decision LE-2010-70525.

Name of the court: Supreme Court
Date of decision: 29. June 2011
Name of the parties: A vs Gjensidige Forsikring ASA
Reference number: Rt-2011-964, HR-2011-1291-A (*Gjensidige*)
Brief summary: A worker in an insurance company was forced to retire due to an internal regulation set by the company, fixing retirement at 67 years. The Supreme Court found this regulation to be in line with the exception of the WEA section 13-3 and directive 2000/78 article 6(1). Key arguments included that the age limit was fairly high in a European context, the age limit was necessary due to the division of labour between the generations, the size of the pensions received for those who were retired and the need for the employer to have a predicatable and fixed age-limit.

Name of the court: Supreme Court
Date of decision: 5. May 2011
Name of the parties: Sven Vidar Bottolvs and others vs SAS Scandinavian Airlines Norge AS
Reference number: Rt-2011-609, HR-2011-910-A (*SAS-pilotene*)
Brief summary: The case concerned the validity of redundancies in SAS where ten pilots were chosen as redundant because they had reached 60 years of age and had a right to a pension. The fact that there was an economical need for downscaling, as well as an overstaffing in the Norwegian branch of the enterprise was not refuted. The Supreme Court concluded that the selection of the dismissed pilots was based on considerations that were justifiable under the WEA section 15-7, that is, an economical need for dismissals and the use of specified criteria – here – that the pilots were eligible for pension. The Supreme Court found that if one in a concrete situation chooses to base the selection process for redundancies on other criteria than tenure this can not in itself lead to the decision being ill founded. In this concrete setting, age was seen as a justifiable consideration, and thus, the Supreme Court found that the pilots were not subject to age-based discrimination when chosen for redundancy.

Name of the court: Supreme Court
Date of decision: 18 February 2010
Name of the parties: A vs Nye Kystlink
Reference number: Rt 2010 s 202, HR-2010-00303-A (*Nye Kystlink*)
Brief summary: The question in case was if a seaman employed by the shipping company after his 62 birthday could be legally dismissed because of his age, in accordance with the mandatory 62-years age limit in the seafarers act. The question of age discrimination in relation to the mandatory age limit had not been discussed in Parliament when section II A of the seaman's act was amended in 2007 to include a prohibition against discrimination. The Supreme Court concluded that the mandatory age limit for seamen was not a breach of directive 2000/78, referring to the wide margin of appreciation the courts have in this area, and that the mandatory age limit

is a result of a conscious decision from the legislator, and that the rule is applicable both for national and international shipping.

Name of the court: Eidsivating Appellate Court/ Court of second instance
Date of decision: 6 July 2007
Name of the parties: A vs Oppland fylkeskommune
Reference number: LE-2006-189239, (The music teacher) (disability)
Brief summary: A blind woman with a Master of Arts (music) claimed that she was passed over to a position as a music teacher in a high school because of her disability (blindness) and demanded redress according to the previous WEA section 54J. She also claimed that the decision to not to hire her was a retaliation by the school because she had previously raised questions about discrimination. The court found that the court of first instance had proved that the real reason for not hiring her was not due to her disability, but due to the schools' assessment of her personal suitability (or lack thereof). This was based on previous experience when she had held a temporary position.

Name of the court: Tønsberg court of first instance
Date of decision: 16 December 2011
Name of the parties: A vs X AS
Reference number: TTONS-2011-72817
Brief summary: A woman A was employed as a bingo hostess in June 2009. She was dismissed in October 30, 2010, justified by the bingo-contractor by her "*difficulties in complying with the procedures and work instructions that resulted in subordination*". In the course of her employment, she had been ordered to expel two Roma people, a father and son, from the bingo-hall: This she had refused to do, as she perceived that the exclusion of the two, in reality, would constitute a discriminatory act. The employer argued in court that her dismissal was fair and valid, as she was dismissed for violating clear work instructions. The employer argued that A had a duty as an employee to act in good faith towards her employer and abide by the employer's performance instructions. A had not been loyal to the employer in enforcing the instructions given regarding the exclusion criteria the employer had set for access to the premises. The court found that the employer could not validly terminate A's contract on the basis of insubordination, since A had no duty to abide by and enforce an unlawful order/ instruction. The Court did not find other reasons for the dismissal. The dismissal was ruled unfair and invalid. A was awarded damages for the economic loss she had sustained by losing her job, of NOK 320,000, - (approx € 80.000, -). She was not awarded damages for non-monetary loss.

There have been no discrimination cases before ordinary courts brought by Roma and Travellers. There have neither been any discrimination cases before ordinary courts concerning the discrimination grounds religion or sexual orientation.

Select cases of the Equality and Anti-Discrimination Tribunal:

Name of the court: Equality and Anti-Discrimination Tribunal
Date of decision: 31 January 2012
Reference number: Case no. 40/2011
Brief summary: A woman was referred to a specialist in oral surgery for a tooth implant evaluation. She was HIV-positive, and under examination for possible hepatitis. The oral surgeon concluded that the implant treatment should be postponed, due to the risk of infection. On behalf of the complainant, the organisation HIV-Norway complained about the above rejection to the Equality and Discrimination Ombudsman, who dismissed the case. The Ombudsman found that discrimination because of assumptions about transmission risks falls outside the term "disability" within the Anti-discrimination and Accessibility Act. The Equality and Anti-Discrimination Tribunal found that being HIV-positive, because of the transmission risks, *per se* is covered by the term “disability” in the Discrimination and Accessibility Act term § 4. The Tribunal reviewed the legislative preparatory works of the AAA and found that while it is unclear as to whether it is the current functioning of the HIV-positive or the possible future disability that the Act is meant to cover, it is clear that protection should be offered to people who are HIV-positive to avoid discrimination because of negative stereotypes linked to the infection. Until further legislative clarifications are provided, the Tribunal found that being HIV positive is covered by the term "disability" in accordance with the Anti-Discrimination and Accessibility Act § 4.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 22 November 2010
Reference number: Case 29/2010
Brief summary: The case concerned an appeal against the Equality and Discrimination Ombudsman's statement of 20 January 2010 and pertaining to a lack of universal design at an airport.
The question relates to the entrance to the gate 21 in the domestic terminal of an airport. This particular gate is used for departures and arrivals of passengers between X and Y. When the aircraft arrives from X, it arrives at the inland terminal to carry domestic passengers on to Heathrow. Passengers coming from Y must pass through the customs area in the international terminal. Access to the customs and baggage action is only by stairs. From gate 21 there are ten steps down to the Baggage Claim and Customs area. The gate has access to a lift, but the lift is not in operation. Wheelchair users arriving from Y must thus either be accompanied by security personnel through regular public area of the inland terminal up to the elevator that leads down one floor to the customs area / arrival abroad, or be carried down the ten steps. The Tribunal assessed the relationship in accordance with the AAA section 9, and concluded that there was a violation of the duty of universal design/ universal accommodation. The Tribunal ordered the company to establish a satisfactory solution as soon as possible and no later than six months after the date of the decision of the Tribunal.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 20 August 2010
Reference number: Case 8/2010
Brief summary: Within the Norwegian police force, uniform regulations prohibits the use of civilian clothes and effects related to the uniform, which means that people who because of their religion wear religious headgear, can not apply to the police. The Equality and Discrimination Ombudsman found that the police uniform regulations, which bans the use of religious headgear in connection with the uniform, violates the ADA section 4 and the GEA section 3. The Ministry of Justice and the Police Department decided not to change the regulations according to their own political assessment and their own interpretation that the regulations were in line with international conventions and national legislation. The Ombudsman thus brought the matter before the Equality Tribunal. Both the parties to the case and the Tribunal agree that the uniform regulations involve an infringement of religious freedom. The regulations are in principle gender-neutral, but given that women constitute the largest group among those who use religious headgear in Norway, the regulations also have an indirect discriminatory effect. The regulations also imply an indirect discrimination, as people who wear the hijab or other religious headgear are placed in a weaker position regarding their applications to the police profession. The purpose of the prohibition is a desire for the uniform to express values such as neutrality and equality. The Ministry of Jusitce argued the necessity of the prohibition in order to maintain confidence in the Norwegian police's neutrality, and to maintain peace and order. The Equality Tribunal agreed with the Ombudsman, and pointed to the stated aim of the police that they should reflect the Norwegian society in a good and reliable manner. As the society is multicultural and diverse, the police should also represent this diversity, in order to maintain confidence on a broad basis.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 17 June 2010
Reference number: Case 10/2010
Brief summary: A man applied for a position as a medical doctor at a medical centre in a municipality. Another Scandinavian, and less formally qualified doctor, was given the position. The man claimed he was passed over in the recruitment process because of ethnicity and skin colour. The ethnic origin of the claimant is not stated in the decision of the Tribunal. The municipality claimed that the position was given to the best qualified applicant, based on the interview situation and formal qualifications. As the complainant was far better formally qualified than the doctor offered the position, the Tribunal found that the burden of proof had been transferred to the municipality. In view of the unclear circumstances of the case, and that the process was characterized by the lack verifiable evidence, the Tribunal found that ethnicity might have been a decisive factor in the recruitment process. The Tribunal thus found that the municipality acted in violation of the prohibition against discrimination in ADA section 4.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 12 March 2010
Reference number: Case no. 44/2009
Brief summary: In the Tribunals' case 10/2006, a position at a Dry-Cleaner's in Oslo was announced vacant in the Norwegian national newspaper Aftenposten asking for "Mature female aged 30-50 years". Both the Ombud and the Tribunal found that the announcement amounted to discrimination on the grounds of age and gender. As the company had used a similar announcement previously, and the firm is a large, professional employer with 17 branch offices in the Oslo area, the Tribunal ordered that similar advertisements be stopped. The Tribunal issued an order with a specific time limit for compliance to ensure that a similar advertisement would not be used again. Thereafter the Tribunal received a notice from the firm confirming that the advertisement would not be used again. The dry cleaners' announcement in 2009 was for a "mature woman". The case was brought to the Tribunal from the Ombud on her own initiative, asking whether or not the current announcement was a breach of the 2006 order of the Tribunal. The Tribunal again ordered the announcement stopped, and that the company collaborate with the Ombud in the wording of coming announcements, but did not issue a fine.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 25 September 2009
Reference number: Case no. 26/2009
Brief summary: The case concerned the effects of a settlement in employment, in which a woman who wore a hijab was forced to quit and sign a settlement that she voluntarily resigned. This agreement, which was in breach of the ADA and the GEA was assumed void by the Tribunal based on the grounds gender and religion. The legal effect of the nullity of the agreement was that formally the employment relationship still existed, however, a settlement was entered into by the parties to the case.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 7 September 2009
Reference number: Case no 19/2009
Brief summary: A Roma family was denied access to a camping site. The Equality Ombud found that they had been subject to discriminatory treatment, but the Equality Tribunal found that discrimination had not taken place. The complainants belong to the Roma (Gypsies / Travellers). During summer 2008, the complainant tried with his wife and adult son to check in at a campground. They arrived at the campsite with two large cars, as well as two large caravans. The family was offered to stay within the camp site, however they were asked to park their cars outside the campsite. The complainant and his family regarded the request to park outside the site as a rejection, and thus decided not to stay at the camp site. The complainant claimed that he was given limited access to the campsite because of their ethnic background as travellers. The campsite claims that all guests with big cars are asked to park their cars outside the camp site due to reconstruction, and that the complainant was not treated differently than others. The Tribunal did not find indications that the person

was treated differently because he was a Roma, and found that there had not been a breach of the ADA.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 20 August 2008
Reference number: Case 18/2008
Brief summary: A woman born in Guyana in South America applied for a permanent position as a teacher at an upper secondary school at which she worked as a temp. She was not nominated for the position. The Tribunal concluded that there were facts that gave reason to believe that the school had attached importance to ethnicity and language during the appointment process, as both the woman's relevant work experience at the school and her education, were under-reported in the expanded list of applicants. Furthermore, it took an unusually long time for the woman's expertise to be recognised when she was appointed to a temporary position at the school. She had also previously applied for permanent positions at the school without being offered a job. The Tribunal further pointed out that the recommendation noted that the woman spoke "somewhat unclear Norwegian". The Tribunal was of the view that such a note would not have been made if the applicant had been of Norwegian ethnicity, and therefore concluded that there was an obvious connection with the applicant's ethnic background. Finally, the woman was not even considered qualified for the position. Even though the Tribunal did not undertake a complete comparison and ranking of the applicants, it pointed out that both applicants appeared qualified for the position. The woman both had greater experience at the school and had completed more extensive higher education than the person who was nominated and appointed. The Tribunal concluded that the school had not sufficiently substantiated that ethnicity and language had not played a disadvantageous role in the recruitment process. The school did not provide an explanation of why a single applicant had been treated unfavourably in relation to all of the aforementioned points, and did not succeed in showing that this was not connected to ethnicity/language. Nor could the school show that corresponding inaccuracies had occurred in relation to applicants/employees of Norwegian ethnic origin. The school had therefore contravened the prohibitions against discrimination on the basis of ethnicity and language in section 4 of the Anti-Discrimination Act.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 5 March 2008
Reference number: Case no 2/2008
Brief summary: A hospital discriminated on the grounds of ethnicity and skin colour in connection with the appointment of a physician: A physician whose ethnic background was from Iran wished to specialize in the field of cardiac surgery. He applied for two training positions at a hospital. He was not offered either of the two positions and assumed he had been passed over on the grounds of ethnicity and skin colour. A majority of the Tribunal (3) found there were circumstances that gave grounds to believe that the hospital attached importance to the complainant's ethnicity and skin colour in connection with the appointment. The complainant had better formal qualifications than one of the two applicants offered the position.

Further, the complainant's work experience in the field of cardiac surgery had been taken into account in both the recommendation and in the appointment form, however none of the appointment documents prepared by the divisional management mentioned of the most relevant part of the complainant's work experience. This omission corresponded with the complainant's subjective perception of having been systematically overlooked by the divisional management during the time he worked at the hospital, which the complainant related to his ethnic background and skin colour. The hospital's grounds for why the complainant was not offered the position were only documented to a limited extent, and the hospital was unable to substantiate that there had been no discrimination.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 5 March 2008[23]
Reference number: Case no. 1/2008
Brief summary: This case was the first case to explicitly address multiple discrimination. Two women with an Asian background tried to book a hotel room in Oslo. The women were refused a room at the hotel, as the women's home address was in the Oslo area, based on written guidelines permitting staff to refuse access to people domiciled in Oslo and its environs. When assessing the case, the Tribunal found circumstances which gave grounds to believe that the hotel had attached negative importance both to the women's gender and ethnical background, and that the hotel was unable to substantiate that there were other circumstances than gender and ethnicity behind the two women being refused a room.[24]

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 18 October 2007
Reference number: Case no. 21/2007
Brief summary: An employer had not fulfilled his duty (pursuant to previous section 13-5 of the Working Environment Act, now AAA section 12) to adapt working conditions to meet the needs of an employee with Attention deficit hyperactivity disorder (ADHD). The complainant who was diagnosed with ADHD shortly after being employed by the air traffic company was being blamed for a poor working environment and forced to resign, in spite of having informed his employer about his diagnosis. The employer did not initiate any actions to adapt the complainant's work situation. He did not seek information about the diagnosis, nor discuss specific measures of adaptation with the employee concerned. The lack of action was seen as a breach of the duty to individual accommodation.

Name of the court: Equality and Anti-discrimination Tribunal
Date of decision: 18 October 2006
Reference number: Case no. 18/2006

[23] See http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/62958820.doc for an English-language version of the case in full.
[24] The full text in English of the case can be accessed at:
http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/501748867.pdf
http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/62958820.doc.

Brief summary: The cases concerned a housing advertisement posted by a private landlord on the national webpage used for selling and letting houses (www.FINN.no) website stated; "*only Norwegian citizens need apply*". The advert was for a two-bedroom flat in a four-family house. The flat had a private entrance. The landlord did not live in the flat himself. The landlord stated that his interests were purely financial, as where Norwegian citizens are concerned he can seek assistance from the enforcement officer to recover rental arrears, and that it is far simpler to obtain enforceable eviction and to collect money owed in the wake of a tenancy, for example by execution charge, attachment of earnings etc., and that he can claim compensation from Norwegian citizens for any damage they have caused. Furthermore he argued that the requirement of Norwegian citizenship falls outside the scope of the Anti-Discrimination Act's prohibition of discrimination. The Tribunal found that although citizenship is not explicitly mentioned as a basis for discrimination under the Anti-Discrimination Act, the preparatory works left to the enforcement agencies to determine the point at which discriminatory treatment based on citizenship comes under the prohibition of indirect discrimination based on ethnicity etc. The Tribunal found that the requirement of Norwegian citizenship leads, or can lead, to persons of non-Norwegian descent, origin or ethnic background being put at a particular disadvantage compared with ethnic Norwegians. Hence the requirement entailed indirect discrimination in breach of the ADA on grounds of ethnicity, nationality and descent.

Select cases of the Equality and Anti-Discrimination Ombudsman:

Name of the court: Equality Ombudsman
Date of decision: 27 March 2012
Reference number: Case no 11/2094
Brief summary: A woman had on four different occasions in 2011 been refused entrance to a bus because she was in a wheel-chair. The bus-driver had claimed that the bus either was too full, or that the select area for wheel-chairs was full. The Ombud found that the woman had been placed in an unfavourable position by being denied access to the bus because she was in a wheel-chair. No objective justifications existed that could justify the unequal treatment. The denial was thus a breach of AAA section 4.

Name of the court: Equality Ombudsman
Date of decision: 17 February 2012
Reference number: Case no 10/1742
Brief summary: A Romanian Roma citizen forwarded a complaint to the Equality Ombud based on discrimination because of language/ ethnicity. The complainant was arrested by the police, on the suspicion of grand theft and handling of stolen goods. He was not informed about the reason for the arrest and his rights before an interpreter appeared three days later, who gave this information in his national language. It took a further eight days before he was transferred from police custody to the detention centre. The Ombudsman concluded that there was no reason to believe that appellant's ethnicity or language were emphasized regarding the transfer

of appellant from police custody, but found that he had been discriminated against on the basis of language when he was not immediately informed about the reason for the detention and his rights in prison until after three days in a language he understood. The Ombudsman pointed to the right to be informed about the reasons behind detention is an essential part of the right to a due process and fair trial. The complainant was therefore placed at a more disadvantaged position than people who speak Norwegian because he did not know the basis for the charges when he was arrested, but only after three days.

Name of the court: Equality Ombudsman
Date of decision: 4 January 2012
Reference number: Case no 10/761
Brief summary: The case concerning kitchen work in a religious boarding school. The school is a private evangelical school, and requires that all staff at the school share the same view. The Equality Ombud found that this requirement was a breach of the ADA, as people with another view than Christianity were placed in a worse position as the advertisement for the position stated that only Christians will be considered for the position. The Equality Ombud assessed if having a Christian belief was necessary to achieve a legitimate aim. The school argued that all staff at school must have a Christian belief, as they might act as discussion partners or "counsellors" for its pupils. The Equality Ombud found that although it was possible that such a function may be part of the position, this was not the key part of the job, and not relevant in terms of this concrete job, thus the school could not demand a specific faith for positions working in the kitchen.

Name of the court: The Equality Ombud
Date of decision: 3 May 2012
Reference number: Case no 09/892
Brief summary: The case concerned an assessment of indirect discrimination because of statelessness/ ethnicity: An asylum seeker had been promised a job in a business leasing employees to other employers. As he was an asylum seeker, he was not entitled to a Norwegian personal id-number, and was rejected a permanent access card to work in the business leasing employees and thus fired. The employer claimed that the dismissal/ rejection was based on the fact that the employee as an asylum-seeker did not have personal id-number, and thus could not be registered in the internal tax and salary-systems of the firm. The Ombud considered that the requirement to have a personal id-number/ social security number was an apparently neutral rule. Nevertheless, the lack of a personal id-number led to the person being put in a worse position than others. There was a clear connection between his lack of personal identity and his national origin. The company later changed its practice so that people who lack personal id-number/ social security number, but hold a DUF number (a registration number issued by the immigration board) and work permit can take up employment in the company.

Name of the court: Equality Ombudsman
Date of decision: 20 October 2011
Reference number: Case no 11/1146
Brief summary: A man alleged that he was by-passed to a position as a medical doctor in psychiatry at a hospital as he claimed that the hospital illegally had weighted his attachment to the 7-day Adventist church in the hiring process. He had during the interview mentioned that he was a member of the 7-day Adventist church. After the interview, he received an e-mail message from the head medical doctor informing him that he would not be hired for the position. Among other things, the e-mail said: “I am sorry to inform you that you will not be offered the position. Our ways of thinking are apparently far apart, and I don’t think our working relationship would function well.” A week later, he received an additional message from the head medical doctor: “I apologize if I have been too cryptic in my earlier message to you. Firstly, we have the impression that your qualifications are excellent. However, we have made a comprehensive assessment of the situation, and if whether or not we will be able to collaborate with you. In our opinion, your personality and behaviour did not appeal to us…(.). Your view of the world will probably not be present in everyday work at the clinic, but in rather more theoretical discussions” The Ombud found on the basis of this correspondence ground to believe that the employer had placed negative weight on the fact that the applicant belonged to the 7-day Adventist church. Thus, the complainant was not hired because of his religion, which amounted to a breach of ADA section 4.

Name of the court: Equality Ombudsman
Date of decision: 23 June 2011
Reference number: Case no 2009/2
Brief summary: The complainant had applied for child insurance for their daughter in a large insurance firm. The application was rejected, as the daughter was diagnosed with "attention deficit disorder" (ADD) and had an impaired cognitive functioning. After the rejection was brought to the attention of the Equality Ombudsman, the insurance company overturned their earlier rejection and granted the child insurance in accordance with the standard terms of the company. The general standard terms on insurance coverage for disability compensation read: *"7 insurance coverage 7.1.2 Special rules for disease. Disability compensation does not include b) ADHD, ADD, Autism, Asperger's and Tourette's syndrome and the consequences of such".* Based on this, the complainant upheld the complaint on behalf of her daughter because she believed that the insurance requirements for disability compensation under the child insurance continued to involve discrimination against her daughter compared to children who are not diagnosed. Pointing to the legal preparatory work of the AAA, the Ombudsman considered that there is no basis for concluding that the insurance company through their insurance and their practice is in violation of the AAA when the company limit its liability insurance against the known increased risk is related to disabilities, including ADD.

Name of the court: Equality Ombudsman
Date of decision: 22 December 2009
Reference number: Case no 08/1106
Brief summary: A private institution in Oslo called the "Poor's House" provides free food at the "Poor's House" to needy persons in Oslo every Friday. On 18. July 2008, seven Rumanian Roma citizens who were in Norway on a tourist visa to beg were refused entry to the house, so that they did not receive the free food given that day. The arguments for the refusal were according to one of the employees of the "poor's house" allegations that the Roma would not eat the food at the house, but take the food from the café and sell the food to others outside the house, which was a breach of the internal house rules. The Ombudsman was asked by a man who had been a board member of the "Poor's House" to assess if the "Poor's House" discriminates against Rumanian Roma citizens who begs on the streets by not giving them access to the food because of their ethnicity. The Ombud found that the Roma's were subject to discriminatory treatment on 18. July, but that this practice had not occurred after that date, thus that a discriminatory practice had not been established, and that Roma had a right to receive food at the Poor's House as long as they followed the internal regulations established in relation to the handout.

Name of the court: Equality Ombudsman
Date of decision: 3 December 2009
Reference number: Case no 09/1352
Brief summary: A blind person was refused entrance to a restaurant, as he was not allowed to bring his dog into the restaurant. The Ombud found that the blind person was put at a disadvantage as he was refused entrance to the restaurant. As the dog had to stand outside, the blind was not allowed contact with the dog, nor was the dog able to execute his job. The restaurant claimed that the refusal was due to health- and hygienic reasons, as food is naturally made in the restaurant. In the general regulations concerning food safety, guide dogs are specifically exempt, thus the Ombud concluded that the legislator had considered the issue regarding guide dogs, and that health and hygienic arguments are not considered an objective justification to refuse a blind person with a guide dog entrance. The refusal was thus a breach of the AAA.

Name of the court: Equality Ombudsman
Date of decision: 30 November 2009
Reference number: Cases 09/357, 09/358, 09/359, 09/360, 09/361 and 09/363
Brief summary: The Norwegian Association for the disabled (NHF) complained to the Ombud regarding six restaurants in Trondheim, claiming that neither of them were accessible for people in wheel-chairs. NHF alleged that these restaurants were in breach of the AAA as access to parts of the premises as well as the rest-rooms were though stairways. The restaurants had transportable wheel-chair access rails that were placed in the stairs and used when needed to enable universal access. As restaurants and cafes are enterprises with public access, these are covered by the duty of universal access/ design according to AAA section 9. The Ombud assessed each restaurant according to the legislative standards of the AAA section 9, and

found that four of the six did not fulfil the requirements of the AAA. The remaining two did also not fulfil the requirements of the AAA, however, the Ombud found that they were exempt the duties of the AAA as a refurnishing of the sites would imply an undue burden at the time of assessment.

Name of the court: Equality Ombudsman
Date of decision: 21 April 2009
Reference number: Case no 08/1630
Brief summary: Islamic Council of Norway complained on behalf of a Muslim woman to the Ombudsman, as the employer had denied the women more than 14 days of unpaid leave of absence from work to go on pilgrimage to Saudi Arabia. The Muslim woman worked as an assistant at a day-care program at a municipal school in Oslo. When she applied for a three-week leave of absence for pilgrimage, she was not granted a leave of absence exceeding fourteen days. The school argued that the City of Oslo have common rules for leaves of absence, as a more extended leave for employees will be disadvantageous to the students. The Muslim woman argued that she had applied for the leave well in advance of the actual travel, and that the school would be able to find a substitute for her for the entire period of three weeks and not only two weeks. The woman emphasized the importance of pilgrimage as a religious Muslim. She pointed out that *Hajj* is a religious duty. The Ombud considered that it is not possible to complete the journey in just fourteen days, and that the Muslim woman thus have been indirectly discriminated against by the school's practice where they only granted her a 14-day leave. The Ombudsman emphasized that the general practice restricting the leave to 14 days, without any individual assessment, involves an indirect discrimination based on religion. In assessing the proportionality of the case, the Ombud concluded that the disadvantage of the Muslim employees' in not being able to perform *Hajj* weighed more than the employer's disadvantage regarding substituting an employee for more that 14 days. The Ombud thus concluded that the school had acted contrary to the ADA section 4, first paragraph, by its practice implying a lack of individual assessment of applications for leave of absence exceeding fourteen days.

Name of the court: Equality Ombudsman
Date of decision: 22 November 2008
Reference number: Case no 07/2027
Brief summary: This case is one of the very few cases so far treated by the Ombud on possible discrimination based on sexual orientation. A man was employed as an assistant professor at a university. His application for promotion to professor had been refused. He claimed that his sexual orientation was emphasized when assessing the application, as one of the members of the university evaluation committee had previously expressed a negative attitude towards homosexuality on a public website. The university disputed that the man's sexual orientation had affected the outcome of the case. The University claimed that it was the applicant's lack of full academic qualifications that was assessed by the evaluation committee. The University also believed that the man's claim that the relevant person was negative to homosexuality was not correct, as they found the quotes taken out of context. The

Ombud did not assess the man's professional qualifications, as the Ombud was not qualified to assess the quality of his scientific work, however the Ombud found that the professional assessments from the evaluation committee appeared professionally based and thorough. The Ombud did not agree that the quotes from the member of the evaluation board that were referred to gave reason to believe that the man's sexual orientation was emphasized. Both the university and the evaluation team member himself disputed the man's interpretation of the quotes. The man's allegations could thus not be said to be supported by other external circumstances. The Ombudsman found that the university had not acted in contravention of the WEA section 13-1.

Name of the court: Equality Ombudsman
Date of decision: 15 February 2007
Reference number: Case no 06/1529
Brief summary: The Ombud found that a prohibition against full-body bathing suits constitute a discriminatory breach of the ADA section 4. The case arose as a hospital in Oslo offered physiotherapy in warm water refused women to wear full-body bathing suits. The woman who complained to the Ombud pointed to the fact that it was mainly muslim women who insisted on using full-body bathing suits due to their religion, and that the prohibition would negatively affect this group of women who would be hindered from using a therapy-oriented service. The arguments from the hospital: that the use of full-body bathing suits made of cotton would cause technical problems with the swimming-pool, was not an objective justification, as full-body bathing suits are available in lycra.

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?

The Norwegian Constitution was adopted on 17. May 1814 and was founded on the principles of the sovereignty of the people and the separation of powers. The rights currently guaranteed by the Constitution include the freedom of expression (section 100) and freedom of religion (section 2). The Constitution has *no* provisions regarding discrimination, neither on grounds of gender nor ethnicity, age or disability or any other ground.

Section 110 c of the Constitution proclaims that the Norwegian authorities are under obligation to respect and ensure the human rights. The article also prescribes that specific provision for the implementation of treaties on human rights may be determined by law. This power is used first and foremost through the Human Rights Act[25] which incorporates a number of important treaties on human rights - including the International Convention on Elimination of All Forms for Discrimination of Women - into the domestic legal system on a general basis in which the Conventions prevail over any other conflicting statutory provision.[26] The International Convention on Elimination of All Forms for Racial Discrimination (CERD) is not incorporated into the Human Rights Act, but into the Anti-discrimination Act (ADA), the legal consequence being that CERD does not prevail over other statutory provisions in case of conflict, but has to be decided through an interpretation.

b) Are constitutional anti-discrimination provisions directly applicable?

Yes, if existing.

Currently non-discrimination is per se not a constitutional right, as the general reference to human right must be invoked (see above in a)). The Constitutional provision on human rights has up to now not been invoked in a discrimination case before the ordinary courts A Constitutional Committee forwarded a proposal for amendments in the Constitution to the *Storting* (Parliament) in December 2011 for

[25] Act Relating to the Status of Human Rights in Norwegian Law of 21. May 1999 no 30 (*Menneskerettsloven*).
[26] The International Convention on Racial Discrimination is incorporated in the Anti-discrimination act, but the Convention will in conflicting cases not automatically prevail. The lack of including the CERD in the Human Rights Act has been repeatedly criticised by the NGOs working on anti-discrimination.

discussion the coming months. This proposal covers non-discrimination.[27] The proposed text reads (unauthorized translation):"*Everyone shall be equal before the law. No person shall be subject to unjust or disproportional differential treatment*".

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

Once a constitutional provision is approved by Parliament, this can be directly invoked and are thus directly applicable. A constitutional equality clause would be enforceable both against private and public (State) actors.

[27] Dok 16 (2011-2012) Report on Human Rights in the Constitution from the Constitutional Committee to the Storting (Parliament), Chapter 6 see http://www.stortinget.no/Global/pdf/Dokumentserien/2011-2012/dok16-201112.pdf (accessed 22. March 2012).

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Norwegian anti-discrimination legislation provides a solid basis to address the following grounds of discrimination within all sectors: gender, ethnicity, national origin, descent, skin colour, language, religion or belief and disability under the GEA, ADA and AAA. Discrimination based on political views, membership of a trade union, sexual orientation and age is covered within working life under the WEA.

A new Act on protection against discrimination because of sexual orientation currently in its planning stages will give sexual orientation applicability in all sectors.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?
Is there a definition of disability at the national level and how does it compare with the concept adopted by the European Court of Justice in Case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

National law on discrimination has the following definitions:

Racial or ethnic origin: The grounds for discrimination in the ADA, ethnicity, national origin, descent, skin colour, language, religion or belief, overlap to some extent. "Race" is not specified as a separate distinction in the ADA, as the starting point for combating racism is to eliminate the idea that people can be divided into difference races, in line with preamble no 6 of directive 2000/43. Discrimination based on perceptions of a person's race is regarded as discrimination based on ethnicity.[28] The content of the term *ethnicity* is vague, and provision is made for some exercise of discretion by the enforcing agencies in defining the reach of the term's boundary zone. According to the Preparatory works, the term has both a subjective and objective content, and it is pointed out that the terms culture and ethnicity are closely linked:[29]

> *"The term culture describes certain characteristics common to people belonging to a defined group that are not possessed by other groups, or not to the same extent. Such characteristics may be a shared language, shared values, shared religion, shared moral codex and shared basis of experience. Where the term ethnicity is concerned about relations, and the individual's or*

[28] According to the *travaux préparatoires* to the ADA, Proposition No 33 (2004-2005) to the Odelsting, page 89.
[29] See *travaux préparatoires* to the ADA: Proposition to the Storting No. 33 (2004-2005) page 87-88.

group's sense of being different from other individuals or groups, are at centre stage.
…
In addition the term ethnicity could encompass objective differences which can be verified such as place of birth, place of upbringing, language, religion etc. The objective differences mentioned may incidentally also underlie the subjective experience of being different or alike".

The preparatory works also make it clear that *national origin* and *descent*, as grounds for discrimination, are closely associated with the term ethnicity: these grounds could include place of birth, country background, the place where one was brought up or from which one has one's background, and relationships in the broad sense.

Religion or belief: The ADA covers discrimination because of religion or belief. The legal preparatory works specify that the definition follows the wording of directive 2000/78, and that both having and not having a religion or belief is covered.[30] "Religion" is not defined in the preparatory works, but it is specified that the word "belief" is specifically chosen to underline that all kinds of life-stance beliefs are covered, not only those linked to a specific line of religious thinking.

Disability: The Norwegian definition of disability in the AAA is not limited to professional life, but formulated in the legislative preparatory works as "reduced functional ability either regarding physical, mental or cognitive abilities".[31] This definition is not specifically included in the Act. The definition of disability in the AAA in relation to professional life is also in Norwegian legislation understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life, in line with the judgment of the European Court in its case C-13/05 Chacón Navas

Age: The definition of age does not have limits upwards or downwards. Discrimination based on age will thus encompass discrimination because of high age and because of low age.[32]

Sexual orientation: the definition of sexual orientation is an overarching concept that covers heterosexual, homosexual and bisexual orientation. Transgender persons with the diagnosis transsexualism are assumed covered by the definition of gender in the GEA.[33]

[30] See *travaux préparatoires* to the WEA, NOU 2003:2 Skjerpet vern mot Diskriminering i arbeidslivet page 36.
[31] See *travaux préparatoires* to the AAA, NOU 2005:8 Likeverd og tilgjengelighet (Equal worth and accessibility) page 162-163.
[32] See *travaux préparatoires* to the WEA, NOU 2003:2 Skjerpet vern mot Diskriminering i arbeidslivet page 16.
[33] See legal note from the Gender Equality Ombud dated 14. May 2005: http://www.ldo.no/no/Klagesaker/Arkiv/Likestillingsombudets-klagesaker/2005/Likestillingsloven-gjelder-ogsa-for-transkjonnete-/.

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

National law on discrimination has defined these grounds, see response above under (a).

Recital 17 of Directive 2000/78/EC is not reflected in the national anti-discrimination legislation.

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 are formally no restrictions related to the scope of "age" as a protected ground such as a minimum or a maximum age below which the anti-discrimination law does not apply. In reality a number of age limits exists – both regarding minimum and maximum age, but these are referred to as falling under the exceptions (see chapter 4 below).

d) *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 national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

There are no legal rules per se in the field of anti-discrimination which deal with situations of multiple discrimination. "Multiple discrimination" is not explicitly prohibited in (non-discrimination) statutory legislation or statutory legal instruments, however it is assumed that multiple discrimination are currently covered by the discrimination legislation.

A recent official report on the structure for (gender) equality released in November 2011 suggests that a specific national provision be included in the GEA to cover multiple discrimination in relation to gender.[34]

Both the Equality Ombud and Equality Tribunal have handled a number of cases relating to cross-grounds/ multiple grounds discrimination, mainly in relation to gender and age, as well as gender and religion (hijab).

[34] See NOU 2011:19 Structure for equality (in English) accessible at http://www.regjeringen.no/pages/36950733/PDFS/NOU201120110018000EN_PDFS.pdf. (19 March 2012.

National or European legislation dealing with multiple discrimination may be necessary in order to ensure that the cases of multiple discrimination be given sufficient attention. This so that not only the most apparent ground of discrimination of a particular case be chosen for litigation, but that all grounds of the case be included and assessed equal weight.

e) *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?*

The Norwegian cases dealing with age and gender as well as ethnicity and gender have mainly been handled by the Equality Ombud and the Equality Tribunal. They have in general been handled as multiple discrimination cases. Interestingly, the national court system has handled only one case of multiple discrimination, concerning gender and age.[35] This case had already been handled by the Ombud and Tribunal, but was brought to the national court because of the employer's non-compliance with the statement of the Equality Tribunal.[36] A county recruiting new staff was alleged of discriminating against a female worker in the fire-brigade because of her age and gender, in contravention to the GEA and the WEA. The case concerned a female worker aged 41, employed on a part-time basis in the fire-brigade. She subsequently applied for a longer, full-time vacancy, and then a full-time position with a fixed term. A male worker aged 27 with less qualifications was employed in the positions that the woman had applied for. The ads announcing the position had the following formulation: 'applicants should be between 27 and 35 years of age'. The Tribunal and the Court found that the woman was discriminated against both on the grounds of gender and age, and a compensation of € 37.500,- (NOK 300.000,-) for economical loss as well as €18.759,- (NOK 150,000,-) for non-pecuniary damage was awarded. The employer, the county, did not take the case to the appellate court, and the judgment is final.

The Equality Tribunal Case no 1/2008 was the first case to explicitly address multiple discrimination. Two women with an Asian background tried to book a hotel room in Oslo. The women were refused a room at the hotel, as the women's home address was in the Oslo area, based on written guidelines permitting staff to refuse access to people domiciled in Oslo and its environs. When assessing the case, the Tribunal found circumstances which gave grounds to believe that the hotel had attached negative importance to the women's gender and ethnic background, and that the hotel was unable to substantiate that there were other circumstances than gender and ethnicity behind the two women being refused a room.[37]

[35] Øst-Finnmark Court of first instance. Judgment of 17. March 2010 in case no 09-136827TVI-OSFI.
[36] The Equality and Anti-Discrimination Tribunal, Case number 8/2008.
[37] The full text in English of the case can be accessed at:
http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/501748867.pdf
http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/62958820.doc.

Equality Tribunal case number 44/2009 (a follow-up from its case 10/2006), concerned an announcement for employment for a female between 20 and 50, thus the announcement was an example of discrimination both on gender and age, also an example of multiple discrimination. The proprietor of the firm withdrew the announcement, thus a sanction was not issued (see more below in point 6.5 a).

The Equality Tribunal in its case number 26/2009 concerned the effects of a settlement in employment, in which a woman who wore a hijab was forced to quit and sign a settlement that she voluntarily resigned. This agreement, which was in breach of the ADA and the GEA was assumed void by the Tribunal based on the grounds gender and religion. The legal effect of the nullity of the agreement was that formally the employment relationship still existed, however, a settlement was entered into by the parties to the case.

No damages have been awarded in the above cases, as the Ombudsman/ Equality Tribunal are not empowered to award damages.

2.1.2 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).*

Perceived or assumed discrimination is covered by national discrimination legislation – the AAA section 4(2) and (3), ADA section 4(2) and WEA - if the perception or assumption has actually resulted in a worse/ less favourable treatment of the person. If the perception or assumption has had no (negative) impact on the person concerned, discrimination has not occurred.

In its decision of 31. January 2012, case 40/2011, the Equality and Anti-Discrimination Tribunal concluded that being HIV-positive, because of the transmission risks, *per se* is covered by the term “disability” in the Discrimination and Accessibility Act term § 4. A woman was referred to a specialist in oral surgery for a tooth implant evaluation. She was HIV-positive, and under examination for possible hepatitis. The oral surgeon concluded that the implant treatment should be postponed, due to the risk of infection. The Tribunal found it clear that protection should be offered to persons who are HIV-positive to avoid discrimination because of negative stereotypes linked to the infection. Until further legislative clarifications are provided, the Tribunal thus found that being HIV positive is covered by the term "disability" in accordance with the Anti-Discrimination and Accessibility Act § 4 and its preparatory works (NOU-2005-8 para 10.4.5 and Ot.prp. nr. 44 (2007–2008) para 9.4.8.3).

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?

Discrimination by association (discrimination of a person due to their relationship with a person with a disability) is explicitly covered in AAA section 4(5), which reads:

> *"The prohibition against discrimination stated in this section relates to discrimination on the grounds of a present disability, assumed disability, past disability, possible future disability as well as discrimination of a person due to their relationship with a person with a disability. "*

Norwegian national legislation is thus in line with the European Court judgment in case C 303/06.

Discrimination by association is thus covered for the ground disability, but not covered in the WEA or ADA, that is for race/ ethnicity, age and sexual orientation.[38]

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

a) How is direct discrimination defined in national law?

Direct discrimination is defined in Norwegian law as when a person is treated less favourably than another has been or would be treated in a comparable situation. Direct discrimination is thus defined in such a way to cover a situation where the purpose/ objective or effect of an act or omission is such that persons or enterprises are treated less favourably than others are, have been or would have been treated in a corresponding situation on such grounds as are covered by the actual legislation, see ADA section 4(2), AAA section 4(2) and WEA section 13-1. In WEA section 13-1, the concepts of direct and indirect discrimination are not defined, but are discussed in the preparatory works.[39]

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).

[38] The proposition no 33 (2004-2005) to the Odelsting on new legislation on discrimination on ethnicity, chapter 19 p 205 and point 9.2.8.2 p 92, proposed that ADA would also cover discrimination by association, but not included in the enacted legislation.

[39] See the ADA section 4, the AAA section 4 and the WEA section 13-1 (1).The definitions are not specified in the WEA chapter 13 but are discussed in its preparatory works, Ot.prp nr 49 (2004-2005) chapter 25: http://www.regjeringen.no/nb/dep/aid/dok/regpubl/otprp/20042005/otprp-nr-49-2004-2005-/25.html?id=397026.

Discriminatory job vacancy announcements constitute direct discrimination in national law. The ADA section 7 has a specific prohibition against obtaining information in connection with appointments. When advertising for new employees, employers may not ask applicants to provide information regarding their stance on religious or cultural issues. Nor may employers initiate measures to obtain such information in another manner.

However, this general prohibition has an exception which is phrased in a rather broad manner, as employers may ask information regarding the applicants' stance on religious or cultural issues if the nature of the position so requires, or if it is part of the purpose of the enterprise concerned to promote specific religious or cultural views and the stance of the employee will be significant for the accomplishment of the said purpose. If information of this nature will be required, this must be stated in the advertisement of the vacant position. Illustratingly, the prohibition in the GEA section 4(1) is worded stronger, as it states that a job vacancy must not be advertised as being restricted to one sex only unless there is an "*obvious reason*" for doing so, such as looking for an actress. Nor must the advertisement give the impression that the employer expects or prefers one of the sexes for the position.

AAA does not contain a specific prohibition on discriminatory job announcements, but there is a general prohibition in the WEA limiting the questions and obtaining of information on the medical information of the employee, see WEA section 9-3. This general provision also covers workers with disabilities.

The WEA is worded similarly as the AAA: The employer cannot when advertising for new employees request applicants to provide information on sexual orientation, their views on political issues or whether they are members of unions. Neither can the employer initiate other steps to obtain such information by other means, see WEA section 13-4(1). Similarly to the ADA, there is a general exception to this starting point: the employer may ask information regarding the applicants' views on political issues or whether they are members of an employee organization, if the nature of the position so requires, or if part of the aim of the enterprise is to promote certain political views and the employee's position will be of significance for the organisational aim. The same applies to information about whom the applicant is co-habiting with. If such information will be required by the employer, this must be stated in the announcement of the position, see WEA section 13-4(2).

Discriminatory oral statements are per se not capable of constituting direct discrimination in national law, as these are covered – to a certain length – by the constitutional right of freedom of expression. However, this is only as far as the statement is not so grave as to constitute a criminal offence under the penal code, see below point 2.4 a.

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, neither the ADA; AAA or WEA permits justification of direct discrimination, neither generally, nor in relation to particular grounds.

The only exceptions in relation to direct discrimination are those linked to genuine and determining occupational requirements, see point 4.1 below.

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?

In relation to age discrimination, the WEA only specifies that direct and indirect discrimination is prohibited. These concepts are interpreted along the lines of the definitions of the ADA section 4 and AAA section 4, in which the definition is based on "less favourable treatment". The law does not specify how a comparison is to be made, but it is stated in the legal preparatory works that the interpretation should not be made in a too limited manner.[40]

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.

It is assumed that national law permits the use of situation testing in court for all discrimination grounds. Situation testing is not defined specifically, as the law is silent on this issue. The key procedural principle in Norwegian civil courts is the free evaluation of evidence by the courts in the course of the case as presented in courts. The provisions on evidence apply to the factual basis for the ruling in the case, see section 21-2(1) of the Act on Civil Procedures of 17. June 2005 no 90.[41] Evidence consists according to Norwegian law both of oral presentations, witness declarations and written statements made for the purpose of the case. Evidence may only be presented on facts which may be of importance for the ruling to be made, and the scale and the scope of the presentation needs to be proportionate in relation to the importance of the dispute. In civil cases before the courts, the procedural rules for evidence are the same in discrimination cases as in other cases. If a relevant and grounded study on situation testing exists, a plaintiff would normally use this as evidence in court. Evidence brought that expands the case in an unnecessary manner may have adverse consequences for the costs of litigation.

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

[40] See Propositin to the Odelting, No 104 (2003-3004) chapter 8.3.5.3.
[41] Official translation at http://www.ub.uio.no/ujur/ulovdata/lov-20050617-090-eng.pdf.

Several NGOs such as the National association for the disabled, as well as the Norwegian Centre against Racism have carried out various small examples of situation testing regarding accessibility to publicly available clubs and bars etc on the grounds of ethnicity and disability, and forwarded these to the Ombud for complaints as well as further study.

An academic comprehensive study was recently released in which situation testing was used as a research method.[42] The study showed that job seekers with Norwegian names have a better chance of actually being called for an interview and thus securing employment than applicants with more unfamiliar names. Applicants with Pakistani names stand a 25 percent lesser chance of getting called to an interview. The researchers sought to examine discrimination in the workplace by sending out 1,800 fictitious job applications in response to real job ads in six different lines of business. For each ad, the researchers replied with one application using a Norwegian name and another using a Pakistani-sounding name. The fictitious applicants were given near-identical profiles in terms of age, skills and work experience. All of the would-be applicants fulfilled them minimum criteria for the job and had perfect, native-level Norwegian language skills. The report found that men with Pakistani names are more often discriminated against than any women. Private sector employers are more likely than their public sector counterparts to reject an applicant with a Pakistani name.

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)?*

There is no reluctance formally to use situation testing as evidence in court, but there is a marked hesitation by lawyers to use situation-testing as it is for one thing very expensive to carry out. It is also contested among practitioners how valuable it is to use situation testing as court evidence in a concrete individual case, as the evidence given by the situation testing does not prove what has occurred in the concrete case being assessed, but rather gives statistical indications on the predictability of discrimination to occur in a given environment.

In criminal cases, there is a general prohibition on illegal provocation by the police - to provoke an action to occur which otherwise would not have occurred. This rule has probably led to a certain caution against situation testing by the police.

d) *Outline <u>important</u> case law within the national legal system on this issue.*

[42] *Diskrimineringens omfang og årsaker. Etniske minoriteters tilgang til norsk arbeidsliv* (The reasons and extent of discrimination. Ethnic minorities' access to the Norwegian employment sector), ISF Report 2012:1. The study was carried out jointly by Arnfinn H. Midtbøen from the Institute for Social Research (ISF) and Jon Rogstad from the Institute for Labour and Social Research (Fafo), financed by the Ministry for Children, Equality and Family affairs, at: http://www.samfunnsforskning.no/samfunnsforskning.no/Publikasjoner/Rapporter/2012/2012-001/(language)/nor-NO (accessed on 21. March 2012).

So far, no case law exists within the national civil legal system on this issue.

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

a) How is indirect discrimination defined in national law?

Indirect discrimination is where an apparently neutral provision, criterion or practice would put persons of a specific ground of discrimination at a particular disadvantage compared to other persons. Indirect discrimination is defined slightly differently in the various acts on discrimination, although the intentions behind the legislation are to have a similar coverage for all grounds. A feature of indirect discrimination in all acts is to cover a situation where there may be nothing wrong with a provision, condition, etc, viewed in isolation. However, while the provision or condition etc., is apparently neutral, it has a negative effect for certain groups in practice. The prohibition on indirect discrimination thus attempts to protect individuals against a systemic group identification that leads to unintended negative results for the individual or the group.

The ADA defines indirect discrimination as *any apparently neutral provision, condition, practice, act or omission that would put persons at a particular disadvantage compared with other persons on grounds of* ethnicity, national origin, descent, skin colour, language, religion or belief, see ADA section 4(3). The ADA does not require discrimination to have actually occurred as a result of a provision, condition etc. According to the Act's preparatory works the presence of a provision, condition etc which is likely to result in discrimination is sufficient. Nor is there any requirement as to prove a discriminatory intent or motive, it's the presence of or result of the action, omission, provision, condition etc that is assessed.

A key requirement for the concept is that persons are put at a *particular disadvantage* compared with others. A negative impact of some significance needs to be established in order to come under the protection afforded against indirect discrimination. The topic at issue is the degree of disadvantage or intervention for the person(s) affected, in addition to how large a problem would be caused by altering the condition, provision etc.

The AAA section 4(3) has similar wording: "*By indirect indiscrimination is meant any apparently neutral act, provision, practice, act or omission that leads to persons, on the basis of a disability, being placed in a worse position than other people*".

Indirect discrimination is not defined in the WEA, but it is specified in the legal preparatory works that the definitions follow directive 2000/78 art 2 no 2 b).[43]

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

[43] See the *traveaux préparatories* to the WEA, Proposition to the Odelsting no 104 (2002-2003), section 8.3.5.4, page 36.

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?

The test to be satisfied to justify indirect discrimination is similar in the all the different pieces of anti-discrimination legislation see for example ADA section 4(4) and AAA section 4(4): Differential treatment that is necessary in order to achieve a legitimate aim, and which does not involve a disproportionate intervention in relation to the person or persons so treated is not regarded as discrimination,. The wording in the GEA is somewhat different, as it is specified that the test to justify indirect discrimination is only to be used "in certain cases". The test according to the GEA is that the action must have an objective purpose that is independent of gender, and the means chosen is suitable, necessary and is not a disproportionate intervention in relation to the said purpose.

What constitutes a legitimate aim is based on an evaluation of the justification of the aim assessed in each concrete case. The action chosen must be relevant, true, necessary and proportionate in relation to the aim in order for indirect discrimination to be justified.

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

c) *Is this compatible with the Directives?*

The test used to justify indirect discrimination is derived from the Bilka-case, and thus is compatible with the origins of the directives. The legal preparatory works to the acts all point directly to the understanding of the directives.

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

The WEA does not specify how a comparison in relation to age discrimination is to be made. This was explicitly omitted by the lawmakers, as they stated that each case will have to be assessed on its own merits, and thus, they did not want to specify how the comparison should be made, as this is left to the courts to decide.[44]

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

Differences in treatment based on language has not been perceived as potential indirect discrimination on the grounds of race and ethnic origin, as in Norway,

[44] See the *traveaux préparatories* to the WEA, Proposition to the Odelsting no 104 (2002-2003), section 8.3.5.4, page 37.

language is a separate grounds of discrimination according to the ADA, and can thus be assessed as both a direct and indirect discrimination. The ground "language" is most often linked to ethnic origin, but may also stand alone. There is only one case assessed by the Equality Tribunal in which language was the only claimed ground of discrimination, see case 16/2011. The other cases handled by the Equality Tribunal on language as a discrimination ground, cases no 14/2007, 19/ 2007, 18/2008, 32/ 2010 and 33/2010 all concerned ethnicity and language in conjunction. In all of these cases, language is assessed in relation to direct discrimination. All cases concern people with another mother-tongue than Norwegian. There are no cases assessing language as indirect discrimination.

There is only one court case in which language as a discrimination ground was claimed - as one of several elements - when the case was initiated.[45] The case concerned a mother-tongue kindergarten assistant, a county employee, whose mother tongue was Tamil. Her job in the kindergarten had been to teach Tamil children the Tamil language. She was initially moved to another position in the county because the positions as mother-tongue teachers were abolished, and later dismissed due to alleged redundancies in the county because the county could not find another available position for her. When the case was tried in the county court/ first instance, the question of discrimination because of her Norwegian language skills was a key claim from the employee in relation to assessing the justification of the dismissal: she claimed she was dismissed because of her poor Norwegian, and that the focus on her language skills constituted discrimination and did not justify the dismissal. The question of language was not assessed in the judgment at all, as the court focused only on the duty of the employer to find another suitable position for her. In the Appellate Court of second instance, language was not included as a separate ground for discrimination by the appellant and thus not assessed.

There are within working life a number of positions which require either oral or written Norwegian language as a condition for employment. It has been accepted that an emphasis on language skills in many instances are seen as both legitimate and necessary.[46]

In its case 14/2007, the Equality Tribunal found that the refusal of a publicly funded work-experience place because of insufficient knowledge of the Norwegian language was not considered a contravention of the ADA, as it found the language requirement necessary and legitimate. As the complainant had received other relevant offers from the Welfare Services, the refusal of the particular work-experience place did not involve a disproportionate intervention in relation to the complainant.

The Equality Ombud has in her decision of 17 February 2012, Case 10/1742 handled one of the very few cases concerning a Roma: A Romanian Roma citizen forwarded a complaint to the Equality Ombud claiming he was discriminated against because of

[45] Case no LG-2007-124516, Gulating Appellate court Judgment of 3 March 2008.
[46] See the traveaux préparatories to the ADA, Proposition to the Odelsting no 33 (2004-2005) page 90 and 103-104.

language/ ethnicity. The complainant was arrested by the police, on the suspicion of grand theft and handling of stolen goods. He was not informed about the reason for the arrest and his rights before an interpreter appeared three days later, who gave this information in his national language. It took a further eight days before he was transferred from police custody to the detention centre. The Ombud concluded that there was no reason to believe that appellant's ethnicity or language were emphasized regarding the transfer of appellant from police custody, but found that he had been discriminated against on the basis of language when he was not immediately informed about the reason for the detention and his rights in prison until after three days in a language he understood. The Ombud pointed to the right to be informed about the reasons behind detention is an essential part of the right to a due process and fair trial. The complainant was therefore placed at a more disadvantaged position than people who speak Norwegian because he did not know the basis for the charges when he was arrested, but only after three days.

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 permits the use of statistical evidence to establish indirect discrimination, however, it is not necessary to prove if indirect discrimination has happened or not, as the assessment that has to be made according to national legislation is whether or not an action or non-action has had a negative result for the individual or the group.[47] The use of statistical evidence is however often a practical necessity, as described above, the prohibition on indirect discrimination attempts to protect individuals against a systemic group identification that leads to unintended negative results for the individual or the group. In order to prove indirect discrimination at an individual level, the use of statistical data will often constitute a practical necessity in order to prove that discrimination has occurred.

There are no specific conditions for statistical evidence to be admissible in court, however there is a general prohibition against the collection of sensitive personal information in Norwegian law which classifies information regarding ethnic background, religious or political views, health information, sexual relationships and membership in trade unions as sensitive information according to the Personal Data Act section 2 no 8.[48]

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)?*

[47] See the *traveaux préparatories* to the AAA, Proposition to the Odelsting no 44 (2007-2008) page 101.
[48] Personal Data Act of 14. April 2000 no 31. See http://www.ub.uio.no/ujur/ulovdata/lov-20000414-031-eng.pdf.

The use of statistical evidence in discrimination court cases is not widespread, as there are few discrimination cases brought before the ordinary courts.

The Equality Ombud uses statistical evidence regularly in her assessment of cases, as arguments for a specific solution.

There is no current debate on ethical or methodology issues on statistical data as evidence in court. To the author's knowledge there has not been a discussion on European strategic litigation issue in public discussion fora.

c) Please illustrate the most <u>important</u> case law in this area.

The case law as yet in this area is sparse. There are examples where statistical data was used in a Supreme Court case on age and retirement,[49] as well as on gender and work-related pensions.[50] The significance of this data by the Supreme Court in its judgment was low.

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?

National rules permit data collection, and most data is collected through the national statistical office, Statistics Norway, which in general are seen as high-quality providers of national data.

A key issue related to the use of statistical evidence is the linkage to privacy laws, such as data protection legislation, as well as the lack of reliable evidence for some groups, for example sexual orientation, as people are not registered by sexual orientation, as well as many refusing to disclose their sexual orientation. It is technically possible to collect information on registered partnerships or same-sex marriages and/ or dissolution thereof, however this information does not give statistically reliable data for the group as a whole. There are also a number of instances where data collection is not permitted for example on personal matters (privacy legislation) or in relation to health information, so that people are for example not registered according to disability.[51] The lack of data on the ethnic composition of the population in the Norwegian report under the international Convention on the Elimination of Racial Discrimination (CERD) was noted as a concern by the Committee on the Elimination of Racial Discrimination in 2011: "*The Committee recommends that the state party provides it with updated information on this*".[52] The

[49] Supreme Court judgment of 29. June 2011 (Rt-2011-964 *Gjensidige*).
[50] Supreme Court judgment of 27. November 2003 (Rt-2003-1657 *Braathens*).
[51] See Official Norwegian Report NOU 2009:1 Individ og integritet (*The integrity of the Individual*).
[52] See United Nations document CERD/C/NOR/CO/19-20 dated 8. April 2011.

national statistical office has however general geographical information about the Sami population.[53]

Statistical data – to the extent reliable information exists - are used also to design positive action measures. This may be illustrated with the enactment in 2003 of a specific rule within several acts on 40% gender representation on the boards of all publicly owned enterprises (state-owned limited liability and public limited companies, state-owned enterprises, companies initiated by special legislation and inter-municipal companies) and all public limited companies in the private sector. The key act is the Public Limited Liability Companies Act of 13 June 1997 No. 45 section 6-11a which has acted as the "template" for the other legislation, such as the Limited Liability Companies Act of 13 June 1997 No. 44 *Lovomaksjeselskaper* [*aksjeloven*], section 20-6. When the Minister of Commerce introduced this legislation, he cited statistical data that proved that if the companies themselves were to regulate this area, it would take at least 40 years to achieve the wanted equal representation of gender on all boards.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law?

The various Acts on anti-discrimination prohibit harassment within the grounds their particular act covers, see ADA section 5, AAA section 6 and WEA section 13-1(2).[54] The general definitions are similar in the various bits of legislation: By harassment is meant acts, omissions or statements that seem or aim to seem offensive, frightening, hostile, degrading or humiliating. In terms of disability the prohibition against harassment covers harassment on the basis of a present disability, assumed disability, past disability or possible future disability, as well as the harassment of a person on the basis of this person's relationship with a person with a disability. It is also prohibited to be an accessory to any breach of the prohibition against discrimination. The Acts all provide a specific duty on employers and the managements of organisations and educational institutions that they shall within their areas of responsibility, prevent and seek to prevent harassment occurring.

[53] See (in English) http://www.ssb.no/english/subjects/02/01/10/samisk_en/ Accessed on 22. March 2012.
[54] Specific for sexual harassment is that it also covered by the GEA, but not enforced by the Equality Ombud and Tribunal. Sexual harassment shall be enforced by the courts of law.

Section 135a of the General Civil Penal Code[55] contains criminal-law protection against discrimination, and concerns hateful expressions emphasising more clearly that racist expressions with insulting effects are punished by law. The provisions in the penal code are only applicable in relation to discrimination because of skin colour or national or ethnic origin, religion or life stance or sexual orientation.

b) Is harassment prohibited as a form of discrimination?

Yes. Harassment is prohibited as a form of discrimination.

The legal preparatory works to the prohibition emphasize that the concept of harassment shall be construed in accordance with the general concept of harassment in the WEA section 4-3 third paragraph. This provision contains a general requirement that workers should not "be subject to harassment or other improper conduct." Harassment protection pursuant to § 4-3 thus also includes harassment related to factors other than the grounds protected by discrimination rules. The provision is part of the requirements of the psychosocial work environment and is a continuation of the now obsolete Working Environment Act (1977) § 12 Case law for regarding the provision related to general harassment (previously WEA section 12 and current WEA section 4-3) is thus of relevance for the understanding of the concept of discriminatory harassment.[56]

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

There are no additional sources on the concept of harassment, such as an official Code of Practice.

2.5 Instructions to discriminate (Article 2(4))

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?

The different pieces of Norwegian anti-discrimination legislation all prohibit instructions against discrimination or harassment, see ADA section 6, AAA section 7

[55] See Penal Act of 22. May 1902 No 10. The text of the Penal Code section 135 a reads: "*Any person who wilfully or through gross negligence publicly utters a discriminatory or hateful expression shall be liable to fines or imprisonment for a term not exceeding three years. AN expression that is uttered in such a way that it is likely to reach a large number of persons shall be deemed equivalent to a publicly uttered expression, cf section 7 no 2. The use of symbols shall also be deemed to be an expression. Any person who aids and abets such an offence shall be liable to the same penalty. A discriminatory or hateful expression here means threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone because of his or her a) skin color or national or ethnic origin, b) religion or life stance, or c) homosexuality, lifestyle or orientation*".

[56] See the *traveaux préparatories'* special notes to the actual provision (§ 13-1) in the Proposition to the Odelsting. No. 49 (2004-2005) on the WEA.

and WEA section 13-1(2). It is also prohibited to instruct anyone to carry out an act of reprisal. It is furthermore prohibited to be an accessory to instructions to discriminate, that is to assist or support instructions to discriminate.

To consider an action to be an instruction, there must exist a relationship of subordination, obedience or dependency between the instructor and the person receiving it.[57] In a workplace, it will therefore be a case of instruction if a manager asks a subordinate to discriminate against another employee at the same level as the subordinate. However, if an employee asks another employee to discriminate, this demand will normally not be considered as an instruction in the legal sense, however inappropriate. The instructions must contain a specific order that one or more persons shall be discriminated. For example, if a manager asks a middle manager to ensure that the unionized employees are assigned to the unpopular shifts this would constitute an illegal instruction. Another example is where a manager at a club instructs gatekeepers that people with disabilities, wheelchair users or people with a particular skin colour should not be allowed.

Legal persons/ employers are liable for the actions and omissions of their employees according to the specific sanctions posed in each of the Acts as well as by general tort law.

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 or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?

The duty to provide reasonable accommodation for people with disabilities is specified in AAA section 12 which provides "Requirement of individual accommodation"..

The AAA is not limited to cover only professional life, but should cover all areas. However, the requirement to provide individual accommodation is limited to cover only four areas: employment, schools and educational institutions including kindergartens, municipal services according to the Social Services Act and the Municipal Health Services Act,

[57] See the *traveaux préparatories* to the previous WEA, Proposition to the Odelsting No. 104 (2002-2003) section 8.3.5.6.

The wording of AAA section 12 reads:

> "Employers shall, within reason, individually accommodate workplaces and tasks in order to ensure that employees or job-seekers with disabilities can obtain or retain a job, have access to training and other measures to develop their competence and can carry out and have an opportunity to advance in their work in the same way as other people.
> Schools and educational institutions shall, within reason, individually accommodate teaching locations and the teaching in order to ensure that pupils and students with disabilities obtain equal training and educational opportunities.
> The municipality shall, within reason, individually accommodate Kindergartens in order to ensure that children with disabilities obtain equal opportunities for development and activity.
> The municipality shall, within reason, individually accommodate its range of services pursuant to the Social Services Act and Municipal Health Services Act in a way that is permanent for the individual in order to ensure that persons with disabilities obtain an equal service.
> The obligations stated in the first to fourth subsections do not include accommodation that entails an undue burden. When considering whether the accommodation leads to an undue burden, particular importance is to be attached to the effect of the accommodation on the dismantling of disabling barriers, the necessary costs of the accommodation, the undertaking's resources. Any breach of the obligation to ensure individual accommodation stated in the first to fifth subsections is to be regarded as discrimination."

Any breach of the obligation to ensure individual accommodation is to be regarded as discrimination. Employers are expected to individually accommodate workplaces and tasks in order to ensure that employees or job-seekers with disabilities can obtain or retain a job, have access to training and other measures to develop their competence and can carry out and have an opportunity to advance in their work in the same way as other people. This is required "within reason". "Within reason" implies that it should not constitute an undue or disproportionate burden to provide reasonable/ individual accommodation.

Reasonable accommodation is only framed as an obligation where the accommodation will not entail an "undue burden". When considering whether the accommodation leads to an undue burden, particular importance is to be attached to the effect of the accommodation on the dismantling of disabling barriers, the necessary costs of the accommodation and the undertaking's resources.[58]

"*Reasonable*": What the duty is to provide reasonable individual accommodation needs thus to be considered in relation to each person with a disability. In this assessment, relevant factors are the planned duration of the relationship between

[58] See the *traveaux préparatories* to the AAA, Proposition to the Odelsting No. 44 (2007-2008) p 263-265.

responsible and the individual disabled, as well as the kind of/ degree of disability and the time-frame of the accommodation. Other factors that may be used in the legal assessment are to what extent the arena for adaptation is an essential part of that person's life, as well as the benefit for the person with disabilities.

"*Undue/ disproportionate burden*": In assessing whether the arrangement involves an undue burden, factors to be assessed include what effect the dismantling of disabling barriers will have, the costs of the actual accommodation and the resources of the enterprise. The cost is a fundamental factor in determining whether the measure should be considered as an undue burden or not. The extent to which public support is available is another factor. There is a stricter requirement – and expectations - for accommodation - posed on large and resourceful enterprise, than the requirements posed to a smaller firm. The same applies in relation to municipalities of different sizes and different economic situation.

What may be regarded as a disproportionate/ undue burden must be seen in the context of what a reasonable accommodation entails. The cost should not be viewed in isolation from the resources of the enterprise, but also seen in relation to the individual beneficiaries of such accommodation arrangements. Another factor to be taken into consideration is if others can benefit from the measure. One measure that only marginally improves the situation for one person is easier perceived as an undue burden than if it concerns a measure that is critical for the person with disabilities can benefit from such a school or health and social services.

In addition to the specific protection afforded to disabled workers according to the AAA, the WEA contains a general duty for employers to provide reasonable accommodation for workers who due to physical or psychological impairments need this, see WEA section 4-6 concerning adaptation for employees with reduced capacity to work.

The definition of a disability is the same for the purposes of claiming a reasonable accommodation as for claiming protection from non-discrimination in general. The personal scope of the national law in not different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.

b) 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?

Yes, Norwegian legislation provides for a duty to provide a reasonable accommodation for people with disabilities also in areas outside of employment. The AAA provides in its section 12 for schools and educational institutions to - "within reason" - individually accommodate teaching locations and the teaching in order to

ensure that pupils and students with disabilities obtain equal training and educational opportunities.

Similarly, the municipalities provide individual accommodation for children at kindergartens in order to ensure that children with disabilities obtain equal opportunities for development and activity. This is also "within reason".

The municipality shall, within reason, provide individual accommodations with regard to a range of services pursuant to the Social Services Act and Municipal Health Services Act in a way that is permanent for the individual in order to ensure that persons with disabilities obtain an equal service.

c) *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?*

Yes, failure to meet the duty of reasonable accommodation counts as discrimination. The justification defence is related only to the standard of "within reason" as described above.

d) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?*

Norwegian law has not implemented the duty to provide reasonable accommodation in respect of any of the other grounds. In relation to religion, lack of accommodation may constitute discrimination based on general rules of the ADA as well as the constitutional right to freedom of religion. Key concerns for religious persons such as a right to absence from work/ education on their religious holidays, the right to daily prayer at work etc is negotiable, and forms part of individual or collective agreements. The Equality Ombud has developed a handbook on religion at work, to guide both employee and employers regarding their religious rights in relation to work.[59]

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

National law clearly provides for the shift of the burden of proof when claiming the right to reasonable accommodation, as per the AAA section 13 on the burden of proof which reads: "*If there are circumstances that give reason to believe that there has been a breach of the provisions stipulated in sections 4, 6, 7, 8, 9 or 12, such a breach shall be assumed to have taken place unless the person responsible for the act, omission or remark proves it probable that no such breach has occurred*."

[59] See http://www.ldo.no/Documents/10-01-27%20Religionsh%c3%a5ndbok.pdf (accessed on 23.03.2012).

f) 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?

National law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way. The AAA section 9 contains a general duty to provide accessibility for people with disabilities by anticipation, in Norway called "universal design". A breach of the obligation to ensure universal design is regarded as discrimination under the law. Public undertakings are to make active, targeted efforts to promote universal design within the undertaking. The same applies to private undertakings that offer goods or services to the general public. By "universal design" is meant to design the main solution regarding physical conditions so that it may be used by as many people as possible irrespective of their physical functioning. Public and private undertakings that offer goods or services to the general public are obliged to ensure the universal design of the undertaking's normal function provided this does not entail an undue burden for the undertaking. When assessing whether the design or accommodation entails an undue burden, particular importance shall be attached to the effect of the accommodation on the dismantling of disabling barriers, if the main business function is of a public nature, the necessary costs associated with providing the accommodation, the undertaking's resources, whether the normal function of the undertaking is of a public nature, safety considerations and cultural heritage considerations. The list of elements does not exclude that there may be attached to other relevant considerations.[60]

It is not to be regarded as discrimination pursuant to subsection four if the undertaking meets specific provisions laid down in statutes or regulations concerning the content of the obligation to implement universal design.

The AAA has a general rule that "The King in Council" – may issue regulations concerning the content of the obligation to ensure universal design in areas that are not covered by the requirements of, or pursuant to, other legislation. The regulations are developed by the relevant Ministry, and after subsequent public hearings and preparation of legislative preparatory works, sanctioned by the King in Council, ie the Ministers and King in Council. Such regulations have not yet been issued.

A failure to comply with such legislation can and has been relied upon in a discrimination case based on the legislation transposing Directive 2000/78.[61]

[60] See Proposition No. 44 to the Storting On the law prohibiting discrimination on the basis of disability (2007-2008) pp. 261.

[61] See for example the following cases of the Equality Ombud: cases 10/2005, 10/2006, 10/2008 (all concerning access to fitting rooms in stores selling clothes), case 10/2224 (lack of technical hearing aids in the reception of a division within the public hospital dealing with deaf patients), case 11/62 (a blind was refused access to a café with his dog), case 10/1930 (lack of universal access to an electrical appliances store), case 09/169 (lack of universal access to public cinema), 09/473 (lack of access to the first floor of the county town hall). Case 10/1158 (lack of universal access to restaurant).

There are no cases tried before the courts as of yet.

g) Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? 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?

The AAA section 9 contains a general duty to provide accessibility for people with disabilities by anticipation, in Norway called "universal design" – see response above point f).

h) 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?

In terms of the labour market, there are a number of special rights for people with disabilities, which both intend to make their daily living easier, as well as enable their access to paid formal employment. The package of support in relation to employment includes possibilities for (1) transport to job and education, (2) financial incentives for trying out accommodation, (3) technical aids (including a "green card" system through which the authorities guarantees support to fund accommodation at the workplace), (4) Personal assistants paid by the state. The system appears to be fairly generous, but appears to be underutilized.[62]

Outside the labour market, the package of support consists of elements related to 1) economy: the access to disability benefits and other benefits, 2) transport, either by financing the accommodation of a private vehicle or , 3) provision of technical aids and 4) Personal assistants paid by the state.

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?

National law makes provision for a variety of sheltered and/ or semi-sheltered accommodation/ employment for workers with disabilities.[63]

[62] See Jan Tøssebro, Norway Report on the employment for disabled people in European countries, for the Academic Network of European Disability Experts (ANED) VT/2007/005 at http://www.disability-europe.net/content/aned/media/NO%20Employment%20report.pdf.

[63] See Act of 10. December 2004 no 76 on Employment measures (arbeidsmarkedsloven) with regulations of 11. December 2008 nr 1320 (FOR-2008-12-11-1320) on measures to promote labour market measures (forskrift om arbeidsrettede tiltak). The National Social Insurance system have a comprehensive description of the different kinds of sheltered employment, see www.nav.no/Arbeid/Arbeidsrettede+tiltak.

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

Both semi-sheltered and sheltered accommodation/ employment are included in the scope of the AAA and thus covered by the anti-discrimination law.

In relation to the WEA, they are technically not considered as employees. As a starting point in relation to the WEA; only employees are covered by the act. Persons who for training or rehabilitation purposes are placed on undertakings without being employees and persons who are not considered employees but participate in labour market schemes are only covered by the provisions of the act regarding health, environment and safety, see WEA section 1-6(1) f) and g).

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)

There are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives. However, citizenship/ nationality requirements are neither a ground for protection.

This has been specifically raised as an issue in relation to the protection of the Anti-discrimination Act (ADA): Citizenship is not explicitly mentioned as a basis for discrimination under the Anti-Discrimination Act. Hence requiring Norwegian citizenship does not fall within the prohibition of direct discrimination in section 4 first paragraph of the Act. Discrimination based on citizenship is however discussed in the Act's preparatory works, which states that discrimination based on citizenship may be subject to the prohibition against indirect discrimination based on ethnicity.[64] It is left to the enforcement agencies to determine the point at which discriminatory treatment based on citizenship comes under the prohibition of indirect discrimination based on ethnicity etc. The Tribunal or the courts must assess each case on its own merits. A case involving the requirement of Norwegian citizenship was handled by the Equality Tribunal in its case no. 18/2006, as described below (see point 3.2.10).

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

Norwegian law does not distinguish between natural persons and legal persons, neither for purposes of protection against discrimination or liability for discrimination.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service providers (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?

The scope of liability for discrimination (including harassment and instructions to discriminate) is wide. Employers and service providers such as landlords, schools and hospitals may be held liable for the actions of employees.

[64] See the *traveaux préparatories* to the ADA, Proposition to the Odelsting No. 33 (2004-2005) page 88.

Service providers cannot be directly held liable for actions of third parties such as tenants, clients or customers, as long as the service provider have not been directly involved in the incident or instruction.

The individual harasser or discriminator may also be held liable for discrimination. If an employee harasses co-workers, the harassment may according to the circumstances constitute grounds for dismissal or summary dismissal. In a Supreme Court judgment of 18. March 2002, RT-2002-273a professor had (sexually) harassed co-workers and students. This behaviour constituted justified reason for summarily dismissal.[65].

Trade unions or other general trade/ professional associations can be held liable for actions of their members only if the member operates in the name of the union or if key members of the union have been responsible for the instruction.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

National legislation applies in principle to all sectors of public and private employment and occupation, including contract work, self-employment, military service, and holding statutory office.

The scope of discrimination protection in the ADA and AAA apply to all sectors, also all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office, see ADA section 3 and AAA section 2. That covers each of the specific grounds covered by the directives. The WEA applies to undertakings that engage employees, unless otherwise explicitly provided by the Act, see WEA section 13-2(1). The provisions of the chapter also cover the employers' selection and treatment of self-employed and contract workers, see WEA section 1-2(1).

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

The scope of discrimination in employment under all the different acts (ADA section 3; AAA section 2 and WEA section 13-2) covers all aspects of employment from the initial advertisements of posts until the termination of the work contract, such as pay and working conditions, training and other forms of competence development,

[65] Although at that time in accordance with the Act on Public Employees (1983) section § 15 first paragraph, but the arguments of the case remain valid.

appointment, relocation and promotion. The regulations relating to public and private sector are the same.

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

In respect of occupational pensions, how does national law 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.

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.

Occupational pensions are covered by the provisions of both the AAA and the WEA, as the act applies to all aspects of employment including pay and working conditions, see WEA setion 13-1(c).

There is no case law pertaining to the access to occupational pensions because of alleged discrimination based on sexual orientation, age or disability. This does not mean that challenges do not exist. As a recent overhaul of the pensions system is in the process of taking place, it is probable that cases will arise concerning the accrual of pension credits between 67 and 70 years, as currently, a number of systems stop the accrual of pension credits at 67, which is the general retirement age (as opposed to maximum limits) (see below point 4.7.1 c). The legality of some of these systems in relation to directive 2000/78 is at present thus unclear, as this aspect has not been assessed in preparatory works to my knowledge.

An issue from an equality point of view is schemes where part-time or temporary workers are not fully covered by the schemes. There are a number of people who work part-time in Norway, that is in less than full-time positions. Especially in areas with shift work, for example within the health service, a number of people work on marginal employment contracts, for example 35% of a full time position, or 65% of a full time position A number of insurance agreements operate with conditions requiring that a person has to work at least 14 hours weekly or have a 20% position to be eligible for membership in a supplementary occupational pension system or that a certain time of employment is required before rights to membership/ benefits are earned. Such rules, that a 3-year grazing period is required before an insured member can receive benefits from the civil servants pension schemes, might be(come) unfortunate for immigrants and persons with disabilities with few fixed-term contracts. If the employee quits working or is dismissed within this first three-year period expires, the accrued pension credits in the occupational schemes are lost. For people working more than three years and then quitting, there is a system of deferred pension, in which the period of employment is calculated proportionally upon receipt of pension. For people in many temporary different positions, this might lead to little or no pension credit accrual in the occupational scheme at all.

Furthermore, workers working in employment contracts in which they work less than 20% of a full-time position are excluded from many occupational pension schemes, as per the Act on Defined Benefit Pension Scheme article 3-5(1) and the Act on Defined Contribution Pension Scheme article 4-2(3). The aim of the compulsory supplementary pension scheme is that all workers should be part of an occupational pension scheme. However, through both the underlying schemes, part-time workers with less than 20% of a full-time position and workers in temporary positions of less than 20% annually do not have the right to join the compulsory occupational pension schemes, unless otherwise is stated in the underlying regulation covering the pension agreement between the employer and the insurance company. Workers with a 20% position or more have a right to join the scheme. The legal preparatory work does not specify why the threshold is set at 20% position, but argues that there needs to be a limit downwards: in enterprises with a high number of part-time workers, such as students working part-time as well as in enterprises with high turnover of staff, there is a need for rules that limit membership in pension schemes so as not to create unnecessary administrative burdens.[66] This threshold has not been tried in national courts. In a possible case validating the legality of such a rule, assessing the objective justifications that necessitate such an automatic exclusion of part-time workers and temporary worker, most of whom are women and immigrants, would be a key element.[67]

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))

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 the national anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning courses?

Given the full scope of the ADA and the AAA (AAA section 2 and ADA section 3) as described above, both acts cover all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience. The WEA – that is age and sexual orientation - covers specifically training and other forms of competence development, see WEA section 13-2(1)b.

[66] See NOU 1998:1 p 128-130 and Ot. Prp Nr 47 (1998-199) point 5.2.
[67] Aune Helga (2008) Deltids og midlertidig ansattes diskrimineringsvern in Hellum, Anne and Kirsten Ketcher (eds) Diskriminerings- og likestillingsrett, Universitetsforlaget, Oslo, p 239-254.

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))

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.

Membership in an organisation of workers or employers, or any organisation whose members carry on a particular profession, are covered as a separate ground for discrimination in relation to employment and covered in the WEA, see WEA section 13-2(3).

Access to 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 – cannot be refused based on ethnicity or disability or the other grounds, however, there is a specific right in the WEA that the benefits offered by the organisation cannot be claimed by non-members, see WEA section 13-2(4).

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

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?

Norwegian law is in line with directive 2000/43 article 3(1)(e) as the ADA section 3 and the AAA section 2 covers social protection, including social security and health care.

The WEA – age and sexual orientation – does not extend to social security, and is as such in line with Directive 2000/78, article 3(3).

Most legislation, including that on social security, is neutral in terms of the existing grounds for discrimination. This is a challenge in contexts where for example men and women's choices in reality are different because of stereotypical gender roles in society, or where choices made by the minority population of specific ethnic or religious groups makes it difficult for the individuals of this group to access the protection afforded to the majority population. The result of these kinds of neutral systems without proactive measures might thus lead to differences in results because of individual choices. A system of neutral legislation leaves little room for compensating results of stereotypical individual choices based on gender, ethnicity, religion, disability etc. A challenge in terms of addressing discrimination in social security thus becomes an issue of defining what is meant by „discrimination" and „equality" in the intersection of anti-discrimination legislation and social security, for

example when determining what is a good set of regulations for women: do legislation aim to compensate for women or minorities lower labour market participation than men? Should legislation function as an incentive for women/ members of minorities to work more? Should legislation see men and women's activities as equal value, even though men and women behave differently? These issues are seldom addressed in public debates, as it is assumed that the Norwegian welfare state will cover the results of individual choices or structural barriers to employment – which it does not always do.

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

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.

The ADA and AAA cover all sectors of society, thus also all forms of social advantages, that is benefits that may be provided by either public or private actors to people because of their employment or residence status. Discrimination in this area will be unlawful. There are a number of benefits in Norway that are needs-based, for example funeral-support, family allowances etc. To the author's knowledge there is little indication that any of these either are discriminatory or have a discriminatory effect.

Prohibition of discrimination because of age and sexual orientation is limited to discrimination in working life, and does not cover social advantages. Discrimination in relation to social advantages outside working life will thus not be unlawful on the grounds of age or sexual orientation.

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

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.

The anti-discrimination legislation on, gender, ethnicity, national origin, descent, skin colour, language, religion or belief and disability also covers all aspects of education including all types of schools, both public and private.

The Education Act has specific regulations on psychosocial environment in section § 9-3a: all pupils attending primary and secondary schools are entitled to a good physical and psychosocial environment conducive to health, well-being and learning. The schools must make active and systematic efforts to promote a good psychosocial environment, where individual pupils can experience security and social belonging. If any school employee learns or suspects that a pupil is being subjected to insulting language or acts such as bullying, discrimination, violence or racism, the school management should be notified in order to investigate and intervene.

In the capital city Oslo there has recently been a discussion as to the legality of making a separate class with children of Norwegian parents in high school (Bjerke) in an area with a high immigrant population. This led to massive opposition, and the attempt was abolished.

The general approach to education for children with disabilities in Norway attempts both to handle the needs of disabled children within the mainstream public education system, but has also a network of segregated "special" education for those children unable to benefit from a more "mainstream" approach.

All children have a right to free education in Norway, as stated in the Education Act.[68]. Formal compulsory education starts normally the calendar year the child turns six years, and last until the child has completed the tenth school year, see section 2-1. Basically, all children have the right to go to school in the community where they live as per section 8-1 and to belong to a group, as per section 8-2. One exception is made for deaf students with sign language as their first language, as they are given the right to special instruction and education, see section 2-6.

The school has a general duty to adapt all education and instruction for each student, depending on the individuals' abilities and aptitudes. If this special adaptation is not enough, and does not give each individual pupil sufficient educational training, the pupil will be entitled to special education, see section 5-1. The Act contains specific rules for the assessment and allocation of special education. The parents may request that the school carries out sufficient surveys and tests to determine if the student needs special education. Involved in this assessment is the Educational Psychology Service (PP) established by local authorities. The PP-service (or DPI) is an expert and advisory body for nurseries and schools. Their tasks are to provide psychology services to help municipalities and counties to ensure tailor-made options for pupils with special needs, and provide for the preparation of expert evaluation of the child. National guidelines form the basis for the assessment to be made.[69]

[68] See the Act on Education of primary and secondary education of 17. July 1998 No 61, see http://www.ub.uio.no/ujur/ulovdata/lov-19980717-061-eng.pdf.
[69] http://www.udir.no/Regelverk/Tolkning-av-regelverket/Elever-med-sarskilte-behov/Spesialundervisning/Spesialpedagogisk-hjelp-og-spesialundervisning---Veileder-til-opplaringsloven2/.

An individual education plan (IEP) is prepared for each pupil who receives special education, see section 5-5. This plan should describe the objectives for the education, its content and scope. The IEP should both specify how the pupils' training differs from the normal curriculum, as well as specify how the education should be conducted.

The State has also developed special expertise about educational provision for children, adolescents and adults with major special needs through a National Support System for Special Needs Education (Statped).[70]

The governmental action plan to improve the situation of the Roma in Oslo also includes elements related to schooling.[71] This includes both specific education in Norwegian as well as mother-language training according to the education act section 2-8 and the private education act section 3-5, however data from the Education information system shows that no Roma children uses this right, as referred in the action plan. These figures might be misleading, as the counting is taking place annually by 1. October, when many Roma still are travelling. A project on the right to adult education for Roma in Oslo is referred to in the action plan as a positive initiative. The initiatives in schools include giving children computers for remote-distance education, home education and production of relevant educational material. There are 71 registered Roma pupils in 22 schools in Oslo, out of a total Roma population in Norway of about 700 persons. These services extend in principle to immigrant Roma children as well. However, a key issue in Norway in relation to Romanian Roma is that they visit Norway on a tourist visa and leave the country when this expires.

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

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.

The legislation on discrimination on ethnicity, national origin, descent, skin colour, language, religion or belief and disability covers as a starting point goods and services, and does in principle not distinguish between goods and services available to the public (such as in shops, restaurants or banks) and those available only privately, limited to members of a private association. A number of cases pertaining to discrimination of persons with disabilities in restaurants have been handled by the Equality Ombud. In case no 09/1352 as well as in case no 10/360, blind persons were refused entrance to a restaurant with their dogs, which was assessed as discrimination. In case 09/1852, some persons with psychological impairments and

[70] See http://www.statped.no/Spraksider/In-English/ (26.03.2012).
[71] See http://www.regjeringen.no/nb/dep/fad/dok/rapporter_planer/planer/2009/Handlingsplan-for-a-bedre-levekarene-for-rom-i-Oslo.html?id=594315.

their assistants were refused entrance to a café, which was also considered discrimination. This is by anecdotal evidence an area where a lot of discriminatory practice takes place.

However, there is a general exception in the ADA, that it does not cover family life and personal relationships. In the legal preparatory works to the legislation, it was specified that small local clubs and associations that are not directed towards the public, but only directed toward limited groups of people are assumed to fall under the exception of "personal relationships".[72] If the goods and services are directed towards the public in general, the prohibition against discrimination exists.

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?

As a general rule, the Act relating to Insurance Contracts section 12-12[73] has a specific regulation concerning the right to deny someone insurance, as a possible refusal/ denial/ specific requirements demands "just cause". Specific conditions that are considered to pose a particular risk will only be considered to have "just cause" provided that there is a specific and reasonable correlation between the specific risk and the rejection. The rejection must also not be regarded as unreasonable to the individual. The complaint mechanism developed in accordance with the Insurance Act, the Insurance Complaints Board[74] has since 2009 developed guidelines for the requirements that should apply to the factual basis the insurance companies used when they refuse personal insurance on the basis of future health risks. This applies to death coverage, disability coverage, child insurance and health insurance. Now, two independent physicians are appointed as members of the Insurance Complaints Board, in additions to the medical experts appointed by the insurance companies. The doctors assess whether rejections follow the Act's strict requirements regarding "valid reason". Before 2009, it was only the insurance companies' own doctors who assessed the risk of future disease among those who applied for insurance, and were also sole responsible for recommendations of rejection or approval.

The WEA does not cover provision of financial services, thus there are in principle no limitations on how age should be used in this context, apart from the limitation posted by the general principle requiring "just cause". There is a lower age limit to open a bank account/ obtain a credit card: children may open a bank account with the approval of their guardians. Children 13 and older may open a bank account with a credit card attached to it – the card also functioning as a form of nationally approved identification, with the approval of the guardians. There are no differences in

[72] As per the *traveaux préparatories* to the ADA, Proposition to the Odelsting No. 33 (2004-2005) page 204.
[73] See Act of 16. June 1989 No 69.
[74] See http://www.finkn.no/vis.asp?id=1.

treatment on the grounds of age regarding other financial services to the author's belief.

The AAA does not as a general rule allow for differences in treatment on the grounds of disability in the provision of financial services. The assessment used here will also be an assessment of the need to allow for such a difference based on a just cause.

The Equality Ombud has assessed various complaints about limited access to personal insurances because of disability.

> The complainant's daughter was diagnosed with "attention deficit disorder" (ADD) and have as a result of this an impaired cognitive functioning. The complainant had applied for child insurance for this daughter in a large insurance firm. The application was rejected in November 2008. After the rejection was brought to the attention of the Equality Ombudsman, the insurance company overturned their earlier rejection and granted in February 2009 the daughter a child insurance in accordance with the standard terms of the company. The general standard terms on insurance coverage for disability compensation reads: *"7 insurance coverage 7.1.2 Special rules for disease. Disability compensation does not include b) ADHD, ADD, Autism, Asperger's and Tourette's syndrome and the consequences of such".* Based on this, the complainant maintained the complaint on behalf of her daughter because she believed that the insurance requirements for disability compensation under the child insurance continued to involve discrimination against her daughter compared to children who are not diagnosed. The Ombudsman assessed the case. Pointing to the legal preparatory work of the AAA, she considered that there is no basis for concluding that the insurance company through their insurance and their practice is in violation of the AAA when the company limit its liability insurance against the known increased risk which is related to disabilities, including ADD.[75] This case had not been assessed by the Insurance Complaints Board.

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

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 article 3(1)h has in Norway been implemented by including specific provisions in four different Acts on housing: the Tenancy Act, the Housing Cooperative Act, the Property Ownership Act and the Act relating to housing Cooperatives (the housing acts). Through these Acts, discrimination based on

[75] Decision of 23. June 2011, case 2009/2.

gender, ethnicity, national origin, descent, skin colour, language, religion or life orientation, homosexual orientation or disability are prohibited.

The Tenancy Act states that the abovementioned grounds cannot be considered just cause for refusing to accept a lease, sub-lease, or a member of a household, and for transferring a lease to another person. Furthermore, these grounds can not be invoked for terminating a lease. The Act covers rentals for private, public and business purposes. The prohibition against discrimination does not apply to letting a room in one's own home. This is linked to the general scope of the ADA, as it does not cover private and personal relations.[76]

The Housing Cooperative Act, the Property Ownership Act and the Act relating to housing Cooperatives prohibit conditions being set for becoming a unit owner that may function discriminatory based on the abovementioned grounds.

The prohibition against discrimination according to the housing acts does not include selling a dwelling, that is, the relationship between the vendor and the buyer. The selling of dwellings is covered by the ADA, and is in practice the area in which a small number of cases have been assessed: No cases regarding housing discrimination has yet been taken to court, but the Equality Ombud and Equality Tribunal has heard some cases.

The Equality Tribunal Case no. 18/2006 concerned a housing advert posted by a private landlord on the national webpage used for selling and letting houses website[77] stated; "*only Norwegian citizens need apply*". The advert was for a two-bedroom flat in a four-family house. The flat had a private entrance. The landlord did not live in the flat himself. The landlord stated that he had not previously made Norwegian citizenship a requirement in his housing adverts, but wished to do so provided it was not unlawful. The landlord stated that his key concern is that his flats are properly looked after, that rent is paid punctually and that requisite guarantees are provided. He emphasised that his interests were purely financial, as where Norwegian citizens are concerned he can seek assistance from the enforcement officer to recover rental arrears, and that it is far simpler to obtain enforceable eviction and to collect money owed in the wake of a tenancy, for example by execution charge, attachment of earnings etc., and that he can claim compensation from Norwegian citizens for any damage they have caused. Furthermore he argued that the requirement of Norwegian citizenship falls outside the scope of the Anti-Discrimination Act's prohibition of discrimination. The Tribunal found that although citizenship is not explicitly mentioned as a basis for discrimination under the Anti-Discrimination Act, the preparatory works left the enforcement agencies to determine the point at which discriminatory treatment based on citizenship comes under the

[76] It follows from the Anti-Discrimination Act's preparatory works – Proposition to the Odelsting no. 33 (2004-2005) – that the exception in regard to family life and personal relationships is to be interpreted narrowly. Letting a room in one's own house is excluded from the scope of the Act, whereas the letting of independent flats not occupied by the owner himself falls within the scope of the Act.
[77] www.FINN.no

prohibition of indirect discrimination based on ethnicity etc. As the right to housing is a key welfare good, and the Norwegian housing rental market features a substantial element of private letting, a possible exclusion of persons from the rental market is a heavy burden for those affected. Thus, the Tribunal found that the requirement of Norwegian citizenship leads, or can lead, to persons of non-Norwegian descent, origin or ethnic background being put at a particular disadvantage compared with ethnic Norwegians. Hence the requirement entailed indirect discrimination in breach of the ADA on grounds of ethnicity, nationality and descent. The Tribunal also ordered the landlord to halt his discriminatory advertising and letting practice. The landlord was ordered to within 14 days of receiving notification of the decision of the Tribunal confirm in writing that the discriminatory letting practice will cease and that future housing adverts will be formulated in accordance with the rules of the Tenancy Act and the ADA.

The Equality Tribunal has furthermore handled 2 cases of discrimination because of ethnicity, in which the vendor of the real estate sold the property to a (Norwegian) bidder even though a higher bid from a non-ethnic Norwegian was receive. In one of the cases, no 7/2007,[78] the Equality Tribunal found it proved that the sale was not related to the bidders ethnicity, whilst it found a breach of the ADA in case no 22/2007.[79] No sanction was imposed.

Regulations has been approved under the Act on Planning and Building[80] regarding housing accessible to people with disabilities and older people.

[78] See http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/1025051586.doc for an English version text of the case.
[79] See http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/713306804.doc for an English version text of this case.
[80] Act relating to planning and the processing of building application/ building of 27. June 2008 no 71.

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?

Yes, both the ADA section 4(4) and the WEA section 13-3(1) provides a general exception which includes genuine and determining occupational requirements, in compliance with article 4 of directive 2000/43 and article 4(1) of directive 2000/78. The WEA permits justification of direct discrimination relating to age and sexual orientation to allow for differential treatment that does not constitute a disproportionate intervention, and is necessary for the performance of work or profession, see WEA section 13-3(1) similar to directive 2000/78 article 4(1). The provision is designed in general terms, but will only have independent significance as an exception to the prohibition of direct discrimination as the second paragraph sets out a further exception to the prohibition against indirect discrimination, which is a genuine occupational requirement. The legal preparatory works states that this provision is an exception to the principle of equal treatment and should be interpreted restrictively to prevent erosion of the prohibition against discrimination.[81] Because the provision is general and discretion-based, the content is to be determined in each individual case.

Both the ADA and the AAA have a similar restriction in relation to ethnicity and disability, as different treatment that is necessary to achieve a legitimate aim and does not disproportionately negatively affect the person or persons that are subject to the unequal treatment is not to be regarded as discrimination pursuant to this Act. Any unequal treatment in working life must also be necessary for the execution of the work or profession, see ADA section 4(3), AAA section 4(3).

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?

There is a general specific exception to the scope of the ADA relates to “actions and activities carried out under the auspices of religious and belief communities and enterprises with a religious or belief-related purpose, if the actions or activities are significant for the accomplishment of the community’s or the enterprise’s religious or belief-related purpose”. It is specified that this exception shall not apply in working life, see ADA section 3.

[81] See Proposition to the Odelsting No. 104 (2002-2003) chapter 8.4.5.1.

In working life, as a general rule, exceptions for employers with an ethos based on religion or belief are not accepted. However, employers with an ethos based on religion or belief may require that employees follow this religion or belief, provided that this is a genuine and determining occupational requirement in line with the general exception to the Act. This would be the case for religious/ confessional positions.

The scope of this exception is specified in relation to the advertisements of these position, as it is specified that employers may ask information regarding the applicants' stance on religious or cultural issues if the nature of the position so requires, or if it is part of the purpose of the enterprise concerned to promote specific religious or cultural views and the stance of the employee will be significant for the accomplishment of the said purpose, see ADA section 7(2). For the Norwegian church, it follows from the Church Act that the Norwegian Church as an employer have the right to require that their employees are members of the Church for confessional/ religious positions, as per the Church Act section 29.[82]

For general employment in positions in religious organisations that have no bearing on the organisation itself, it will not be allowed to neither ask nor emphasize religious affiliation. This is for example the case with positions as care-takers or cleaners in churches/ religious organisations (see below point c).

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 or case law regarding conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination, although the Equality Ombud in her handbook on religion at work has a specific page devoted to the interface between religion and sexual orientation.

The Equality Ombud assessed in 2006 a "value document" of a private kindergarten run by an evangelical Lutheran mission church. The kindergarten based its employment relationship on this document, in which it was stated that employees must follow their faith, and as a consequence of this faith could not live in same-sex couples.[83] The Ombud was asked to assess if the value document as such was allowed by a large county, through which the kindergarten received public funding towards its work. The Ombud found the document problematic both in relation to ADA and WEA, as the document provided general instructions for appointment based on NLM's purpose as a missionary organization and does not include a specific evaluation in relation to each position based on the tasks and the requirements of the individual position, which would be necessary for a thorough

[82] See the Church Act of 7. June 1996 No 31.
[83] See Equality Ombud case no 2006/226. statement of 7. December 2006.

assessment by the Ombudsman. The Ombudsman did not assess the document in relation to a specific position at the kindergarten, as no person living in a same-sex relationship came forward to complain.

There has been a discussion and following legal changes in the GEA related to conflicts between gender and sexual orientation, as well as changes regarding questions around cohabitation of same-sex couples.[84] As a general rule, churches or religious associations can not discriminate because of sexual orientation. In relation to the Church of Norway, the ecclesiastic bodies responsible for appointments may either appoint, or not appoint, persons living in same-sex partnership. In the Church internal procedure they may, if they so wish, take the candidates' civil status into consideration, without being in breach of Norwegian law or guidelines by the General Synod.[85]

c) *Are there cases where religious institutions are 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?*

Yes, religious institutions are permitted to hire people on the basis of their religion to a job when that job is in a state entity, or in an entity financed by the State. For example, it is accepted that the (state) church may require a particular religious belief when hiring priests and religious leaders, but cannot demand a particular religious affiliation related to positions that do not have a religious content. The assessment used is similar to that used for exceptions to the protections against discrimination in general.

The Equality Ombud recently issued a statement concerning kitchen work in a religious boarding school.[86] The school is a private evangelical school, and requires that all staff at the school share the same view. The Equality Ombud found that this requirement was a breach of the ADA, as people with another view than Christianity were placed in a worse position as the advertisement for the position stated that only Christians will be considered for the position. The Equality Ombud assessed if having a Christian belief was necessary to achieve a legitimate aim. The school argued that all staff at school must have a Christian belief, as they might act as discussion partners or "counsellors" for its pupils. The Equality Ombud found that although it was possible that such a function may be part of the position, this was not the key part of the job, and not relevant in terms of this concrete job, thus the school could not demand a specific faith for positions working in the kitchen.

[84] See the *traveaux préparatories* to the changes: Official Report NOU 2008:1 *Women and homosexuals in religious organisations*, Proposition to the Odelsting nr 79 (2008-2009) and Prop 16L (2009-2010).
[85] See http://www.kirken.no/english/news.cfm?artid=153385.
[86] Case no 10/761, statement of 4. January 2012.

This possibility for selection is provided by national law as described above. This legislation has to my knowledge only been influenced by directive 2000/78 and 2000/43 and not been influenced by international agreements such as agreements with the Holy See.

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)?

National law provides for an exception for the armed forces in relation to age discrimination as the Armed Forces' Employment Act of 2. July 2004 no 59 section 4(2) states that "Officers and enlisted crew are exempt from the prohibition on age discrimination according to WEA section 13-1"

In the legal preparatory works to the WEA, it was stated that "*the directive gives an opportunity for national legislation to provide for an exception for the armed forces in relation to age or disability discrimination. This gives an opportunity to, but not a duty to except the armed forces. The context of directive 3 no 3 and 4 is not explicitly included in the legislative proposal. The reason for this is that these provisions contain rules that are not a natural part of the provisions of the WEA*".[87]

The AAA on disability discrimination does not contain a specific exception for the armed forces, neither is this addressed in the legal preparatory works.

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

There are no provisions or exceptions specifically relating to employment in the police, prison or emergency services. To be admitted into these services requires the incumbent to undergo a number of tests, including health tests, which results in persons with disabilities being hindered from these positions if they are not able to fulfil these tests. However, the duty for individual accommodation will apply also within these sectors.

This issue has never been tried before the courts.

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).

[87] See the *traveaux préparatories* to the previous WEA on equality in employment, Proposition to the Odelsting No. 104 (2002-2003) section 8.1.2 s 23.

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?
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?

National law through the ADA section 1 protects "national origin" as a ground for discrimination, not nationality. National origin includes also the stateless, as it is not focusing on which nationality, but national origin other than Norwegian.

Also the stateless can have their case heard. The Equality Ombud assessed the question of indirect discrimination against a stateless employee on the basis of ethnicity.[88] As the employee was not entitled to a Norwegian personal id-number, he was rejected a permanent access card for working in a business leasing employees to other employers, thus he was fired. The employer (the leasing company) claimed that the dismissal/ rejection was based on the fact that the employee as an asylum-seeker did not have personal id-number, and thus could not be registered in the internal tax and salary-systems of the firm. The Ombud considered that the requirement to have a personal id-number/ social security number was an apparently neutral rule. Nevertheless, the lack of a personal id-number led to the person being put in a worse position than others. There was a clear connection between his lack of personal identity and his national origin. The company later changed its practice so that people who lack personal id-number/ social security number, but hold a DUF number (a registration number issued by the immigration board) and work permit can take up employment in the company.

Nationality, in the sense of citizenship, is not included in the definitions of discrimination grounds of the ADA.[89]

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

No.

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

[88] Equality Ombud case no 09/892, statement of 3. May 2012.
[89] See Government White Paper NOU 2002:12 Legal protection against ethnic discrimination page 34.

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 provides benefits that are limited to those employees who are married?

Yes, it constitutes unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married, based on the fundamental principle of fairness/ just cause developed by case-law.

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

Yes it would constitute unlawful discrimination in national law because of sexual orientation if an employer provides benefits that are limited to those employees with opposite-sex partners.

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)?

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 relating to health and safety law in relation to other grounds, for example ethnic origin or religion.

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

4.7.1 Direct discrimination

a) 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 European Court of Justice in the Case C-144/04, Mangold?

Yes, it is possible both generally and in specified circumstances to justify direct discrimination on the ground of age. The general exception in the WEA states that discrimination that has a just cause, does not involve disproportionate intervention in relation to the person or persons so treated and that is necessary for the

performance of work or profession, shall not be regarded as discrimination, as per the WEA section 13-3(1).

The test is in principle compliant with the test used by the Court of Justice in the Mangold case, as the Norwegian Supreme Court has referred explicitly to the test of the Mangold case in its first judgment on age discrimination.[90]

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

Yes, there is a maximum age for retirement at 70 years for a number of professions, see below point 7.4.7 c. The WEA states that dismissal before 70 years because of having reached the right to a pension according to the National Insurance Act shall not be objectively justified, see WEA section 15-13a. It is thus implicitly accepted by the WEA section 15-13a that a person may be dismissed because of age at 70 years. In reality this means that it is acceptable to dismiss a person on the ground of age alone from 70 years and onwards.

c) 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)?

The issue of age limits for admission to the scheme or entitlement to benefits are not discussed or mentioned in the legal preparatory works in relation to the WEA.

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.

There are no 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.

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?

Maximum age requirement in the public sector is at 70 years.

[90] See Supreme Court judgment of 18. February 2010, Rt-2010-202 (*Nye Kystlink*). Please see section 0.2. above for a description of the case.

There are in general no minimum age limits in Norway regarding access to employment, however a number of positions or access to training positions require that the employee be a major (ie above 18 years) in order to handle money. There is no minimum age of entry into public sector employment, as employment in this sector to a large degree is governed by qualification requirements. There are some select positions in public employment with minimum age requirements: Supreme court judges must be 30 years, judges of the appellate courts must be 25 and assistant/deputy judges 21 years, as per the Act on Courts of 13. August 1915 no 5 § 54. There is an age minimum of 20 years to work as a lawyer, as per the Act on Courts of 13. August 1915 no 5 § 218 b.

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).

There are as a general rule no age limits that are different for women and men in Norway. There is an ongoing pension reform in Norway (since 2008), and all regulations are still not completely in place regarding all three pillars.

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?*

In theory, if pensioners have a full right to pension, pensioners may start to collect state pensions when they are between 62 and 75 years. The general state pension age is set at 67 years. In order to start pension earlier than 67, the pensioner must have had a sufficiently high pension credits.

The collection of state pensions can be deferred until 70 years for employment in the state. The pensioner can choose to work part-time and get part-time pension.

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

The normal pension age is 67 years, however, it is possible to start advance pension at 62 years. Payment from occupational pension schemes may be deferred if an individual wishes to work longer.

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?*

There is a state-imposed mandatory retirement age at 70 years for state workers according to the the Act on Age Limits for Public Officials of 21. December 1956 no 1 section 2. This is generally applicable, but there are also exceptions, such as for the armed forces and other sectors with a lower mandatory retirement age.[91] These retirement ages are in the process of being evaluated.

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?*

Yes, national law permits employers to set retirement ages by contract, both through collective bargaining and unilaterally through limits set by the firm itself,[92] if within the limits of directive 2000/78. These retirement ages must be within the limits set by directive 2000/78.

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)?*

Legislation on protection against unjustified dismissal applies to workers under 70 years, see WEA section 15-13a.

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 when selecting workers for redundancy, as this must be assessed in each case against the limitations set by directive 2000/78. Traditionally, in trade union agreements, seniority is often used as one of the criteria to select those to be continued in employment.

However, an important element to be included in the employer's assessment of whom to make redundant is the social consequences of a possible redundancy. The right of an employee to receive a full pension, may be used as an argument for selection for redundancy, thus a number of employees have found themselves

[91] Most age limits for state employees were approved by the Parliament in 1995, see Innst. S nr 77 (1995-1996).
[92] An age limit of 67 years decided by the firm, practiced consistently and laid down in the internal regulations was accepted by the Supreme Court in its judgment Rt-2011-964 (*Gjensidige*).

redundant at an early age, for example 62 years, which is when it is possible to ask for agreement-based retirement-packages.

A recent Supreme Court judgment accepted that 10 airline pilots were dismissed when turning 60 years, as part of a selection process for redundancy. The Supreme Court concluded that the selection of the dismissed pilots was based on considerations that were justifiable under the WEA section 15-7, that is, an economical need for dismissals and the use of specified criteria – here – that the pilots were eligible for pension. The Supreme Court found that if one in a concrete situation chooses to base the selection process for redundancies on other criteria than tenure, this can not in itself lead to the decision being ill founded. In this concrete setting, age was seen as a justifiable consideration, and thus, the pilots were not subject to age-based discrimination when chosen for redundancy.[93] This judgment is in my view not in accordance with directive 2000/78.

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

No, in principle not. However, national legislation concerning the paid periods of notice according to the law give longer periods of notice based on seniority, thus an element of compensation for age is given, see WEA section 15-3.

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 includes no exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

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 further exceptions other than those mentioned above.

[93] See Rt-2010-609 of 5. May 2011.

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.

Positive action is permitted both in the ADA section 8 on positive action, AAA section 5 on positive action and WEA section 13-6 on preferential treatment, which means that positive action is permitted for all discrimination grounds. Although the wording in the different Acts is somewhat different, it is assumed that it at least covers the area of the EU acquis. Positive action is defined as "*specific measures that contribute to promote the purpose of the Act shall not to be regarded as discrimination pursuant to this Act. Such measures shall cease when the purpose of it has been achieved*". In the WEA the terms used are "preferential/ special treatment", but the content is intended to be the same.

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.

A number of measures for positive action exists in Norway, as described and defined in the various national action plans referred to in chapter 9. The most frequently used measure in working life is the introduction of quotas.

A pilot project undertaken by the Ministry of Government Administration and reform and the Directorate for Public Management and eGoverment involves a moderate quota system in favour of non-ethnic Norwegians when hiring into 12 state enterprises.

The State may give priority to applicants with disabilities according to the Civil Service Act which gives persons with disabilities rights to positive action in employment. When recruiting to positions in the State, the employer must take into account the special rules in the Civil Service Act in addition to the provisions of the Working Environment Act. If there are qualified disabled applicants for a position, at least one of the applicants with a disability must always be called for interview. The employer may also choose to hire a applicant with disabilities, even if there are better qualified applicants for the position. This is often called "radical positive action", and increases the possibilities of persons with disabilities to be hired.

Positive action in the area of gender has since the judgment of the EFTA-court case E-1/02 in which a measure to increase women in academic positions was found to be

in contravention with directive 76/207/EEC article 3(1) been interpreted with a limitation not inherent in the wording of the GEA. GEA section 3a explicitly states that only “the different treatment that promotes gender equality in conformity with the purpose of this Act” is allowed. The experiences of the EFTA-case has led to a marked hesitation in using quotas proactively, although a number of measures in fact have been taken both in relation to ethnicity and disability , especially within the area of employment.

Only one case regarding positive action has been handled in the court system, in the Oslo Municipal Court of 8 July 2010 (TOSLO-2010-7432) (court of first instance) - ironically regarding the appointment of the premier judge a Municipal Court. The question at stake was if the conditions for applying section 3a on positive action in the Gender Equality Act were fulfilled. Three applicants were considered for the job and listed according to priority. The government – through the Ministry of Justice – decided to appoint the applicant ranked as number three - a woman. The male applicant listed first claimed to have been the victim of direct discrimination because of gender, and argued that he was better suited for the job as he had longer experience and better qualifications as a leader. The court found after an overall assessment of the applicants’ qualifications that the applicants had similar qualifications, thus the government did not discriminate when a member of the underrepresented sex was appointed. The judgment was in line with the Equality Tribunals’ decision in the same case, case 23/2009. There have not been cases with the Equality Ombud, or ordinary court cases addressing positive action measures in other areas than gender.

There are to my knowledge no positive action measures in relation to age or sexual orientation.

There are no explicit positive action measures in favour of the Roma, but a number of initiatives and projects have been initiated according to the national plan of action.

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

As a general rule, the procedures for addressing discrimination issues are the same for employment in the private and public sectors.

It is not a procedural requirement to be represented by a lawyer or legal practitioner in court, as it is given as a right – but not a duty - to use counsel. The key costs of the judicial proceedings in civil cases are however the fees linked to legal counsel – that is, the fee of the lawyer. Where a claimant/ victim is not represented by legal counsel, the judge has an extended/ specific duty to advise the complainant/ victim of procedural matters that might be of relevance to the case. The court also has a duty to assist the complainant/ victim in setting up a proper writ summons to start the case, and to assist in making an appeal, as long as the complainant/ victim appears in court and ask for assistance.

There is furthermore a large economical risk linked to costs of proceedings. The general rules on costs of proceedings in discrimination cases before the ordinary courts are found in the Dispute Resolution Act chapter 20, and are applicable also in discrimination cases. The general rule is that the successful party is entitled to full compensation for his legal costs from the opposite party, as per the Dispute Resolution Act section 20-2(1). The court can exempt the opposite party from liability for legal costs in whole or in part if the court finds that “weighty grounds” justify exemptions, see section 20-2(3). There is also a possibility, in exceptional cases, to share the cost of litigation between the parties even if the main case is lost. This has only happened in very few discrimination cases: in a case of March 2012, the Supreme Court found that the loosing party to a case did not have to pay due to the uneven level between the parties, irregularities in the handling of the case during the hiring process and the importance of the case for the claimant.[94] In an unpublished case from the Oslo municipal court (first instance) the judge found that the claimant (age) – despite losing the case - had a due reason to have the case tried in court, as she considered herself the victim of discrimination. The court stated that “there must be a possible option to have the case tried in court even though this belief was

[94] See HR-2012-580-A, Supreme Court judgment of 5. March 2012.

unfounded".[95] Similar views were expressed in another case in the Appellate court on disability (blindness) in which the claimant lost the case but where the employer was partly to blame for the events that led to the dispute.[96] A claimant who was led to believe by trade union representatives that he might be subject to discrimination because of his non-Norwegian background, lost his case. He was in the court of first instance ordered to pay the full costs of the opposite party. He appealed the case to the appellate court. He lost the case there as well, and the appellate court ordered him to pay the costs of the opposite party. He was however acquitted of paying the cost of litigation for the opposite party in the court of first instance, as the opposite party could be reproached for bringing action, and was thus partly to blame for the action sought.[97]

Statistics: There are no officially available statistics on the number of cases related to discrimination brought to the ordinary courts of law. In a study carried out in 2008 for the publicly appointed committee that prepared the Government White Paper on Comprehensive protection against discrimination,[98] in which both published and previously non-published court material was gathered,[99] it was found that in the course of the 30 years that the GEA has been in force, a very limited number of cases had been brought before the courts.[100] Between 1978 and 2008, approximately 51 legal disputes in the area of discrimination issues were handled by the civil courts.[101] In the period 1985-2008, seven judgments and three interlocutory decrees were passed in Supreme Court. Of these cases, split by discrimination area/ grounds: five concerned gender, two concerned religion, and three concerned freedom of association. A significant increase in discrimination cases before the lower instance courts have taken place since 2008, as key legislation in this area has only come into force in recent years (ADA in 2006 and AAA in 2009). Since 2008, only eight additional cases have been considered by the Supreme Court, all on age discrimination (see above point 0.3).The total number of court cases on

[95] Judgment of 29. June 2007 in case 07-036427 TVI/OTIR/10.
[96] See the Eidsivating Appellate Court/ court of second instance, judgment of 6. July 2007 (Case LE-2006-189239), the "music teacher judgment". This judgment was passed before the enactment of the AAA, thus the merits of the case was assessed according to the WEA, where disability was included as a ground of discrimination before the AAA was enacted in 2009.
[97] Borgarting Appellate Court/ Court of second instance, judgment of 27. January 2003 (Case LB-2002-44) (*Sporveissaken*).
[98] See Government White Paper NOU 2009:14 *Et helhetlig diskrimineringsvern (A comprehensive protection against discrimination).*
[99] All Supreme Court cases, most Appeal court cases and select cases from the courts of first instance are published electronically on the website www.lovdata.no.
[100] Else Leona McClimans: Rettspraksis om diskrimineringslovgivning, (Court cases concerning discrimination legislation, Diskrimineringslovutvalget, 2008).
[101] Between 1985 and 2008 24 judgments and one interlocutory decree were passed by the six different appeal courts (courts of second instance), of which nine cases were appealed to the Supreme Court. 14 of the cases brought before the appeal courts related to gender. The others concerned religion (2), freedom of association (3), age (2), ethnicity/ nationality (2), language (1) and disability (1).
The districts/ municipal courts (courts of first instance) handled 51 judgments in the period 1985-2009, out of which 16 were handled in the period 2006-2009, that is, after the entry in force of the ADA and the chapter on protection against discrimination in the WEA.

discrimination cases remains however still sparse, especially compared with the volume of cases brought before the Equality Ombud, who in 2011 alone handled 239 cases.[102] 5 related to age, 35 to ethnicity, 133 to disability, 48 to gender, 2 to membership, 2 to political views, 2 to religion, 1 to sexual orientation and 1 related to "other". 15 cases concerned more than one discrimination ground.

This low rate of court litigation is among other factors due to the risks and costs involved in litigation, and the difficulties in obtaining free legal aid in discrimination cases.

The Equality Ombud and the Equality Tribunal have detailed annual statistics for their work. More than 95% of all cases on discrimination are handled by them. See chapter 7 below for more information on the mandate and work of this specialized body. Statistics thus show that although the courts do handle discrimination cases, and although the number of cases handled by courts is increasing, the overwhelming number of discrimination cases in Norway is channelled through the administrative bodies, the Ombud and the Tribunal. This has in particular consequences in relation to an assessment of compliance with EU law in terms of sanctions, as the Equality Ombud/ Tribunal does not enforce the clauses relating to sanctions in the form of liability for damages/ redress/ compensations (see below).

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

There are no special procedures for enforcing the principle of equal treatment, as this follows general legal principles. For matters within the scope of the WEA; the law itself has a special procedure to be followed in WEA chapter 17, which gives a number of clear timelines.

For the enforcement of the ADA and AAA within the ordinary civil courts, discrimination cases follow the "normal" procedural rules for civil cases as stated in the Dispute Resolution Act.

There are no specific procedural rules when forwarding a case to the alternative dispute mechanism, the Equality Ombud and the Equality Tribunal, other than those posed in the AOT, which is described below in chapter 7.

b) Are these binding or non-binding?

The decisions and judgments of the civil courts are binding and enforceable.

The statements of opinions from the Equality Ombud are non-binding, as the Equality Ombud issues statements as to whether or not the non-discrimination legislation

[102] As per the Equality Ombuds' annual report for 2011, accessible at (in Norwegian): http://www.ldo.no/Global/Rapporter/LDO%20årsrapport%202011_PDF_web.pdf (accessed 23. March 2012).

under her mandate has been violated. These statements are not legally binding and may not be subject of enforcement, however it is assumed that they should be adhered to by public bodies, see the AOT section 3(3).[103] The Equality Ombud shall seek to secure the parties' voluntary compliance with this opinion. If a voluntary arrangement cannot be reached, the Ombud may bring the case before the Tribunal to be dealt with. In exceptional cases of *force majeure* the Ombud may issue an administrative decision/order. This decision may be appealed to the Tribunal, see AOT section 4. Administrative decisions/orders are legally binding with the effect that a person/organization who does not wish to obey the order needs to seek a judgment by courts, in addition to running the risk of being fined.

A party not satisfied with the statement/ opinion given by the Equality Ombud, may appeal it to the Equality Tribunal, see AOT section 4 Also, if one of the parties does not comply with the Equality Ombud's recommendation, the dispute may be referred to the Equality Tribunal by either of the parties or by the Ombud herself. The Equality Tribunal will decide whether or not the anti-discrimination legislation has been violated and can decide that the discriminating actions must come to an end. The Tribunal has competence to either provide statements or to give administrative orders, see AOT section 7.

The Equality Tribunal may make administrative decisions to the effect that there is a breach of the provisions it is set to assess. This is a legally binding decision if the decision is directed towards a private party. However, the decisions of the Equality Tribunal are not legally binding in relation to other public administrative agencies: An important limitation in the mandate and competence of the Tribunal is its relationship to the decision of those of other administrative authorities, in which the competence of the Tribunal is limited, see the AOT section 9. The Tribunal may not annul or alter administrative decisions made by other public administrative agencies. Nor may the Tribunal issue orders as to how the authority to make administrative decisions must be exercised in order to avoid contravening the provisions in the various Acts. Administrative decisions made by the Tribunal are not binding on "the King" (ie public administration) or ministries. The Tribunal has also limited powers in relation to assess specialized legislation passed by the *Storting*,[104] although it is clear that it's within its mandate to assess possible discriminatory aspects of acts and regulations in concrete cases.[105] Thus, the powers of the Equality Tribunal are wider when directed towards private parties than public bodies.

[103] As per the decision of the Parliamentary Ombudsman case SOMB-1993-32.
[104] In the Tribunals' case 9B/2006, a general assessment of the Tribunal's professional area of scope and its task as law enforcer was outlined. The Tribunal shall make a complete interpretation of the legislation it is set to enforce and then apply the legislation to the cases presented to the Tribunal. In the event of any apparent contradiction, the Tribunal will, if necessary, harmonise the provisions on the basis of general principles.
[105] As demonstrated in the Tribunal's case 16/2006 concerning the relationship between the conditions for a waiting benefit in section 10-2 of the Regulations on Labour Market Measures and the conditions in section 3 of the GEA, and its similar case 18/2007 in which it was explicitly stated that Section 3 of the GEA sets aside parts of section 10-2 of the Regulations on Labour Market Schemes, making it

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

Time limits to have access to procedure in civil court cases is related to the principle of the parties' connection to the dispute situation, that is the parties must show a genuine need for the dispute to be resolved, see dispute resolution act section 1-3. The time limits will thus to a certain extent depend on the general rules for limitation periods for claims, which for "normal" economical claims is three years from the time knowledge about the claim was brought to the attention of the claim-holder, according to the Act relation to the limitation period for claims, section 3 and 9.[106] These are thus also the time limits governing discrimination cases.

The time-limits are the same regardless of the claim's basis. However there is no time-limit to bring a case to Court in case of fault-based liability for personal injury. As the time-limits are set in law, the court has no discretion to derogate or overrule the time-limits.

There is in principle no time-limit for using the Ombud, apart from the principle of the parties' connection to the dispute situation. This principle has in practice led to the introduction of a practical time limit that the Ombud operates with: cases in which the discrimination has ceased to exist is dismissed.[107] However, the Equality Tribunal handled in 2007 a landmark case, case 21/2007, related to disability in employment, where the employer had already ended the working relationship. After the Tribunal found that the employee was subject to discrimination, the employer and the employee entered into a settlement.

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

A person can bring a case to court after the relationship has ended both according to the WEA, the ADA and AAA as well as general tort law, in accordance with time limits as outlined above.

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) 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).

unlawful to stop the waiting benefit of a woman who had been on sick leave due to pregnancy in a former employment relationship.

[106] See Act relating to the limitation period for claims (Foreldelsesloven) of 18 May 1979 no 18, , see http://www.ub.uio.no/cgi-bin/ujur/ulov/sok.cgi.

[107] For example as shown in Tribunal case 3/2006.

In general, persons of legal age (18 years) have procedural capacity and can act on their own in court, see Dispute Resolution Act section 2-2. Both physical persons, and legal entities, including the State, municipal and county authorities have the capacity to sue and be sued, see section 2-1(1). Organisations that are not legal entities in the form of a foundation etc have the capacity to sue and be sued to the extent justified by an overall assessment where the court assesses issues such as if the organisation has a permanent organisational structure, if there are formalised membership arrangements, the purpose of the organisation and the subject matter of the action, see section 2-1(2). Organisations and associations have a right of action in their own name in relation to matters that fall within their purpose and normal scope, on the condition that they have a "genuine need" to have the claim determined, see section 1-4(1). These have an action right both in their own name as well as are entitled to act on behalf or in support of victims.

b) *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"?*

In discrimination cases, the right of associations to be used as agents in administrative proceedings and act on behalf of victims is expressly stated. The requirement is that the organisation must have a "*purpose, wholly or partly, to oppose discrimination*" according to the grounds as prohibited by law", see ADA section 12, AAA section 15 and WEA section 13-10.

This rule supplements the rules concerning the individual rights' of associations to act on their own (see below) and the right of organisations to act on behalf of their members.

A key issue for bringing a case to court is that the claimant – also if it is an association - must show a genuine need to have the claim determined against the defendant, which is a legal interest.[108] The "genuine need" shall be determined based on a total assessment of the relevance of the claim and the parties' connection to the claim, see the Dispute Resolution Act section 1-3(2). This is in reality a criteria for direct interest in a case in order to be a party to the case. The procedural rules before court are not different in civil discrimination cases.

[108] According to a legal dictionary (Ronald Craig: Norsk Engelsk ordbok, Universitetsforlaget 2010 (3 utg)) the concept legal interest according to Norwegian law has two aspects: 1) a requirement that the plaintiff and defendant have a sufficient connection to the subject matter in dispute and 2) a requirement that the dispute be a live controversy, it neither moot nor hypothetical.

A person appointed by and with links to an organisation whose purpose is, wholly or partially, to work to prevent discrimination on the basis of disability or religion/ ethnicity may be used as a legal representative in cases heard by the courts. This does however not apply in relation to the Supreme Court. The court may refuse to accept the authorisation of a legal representative if the court believes there is a danger that the legal representative does not have sufficient qualifications to safeguard the party's interests satisfactorily. A legal representative shall, along with an authorisation as stated in section 3-4 of the Civil Procedure Act, at the same time submit written information from the organisation regarding the legal representative's qualifications, see AAA section 15(2)-(4) and ADA section 12(2)-(4).

c) *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?*

Where entities act on behalf of or in support of victims, they need a written specific power of attorney to legitimate them and authorize them in relation to the court/ the Equality Ombud/ the Equality Tribunal. There are no specific requirements regarding the form or content of this power of attorney.

There are special provisions on victim consent in cases where obtaining formal authorization is problematic, such as by minors (ie persons under 18 years) and persons under guardianship. A new Act on Guardianship of 26. March 2010 no 9 is enacted and will be in force as of 1.78.2013. The act on guardianship gives the possibility to legally incapacitate a person, but never to a greater extent than absolutely necessary and always tailored to the persons' circumstance. This new legislation will secure that Norwegian legislation is in line with the requirements of the UN Convention on the Rights of People with Disabilities (CRPD). This convention has not yet been ratified by Norway.

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

Action by associations is discretionary. There are no rules establishing that associations have a legal duty to act under specific circumstances, unless they themselves have taken on a particular assignment on behalf of specific victim(s) to act on behalf of them.

e) *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 according to the general rules of the Public Administration Act section 12[109] and the Dispute Resolution Act.

As a main rule, associations have no legal standing alone within criminal law but have in some limited manner a right to raise a private criminal case against someone. This is seldom used in general, and the author has never heard of a discrimination case in which this possibility has been used.

f) 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.

Associations may ask the same remedies as actual victims.

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

There are no special rules on the shifting burden of proof where associations are engaged in proceedings – the rules are the same no matter who the plaintiff is.

*h) 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.*

Organisations and associations have a right of action in their own name in relation to matters that fall within their purpose and normal scope, on the condition that they have a "genuine need" to have the claim determined, see the dispute resolution act 1-4(1). There is thus no need to have a specific victim to support or represent, although it is necessary to prove some kind of membership. The fact that a formalized membership structure exists will easier demonstrate and classify the organisation as one with legal capacity to sue and be sued according to the law. "Ad-hoc" organisations, that is organisations established in order to forward a particular case of litigation, or other organisations that may be termed "mayfly-organisations" will not in itself have legal capacity to sue and be sued. Case-law has widely accepted associations and cooperatives acting under one common name.[110]

The organisations that have a right of action in their own name may use all proceedings under the dispute resolution act. The rules on the shifting burden of

[109] Act relating to procedure concerning the public administration (Public Administration Act) of 10. February 1967.
[110] See the *traveaux préparatories* to the Dispute Resolution Act, Norwegian Official Report NOU 2001:32 Rett på sak point 2.2.2.1.

proof under the anti-discrimination legislation are also applicable to organisations and associations.

*i) 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.*

National law allows associations to act in the interest of more than one individual victim. Since 2008, with the implementation of the new Dispute Resolution Act, there is a possibility to collectively take cases to court, in so-called class actions, with specific procedural rules according to the Dispute Resolution Act chapter 35.

A class action may be brought by any person who fulfils the conditions for class membership or by an organisation, an association or a public body charged with promoting a specific interest. In the preparatory works to the Dispute Resolution Act, discrimination cases are given as an example of the kind of cases where class action might be suitable.[111] Trade unions and NGOs working on discrimination cases are entitled to file a class action claim, as per the dispute resolution act section 35-1. Official documents and legal preparatory works have assumed that the Ombud is also able to bring a class action suit concerning discrimination to courts, however she has not made use of that possibility so far.[112]

As a general rule, victims must be identified, both in general civil and criminal cases. This is similar in class actions, where concrete victim of discrimination must be identified in most instances. The exception may be in the kind of class action where not all members of the class are required to be made known by name, see section 35-2.

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).

The rule of shared burden of proof applies for all grounds of discrimination, including reasonable accommodation, harassment, victimisations and instructions to discriminate, see ADA section 10, AAA section 13 and WEA section 13-8.

[111] See Ot.prp nr 51 (2004-2005) s 322.
[112] See Government White Paper on Gender and Pay. Facts, analysis and measures, NOU 2008:6 *Kjønn og lønn,* p 114.

In cases concerning dismissals according to labour law procedural rules, it is a general principle that the employer must substantiate that the dismissal is based upon the correct facts. Other than this, in civil cases- as a general rule - the burden of proof is on the claimant. This is why the shifting burden of proof as implemented in the discrimination legislation is thus important. In all discrimination cases, if there are circumstances that give "*reason to believe*" that there has been direct or indirect differential treatment in contravention with the said legislation, such differential treatment shall be assumed to have taken place unless the person responsible proves on a balance of probabilities that such differential treatment nonetheless did not take place. What is meant by "reason to believe" for the burden of proof to be reversed is interpreted by the Equality Tribunal to mean that the allegation must be "supported by the chain of events and the external circumstances of the case which necessitates an assessment of the specifics of the case".[113]

In an article by the previous head of the Equality Tribunal and the head of its Secretariat, the conclusion is that the current rules on reversal on the burden of proof are useful and fulfil the EU requirements. [114] This conclusion is shared with the author of this report.

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

Protection against acts of reprisals/ victimisation is implemented through the ADA section 9, AAA section 8 and WEA section 2-5. In all discrimination cases, if there are circumstances that give reason to believe that there has been direct or indirect differential treatment in contravention with the discrimination legislation, such differential treatment shall be assumed to have taken place unless the person responsible proves on a balance of probabilities that such differential treatment nonetheless did not take place. This applies equally to situations of reprisals and victimisation. It is not permitted to make use of reprisals against any person who has submitted a complaint regarding a breach of provisions of the discrimination legislation, or who has stated that a complaint may be submitted. There is a limitation to this right, and that is in instances where the complainant has acted with gross negligence. The protection against victimisation applies correspondingly to witnesses or someone who helps the victim of discrimination to bring a complaint, for example a workers' representative.

As the regulation of victimisation is relatively new, so far, both the Ombud and Equality Tribunal have dealt with a limited number of cases in which victimisation is

[113] See the Equality Tribunal case 26/2006, in which the said quote was used by the dissenting member of the Tribunal. Although the rest of the Tribunal in this particular case did not agree with the dissenting member, the said quote has later been referred to by the Tribunal in a number of subsequent cases.

[114] See Syse, Aslak, og Geir Helgeland: Reglene om delt bevisbyrde i norsk diskrimineringsrett, i Aune, Fauchald, Lilleholt og Michalsen (red): Arbeid og Rett, Festskrift til Henning Jakhellns 70-årsdag, Cappelen DAMM 2009.

alleged. The Equality Tribunal has only handled two cases on victimisation; case 27/2008 and case 30/2009. Case 27/2008 was subsequently taken to the Oslo municipal court by the accused of the reprisal, the municipality of Oslo, where the decision of the Tribunal in its case 27/2008 was overruled by the court. The court found that the refusal to employ a male nurse was due to his personal abilities, and that he was not subject to reprisals or victimisation from the former employer, as the decision to refuse to use his services as a nurse was taken before he brought the case to the Ombud and Tribunal.[115] The Ombud has furthermore handled one case concerning reprisal regarding an instance of notification about sexual harassment.[116]

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.

Sanctions according to the ADA, AAA and WEA that are enforced by the civil courts consist of liability for damages/ compensation/ redress awarded to the claimant of discrimination. Sanctions according to criminal law consist of penalties.

There are a number of general rules on compensation in Norwegian law, that are applicable in discrimination cases. Compensation in Norwegian law is awarded either for fault-based liability (culpa) or for liability without fault. These ordinary rules are the rules on compensation set mainly by the Act relating to Compensation,[117] as well as by the non-statutory customary rules on compensatory damages. These also include a number of general rules to limit liability.

The rules on compensation in discrimination cases are slightly different depending on the piece of legislation invoked. All discrimination legislation – ADA; AAA and WEA – states that the general rules regarding liability for damages in the event of wilful or negligent contravention of the provisions of the relevant act apply.

All acts contain a right to claim financial damages pursuant to the ordinary rules governing damages, see ADA section 14 and WEA section 13-9.

Regarding non-financial damages, all acts contain the general rule that compensation shall be fixed at the amount that is reasonable, having regard to the financial loss, the situation of the employer and the employee or job seeker and all other circumstances. More generally, redress shall be fixed at the amount that the court finds reasonable, having regard to the relationship of the parties and all other circumstances, see ADA section 14, AAA section 17 and WEA section 13-9.

[115] Oslo municipal court, first instance judgment of 27. October 2009 (TOSLO-2009-72697)(reprisal).
[116] Case no 08/1177 of 6. January 2009 as referred in (in Norwegian) the annual report of the Ombud, Praxis 2008 at http://www.ldo.no/Global/Praksis%20del%202.pdf.
[117] Act relating to Compensation of 13. June 1969 No 26.

Access to compensation differs slightly in the various acts depending on the discrimination taking place inside or outside employment:

According to the AAA section 17, a job applicant or employee may demand redress for non-economic loss for a contravention of the general rule on prohibition of discrimination irrespective of the employer's culpability. This applies correspondingly to any person who applies to become, or who is, a member or a participant in an employee's, employer's or professional organization. There is no right to demand redress for non-economic loss for a contravention of the rights to reasonable individual accommodation or the right to universal design.

Preliminary injunction on the right to remain in position: A practical form of "sanction" often claimed by victims of discrimination in employment is the right to remain in the position until the case has been finally decided in Court. This has been granted on one occasion related to age discrimination in the context of interlocutory judgments,[118] but recently refused by Supreme Court.[119]

ADA section 15 provides penalties in the form of fines or imprisonment for up to three years towards the perpetrators for a gross discrimination that has been committed jointly by several persons. This is in relation to discrimination on the following grounds: ethnicity, national origin, descent, skin colour, language, religion or belief. Any person who wilfully and jointly with at least two other persons commits a serious contravention or is accessory to a serious contravention of parts of the ADA shall be liable to fines or imprisonment for a term not exceeding three years. Furthermore, there is a specific clause on repeated behaviour, in as such that any person who has previously been sentenced to a penalty for contravention of the present provision may be liable to a penalty even if the contravention is not serious. When assessing whether a contravention is serious, particular importance is attached to the degree of manifest fault, whether the contravention was racially motivated, whether it is in the nature of harassment, whether it constitutes an offence against the person or serious violation of a person's mental integrity, whether it is liable to create fear and whether it was committed against a person under the age of 18. Before instituting a prosecution for such offences, an assessment shall be made of whether it will be sufficient to impose an administrative sanction in the form of and order or fine. In the ADA, the limit for imprisonment is three years. To the author's knowledge, this sanction has not been used. This might be an indication that, as a sanction, given that it is never used, does not comply with the criteria set by the ECJ of being sufficiently dissuasive.

[118] For example verdict of 19. November 2009 by the Oslo municipal court first instance in case no 09-143503TVI-OTIR/02.

[119] The Supreme Court did not in its decision Rt 2011-974/ HR-2011-1294-A of 29 June 2011 give the plaintiff the right to continue her position when addressing the possible discriminatory aspects of a retirement age set unilaterally by the company at age 67. Supreme Court stated that allowing the claimant the preliminary right to remain in position in these kinds of litigation would reduce the content of these age limits.

The crime statistics do not tag information regarding whether "hate motivation" is an aggravating circumstance, and therefore there is no way of knowing whether, or the extent of, the usage of this provision in the Norwegian courtrooms.

Sanctions according to the ADA, AAA and WEA that are enforced by the Equality Ombud and Equality Tribunal: The Equality Tribunal has a limited competence to give administrative order - that is to order an act to be stopped or remedied or other measures that are necessary to ensure that discrimination, harassment, instructions or reprisals cease and to prevent their repetition, see AOT section 7. The Equality Tribunal may set a time limit for compliance with the order. The Tribunal shall state the grounds for an administrative decision at the time the decision is made. Furthermore, the Equality Tribunal may make an administrative decision to impose a coercive fine to ensure implementation of orders pursuant to section 7, if the time limit for complying with the order is exceeded, see AOT section 8(1). The coercive fine begins to run if a new time limit for complying with the order is exceeded, and shall normally run until the order has been complied with. The Tribunal may reduce or waive a fine that has been imposed when special reasons warrant doing so. The coercive fine shall accrue to the State. An administrative decision to impose a coercive fine constitutes grounds for enforcement. The Tribunal shall state the grounds for an administrative decision to impose a coercive fine at the time the decision is made. So far, the Tribunal has not made use of its mandate to impose a coercive fine, although it has been discussed in two instances of illegal employment announcements made by the same company. A coercive fine has thus yet to be issued, even in cases of repetitive offences.

The Tribunals' decision in its case 44/2009 of 12. March 2010, which was a follow-up to its case 10/2006 is an illustration of this: In the latter case, a position at a Dry-Cleaner's in Oslo was announced vacant in the Norwegian national newspaper Aftenposten asking for "Mature female aged 30-50 years is encouraged to apply for the vacancy in our Dry-Cleaner's at Røa". Both the Ombud and the Tribunal found the announcement a breach of age and gender. As the company had used a similar announcement previously, and the firm is a large, professional employer with 17 branch offices in the Oslo area, the Tribunal ordered that similar advertisements should be stopped. The Tribunal issued an order with a specific time limit for compliance to ensure that a similar advertisement would not be used again. Thereafter the Tribunal received a notice from the firm confirming that the advertisement would not be used again. In its recent case, the dry cleaners' announcement in 2009 was for a "mature woman". The case was brought to the Tribunal from the Ombud on her own initiative, asking whether or not the current announcement was a breach of the 2006 order of the Tribunal. The Tribunal also discussed if a breach of the order should result in a fine in accordance with the Anti-discrimination Ombuds' Act section 13, or another form of reaction. The Tribunal again ordered the announcement stopped, and that the company collaborate with the Ombud in the wording of coming announcements, but did not issue a fine.

In practice thus, the mandate to make use of fines is more a coercive tool, as this sanction never has been used. The lack of use is a problem. The efficiency of this sanction may thus be questioned.

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

There are no upper limits for compensation, nor are there rules for calculation provided in the national legal framework.

In the sparse court cases that exist, compensation has only been awarded in two Supreme Court cases. In the first, Rt 2001-248 *Olderdalen*, NOK 100,000, (approx 12.000 EUR) was awarded to the claimants as economical loss because of discrimination due to political affiliation. The WEA of the time did not contain a clause specifically on liability for economical loss, thus the sanctions used for gender discrimination was referred to as comparable. In a recent Supreme Court case, relating to discrimination because of participation in a trade union, the lower courts had fixed the level of compensation at approx €650 (NOK 5000,-) per person.[120] In the other cases, compensation has either not been claimed, or the case was lost and compensation thus not awarded.

Apart from these judgments, compensation has been awarded in only four lower court cases: three concerning discrimination because of gender/ pregnancy,[121] one concerning age and gender. All concern employment relations.[122] Interestingly, the non-pecuniary compensation for the discrimination has been set above NOK 100.000 (approx 12.000 EUR) in the three recent cases. This is considered a high compensation when for example compared with the level of compensation in cases of unjustified dismissals within employment.

The fact that the Equality Ombud and the Equality Tribunal cannot award compensation has been criticised. In an in-depth study, in which victims of discrimination were interviewed, the victims expressed disappointment that despite the Ombud's assessment that discrimination had taken place, the Ombud had no powers to award compensation. The victims themselves had an impression that the sanctions enforced by the Ombud to be more encompassing than they in reality are.[123]

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[120] See Supreme Court judgment of 22. November 2011 Rt-2011-1755, HR-2011-2393-A.

[121] These are: Court of Second Instance/ Hålogaland Appellate Court, Judgment of 21. January 2009 LH-2008-99829 (*Bang-saken*), Oslo municipal court judgment of 17. november 2006 case no TOSLO-2006-52718 and Court of second instance/ Eidsivating Appellate court 12 December 1994, case no LE 1994-892 (*Lufthansa*).

[122] Judgment of Øst-Finnmark Court of first instance - judgment of 17. March 2010 in case no 09-136827TVI-OSFI (age and gender).

[123] Fjordholm, Fin Skre: "- Er det meg, er det han, eller hva er det? - Opplevelse og rettsregler i diskriminertes møte med Likestillingsombudet" ("Is it me, is it him, or what's the problem? Rules and experiences from encounters with the Equality Ombud". Kvinnerettslig skriftserie nr. 69/2007, Universitetet i Oslo, accessible at

It has been proposed that the Equality Tribunal be given powers to award damages for non-economic loss in cases concerning a breach of the prohibition against discrimination.[124]

c) Is there any information available concerning:

- *the average amount of compensation available to victims?*
- *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?*

There is no statistical information available concerning the average amount of compensation available to victims.

The sanctions as formulated in the legislation and adopted in Norway are formally satisfactory per in relation to EU directives se to address problems of discrimination. A challenge with the Norwegian system as described above is not the sanctions alone, but the enforcement system. As more than 90% of all discrimination cases each year are handled by the Ombud alone, with the inherent limitation that she is not able to award damages for breaches to the act, persons who are discriminated against are not awarded compensation for discriminatory treatment unless they take their case to the ordinary court system. As described above, the access to legal aid is sparse for this group, thus not giving them efficient access to justice in discrimination cases.

Furthermore, current legislation contains sanctions that are seldom used. This makes sanctions in practice less effective than their legislative potential is.

http://www.jus.uio.no/ior/forskning/omrader/kvinnerett/publikasjoner/skriftserien/dokumenter/69_Fjordholm.pdf.

[124] See NOU 2011:18 Structure for Equality.

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).

A specialised body exists for the promotion of equal treatment irrespective of racial or ethnic origin: the Equality- and Anti-discrimination Ombud[125] with its appeal instance the Equality Tribunal.[126] The Ombud enforce prohibition of discrimination based on all grounds covered by legislation as mentioned above.

The appointment, method of organisation and authority of these bodies are regulated in the Anti-Discrimination Ombud Act - AOT.[127]

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.

The Equality Ombud and the Equality Tribunal are alternative dispute mechanisms outside the judicial system, addressing cases of discrimination. The Ombud and Tribunal are a free low-threshold complaint system.

The Equality Ombud and -Tribunal are professionally independent central government bodies. The competencies of the Ombud and the Tribunal are derived from the AOT. The independence of the bodies are stipulated in law, and they are independent in their functions.[128]

The Equality Ombud has a dual role in working for equality, by enforcing the law as well as proactively promoting equality and combating discrimination. As a law

[125] http://www.ldo.no/en/.
[126] http://www.diskrimineringsnemnda.no/wips/2094117726/.
[127] The AOT - Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal of 10. June 2005 No 40 (Diskrimineringsombudsloven).
[128] See AOT - Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal (The Anti-Discrimination Ombud Act), of 10. June 2005 No 40 http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-on-the-Equality-and-Anti-Discrim.html?id=451952.

enforcer, the Equality Ombud issue opinions on complaints concerning breaches of statutes and provisions within the Ombud's sphere of activity, and provides advice and guidance with regard to the legislation within its mandate. The Equality Ombud is funded by annual grants financed by the Ministry of Children, Equality and Social Inclusion, but cannot be instructed by the Ministry. The Equality Ombud herself is appointed by the Ministry. The employees of the Equality Ombud are public officials. Even though the Ombud is nominated by the Ministry and her staff is public officials her independence is not questioned in Norway, as her mandate is clarified by law, and she is not to be instructed by the Ministry.

The income for the Ombud for 2011 was NOK 559.502.257,(approx € 7.460.034,-).[129]

The Equality Tribunal is the appeal body of the Equality Ombud. Its members are appointed by the Ministry of Children, Equality and Social Inclusion for a term of four years, with the possibility for reappointment. When the members and deputy members are appointed for the first time, half of them shall be appointed for a term of two years. The chairperson and deputy chairperson shall fulfil the requirements prescribed for judges. The members are appointed after suggestions from different stakeholders, and chosen because of their academic skills on discrimination issues. When handling the cases the members are divided into two divisions with five members each. The chair and the deputy chair of the tribunal participate in both divisions to ensure a consistency of the Tribunal's practice in law. The Equality Tribunal has a secretariate. The secretariate staff are public employees, as per the AOT regulations section 9.

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.*

The Equality Ombud monitors and contributes to ensure compliance with the provisions in the anti-discrimination legislation. Her mandate covers all legislative discrimination grounds covered by the ADA. AAA and WEA. The mandate of the Ombud also involves ensuring that Norwegian legislation and administration practice is in accordance with Norway's obligations according to the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Elimination of Racial Discrimination, see AOT section 1(3).

The Ombud's function of promoting equality and developing expertise entails the following tasks in accordance with the AOT regulations section 1:

a) *A proactive role*: The Ombud shall play a proactive role in promoting equality and combating discrimination, and shall monitor developments in society with a view to

[129] As per the annual report for 2011 at http://www.ldo.no/Global/Rapporter/LDO%20%c3%a5rsrapport%202011_PDF_web.pdf.

exposing and calling attention to matters that counteract equality and equal treatment.
b) *Influencing attitudes and behaviour*: The Ombud shall help to raise awareness of equality and equal treatment and actively promote changes in attitudes and behaviour. The Ombud shall play an active part in giving the general public information about status and challenges.
c) *Support and guidance*: The Ombud shall provide information, support and guidance in efforts to promote equality and counteract discrimination in the public, private and voluntary sectors.
d) *Advisory service on ethnic diversity in working life*: The Ombud shall provide advice and guidance on ethnic diversity in working life to employers in the public and private sectors. The service shall be provided free of charge and be adapted to the needs of the individual employer. Furthermore, the Ombud shall help to disseminate examples of good practices and to increase knowledge of methods for promoting ethnic diversity in working life.
e) *Expertise*: The Ombud shall have an overview of and provide knowledge and help to develop expertise on and documentation of equality and equal treatment, as well as monitor the nature and extent of discrimination.
f) *Forum:* The Ombud shall serve as a meeting place and information centre for a broad public and facilitate collaboration between actors who work to combat discrimination and promote equality.

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?

A person who claims to be a victim of discrimination because of any of the discrimination grounds covered by law may bring the complaint to the Equality Ombud, who will investigate the complaint by demanding information and documentation from the responsible party, see the AOT section 3, fourth paragraph. The work of the Equality Ombud is based on written statements, and on the principle of contradiction between the parties involved in the case, in which each party is allowed to hear the arguments of the other party and be given opportunity to refute the information. The Ombud may in addition to handling complaints, take up cases on her own initiative, or on the basis of an application from other persons. “Anyone” may bring a case before the Ombud. Trade unions, NGOs or other similar bodies are regarded as “anyone” These parties may also file claims in class actions, as mentioned above.

The Ombud conducts independent surveys, publishes independent reports and makes recommendations on issues relating to discrimination. Every year the Ombud publishes annual reports and relevant reports on the status of equality.

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).

The key characteristic of the Ombud is her independent and impartial role as a law enforcer: she provides free legal advice on equality and anti-discrimination legislation to victims of discrimination and anyone else who contacts the Ombud, such as employers, employee organizations, interest groups, government agencies and the general public. This guidance includes information about how the legislation should be interpreted and what possibilities victims have if they experience discrimination, according to the AOT regulations section 2 and the Public Administration Act.[130] The duty to provide guidance encompasses all relevant matters related to the case, including guidance about the current statutes and regulations and common practice in the administrative sphere in question, and rules of procedure, especially those concerning rights and duties pursuant to the Public Administration Act. If possible, the Ombud should also draw attention to circumstances that may be of particular importance for the result in the specific case. In addition, the Ombud also has the duty to provide guidance in discrimination cases that are not within the Ombud's scope, see AOT section 3.

The great weakness of the Equality Ombud in relation to the task listed in directive 2000/43 is that neither she, nor anyone else, have the specific role of providing independent assistance to victims of discrimination that will enable them to have access to remedies in accordance with directive 2000/43 article 15. As the Equality Ombud has the role as a law enforcer, she will not provide individual independent assistance to each victim – she will decide on the merits of the case. Until 2006, the Centre against Ethnic Discrimination (SMED) provided legal aid to victims of ethnic discrimination, but when the Centre became a part of the new Equality Ombud, the legal aid scheme was revoked. The Ombud is impartial when dealing with complaints and is an alternative to filing a lawsuit in discrimination cases. According to the Anti-Discrimination Ombud Act, the Ombud shall not represent the party in external proceedings. Therefore, the Ombud does not act as a legal representative or legal practitioner for victims. Neither the Ombud nor the Tribunal is entitled to take cases to court independently of a person individually complaining. The fact that there is no legal aid scheme offered specifically to address discrimination because of ethnicity is a flaw with the current system with one holistic Equality Ombud covering all grounds. This has been reported earlier, and the author agree with this observation.[131]

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

According to the general Dispute Resolution Act section 1-4(2), also public bodies charged with promoting specific interests may in the same manner bring an action in

[130] Available at: http://www.ub.uio.no/ujur/ulovdata/lov-19670210-000-eng.pdf.
[131] Anne Therese Sortebekk, Country Fiche Norway for Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC, human european consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, August 2010, point 55.

order to safeguard the interests that fall within their purpose and normal scope. This should in theory open for the possibility of the Equality Ombud and Equality Tribunal to bring cases to court, although this has never been done in practice, as the Equality Ombud considers her role to be that of an impartial legal enforcer, not as an agent for litigation.

The Equality Ombud has however provided co-counsel in court on two occasions, in accordance with mandate given in the dispute resolution act section 3-7 to provide co-counsel.[132] There are no fixed rules or regulations deciding when the Equality Ombud may provide co-counsel in court – this is decided on a case-by-case basis.

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).*

The Equality Ombud and Tribunal are quasi-judicial bodies. In individual complaints to the Equality Ombud, a victim must be identified. However, complaints can also be handled where no individual is identified. Cases brought before the Ombud by a person who is not a party to the case shall only be dealt with by the Ombud if the party whose rights were infringed consents to this. If special considerations warrant doing so, the Ombud may nonetheless deal with such a case, even if consent has not been given.

Following written investigations, the Equality Ombud will evaluate whether or not the prohibition against discrimination has been violated after having received the parties' arguments in writing and will conclude if a breach is found or not. Where a breach of legislation is found, the Ombud will often recommend the party who has been in breach of the law to correct the wrong, for example by making a recommendation to the employer/ responsible to pay a compensation. In many cases, the employers will follow the Ombud's recommendation and obey her suggestion for redress to avoid the case being taken to the Equality tribunal or court. As agreements on compensation following such procedures are private, neither statistics as to the level of compensation nor the number of agreements exist.

The Equality Ombud does not provide independent assistance to victims, as her role is to assess whether or not a breach of the law has occurred or not.

The decision of the Equality Ombud is not a legal binding administrative decision, but is a statement as to how the Ombud evaluates the case seen in relation to the discrimination legislation. However, a party not satisfied with the Ombuds' statement,

[132] Co-counsel by the Ombudsman was carried out in the case of the Hålogoland Appelate Court LH-2008-99829 (*Bang-saken* – non-employment because of pregancy) and the judgment of Øst-Finnmark Court of first instance - judgment of 17. March 2010 in case no 09-136827TVI-OSFI (age and gender).

may appeal it to the Equality Tribunal.[133] Also, if one of the parties does not comply with the Ombud's recommendation, the dispute may be referred to the Equality Tribunal by either of the parties or by the Ombud herself. This is a mechanism/ sanction being increasingly applied by the Ombud to ensure fulfilment of her statement. The Equality Tribunal may also demand that certain cases which have been handled by the Ombud may be brought before the Tribunal, see AOT section 6 second paragraph. This opportunity has almost never been used.

The Equality Tribunal is a permanent body which has been entrusted by law to exercise its functions. Its composition is defined by law, see AOT section 5. It must apply the law and is an independent body, as it members are external appointees, selected on personal merit. Furthermore, its procedure is adversarial and similar to procedure in court in that, *inter alia*, there is normally both a written procedure and an oral hearing before a decision is made. Finally, its decisions are binding upon the private parties before it, as per the AOT section 7.

Neither the Equality Ombud, nor the Tribunal has the right according to the law to award damages or financial compensation. Where a party does not pay compensation voluntarily, the victim may bring an ordinary complaint before the courts, as described above.

The Ombud and the Tribunal may with the exceptions provided below not bring cases before the courts. The equality bodies' powers of investigation are wide. Public authorities are under obligation to provide all necessary information to fulfil its obligation to ensure the fulfilment of the discrimination legislation, see AOT section 11. The obligation of public authorities to provide information overrides their obligation to secrecy. Both the Ombud and the Tribunal are entitled to make the necessary investigations to fulfil their obligations in ensuring the Acts fulfilment. If necessary they may also require assistance from the police, and meeting of evidence at the courts may also be ordered.

Its decisions are only partially binding, as described above in point 6.1.b). Sanctions may be imposed, as described above, but are seldom used. The decision of the Tribunal may not be appealed, but the case may be taken to court for a full hearing of the case, in which the statements/ decisions of the Ombud/ Tribunal are used. The decision of the Ombud/ Tribunal are in general well respected, however, it is only recently that the Ombud systematically started to monitor her own work in terms of the parties' compliance with her decisions.

A specific issue for Norway as an EEA country, is that Norway can only refer prejudicial questions regarding cases on equal treatment and discrimination to the EFTA court, and not to the CJEU. A question that have arisen – but not yet tried in

[133] The Parliamentary Ombud stated in a landmark decision of 1993 that public authorities who do not wish to comply with the statements of the Ombud have a duty to appeal the case to the Tribunal for a final decision. A non-appeal to the Tribunal by public authorities will be seen as an implicit acceptance of the Ombud's conclusions.

practice - is to what extent national anti-discrimination bodies/ equality bodies can be seen as a "court or tribunal" and thus be able to request for advisory opinions/ preliminary rulings regarding cases on equal treatment and discrimination to the EFTA court. There has been an assumption that the Equality Tribunal would be considered a "court" according Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. Both the Norwegian Labour Court[134] and the Norwegian Market Council[135] have been accepted by the EFTA court as requesting parties.

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

Although there are very few Romas and travellers in Norway, the Equality Ombud has repeatedly addressed some of the key issues seen in relation to Roma and Travellers, and been given praise for their role in fighting discrimination against the Roma.[136]

In her report to the UN CERD committee, the Equality Ombud addressed the areas of critical concern: that the Roma's access to basic rights is denied unless the traditional way of life is discontinued.[137] In relation to schooling, the Ombud is concerned that the travellers are being made responsible for the consequences of the failure to adjust Norwegian school policy to the traditional manner of travelling. The Romas are furthermore systematically denied access to camp sites and restaurants on the grounds that they belong to a national minority. At the policy level, the Ombud has thus been a voice in the Norwegian public speaking for the Roma.

In terms of concrete complaints, there are in general few complaints from the Roma, and the few that have been made have not always resulted in a statement confirming that discrimination in fact has happened. As the cases often have been situations where words have been contrary, it has been difficult to establish the facts of the case. This may be illustrated by the Tribunal's case 19/2009, in which a Roma family had complained about denied access to a camping site. The Equality Ombud had found that they had been subject to discriminatory treatment, but the Equality Tribunal found that discrimination had not taken place. The complainants belong to the Roma (Gypsies / Travellers). In summer 2008 he tried with his wife and adult son to check in at a campground. They arrived at the campsite with two large cars: a Chevrolet Tahoe and a Chevrolet pick-up, as well as two large caravans. The family was offered to stay within the camp site, however they were asked to park their cars

[134] See EFTA court case E 02/2000.
[135] See EFTA court case E-8/94 and 9/94.
[136] See NGO Shadow Report 2010 - Supplementing and Commenting on Norway's Combined 19th/20th Periodic Report Submitted by Norway under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination, page 42-43 at http://www.antirasistisk-senter.no/getfile.php/1259924.1211.ascespyfdb/NGO+Shadow+Report.pdf.
[137] See Ombud's Input to the Committee on the Elimination of Racial Discrimination (CERD) 2010, at http://www.ldo.no/Global/Rapporter/CERDreport_PDF.pdf.

outside the campsite. The complainant and his family regarded the request to park outside the site as a rejection, and thus decided not to stay at the camp site. The complainant claimed that he was given limited access to the campsite because of their ethnic background as travellers. The campsite claims that all guests with big cars are asked to park their cars outside the camp site due to reconstruction, and that the complainant was not treated differently than others. The Tribunal did not find indications that the person was treated differently because he was a Roma, and found that there had not been a breach of the act.

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)

The Ombud has a specific duty to disseminate information about legal protection against discrimination, see AOT regulations section 1. Additionally, public authorities have a general proactive duty according the ADA section 3 a and AAA section 3 to make active, targeted and systematic efforts to promote non-discrimination policies and measures regarding ethnicity and disability in all sectors of society. This includes dissemination of information. A similar proactive duty is also required from employers with more than 50 employees.

A general proactive duty is not imposed on public authorities in relation to the discrimination grounds found in the WEA, of relevance for directive 2000/78 is age and sexual orientation.

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

Although there are no formal rules in the anti-discrimination legislation on dissemination of information, social dialogue or dialogue with NGOs by the authorities, there is a wide tradition in Norway to regularly undertake public consultations with NGOs and social partners. NGOs and social partners are in general invited to participate in referee groups when new legal proposals are being drafted, and are also recipients of White Papers and law proposals for consultative purposes before an Act is enacted. The various action plans initiated (see below chapter 9) are in general drafted and implemented in close collaboration with NGOS and social partners.

Various bodies have been established to encourage dialogue between the authorities and citizens, such as The Contact Committee between Immigrants and the Authorities (KIM), which is both an advisory body and a forum for dialogue.

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)

There are a number of initiatives made in relation to promoting dialogue between social partners to give effect to the principle of equal treatment through workplace

practices, codes of practice, workforce monitoring. This is done both through initiatives by the Ministry, the Equality Ombud as well as trade unions, the latter for example described in previous EU reports.[138] Its real effect in terms of effectiveness in relation to the principle of equal treatment has however been questioned, most recently in the official report NOU 2011:18 Structure for Equality, chapter 7.[139] While it is acknowledged that Norwegian working life has a long tradition of institutionalised cooperation between the labour market organisations, this established cooperation is limited when it comes to gender equality, thus the establishment of a forum to discuss equality in working life is proposed. One of the forum's mail goals will be to help follow-up the duty to make active efforts and report stipulated in the anti-discrimination legislation.

d) to specifically address the situation of Roma and Travellers.

See above point 7 i).

The Roma National Association in Norway (Taternes Landsforening)[140] is used as a dialogue point for organised interaction between the Equality Ombud as well as with different ministries. This includes among others the Ministry of Children, Equality and Social Inclusion, the Ministry of Labour, the Ministry of Education, the Ministry of Government Administration, the Ministry of Health and Care Services and the Ministry of Local Government and Regional Development. A key challenge in the Norwegian setting in relation to Roma is that they are very few (approx 700 persons nationwide), and that little knowledge exists about the discrimination both at an individual and structural level that they face. The Norwegian State Housing Bank is thus in the process of carrying out a survey of living conditions and settlement for the Roma people in order to create a knowledge base on this issue, within the framework of the Government Plan of Action to Promote Equality and Prevent Ethnic Discrimination.[141]

The governmental action plan to improve the situation of the Roma is limited to Oslo, as this is where most Roma has a connection.[142] The Government aims through this action plan to develop measures to allow real opportunities for the Roma to use already established welfare systems, within education, employment, health and housing.

[138] See for example the report Trade Union Practices on anti-discrimination and diversity, report for the EC DG 4 (2010) at http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=580&type=2&furtherPubs=no.
[139] See http://www.regjeringen.no/nb/dep/bld/dok/nouer/2011/nou-2011-18.html?id=663064 (in Norwegian). For an English summary of the report, see http://www.regjeringen.no/pages/36950733/PDFS/NOU201120110018000EN_PDFS.pdf.
[140] See http://www.taterne.com/ (in Norwegian).
[141] See http://www.regjeringen.no/upload/BLD/etnisk%20disk/HPL/4043-materie-engelsk-trykk.pdf , accessed on 15 March 2012.
[142] See http://www.regjeringen.no/nb/dep/fad/dok/rapporter_planer/planer/2009/Handlingsplan-for-a-bedre-levekarene-for-rom-i-Oslo.html?id=594315.

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).

Before implementing international legislation in Norway, the national legislation was reviewed to ensure compliance. Furthermore, the legislation contains a specific clause that provisions laid down in collective agreements, regulations, bylaws etc shall be declared null and void if in breach of the WEA section 13-9(3). An agreement in breach of the ADA or the GEA was also assumed void by the Tribunal in a recent case, case no 26/2009.

For collective agreement, if a provision is found to be against the law, it shall be declared null and void by the Labour Court so that the compensation that shall be paid goes back to the moment the invalid provision was put in force.[143]

A challenge is posed in relation to the “normal” principles of interpretation in law, where the traditional principles of interpretation are used, such as *lex specialis* etc. This was demonstrated in the Supreme Court judgment of 18 February 2010, where the seaman’s act was referred to as *lex specialis* in relation to non-discriminatory clauses, and a 62-year retirement age for seamen thus accepted.[144]

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

There are no known laws or regulations or rules that are contrary to the principle of equality still in force, as in theory all legislative areas are assessed before the implementation of new directives and Acts. However, the case-work of the Equality Ombud shows a number of breaches to the act, so full compliance cannot be claimed.

[143] See for instance The Labour Court judgment ARD-1990-148 – Bio Engineers.
[144] Rt 2010 s 202, (HR-2010-00303-A) (*Kystlink*).

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 Ministry for Children, Equality and Social Inclusion is responsible for dealing with anti-discrimination in relation to the grounds covered by the ADA, as well as disabilities.

The Ministry for Labour is responsible for dealing with the anti-discrimination provisions of the WEA, that is those related to sexual orientation and age. Additionally they are responsible for the work on an inclusive working life, which is targeted at employees temporarily or permanently disabled and measures to promote their return to paid employment. A job strategy for young people with disabilities was presented in January 2012.[145]

The is a Government Plan of Action to Promote Equality and Prevent Ethnic Discrimination (2009–2012),[146] as well as a Government Plan of Action for improving the quality of life for lesbians, gays, bisexuals and trans persons 2009-2012.[147] There is a forthcoming action plan for improving accessibility and promoting universal design for people with disabilities. This has not yet been finalized. The governmental action plan to improve the situation of the Roma is limited to Oslo, as this is where most Roma has a connection.[148] The Government will this action plan aims to develop measures to allow real opportunities for the Roma to use already established welfare systems, within as education, employment, health and housing.

There are also a number of sector-specific action plans, such as

- The Action plan for Sami languages 2009-2014, and the Action Plan to improve the living conditions for Norwegian Roma people, both coordinated by the Ministry of Labour,
- The strategy plan on Equal education in practice. Strategy for better learning and greater participation by linguistic minorities in day-care (kindergarten) centres, schools and education 2007-2009, coordinated by the Ministry of

[145] see http://www.regjeringen.no/en/dep/ad/doc/rapporter_planer/planer/2011/jobstrategy.html?id=657116 , accessed on 15. march 2012.
[146] See http://www.regjeringen.no/upload/BLD/etnisk%20disk/HPL/4043-materie-engelsk-trykk.pdf , accessed on 15 March 2012.
[147] See http://regjeringen.no/upload/BLD/homofile%20og%20lesbiske/Hplhbtseptember2008ENG.pdf.
[148] See http://www.regjeringen.no/nb/dep/fad/dok/rapporter_planer/planer/2009/Handlingsplan-for-a-bedre-levekarene-for-rom-i-Oslo.html?id=594315.

education addressing ethnic discrimination, The action plan for integration and social inclusion of the immigrant population.

ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Norway Date: 26 March 2012

Title of Legislation (including amending legislation)	Date of adoption: Day/month/year	Date of entry in force from: Day/month/year	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.					e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
The Anti-Discrimination Act on Prohibition of discrimination based on ethnicity, religion etc (*Diskrimineringsloven*) unofficial translation at http://www.regjeringen.n	3. June 2005 No 33	1. January 2006	ethnicity, national origin, descent, skin colour, language, religion or belief.	Civil/ administrative	All sectors	Prohibition of direct and indirect discrimination, harassment, instruction to discriminate

o/en/doc/Laws/Acts/the-act-on-prohibition-of-discrimination.html?id=449184						
The Working Environment Act (WEA) on Working environment, working hours and employment protection, etc. Chapter 13 (*Arbeidsmiljøloven*) official translation updated as of 2007 at http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156 (relevant chapter, chapter 13 has been revised after the translation, in Norwegian, see http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156	17. June 2005 No 62	1. January 2006, but exising provisions included in previous legislation in 2004	Age, sexual orientation (covers also part-time/ temporary work, political affiliation and membership in trade unions)	Civil/ administrative	Employment	Prohibition of direct and indirect discrimination, harassment, instruction to discriminate
The Anti-Discrimination and Accessibility Act on Prohbition against discrimination on the basis of disability	20 June 2008 No 42	1. January 2009	Disability	Civil/ administrative	All sectors	Prohibition of direct and indirect discrimination, harassment, instruction to

(*Tilgjengelighetsloven*), unofficial translation at http://www.ub.uio.no/ujur/ulovdata/lov-20080620-042-eng.pdf						discriminate. Duty of reasonable accommodation.
the Civil Penal Code (*Straffeloven*), official translation at http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf	22. May 1902 No 10		Ethnicity, religion mm*	Criminal		
Seamen's Act section 33of (sjømannsloven), official translation at http://www.ub.uio.no/ujur/ulovdata/lov-19750530-018-eng.pdf	30. May 1975 no 18,	Discrimination clauses in force as of 1. March 2007			Seamen	Prohibition of direct and indirect discrimination,
The Human Rights Act on the Strengthening of the Status of Human Rights in Norwegian Law (*Menneskerettsloven*), official translation at http://www.ub.uio.no/ujur/ulovdata/lov-19990521-030-eng.pdf	21. May 1999 no 30	21. May 1999				

The act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal (*Diskrimineringsombudsloven*) official translation at http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-on-the-Equality-and-Anti-Discrim.html?id=451952	10. June 2005 No 40	1. January 2006		Civil/ administration law		Creation of a specialized body

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Norway Date: 1 January 2012

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)	04.11.1950	15.01.1952	No	Yes	Yes, directly through Human Rights Act
Protocol 12, ECHR	Not signed	Not ratified	N/a	N/a	N/a
Revised European Social Charter	Yes	07.05.2001	Has accepted 80 of the revised charter's 98 paragraphs	Ratified collective complaints protocol? Yes 20.03.1997	
International Covenant on Civil and Political Rights	20.03.1968	13.09.1972	No	Yes	Yes, through human rights act
Framework Convention for	Yes	17.03.1999	No	N/a	

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?
the Protection of National Minorities					
International Convention on Economic, Social and Cultural Rights	20.03.1968	13.09.1972	No	No	Yes, through the Human Rights Act
Convention on the Elimination of All Forms of Racial Discrimination	21.11.1969	06.08.1970	No	No	Yes, through the Anti-Discrimination Act
Convention on the Elimination of Discrimination Against Women	17.07.1980	21.05.1981	No	Yes	Yes, through the Human Rights Act
ILO Convention No. 111 on Discrimination	Yes	24.09.1959	No	N/a	No
Convention on the Rights of the Child	26.01.1990	08.01.1991	No	Yes	Yes, through the Human Rights Act

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 Persons with Disabilities	30.03.2007	Not yet ratified. Planned ratification 2012	No	No	No