

Finland

National legal study on ageism and age discrimination

This study has been produced in connection with HelpAge International's global report, *Advancing equality for older people* →



Under international human rights law, States agree to combat discrimination and make progress towards equality. This requires the adoption of comprehensive anti-discrimination legislation, which prohibits all forms of discrimination in all areas of life on an open-ended and extensive list of grounds, including age.¹ The law should establish the framework for promoting equality for older people, and put in place the necessary enforcement and implementation mechanisms needed to ensure access to justice and remedy for victims.

The Finnish legislative framework is broadly compliant with these requirements, although there remains some room for improvement.

Equality and non-discrimination obligations

Treaty ratification	Ratified	Individual complaints
ICCPR	✓	✓
ICESCR	✓	✓
ICERD	✓	✓
CEDAW	✓	✓
CRPD	✓	✓
CRC	✓	✓
CAT	✓	✓
ICMW	✗	✗
CPED	✗	✗

Finland has accepted non-discrimination obligations through the ratification of international human rights treaties. The State is party to the International Covenant on Civil and Political Rights (ICCPR), which contains a free-standing right to non-discrimination, and prohibits discrimination in respect of all Covenant rights.²

Finland is also a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as each of the ground-specific treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD). Individuals who have experienced age discrimination are empowered to bring complaints directly to each of these treaty bodies after exhausting domestic remedies. Additionally, Finland is a party to relevant regional human rights instruments. The State has ratified the European Convention on Human Rights, as well as Protocol 12 to the Convention, which provides an autonomous right to non-discrimination. Finland is also party to the revised European Social Charter. As an EU member State, Finland is directly bound by the requirements of the Framework Employment Directive and the Charter of Fundamental Rights of the European Union, which prohibits age-based discrimination in the application of EU law.

The prohibition of age discrimination

Personal scope	
Has the State adopted comprehensive legislation?	✓
Does the law expressly prohibit age discrimination?	✓
Is the list of grounds open-ended and non-exhaustive?	✓

The primary anti-discrimination law in Finland is the Non-Discrimination Act, which sits alongside gender-specific legislation, criminal sanctions, consumer protection and employment provisions, and a Constitutional equality guarantee.³



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The Law has a broad **personal scope**: prohibiting discrimination on an open-ended list of grounds that expressly includes age, in line with best-practice.⁴ Discrimination based on a (real or inaccurate) perception that a person belongs to a protected group, or due to a person's association with someone who belongs to such a group is prohibited through Section 8(1) of the Act. The government has noted that intersectional discrimination is prohibited under national law, and there is some relevant practice from the National Non-Discrimination and Equality Tribunal of Finland to this effect, in cases concerning multiple gender and age discrimination.⁵ However this is not made explicit under the Act, despite the clear recommendations of the bill's drafting Committee.⁶ This is a notable protection gap, and the Ministry of Justice had recommended that "legal safeguards (...) be developed to better recognise multiple discrimination and the particularly vulnerable position of its victims in both support services and the judicial process".⁷

Personal scope	
Is multiple discrimination prohibited?	?
Is discrimination based on association prohibited?	✓
Is discrimination based on perception prohibited?	✓

The Non-Discrimination Act explicitly defines direct discrimination, indirect discrimination, harassment, instruction or order to discriminate, and victimisation as forms of **prohibited conduct**.⁸ Denial of reasonable accommodation is also prohibited; however, the personal scope of protection is confined to the ground of disability.⁹ Human rights organisations have noted that in some situations, a medical diagnosis may be required before an accommodation is provided. In practice "these restrictions [may] create additional difficulties for older people to receive equal treatment as old age disabilities are not necessarily linked to a specific condition, while medical professionals tend to attribute some of the difficulties encountered 'just to old age'".¹⁰

Prohibited conduct	
Direct discrimination	✓
Indirect discrimination	✓
Harassment	✓
Denial of reasonable accommodation	?

The Act has a wide **material scope**, consistent with best practice. It applies to public and private activities (although 'religious activity' and private and family life fall beyond the scope of the law), and defines the specific obligations of employers, educators, and public authorities to promote equality.¹¹

The Act establishes specific rules relating to **justifications and exceptions**. Section 11(1) of Chapter 1 of the Act provides that a differentiation *inter alia* on the grounds of age will not constitute discrimination if it is "based on legislation and it otherwise has an acceptable objective and the measures to attain the objective are proportionate". As part of this assessment, the Courts have stressed that a differentiation will "not be permissible if the means used were inappropriate or excessive (...) or if the means used were not necessary, because the same aim could have been achieved by other means more compatible with equal treatment".¹² The requirement that **justifications** are prescribed by legislation, is exempted under Section 11(2), "if the treatment has an acceptable aim in terms of basic and human rights, and the measures to attain the aim are proportionate". Certain areas of life, grounds of discrimination, and duty-bearers are excluded from the ambit of this provision.¹³

Section 12(1) of the Act provides that unequal treatment may be justified where "the treatment is founded on genuine and determining requirements concerning the type of occupational tasks and their performance, and the treatment is proportionate to achieve the legitimate objective". This provision is supplemented by Section 12(2), which establishes a specific exception relating to age:

Different treatment based on age or domicile is also justified if the treatment has an objectively and appropriately justified employment policy objective or an objective concerning the labour market, or if the different treatment is attributable to the age limits adopted for qualification for retirement or invalidity benefits.

Thus, in this respect, age is treated differently from other protected characteristics under the Non-Discrimination Act. This is problematic. Older people often experience discrimination in the workplace and in accessing services. Under international law, age-based distinctions may only be justified where necessary, appropriate and proportionate to a legitimate aim. Stereotypes (based on age or other grounds) cannot serve as an objective or reasonable justification.

Equality duties and other equality measures

Alongside eliminating discrimination, States are required to advance equality for members of discriminated groups, including older people. This, in turn, requires the adoption and effective implementation of a comprehensive package of proactive and targeted equality measures, which seek to identify and address structural barriers to equal participation. To meet their non-discrimination and equality obligations under international law, many States have enacted equality duties that require public authorities and other duty-bearers such as employers and educators to assess the impact of their policies and mainstream the rights of discriminated groups in their work.

The Non-Discrimination Act provides a legal basis for the adoption of equality measures, including **positive action**, which is expressly permitted (although not mandated) under Section 9. For measures adopted pursuant to this provision to be legitimate, they must be proportionate, and aim to “promote *de facto* equality, or to prevent or remove the disadvantages attributable to discrimination”.¹⁴

Finland’s non-discrimination framework establishes preventative, institutional and mainstreaming **equality duties**,¹⁵ although these duties do not apply equally to all grounds. Chapter 2 of the Non-Discrimination Act establishes the principal obligations of authorities, educators, and employers (defined under Section 4) to evaluate and develop plans, and to promote equality in their work. The Ministry of Justice has developed guidance and best practices on equality planning, which is maintained on its website.¹⁶ Mechanisms for the enforcement of these provisions are provided for under the law.¹⁷

Equality impact assessment is not specifically required by the Non-Discrimination Act, although such assessment may be conducted in practice as part of measures developed to promote equality. The duty of authorities to promote gender equality under the Act on the Equality between Women and Men, is drafted in more explicit terms, requiring authorities to “create and consolidate administrative and operating practices that ensure the advancement of equality between women and men in the preparatory work undertaken on different matters and in decision-making”.¹⁸ It has been noted that this provision has provided a “legal basis for gender impact assessment implementation”.¹⁹ However, the law is more limited in its personal scope, and does not expressly require the impact of intersectional gender discrimination on older people to be taken into account.

Enforcement and implementation

To ensure access to justice for victims of discrimination, a wide range of measures are required. This includes the establishment and adequate resourcing of institutions empowered to enforce the legal framework; the amelioration of national rules governing evidence and proof in discrimination cases; and the provision of legal aid and assistance, alongside procedural accommodation and accessibility measures, to remove financial and physical justice barriers. While States may adopt slightly different approaches to the enforcement and implementation of equality law, in all cases people who have been subjected to discrimination must be ensured the right to seek legal redress and an effective remedy.

The implementation of the Non-Discrimination Act is overseen by three supervisory bodies, whose primary responsibilities are set out under Chapter 4.²⁰ The Non-Discrimination Ombudsman has broad promotion and prevention functions, and is empowered to support victims to bring discrimination complaints and take action to reconcile matters relating to compliance with the Act.²¹ In areas other than employment, the ombudsman can bring cases, with the consent of a victim, directly to the Non-Discrimination and Equality Tribunal, which is empowered to receive complaints.²² Individuals may also bring claims on their own behalf, or may permit a third party organisation which “fosters equality” to do so.²³ The tribunal has the power to confirm reconciliation agreements lawfully reached between parties (which may include measures such as public apologies, compensation and guarantees of non-repetition), and may order non-repetition, and the discontinuation of discriminatory policies and practices, subject to the threat of a fine for non-compliance, although it possesses no general power to award compensation.²⁴ The powers of the tribunal in this regard do not extend to employment, which falls within the remit of the occupational safety and health authorities.²⁵

A person who has experienced discrimination or victimisation is entitled to apply to a district court for compensation, which should be awarded “equitably proportionate to the severity of the act”.²⁶ The **burden of proof** is regulated under Section 28 of the Act which states that the victim of discrimination or victimisation must, before the court or other authority, present an account of the facts on which the claim is based. If a *prima facie* case of discrimination has been shown, the burden of proof shifts onto the other party who must show that the prohibition of discrimination was not breached. This procedure is applied in investigations conducted by the ombudsman, but – consistent with best practice – does not apply in criminal discrimination proceedings, which would raise issues relating to the presumption of innocence.²⁷

Gaps and opportunities

The Finnish anti-discrimination framework is broad, clearly-articulated and largely consistent with international standards. In some areas – such as the development of statutory equality duties for employers, educators, and public authorities – the Non-Discrimination Act goes further than many similar laws. However, there remain some legislative gaps and weaknesses in enforcement, which undermine the protection of the rights to equality and non-discrimination for older people. The lack of explicit protection against intersectional discrimination, the failure to apply the right to reasonable accommodation to a broader list of characteristics, and the problematic inclusion of an age-specific exception to the general equality framework are just three notable examples.

Whilst Finland has developed a broad framework for promoting equality through the adoption of statutory equality duties, equality impact assessment is not specifically mandated. Such assessment is necessary to identify and avert the impacts of age-discriminatory policies, compliant with States' immediate obligations to refrain from discrimination. The limited competence of the Non-Discrimination Ombudsman and Equality Tribunal to decide upon complaints in the area of employment complicates the enforcement framework and may result in protection gaps. Whilst these mechanisms have been developed as low-cost alternatives to the Courts, the only way to receive compensation outside of an agreement between parties is through a district court application. Only three successful compensation claims were recorded between 2015 and 2019.²⁸ The limited range of sanctions available to enforcement bodies and the inability of the ombudsman or interested civil society organisations to initiate discrimination cases of their own volition may also create barriers to justice.

Endnotes

1. For a discussion of the human rights framework on age discrimination see HelpAge International, *Advancing equality for older people*, 2022, available at: www.helpage.org/AgeEquality
2. International Covenant on Civil and Political Rights, Articles 26 and 2(1).
3. See respectively, Finland, Non-Discrimination Act (1325/2014); Act on the Equality between Women and Men (609/1986); Criminal Code (39/1889); Employment Contracts Act (55/2001), Section 2; and Constitution of Finland (731/1999), Section 6. This study focuses on the Anti-Discrimination Act as the primary piece of equality legislation. Criminal sanctions fall beyond the scope of this study.
4. Non-Discrimination Act, Section 8(1). See Note 1.
5. Committee on the Elimination of Discrimination against Women, State Party Report: Finland, UN Doc. CEDAW/C/FIN/8, 2019, para. 10; Non-Discrimination and Equality Tribunal, Decision 216/2017, 21 March 2018, available at: www.yvtltk.fi/en/index/opinions_anddecisions/decisions.html
6. Ministry of Justice, 'Tense All the Time: Multiple Discrimination Experienced by Sexual and Gender Minorities', 2018, p.25, available at: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161239/OMSO_51_2018_Koko_ajan_jannittyneen_Rainbow_Rights_web.pdf
7. Ministry of Justice of Finland, Multiple Discrimination and the Need to Identify it Better, 2019, p.14, available at: <https://yhdenvertaisuus.fi/documents/5232670/5376058/Policy+Brief+moniperussynteinen+syryjint%C3%A4+EN/cb153ed3-ad4a-fd32-8bec-bd2c7580240f/Policy+Brief+moniperusteinen+syryjint%C3%A4+EN.pdf>. See also the concerns of the UN Independent Expert on the enjoyment of all human rights by older persons, on her recent visit to Finland, available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27765&LangID=E
8. Non-Discrimination Act, Sections 8(2), 10, 13, 14, and 16.
9. *Ibid.*, Sections 8(2) and 15.
10. See Age Platform Europe, Questionnaire on the Rights of Older Persons with Disabilities, 2019, p.5, available at: www.age-platform.eu/sites/default/files/AGE_contribution_on_rights_of_older_persons_with_disabilities-April2019.pdf
11. Non-Discrimination Act, Sections 2, 5, 6 and 7.
12. Supreme Administrative Court, Judgment of 6 April 2018, Case 820/3/17, Volume 1620, ECLI:FI:KHO:2018:T1620, available at: www.finlex.fi/fi/oi/keus/kho/muut/2018/201801620?search%5Btype%5D=pika&search%5Bpika%5D=yhdenvertaisuusla%2A%20%20%20%20perustuu%20lakiin%20-%20highlight3 (accessed 13 October 2021).
13. Non-Discrimination Act, Section 11(2).
14. *Ibid.*, Section 9.
15. See further, Equinet, *Making Europe More Equal: A Legal Duty*, 2016, available at: www.archive.equineteurope.org/IMG/pdf/positiveequality_duties-finalweb.pdf
16. See Ministry of Justice Website 'equality.fi', Guides for Equality Planning, available at: <https://yhdenvertaisuus.fi/oppaat-yhdenvertaisuussuunnitteluun>
17. See in particular, Sections 21(3) and 20(3).
18. Act on the Equality between Women and Men, Section 4.
19. European Institute for Gender Equality, Gender Impact Assessment: Finland, 2021, available at: <https://eige.europa.eu/gender-mainstreaming/toolkits/gender-impact-assessment/finland>
20. Non-Discrimination Act, Section 18.
21. *Ibid.*, Section 19. See also, the Non-Discrimination Ombudsman Act (1326/2014).
22. *Ibid.*, Non-Discrimination Act, Section 21(2).
23. *Ibid.*, Section 21(2).
24. *Ibid.*, Sections 20 and 21. For a more detailed description of this process, see the Report of the Non-Discrimination Ombudsman to Parliament, 2018, pp.15–19, available at: <https://rm.coe.int/fin-the-report-of-the-non-discrimination-ombudsman-to-the-parliament/16808b7cd2>
25. The powers of the Occupational Safety and Health Authorities are detailed under Section 22.
26. *Ibid.*, Sections 23–26.
27. *Ibid.*, Section 28. See also Report of the Non-Discrimination Ombudsman to Parliament, 2018, above, p.16.
28. European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report: Non-Discrimination in Finland, 2021, p.44, available at: www.equalitylaw.eu/downloads/5507-finland-country-report-non-discrimination-2021-1-21-mb

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