

## DESCRIPTION

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<p>Name of the publication</p> <p>The need and options for the reform of the equality and non-discrimination legislation. Interim report of the Equality Committee</p>			
<p>Parts of publication</p>			
<p>Abstract</p> <p>The Committee is commissioned to prepare a proposal for new non-discrimination legislation. At the first phase of its work, the Committee was to examine, in particular, the need and options for reform of the non-discrimination legislation and the related monitoring mechanisms and to prepare an interim report on these issues.</p> <p>The Committee proposes in its interim report that the work to reform the equality and non-discrimination legislation be continued in accordance with the following guidelines:</p> <ul style="list-style-type: none"> <li>- The content of the legislation will be made more coherent, where appropriate and possible.</li> <li>- Legal and linguistic aspects in the legislation will be improved.</li> <li>- The ways to develop measures to promote equality and non-discrimination and to control and monitor the implementation of these measures will be examined.</li> <li>- The ways to improve co-operation, participation and interaction in equality and non-discrimination issues both between the authorities and between the authorities and interest groups will be examined.</li> <li>- The status, duties and powers of the special authorities within the field will be re-examined with special regard to their opportunities to operate independently.</li> <li>- The need, in the longer run, to develop the system of promoting and monitoring fundamental and human rights as a whole in compliance with international obligations and recommendations, will be taken into consideration in the reform of the organisation of authorities.</li> </ul> <p>Furthermore, the Committee proposes the following:</p> <ul style="list-style-type: none"> <li>- Representatives for the Confederation of Finnish Industries and the Central Organisation of Finnish Trade Unions should be nominated to the Committee and a section dealing with equality and non-discrimination issues in working life should be established to assist the committee in its work.</li> <li>- In connection with the Committee should be established an NGO-section, which would comment the Committee's legal proposals and other proposals.</li> <li>- The mandate of the committee should be extended until end of September 2009.</li> </ul>			
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## **SUMMARY**

### **I BACKGROUND TO THE REFORM OF THE EQUALITY AND NON-DISCRIMINATION LEGISLATION**

There are severe deficiencies in achieving equality and non-discrimination<sup>3</sup>. Furthermore, the legislation on equality and non-discrimination has been amended at several different times over the course of the years, which has made the legislation diffuse and incoherent. The differences in the various grounds of discrimination in the legislation cannot in all respects be justified. When the Non-Discrimination Act was enacted, the Finnish Parliament provided that the government drafts a proposal for non-discrimination legislation, which is founded on the Finnish system of fundamental rights and in which the same legal remedies and sanctions are applied to all discrimination grounds. The legislation needs to be revised also as a response to the international development and the development within the European Union.

In accordance with its assignment, the Equality Committee has drawn up an interim report on the extent of the need to reform the current legislation and options for reform. The purpose of the interim report is not to take a position on the different options, but to stimulate debate about them.

### **II THE CURRENT STATE OF THE EQUALITY AND NON-DISCRIMINATION LEGISLATION**

The Constitution of Finland includes a number of provisions that are relevant to equality and non-discrimination. Section 6 of the Constitution contains the fundamental provision on non-discrimination. The provision is based on international human rights conventions. However, since the fundamental rights reform was carried out in Finland, the scope of the international law concerning equality and non-discrimination has been extended. Over the past years also the EU anti-discrimination legislation has been extended and made more precise. In addition, the case law of the European Court of Justice and the European Court of Human Rights and the decisions, evaluations and recommendations of international human rights bodies must be taken into consideration in the reform.

In the legislation subordinate to the Constitution, the provisions on equal treatment and prohibition of discrimination are included in two general laws, i.e. the Act on Equality Between Women and Men (Equality Act) and the Non-Discrimination Act, and in several special laws concerning, for instance, employment, social welfare and health care. Provisions on the authorities and sanctions are included in the above mentioned general laws and in the special laws concerning the authorities, the Penal Code of Finland, the Tort Liability Act and the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces.

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<sup>3</sup> In this interim report equality refers to the sex of a person as mentioned in section 6 of the Constitution of Finland. Non-discrimination refers to the other grounds that concern an individual as a person as mentioned in the Constitution. These other grounds are age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

### **III EQUALITY AND NON-DISCRIMINATION LEGISLATION IN CERTAIN OTHER COUNTRIES**

Most European countries have reformed or planned to reform their equality and non-discrimination legislation. Examples of such countries are Sweden, Norway, Denmark, Germany and the United Kingdom. As in Finland, the legislation, as well as the organisation of authorities established to promote and monitor it, is diffuse in many of these countries. Even if the scope of the reform varies from one country to another, the goal of the reform is the same; to harmonise the legislation and the organisation of authorities.

### **IV THE NEED FOR AND THE GOALS OF REFORM OF THE EQUALITY AND NON-DISCRIMINATION LEGISLATION**

#### **1 The need for reform**

There are many deficiencies in the current equality and non-discrimination legislation and in its enforcement. Correcting these deficiencies would improve the opportunities to combat discrimination and safeguard equality. The most important development needs are listed below.

*The coherence and the scope of the legislation.* The concepts and other terminology used in the legislation are to some extent inconsistent. Some discrimination grounds, which are considered important in modern society, are not mentioned in the legislation. There are differences in the scope of the prohibition of discrimination, the extent of the legal protection and the access to counselling services and other expert assistance depending on the ground of discrimination and the area of life.

*Promotion of equality and non-discrimination.* The legislation relies a great deal on subsequent legal protection and the reactions of individuals. The duties to promote equality imposed on the authority are different depending on the ground of discrimination. At present Finland does not have a designated body responsible for planning information activities and education in non-discrimination issues, organising the education or monitoring this kind of activity.

*The status, duties and powers of the designated authorities.* The duties of the equality and non-discrimination authorities are not completely in line with the international recommendations and statements, but mainly they seem to comply with the requirements set out in the EU-legislation. An exception to this is to some extent the duties relating to conducting independent surveys and providing assistance to victims of discrimination. With regard to EU law, the convention on the rights of persons with disabilities and international recommendations there also seems to be a need to strengthen the independence of the national bodies. In addition, there are other aspects in the duties and the powers of the current authorities that need to be developed to make their operation more effective.

*Co-operation and interaction in equality and non-discrimination issues.* At present the co-operation between the authorities is informal. With the exception of the Ombudsman for Minorities, no special duty to co-operate has been imposed on the authorities and they do not have an official organisation for such co-operation. The co-operation between the authorities and the interest groups is also mainly based on informal communication. In addition to this, different advisory boards have been established in connection with the Ministries. However, the relevance of these boards in the communication varies. EU law, international conventions and recommendations as well as the increased international co-operation require that the national procedures and structures are reorganised.

*Participation of associations and organisations in the administrative and judicial procedures.* The current legislation gives associations and organisations only limited possibilities to make use of the administrative and judicial procedures in discrimination cases. This question should be considered with regard to EU law.

*Enforcement of the legislation.* Counselling and other expert assistance concerning the legislation improve the legal protection of the victims of discrimination. Today this kind of operation is concentrated on a national level and there are no such services on a regional or local level. Also the lack of resources for advisory and supervisory bodies makes it difficult to enforce the legislation.

*The legal and linguistic clarity of the legislation.* The incoherence and the multi-level nature of the legislation, as well as the technical deficiencies, reduce the clarity of the current legislation. There are also some terminological and linguistic questions, such as difficult and abstract concepts, legal terms and too broad expressions, which need to be considered.

## **2 The goals of the reform**

*Improvement of the coherence of the content of the legislation.* In the reform the content of the legislation should, where appropriate and possible, be made more coherent. Examples of contents that should be made more coherent are the prohibitions of discrimination and their scope of application, the scope of the duty to promote equality and the access to legal protection. The goal should be that victims of discrimination as far as possible are treated in the same way regardless of the ground for discrimination and area of life.

*Improvement of the promotion and supervision of equality and non-discrimination.* In the reform the possibilities to develop the obligations to promote equality relating to different grounds of discrimination should be examined. The examination should be carried out bearing in mind the special characteristics of the current legislation and that neither the present supervision and promotion obligations nor the powers relating to them can be restricted. The status, duties and powers of the Ombudsman for Equality and the Ombudsman for Minorities should be re-examined and their resources and opportunities to operate on a regional and local level should be evaluated.

*Improvement of co-operation, interaction and participation in equality and non-discrimination issues.* In the reform the possibilities to improve the opportunities of the interest groups to participate in the handling of equality and non-discrimination matters should be examined. It should also be examined how the co-operation between authorities and between the authorities and the interest groups could be developed.

*Improvement of the clarity as well as legal and linguistic aspects of the legislation.* In the reform the current legislation should be made clearer and the language used in the legislation made more intelligible and precise.

## **V OPTIONS FOR REFORM**

The systematic and the structure of the equality and non-discrimination legislation as well as the organisation of authorities could be developed on the basis of several different models. The basic structure of the legislation and the organisation of authorities could also be reformed separately. The Committee has discussed the following main options for reform:

### **The basic structure of the legislation: one or several general laws?**

*Decentralised regulation.* This model would include making the provisions in the current Equality Act and Non-Discrimination Act more coherent and adoption of a new act on non-discrimination authorities as well as certain new special laws or provisions, for instance, on person with disabilities and Roma people. This model is in line with current international law and EU-legislation. The differences in the grounds of discrimination and the distinctions in the legislation due to this appear to favour this model.

*A new non-discrimination act and two special acts.* In this model all general provisions on equality and non-discrimination would be consolidated in one combined act whereas the provisions on the achievement of equality between women and men and of other equality would be included in separate special acts. The provisions on general equality issues and the authorities would thereby be included in the same act.

*One common law.* In this model the Equality Act and the Non-Discrimination Act would be combined to form one general act, including also the provisions on the authorities. To the extent the content of the current provisions can be made more coherent, the legislation could be made clearer by combining them to form one act. Furthermore, combining the acts would promote a more uniform and comprehensive view on discrimination issues and also facilitate the handling of cases of multiple and intersectional discrimination.

### **The organisation of authorities: one or several authorities?**

*Development of the organisation of authorities on the basis of the current organisation.* The status, duties and powers of the current equality and non-discrimination authorities would be re-examined. Also new anti-discrimination bodies would be established or the powers of the current authorities would be extended. The authorities would have the same expertise and visibility as they have today and they would still operate under the ministry responsible for the sphere of authority in question. However, the organisation would still be diffuse and the synergies offered by joining authorities together could not be exploited. Operation under the ministries would limit the independence of the authorities.

*Establishment of a combined organisation of authorities under the Government.* The current authorities would be combined to form a new institution of non-discrimination ombudsman, which would handle also totally new grounds of discrimination. In addition to this, an advisory board and a Tribunal for discrimination issues could be established. Expertise on different fields could be guaranteed for example by appointing specialised ombudsmen within the institution. This combined ombudsman institution would be the contact point in all equality and non-discrimination issues. The exchange of information and co-operation of the actors in the field would be easier and establishment of one combined authority would also bring benefits relating to expertise, operation and administration. The new authority would operate under a ministry, which would limit its independence.

*Establishment of a combined authority under the Parliament.* A similar institution of non-discrimination ombudsman as described above would be placed under the Parliament instead of the Government, which would guarantee the independence required in international recommendations. The ombudsman would work in close co-operation especially with the Parliamentary Ombudsman of Finland, whose work its operation would complement. The communication with other actors, such as the ministries and organisations, could take place through an advisory board. The authority

would carry out its operation independently and work more freely in co-operation with e.g. various organisations and research institutes. Finland would still have a need for a broad-based expert body, with the duty to handle all kinds of issues relating to fundamental rights.

### **Development of the organisation of authorities in relation to the reform of monitoring of fundamental and human rights**

EU law, international human rights conventions as well as international recommendations and statements enable the establishment of special non-discrimination authorities in connection with general bodies responsible for the promotion and protection of human rights. In many international recommendations and statements this is even recommended. There are also national grounds which favour an investigation, in the longer run, of the possibility to reform the national system for the promotion and protection of fundamental and human rights as a whole. The Constitutional Law Committee of the Parliament of Finland has supported the idea of the establishment of a national human rights institution. The possibilities for such a reform should be investigated in more detail, for instance in a broad-based preparatory organ or as a part of a national plan of action for the promotion and protection of human rights. The general development needs in the Finnish system for fundamental and human rights will, where possible, be taken into consideration already in the reform of the organisation of authorities in the equality and non-discrimination legislation.

## **VI CONCLUSIONS AND PROPOSALS**

In accordance with the assignment of the Committee, the reform is to be carried out so that it does not weaken the protection given under the current legislation nor restrict the duties or powers to follow, monitor and promote equality and non-discrimination laid down in the acts. Instead, these should be strengthened through the reform. The Committee considers, that the work to reform the equality and non-discrimination legislation should be continued in accordance with the following guidelines:

1. The content of the legislation will be made more coherent, where appropriate and possible.
2. Legal and linguistic aspects in the legislation will be improved.
3. The ways to develop measures to promote equality and non-discrimination and to supervise and monitor the implementation of these measures will be examined.
4. The ways to improve co-operation, participation and interaction in equality and non-discrimination issues both between the authorities and between the authorities and interest groups will be examined.
5. The status, duties and powers of the designated authorities within the field will be re-examined with special regard to their opportunities to operate independently.
6. The need, in the longer run, to develop the national system for the promotion and protection of fundamental and human rights as a whole in compliance with international obligations and recommendations, will be taken into consideration in the reform of the organisation of authorities.

Furthermore, the Committee proposes the following:

7. Representatives for the Confederation of Finnish Industries and the Central Organisation of Finnish Trade Unions should be nominated to the Committee and a section dealing with equality and non-discrimination issues in working life should be established to assist the Committee in its work.
8. In connection with the Committee should be established an NGO-section, which would comment the committee's legal proposals and other proposals.
9. The mandate of the Committee should be extended until end of September 2009.